SUPREME COURT EVADES RESIDENTIAL SEGREGATION ISSUE: DISMISSES CURTIS CASE Loses Decision
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SUPREME COURT EVADES RESIDENTIAL SEGREGATION ISSUE

DISMISSES CURTIS CASE

(Washington Correspondent)

WASHINGTON, D. C., May 22.—The United States Supreme Court last Monday dismissed the Curtis case, which involved the legality of an agreement among a number of property holders not to sell, lease or rent their property to colored persons.

The court held that there was no constitutional question involved and, therefore, it lacked jurisdiction.

The effect of this decision is to leave in force an injunction, issued by the Supreme Court of the District of Columbia, restraining Mrs. Irene Hand Corrigan from selling and Mrs. Helen Curtis from buying the premises at No. 1727 S street, northwest.

Suit for an injunction was brought by John J. Buckley. He claimed that Mrs. Corrigan was one of thirty persons who had entered into a covenant June 3, 1921, running with the land, providing that no part of their property should ever be used or occupied by, or sold, leased or given to any person of the Negro race or blood for a period of 21 years.

On September 26, 1922, Mrs. Corrigan entered into a contract to sell her property to Mrs. Curtis. Mr. Buckley applied to the District Supreme Court for an injunction. Mrs. Corrigan and Mrs. Curtis filed motions to dismiss his bill on the ground that the covenant was unconstitutional and contrary to public policy. Their motions to dismiss were overruled. The defendants elected to stand on their motions, and a final decree was entered enjoining the sale. The decision of the District Supreme Court was affirmed on appeal by the Court of Appeals of the district of Columbia.

Mrs. Corrigan and Mrs. Curtis then applied to the United States Supreme Court on the ground that a review was authorized in that the case involved the construction or application of the Constitution and certain statutes of the United States. This appeal was allowed in June, 1924. The case was argued in the

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Dismisses

Loses Decision

Supreme Court on January 8, 1926.

The opinion of the court, rendered by Justice Sanford, is as follows:

"The mere assertion that the case is one involving the construction or application of the Constitution, and in which the construction of Federal laws is drawn in question, does not, however, authorize this Court to entertain an appeal; and it is our duty to decline jurisdiction if the record does not present such a constiutional or statutory question substantial in character and properly raised below. Sugarman v. U. S., 249 U. S. 182, 184; Zucht v. King, 260 U. S. 174, 176. And under well settled rules, jurisdiction is wanting if such questions are so unsubstantial as to be plainly without color of merit and frivolous. Wilson v. North Carolina, 169 U. S. 586, 595; Delmar Jockey Club v. Missouri, 210 U. S. 324, 335; Bindercup v. Pathe Exchange, 263 U. S. 291, 305; Moore v. New York Cotton Exchange, No. 200, decided April 12, 1926.

"Under the pleadings in the present case the only constitutional question involved was that arising under the assertions in the motions to dismiss that the indenture or covenant, which is the basis of the bill, is "void" in that it is contrary to and forbidden by the Fifth, Thirteenth and Fourteenth Amendments. This contention is entirely lacking in substance or color of merit. The Fifth Amendment 'is a limitation only upon the powers of the General Government,' Talton v. Mayes, 163 U. S. 376, 382, and is not directed against the action of individuals. The Thirteenth Amendment denouncing slavery and involuntary servitude, that is, a condition of enforced compulsory service of one to another, does not in other matters protect the individual rights of persons of the Negro race. Hodges v. U. S., 203 U. S. 1, 16, 18. And the prohibitions of the Fourteenth Amendment 'his reference to state action exclusively, and not to any action of private individuals.' Virginia v. Rives, 100 U. S. 313, 318; U. S. v. Harris, 106 U. S. 629, 639. 'It is state action of a particular kind that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment.' Civil Rights Cases, 109 U. S. 3, 11. It is obvious that none of the amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property; and there is no color for the contention that they rendered the indenture void. And, plainly, the claim urged in this Court that they were to be looked to, in connection with the provisions of the Revised Statutes and the decisions of the courts, in determining the contention, earnestly pressed, that the indenture is void as being 'against public policy', does not involve a constitutional question within the meaning of the code provision.

MRS. HELEN CURTIS

"The claim that the defendants drew in question the 'construction' of Sections 1977, 1978 and 1979 of the Revised Statutes, is equally unsubstantial. The only question raised as to these statutes under the pleadings was the assertion in the motion interposed by the defendant that it is forbidden by the laws enacted in aid and under the sanction of the Thirteenth and Fourteenth Amendments. Assuming that this contention drew in question the 'construction' of these statutes, as distinguished from their 'application,' it is obvious, upon their face, that while they provided, inter alia, that all persons and citizens shall have equal right with white citizens to make contracts and sequire property, they, like the constituional amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property. There is no color for the contention that they rendered the indenture void; nor was it claimed in this Court that they had, in and of themselves, any such effect.

"We therefore conclude that neither the constitutional nor statutory questions relied on as grounds for the appeal to the court have any substantial quality or color of merit, or afford any jurisdictional basis for the appeal.

"And while it was further urged in this Court that the decrees of the courts below in themselves deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under paragraph 3 of the code provision, it was not raised by the petition for the appeal or by any assignment of error, either in the Court of Appeals or in this Court; and it likewise is lacking in substance. The defendants were given a full hearing in both courts; they were not denied any constitutional or statutory right; and there is no semblance of ground for any contention that the decrees were so plainly arbitrary and contrary to law as to be acts of mere spoliation. See Delmar Jockey Club v. Missouri, supra, 335. Mere error of a court, if any there be in a judgment entered after a full hearing, does not constitute a denial of due process of law. Central Land Company v. Laidley, 159 U. S. 103, 112. Jones v. Buffalo Creek Coal Co., 245 U. S. 328, 329.

"It results that, in the absence of any substantial constitutional or statutory question giving us jurisdiction of this appeal under the provisions of section 250 of the Judicial Code, we cannot determine upon the merits of the contentions earnestly pressed by the defendants in this Court that the indenture is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant. These are questions involving a consideration of rules not expressed in any constitutional or statutory provision, but claimed to be part of the common or general law in force in the District of Columbia; and, plainly, they may not be reviewed under this appeal unless jurisdiction of the case is otherwise acquired.

"Hence, without a consideration of these questions, the appeal must be, and is, dismissed for want of jurisdiction."

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