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ence of Commissioners on Uniform State Laws in September, 1950, attempts to remedy the failure of existing legal techniques and the inadequacy of concepts of personal jurisdiction and full faith and credit to resolve the problem of deserted dependents in a federal system. A simple two-state procedure is devised whereby the courts of each state participate in enforcing, by appropriate civil and criminal remedies, the duty of support owed by a person who has fled from one state to the other, provided, of course, that both states have the same or substantially similar reciprocal law.¹⁹

Subsequent to the principal case, this Act, with modifications, was enacted into law by the North Carolina General Assembly.²⁰ The adoption of this Act is an unequivocal legislative expression of the public policy of this state to provide effective means of coping with the problems inherent in the interstate enforcement of support. Since reciprocity is the heart of the act, its efficacy may be gauged by the number of states that adopt it. Until its full potential is realized by widespread adoption, the court should feel bound to give effect to the legislative declaration of public policy by providing equitable, as well as legal, remedies for enforcing foreign alimony decrees and support orders, in those cases that come before it from states which have yet to adopt a reciprocal or similar law.

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Constitutional Law—Privilege Against Self-Incrimination— Smith Act

In the recent case of *Blau v. United States*,¹ petitioner, in response to a subpoena, appeared as a witness before the United States District Court Grand Jury at Denver, Colorado. There she was asked several questions² concerning the Communist Party of Colorado and her em-

¹⁹ For a substantially similar act, progenitor of the principal act, see UNIFORM SUPPORT OF DEPENDENTS ACT, adopted by 10 jurisdictions in 1949. CONN. GEN. STAT. tit. 63, c. 415a (Supp. 1949); ILL. REV. STAT. c. 68, Sec. 50 (1949); IND. ANN. STAT. sec. 38-118a (Burns 1949); IOWA CODE c. 252A (1950); ME. LAWS c. 297 (1949); N. H. LAWS c. 153 (1949); N. J. STAT. ANN. tit. 9, c. 18, sec. 17.1 (Cum. Supp. 1950); MCK. UNCONSOL. LAWS sec. 2111-2120 (1949); OKLA. STAT. tit. 12, sec. 1601-1610 (Supp. 1949); VIRGIN ISLANDS, Bill No. 3 (1949). Though bearing the title, "Uniform," this act was not promulgated by the National Commissioners on Uniform State Laws. For an interesting account of the genesis of this Act, see Griswold, "Fugitive Husbands," American Magazine, Jan. 1949, p. 24.

²⁰ See summary of new statute, *supra* p. 423.

¹ 71 Sup. Ct. 223 (1950).

² "Do you know the names of the State officers of the Communist Party of Colorado?" "Do you know what the organization of the Communist Party of Colorado is, the table of organization of the Communist Party of Colorado?" "Were you ever employed by the Communist Party of Colorado?" "Did you ever have in your possession or custody any of the books and records of the Communist

ployment by it, all of which she refused to answer, asserting her constitutional privilege against self-incrimination.³ The petitioner was adjudged guilty of contempt.⁴ The Court of Appeals affirmed,⁵ stating that membership in the Party is not of itself an offense, therefore answers to the questions propounded would not subject petitioner to criminal prosecution. The Supreme Court, by unanimous decision,⁶ reversed stating that the Smith Act⁷ made further prosecution of petitioner far more than a mere imaginary possibility, and that she could reasonably fear prosecution under it if she admitted employment by the Communist Party or intimate knowledge of its working. Whether such admissions by themselves would support a conviction under a criminal statute was immaterial since they would have furnished a link in the chain of evidence needed in a prosecution of petitioner for violation of or conspiracy to violate,⁸ the Smith Act.

This decision resolves the conflict among lower federal courts as to whether a witness may refuse to answer inquiries as to his affiliation with or knowledge of the Communist Party on the ground of self-incrimination.⁹ The Supreme Court, in the principal case, states that "the attempt by the lower courts to compel petitioner to testify runs counter to the Fifth Amendment as it has been interpreted¹⁰ from the

Party of Colorado?" "Did you turn the books and records of the Communist Party of Colorado over to any particular person?" "Do you know the names of any persons who might now have the books and records of the Communist Party of Colorado?" "Could you describe to the grand jury any books and records of the Communist Party of Colorado?"

³ U. S. CONST. AMEND. V. "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ."

⁴ Petitioner asserted privilege before the grand jury and refused to answer, whereupon she was taken before the District Judge who again propounded the same questions, and petitioner again claimed privilege and refused to testify.

⁵ 180 F. 2d 103 (10th Cir. 1950).

⁶ Mr. Justice Clark took no part in the consideration or decision of this case.

⁷ 18 U. S. C. §2385 (1948). "Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity . . . of overthrowing . . . the government of the United States . . . ; or . . . whoever organizes or helps . . . to organize any society . . . of persons who teach . . . the overthrow . . . of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group . . . of persons, knowing the purposes thereof shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. . . ."

⁸ 18 U.S.C. §371 (1948). "If two or more persons conspire to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined . . . or imprisoned . . . or both."

⁹ Privilege overruled: *Blau v. U. S.*, 180 F. 2d 103 (10th Cir. 1950); *Rogers v. U. S.*, 179 F. 2d 559 (10th Cir. 1950).

Privilege allowed: *Healey v. U. S.*, 186 F. 2d 164 (9th Cir. 1950); *Estes v. Potter*, 183 F. 2d 865 (5th Cir. 1950); *Kasinowitz v. U. S.*, 181 F. 2d 632 (9th Cir. 1950); *Doran v. U. S.*, 181 F. 2d 489 (9th Cir. 1950); *Alexander v. U. S.*, 181 F. 2d 480 (9th Cir. 1950).

¹⁰ For an excellent historical discussion see Morgan, *The Privilege Against Self-Incrimination*, 34 MINN. L. REV. 1 (1949).

beginning."¹¹ The privilege insures that a person, whether defendant or witness,¹² shall not be compelled to give testimony which discloses a fact that would form a necessary and essential part of a crime, or which forms a link in the chain of testimony which would be sufficient to convict him of any crime.¹³ For a witness to be entitled to the privilege, the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give,¹⁴ that there is reasonable ground for the witness to apprehend danger of criminal prosecution—mere imaginary possibility of danger is not sufficient to justify use of the privilege.¹⁵ Also, it must not be put forward for a sentimental reason, or where witness has already received pardon for the crime, concerning which he is interrogated, or where prosecution therefor is barred by the statute of limitations.¹⁶ The privilege is essentially a personal one, applying only to natural individuals¹⁷ and it may not be invoked for the protection of third persons,¹⁸ or by individuals standing in a representative capacity even though the testimony required may incriminate the witness personally.¹⁹ It may be invoked in court proceedings as well as before a federal grand jury²⁰ or administrative agency,²¹ and it must be

¹¹ 71 Sup. Ct. 223, at 224 (1950).

¹² *Raffel v. U. S.*, 271 U. S. 494 (1926); *McCarthy v. Arndstein*, 266 U. S. 34 (1924); *Counselman v. Hitchcock*, 142 U. S. 547 (1891).

¹³ *Smith v. U. S.*, 337 U. S. 137 (1949); *Healey v. U. S.*, 186 F. 2d 164 (9th Cir. 1950); *Estes v. Potter*, 183 F. 2d 865 (5th Cir. 1950); *Kasinowitz v. U. S.*, 181 F. 2d 632 (9th Cir. 1950); *Doran v. U. S.*, 181 F. 2d 489 (9th Cir. 1950); *Alexander v. U. S.*, 181 F. 2d 480 (9th Cir. 1950); *U. S. v. Rosen*, 174 F. 2d 187 (2nd Cir. 1949); *U. S. v. Wiseman*, 111 F. 2d 260 (2nd Cir. 1940); *U. S. v. Burr*, 25 Fed. Cas. 38, No. 14, 692e (C. C. D. Va.).

Witness is protected from being compelled to disclose the circumstances of his offense, or the sources from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his conviction. *Counselman v. Hitchcock*, 142 U. S. 547 (1891).

¹⁴ *U. S. v. Hoffman*, 185 F. 2d 617 (3rd Cir. 1950); *Estes v. Potter*, 183 F. 2d 865 (5th Cir. 1950); *Alexander v. U. S.*, 181 F. 2d 480 (9th Cir. 1950); *U. S. v. Rosen*, 174 F. 2d 187 (2nd Cir. 1949); *U. S. v. Wiseman*, 111 F. 2d 260 (2nd Cir. 1940).

¹⁵ *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951); *Mason v. U. S.*, 244 U. S. 362 (1916); *Healey v. U. S.*, 186 F. 2d 164 (9th Cir. 1950); *U. S. v. Hoffman*, 185 F. 2d 617 (3rd Cir. 1950).

¹⁶ *Brown v. Walker*, 161 U. S. 591 (1896).

¹⁷ *U. S. v. White*, 322 U. S. 694 (1944); *Brown v. U. S.*, 276 U. S. 134 (1928); *Essgee Co. of China v. U. S.*, 262 U. S. 151 (1923); *Grant v. U. S.*, 227 U. S. 74 (1913); *Wheeler v. U. S.*, 226 U. S. 478 (1913); *Wilson v. U. S.*, 211 U. S. 361 (1911).

¹⁸ *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951); *U. S. v. Murdock*, 284 U. S. 141 (1931); *McAlister v. Henkel*, 201 U. S. 90 (1906); *Hale v. Henkel*, 201 U. S. 43 (1906); *Brown v. Walker*, 161 U. S. 591 (1896).

¹⁹ *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951); *U. S. v. White*, 322 U. S. 694 (1944); *McAlister v. Henkel*, 201 U. S. 90 (1906); *Hale v. Henkel*, 201 U. S. 43 (1906); *Healey v. U. S.*, 186 F. 2d 164 (9th Cir. 1950).

²⁰ *U. S. v. Monia*, 317 U. S. 424 (1943); *Counselman v. Hitchcock*, 142 U. S. 547 (1891); *U. S. v. Hoffman*, 185 F. 2d 617 (3rd Cir. 1950).

²¹ *Smith v. U. S.*, 337 U. S. 137 (1949); *Estes v. Potter*, 183 F. 2d 865 (5th Cir. 1950); *U. S. v. DeLorenzo*, 151 F. 2d 122 (2nd Cir. 1945).

invoked specifically,²² else it is waived²³ and thereupon the witness must make full disclosure.²⁴ Also, it may not be asserted where the prosecution feared will be by another sovereign.²⁵ Immunity statutes may abate the privilege, but to be valid, they must be as broad as the constitutional privilege itself.²⁶

The decision of the principal case affords persons interrogated concerning their knowledge of, or connection with, the Communist Party, its activities or members, a definite constitutional ground for refusal to answer. In the past, such persons refused to answer on the grounds that the questions asked violated the guarantees of the First Amendment; or, where the investigation was being conducted by a congressional committee, the witness refused to answer, stating the committee was unconstitutional since Congress has no power to make investigations into private affairs²⁷ or legislate in re freedom of speech. But these defenses were rejected in several cases, including those of the Hollywood Ten.²⁸

²² *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951); *U. S. v. Monia*, 317 U. S. 424 (1943); *McAlister v. Henkel*, 201 U. S. 90 (1906); *U. S. v. Johnson*, 76 F. Supp. 538 (M.D. Pa. 1947); 8 WIGMORE, EVIDENCE §2268 (3d ed. 1940).

²³ *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951); *U. S. v. Gates*, 176 F. 2d 78 (2nd Cir. 1949); *U. S. v. DeLorenzo*, 151 F. 2d 122 (2nd Cir. 1945); *U. S. v. Johnson*, 76 F. Supp. 538 (M.D. Pa. 1947). *But cf.* *Smith v. U. S.*, 337 U. S. 137 (1949); *U. S. v. Murdock*, 284 U. S. 141 (1931).

²⁴ *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951); *Raffel v. U. S.*, 271 U. S. 494 (1926); *McCarthy v. Arndstein*, 262 U. S. 355 (1922); *Brown v. Walker*, 161 U. S. 591 (1896); *U. S. v. Gates*, 176 F. 2d 78 (2nd Cir. 1949); *U. S. v. Johnson*, 76 F. Supp. 538 (M. D. Pa. 1947).

²⁵ *U. S. v. Murdock*, 284 U. S. 141 (1931); *Hale v. Henkel*, 201 U. S. 43 (1906).

²⁶ *Smith v. U. S.*, 337 U. S. 137 (1949); *U. S. v. Monia*, 317 U. S. 424 (1943); *McCarthy v. Arndstein*, 266 U. S. 34 (1924); *Hale v. Henkel*, 201 U. S. 43 (1906); *Brown v. Walker*, 161 U. S. 591 (1896); *Counselman v. Hitchcock*, 142 U. S. 547 (1891). Oral offer of immunity by interrogator insufficient, *Healey v. U. S.*, 186 F. 2d 164 (9th Cir. 1950).

²⁷ *Kilbourn v. Thompson*, 103 U. S. 168 (1880). Notes, 47 MICH. L. REV. 775 (1949); 22 So. CALIF. L. REV. 464 (1949); 23 NOTRE DAME LAW. 353 (1948).

²⁸ *Marshall v. U. S.*, 176 F.2d 473 (D. C. Cir. 1949); *Lawson v. U. S.*, 176 F. 2d 49 (D. C. Cir. 1949); *U. S. v. Dennis*, 171 F. 2d 986 (D. C. Cir. 1948); *Eisler v. U. S.*, 170 F. 2d 273 (D. C. Cir. 1948); *Barsky v. U. S.*, 167 F. 2d 241 (D. C. Cir. 1948), *cert. denied*, 334 U. S. 843 (1948); *U. S. v. Josephson*, 165 F. 2d 82 (2nd Cir. 1947), *cert. denied*, 333 U. S. 838 (1948), *rehearing denied*, 333 U. S. 858 (1948). Notes, 6 WASH. & LEE L. REV. 66 (1949), 47 COL. L. REV. 416 (1947). *But cf.* 43 ILL. L. REV. 253 (1948). Statute suggested by writer in 27 NEB. L. REV. 601 (1948).

Defenses in question were raised by above defendants being prosecuted for violation of REV. STAT. §102 (1857), 2 U. S. C. §192 (1938), making it a misdemeanor to refuse to answer any question of a Congressional Committee pertinent to the inquiry. Violations are: refusal to produce subpoenaed records, *U. S. v. Bryan*, 339 U. S. 323 (1950), *U. S. v. White*, 322 U. S. 694 (1944); refusal to appear, *McGrain v. Daugherty*, 273 U. S. 135 (1936), *U. S. v. Dennis*, *supra*; refusal to answer, *Lawson v. U. S.*, *supra*; refusal to be sworn, *Eisler v. U. S.*, *supra*, *U. S. v. Josephson*, *supra*. This statute applies to witnesses who voluntarily appear as well as those summoned; also, in prosecution under it, burden on government to show question was pertinent to matter under investigation, and issue of "pertinency" is for the court, and not the jury, *Sinclair v. U. S.*, 279 U. S. 263 (1928). Questions in re finances and personnel of the Communist organization are pertinent, *Marshall v. U. S.*, 176 F. 2d 473 (D. C. Cir. 1949).

What will be the effect of this holding upon investigations of the Communist Party? The present case makes it clear that a witness may refuse to answer questions concerning his knowledge of or connection with the Party because of their incriminating effect. The next problem is, before what investigating panels may a witness invoke the privilege against self-incrimination? He may do so before any federal grand jury or federal judge as was done in the principal case.²⁹ May the privilege be invoked before a congressional committee? In a recent oral decision, Federal Judge T. Alan Goldsborough held that a witness before a Senate investigating committee was within his constitutional rights in refusing to answer questions on the ground of self-incrimination,³⁰ and acquitted the witness of contempt-of-Congress charges. The Judge stated, "The court is of the opinion that if the defendant had answered all thirty-two questions³¹ in the affirmative—or in a certain way—it would have taken very little more evidence to put him in the penitentiary." There is no Supreme Court holding squarely on the point,³² but that court has held that Congress may investigate subject only to the restraints imposed by the Constitution.³³ Lower federal courts have also so indicated,³⁴ as well as writers on the problem.³⁵ It is well to note that the Supreme Court has held³⁶ that the immunity granted by statute³⁷ to witnesses before congressional committees is insufficient to abate the constitutional privilege, since the purpose of the immunity statute was effectively nullified in 1891 by *Counselman v. Hitchcock*.³⁸

The result of the present ruling forces the investigating authorities

²⁹ Cases cited note 20 *supra*.

³⁰ N. Y. Times, March 22, 1951, p. 37, col. 4.

³¹ Defendant was asked questions concerning his connection with the defunct subversive magazine "Amerasia"; his knowledge and association with other persons guilty of subversive activities.

³² Whether or not the privilege against self-incrimination may be claimed by a witness before a Congressional Committee.

³³ U. S. v. Bryan, 339 U. S. 323 (1950); Barry v. U. S. *ex rel.* Cunningham, 279 U. S. 597 (1928).

³⁴ *Loew's, Inc. v. Cole*, 185 F. 2d 641 (9th Cir. 1950) states that congressional committees have the right to subpoena witnesses and ask questions, and it is the duty of such witnesses to answer, but by n. 18 the Court recognizes that the witness in the present case made no claim of privilege against self-incrimination.

³⁵ Notes, 49 COL. L. REV. 87 (1949), 35 VA. L. REV. 97 (1949).

³⁶ U. S. v. Bryan, 339 U. S. 323 (1950).

³⁷ 18 U. S. C. §3486 (1948). "No testimony given by a witness before . . . any committee of either House . . . shall be used as evidence in any criminal prosecution against him in any court. . . ."

³⁸ 142 U. S. 547 (1891), which held REV. STAT. §860 [statute identical in all material respects to REV. STAT. §859, 18 U. S. C. §3486 (1948)] was not sufficient substitute for the Constitutional privilege. Thereafter REV. STAT. §860 was repealed by Congress. "But," the Court in U. S. v. Bryan, 339 U. S. 323 (1950) continues, "attention of Congress has not apparently been called to the anomaly presented by the continued existence of REV. STAT. §859, which, like REV. STAT. §860, was a constituent part of immunity 'bargain' declared invalid in the Counselman case."

See 49 COL. L. REV. 87 (1949).

to search for independent evidence instead of relying upon proof extracted from individuals by force of law.³⁹ This renders investigation of the Communist Party exceedingly difficult, since it is so tightly woven. It is doubted that the Internal Security Act of 1950⁴⁰ is of sufficient protection to abate the assertion of the privilege since prosecution under the Smith Act⁴¹ is the real danger and not membership in the Communist Party.⁴² There is but one remaining hope for the interrogators: that the witness will waive the privilege and, as a result, be required to make a full disclosure of his knowledge of the Party. Such a waiver is consummated when the witness answers *any* questions in regards to his knowledge of or affiliation with or membership in the Communist Party.⁴³ Therefore, to avoid the dangers of a waiver and preserve his privilege the witness must refuse to answer all questions concerning his association with the Party, as Patricia Blau did in the principal case, or be held to have waived the privilege if any of such questions are answered, as was done by Jane Rogers in the same investigation.⁴⁴

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³⁹ Such independent evidence may not be obtained from the spouse of the witness interrogated, *Blau v. U. S.*, 71 Sup. Ct. 301 (1951). Petitioner in this case is husband of petitioner in the principal case.

⁴⁰ 64 STAT. 991, 50 U. S. C. A. §783f (Supp. 1950). "Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation . . . of any . . . criminal statute." The Supreme Court, in *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951), expressed no opinion as to the implications of this legislation upon issues presented in that case, and discussed in this note.

⁴¹ See note 7 *supra*.

⁴² *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951); *Healey v. U. S.*, 186 F. 2d 164 (9th Cir. 1950); *Estes v. Potter*, 183 F. 2d 865 (5th Cir. 1950); *Doran v. U. S.*, 181 F. 2d 489 (9th Cir. 1950); *Alexander v. U. S.*, 181 F. 2d 480 (9th Cir. 1950).

⁴³ *Rogers v. U. S.*, 71 Sup. Ct. 438 (1951). In this case, the petitioner, Jane Rogers admitted she was treasurer of the Communist Party of Colorado; also that she had possession of the books and records thereof up until January 1948, the investigation being held in September 1948, but she refused to answer questions as to whom she had turned them over to, on the ground of self-incrimination. The Supreme Court held that she had waived the privilege, and that the answer to the propounded question would subject her to no further danger of prosecution than she was already subjected to because of previous admissions.

The dissenting opinion, by Mr. Justice Black, states that the majority opinion too greatly expands the "waiver" doctrine and therefore the witness runs the risk of refusing to answer prematurely and be in contempt, or answering and thereby waiving the privilege against self-incrimination. *Quaere*: Could there be a premature refusal to answer under the decision of the principal case?

⁴⁴ Both Patricia Blau and Jane Rogers were subpoenaed and interrogated by the Grand Jury of the United States District Court for the District of Colorado in September 1948. Both refused to answer and were found guilty of contempt of court, and both appealed to the Supreme Court. Patricia Blau's case was decided first, in December 1950.