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 pre-
supposes 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 Bf Io. 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 mor-
phine 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 com-
pulsion, 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).

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-