

HOUSING AND THE LAW: LESSON 4: HANDOUT 3

OPINION: CORRIGAN ET AL. V. BUCKLEY (1926)¹

Argued: January 8, 1926.

Decided: May 24, 1926.

Mr. Justice SANFORD delivered the opinion of the Court.

....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,' and is not directed against the action of individuals.² 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.³ And the prohibitions of the Fourteenth Amendment 'have reference to State action exclusively, and not to any action of private individuals.'⁴ 'It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment.'⁵

The justice claims that the racial covenants in this case do not violate the Fifth, Thirteenth, or Fourteenth Amendments.

He bases his argument on how these amendments do not forbid people from engaging in private decisions about property. The amendments would only prohibit public and government actions done in similar discriminatory ways.

It is obvious that none of these amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property; and there is no color whatever 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.

The claim that the defendants drew in question the 'construction' of sections 1977, 1978 and 1979 of the Revised

¹ Excerpts retrieved from

<https://www.law.cornell.edu/supremecourt/text/271/323>.

² Talton v. Mayes, [163 U. S. 376, 382](#), 16 S. Ct. 986, 988 (41 L. Ed. 196)

³ Hodges v. United States, [203 U. S. 1, 16, 18](#), 27 S. Ct. 6, 51 L. Ed. 65.

⁴ Virginia v. Rives, [100 U. S. 313, 318](#), 25 L. Ed. 667; United States v. Harris, [106 U. S. 629, 639](#), 1 S. Ct. 601, 27 L. Ed. 290.

⁵ Civil Rights Cases, [109 U. S. 3, 11](#), 3 S. Ct. 18, 21 (27 L. Ed. 835).

Statutes are laws that often prohibit or require something. The justice claims that the statutes in question, like the amendments, do not legally invalidate racial covenants because they are private contracts.

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 Curtis, that the indenture is void in 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 provide, inter alia, that all persons and citizens shall have equal right with white citizens to make contracts and acquire property, they, like the Constitutional 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 this 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.⁶ 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.⁷

The justice also argues that no violations occurred in the judicial proceedings of the case as it moved through the lower courts.

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

⁶ See *Delmar Jockey Club v. Missouri*, supra, 335 (28 S. Ct. 732).

⁷ *Central Land Co. v. Laidley*, [159 U. S. 103, 112](#), 16 S. Ct. 80, 40 L. Ed. 91; *Jones v. Buffalo Creek Coal Co.*, [245 U. S. 328, 329](#), 38 S. Ct. 121, 62 L. Ed. 325.

With the decision outlined here, the sale of Corrigan's home was invalidated because the covenant had to be upheld. The court agreed that no constitutional or statutory violations occurred, though other considerations may be at hand that are not currently under the court's jurisdiction.

determine upon the merits 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 a 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.