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Constitutional Law--Admission of Evidence Obtained by Illegal Search and Seizure (Wolf v. Colorado, 338 U.S. 25 (1949))

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pleted unilateral contract cannot be found.[13] Some courts, however, have predicated their decisions squarely upon both consideration and estoppel.[14] The first and second *rationes decidendi* have been utilized in cases where all the elements of estoppel were present; nevertheless, lip service was paid to contract principles.[15] It would appear, therefore, that unless these elements of estoppel are present there can be no enforcement.

The court in the instant case used no *ratio decidendi* by name but based its decision squarely upon the elements of estoppel.[16] This decision may well establish a precedent for the enforcement of charitable subscriptions solely on the grounds of estoppel.

CONSTITUTIONAL LAW—ADMISSION OF EVIDENCE OBTAINED BY ILLEGAL SEARCH AND SEIZURE. — Appellant and another were convicted of conspiracy to commit abortion. The conviction was upheld in the State Supreme Court although evidence was obtained by means of an illegal search and seizure.[1] Appellant alleges that the admission of this evidence was a violation of the "due process clause" of the Fourteenth Amendment to the United States Constitution. *Held,* conviction sustained. The "due process clause" of the Fourteenth Amendment does not prohibit admission of illegally obtained evidence in state courts. *Wolf v. Colorado,* 338 U. S. 25 (1949).[2]

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justice can be avoided only by enforcement of the promise." RESTATEMENT, CONTRACTS § 90 (1932); Beatty v. Western College, 177 Ill. 280, 52 N. E. 432 (1898); Simpson Centenary College v. Tuttle, 71 Iowa 596, 33 N. W. 74 (1887).

[13] I. & I. Holding Co. v. Gainsburg, 276 N. Y. 427, 12 N. E. 2d 532 (1938).

[14] Matter of Lord, 175 Misc. 921, 25 N. Y. S. 2d 747 (Surr. Ct. 1941); First M. E. Church of Mt. Vernon v. Howard, 133 Misc. 723, 233 N. Y. Supp. 451 (Surr. Ct. 1929), *aff'd without opinion,* 233 App. Div. 753, 250 N. Y. Supp. 906 (2d Dep't 1931).

[15] I. & I. Holding Co. v. Gainsburg, 276 N. Y. 427, 12 N. E. 2d 532 (1938); Allegheny College v. Nat. Chautauqua Co. Bank, 246 N. Y. 369, 159 N. E. 173 (1927); Keuka College v. Ray, 167 N. Y. 96, 60 N. E. 325 (1901); Barnes v. Perine, 15 Barb. 249 (1852), *aff'd,* 12 N. Y. 18 (1854); Central Maine General Hospital v. Carter, 125 Me. 191, 132 Atl. 417 (1926).

[16] RESTATEMENT, CONTRACTS § 90 (1932). In the instant case utilization of either the first or second *ratio decidendi* would have effected a new and different agreement due to the presence of negative clause in the subscription.

[1] Wolf *et al.* v. People, 117 Colo. 279, 187 P. 2d 926 (1947).

[2] *But cf.* Lustig v. United States, 338 U. S. 74 (1949), decided by the Supreme Court the same day. There state officials secured a warrant for arrest of petitioner, charging him with violation of a city ordinance requiring all known criminals to register with the police. When admitted to the suspect's rooms, they embarked on an illegal search. Uncovering evidence of counterfeiting, they called in a federal agent, who there and then examined the evidence although he did not participate in the search. Petitioner was convicted of counterfeiting. The Supreme Court reversed the conviction ruling that ad-

The Constitution of the United States does not prohibit a state from establishing its own rules of evidence.[3] But it does prohibit a state from depriving ". . . any person of life, liberty, or property, without due process of law. . . ."[4] Consequently the Supreme Court of the United States will reverse state courts whenever it finds that they have violated the "due process clause" of the Fourteenth Amendment.[5]

Neither the Federal nor state constitutions define "due process of law," [6] and the courts have declined to supply a comprehensive definition of the phrase.[7] They prefer that its full meaning should be ascertained gradually by the process of inclusion and exclusion in the course of decisions as they arise.[8] However the Supreme Court has declared that the "due process clause" is violated when state action is found to deny ". . . fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." [9] The soundness of this doctrine is not open to question, but a difficulty lies in applying it to the individual case. Nevertheless the Supreme Court has utilized the concept in declaring the guarantees of the First Amendment to be "fundamental rights." Thus the Court has condemned as unlawful state action which has abridged freedom of speech,[10] press,[11] and the free exercise of religion.[12] The guaranty of the Sixth Amendment as regards benefit of counsel has also been upheld as a fundamental right.[13] On the other hand, the Supreme Court has held that the disregard of the guarantees of the Fifth Amendment is not a violation of the fundamental rights implicit in the "due process clause" of the Fourteenth Amendment. Thus the Court has permitted a state to abolish indictments by grand juries,[14]

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mission of the evidence violated the Fourth Amendment. Where there is any federal participation in an illegal search and seizure, evidence thus obtained must be excluded.

[3] Logan and Bryan v. Postal Telegraph & Cable Co., 157 Fed. 570 (E. D. Ark. 1908).

[4] U. S. CONST. AMEND. XIV, § 1, reads: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 or law; nor deny to any person within its jurisdiction the equal protection of the laws.

[5] Powell v. Alabama, 287 U. S. 45 (1932); Moore v. Dempsey, 261 U. S. 86 (1923).

[6] Albritton v. City of Winona, 181 Miss. 75, 178 So. 799 (1938).

[7] Twining v. New Jersey, 211 U. S. 78 (1908); Davidson v. New Orleans, 96 U. S. 97 (1877).

[8] *Ibid.*

[9] Herbert v. Louisiana, 272 U. S. 312, 316 (1926).

[10] DeJonge v. Oregon, 299 U. S. 353 (1937).

[11] Grosjean v. American Press Co., 297 U. S. 233 (1936).

[12] Hamilton v. Regents, 293 U. S. 245 (1934).

[13] Powell v. Alabama, 287 U. S. 45 (1932).

[14] Hurtado v. California, 110 U. S. 516 (1884).

to appeal in a criminal case where the defendant has been acquitted by a petit jury,[15] and to allow a defendant to incriminate himself.[16]

It should be noted that in federal prosecutions evidence obtained by federal agents, by means of an unlawful search and seizure, is excluded.[17] The reason for this exclusion is that the Fourth Amendment which prohibits the Federal Government from making unlawful searches and seizures would be reduced ". . . to a form of words" should such illegally obtained evidence help convict a defendant.[18] However, the Federal Constitution does not specifically prohibit a state from making unlawful searches and seizures. Consequently if this right is to be protected against state action, it must come within the connotation of ordered liberty inherent in the Fourteenth Amendment.

In *Gouled v. United States,*[19] the Supreme Court in discussing the rights guaranteed by the Fourth Amendment stated, ". . . they are to be regarded as of the very essence of constitutional liberty; and as imperative as are the guaranties of the other fundamental rights of the individual citizen. . . ." [20] And in *Harris v. United States,*[21] Justice Frankfurter, in referring to these rights, declared, "Historically we are dealing with a provision of the Constitution which sought to guard against an abuse that more than any one single factor gave rise to American independence." [22]

The instant case recognizes that the right to be protected against unlawful searches and seizures is a fundamental right for the Court declared, "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment— is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause." [23] However the Court refused to exclude

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[15] Palko v. Connecticut, 302 U. S. 319 (1937).

[16] Twining v. New Jersey, 211 U. S. 78 (1908).

[17] Weeks v. United States, 232 U. S. 383 (1914).

[18] Silverthorne Lumber Company, Inc. v. United States, 251 U. S. 385, 392 (1920).

[19] 255 U. S. 298 (1921). Here the defendant was indicted for conspiracy to defraud the United States and for using the mails to defraud the United States. Evidence leading to his conviction was obtained by an unreasonable search and seizure. The Court excluded the evidence, holding that admission of such evidence violates the Fourth Amendment.

[20] *Id.* at 304.

[21] 331 U. S. 145 (1947). Here the defendant was indicted for having violated the Mail Fraud Statute and the National Stolen Property Act. Federal agents armed with warrants of arrest searched defendant's apartment. The Court held that a search incidental to an arrest may, under appropriate circumstances, extend beyond the person of the one arrested to the premises under his immediate control. Justice Frankfurter dissented on the ground that to permit rummaging throughout a house without a search warrant on the ostensible ground of looking for the instrument of a crime, when only a warrant of arrest had been procured, is a serious threat to basic liberties.

[22] *Id.* at 159.

[23] Wolf v. Colorado, 338 U. S. 25, 27, 28 (1949).

the evidence illegally obtained on the ground that when the right to be secure from unreasonable searches and seizures is weighed against the public policy of suppressing crime, the individual right is deemed to be subordinate to this policy.[24]

It is submitted that this reasoning is both erroneous and dangerous. Since the arbitrary utilization of the power to arrest and search is a step towards a totalitarian state, it would seem to follow that the guaranty of the Fourth Amendment should be considered as one of those fundamental rights protected by the "due process clause" of the Fourteenth Amendment.

CONSTITUTIONAL LAW — CONFESSIONS AND DUE PROCESS. — Petitioner was convicted of murder while attempting to commit rape. The judgment was affirmed by the Supreme Court of Indiana.[1] On writ of certiorari, the Supreme Court of the United States, in reviewing the facts, found that the police, in attempting to procure a confession from the petitioner, had questioned him for five to ten hours on six separate days. He was kept two days in solitary confinement in a cell called "the hole." He was never given sufficient food or rest during this period to satisfy normal needs. Petitioner was not given a prompt preliminary hearing as required by Indiana law; he was without friendly or professional aid and was not advised of his constitutional rights. *Held,* conviction reversed. The coercive methods employed by the police officials to elicit the confession were unconstitutional as a violation of the due process clause of the Fourteenth Amendment to the United States Constitution.[2] *Watts v. Indiana,* 338 U. S. 49 (1949).

The *Watts* case was the first of three cases decided the same day, all reversing convictions where confessions had been obtained through coercion.[3]

In reviewing cases of this nature, the Supreme Court is not concluded by the findings of a state court that the confession was

[24] In coming to this conclusion the Court relied upon People v. Defore, 242 N. Y. 13, 150 N. E. 586 (1926).

[1] Watts v. State, 226 Ind. 655, 82 N. E. 2d 846 (1948).

[2] U. S. CONST. AMEND. XIV, § 1. ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

[3] Turner v. Pennsylvania, 338 U. S. 62 (1949). The petitioner was constantly interrogated from four to six hours a day for five days. He was denied the right to see friends or relatives and was not informed of his right to remain silent. The suspect was not given a preliminary hearing until the interrogation had produced a confession. Harris v. South Carolina, 338 U. S. 68 (1949). Here the suspect was held in jail several days and on one occasion was interrogated for a twelve-hour period. He was not given a hearing or informed of his rights. Petitioner was denied benefit of consultation with an attorney or friends.