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REAL PROPERTY—DUE PROCESS—
PLAT RECONSTRUCTION STATUTE INVALID

The seller of land sought a declaratory decree as to the validity of a Florida statute requiring the recordation of plats as a condition precedent to the conveyance of certain size plots of land. Held, the statute is an unreasonable restraint on the right to alienate property under the due process and equal protection clauses of the fourteenth amendment of the federal constitution. Kass v. Lewin, 104 So.2d 572 (Fla. 1958).

There are two facets to the problem presented by this case: (1) The extent of the state’s police power as contained in the due process clause of the fourteenth amendment and; (2) the application of the equal protection clause in regard to the reasonableness of state police regulations.

The due process clause of the fourteenth amendment has passed through three phases of judicial interpretation since its ratification in 1868. Between that date and the middle 1880’s the due process clause was never used to check state economic and social legislation. Until the middle 1930’s, it was utilized by the United States Supreme Court to invalidate economic and social legislation of the states since such legislation was contrary to the Court’s laissez-faire economic theory. From the middle nineteen-thirties to the present, the Court has developed a strong presumption of validity in favor of these state regulations. In Williamson v.

1. Fla. Laws 1955, ch. 30202, § 3, at 271. “Whenever any land, a plat of which has not been recorded in the Public Records of the county wherein the land lies, shall be platted into lots, blocks, parcels, tracts or other portions, however designated, so that any of the same shall comprise one acre or less in size, and whenever any land, a plat of which has been recorded in the county wherein such land lies, is replatted into lots, blocks, parcels, tracts or other portions, however designated, so that any of the same shall comprise one-half acre or less in size, a plat thereof shall be recorded in the Public Records of the county wherein such land lies.” The statute applies to counties with a population in excess of 300,000.

2. The facts of the instant case fit the two classifications of the statute exactly.

3. 2 CUSHMAN, SELECTED ESSAYS ON CONSTITUTIONAL LAW 62 (1938).

4. Ribnik v. McBride, 277 U. S. 350 (1928), under the due process clause of the fourteenth amendment a state cannot fix the compensation that an employment agency may charge for its services; Tyson & Brother v. Banton, 273 U. S. 418 (1927), state statute fixing prices to be charged for admission to public contests, exhibitions, games or performances violates the due process clause; Wolff Co. v. Industrial Ct., 267 U. S. 552 (1925), state statute which provided for submission of controversies to compulsory settlement by state agency and compulsory fixing of wages and hours violates the due process clause because this compels the parties to continue in business on terms that were not agreed upon; Coppage v. Kansas, 236 U. S. 1 (1915), state statute making it a misdemeanor for employer to require an employee to agree not to become a member of any labor organization during time of employment is in violation of the due process clause; Lochner v. N. Y., 198 U. S. 45 (1905), state statute forbidding employment of bakers for more than 60 hours per week or 10 hours per day violates the due process clause; See also CUSHMAN, supra note 3, at 67, 69; SWISHER, AMERICAN CONSTITUTIONAL DEVELOPMENT 813 (1943).

5. CUSHMAN, supra note 3, at 76-77, 81; SWISHER, supra note 4, at 99; Wood, DUE PROCESS OF LAW 181-2 (1951); See cases cited, infra note 6.
Lee Optical Company, the Court held that there was no violation of the due process clause where a state statute forbade an unlicensed optician to practice optometry. In that case, the Court stated that it would no longer use the due process clause to strike down state laws regulating business and industrial conditions even though they might be unwise, lacking in foresight, or were out of harmony with a particular school of thought.\footnote{Williamson v. Lee Optical Co., 348 U.S. 483 (1954).}

The Supreme Court's interpretation of the due process clause of the fourteenth amendment has always been generous to the state's police power dealing with fraud.\footnote{See Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952); a state statute which entitled an employee to absent himself from work to vote on election days without a loss of wages was not a denial of equal protection or due process to the employer; Daniel v. Family Ins. Co., 336 U.S. 220 (1949), state statute which denies insurers or their agents the right to engage in the undertaking business and denies an undertaker the right to serve as an agent of an insurance company does not violate the two clauses; Lincoln Union v. Northwestern Co., 335 U.S. 525 (1949), state statute forbidding closed shop arrangements and guaranteeing right to work to all does not deny the employer nor the union due process or equal protection; Olsen v. Nebraska, 313 U.S. 236 (1941), state statute limiting the amount an employment agency may charge for its services does not violate the due process clause; Old Dearborn Distrib. Co. v. Seagram Distillers Corp., 299 U.S. 183 (1936); Corn Products Refining Co. v. Eddy, 249 U.S. 427 (1919), state statute requiring branding of syrup compounds before they can be sold was a valid exercise of police power. See also Jacobson v. Massachusetts, 197 U.S. 11 (1905); Atkin v. Kansas, 191 U.S. 207 (1903); Minnesota v. Barber, 136 U.S. 578 (1913).}

In the early history of the equal protection clause of the fourteenth amendment the United States Supreme Court maintained rigorous requirements that persons be treated alike where economic and social legislation...
was concerned. The Court now respects the determination by the state legislature that a classification is reasonable and necessary even though the result reached is ill advised, unequal, and oppressive legislation. As early as 1910, in the Lindsley v. Natural Carbonic Gas Company case it was held that the equal protection clause of the fourteenth amendment permits great discretion by the state in regard to classifications established in the adoption of police laws. Such classifications will be held invalid only when they are purely arbitrary or without any reasonable basis. Generally, the Supreme Court of Florida presumes the validity of state legislation. However, in the instant case the court concluded that
the statutory requirements imposed on the vendor were an "unreasonable" restraint on the right to alienate property. 18 This is in agreement with the dicta in Garvin v. Baker 19 stating it was not necessary that a plat or map be recorded before property could be sold. The court in the instant case further held that the statute establishing the classifications did so unreasonably and hence was discriminatory and was in violation of the equal protection clause. 20

Scholarly authority agrees that the due process and equal protection clauses are not violated by state legislation similar to that under consideration. 21 As one writer expressed it, "Any measure which could gather enough support to pass the legislature would be upheld by the Court." 22 Comparable legislation has been adopted in states other than Florida, but as yet there has been no judicial interpretation on the precise point involved in this case. 23 It does not appear that either the regulatory effect or the classification of the statute is so "utterly unreasonable" 24 or "without any reasonable basis," 25 as to justify the court in invalidating it under the fourteenth amendment. It appears that the court was in error in holding that this law was arbitrary. The Supreme Court of Florida should accept the present federal position on the impact of the due process and equal protection clauses on property and contract rights.

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19. 59 So.2d 360, 365 (Fla. 1952) (dictum), where plaintiff sought writ of mandamus to compel officials to approve proposed plat for real estate subdivision. "...It is not necessary that a plat or a map of a person's property showing lots and blocks be recorded before it can be sold. It may be more convenient to sell by lots and blocks as was shown by a recorded plat, but he may sell it by the inch, the foot, or the yard, and describe it by metes and bounds."
22. Hetherington, supra note 19 at 25.
24. Schmiding v. Chicago, 226 U. S. 578, 587 (1913); See Williamson v. Lee Optical Co., 348 U. S. 483, 487 (1954), both the due process and equal protection clauses were at issue in this case.