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Constitutional Law - State Action - Effect of State Court Interpretation of a Contract

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CONSTITUTIONAL LAW—STATE ACTION—EFFECT OF STATE COURT INTERPRETATION OF A CONTRACT—Mrs. Doris Walker, president of her local union, was discharged by Cutter Laboratories in 1949 because of membership in the Communist Party and falsification of her employment application. The employer acquired knowledge of these facts in 1947, but did not act at that time to avoid charges of persecuting a union officer. The union, pursuant to the collective bargaining agreement, which authorized discharge for "just cause" only, sought and obtained reinstatement from the arbitration board, which action was affirmed by the district court of appeal,[1] but reversed by the California Supreme Court.[2] On certiorari to the United States Supreme Court,[3] the union contended that the state court's decision rested on a public policy against membership in the Communist Party in violation of the due process and equal protection clauses of the Fourteenth Amendment. *Held,* writ dismissed, three justices dissenting. Since the state court construed the agreement to mean that membership in the Communist Party is "just cause" for discharge, the decision can be sustained on adequate state grounds and there is no basis for review of constitutional questions. *Black v. Cutter Laboratories,* 351 U.S. 292 (1956).

An examination of the California Supreme Court's opinion raises a question as to whether the majority of the United States Supreme Court did not overestimate the significance of the former court's statement alluding to the effect of the contract.[4] Assuming, however, that the majority is

1 Black v. Cutter Laboratories, 266 P. (2d) 92 (1954).

2 Mabel Black v. Cutter Laboratories, 43 Cal. (2d) 788, 278 P. (2d) 905 (1955).

3 350 U.S. 816 (1955).

4 See the first sentence of the dissenting opinion in the California Supreme Court, note 2 supra, at 809. The California Supreme Court did not have jurisdiction to review the arbitration board's construction of the contract. Cal. Code Civ. Proc. (Deering, 1953) §1288. See also the opinion of the district court of appeal, note 1 supra. The California Supreme Court, immediately after indicating that the ground of appeal was that the board had exceeded its power, launched into an eight-page discussion of public policy and the

correct in its interpretation of the California decision, there remains a federal question which would seem to have merited consideration by the whole court. The restrictive covenant cases, beginning with *Shelley v. Kraemer*,[5] established the doctrine that a state court's enforcement of a contract is a state act, and that the enforcement of covenants restricting the sale or use of real property on a racial basis is unconstitutional as a denial of equal protection under the Fourteenth Amendment.[6] In *Shelley v. Kraemer* the Court denied injunctive relief, and this doctrine was later extended to preclude an action for damages, even when the suit was against a person not of the class discriminated against, because of the overbalancing consideration of public policy against enforcing these contracts.[7] The Fourteenth Amendment, which forbids the states to discriminate on the basis of race, together with the First Amendment, also denies the power to discriminate against a political group.[8] Does it follow, then, that the majority's decision is inconsistent with the rule of *Shelley v. Kraemer* because it allows the state, through the enforcement of a private contract, to interfere with Mrs. Walker's freedom of political belief when she has been charged with no wrongful act?[9] In *Shelley v. Kraemer*, the Court was careful to point out that the racially restrictive covenant was not void as unconstitutional, because the prohibitions of the Fourteenth Amendment apply only to states, not to individuals. The Court specified that a violation occurred only in the granting of affirmative relief by the state.[10] What, then, is the legal status of these restrictive covenants? Since the Supreme Court said that the unconstitutional act occurred when the state court granted affirmative relief, it was suggested that such covenants would still constitute a valid defense to a claim for affirmative relief because this would not require state action. There appears to be some logic in this argument, on the theory that since the covenant is not void, a party should not be held liable for acting in accordance with its provisions. The question came before the Supreme Court in an Iowa case[11] where burial privileges were denied an Indian on the basis of a discriminatory covenant which was asserted as a defense to a tort claim brought by the owner of a cemetery plot.[12] The Court was evenly divided and later dismissed

Communist Party, note 2 supra, at 798. There was no discussion in the opinion concerning the matter of contract enforcement except for a single rhetorical sentence at the end of the opinion.

5 334 U.S. 1 (1948); Hurd v. Hodge, 334 U.S. 24 (1948); Barrows v. Jackson, 346 U.S. 249 (1953); 3 A.L.R. (2d) 441 (1949).

6 Groves, "Judicial Interpretation of the Holdings of the United States Supreme Court in Restrictive Covenant Cases," 45 ILL. L. REV. 614 (1950).

7 Barrows v. Jackson, note 5 supra.

8 De Jonge v. Oregon, 299 U.S. 353 (1937).

9 Cantwell v. Connecticut, 310 U.S. 296 (1940).

10 Shelley v. Kraemer, 334 U.S. 1 at 19 (1948).

11 Rice v. Sioux City Memorial Park Cemetery, 348 U.S. 880 (1954).

12 The defense was upheld by the state supreme court, Rice v. Sioux City Memorial Park Cemetery, Inc., 245 Iowa 147, 60 N.W. (2d) 110 (1953). The court distinguished

certiorari when state legislation was found to govern the case.[13] The argument that such restrictions could be used defensively was flatly rejected by a Texas court,[14] which based its decision on *Shelley v. Kraemer*. There, the covenant acted as a condition in the deed and the defendant in an ejectment action attempted to support his claim to title on the operation of this condition. Both of these cases involved property rights, but not in exactly the same sense. In the Texas case, title to the property was involved, whereas the Iowa case involved an incident of ownership, not ownership itself. The Texas case is easier because there the effect of the covenant was affirmatively to shift title from one person to another. Both of these cases differ from the principal case, however, in that the former involved property rights, whereas the principal case concerned a purely contractual right. We thus have two grounds for distinguishing the principal case from *Shelley v. Kraemer*[15] and for defining the legal status of restrictive covenants. First, it is clear that affirmative relief cannot be predicated upon such an agreement, whether the right affected is of property[16] or purely contractual.[17] The Texas decision appears sound in denying the covenant as a defense where the title to property is directly affected.[18] A more difficult question is raised by the Iowa case, and remains open, i.e., whether such a covenant can be asserted as a valid defense where enjoyment of property is involved, though the title itself is not in issue. On the other hand, the principal case would indicate that such an agreement may be properly asserted as a defense to an action involving a purely contractual right. In support of this interpretation, it may be suggested that the courts are not enforcing such a covenant, rather that its existence simply makes it impossible for the plaintiff to show a promise made in such terms as to allow recovery. Any conclusions predicated upon the principal case must, of course, be qualified by the fact that the majority did not discuss this issue, although they in effect decided it. It might be well to consider whether the disposition of the principal case would have been the same had the contract justified discharge on racial grounds rather than on the basis of membership in the Communist Party.

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Shelley v. Kraemer on the basis that the restrictive covenant was not being used as grounds for affirmative relief.

[13] Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70 (1955). Justice Frankfurter's opinion indicated that the Court had been troubled by the question of what constituted state action. See Dorsey v. Stuyvesant Town Corp., 299 N.Y. 512, 87 N.E. (2d) 541 (1949), cert. den. 339 U.S. 981 (1950); 14 A.L.R. (2d) 133 (1950).

[14] Clifton v. Puente, (Tex. Civ. App. 1948) 218 S.W. (2d) 272.

[15] First, the restrictive provision is being asserted as a defense and, second, the rights affected are solely contractual, not of property.

[16] Shelley v. Kraemer, note 10 supra.

[17] Barrows v. Jackson, note 5 supra.

[18] "It is as much an enforcement of the covenant to deny a person a legal right to which he would be entitled except for the covenant as it would be to expressly command by judicial order that the terms of the contract be recognized and carried out." Clifton v. Puente, note 14 supra, at 274.