

**HOUSING AND THE LAW: LESSON 4: HANDOUT 2**

**OPINION: BUCHANAN V. WARLEY (1917)<sup>1</sup>**

Argued: April 10, 11, 1916

Decided: November 5, 1917

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**Opinion**

DAY, J., Opinion of the Court

MR. JUSTICE DAY delivered the opinion of the court.

....The assignments of error in this court attack the ordinance upon the ground that it violates the Fourteenth Amendment of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States to acquire and enjoy property, takes property without due process of law, and denies equal protection of the laws.

The objection is made that this writ of error should be dismissed because the alleged denial of constitutional rights involves only the rights of colored persons, and the plaintiff in error is a white person. This court has frequently held that, while an unconstitutional act is no law, attacks upon the validity of laws can only be entertained when made by those whose rights are directly affected by the law or ordinance in question. Only such persons, it has been settled, can be heard to attack the constitutionality of the law or ordinance. But this case does not run counter to that principle.

The property here involved was sold by the plaintiff in error, a white man, on the terms stated, to a colored man; the action for specific performance was entertained in the court below, and, in both courts, the plaintiff's right to have the contract enforced was denied solely because of the effect of the ordinance making it illegal for a colored person to occupy the lot sold. But for the ordinance, the state courts would have enforced the contract, and the defendant would have been compelled to pay the purchase price and take a conveyance of the premises. The right of the plaintiff in error to sell his property was directly involved and necessarily impaired, because it was held, in effect, that he could not sell the lot to a person of color who was willing and ready to acquire the property and had obligated himself to take it. This case does not come within the class wherein this court has held that, where one seeks to avoid the

Justice Day argues that Louisville's ordinance is in violation of the **Fourteenth Amendment**. The Fourteenth Amendment guarantees all U.S. citizens equal protection under the law. The amendment passed during Reconstruction after the Civil War in effort to grant civil and legal rights for people who were formerly enslaved.

Here, the Justice mentions that the property purchase would have been enforced if Louisville's ordinance was not in place. In this case, the ordinance interfered with the property rights of Buchanan who was attempting to sell his home to Warley.

<sup>1</sup> Excerpts retrieved from <https://www.law.cornell.edu/supremecourt/text/245/60>.

enforcement of a law or ordinance, he must present a grievance of his own, and not rest the attack upon the alleged violation of another's rights. In this case, the property rights of the plaintiff in error are directly and necessarily involved...<sup>2</sup>

True it is that dominion over property springing from ownership is not absolute and unqualified. The disposition and use of property may be controlled in the exercise of the police power in the interest of the public health, convenience, or welfare. Harmful occupations may be controlled and regulated. Legitimate business may also be regulated in the interest of the public. Certain uses of property may be confined to portions of the municipality other than the resident district, such as livery stables, brickyards and the like, because of the impairment of the health and comfort of the occupants of neighboring property. Many illustrations might be given from the decisions of this court, and other courts, of this principle, but these cases do not touch the one at bar.

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The justice acknowledges that property can be regulated in some instances, if for instance public interest or safety is at stake. However, in this case, Louisville's ordinance does not meet these standards.

The concrete question here is: may the occupancy, and, necessarily the purchase and sale of property of which occupancy is an incident, be inhibited by the States, or by one of its municipalities, solely because of the color of the proposed occupant of the premises? That one may dispose of his property, subject only to the control of lawful enactments curtailing that right in the public interest, must be conceded....

The justice argues that Louisville's ordinance was not constitutional because it violated an individual's property rights. The ordinance was not in place as a legal regulation.

The effect of the ordinance under consideration was not merely to regulate a business or the like, but was to destroy the right of the individual to acquire, enjoy, and dispose of his property. Being of this character, it was void as being opposed to the due process clause of the constitution.

That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges.

The justice claims that racial tension exists, but it cannot be corrected through ordinances that violate protected rights.

The justice references the *Plessy v. Ferguson* decision. *Plessy* upheld racial segregation as long as separate facilities were considered to be "equal."

As we have seen, this court has held laws valid which separated the races on the basis of equal accommodations in public conveyances, and courts of high authority have held enactments lawful which provide for separation in the public schools of white and colored pupils where equal privileges are given. But, in view of the rights secured by the Fourteenth Amendment to the Federal Constitution, such legislation must

<sup>2</sup> See *Truax v. Raich*, [239 U.S. 33](#), 38.

have its limitations, and cannot be sustained where the exercise of authority exceeds the restraints of the Constitution. We think these limitations are exceeded in laws and ordinances of the character now before us.

It is the purpose of such enactments, and, it is frankly avowed, it will be their ultimate effect, to require by law, at least in residential districts, the compulsory separation of the races on account of color. Such action is said to be essential to the maintenance of the purity of the races, although it is to be noted in the ordinance under consideration that the employment of colored servants in white families is permitted, and nearby residences of colored persons not coming within the blocks, as defined in the ordinance, are not prohibited.

The case presented does not deal with an attempt to prohibit the **amalgamation** of the races. The right which the ordinance annulled was the civil right of a white man to dispose of his property if he saw fit to do so to a person of color and of a colored person to make such disposition to a white person.

It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution.

It is said that such acquisitions by colored persons depreciate property owned in the neighborhood by white persons. But property may be acquired by undesirable white neighbors or put to disagreeable though lawful uses with like results.

We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law. That being the case, the ordinance cannot stand.<sup>3</sup>

Reaching this conclusion, it follows that the judgment of the Kentucky Court of Appeals must be reversed, and the cause remanded to that court for further proceedings not inconsistent with this opinion.

*Reversed.*

Here, the justice mentions how some believe that the separation of races is "essential." However, the ordinance allows for people of color to work in the White neighborhood's homes, yet people of color cannot purchase homes in the neighborhood.

**amalgamation:** the process or act of combining, merging, or uniting

The justice argues that conflicts cannot be prevented through ordinances like Louisville's that go against rights protected in the Constitution.

He also references how White people would often claim that their property values would decrease if people of color moved into their neighborhoods. This type of argument was often used by people to seem "logical," making their racism less explicit.

<sup>3</sup> *Booth v. Illinois*, [184 U.S. 425](#), 429; *Otis v. Parker*, [187 U.S. 606](#), 609.