

10-1936

Criminal Law-Due Process--Privilege Against Self-Incrimination

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Recommended Citation

(1936) "Criminal Law-Due Process--Privilege Against Self-Incrimination," *Indiana Law Journal*: Vol. 12 : Iss. 1 , Article 6.

Available at: <https://www.repository.law.indiana.edu/ilj/vol12/iss1/6>

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RECENT CASE NOTES

CRIMINAL LAW—DUE PROCESS—PRIVILEGE AGAINST SELF-INCRIMINATION.—Defendants were convicted of murder and sentenced to death, the convictions being based entirely upon confessions extorted by officers of the state by physical duress and violence. The state supreme court affirmed the conviction by the trial court, holding as one of the grounds "that immunity from self-incrimination is not essential to due process of law." The Supreme Court of the United States reversed the state court's decision and held that where defendants were convicted upon confessions obtained by brutality and violence they were denied the due process of law guaranteed by the 14th amendment.¹

Although the opinion does not expressly state whether due process as a matter of procedure, or due process as a matter of substance was violated, it must have been the former since a conviction based upon inadmissible evidence is improper procedurally. However that may be, the point of significant interest in the principal case is that the 14th amendment appears to have been extended to protect the privilege against self-incrimination as against the states in the same way that the 5th amendment has protected the privilege as against the Federal Government. The 5th amendment, along with the other amendments in the Bill of Rights in the Constitution, applies, of course, to the Federal Government only.²

Before the principal decision, if it could not be said that due process did not apply to protect the privilege against self-incrimination from violation by the states,³ it must be admitted that as to this the law was at least unsettled.⁴ The decision in the principal case should settle the matter. It is not especially surprising in the light of previous Supreme Court decisions that due process insofar as it relates to an orderly course of procedure was thus further extended.⁵ The scope of due process in the 14th amendment is not broad enough to prevent the state from engaging in unreasonable searches and seizures;⁶ nor does it guarantee a jury trial in state courts;⁷ nor is an appeal necessary for an orderly course of procedure.⁸ The state may also substitute a complaint or information for an indictment by the grand jury.⁹ However, the "due pro-

¹ *Brown et al v. State of Mississippi* (1936), 59 Sup. Ct. 461.

² *Barron v. Balt* (1833), 7 Pet. 243.

³ Corwin, *The Supreme Court's Construction of the Self-incrimination clause*, 29 Mich. L. Rev. 1, 191, at p. 203. "In view, nevertheless, of the fact that the privilege against self-incrimination has to do immediately with procedure, that it was comparatively late in arising in the history of the common law, that it has always been regarded as waivable, and finally that it has been recently held, in the case of a bankrupt, to be subordinate to his 'substantive obligation' to surrender his books and papers for the benefit of his creditors, the holding in *Twining v. New Jersey* is presumably still good law."

⁴ *Adams v. New York* (1904), 192 U. S. 585, 24 Sup. Ct. 372, seems to hold that the 14th amendment did cover the privilege against self-incrimination. *Twining v. New Jersey* (1908), 211 U. S. 78, 29 Sup. Ct. Rep. 14, apparently holds contra.

⁵ Willis, *Constitutional Law* (1936), Chap. 22, for a discussion of what is required by due process as a matter of procedure, namely: notice, opportunity to be heard, an impartial tribunal, and an orderly course of procedure.

⁶ *People v. Defore* (1926), 242 N. Y. 13, 150 N. E. 585, 270 U. S. 657.

⁷ *Maxwell v. Dow* (1899), 176 U. S. 581, 44 L. Ed. 597.

⁸ *Ohio v. Akron Metropolitan Park District* (1930), 281 U. S. 74.

⁹ *Hurtado v. California* (1884), 110 U. S. 516, 4 Sup. Ct. 111, 292.

cess" clause has been extended to protect the individual from contrary action on the part of the states in the following instances: freedom from the infliction of cruel and inhuman punishment;¹⁰ the correct application of the law to the facts;¹¹ protection against the presentation of perjured testimony;¹² the requirement of presence of witnesses¹³ and of a public trial;¹⁴ the right to have counsel and a reasonable opportunity to prepare a case;¹⁵ and freedom from the mob domination of a trial.¹⁶

It is submitted that the extension of due process of the 14th amendment to include the privilege against self-incrimination is a desirable one, in view of the fact that it may tend to curb the practice of state police officers from obtaining confessions by clearly unreasonable means.

H. B.

BANKS AND BANKING—TRUSTS—SPECIAL DEPOSITS.—A trust company established a segregate savings investment department which was to receive deposits, invest them in loans and high grade securities, keep these loans and securities separate from other assets of the company, treat them as a special fund which was at all times to equal the total amount of investment deposits outstanding, and pay 5½% interest on the funds received, any withdrawals to be paid only out of the special fund and to be subject to statutory notice restrictions on time deposits enforceable at the option of the bank. For a period of 17 months after the inception of the plan the bank received monies from the savings investment depositors but did not in any manner identify them, commingling them with its general funds. Nor did published statements of resources and liabilities made by the bank during this period indicate that any particular securities had been segregated for the particular benefit of the savings depositors. During the period, however, the officers of the trust company selected certain mortgage notes owned by the bank and placed on each a band bearing the legend "Savings Investment Mortgages," and marked on the ledger sheets of the depository after each mortgage note so marked the letter "S", but no assignment or endorsement in any form was made upon the notes so banded. The trust company failed and the depositors into the fund sought to impress a trust upon the assets so set aside. Held, that the deposits were special deposits made for a specific purpose, creating a trust in favor of such depositors, entitling them to a preferred claim as to the securities so segregated.¹

A trust under the classified definition meant, among other things, that the trustee had legal title,² was strictly accountable to a court for his management of the fund,³ and was bound to keep the res separate and distinct from any

¹⁰ *Davis v. Berry* (1914), 216 Fed. 413.

¹¹ *International Shoe Co. v. Federal Trade Commission* (1930), 280 U. S. 291.

¹² *Mooney v. Holohan* (1935), 294 U. S. 103, 112, 55 Sup. Ct. Rep. 340.

¹³ *United States v. Angell* (1881), 11 Fed. 34, 43.

¹⁴ *Gaines v. Washington* (1928), 277 U. S. 81, *Frank v. Mangum* (1915), 237 U. S. 309, 35 Sup. Ct. 582.

¹⁵ *Powell v. Alabama* (1932), 287 U. S. 45, 53 Sup. Ct. 55.

¹⁶ *Moore v. Dempsey* (1923), 261 U. S. 86, 91, 43 Sup. Ct. 265; *Frank v. Mangum* (1915), 237 U. S. 309, 35 Sup. Ct. 582.

¹ *Singlinger v. Dept. Financial Institutions* (1936), 199 N. E. 715.

² *Am. Law Inst. Restatement of Trusts*, sec. 2.

³ *Am. Law Inst. Restatement of Trusts*, secs. 164, 165, and 187.