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ENFORCEMENT OF RACIAL RESTRICTIVE COVENANTS

One Fitzgerald owned a parcel of land in a district of St. Louis, Missouri, in which all the landowners had entered into an agreement of record whereby none of the land was to be used or occupied by negroes for a period of fifty years. Fitzgerald, pursuant to a contract of sale for valuable consideration, executed a warranty deed to Shelley, who was a negro. Several owners of other property subject to the terms of the restrictive covenant brought suit to enjoin Shelley from taking possession of the property and to divest him of title. The Supreme Court of Missouri upheld the covenant and granted the relief asked.1 A similar case arose in Michigan and there, too, the Supreme Court of Michigan held the restrictive covenant valid and enforceable and granted the relief sought.2 The Supreme Court of the United States granted certiorari in both these cases and heard them together. Held, that while the restrictive covenants were not of themselves violative of the fourteenth amendment to the Federal Constitution, because the fourteenth amendment prohibits only state action which is discriminatory, nevertheless when the state courts acted to enforce the covenants it constituted discriminatory state action which was violative of the fourteenth amendment. Shelley v. Kraemer, McGhee v. Sipes, 334 U. S. 1, 68 Sup. Ct. 836, 92 L. Ed. 845 (1948).

The problem of racial restrictive covenants was first treated in Gandolfo v. Hartman.3 In that case, the grantor and the grantee of land entered into mutually restrictive covenants, each covenanting for himself, his heirs, and his assigns not to lease to a Chinese. Later, however, the grantor breached the covenant and the grantee brought an action to enforce the contract. The Circuit Court of the United States for the Southern District of California struck down the restrictive covenant as being violative of the fourteenth amendment to the Federal Constitution.4 The Court there said that the fourteenth amendment prohibited a state from discriminating against a person because of his race, creed, or color, and that it would be a very narrow construction to hold that a private citizen could do by contract what the state could not do by legislation or judicial action.5 The contract itself was held to be violative of the fourteenth amendment.

The reasoning of this case has very often been repudiated, and it is now well settled that the prohibitions of the fourteenth amendment operate only against the state and not the individual.6 It is held that the wrongful act of an individual unsupported by any statute or judicial or executive proceeding, is simply a private

3. 49 Fed. 181 (S. D. Cal. 1892).
4. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
wrong; an invasion of the rights of the injured party, it is true, but not a violation of the fourteenth amendment.7

Applying these principles, in 1915, twenty-three years after Gandolfo case, supra, the Supreme Court of Louisiana declared what was to be the law regarding racial restrictive covenants until 1948, by rendering its decision in Queensborough Land Co. v. Cazeaux.8 There the defendant breached a covenant not to sell or lease the land to a negro for a period of twenty-five years and the plaintiff brought an action to enforce the covenant. The Supreme Court of Louisiana upheld the covenant as not being violative of the fourteenth amendment nor against public policy.

Since the Queensborough case, supra, decisions on the question have been more frequent, cases having been decided in at least sixteen jurisdictions.9 A review of the cases shows that all of the decisions are in accord on the proposition that restrictive covenants against negro ownership or occupancy are not violative of the fourteenth amendment to the Federal Constitution nor against public policy.10 They are likewise in accord in holding that restrictive covenants against use and occupancy are not void as being an unlawful restraint on the alienation of the premises.11 There is a conflict among the various jurisdictions, however, when the covenant restrains the sale to and ownership by negroes. Some courts have held that a restrictive covenant against negro ownership is void as an unlawful restraint on the alienation of the premises.12 Others, however, have held that such restrictions do not contravene the rule against restraint of alienation, because the restraint is not general; and so, like restrictive covenants against use and occupancy, they are held valid and enforceable.13

7. Civil Rights Cases, supra note 6; North American Cold Storage Co. v. Chicago, 151 Fed. 120, (C. C. Ill. 1907); United States v. Morris, 125 Fed. 322 (D. C. Ark. 1903).
8. 136 La. 724, 67 So. 641 (1915).
In Shelley v. Kraemer and McGhee v. Sipes the United States Supreme Court did not overrule the law as to the validity of racial restrictive covenants, for it specifically stated that the covenants of themselves were valid. Rather, the court held that the state court's action in enforcing the restrictive covenants was unconstitutional as violative of the fourteenth amendment.

The effect of the decision is to leave the landowner with a perfectly valid contract, for the breach of which he has no remedy—he has a right without a remedy.

At first glance this would appear to be an impairment of contract within the prohibition of Art. 1, sec. 10 of the Federal Constitution, for it is well settled that the obligation of contract embraces the remedy provided for its breach and that, while a state may alter or amend the remedy provided for a contract, it may not remove it entirely or reduce it to such a point that it remains a mere shadow. The Federal Constitution, however, only provides that no state “shall pass any . . . law” impairing the obligation of contract. The Federal courts and most of the state courts hold that this provision is against state legislative action only, and that a change of judicial decision does not constitute an impairment of contract.

A majority of the state constitutions contain provisions which are the same as, or similar to, Art. 1, sec. 8 of the Constitution of the State of Wyoming. Such provisions have been interpreted as meaning that for every right violated a citizen must be given a remedy. When the problem of racial restrictive covenants again arises in one of the states whose constitution contains such a provision, the court will be faced with the necessity of following the Kraemer case, supra.
and thereby flying in the teeth of its own constitution by denying a remedy for
the violation of the covenant. It will be interesting to watch the future decisions
to see whether the state courts can devise some method of giving effect to both
the Supreme Court's ruling and their own constitutions.

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AUTOMOBILES—CHATTEL MORTGAGES—RECORDING

An auto, licensed and taxed in Wyoming, was taken to Colorado and mort-
gaged. The auto was then returned to Wyoming before the mortgage was record-
ed in Colorado. The defendant purchased the auto in Wyoming without notice
of the mortgage, and after default in the payments by the mortgagor, the mort-
gagee, as was provided for in the mortgage, attempted to take possession of the
auto. In an action by the mortgagee to replevin the auto, held: for the defendant.
The plaintiff had not complied with the Colorado recording statute providing
for chattel mortgages to be recorded in the county where the mortgaged property

The validity of a chattel mortgage is to be determined by the law of the
place where the mortgagee is executed, if the chattel was located there at the
time. Therefore, the Wyoming court had to make their decision based upon the
law of Colorado. If the mortgage had been recorded according to the law of
Colorado, it would have been valid against third parties wherever the property
might be taken, so long as it was without the consent or knowledge of the
mortgagee.

This case interprets the Colorado statute to mean that the mortgage is to
be filed where the property is situated at the time of the filing. The auto was not
in Colorado at the time of such recording, therefore, there was no property to
which the lien of the mortgage could attach; compliance with the statute became
impossible by reason of the neglect of the mortgagee. This construction of the
statute protected the Wyoming purchaser, but at the same time indicates that the
method of recording chattel mortgages upon autos is inadequate. It is quite
possible for an auto to be in another county or even in another state within a few
hours and to hold that such a short delay may cause a mortgagee to lose his
mortgage as to third parties is unjust and unreasonable.

2. Mosko v. Matthews, 87 Colo. 55, 284 Pac. 1021 (1930); Restatement, Conflict Of Laws
   sec. 6 (1934).
3. Ball Bros. Trucking Co. v. Sorenson, 191 S. W. (2d) 908 (Texas 1945); American
   Loan Co. v. see, 298 Ky. 180, 182 S. W. (2d) 644 (1944); McGlone v. Smith, 293
   Ky. 131, 168 S. W. (2d) 566 (1943).
5. Yund v. First National Bank of Shawnee, Okla., 14 Wyo. 81, 82 Pac. 6 (1905);
   General Finance & Thrift Corporation v. Guthrie, 227 N. C. 431, 42 S. E. (2d) 601
   (1947).
6. The auto was mortgaged on October 25, 1944 and the mortgage recorded on November
   3, 1944.