

1920

## ALIEN LAND LAW

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<p><b>ALIEN LAND LAW.</b> Initiative act. Permits acquisition and transfer of real property by aliens eligible to citizenship, to same extent as citizens except as otherwise provided by law; permits other aliens, and companies, associations and corporations in which they hold majority interest, to acquire and transfer real property only as prescribed by treaty, but prohibiting appointment thereof as guardians of estates of minors consisting wholly or partially of real property or shares in such corporations; provides for escheats in certain cases; requires reports of property holdings to facilitate enforcement of act; prescribes penalties and repeals conflicting acts.</p>	<p>YES</p>	
<p>1</p>	<p>NO</p>	

Sufficient qualified electors of the State of California present to the secretary of state this petition and request that a proposed measure, as hereinafter set forth, be submitted to the people of the State of California for their approval or rejection, at the next ensuing general election. The proposed measure is as follows:

**PROPOSED LAW.**

(Proposed changes from provisions of present laws are printed in black-faced type.)

An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith.

The people of the State of California do enact as follows:

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Sec. 3. Any company, association or corporation organized under the laws of this or any other state or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise. Hereafter all aliens other than those specified in section one hereof may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Sec. 4. Hereafter no alien mentioned in section two hereof and no company, association or corporation mentioned in section three hereof, may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association

or corporation is, inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of this act. The public administrator of the proper county, or any other competent person or corporation, may be appointed guardian of the estate of a minor citizen whose parents are ineligible to appointment under the provisions of this section.

On such notice to the guardian as the court may require, the superior court may remove the guardian of such an estate whenever it appears to the satisfaction of the court:

(a) That the guardian has failed to file the report required by the provisions of section five hereof; or

(b) That the property of the ward has not been or is not being administered with due regard to the primary interest of the ward; or

(c) That facts exist which would make the guardian ineligible to appointment in the first instance; or

(d) That facts establishing any other legal ground for removal exist.

Sec. 5. (a) The term "trustee" as used in this section means any person, company, association or corporation that as guardian, trustee, attorney-in-fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such an alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying or transferring it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such an alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

Sec. 6. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee cannot take real property in this state or membership or shares of stock in a company, association or corporation which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such property to such heir or devisee,

shall order a sale of said property to be made in the manner provided by law for probate sales of property and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such property.

Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the State of California. The attorney general or district attorney of the proper county shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner provided by section four hundred seventy-four of the Political Code and title eight, part three of the Code of Civil Procedure. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the State of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner. No alien, company, association or corporation mentioned in section two or section three hereof shall hold for a longer period than two years the possession of any agricultural land acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt.

Sec. 8. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to the State of California. The attorney general or district attorney of the proper county shall institute proceedings to have such escheat adjudged and enforced as provided in section seven of this act. In such proceedings the court shall determine and adjudge the value of such leasehold or other interest in such real property, and enter judgment for the state for the amount thereof together with costs. Thereupon the court shall order a sale of the real property covered by such leasehold, or other interest, in the manner provided by section twelve hundred seventy-one of the Code of Civil Procedure. Out of the proceeds arising from such sale, the amount of the judgment rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein. Any share of stock or the interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section three of this act shall escheat to the State of California. Such escheat shall be adjudged and enforced in the same manner as provided in this section for the escheat of a leasehold or other interest in real property less than the fee.

Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:

(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof;

(b) The taking of the property in the name of a company, association or corporation, if the memberships or shares of stock therein held by aliens mentioned in section two hereof together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or the issued capital stock of such company, association or corporation;

(c) The execution of a mortgage in favor of an alien mentioned in section two hereof if said mortgagee is given possession, control or management of the property.

The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein.

Sec. 10. If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both.

Sec. 11. Nothing in this act shall be construed as a limitation upon the power of the state to enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

Sec. 12. All acts and parts of acts inconsistent or in conflict with the provisions hereof are hereby repealed; provided, that—

(a) This act shall not affect pending actions or proceedings, but the same may be prosecuted and defended with the same effect as if this act had not been adopted;

(b) No cause of action arising under any law of this state shall be affected by reason of the adoption of this act whether an action or proceeding has been instituted thereon at the time of the taking effect of this act and actions may be brought upon such act in the same manner, under the same terms and conditions, and with the same effect as this act had not been adopted;

(c) This act in so far as it does not add to, take from or alter an existing law, shall be construed as a continuation thereof.

Sec. 13. The legislature may amend this act in furtherance of its purpose and to facilitate its operation.

Sec. 14. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The people hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

#### EXISTING PROVISIONS.

The alien land act of 1913, which will be superseded by the proposed initiative alien land law, reads as follows:

(Provisions proposed to be repealed are printed in italics.)

An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing the procedure therein, and repealing all acts or parts of acts inconsistent or in conflict herewith.

The people of the State of California do enact as follows:

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise, and may in addition thereto lease lands in this state for agricultural purposes for a term not exceeding three years.

Sec. 3. Any company, association or corporation organized under the laws of this or any other state or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise, and may in addition thereto lease lands in this state for agricultural purposes for a term not exceeding three years.

Sec. 4. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee can not take real property in this state which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such real property to such heir or devisee, shall order a sale of said real property to be made in the manner provided by law for probate sales of real property, and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such real property.

Sec. 5. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the State of California. The attorney general shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner provided by section four hundred seventy-four of the Political Code and title eight, part three of the Code of Civil Procedure. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the State of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner.

Sec. 6. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to the State of California. The attorney general shall institute proceedings to have such escheat adjudged and enforced as provided in section five of this act. In such proceedings the court shall determine and adjudge the value of such leasehold, or other interest in such real property, and enter judgment for the state for the amount thereof together with costs. Thereupon the court shall order a sale of the real property covered by such leasehold, or other interest, in the manner provided by section one thousand two hundred seventy-one of the Code of Civil Procedure. Out of the proceeds arising from such sale, the amount of the judgment rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein.

Sec. 7. Nothing in this act shall be construed as a limitation upon the power of the state to

enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

Sec. 8. All acts and parts of acts inconsistent, or in conflict with the provisions of this act, are hereby repealed.

#### ARGUMENT IN FAVOR OF PROPOSED ALIEN LAND LAW.

Opponents of this initiative measure must assume that California is bound for some reason to give to Japanese in the state—to our ultimate undoing—privileges not contemplated by the treaty with Japan, and such as have always been denied to Americans in Japan.

Through the measure California seeks, as is her inherent right, to preserve her lands for Americans, precisely as Japan preserves her lands for the Japanese. Its primary purpose is to prohibit Orientals who can not become American citizens from controlling our rich agricultural lands.

By what right does Japan object to California extending to her own citizens and lands the same protection given by Japan to the Japanese and their lands?

Our present treaty of commerce and navigation with Japan deliberately omits, from the privileges granted Japanese in this country, either ownership or lease of agricultural lands. Japan has always prohibited ownership, or lease, or use of agricultural lands in Japan by Americans, or other foreigners.

Orientals, and more particularly Japanese, having commenced to secure control of agricultural lands in California, there was enacted in 1913, the Alien Land Law, which prohibited ownership—or lease beyond three years—of agricultural lands by aliens ineligible to citizenship.

In defiance of that law, through various subterfuges, including use of dummy corporations and minor native born children, Orientals, largely Japanese, are fast securing control of the richest irrigated lands in the state, through lease or ownership, the proportion already controlled in some counties being from 50 per cent to 75 per cent.

The initiative measure simply closes the loopholes in the 1913 law which permit violation and erosion thereof. In addition, it forbids even short leases.

Long lease of these lands by Japanese is as injurious in effect as ownership; and the short lease becomes long lease through repeated renewal, and because once the land is occupied by Japanese, the whites move away, and cease to be prospective lessees.

Control of these rich lands means in time control of the products, and control of the markets. Control of the products of the soil by a unified interest such as the Japanese will lead to economic control of the country. That will be followed in time by political control through force of numbers induced by the heavy birth rate. That condition is now at hand in Hawaii.

Rather than invite such disaster, better let some land lie idle, and a few large landholders make less profit, and even see production decrease somewhat, as opponents claim will result if this measure carries. However, it is not proven that curtailment of production will result. At present the small farmer who needs labor can get none from the Japanese, because they demand leases and cooperative management.

Under the initiative measure, treaty rights are fully safeguarded and citizenship of native born is not affected. All Japanese legitimately here may remain indefinitely in any occupations selected by them, and will be protected in all

property rights previously acquired. As agricultural laborers in California, they could earn much more than in any occupation in their own land. The birth rate will insure increase, rather than decrease, of the Japanese population in this state.

The measure provides that any alien ineligible to citizenship may acquire, use, transmit, and inherit interest in real property to the extent, and for the purposes prescribed by treaty with his respective nation, and not otherwise.

Various safeguards, suggested by experience, are provided, and certain penalties (including forfeiture of the property) for deliberate violation or evasion. The equities of innocent holders are fully protected.

The measure was carefully prepared by the State Legislative Counsel Bureau, after the proposed provisions had been criticised by various leading legal and civic organizations of the state.

California should vote overwhelmingly for the measure, for the additional reason that her polled verdict as to the gravity of the problem will influence the nation in endorsing necessary federal legislation.

V. S. McCLATCHY.

#### ARGUMENT AGAINST PROPOSED ALIEN LAND LAW.

This initiative raises questions of cold law, to which I invite the very thoughtful attention of the voters.

Our treaty with Japan provides that the Japanese here "may own or hire and occupy houses, manufactories, warehouses, shops and premises and lease land for residential and commercial purposes." In its economic definition commerce consists of production, transmutation and exchange; production is the ranking element, because without it there can be no commerce.

The treaty protects the right of Japanese to hire or own manufactories, for transmutation, warehouses, necessary to exchange, and to lease land for commercial purposes. Land employed in agricultural production is employed in a commercial purpose. The treaty is intended, then, to give the Japanese privilege to enter upon complete commerce, and therefore protects their right to lease land for production. Any other interpretation twists the plain language of the treaty into vain repetition.

Considered in the light of the fourteenth amendment to the Constitution of the United

States, which says, "No state shall deny to any person within its jurisdiction the equal protection of the laws," we find the initiative in conflict with our own constitution, since it proposes a discriminatory classification of aliens, conferring upon one class the protection of the law which it denies to another class.

This discrimination applies also to the leasing of land denied to Japanese and permitted to other aliens. It also applies to the feature of the initiative which subjects Japanese minors who own land to the guardianship of the public administrator, but exempts other alien minors who own land from such guardianship.

These proposed discriminations against classes of aliens were adopted by the people of another state by the initiative and were voided by the United States Supreme Court as unconstitutional. That court held that "equal protection of the laws is applicable to all persons, without regard to any differences of race, color or nationality," and that discrimination under the pretense of "promoting the health, safety, morals and welfare," is unconstitutional, and denies "the very essence of personal freedom and opportunity it was the purpose of the fourteenth amendment to secure." And "if such freedom could be refused upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words."

In the foregoing I have stripped the initiative of its cryptic and involved language and technicalities, so that it is naked in its two purposes: First, to forbid the leasing of land to Japanese and Chinese; and, second, to take land-owning minors of those races from the natural guardianship of the parents and commit them to the control of the public administrators.

All the other confusing propositions of the initiative, respecting holdings in corporations etc., are subordinate to these two.

Considered in its effect upon the land owners in the state, the initiative, under penalty of confiscation, prohibits them from leasing land to a certain class of persons. If the state can do that it can also compel land owners, under penalty of confiscation, to lease their land to a certain class of persons. It will be seen at once that the claim of such power in the state is a destructive blow at the liberty of American citizens.

JOHN P. IRISH.

#### PROHIBITION ENFORCEMENT ACT. Submitted to electors by referendum.

2 Defines intoxicating liquor as that containing over one-half of one per cent of alcohol; with certain exceptions relating to religious, medicinal and home use, prohibits the manufacture, possession, receiving, serving, gift and transportation thereof, and also the advertising and soliciting the sale thereof, for beverage purposes; declares nothing therein shall authorize anything prohibited by any act of Congress, nor limit the power of any city or county to prohibit the manufacture and sale of such liquor; regulates the dealing in intoxicating liquor for nonbeverage purposes; and prescribes penalties.

YES

NO

Whereas, the legislature of the State of California, in regular session in April, 1919, passed, and the governor of the State of California, on the fifteenth day of April, 1919, approved a certain act, which act, together with its title, is in the words and figures following, to wit:

#### PROPOSED LAW.

An act enforcing the provisions of article eighteen of the constitution of the United States; prohibiting the manufacture, sale, storage, service, gift, transportation, impor-

tation or exportation of intoxicating liquors for beverage purposes; regulating all other traffic in such liquors; and providing penalties for violations hereof.

The people of the State of California do enact as follows:

Section 1. This entire act shall be deemed to be an exercise of the power granted by article eighteen of the constitution of the United States and of the police power of the state for the protection of the public health, peace, safety, and morals of the people of the state, and all of its