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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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When Two Persons Have Equal Rights to Premises, Consent of Either Legalizes Search—Police officers arrested defendant pursuant to his wife's complaint that he had threatened her with a gun after a quarrel in their home. At her invitation a search was instigated, and the gun found in the family garage. At the trial defendant made a timely motion to suppress the gun as evidence, but the motion was overruled, as was his objection when the gun was offered and received in evidence. Defendant appealed his conviction asserting a violation of his right against unlawful searches as guaranteed by the Illinois constitution. Held, affirmed. *People v. Shambley*, 122 N.E.2d 172 (Ill. 1954). The supreme court in holding that the wife's consent waived defendant's constitutional immunity noted that the house was in joint tenancy. Thus, "it is clear that in giving her consent she was not acting as agent for husband but was acting in her own right as occupant of the premises."

Law Enforcement Officers not Liable under Federal Civil Rights Act—A prisoner incarcerated under the authority of the State of Illinois was found to have been deprived of constitutional rights and was granted a new trial under the Illinois Post-Conviction Hearing Act. The acts complained of were the unlawful search of his person, the seizure of his personal property, the introduction into evidence of the unlawfully seized property, and the deliberate use of perjured testimony at the trial. Although he was found guilty at a second trial in which his rights were fully respected, he brought an action founded on the Federal Civil Rights Act seeking damages from the police officers who participated in the unlawful seizure and who offered the perjured testimony at the first trial.

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Section 1938 of the Act gives a cause of action for deprivation of due process; however, for the following reason, the Court of Appeals for the Seventh Circuit held that the complaint in the instant case did not state a cause of action. *Jennings v. Nester*, 23 *U.S.L.WEEK* 2257 (Dec. 7, 1954):

"The Civil Rights Acts were enacted to protect the civil rights of individuals, and not to discipline local law enforcement officers for acts that are later corrected.... The common law provides adequate actions for damages against errant law enforcement officials.... In determining whether or not [prisoner's] constitutional rights have been deprived, we must look at everything that transpired. It is obvious from the complaint that as he stands today, the [prisoner] has been accorded due process as required by the Fourteenth Amendment.

"If we should allow this action for what, if anything, was only a temporary denial, then every new trial under the Illinois Post-Conviction Hearing Act, or any like proceedings in other states, would give rise to a course of action for damages under [the Federal Civil Rights Act]. We are sure that Congress did not not intend such a result.

"The purpose of the Civil Rights Acts has been achieved with regard to the [prisoner]. He has been given a fair hearing in the state courts with every procedural guarantee required by the Fourteenth Amendment. The improperly obtained evidence was not used against him in the second trial, which is even more than due process requires."

Presumption that Owner of Automobile Was Operating It at Time of Offense—In *People v. Hildebrandt*, 129 N.Y.S.2d 48 (1954), defendant appealed from a conviction of speeding. Evidence of the claimed speeding violation was obtained by photographs of the defendant's

automobile from which, by means of a mathematical formula, the speed of the automobile was calculated. The accuracy of the camera and method of computation were not question on the appeal, and apparently its reliability was demonstrated by an expert witness during the trial. Defendant's contention that the proceeding was defective because he was not notified of the alleged offense until about two weeks after its occurrence was rejected on the ground that by statute prosecution for traffic infractions may be commenced any time within a period of two years from the date of commission. The court also held that proof of defendant's ownership of the automobile raised a rebuttable presumption that he was the operator at the time of the offense. A decision of the Court of Appeals, *People v. Rubin*, 284 N.Y. 392, 31 N.E.2d 501 (1940), was cited which upheld the same presumption with reference to a violation of parking regulations. Still another presumption confronted the defendant. The court declared that he was the same person who registered as the owner since "there is a presumption of the identity of a person from the identity of his name" even in criminal cases "if fortified by circumstances."

Sleeping on Subway Not Disorderly Conduct—Defendants were charged with disorderly conduct in that they went to sleep upon seats of subway trains to the annoyance of passengers. A city magistrate court of New York held that the involuntary act of sleeping did not constitute disorderly conduct. *People v. Sustek*, 204 Misc. 514, 124 N.Y.S.2d 641 (1953). "These defendants, by all appearances, are derelicts, but they are human souls whose rights may not be trampled on and against whom a non-existing offense may not be used merely because they present a practical problem to the authorities in charge of our transit system. . . . It is common knowledge that many persons fall asleep on trains. Would this mean that they are ipso facto guilty of disorderly conduct? If so, many of our citizens who use the rapid transit facilities of our city must at least once in their lives have been guilty of disorderly conduct, and this court must confess that if sleeping on a train be the test, he is a confirmed violator of the statutes against disorderly conduct. . . . If these defendants are vagrants, they should be tried as such, but to let them plead guilty to disorderly conduct . . . would make a mockery of justice."