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Constitutional Law: A Violation of Bill of Rights by Federal Agents is Not an Actionable Wrong Per Se

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**CONSTITUTIONAL LAW: A VIOLATION OF BILL OF RIGHTS
BY FEDERAL AGENTS IS NOT AN ACTIONABLE
WRONG PER SE**

Bell v. Hood, 71 F. Supp. 813 (S. D. Cal. 1947)

Federal agents allegedly committed an illegal arrest of the plaintiffs, an illegal search of their premises, and a seizure of their property without due process of law. Plaintiffs, seeking money damages, brought an action in a federal court against the agents. The cause of action was based solely upon a breach of the plaintiffs' constitutional rights as guaranteed by the Fourth¹ and Fifth² Amendments to the United States Constitution. The case was originally dismissed for lack of federal jurisdiction.³ The Supreme Court, on certiorari, held that a federal question was involved, that the federal courts had jurisdiction, and remanded the case for a decision on the merits.⁴ In the district court defendants then moved to dismiss for failure to state a claim upon which relief could be granted. HELD, no cause of action exists against an individual for violation of the Fourth and Fifth Amendments. Action dismissed.

Although the Supreme Court stated that this question had never been specifically decided by that court,⁵ the present decision is a restatement of the long recognized concept that the Bill of Rights does not create any new rights.⁶ The rights enumerated have always belonged to the people, and the Bill of Rights only secures them from infringement by the Federal Government.⁷ Although the first eight amendments to the Constitution merely limit the powers of the Federal Government, and are not directed to the states⁸ nor to individuals,⁹ the

¹U. S. CONST. AMEND. IV, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."

²U. S. CONST. AMEND. V, "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

³*Bell v. Hood*, 150 F.2d 96 (C. C. A. 9th 1945).

⁴*Bell v. Hood*, 327 U. S. 678 (1946), 41 ILL. L. REV. 558.

⁵*Bell v. Hood*, 327 U. S. 678, 684 (1946).

⁶*United States v. Cruikshank*, 92 U. S. 542, 551, 552 (1875).

⁷*Ibid.*

⁸*Twining v. New Jersey*, 211 U. S. 78 (1908).

⁹*Burdeau v. McDowell*, 256 U. S. 465 (1921).

Fourteenth Amendment¹⁰ has placed upon the states most of the prohibitions contained in the Bill of Rights.¹¹ The Civil Rights Act, probably enacted under authority of the enabling clause of the Fourteenth Amendment,¹² provides for civil liability on the part of only those persons who, acting under color of state authority, violate an individual's constitutional rights.¹³ There are no other Constitutional or statutory provisions for actions based solely on violations of the Bill of Rights. Accordingly, the Federal Government may not be sued without its consent,¹⁴ even when it violates private rights guaranteed by the Constitution.¹⁵

Such remedies as are offered for violation of the Bill of Rights are negative or preventive in their nature. A statute which denies a right guaranteed by the Bill of Rights may be declared void.¹⁶ An injunction may be issued to prevent the enforcement of an unconstitutional statute, and the violator of the injunction cited for contempt.¹⁷ An injunction has been granted in a state court against a recurring illegal search and seizure.¹⁸ Property taken without due process of law must be returned;¹⁹ if taken by an illegal search and seizure it must not only be returned but it also cannot be used as evidence in a federal court.²⁰ Convictions obtained without due process of law will not be allowed to stand.²¹ These and other similar remedies are available to prevent invasion of an indi-

¹⁰U. S. CONST. AMEND. XIV, §1, “. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

¹¹*De Jonge v. Oregon*, 299 U. S. 353 (1937); *Grosjean v. American Press Co.*, 297 U. S. 233 (1936); *Powell v. Alabama*, 287 U. S. 45 (1932).

¹²U. S. CONST. AMEND. XIV, §5, “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

¹³17 STAT. 13, 8 U. S. C. §43 (1871).

¹⁴*Kansas v. United States*, 204 U. S. 331 (1907).

¹⁵*Pflueger v. United States*, 121 F.2d 732 (App. D. C. 1941), *cert. denied* 314 U. S. 617 (1941).

¹⁶*Boyd v. United States*, 116 U. S. 616 (1886).

¹⁷*Ex parte Young*, 209 U. S. 123 (1908).

¹⁸*Devlin v. McAdoo*, 96 N. Y. Supp. 425 (1905).

¹⁹*Heiner v. Donnan*, 285 U. S. 312 (1932).

²⁰*Weeks v. United States*, 232 U. S. 383 (1914).

²¹*Chambers v. Florida*, 309 U. S. 227 (1940).

vidual's constitutional rights by the Federal Government, but no action for money damages exists for a violation per se of the Bill of Rights by the Federal Government, its agents, or private individuals. These rights not being created by the Bill of Rights, the people must seek other relief.²² A violation of many of the freedoms guaranteed by the Bill of Rights would constitute an actionable tort, for which a remedy may be found in the state court²³ or in the federal court if some ground of federal jurisdiction exists.

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CRIMINAL LAW: TEMPORARY INSANITY PRODUCED BY VOLUNTARY INTOXICATION

Britts v. State, 30 So.2d 363 (Fla. 1947)

The uncontradicted evidence was that the defendant had been on a prolonged drunken spree. As an aftermath thereof he became obsessed with a fear that someone was going to kill him or do him great bodily harm. He was taken into custody by two policemen. Apparently believing that the police officers were part of an imaginary gang which was after him, defendant attempted to escape. In the ensuing attempt by one of the policemen to recapture him, the defendant seized the police officer's pistol and shot him. While there was no evidence that the defendant was intoxicated at the time of this act, it was established that he was suffering from alcoholic hallucinosis. He was convicted of assault with intent to commit manslaughter. On appeal, HELD, judgment reversed.

If the appellate court reverses a conviction of assault with intent to commit manslaughter on the ground that the evidence does not justify conviction as to the *assault*, then the conviction should be reversed

²²United States v. Cruikshank, 92 U. S. 542, 552 (1875).

²³Krehbiel v. Henkle, 152 Iowa 604, 129 N. W. 945, 152 Iowa 675, 133 N. W. 115, (1911); United States Fidelity and Guarantee Co. v. Hardy, 121 Miss. 369, 83 So. 610 (1919); Shall v. Minneapolis, St. P. & S. S. M. Ry., 156 Wis. 195, 145 N. W. 649 (1914); Entick v. Carrington, 2 Wils. 275, 95 Eng. Rep. 807 (K. B. 1765).