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Eminent Domain--Federal Condemnation Judgments--Docketing and Indexing with State Records

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large enough to justify the belief that mental disturbance of a psychotic nature existed at the time of the trial and before." (1949) U.S. CODE CONG. SERV. 1929. Although mere psychosis is not enough to make one incompetent—under the "rational defense" test noted above—to stand trial, this statement does indicate a realization of the problem of subsequent determination of competency.

Ideally then, the insanity of an accused, as affecting his competency to stand trial, should be tested at the time of such trial, *e.g.*, under 18 U.S.C. § 4244, as in *Hill v. United States.* ALI CODE CRIM. PROC. § 307 (1931). Since, due to various reasons, this is not always accomplished, a rational method of determination at a time subsequent to the trial is required. The purely legalistic review of the record in *Bishop v. United States,* as it is pointed out above, leaves much to be desired.

In *United States v. Fooks, supra,* the court, aided by psychiatric advice in the form of expert testimony, based its findings upon a combined consideration of the records of *D*'s trials *and* upon psychiatric examinations subsequent thereto. *Id.* at 535, 536. Both current evidence and record material were fully utilized. If current and probative reports are also relied upon then, proper results can be reached even under the requirement of *Bishop v. United States* that the record be utilized in the determination. The procedure followed by the court in *United States v. Fooks* would seem to be more fruitful in reaching the basic issue of competency to stand trial than a subsequent view only of stale and often incomplete records of trial. If it is a desirable policy not to subject persons who are incapable of understanding their positions to trial and punishment, then it is as necessary to have an accurate and fair method of subsequently determining their competency as it is to have a like procedure prior to or concurrent with the trial.

B. F. D.

EMINENT DOMAIN—FEDERAL CONDEMNATION JUDGMENTS—DOCKETING AND INDEXING WITH STATE RECORDS.—Federal government obtained timber land in a condemnation proceeding. The judgment was correctly docketed and indexed with the clerk of the federal district court. It also was docketed in the office of the county clerk but was indexed and cross indexed without the name of one of the parties. Under the state law this was necessary in order to give a subsequent purchaser constructive notice of judgment

liens on real property. The issue was whether federal condemnation judgments must be docketed, indexed and cross indexed with state records for a subsequent purchaser to have notice. *Held,* that docketing and cross indexing of federal judgments of condemnation with state court records is not required as a condition of validity as against subsequent purchasers from condemnee in absence of an act of congress so providing. Judgment affirmed. *Norman Lumber Co. v. United States,* 223 F.2d 868 (4th Cir. 1955).

The court was faced with the immediate problem of establishing the validity of the government's title, and it found it to be well settled that federal condemnation is a proceeding in rem divesting all proprietary rights and interests in the property, founding a new title and extinguishing all previous rights. Also it recognized that the only way this title could be divested was by virtue of congressional authorization. Thus the court was led to the necessity of examining the federal statutes which seemed to have this effect.

After an examination of the old conformity acts which, prior to August 1, 1951, prescribed that procedure in federal courts in regard to condemnation proceedings should conform to state court procedure, the court, in view of long standing decisions, concluded that these acts applied only to that procedure in procuring the judgment and not to those subsequent thereto. Therefore, under these former acts it was not necessary for such judgments to be docketed and cross indexed with state court records in order to provide notice to a subsequent purchaser. As further evidence of this fact, the court pointed out that there is no provision therefor in the present procedure which took effect August 1, 1951. FED. R. CIV. P. 71 (a).

The defendant in the principal case relied upon the Lien of Judgment Act claiming it provided for such docketing and cross indexing. 25 STAT. 357 (1888), 28 U.S.C. § 1962 (1940). This act, in essence, states that judgments rendered in United States district courts shall be liens on property located in the state to the same extent and under the same conditions as state court judgments upon provision being made by the law of the state for the docketing of such district court judgments. North Carolina, the situs of the land in question, and West Virginia provide such laws. W. VA. CODE c. 38, art. 3, § 5 (Michie 1955). In North Carolina state court judgments become liens on real estate only when docketed, indexed and cross indexed in the county where the real estate is situate. Since West Virginia is also a state within the fourth circuit, it is

important to note that, under the West Virgina law, judgments need only to be docketed in the county where the land lies in order to become liens on such lands. W. VA. CODE c. 38, art. 3, § 7 (Michie 1955). However, the same problem as set forth by the principal case would arise in West Virginia if the judgment was not so docketed. Thus it seems that under North Carolina law, in order for a subsequent purchaser to be put on constructive notice, it is necessary that the judgment be docketed, indexed and cross indexed, while in West Virginia the judgment need only be docketed, to provide such notice. It, therefore, appears that if the Lien of Judgment Act applies to federal condemnation judgments, it would be an act which could result in the divestment of title of the federal government if constructive notice is not properly provided to a subsequent purchaser through the workings of the statutory plan. However, the court in the principal case, in reviewing this possibility, held that condemnation judgments do not come under the Lien of Judgment Act since that act relates to the acquisition of liens upon the lands of those against whom judgments are rendered, and not to the transfer of land itself as in condemnation proceedings.

From the examination of these federal acts it is apparent that none of them offer the solution which is necessary to permit a subsequent purchaser to divest the government of a condemnation title on the grounds that he does not have constructive notice. The practical effect of such a holding is that one is considered to have constructive notice of federal condemnation proceedings from the fact the judgment is recorded in the office of the clerk of the federal district court. Thus the practicing attorney must beware, since it appears that to be completely safe in abstracting a title to real estate, in addition to normal procedure, it will also be necessary to check the office of the clerk of the district court for evidence of federal condemnation judgments which may not be correctly docketed or indexed and cross indexed in the records of the county clerk.

While the effect of the holding of the principal case appears to be undesirable, it seems, after careful examination of the authorities, that the court could have reached no other correct decision. The law, as it exists at present, will allow no other result. Congress saw fit to solve a similar problem in regard to federal court judgments acting as liens by passing the beforementioned Lien of Judgment Act. Basically, the same statutory scheme would be highly desirable in regard to condemnation judgments. Whether or not

this would be the best solution to this question, it is obviously a problem which can only be solved by appropriate congressional action.

T. E. P.

FEDERAL COURTS—JURISDICTION OF TRESPASS AND FALSE IMPRISONMENT.—*P*, falsely imprisoned by a municipal officer, brought suit in United States district court, pleading a violation of rights guaranteed by the fourteenth amendment, as implemented by the civil rights statute, to establish federal jurisdiction in the absence of diversity of citizenship. *Held,* sustaining the district court's dismissal for lack of jurisdiction, that *P* had not pleaded sufficient facts to show "state action" to warrant federal court jurisdiction. *Dinneen v. Williams,* 219 F.2d 428 (9th Cir. 1955).

The court distinguishes the principal case from *Bell v. Hood,* 327 U.S. 678 (1946), saying that where federal officers are involved a more sketchy statement of facts will suffice. *Bell v. Hood* held that federal courts have jurisdiction of a suit when the plaintiff chooses to base his claim on the violation of a right having its foundation in the United States Constitution and amendments although the action was one generally cognizable in the state courts and the only remedy available would be under state law. *Bell v. Hood* involved a transgression by federal officers but this should not distinguish the cases as the basis of that court's decision was not the capacities of the officers involved but the foundation of the right violated.

The plaintiff in the principal case claimed under the fourteenth amendment, since the offense was committed by a municipal officer, whereas in *Bell v. Hood* the claim was made under the fourth and fifth amendments, since the trespass was committed by federal officers. The court, in the principal case, is possibly distinguishing the two cases on this basis. The court stated that plaintiff must plead sufficient facts to show "state action". What it means by this is not too clear. The pleading mentions the Civil Rights Statute, 62 STAT. 932 (1948), 28 U.S.C. 1343 (1951), but this should not require the plaintiff to show the violation occurred under color of statute, ordinance, custom or usage of the state. Presumably, the court by "state action" means that the pleading must show that the violation was an act of the state, since the officer involved was a municipal officer. This should not be necessary. It should be sufficient to show only that the right violated has its foundation