The Court Archive:
Racial Covenants

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Lorraine Hansberry had just turned seven years old when her family moved to the Washington Park neighborhood on the south side of Chicago, two decades before she wrote the Broadway play, "A Raisin in the Sun," which later became a 1961 movie starring Sidney Poitier. Hansberry's father, Carl Hansberry, was a successful real estate agent and active in Chicago's African American society.

Beginning before World War I, African Americans had begun moving to northern cities to escape racial violence and to pursue economic opportunities in what was known as the Great Migration. In Chicago, many Blacks settled on the south side. In an effort to prevent African Americans from moving to certain places, people living in all-white neighborhoods would file restrictive covenants.

The Washington Park neighborhood, roughly bounded by 60th and 63rd Streets and Cottage Grove and South Park Avenues (now Martin Luther King Jr. Drive), filed a covenant that "no part of the property restricted should be sold, leased to, or permitted to be occupied by any person of the colored race." The covenant required 95 percent of the neighborhood to sign and agree but only 54 percent actually signed on.

The Hansberrys moved to the neighborhood in 1937. Anna Lee, a resident of the neighborhood, sued Carl Hansberry to enforce the covenant. Earl B. Dickerson represented Hansberry. The Cook County Circuit Court ruled in favor of Lee that the covenant would remain in effect because the issue had been determined in *Burke v. Kleiman*, 277 Ill. App. 519 (1934), a case that involved the same covenant for the same neighborhood.

Hansberry appealed the judgment to the Illinois Supreme Court, *Lee et al. v. Hansberry et al.*, 372 Ill. 369 (1939), and the Court affirmed the judgment. In his opinion, Justice Norman Jones wrote that the doctrine of *res judicata* extended not only to matters actually determined in the *Burke* case but also to all grounds of recovery. Hansberry could not relitigate the question settled by a previous decree.

In a blistering dissent, Justice Elywn Shaw immediately recognized the problems in the covenant and the lawsuit itself, writing, “the fraud and collusion between total strangers” on an agreement “which is void on its face has been imposed upon some ten million dollars worth of the property of five hundred other parties who were never in court, who never had notice of any law suit, and who have never been accorded any process whatsoever.” He added that “certainly, no man’s rights can be safe under such rule of law.”

Hansberry appealed the case to the U.S. Supreme Court, 311 U.S. 32 (1940), which overturned the Illinois Supreme Court ruling. In the unanimous opinion, the Court did not declare enforcement of such covenants to be unconstitutional but said that the Illinois court erred in binding Hansberry to such a judgment violated his due process rights under the 14th Amendment to the U.S. Constitution. Eight years later, the U.S. Supreme Court, in *Shelley v. Kraemer*, 334 U.S. 1 (1948), declared enforcement unconstitutional. While the practice of racial covenants continued, *Shelley* ended judicial enforcement of them.

After losing a Congressional race in 1940, Hansberry planned to leave the United States because of escape widespread racism. While visiting Mexico, he died in 1946. Lorraine Hansberry moved to New York City and became a writer. She authored “A Raisin in the Sun,” which referred to her family’s legal struggles involving racial covenants. The play was the first on Broadway to be produced by an African American woman. She died in 1965.