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murder[17] to which the defendant has interposed the defense that an act other than his own caused the death.[18] This rule has no application until the state has proven a sufficient cause of death.[19] The rule of law that once the state has shown a sufficient cause of death, a rebuttable presumption arises,[20] should mean only that the defendant has the *burden of going forward with the evidence.*

In the instant case, defendant was charged with involuntary manslaughter and did not contend that death was due to any cause other than that alleged by the state. Therefore, it is submitted that the rule, since it is applicable for mitigating purposes only, was wrongfully applied to the instant case. If the court meant to imply that the state had sufficiently proven the cause of death to raise a presumption, the words "burden of proof" should not have been used. Since from the record it appears that the state sufficiently proved the death by competent evidence, the use of the rule was superfluous.

EVIDENCE—REFUSAL OF FEDERAL COURT TO ENJOIN ADMISSION OF ILLEGALLY OBTAINED EVIDENCE IN STATE COURT

Plaintiff was indicted for bookmaking in violation of a New Jersey statute.[1] He sought an injunction[2] in a United States district court to restrain the prosecutor from using illegally obtained evidence in the state criminal proceeding. *Held,* on certiorari, that federal courts should refuse to intervene in state proceedings to suppress the use of evidence, even when claimed to have been secured by unlawful search and seizure. *Stefanelli v. Minard,* 72 Sup. Ct. 118 (1951).

Prior to 1914, it was generally recognized that in a criminal proceeding any court would receive evidence, whether legally or illegally obtained,[3] if otherwise competent. The courts rationalized that to hold otherwise would involve the raising of collateral issues.[4] In *Weeks v. United States,*[5] however, the Supreme Court reversed a conviction which was based on evidence obtained by an unreasonable search by a United States marshal. The Court

17. Until the instant case, the words "with murderous intent" were included in the rule. E.g., Bellamy v. State, 56 Fla. 43, 57 So. 868 (1908); State v. Briscoe, 30 La. An. 433 (1878).
18. State v. Briscoe, 30 La. An. 433 (1878).
19. *Ibid.*
20. United States v. Wiltberger, 28 Fed. Cas. 727, No. 16,738 (E.D. Pa. 1819).

1. N.J. REV. STAT. § 2:135-3 (1939).
2. REV. STAT. § 1979 (1875), 8 U.S.C. § 43 (1946); 28 U.S.C. § 1343(3) (1946).
3. Adams v. New York, 192 U.S. 585 (1904); Commonwealth v. Dana, 2 Met. 329, 337 (Mass. 1841); People v. Adams, 176 N.Y. 351 (1903); Bishop Atterbury's Case, 16 How. St. Tr. 323, 495 (1723); 3 WIGMORE, EVIDENCE §§ 2183, 2264 (3d ed. 1940).
4. See, e.g., Cobbledick v. United States, 309 U.S. 323 (appeals from "final decisions of the district courts").
5. 232 U.S. 383 (1914).

declared that such searches and seizures were in contravention of the Constitution.[6] It asserted, however, that the Constitution affords no protection from such searches by non-federal police officers.

Since 1914, the courts of forty-six states have ruled on the question of whether the doctrine of the *Weeks* case should be applied in state trials. In twenty-nine states the doctrine has been rejected;[8] in seventeen it has been followed.[9] In the recent leading Supreme Court case of *Wolf v. Colorado*,[10] a 4-3 decision, the majority concluded that in a state prosecution for a state crime, the Fourteenth Amendment did not forbid the admission of evidence, even if obtained by an illegal search and seizure.

Although it would be contrary to the Constitution[11] for a state to sanction such police incursion into privacy,[12] unless the answer to the constitutional question is indispensable to the disposition of the cause, the court will not decide the matter.[13] In an effort to maintain the balance between state and federal powers, the Court, in using its discretionary privilege, refused to grant equitable relief in the absence of a finding of "irreparable injury which is clear and imminent."[14] It further concluded that a conviction, even though based on illegally obtained evidence, would not deprive petitioner of due process of law.[15] The Supreme Court is reluctant to lay down a rule which would open the door for counsel to resort to a federal forum to determine issues arising out of procedural due process.[16]

In view of the fact that petitioner had not attempted to obtain an injunction in the state court to suppress the use of the evidence,[17] and that he merely anticipated its use,[18] the holding, based on the Court's discretionary power to refuse to intervene, appears to be sound. However, the dissenting opinions in the *Wolf*[19] and instant[20] cases are persuasive in their argument that to hold that the illegally obtained evidence is admissible and that its use may not be enjoined, is to make the Fourth Amendment an "empty and hollow guarantee so far as state prosecutions are concerned."[21]

6. U.S. CONST. AMEND. IV.
7. Weeks v. United States, 232 U.S. 383, 398 (1914).
8. Ala., Ariz., Ark., Calif., Colo., Del., Ga., Kan., La., Me., Md., Mass., Minn., Neb., Nev., N.H., N.J., N.M., N.Y., N.C., N.D., Ohio, Ore., S.C., Tex., Utah, Vt. and Va.
9. Fla., Idaho, Ill., Ind., Iowa, Ky., Mich., Miss., Mo., Mont., Okla., S.D., Tenn., Wash., W. Va., Wis. and Wyo.
10. 338 U.S. 25 (1948).
11. U. S. CONST. AMEND. XIV.
12. Wolf v. Colorado, 338 U.S. 25, 27 (1948).
13. Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936).
14. Douglas v. City of Jeanette, 319 U.S. 157, 163 (1943).
15. See note 10 *supra*.
16. See Watts v. Indiana, 338 U.S. 49 (1949) (admission of a confession); Smith v. Texas, 311 U.S. 128 (1940) (selection of a grand jury); Powell v. Alabama, 287 U.S. 45 (1932) (failure to appoint counsel); Strauder v. West Virginia, 100 U.S. 303 (1879) (selection of a petit jury).
17. Poughe v. Patton, 21 F. Supp. 182 (D.C. Tex. 1938).
18. Continental Baking Co. v. Woodring, 286 U.S. 352 (1932).
19. *Id.* at 40 (J.J., Douglas, Murphy and Rutledge, dissenting).
20. Stefanelli v. Minard, 72 Sup. Ct. 118, 123 (Justice Douglas dissenting).
21. *Id.* at 123.