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Courts -- Judicial Immunity vs. Civil Rights

Richard I. Goodman

court, and the functions of a judge. Whether an act is to be performed by the court or the judge is generally determined by the character of the act. Whenever it is a statutory power or duty conferred upon the court, it can only be discharged by the assembled tribunal, "however composed, whether of one judge or several."[18] The power of removal or appointment of school directors,[19] public officials,[20] and guardians, is conferred upon the court and "court" means court *en banc*.[21]

The Pennsylvania position seems the more reasonable in differentiating the stated questions. It is highly improbable that the drafters of the Florida Constitution intended to have the opinion of one circuit judge bind the full circuit in the interpretation of constitutional and statutory powers conferred on that circuit. Such a conclusion would be illogical in that the minority opinion of one, asserted first, could prevail. This would be especially true if the remaining judges not participating, were to have a contrary opinion. Certainly this question is important enough to have merited a discussion in the majority opinion.

Arthur J. Franza

COURTS — JUDICIAL IMMUNITY VS. CIVIL RIGHTS

Plaintiff, confined as a delinquent[1] on an order issued without notice or hearing in violation of his rights under the Fourteenth Amendment, brought an action by virtue of the Civil Rights Act[2] against the judge who promulgated the order. *Held*, the judicial immunity of a judge acting within his authority is not derogated by the Civil Rights Act. *Francis v. Lyman*, 108 F. Supp. 884 (D. Mass. 1952).

The principle that exempts judges from civil liability for acts in the exercise of their judicial functions has "a deep root in the common law."[3] Judges are not civilly liable when such acts are in excess of their jurisdiction,[4]

18. Moritz v. Luzerne County Co., 283 Pa. 349, 352, 129 Atl. 85, 86 (1925).
19. In re Hanover Township School Directors, 290 Pa. 95, 137 Atl. 811 (1927).
20. Novak v. Koprivsek, 58 York 16, 29 North 201 (1944).
21. Carter's Estate, 254 Pa. 518, 99 Atl. 58 (1916).

1. MASS. GEN. LAWS c. 123, § 116 (1932).
2. REV. STAT. § 1979 (1875), 8 U.S.C. § 43 (1946) "Every person who, under color of any statute . . . of any State . . . subjects . . . any citizen of the U. S. . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . for redress."
3. Yates v. Lansing, 5 Johns. 282, 291 (N.Y. 1810); Bradley v. Fisher, 13 Wall. 335 (U.S. 1871); Yaselli v. Goff, 12 F.2d 396 (2nd Cir. 1926), *aff'd*, 275 U.S. 503 (1927); Allen v. Biggs, 62 F. Supp. 229 (E.D. Pa. 1945); Allard v. Estes, 292 Mass. 187, 197 N.E. 884 (1935); Landseidel v. Culeman, 47 N.D. 275, 181 N.W. 593 (1921); Hammond v. Howell, 2 Mod. 218, 86 Eng. Rep. 1035 (1678); 2 COOLEY, TORTS 420 *et. seq.* (4th ed. 1932).
4. As distinguished from acts where no jurisdiction over the subject matter exists. Bradley v. Fisher, 13 Wall. 335 (U.S. 1871); Randell v. Brigham, 7 Wall. 523 (U.S. 1868); Allard v. Estes, 292 Mass. 187, 197 N.E. 884 (1935).

or even when such acts are performed maliciously or corruptly.[5] The immunity extends to judges of courts of superior or general jurisdiction[6] as well as to lower courts[7] and judicial officers,[8] and is a fundamental principle of English and American jurisprudence.[9]

The immunity exists, not for the benefit of the judge, but for the benefit of the public. The general welfare requires that the judiciary exercise its functions with independence uncontrolled by fear of adverse consequences to themselves.[10] The public's protection is contained in the power of appeal, and the weapon of impeachment which can be directed toward corruption or misconduct.[11]

A contrary result was reached in the *Picking*[12] case. There the Circuit Court held that, if the plaintiffs brought a proper proceeding which was refused hearing, the judge may be answerable in damages under the Civil Rights Act.[13] "The statute must be deemed to include members of the state judiciary acting in official capacity. The result is of fateful portent to the judiciary of the several states."[14]

In the instant case, the court stated that the *Picking* case was unsound. Although it appears on first glance, by Congressional use of the words "every person"[15] that judicial immunity was ended, the court added that if Congress were going to abrogate so sacred a principle of the common law, they would have done so "in plain terms."[16] This conclusion is justified on the basis of public policy which requires a judiciary who may speak freely without fear of reprisal. The court intimated that the ability of the judiciary to serve the public would be seriously hampered if the Civil Rights Act[17] were read so as to destroy judicial immunity.

The decision in the instant case appears sound. The principle of judicial immunity is recognized in any well-ordered system of jurisprudence[18]

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5. Bradley v. Fisher, 13 Wall. 335 (U.S. 1871).
6. *Ibid;* Randell v. Brigham, 7 Wall. 523 (U.S. 1868); Weaver v. Devendorf, 3 Denio 117 (N.Y. 1846).
7. Cooke v. Banks, 31 Fed. 640 (C.C. Minn. 1887); Calder v. Halket, 3 Moo. P.C. 28, 13 Eng. Rep. 12 (1839).
8. Yaselli v. Goff, 12 F.2d 396 (2nd Cir. 1926), *aff'd*, 275 U.S. 503 (1927).
9. *Ibid;* Yates v. Lansing, 5 Johns. 282 (N.Y. 1810).
10. Bradley v. Fisher, 13 Wall. 335 (U.S. 1871); Allard v. Estes, 292 Mass. 187, 197 N.E. 884 (1935); Stewart v. Case, 53 Minn. 62, 54 N.W. 938 (1893); Yates v. Lansing, 5 Johns. 282 (N.Y. 1810); Landseidel v. Culeman, 47 N.D. 275, 181 N.W. 593 (1921); Floyd v. Barker, 12 Co. Rep. 23, 77 Eng. Rep. 1305 (1608); Taaffe v. Downes, 3d Moo. P.C. 35, 13 Eng. Rep. 15 (1813); Jennings, *Tort Liability of Administrative Officers* in 4 SELECTED ESSAYS ON CONSTITUTIONAL LAW 1271 (1938).
11. Cooke v. Bangs, 31 Fed. 640 (C.C. Minn. 1887); Pratt v. Gardner, 2 Cush. 63 (Mass. 1848).
12. Picking v. Penn. R.R., 151 F.2d 240 (3rd Cir. 1945), *cert. denied*, 332 U.S. 776 (1947); see, McShane v. Moldovan, 172 F.2d 1016 (6th Cir. 1949).
13. See note 2 *supra.*
14. Picking v. Penn. R.R., 151 F.2d 240, 250 (3rd Cir. 1945), *cert. denied*, 332 U.S. 776 (1947).
15. See note 2 *supra.*
16. Francis v. Lyman, 108 F. Supp. 884, 887 (D. Mass. 1952).
17. See note 2 *supra.*
18. Bradley v. Fisher, 13 Wall. 335 (U.S. 1871).

and it is important to an enlightened and impartial judiciary that the principle be perpetuated. This conclusion is in line with the recent Supreme Court ruling of *Tenney v. Brandhove*.[19] The court there excluded members of a state legislature from claims arising out of the Civil Rights Act, based on the rationale that any other result would destroy legislative freedom of judgment. The holding of the *Picking* case does not seem to be based on sound reasoning, principle, or authority. Rather, it was an attempt to import into an act of Congress an interpretation which would tend to destroy the very nature of the judiciary. With the noted case, the well established principle of judicial independence has been reaffirmed.[20]

Richard I. Goodman

FAMILY LAW — PATERNITY PROCEEDINGS — VALIDITY OF BLOOD TESTS

A married woman brought paternity proceedings against a party not her husband. Husband and wife, though cohabiting, testified to non-access and the results of blood grouping tests excluded the husband as the possible father. *Held*, action dismissed because the presumption of legitimacy had not been overcome. *Complaint of Dunn*, 115 N.Y.S.2d 438 (Children's Ct. 1952).

No principle of law is more firmly established than that which presumes every child born in wedlock to be legitimate.[1] However, a child born to a married woman begotten by one not her husband may be considered a child born out of wedlock.[2]. To overcome the presumption of legitimacy evidence of non-access, where admissible, may be introduced to prove adulterous intercourse resulting in the disputed issue.[3] There is a

19. Tenny v. Brandhove, 341 U.S. 367 (1951).

20. "No man would accept the office of judge, if his estate were to answer for every error in judgment, or if his time and property were to be wasted in litigations with every man whom his decisions might offend." Phelps v. Sill, 1 Day's Conn. Rep. 315, 329 (1804).

1. CAL. CIV. CODE § VTC (1941); CAL. CODE CIV. PROC. ANNOTATIONS §§ 1962, 1963 (1941); Dill v. Patterson, 326 Ill. App. 511, 62 N.E.2d 249 (1945); Heath v. Heath, 222 Iowa 660, 269 N.W. 761 (1936); Bassil v. Ford Motor Co., 278 Mich. 173, 270 N.W. 258 (1937); Bednarik v. Bednarik, 18 N.J. Misc. 633, 16 A.2d 80 (Ch. 1940); Harding v. Harding, 22 N.Y.S.2d 810, *aff'd* 261 App. Div. 924, 25 N.Y.S.2d 525 (2d Dep't 1940); Jacobs v. Jacobs, 163 Misc. 98, 297 N.Y. Supp. 642 (Dom. Rel. Ct. 1937); Gonzalez v. Gonzalez, 177 S.W.2d 328 (Tex. Civ. App. 1944).

2. Jones v. State, 11 Ga. App. 760, 76 S.E. 72 (1912); N.Y. DOM. REL. LAW § 119, Complaint of Vincent, 284 N.Y. 260, 30 N.E.2d 587, *aff'd* 259 App. Div. 835, 20 N.Y.S.2d 172 (2d Dep't 1940) ("out of lawful matrimony" refers to status of natural parents); N.D. REV. CODE §§ 14-0901, 14-0902, 14-0903 (1943), North Dakota v. Coliton, 17 N.W.2d 546 (N.D. 1945).

3. CAL. CIV. CODE §§ 193, 194, 195 (1941); CAL. CODE CIV. PROC. ANNOTATIONS §§ 1962, 1963 (1941) (parents cannot testify to non-access); MASS. GEN. LAWS c. 273, §§ 7, 16; MONT. REV. CODES ANN. § 5830, § 10605 subdivision 5, § 10606 (1935); N.Y. DOM. REL. LAW § 126; Hubert v. Cloutier, 135 Mo. 230, 194 Atl. 303 (1937);