Federal Courts—Jurisdiction of Trespass and False Imprisonment

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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
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in the fourteenth amendment. That amendment states: "No state shall . . . ", but this does not limit the federal courts' jurisdiction to violations by state legislatures. It does not limit the right guaranteed by the amendment. The United States Supreme Court in Virginia v. Rives, 100 U.S. 313 (1879), held that, whoever, by virtue of public position under a state government, deprives another of life, liberty or property without due process of law violates the constitutional inhibition and his act is that of the state. The Supreme Court in Chicago, Burlington, & Quincy R.R. v. Chicago, 166 U.S. 266 (1897), held that the fourteenth amendment applies to all agencies of the state. The fifteenth amendment uses the same language as the fourteenth amendment but the Court has consistently held that the right to vote has its foundation in the Constitution and its amendments and has never required facts showing "state action" to secure federal court jurisdiction. Wiley v. Sinkler, 179 U.S. 58 (1900), and Swafford v. Templeton, 185 U.S. 487 (1902). Obviously, the principal case cannot be distinguished from Bell v. Hood on the ground that the fourteenth amendment requires a showing of "state action" as opposed to the fourth and fifth amendments which require only sufficient facts to show the existence of the violation.

The plaintiff in the principal case manifestly based his claim on the fourteenth amendment to gain jurisdiction in the federal court. The claim was not frivolous, as it stated a transgression of a right having its foundation in the Constitution and amendments. The plaintiff's pleading was designed to enable him to bring his case in a federal court, although it was an action usually brought in a state court. The plaintiff is the architect of his own pleading and has this choice. Bell v. Hood. Had the court followed this doctrine it appears that it should have taken jurisdiction of the principal case. The case is indicative of the tendency of the federal courts to limit their jurisdiction by distinguishing cases on the slightest provocation, thereby making it more difficult for the pleader to substantiate jurisdiction in the federal court in absence of diversity of citizenship.

J. W. P.

GAMING—SLOT MACHINES AS GAMING DEVICES UNDER WEST VIRGINIA STATUTE.—D was indicted under W. Va. Code c. 61, art. 10, § 1 (Michie 1955), for keeping and exhibiting a gaming device. The device in question, a slot machine of the general type known as