

## CONSTITUTIONALITY OF RACE SEGREGATION ORDINANCES.

The validity of a race segregation ordinance enacted by the City of Louisville was sustained by the Court of Appeals of Kentucky in a recent case (*Harris v. City of Louisville*, 177 S. W. 472). Because of the fact that such ordinances have usually been held invalid we give the important sections of the present ordinance in full:

Section I. "It shall be unlawful for any colored person to move into and occupy as a residence, place of abode, or to establish and maintain as a place of public assembly any house upon any block upon which a greater number of houses are occupied as residences, places of abode or places of public assembly, by white people than are occupied as residences, places of abode or places of public assembly by colored people."

Section II. "It shall be unlawful for any white person to move into and occupy as a residence, place of abode or to establish and maintain as a place of public assembly, any house upon any block upon which a greater number of houses are occupied as residences, places of abode or places of public assembly by colored people than are occupied as residences, places of abode or places of public assembly by white people."

Section III. "The word block as the same is used in this ordinance shall be construed to mean," etc.

Section IV. "Nothing in this ordinance shall affect the location of residences, places of abode or places of public assembly made previous to the approval of this ordinance, and nothing herein shall be so construed as to prevent the occupation of residences, places of abode or places of public assembly by white or colored servants or employes of occupants of such residences, places of abode or places of public assembly on the block on which they are so employed; nor shall anything herein contained be construed to prevent any person who, at the date of the passage of this ordinance, shall have acquired or possessed the right to occupy any building as a residence, place of abode or place of public assembly, from exercising this right. Nor shall anything herein contained prevent the owner of any building now leased, rented or occupied as a residence, place of abode or place of public assembly for colored persons, from continuing to rent, lease or occupy such residence, place of abode or place of public

assembly for such persons, if the owner shall so desire; but, if such house should, after the passage of this act, be at any time leased, rented or occupied as a residence, place of abode or place of public assembly for white persons, it shall not thereafter be used for colored persons, if such occupation would then be a violation of Section I hereof. Nor shall anything herein contained prevent the owner of any building now leased, rented or occupied as a residence, place of abode or place of public assembly for white persons, from continuing to rent, lease or occupy such residence, place of abode or place of assembly for such purpose, if the owner shall so desire; but if such house should, after the passage of this act, be at any time leased, rented or occupied as a residence, place of abode or place of assembly for colored persons, it shall not be thereafter so used for white persons, if such occupation would then be a violation of Section II hereof."

While it is true that such an ordinance could not be upheld constitutionally, if it operated to take away vested property rights, as it would violate the fourteenth amendment of the Constitution, it is equally clear that such vested property rights are subject to a reasonable regulation by the state when the object sought to be effected by such regulation is the preservation of the peace, public health or public morals. The fourteenth amendment cannot be construed as designing to take away the right to a reasonable exercise of the police power.<sup>1</sup>

We then come to the question of what is a reasonable exercise of the police power in this respect. An examination of the statutes and decisions on the subject of race segregation in schools and public conveyances leads to the inevitable conclusion that segregation with reference to schools and public conveyances is a valid and reasonable exercise of the police power in view of the object sought to be obtained thereby. It would seem that an ordinance providing for segregation of the races with reference to residence should be construed as equally reasonable when its fundamental purpose is to prevent breaches of the peace, immorality and danger to health, resulting from too close an association of the races. This purpose is unequivocally set forth in the title to the ordinance involved in the principle case.<sup>2</sup>

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<sup>1</sup>State v. Gurry, 47 L. R. A. N. S. 1087.

<sup>2</sup>"An ordinance to prevent conflict and ill feeling between the white and colored races in the city of Louisville, and to preserve the public peace, and to promote the general welfare by making reasonable provisions requiring, as far as practicable, the use of separate blocks for residences, places of abode and places of assembly by white and colored people respectively."

The Virginia Supreme Court of Appeals recently sustained a precisely similar ordinance<sup>3</sup> in a consolidated case involving segregation ordinances of the cities of Richmond and Ashland. The question has also been passed upon in North Carolina,<sup>4</sup> Maryland,<sup>5</sup> and Georgia.<sup>6</sup> The ordinances in the three latter states were rejected, but the courts did not deny the power of municipal corporations to enact such ordinances where they do not exclude vested rights but merely restrict them. The Louisville ordinance, *supra*, does not take away the vested right of alienation but merely restricts the alienation to certain classes, and is, therefore, not a violation of the Constitution.

The further objection that such an ordinance is a discrimination against an inferior race cannot be sustained in the absence of anything found in the act itself placing that construction upon it. The Supreme Court of the United States supports this view.<sup>7</sup> The language of Justice Brown is that "Laws permitting and even requiring their separation in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally if not universally recognized as within the competency of the state legislatures in the exercise of their police powers." The Constitution does not attempt to guarantee social equality but merely political equality of the two races.

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<sup>3</sup>*Hopkins v. City of Richmond*; and *Coleman v. Town of Ashland*; 86 S. E. 139.

<sup>4</sup>*State v. Darnell*, 81 S. E. 338.

<sup>5</sup>*State v. Gurry*, 47 L. R. A. (N. S.) 1087.

<sup>6</sup>*Carey v. City of Atlanta*, 84 S. E. 456.

<sup>7</sup>*Plessy v. Ferguson*, 163 U. S. 537.