purchases, that has not been sold, is now vested in one or the other of the appellees, and that they also hold the proceeds of all such property as has been sold in closing out the various deals. No harm, therefore, can result to the appellees by leaving the fundamental issue touching the existence of the alleged agreement to be settled by a jury. The circuit court recognized this fact by refusing to appoint a receiver as prayed for in the bill, and we think that it should also have declined to enjoin the further prosecution of the actions at law.

We have thus far treated both of the suits at law, the further prosecution of which has been enjoined, as if they were suits of precisely the same character brought to recover the appellant's portion of moneys realized by Rufus C. Jefferson in the respective real-estate deals to which the suits respectively relate. We have so treated them heretofore as suits of the same character, because they are so treated and described in the bill of complaint. Other parts of the record disclose, however, that one of the suits at law—the one in which a judgment is demanded against Rufus C. Jefferson for the sum of $8,952.07—is founded upon the breach of an express covenant made by the said Jefferson on the final settlement of one of the deals in which he and the appellant had been engaged, to the effect that he, the said Jefferson, would satisfy certain mortgages on certain lots of land, which, in the settlement of the deal, had been set apart and conveyed to the said Jefferson as his individual property. It would seem, therefore, that in any aspect of the case the complainants below were not entitled to an injunction restraining the prosecution of the last-mentioned suit, because the sum of money sued for in that case was not an item of the partnership account, but was a sum which Rufus C. Jefferson had expressly agreed to pay on the final settlement of one of the deals, without reference to the outcome of the other transactions. The result is that the order granting an injunction must be, and it is hereby, reversed, and the injunction is hereby dissolved. The case will be remanded to the circuit court for further proceedings not inconsistent with this opinion.

BRIGHAM et al. v. KENYON et al.

(Circuit Court, D. Washington, N. D. August 8, 1896.)

No. 525.

DEVISE TO ALIEN—VALIDITY.

Const. Wash. art. 2, § 33, prohibiting "the ownership of lands by aliens * * * except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts," and providing that "all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void," does not render a will void because it contains an item devising land to an alien.

Bill by Mary Ann Brigham and Cynthia Perry against Benjamin Kenyon and others.

Lindsay, Arthur & King and G. W. Delamater, for plaintiffs.

Struve, Allen, Hughes & McMicken, for defendants.

HANFORD, District Judge. The bill of complaint alleges ownership by one J. Gardner Kenyon, deceased, of real estate in the state of Washington, and a will made by him, devising real estate to Benjamin Kenyon, who is alleged to be an alien and a subject of Great Britain. The complainants, as heirs of said J. Gardner Kenyon, seek a construction of the will, and a decree of the court determining that the heirs at law are entitled to the estate as if J. Gardner Kenyon had died intestate, and base their contention on section 33 of article 2 of the constitution of the state of Washington, which reads as follows:

"Sec. 33. The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: provided, that the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom."

The defendants have demurred to the bill, and they contend that a construction must be given to the above section of the constitution to give effect to the word "inheritance" so as to include the succession to ownership of real estate of deceased persons by devise, as well as by operation of law in cases of persons dying intestate, and that the word "void" must be limited in its meaning so that instruments conveying real estate are only made noneffective as against proceedings lawfully instituted by the state for the purpose of depriving alien grantees of estates thereby conveyed, or, to state the matter more concisely, the word "voidable" should be substituted for "void," or else the section must be given a literal construction throughout, and effect given to every word therein, as having been selected to accurately signify what it expresses according to the definitions given by lexicographers, and that the word "conveyances" should therefore be restricted to apply only to instruments in writing whereby the title to land is transferred directly from one living person to another.

In 1887, congress passed an act containing the following provisions:

"It shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens, * * * to hereafter acquire, hold, own real estate so hereafter acquired, or any interest therein, in any of the territories of the United States or in the District of Columbia, except such as may be acquired by inheritance or in good faith in the ordinary course of justice in the collection of debts heretofore created. * * *

"Sec. 4. That all property acquired, held, or owned in violation of the provisions of this act shall be forfeited to the United States, and it shall be the duty of the attorney general to enforce every such forfeiture by bill in equity or other proper process."

24 Stat. 476.

At the time of the adoption of our state constitution, in 1889, the following statute, in regard to the equal rights of aliens with citizens in acquiring real estate, was in force:

"Sec. 2955. Any alien, except such as by the laws of the United States are incapable of becoming citizens of the United States, may acquire and hold lands, or any right thereto or interest therein, by purchase, devise, or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descend, in like manner and with like effect as if such alien were a citizen of this state or of the United States." 1 Hill's Code, p. 1015.

And the following statute in regard to wills was in force:

"Sec. 1458. Every person who shall have attained the age of majority, of sound mind, may by last will devise all his or her estate, real and personal."

It will be observed by reference to the act of congress above quoted that it is one declaring the policy of the United States, and in no sense one for the territory of Washington. Nothing in that act contravenes any policy of the territories, nor is it contemplated that the territories shall in any manner be instrumental in the vindication of the policy. Congress declares the acquiring, holding, or owning of lands by an alien to be unlawful. While it, in every form of the acquirement, holding, or owning, denounces the act as an unlawful one, it recognizes the ability of the forbidden person to do the unlawful act, and reserves to itself, by the fourth section, the right of vindicating the law, and inflicting upon the alien the consequences of his unlawful act in acquiring or owning the land by forfeiting the same to the United States; so that, so far as the law stood up to the time of the adoption of the constitution, the territory itself and its citizens were in no condition to complain of any violation of that act, because it was the sole prerogative of the United States. It will be seen, on the other hand, that the legislature of the territory, so far as it was concerned, expressly recognized and provided for the rights of ownership of real estate in aliens in every respect as in citizens of the territory, measuring those of the alien by those of the citizen. The law in force also gave equal right of devising real estate by will to the citizen and alien, with the same unrestricted right of naming devisees, whether aliens or citizens.

It is difficult to determine what, if any, definite policy, was intended by the framers of the constitution in adopting section 33 of article 2, above quoted. The policy of the common law, and of the states of the American Union adopting the common law,—that allegiance and inheritance should go together,—has been entirely abrogated, because no restriction is placed on aliens acquiring land through inheritance. An examination of this section of the constitution plainly discloses that the incapacity of alienage at common law is removed, and that in all respects the alien heir stands upon a perfect equality with the citizen heir of like degree. First, the alien is expressly authorized and empowered to become the owner of real estate in Washington under mortgage, to as full an extent as he may desire. Second, he is permitted, through judicial process in the collection of debts, to become the purchaser and owner of real estate to the same extent as a citizen. Third, no restriction is placed upon his ownership of lands having deposits of minerals, metals, iron, coal, or fire clay, and whatever lands may be necessary for mills and machinery to be used in the development thereof, and the manu-

facture of products therefrom. Thus, it is seen the alien is by constitutional guaranty assured title to lands as a mortgagee, judgment creditor, or owner to any extent of lands having deposits of various minerals, or lands necessary for their manufacture. Every attribute of ownership and every method of acquirement of ownership are guarantied to the alien. It is clearly demonstrated by this provision of the constitution that he is not a person incapacitated, but, on the contrary, is endowed with every capacity of ownership. In no place does the constitution declare him civilly dead. In no place does it deal with him as a person lacking capacity to take in every one of the methods for the acquirement of property known to the law.

I cannot presume to state or understand all that the framers of our constitution may have intended by the provision above quoted, but this much is reasonably plain: that it was intended to prevent general traffic in real estate by aliens, in the ordinary way of buying and selling, and transferring titles by deeds. And, although there may be evil consequences, I do not feel justified in making an assertion that the method of prohibiting such traffic, by making all deeds to alien purchasers absolutely void, is more radical than our constitution makers intended. But it is not plain that anything more was intended than to prohibit traffic, and the reasons for giving to the word "void" its accurate and literal significance are not more cogent than may be suggested for treating the word "conveyances" in the same way. The definition of the word "conveyance" is given in the dictionaries as follows:

"An instrument in writing by which property, or the title to property, is conveyed or transmitted from one person to another." Webst. Dict.

"In the narrower sense of the word, 'conveyance' signifies the instrument employed to effectuate an ordinary purchase of freehold land (e. g. the modern deed), as opposed to settlements, wills, leases, partitions," etc. 1 Rap. & L. Law Dict. p. 290.

It is much safer for the courts to regard every word in the constitution as an accurate and precise expression of the sovereign will of the people, and as mandatory, than to assume any latitude whatever, in giving a meaning, by construction or interpretation, consonant and varying with the different ideas of different judges. I hold, therefore, that effect must be given to the constitutional provision according to the accurate and technical definition of all the words used. This brings me to the conclusion that a will otherwise valid, in this state, is not, by reason of the above-quoted section of the constitution, rendered void by an item therein devising land to an alien. It would certainly be a most arbitrary rule which would nullify a will in its entirety for such a cause, and it would be very inconsistent to so construe the constitution as to hold such a will to be void for one purpose, and valid as to every other. It may be the future policy of the state to claim a forfeiture of lands devised to aliens, or it may give the same to the heirs of the testators, notwithstanding the will; but, until the legislature shall make provision for such cases, the heirs have, in my opinion, no such right to the lands as to entitle them to ask a court of equity to set aside the will. Demurrer sustained.

NORTHERN TRUST CO. v. SNYDER.

(Circuit Court of Appeals, Seventh Circuit. October 5, 1896.)

No. 314.

1. COVENANTS IN LEASE—WHEN BINDING ON ASSIGNEE.

Covenants that the lessee will keep the buildings insured for two-thirds of their value, and, in case of destruction by fire, will use the proceeds of such insurance for rebuilding, or will pay over the insurance to the lessor at his option, run with the land, and bind the assignee of the lease and all acquiring rights under him.

2. SAME—INSURANCE MONEY—APPLICATION.

Lessees covenanted to construct buildings and keep them insured for two-thirds of their value, the proceeds of insurance to be used in rebuilding, or to be paid over to the lessor, at the lessee's option. A trust deed executed by the lessor required a similar amount of insurance, and such deed also contemplated that the fund arising from the insurance be applied to rebuilding. *Held*, that it was proper to award the sum so derived to the lessor, as against the trustee.

3. SAME—EQUITABLE LIEN FOR RENT—SATISFACTION FROM INSURANCE.

The fact that the contract of lease gives an equitable lien for rent on machinery remaining in the legal possession of the lessees does not render the latter trustees of the machinery for the lessor, so that the insurance effected thereon by the lessees will inure to the benefit of the lessor.

On Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Suit by the Northern Trust Company, trustee, against the Columbia Straw-Paper Company, to foreclose a trust deed. Annie E. Snyder, administratrix of Henry Snyder, deceased, intervened, for the purpose of demanding insurance money in the hands of complainant. From a decree in her favor, complainant appeals.

On the 2d day of September, 1872, Henry Snyder, the appellee's intestate, executed and delivered to George W. Hastings, James E. Stewart, and Frederick Holford a lease of certain premises in Clark county, in the state of Ohio, with right to maintain a dam, for the term of 15 years, commencing January 1, 1873, and ending December 31, 1888, at an annual rental of $2,500. The lessees agreed to erect upon certain foundation walls upon the premises, to be completed by the lessor, permanent brick buildings, the taxes upon the premises to be divided equitably between the parties, according to the several values of the parts upon which they were severally to pay the taxes; that is to say, if the land and water power and buildings and other improvements put upon the premises by the lessor should be assessed separately, the lessor should pay all taxes assessed against the land and water power, and the lessees all taxes assessed against the buildings and other improvements put by them upon the premises. The lease further provided that at the expiration of its term the lessees might remove all the fixtures and appurtenances, including water wheel put in by them, which could be removed without injury to the buildings put upon the premises; but the buildings, upon the expiration of the term, should become the property of the lessor. The lease also provided that the lessor should have a lien upon all machinery, fixtures, and tools put into the buildings, for all rent past due, and for all damages sustained by reason of any breach of the covenants of the lease. The lease further provided that the lessors "will keep said buildings insured for two-thirds of their value, the proceeds of said insurance, in case of fire, to be used in rebuilding, or paid over to the lessor, at the option of said lessee." The lessee entered into and continued in possession of the premises until the last day of March, 1887, at which time the lessor leased the premises to