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Deeds--Restrictions as to Transfer of Property to Ethiopians

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even up to the full value of the property thus subjecting it to double taxation. West Virginia has a statute, Code 1923, ch. 33, §2 (see also §1 which might be construed as meaning to lay a tax on equitable interests) in effect providing that an inheritance tax may be levied on equitable interests. And there is nothing specifically against such a levy in the general tax laws.

—HENRY K. HIGGINBOTHAM.

DEEDS—RESTRICTIONS AS TO TRANSFER OF PROPERTY TO ETHIOPIANS.—A recent case presents a question which has not arisen before in West Virginia, but upon which there is a sharp conflict of authority in other jurisdictions. There was a provision contained in a deed whereby the grantee covenanted that the property granted could not be conveyed, demised, devised, leased or rented, to any person of Ethiopian race or descent for a period of fifty years from the date of the deed. The same provision was contained in each of the several deeds executed by A and others for eleven lots constituting a particular block in the City of Huntington. Of these Lot Number 4 was conveyed to B, who thereafter conveyed to C, who later made a conveyance of the lot to the defendants, who are colored persons. Plaintiff, as owner of Lot Number 6, filed a bill seeking to have the deed from C to the defendants be declared void and the defendants enjoined from renting or leasing the property. Plaintiff prevailed in the Circuit Court, but upon appeal, the decision was reversed upon the ground that the restriction contained in the deed was void because incompatible with the estate granted. Since the suit was by the owner of an adjoining lot the attempt was to enforce the covenant as an equitable servitude. Had it been a condition against alienation the grantor or his heirs only could enforce the condition. *White v. White et al.*, 150 S. E. 531 (W. Va. 1929).

An absolute restraint on the alienation of a fee simple estate in land, even for a short period, is contrary to public policy and void, the policy of the law being that property should not be taken out of commerce. GRAY, PERPETUITIES, 3rd. ed. §60 3d. However, provisions restraining the alienation of property to specified individuals have been sustained in some cases on the ground that this does not substantially restrict free alienation. Gray, RESTRAINTS ON THE ALIENATION OF PROPERTY, 2nd. ed. §40. But may there be a provision restraining alienation to all members of a race even though there be few persons of that race in the com-

munity? On this question, the courts have not been able to agree. For example, some courts hold valid conditions against alienation to Negroes as reasonable restrictions which the grantor may place on the property. *Queensborough Land Co. v. Cazeaux*, 136 La. 724, 67 So. 641 (1915); *Koehler v. Rowland*, 275 Mo. 573, 205 S. W. 217 (1918); *Torrey et al. v. Wolfes et al.*, 6 F. (2d) 702 (D. C. 1925); and in *Russell et al., v. Wallace et al.*, 30 F. (2d.) 981 (D. C. 1929), it was held that a contract between property owners forbidding sale to Negroes, or persons of any race other than the white or Caucasian race, was valid. Other courts, however, had held invalid such conditions, basing their decisions on the ground that such conditions tend to prevent free alienation of real property and are therefore undesirable. *Title Guarantee and Trust Company v. Garrott*, 42 Cal. App. 152, 183 Pac. 470 (1919); *Los Angeles Inv. Co. v. Gary*, 181 Cal. 680, 186 Pac. 596 (1920).

It is to be noted that in the principal case the court only passed on the question of restraint on alienation and left open the question of the validity of restraints as to occupancy.

On the question of restraints as to occupancy most courts hold valid such restrictions. *Parmalee et al. v. Morris*, 218 Mich. 625, 188 N. W. 330 (1922); *Wayt et al. v. Patee et al.*, 269 Pac. 660 (Cal. 1928). Some of the courts which hold invalid restraints as to alienation, hold restraints as to occupancy valid.

What our court would have held if presented with a question as to occupancy is a matter of conjecture, but it is submitted as the opinion of the writer that it would, as other courts have done, segregate title and occupancy.

—CARL A. MCCOMAS.

ATTORNEY AND CLIENT—CONTINGENT FEE.—The syllabus of *Clayton v. Martin*, 151 S. E. 855 (W. Va. 1930) reaffirms the rule originally laid down in *Polsey v. Anderson*, 7 W. Va. 202 (1874) that the amount to be recovered in an action on a contingent fee where the contract was broken by the client is to be measured by a *quantum meruit* only. Between these dates have come several cases concerning contingent fees, none of which, however, directly hold on the question as to the measure of recovery. *Tomlinson v. Polsey*, 31 W. Va. 108, 5 S. E. 457, was a suit between attorneys, formerly partners, as to the proceeds of a successfully prosecuted suit on a contingent fee after one of them had