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Suppression of Coerced Confessions

CONSTITUTIONAL LAW

SUPPRESSION OF COERCED CONFESSIONS

Appellants were arrested by F.B.I. agents for the illegal possession of stolen goods and confessions were obtained. Alleging the confessions to have been illegally obtained,[1] appellants, prior to indictment, petitioned the district court to suppress them and to restrain the United States Attorney from using them as evidence. The district judge, without

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27. Rice v. Olson, 324 U.S. 786 (1945). At least whatever inference can be drawn is answered by allegation of no waiver. Question of fact arises.

28. Carter v. Illinois, 67 S.Ct. 216 (1946).

29. Johnson v. Zerbst, 304 U.S. 458,468 (1937). A conflict of presumptions arises. Which should prevail, every reasonable presumption against waiver of important constitutional rights or presumption of regularity of judgment of a court when collaterally attacked by habeas corpus?

30. See Douglas, Murphy, and Black, J.J. dissenting in Adams v. U.S. ex rel. McCann, 317 U.S. 269,282 (1942). Query under this view if counsel could ever be waived at all.

31. See Justice Murphy dissenting in Carter v. Illinois, 67 S. Ct. 216, 222 (1946). Johnson v. Zerbst, 304 U.S. 458,465 (1937) (though not necessary it would be fitting and proper).
See Rules of the Indiana Supreme Court, Rule 1-11, November 6, 1946. With a plea of guilty in felony cases, the judge shall cause a record to be made of the entire proceedings in connection with arraignment and sentencing.
There is a possibility that the affirmative statement might become a mere formal matter of record.

1. Appellants alleged the confessions were obtained by threats of physical violence and other coercive measures. Appellants also contended that search of a rubber cement plant and seizure of certain documents were conducted under a warrant unlawfully issued. However, the district judge found that the search and seizure was conducted with the written consent of the appellants voluntarily given. This ruling was affirmed in the principal case.

hearing evidence, dismissed the petition on the ground that the court lacked power to suppress the confessions prior to indictment even if they had been illegally obtained. Held: If the confessions were obtained in violation of the Fifth Amendment, they should be suppressed and not admitted in evidence for either indictment or trial. *In re Fried, et al,* —— F.(2d) —— (C.C.A. 2d, 1947).

The effect of the decision is to extend to confessions procured in violation of the Fifth Amendment the benefits of a well settled federal rule permitting the suppression as evidence of articles seized in violation of the Fourth Amendment.[2]

The government argued that an indictment founded upon illegally obtained evidence would do the appellants no harm since the evidence would not be admitted at the trial following indictment. To this argument, Judge Frank replied that wrongful indictment worked an irreparable injury to the person indicted, the stigma of which was not easily erased by a subsequent judgment of not guilty.

Judges Frank and L. Hand disagreed as to how far the innovation announced in the case should be extended. While both agreed it should apply when a constitutional right had been violated, Judge Frank wished to go further and extend it to those cases in which federal officers in obtaining a confession had violated a federal statute governing their authority.

The Indiana courts have followed the federal rule in suppressing as evidence articles illegally seized.[3] There is also

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2. Justice Bradley, speaking for the court in Boyd v. U.S., 116 U.S. 616 (1885), is credited with the original fusion of the Fourth and Fifth Amendments of the federal constitution. It was there held that the production in evidence of the fruits of a search and seizure conducted in violation of the Fourth Amendment would also violate the self-incrimination clause of the Fifth Amendent. The rule laid down in the Boyd case excluding such evidence as being self-incriminating has been followed in subsequent decisions of the federal courts. U.S. v. Lefkowitz, 285 U.S. 452 (1932); Gould v. U.S., 255 U.S. 298 (1920); Harris v. U.S., 151 F.(2d) 837 (C.C.A. 10th, 1945), cert. granted, 66 Sup. Ct. 1360 (1946); U.S. v. Mills, 185 Fed. 318 (C.C. S.D.N.Y. 1911).

3. The Indiana Supreme Court by a synthesis of sections 11 (searches and seizures) and 14 (self-incrimination) of Art. 1 of the Ind. Const. has held that papers and articles obtained by illegal searches and seizures are not admissible in evidence. Flum v. State, 193 Ind. 585, 141 N.E. 353 (1923); Callender v. State, 193 Ind. 91, 138 N.E. 817 (1922); Twomley, "The Indiana Bill of Rights," (1944) 20 Ind. L.J. 211,239.

sufficient constitutional authority in Indiana to permit the extension of the rule announced in the principal case.[4] While such an extension would seem to be a logical corollary consistent with the theory of the rule, at least one Indiana case has refused to extend to confessions, the remedy allowed in the case of unlawful searches and seizures.[5]

DAMAGES

RECOVERY FOR LOSS OF USE OF DESTROYED AUTOMOBILE

Plaintiff's truck was destroyed and due to postwar shortages, he could not obtain another for eight months. In a suit for damages for the negligent destruction of the truck, an additional sum was asked to compensate for lost use. Held: Motion to strike allegation of damages for lost use from the complaint sustained. *Magnolia Petroleum Co. v. Harrell,* 66 F. Supp. 559 (W.D. Okla. 1946).

That damages cannot be recovered for loss of use of a destroyed chattel is clearly the general rule.[1] But the rule is based upon the normal availability of replacements and the plaintiff's duty to replace the property. In 1945, with abnormal conditions prevailing because of the war, the plaintiff was unable to fulfill his duty of replacement.

The court based its decision not only on the rule of damages stated above, but on the further point that defendant's

4. Ind. Const. Art. I, §14: "No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself."

5. "The appellant sought to follow the procedure for quashing a search warrant and suppressing the evidence procured thereunder, which is not an appropriate practice in case of confessions." Kokenes v. State, 213 Ind. 476,481, 13 N.E. (2d) 524,526 (1938).

1. Barnes v. United Rys. and Elec. Co. of Baltimore, 140 Md. 14, 116 Atl. 855 (1922); German v. Centaur Lime Co., 295 S.W. 475 (St. Louis C.A. 1927) (relied on heavily in decision of instant case); Adams v. Bell Motors Inc., 9 La. App. 441, 121 So. 345 (1928); Colonial Motor Coach Corp. v. New York Cent. R.R., 131 Misc. 891, 228 N.Y.S. 508 (S. Ct. 1928); Johnson v. Thompson, 35 Ohio App. 91, 172 N.E. 298 (1929). See 6 Blashfield, "Cyclopedia of Automobile Law and Practice" (Perm. ed. 1945)41: "Where an automobile is practically destroyed, or so completely destroyed as not to be susceptible of repair, the mesure of damages is its reasonable market value immediately before the accident, without any additional allowance for hiring another car." Damages have been disallowed for lost use when the automobile, although it could be partially repaired, could not be restored to as good a condition as before the accident. Helin v. Egger, 121 Neb. 727, 238 N.W. 364 (1931).