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Constitutional Law—Gift of Land "For Use by White Race Only" Creates Possibility of Reverter For Violation

C. M. C.
West Virginia University College of Law

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CASE COMMENTS

CONSTITUTIONAL LAW--Gift of Land "For Use by White Race Only" Creates Possibility of Reverter for Violation.—D donated land to P for use as a park, subject to the restriction that the land was for use by the white race only. The deed provided for a reverter to the grantor upon failure to comply with the restriction. Negroes demanded the right to use the park. In a declaratory judgment action, P seeks determination of the validity of the restriction and reverter clause in the deed. Held, affirming judgment, that the deed created a valid fee simple determinable; that use by non-whites would cause the estate granted to revert automatically to the grantor; and further, that since the reverter operated automatically, requiring no judicial enforcement, the constitutional rights of Negroes were not violated. Charlotte Park and Recreation Comm’n v. Barringer, 88 S.E.2d 114 (N.C. 1955).

The question here is whether the decision is a denial by the state of the equal protection of the laws, guaranteed by the fourteenth amendment of the United States Constitution. The court’s reasoning that the automatic reverter is not such a denial, is open to question. It is true that the possibility of reverter takes effect automatically upon the happening of the condition or event named in the creating instrument. 1 American Law of Property § 4.12 (Casner ed. 1952). However, a decision subsequent to the principal case raised another question. In Dawson v. Mayor and City Council of Baltimore, 220 F.2d 386 (4th Cir. 1955), aff’d without opinion, 24 U.S.L. Week 3125 (U.S. Nov. 7, 1955), the Supreme Court affirmed a holding that racial segregation in public recreational activities can no longer be sustained as a proper exercise of the police power. Thus a public agency, such as the plaintiff in the instant case, cannot refuse to allow Negroes the use of a park. The holding in the principal case is that use by the Negroes would cause a reverter to the grantor. But if the grantee resists being dispossessed the grantor or his heirs must bring some possessory action to regain possession. See Powell, Determinable Fees, 23 Colum. L. Rev. 207 (1923). If possession is then regained through judicial process, the court would be indirectly aiding a discriminatory provision in a deed. Such a result would be illogical, to say the least, for the right to use the park has been given directly; it should not be taken away indirectly.

It is difficult to draw analogies from decisions of the United States Supreme Court, for “the Court will not formulate a rule of
constitutional law broader than is required by the precise facts to which it is to be applied.” *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (concurring opinion). However, over a period of time, certain trends can be observed. This is particularly true in cases of the denial of equal rights to Negroes. In *Bolling v. Sharpe*, 347 U.S. 497 (1954), holding segregation in District of Columbia schools a denial of due process under the fifth amendment, the Court said: “Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective.” *Id.* at 499. Segregation in state schools solely on the basis of race denies the equal protection of laws under the fourteenth amendment. *Brown v. Board of Education*, 347 U.S. 483 (1953). The *Dawson case*, supra, extended this doctrine to the field of public recreation facilities. The holding of the principal case would seem to be in conflict with the spirit of the above cases. But in *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512, 87 N.E.2d 541 (1949), a refusal to admit Negroes as tenants in a housing project was allowed. The opinion said that the refusal was private, not state, action, despite the fact that the state had given the defendant tax exemptions and other aid. The Supreme Court denied certiorari, 339 U.S. 981 (1950), two Justices being of the opinion that certiorari should be granted. The denial in such an “important” case has been questioned. Harper and Rosenthal, *An Appraisal of Certiorari*, 99 U. Pa. L. Rev. 293 (1950).

Two decisions of the Supreme Court concerning property restrictions contain language that appears to have some bearing on the question posed by the principal case. In *Shelley v. Kraemer*, 334 U.S. 1 (1948), it was held that restrictive covenants as to race are not enforceable by injunction. The Court said that while the making of such agreements was lawful, the enforcement of them by the state deprived non-Caucasians of the equal protection of the laws. The opinion in the instant case dismissed *Shelley v. Kraemer* as having no application. *Barrows v. Jackson*, 346 U.S. 249 (1953), held that damages are not recoverable for violation of restrictive racial covenants. The Court said “To compel . . . [defendant] to respond in damages would be for the State to punish her for failure to perform her covenant to continue to discriminate against non-Caucasians. . . . The result of that sanction by the State would be to encourage the use of restrictive covenants.” *Id.* at 254. The decision in the principal case reaches a result similar to that which the Supreme Court has rejected; i.e., the park officials must continue to discriminate against Negroes, which they can no
longer lawfully do, or else lose the property. As mentioned above, such a result would be illogical. But by taking the doctrine of the Shelley and Barrows cases one step further, it might be said that the determination by a state court that such a reverter is valid, is state action which denied equal protection of the laws to persons within its jurisdiction. Such reasoning is not illogical when compared with the progress toward equalization of all persons, within the meaning of the fourteenth amendment. If the above arguments are valid, the holding of the principal case would not be sustained, on appeal, or in a subsequent action.

C. M. G.

Courts—Construction of Local Statute by Foreign Court—Survival of Criminal Action After Corporate Dissolution.—The United States was prosecuting D corporation and three of its subsidiaries X, Y, and Z, for violation of the Sherman Anti-Trust Act §§ 1, 2, 26 Stat. 209 (1890), 15 U.S.C. §§ 1, 2, (1946), in conspiring to fix prices, and to monopolize sales. After the filing of the information X dissolved pursuant to the laws of West Virginia, its incorporating state, and Y and Z merged with D corporation, pursuant to the laws of their incorporating states, Delaware and New York. D moved to dismiss the information as to such subsidiaries on the ground that they were no longer in existence. Held, motion granted, the law of the incorporating state governs the effect to be given to the merger or dissolution of a corporation, and none of the states of incorporation has statutes abrogating the common law principle that criminal actions against corporations abate upon dissolution or merger. United States v. Union Carbide & Carbon Corp., 132 F. Supp. 388 (D. Col. 1955).

Is the federal court's construction binding on our own state courts? Prior decisions leave no room for doubt that our local courts can place their own constructions on the statute without considering the interpretation placed on it by the federal courts. Union Pacific R.R. v. Weld County, 247 U.S. 282, 287 (1917). In Johnson v. Jordan, 22 F. Supp. 286 (E.D. Okla. 1938), where a federal court had construed a state statute, and the state court later had placed a different construction on it, the federal court was now confronted with the question of which construction is was bound to follow. The court ruled that "[a]fter a contrary construction by the state court of last resort, it being a matter peculiarly within