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Recent Case: Constitutional Law - Procedural Due Process - Distraint [*Santiago v. McElroy*, 309 F. Supp. 284 (E.D. Pa. 1970)]

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holds, a home visit is not a search under the fourth amendment, there seem to be no grounds for exclusion. The fourth amendment has certainly lost much of its meaning if an individual can be subjected to a criminal prosecution based on evidence obtained during a visit which she permitted solely in order to avoid losing her and her children's only means of subsistence.

The immediate practical effects of *James* will not be substantial. Home visits have long been a common practice of welfare departments. Any decisions to refrain from or limit home visits in the past have resulted from a lack of personnel rather than a fear of illegality. Thus, *James*' major impact will be on the future role of the fourth amendment. *James* has effectively limited the rule of *Camara* and *See* to situations where it is illegal to refuse to allow the administrative search. And it has distinguished "visits" that are "in a sense . . . investigative" from searches "in the traditional criminal law context." It can be safely said that *James* has provided the seeds for a redefinition of the scope of the fourth amendment.

CONSTITUTIONAL LAW — PROCEDURAL DUE PROCESS — DISTRAINT

Santiago v. McElroy,
319 F. Supp. 284 (E.D. Pa. 1970).

Pennsylvania has a distraint statute which allows a landlord to summarily seize a tenant's chattels and compel their judicial sale to satisfy a delinquent rent obligation.¹ Pursuant to the Pennsylvania statute, two low income tenants were served first with notices of distraint forbidding removal of their chattels from the premises and subsequently with notices of the impending sale of those chattels. The tenants sought relief under section 1983 of the Civil Rights Act of 1871,² which creates a cause of action for the deprivation of constitutional rights by persons acting under color of law. Injunc-

¹ PA. STAT. ANN. tit. 68, § 250.302-313 (1965).

² 42 U.S.C. § 1983 (1964). Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

tive relief was requested by the tenants on behalf of themselves and all low and moderate income tenants residing in the city of Philadelphia on the grounds that the performance of levies and sales by the defendant court officials violated the equal protection and due process clauses of the 14th amendment. In *Santiago v. McElroy*,³ a three-judge court held that statutory distress sales in the absence of a prior hearing to determine the validity of the landlord's claim violate the fundamental principles of due process of law.

Initially, the court noted that the tenants were challenging a procedure of ancient origin. The right of distress was originally a common law form of self-help which permitted landlords to seize and hold a defaulting tenant's chattels as a means of persuading the tenant to meet his rent obligation. In the latter part of the 17th century, an English statute gave the landlord the right, under certain circumstances, to satisfy his claim by selling the distrained chattels.⁴ Statutes have been enacted in this country authorizing seizure and sale of tenants' chattels.⁵ These statutes vest control over the sale in a public official, usually the sheriff.⁶

Finding that distraint presented a unique situation in *Santiago*, the court specifically defined the plaintiff class seeking redress as the class of low income tenants, there being no showing that distraint presented the same hardships to moderate income tenants.⁷

The court initially found that the plaintiffs had not sustained their burden of showing that the levy and steps taken prior to the sale had caused them any injury. Thus, the court restricted its inquiry to whether the statutory authorization of the sale of the tenant's property after distress violated the 14th amendment. The court found sufficient state action to bring the case within the scope

³ 319 F. Supp. 284 (E.D. Pa. 1970).

⁴ Sale of Distress Act of 1689, 2 W & M. 1, c. 5, § 2. Sale was permitted if the tenant had not replevied his property with sufficient security within 5 days after he received notice of the distress.

⁵ See statutes cited note 11 *infra*.

⁶ See statutes cited note 11 *infra*; Comment, *The Pennsylvania Landlord and Tenant Act of 1951*, 13 U. PITT. L. REV. 396, 400-01, 403 (1952).

⁷ 319 F. Supp. at 290-91. The court defined low income tenants as those who qualify as poor under the guidelines published by the Office of Economic Opportunity:

Family Size	Income
1	\$1800
2	\$2400
3	\$3000
4	\$3600
5	\$4200

Six hundred dollars should be added for each additional family member. Revised OEO Income Property Guidelines, OEO Instruction 6004-1a (Jan. 30, 1970).

of the 14th amendment in the statutory authorization of public officials to sell a tenant's chattels after distress. And because public officials perform the sales and have the power to do so because they are officials, the sales are performed under color of law as required by section 1983.

In order to determine whether the requirements of due process were met in *Santiago*, the court focused on *Sniadach v. Family Finance Corp.*⁸ In *Sniadach*, which dealt with wage garnishment proceedings, the Supreme Court identified wages as a specialized type of property presenting distinct problems in our economic system. Wage garnishment, often based upon a fraudulent debt, frequently drove a wage earner below the poverty income level and forced him to settle the alleged debt to recover his full wages and alleviate the threat of being fired. Because of the potential ramifications of wage garnishments, the Court held that to justify a prejudgment taking, the state must show an extraordinary situation requiring special protection to the state or creditor interest involved, and must draw its statute so narrowly as to meet only the unusual condition.

The *Santiago* court found the *Sniadach* rule directly on point. Under Pennsylvania's distraint statute, a landlord may levy upon and sell a tenant's personal property upon the unilateral claim that rent is owing. The tenant's available remedies of actions in trespass or replevin could not ameliorate the harm caused by distraint. If the tenant sued in trespass, his property would probably be sold long before a decision on the merits of the landlord's claim. The tenant would be deprived of his property until the claim was decided, and even if he won on the merits he would only be able to get back the *value* of the seized property. The tenant can regain possession of his chattels immediately by posting a bond equal to twice their value and suing in replevin,⁹ but he is then deprived of the bond until a decision on the merits.

The court found that Pennsylvania did not meet the *Sniadach* requirements because the state had not demonstrated that the grievous loss inflicted upon tenants by the distress procedure was a response to an extraordinary situation; there was no evidence to indicate that in the case of tenants a greater need existed for ensuring an available fund for collection purposes than in the case of other debtors. Further, there was no evidence to indicate that distress was central to the state's interest in protecting the housing market.

⁸ 395 U.S. 337 (1969).

⁹ PA. STAT. ANN. tit. 68, § 250.306 (1965); *id.* tit. 12, § 1824.

In the absence of such an extraordinary situation, the court held that Pennsylvania could not continue to deprive tenants of their property solely upon the landlord's unilateral claim that rent is in arrears.

Santiago appears to be a second step in the expansion of *Sniadach*. The implicit limitation of the *Sniadach* holding to wages as a special type of property was first expanded in *Laprease v. Raymours Furniture Co.*¹⁰ In *Laprease* a three-judge court applied the *Sniadach* holding to replevies of certain property purchased on installment contracts. The property consisted of a bed, mattresses, a dinette set, a chest, and other household furnishings. The court held that the taking of this furniture and other necessities for ordinary day-to-day living was identical to the taking of wages in *Sniadach* because of the egregious hardships it imposed upon the purchasers. Thus, the court required a hearing before the goods could be repossessed.

Santiago extends the *Sniadach* holding to a third type of property — all personal property located on the premises of a tenant — but focuses on low income tenants. Thus, *Santiago* is not really a departure from the specialized type of property limitation found in both *Sniadach* and *Laprease*. The court implicitly found that where low income tenants are involved, all personal property is of a specialized type, no different from the household necessities focused on in *Laprease*. Two questions immediately arise from a reading of *Santiago*: (1) Does the decision mark the beginning of a judicial trend to apply more stringent requirements of due process where the property of a poor person is at issue? and (2) Is it a significant step in the extension of *Sniadach* to eventually prohibit prejudgment seizures of all types of property? The answers to both of these questions lie in how carefully the courts are willing to continue to examine traditional creditor remedies in light of expanding concepts of procedural due process.

There are currently 11 states that have statutory distraint procedures similar to those in Pennsylvania.¹¹ Under the *Santiago* rule,

¹⁰ 315 F. Supp. 717 (N.D.N.Y. 1970). For a contrary decision on similar facts, see *Fuentes v. Faircloth*, 317 F. Supp. 954 (S.D. Fla. 1970), *prob. juris. noted*, 400 U.S. 906 (1971) (No. 6060).

¹¹ DEL. CODE ANN. tit. 25, §§ 5501, 5515 (1953); GA. CODE ANN. §§ 61-401 to -403 (1966); ILL. ANN. STAT. ch. 80, §§ 16-23 (Smith-Hurd 1966); LA. CIV. CODE ANN. arts. 2705, 3218-19 (West 1952); MD. CODE ANN. art 53, §§ 9-21 (1957); MO. ANN. STAT. § 441.300 (1949); N.J. REV. STAT. § 2A:33 (1951); N.M. STAT. ANN. §§ 61-6-5, 61-6-8 (1953); S.C. CODE ANN. §§ 41-151 to -165 (1962); TEX. REV. CIV. STAT. ANN. arts. 5222-27, 5238-39 (1962); W. VA. CODE ANN. § 37-6-9, 37-6-12 (1966).