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

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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 de-
fendants 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 evi-
dence is improper procedurally. However that may be, the point of signifi-
cant 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 ex-
tended.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-

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."
hold 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.
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.
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
in human punishment;\(^{10}\) the correct application of the law to the
facts;\(^{11}\) protection against the presentation of perjured testimony;\(^{12}\) the require-
ment of presence of witnesses\(^{13}\) 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 estab-
lished a segregate savings investment department which was to receive de-
posits, 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 com-
pany 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 depositary 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 securi-
ties 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

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\(^{10}\) Davis v. Berry (1914), 216 Fed. 413.
\(^{11}\) International Shoe Co. v. Federal Trade Commission (1930), 280 U.
S. 291.
\(^{13}\) 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. 509, 55 Sup. Ct. 582.
\(^{16}\) 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. Dept. Financial Institutions, sec. 2.
\(^3\) Am. Law Inst. Restatement of Trusts, secs. 164, 165, and 187.