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Constitutional Law—Proof of Intoxication Obtained from Blood Test Held Violative of Due Process

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the ten per cent. limitation to both attachment and execution is that defendant not be impoverished. But there is no reason why the continuing levy feature should be applied to both remedies. The purpose of attachment is to acquire jurisdiction, which presupposes a present res within the state. On the other hand, there is no compelling reason why a levy invoked to enforce the judgment should not be continuous, so as to reach wages subsequently earned by defendant in the state.

Sally Peard

CONSTITUTIONAL LAW—PROOF OF INTOXICATION OBTAINED FROM BLOOD TEST HELD VIOLATIVE OF DUE PROCESS

While defendant was unconscious after an automobile accident, a sample of her blood was taken for the purpose of typing for a transfusion, which was later given. A portion of this blood was then tested for alcoholic content without defendant's knowledge. *Held:* Conviction of drunken driving reversed. The use of such evidence violates the due process provisions of the federal and state constitutions. *People v. Haeussler,* ___ Cal. App. ___, 248 P. 2d 434 (2d Dist. 1952).

The reversal in the instant case was expressly based on the authority of *Rochin v. California,* 342 U. S. 165 (1952), noted, 1 BFLO. L. REV. 318. In that case, the United States Supreme Court reversed a conviction for illegal possession of narcotics, holding that the conduct of the police in forcibly extracting morphine capsules from the defendant's stomach by means of a stomach pump and emetics violated the due process clause of the Fourteenth Amendment. In the instant case, the court found "no difference in principle" between the facts in the *Rochin* case, *supra,* and the situation in the instant case. *Supra* at 437.

The court, however, did not indicate what that controlling principle is. Clearly the privilege against self-incrimination found in the Fifth Amendment is inapplicable. *Twining v. New Jersey,* 211 U. S. 78 (1908). The privilege is not a restraint on state action through the Fourteenth Amendment. *Adamson v. California,* 332 U. S. 46 (1947). Moreover, it applies only to testimonial compulsion, and not to compulsory exhibition of the body. *State v. Sturtevant,* 96 N. H. 99, 70 A. 2d 909 (1950); *State v. Cram,* 176 Ore. 577, 160 P. 2d 283 (1945); *Holt v. U. S.,* 218 U. S. 245 (1910); and see cases collected in 8 WIGMORE, EVIDENCE §§2263-2266 (3d ed. 1940).

The defense of a violation of the constitutional right against unreasonable searches and seizures is equally untenable in both the *Rochin* case, *supra,* and in the instant case. The evidence obtained thereby is not necessarily inadmissible in the state courts. *Wolf v. Colorado,* 338 U. S. 25 (1949). California admits evidence obtained by an illegal search and seizure. *People v. Gonzales,* 20 Cal. 2d 165, 124 P. 2d 44 (1942).

Apparently, neither the privilege against self-incrimination nor the protection against unreasonable search and seizure is the "principle" of the *Rochin* case, within which the instant case is said to fall. In the *Rochin* case, the court referred to the stomach pumping as "conduct that shocks the conscience," as a procedure "bound to offend even hardened sensibilities," as acts which "offend the community's sense of fair play," and as "brutal conduct." Thus it appears that in that case Frankfurter, J., disapproved primarily of the violence and the force used, the emphasis being on the method and not the evidence obtained thereby.

The writer of the annotation at 25 A. L. R. 2d 1407 (1952) suggests that the aim of the decision is to strike at illegal police, rather than court, practice. Coerced confessions are prohibited by the due process clause of the Fourteenth Amendment in both federal and state courts on like grounds; the police, to convict a man, cannot extract by force what is in his mind. *Watts v. Indiana,* 338 U. S. 49 (1949); *Malinski v. New York,* 324 U. S. 401 (1945). The *Rochin* case apparently applies this principle to prohibit the use of evidence obtained by exacting by force what is in his stomach.

The element of force is conspicuously lacking in the instant case. Moreover, since the defendant was in need of a blood transfusion, even if the law enforcement authorities had not wanted a blood sample, she would have undergone exactly the same treatment. It is submitted that the taking of blood under these circumstances does not come within the rule of *Rochin v. California, supra,* and is not a violation of due process.

Paul Gonson

LITERARY PROPERTY—ELEMENTS OF OWNERSHIP OF AN IDEA

Plaintiff, engaged in the advertising business, conceived an idea for a radio program. He outlined it to defendant, indicating that he expected compensation if the idea were used. Later, defendant put the program on the radio via another advertising agency. Alleging his ownership of the idea, plaintiff sued to re-