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Constitutional Law - Civil Rights Acts - Civil Liability of State Officials Acting Withing Their Discretionary Powers

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CONSTITUTIONAL LAW—CIVIL RIGHTS ACTS—CIVIL LIABILITY OF STATE OFFICIALS ACTING WITHIN THEIR DISCRETIONARY POWERS—Plaintiff was adjudged mentally ill by a county probate judge and ordered committed to a state mental hospital in November 1950. The commitment was made pursuant to a petition made out by the county deputy sheriff on the recommendation of a local attorney. In August of 1952, plaintiff was released from the state mental hospital. He then filed an action in the county circuit court to test the validity of his commitment. The circuit court found that the commitment was void, because of a failure by the authorities to comply with the applicable statutory requirements, and granted a permanent injunction against its enforcement. After a damage action in the state circuit court against the medical superintendent and the director of receiving at the state mental hospital had been dismissed,[1] plaintiff brought a damage action[2]

[1] The state court action is discussed in Kenny v. Fox, (D.C. Mich. 1955) 132 F. Supp. 305, in an action brought in the federal district court by the plaintiff who sought damages

in the federal district court against the probate judge who ordered him committed, the attorney on whose recommendation the petition for commitment was made, and the medical superintendent and director of receiving at the mental hospital. Plaintiff alleged that they had participated at various times in a series of acts which resulted in his confinement, depriving him of his civil rights under color of Michigan law but in violation of the Constitution of the United States. Each defendant filed a motion to dismiss. *Held,* granted. The Civil Rights Acts were not intended to give relief against persons acting in a private capacity or against errors of judgment on the part of judges of state courts or state executive officials. *Kenney v. Hatfield,* (D. C. Mich. 1955) 132 F. Supp. 814.

An increasingly significant problem[3] is the extent to which the all-inclusive language[4] of the Civil Rights Acts has affected the common law immunity given state officials[5]—executive,[6] legislative,[7] and judicial[8]—acting within their discretionary powers.[9] With the exception of the local attorney,[10] there is no question that the acts of the defendants in the principal case constituted "state action,"[11] yet the court found that they were immune from tort liability under the Civil Rights Acts.[12] Although the Civil Rights Acts originally may have been intended to cover situations similar to the principal case,[13] this sweeping approach has not been favored by the

from the state judge who had dismissed his case. The case in the federal district court was also dismissed.

2 Under both the Federal Civil Rights Acts, 28 U.S.C. (1952) §1343, 42 U.S.C. (1952) §1983, and Michigan law. Mich Comp. Laws (1948) §330.1 et seq.

3 As reflected in the growing number of cases arising in federal district courts under the Civil Rights Acts in the years 1945-1953. See tables C-2 in the ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS (1945-1953).

4 R. S. §1979, 42 U.S.C. (1952) §1983, refers to "every person . . ." and does not mention any exceptions from its coverage.

5 Some of the reasons for this immunity are given in Jennings, "Tort Liability of Administrative Officers," 21 MINN. L. REV. 263 at 271-272 (1937). See also 68 HARV. L. REV. 1229 at 1232 (1955); 66 HARV. L. REV. 1285 at 1295, n. 54 (1953).

6 Francis v. Lyman, (1st Cir. 1954) 216 F. (2d) 583. On the common law immunity in general, see Jennings, "Tort Liability of Administrative Officials," 21 MINN. L. REV. 263 (1937); Keefe, "Personal Tort Liability of Administrative Officials," 12 FORD. L. REV. 130 (1943).

7 Tenney v. Brandhove, 341 U.S. 367, 71 S.Ct. 783 (1951).

8 Randall v. Brigham, 7 Wall. (74 U.S.) 523 (1868); Bradley v. Fisher, 13 Wall. (80 U.S.) 335 (1871).

9 For the distinction drawn in regard to their ministerial duties, see Ex parte Virginia, 100 U.S. 339 (1880), where a state judge was held liable under the Civil Rights Acts for such an act.

10 Since the Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18 (1883), there has been no federal protection against the acts of private individuals in the field.

11 See Barnett, "What is 'State' Action Under the Fourteenth, Fifteenth, and Nineteenth Amendments of the Constitution?" 24 ORE. L. REV. 227 (1945).

12 A basic distinction seems to have been made between suits for injunctions against state officials exercising discretionary powers and damage actions brought against state officials for the exercise of their discretionary powers. See 46 COL. L. REV. 614 at 618 (1946).

13 See Frank and Munro, "The Original Understanding of 'Equal Protection of the Laws,'" 50 COL. L. REV. 131 (1950).

courts. The majority of the lower federal courts[14] have reached the same result as the court in the instant case, but with some dissent,[15] and the Supreme Court has not as yet resolved the conflict. But, on the basis of the Court's decision in *Tenney v. Brandhove*,[16] where the Court held that the Civil Rights Acts did not overturn the long tradition of legislative immunity, " . . . it would be absurd to hold, in the application of the Civil Rights Act, that judicial officers of a state stand in any less favorable position than do state legislators, in respect to immunity from civil liability for acts done in their official capacity."[17] Although there is more question as to the extent of the immunity given to state executive officials,[18] it would be paradoxical to grant immunity to the judge ordering the commitment and to impose liability on the doctors enforcing it.[19] The decision of the court in the principal case does not mean that there are no safeguards against the abuses of state officials acting within their discretionary powers. Such cases must be viewed in the federal-state context.[20] Remedies can be found within the state governmental machinery, appeals, extraordinary writs, elections, recall and impeachment of judges and officials, and the state official's own sense of self-restraint.[21] The public interest in maintaining strong and independent state officials overrides the need for a civil damage action under the Civil Rights Acts for an error in the exercise of discretionary authority by a state official. This is particularly so when, as in the principal case, there has been no allegation of willful or malicious action or a purposeful effort to deprive the plaintiff of rights guaranteed by the Constitution.

Charles B. Renfrew, S. Ed.

14 Francis v. Crafts, (1st Cir. 1953) 203 F. (2d) 809; Bottone v. Lindsley, (10th Cir. 1948) 170 F. (2d) 705; McGuire v. Todd, (5th Cir. 1952) 198 F. (2d) 60.

15 Picking v. Pennsylvania R. Co., (3d Cir. 1945) 151 F. (2d) 240; McShane v. Moldovan, (6th Cir. 1949) 172 F. (2d) 1016.

16 341 U.S. 367, 71 S.Ct. 783 (1951).

17 Francis v. Crafts, note 14 supra, at 812.

18 See Jennings, "Tort Liability of Administrative Officers," 21 MINN. L. REV. 263 (1937); Keefe, "Personal Tort Liability of Administrative Officials," 12 FORD. L. REV. 130 (1943).

19 See Francis v. Lyman, note 6 supra, where the court, faced with a similar situation, reached this result.

20 See the concurring opinion of Justice Frankfurter in Snowden v. Hughes, 321 U.S. 1 at 16, 64 S.Ct. 397 (1944).

21 This latter, in the opinion of Justice Stone, is the real check on the judiciary. See his dissent in United States v. Butler, 297 U.S. 1 at 79, 56 S.Ct. 312 (1936).