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Constitutional Law - Civil Rights Act - Civil Liability of State Judicial Officers

John C. Hall S.Ed.
University of Michigan Law School

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CONSTITUTIONAL LAW — CIVIL RIGHTS ACT — CIVIL LIABILITY OF STATE JUDICIAL OFFICERS—In 1940 defendant, a state judge, granted an ex parte order transferring plaintiff, then a voluntary inmate of a Massachusetts school for the feeble-minded, to the Department of Defective Delinquents. Released on habeas corpus in 1951, plaintiff brought suit under the Civil Rights Act,¹

¹ 17 Stat. L. 13 (1871), 8 U.S.C. (1946) §43.

claiming a denial of notice and hearing in violation of the due process clause of the Fourteenth Amendment. On appeal, *held*, a judge is not liable at common law or under the Civil Rights Act for acts done in the exercise of his judicial function. *Francis v. Crafts*, (1st Cir. 1953) 203 F. (2d) 809, cert. den. (U.S. 1953) 74 S. Ct. 43.

At common law there was no civil liability for the acts of judges done in their official capacity.² The English rule is that immunity exists if the proceeds are lawful and conducted with apparent regularity.³ The immunity is given to safeguard independence of action and freedom from harassment.⁴ One court has said the immunity "is absolutely essential to the very existence, in any valuable form, of the office itself."⁵ Early federal decisions agreed that judges should receive judicial immunity.⁶ The possible exception in cases of malicious action was soon erased,⁷ and immunity was extended to inferior courts even where there were acts in excess of jurisdiction.⁸ It seems clear that the Fourteenth Amendment makes it possible for Congress to take this immunity from state judges if there is a violation of due process. The Supreme Court in *Ex parte Virginia*⁹ declared that a state acts through its legislature, executive, and judiciary, and the Fourteenth Amendment allows federal review of state court decisions said to be in violation of the amendment.¹⁰ The language of the Civil Rights Act imposing civil liability on "every person who acts under the color of state law" would seem to reach the judiciary.¹¹ The Supreme Court has never answered this question. Faced with an opportunity to deal with the injunctive relief provisions of section 43 of the act in *Stefanelli v. Minard*,¹² the Court said that the district court could refuse to act in its discretion, and so escaped the need to say whether an injunction, if granted, would be proper. Only three lower court decisions hold the judge liable under the act.¹³ Four-

² *Fray v. Blackburn*, 3 B. & S. 576, 122 Eng. Rep. 217 (1863); *Bradley v. Fisher*, 13 Wall. (80 U.S.) 335 (1871); *Aluza v. Johnson*, 231 U.S. 106, 34 S.Ct. 27 (1913) (extending judicial immunity to the Philippines).

³ *Usill v. Hales*, 3 C.P.D. 319 (1878).

⁴ *Yates v. Lansing*, 5 Johns. (N.Y.) 282 (1810).

⁵ *Grove, Jr. v. Van Duyn*, 44 N.J.L. 654 at 656 (1882).

⁶ *Randall v. Brigham*, 7 Wall. (74 U.S.) 523 (1868); *Bradley v. Fisher*, note 2 supra. Both deal with federal judges.

⁷ *Bradley v. Fisher*, note 2 supra.

⁸ *Yaselli v. Goff*, (2d Cir. 1926) 12 F. (2d) 396, *affd. per curiam* 275 U.S. 503, 48 S.Ct. 155 (1927).

⁹ 100 U.S. 339 (1879). See also *Virginia v. Rives*, 100 U.S. 313 (1879); *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836 (1947).

¹⁰ 28 U.S.C. (Supp. V, 1952) §1257(3); *Tinsley v. Anderson*, 171 U.S. 101, 18 S.Ct. 805 (1897); *Shelley v. Kraemer*, note 9 supra.

¹¹ 8 U.S.C. (1946) §43; *Picking v. Pennsylvania R. Co.*, (3d Cir. 1945) 151 F. (2d) 240. The court in *Bottone v. Lindsley*, (10th Cir. 1948) 170 F. (2d) 705, doubted that a private suit is under color of state law, adding the action must be a complete nullity for the Civil Rights Act to apply.

¹² 342 U.S. 117, 72 S.Ct. 118 (1951).

¹³ *Picking v. Pennsylvania R. Co.*, note 11 supra; *McShane v. Moldovan*, (6th Cir. 1949) 172 F. (2d) 1016; *Cooper v. Hutchinson*, (8th Cir. 1950) 184 F. (2d) 119.

teen cases have denied liability, but of these three involved federal judges,¹⁴ two contained no reference to the Civil Rights Act,¹⁵ one said no federal question was raised for application of the act,¹⁶ one held that the action was properly brought under the act so as to vest the district court with jurisdiction but found for the judge on the merits,¹⁷ and one suggests the judge was acting ministerially under a valid state law.¹⁸ Three circuits, altogether, find liability;¹⁹ four circuits, no liability.²⁰ The Second Circuit and Seventh Circuit recognize a possible liability, while the Fifth Circuit suggests it will not apply the act.²¹ A possible means of finding civil liability, apart from the Civil Rights Act, is suggested by judicial language that immunity does not apply to a judge acting entirely without jurisdiction.²² A judge acting in violation of the Fourteenth Amendment acts without authority.²³ In answer to the argument that imposing such civil liability would allow federal control of state courts,²⁴ it should be pointed out that only in the case of a violation of the Fourteenth Amendment could any federal remedy be given,²⁵ and federal courts already have the power of review in such cases.²⁶ Moreover, the wording of the act does not exempt state judges from its operation;²⁷ but this in itself is not conclusive, since there is similarly no express exemption of state legislators and yet the Supreme Court has recently said that Congress did not mean to destroy the legislators' historic immunity.²⁸ Nevertheless, there seems a tendency for lower courts to place judges within the scope of the Civil Rights Act. Against the fear that the judiciary will be less able to give considered judgments must be weighed the injury to litigants from unconstitutional judgments. The scales have not yet tipped decisively one way or the other.

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¹⁴ *Viles v. Symes*, (10th Cir. 1942) 129 F. (2d) 828; *Allen v. Biggs*, (D.C. Pa. 1945) 62 F. Supp. 229; *Gregoire v. Biddle*, (2d Cir. 1949) 177 F. (2d) 579.

¹⁵ *Cooke v. Bangs, Jr.*, (8th Cir. 1887) 31 F. 640; *United States to the use of Kinney v. Bell*, (3d Cir. 1905) 135 F. 336.

¹⁶ *Green v. Elbert*, (8th Cir. 1894) 63 F. 308.

¹⁷ *Mitchell v. Greenough*, (9th Cir. 1938) 100 F. (2d) 184.

¹⁸ *Blackman v. Stone*, (7th Cir. 1939) 101 F. (2d) 500.

¹⁹ Note 13 *supra*.

²⁰ *Souther v. Reid*, (D.C. Va. 1951) 101 F. Supp. 806; *Bottone v. Lindsley*, note 11 *supra*; *United States v. Chaplin*, (D.C. Cal. 1944) 54 F. Supp. 926; and the principal case.

²¹ *Gregoire v. Biddle*, note 14 *supra*; *Blackman v. Stone*, note 18 *supra*; *McGuire v. Todd*, (5th Cir. 1952) 198 F. (2d) 60, cert. den. 344 U.S. 835, 72 S.Ct. 44 (1952).

²² *Bradley v. Fisher*, note 2 *supra*.

²³ *Grove v. Van Duyn*, note 5 *supra*; *McShane v. Moldovan*, note 13 *supra*.

²⁴ See *McGuire v. Todd*, note 21 *supra*.

²⁵ *Ex parte Virginia*, note 9 *supra*. Mere error does not violate due process. *Shemaitis v. Reid*, (7th Cir. 1951) 193 F. (2d) 119.

²⁶ *Tinsley v. Anderson*, note 10 *supra*.

²⁷ *Picking v. Pennsylvania R. Co.*, note 11 *supra*.

²⁸ *Tenney v. Brandhove*, 341 U.S. 367, 71 S.Ct. 783 (1951).