

Question 20 No One can Own Property

Al, after writing the paper on corporations and reading your additional comments and cases, I remembered a case I looked up a couple of years ago, when doing the research for "*A Country Defeated In Victory*". I am pretty sure I sent it to you then, it was on the subject of mortmain, it is dead on point. I am sending it again, because of our increased understanding now it sheds more light on what was said in this case, which in turn sheds even more light on what we now know. I also, found another case that supplements, the reality of these case and the ones you quote and the paper I just put out on corporations severely limits our remedies. However, as we discussed on the phone it may open up the only remedy. Enjoy the cases below, it proves no one can own property, without fear of it being seized for any reason either by the State or the king/queen of England.

"The cases of purchases of land by aliens and corporations, under the statutes of mortmain, are not in point. It is settled, that an alien or a corporation may, by purchase, take land, but cannot hold; and the doctrine is put on the ground, that if one by an executed conveyance, which is his own act, passes land to an alien, or corporation, he shall not have it back; but it shall belong to the sovereign, upon office found. It is otherwise in regard to the act of law. If the heir, of one dying seized of land, be an alien, the law will not cast the descent on him, because he cannot hold beneficially, and the law will not give with one hand and take away with the other, but will cast the descent upon the next relation who is capable of holding. For the same reason, an alien husband does not take as tenant by the curtesy, nor an alien wife take dower...."

It is a well-settled rule of law in England, and in this State as well as in most, if not all, of the other States of the Union, that an alien may acquire lands by purchase, and may hold them against all persons except the King, or the State; but upon office found, the King in England, or the State in this country, may seize and have them. Co. Lit. 2; 1 Black. Com. 372. Different reasons have been given for the rule. Mr. Justice BLACKSTONE, on the page above cited, says that "if an alien could acquire a permanent property in lands, he must owe an allegiance, equally permanent with that property, to the King of England, which would probably be inconsistent with that which he owes to his own natural liege-lord; besides, that, thereby, the nation might in time be subject to foreign influence, and feel many other inconveniences. Wherefore, by the civil law, such contracts were also made void; but the prince had no such advantage of forfeiture thereby, as with us in England. Among other reasons which might be given for our constitution, it seems to be intended by way of punishment for the alien's presumption in attempting to acquire any landed property." One of the editors in his note (8) on this page remarks that "a political reason may be given for this, stronger than any here adduced. If aliens were admitted to purchase and hold lands in this country, it might at any time be in the power of a foreign State to raise a powerful party amongst us; for power is ever the concomitant of property." He illustrates his position by referring to the course pursued by the Czarina of Russia to raise up a party and acquire an influence in Poland whereby she was enabled to dismember that devoted and unhappy Kingdom.

In the case of *Gouverneur v. Roberston*, 11 Wheat. Rep. 332, Mr. Justice JOHNSTON, in delivering the opinion of the Court, speaks of the rule as having been so long and so firmly established in the common law, that an enquiry into the foundation of it was a mere matter of antiquarian curiosity, and he then seems to approve what he had seen in an elementary writer, as the reason why the sovereign could not seize the lands until an office was found, to wit, "that every person is supposed a natural born subject, that is resident in the Kingdom, and that owes allegiance to the King, till the contrary be found by office." There can be no doubt, then, of the rule of law, whatever may be the reason for it, that an alien may acquire by purchase, land or any other species of real estate, and may hold it against all persons except the King or State; and may hold even against the sovereign, until he may choose to have an office found, and process thereupon to have it seized into his hands. Among the modes of acquisition in England and in this State, is that by devise, or disposition contained in a man's last will. Hence, in England, and perhaps in this State, an alien might take real property by devise, which would give him a good title to it, as against all persons but the sovereign...." *TRUSTEES, DAVIDSON COLLEGE v. CHAMBERS' EXECUTORS*, 56 N.C. 253 (1857)

"....At common law, corporations generally have the legal capacity to take a title in fee to real property. They were prohibited in England by the statutes of mortmain, but these statutes have never been adopted in this State, so that the common-law right to take an estate in fee, incident to a corporation (at common law), is unlimited,

except by its charter and by statute. But the authorities go to the extent that even when the right to acquire real property, is limited by the charter, and the corporation transcends its power in that respect, and for that reason is incompetent to take title to real estate, a conveyance to it is not void, but only the sovereign (here the State) can object. It is valid until assailed in a direct proceeding instituted by the sovereign for that purpose...." *Leazern v. Hilegas*, 7 Sargt., 313; *Gonndie v. Northampton Water Co.*, 7 Pa. St., 233; *National Bank v. Whiting*, 103 U.S., 99; *Angel & Ames on Corporations*, Secs. 152-777; *Runyon v. Coster*, 14 Pet., 122; *The Bank v. Poiteaux*, 3 Rand (Va.), 136 Case is also cited in: *MALLETT v. SIMPSON*, 94 N.C. 37 (1886) and *CROSS v. R. R.*, 172 N.C. 119 (1916).