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Evidence—Effect of Federal Immunity Statute on State Proceedings

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from a sister state. *Williams v. North Carolina,* 325 U. S. 226 (1945). The reluctance of other states to recognize divorce decrees where there is no domicil, even when a statute of the forum authorizes such a decree, is manifested by numerous cases. *E. g., Van Fossen v. State,* 37 Ohio St. 317, 41 Am. Rep. 507 (1881).

The court in the principal case relied heavily on *Gould v. Gould,* 235 N. Y. 14, 138 N. E. 490 (1923), in which the Court of Appeals recognized a divorce decree from a French court even though the parties were domiciled in New York. The parties were residents of France, however, and the French court had personal jurisdiction over the defendant. Recognition of the French divorce was apparently by grace of the New York court and the case does not stand as a precedent in the area of full faith and credit. *Cf.* In re *Lindgren's Estate,* 293 N. Y. 18, 55 N. E. 2d 849 (1944).

The language of C. P. A. § 1147 (2) certainly indicates a decision such as that in the instant case. However, the questionable validity in other jurisdictions of a New York decree based solely on Section 1147 (2) may cause this statute to act as a trap for the unwary plaintiff.

Alan H. Levine

EVIDENCE — EFFECT OF FEDERAL IMMUNITY STATUTE ON STATE PROCEEDINGS

Defendant's conviction for a violation of Maryland's gambling law was based on self-incriminating evidence given by him before a congressional committee, although the federal immunity statute provided that no testimony given by a witness in congressional inquiries "shall be used as evidence in any criminal proceeding against him *in any court.*" 18 U. S. C. § 3486 (1952). *Held:* The immunity statute precludes the use of such testimony by the states. *Adams v. Maryland,* 347 U. S. 179 (1954).

Statutes granting witnesses immunity against prosecution have been enacted in order to obtain needed testimony without violating the privilege against self-incrimination guaranteed by the 5th Amendment of the Federal Constitution. WIGMORE, EVIDENCE, § 2281 (3d ed. 1940). To be granted immunity, the witness must claim the privilege only if the statute so requires, *United States v. Monia,* 317 U. S. 424 (1943), and must be appearing in response to a subpoena. *United States v. May,* 175 F. 2d 994 (D. C. Cir. 1949).

It is uniformly held that the privilege against self-incrimination may be constitutionally supplanted by a statute which guarantees the witness complete immunity from federal prosecution based on the incriminating testimony. *Brown v. Walker,* 161 U. S. 591 (1896). Statutes which immunize only the use of the incriminating testimony in a subsequent federal proceeding are invalid since partial immunity cannot replace the privilege. *Counselman v. Hitchcock,* 142 U. S. 547 (1892). But, the Constitution does not require such statutes to provide witnesses with immunity from prosecution by a state. *United States v. Murdock,* 284 U. S. 141 (1931). Nor is the 5th Amendment violated by federal prosecution based on incriminating evidence revealed by a witness in a state proceeding under a state immunity statute. *Feldman v. United States,* 322 U. S. 487 (1944). The underlying principle in the latter cases stems from the traditional interpretation of the privilege protecting the witness only against the crimes of the jurisdiction in which it is invoked. WIGMORE, EVIDENCE § 2258 (3d ed. 1940). A contrary view was held in a few early cases, particularly bankruptcy proceedings, In re *Feldstein,* 103 Fed. 269 (S. D. N. Y. 1900), and cases in which the evidence requested by a federal grand jury would produce an immediate danger of prosecution by the state in which it was sitting. *Ballmann v. Fagin,* 200 U. S. 186 (1906); In re *Doyle,* 42 F. 2d 686 (S. D. N. Y. 1930).

In the instant case the Supreme Court interpreted the words "in any court" as indicative of a congressional intent to preclude use of incriminating evidence by both federal and state courts and upheld the federal interference with the police power of the states on the basis of the "necessary and proper" clause, U. S. CONST. Art. I, § 8, and the supremacy clause, U. S. CONST. Art. VI. It is important to note that the immunity granted as to the states is to be regarded as a congressional gratuity rather than a constitutional mandate. Hence, the scope of the immunity given in regard to state proceedings may be as narrow or as wide as Congress commands, whereas in the federal jurisdiction, it must of constitutional necessity be co-extensive with the privilege. It is interesting to note that, since the instant statute fails to satisfy the latter requirement, the defendant could have validly refused to testify.

Since the decision in the instant case, a new federal immunity statute, of limited application has been enacted. 68 STAT. 745, 18 U. S. C. A. § 3486 (Supp. 1954). By guaranteeing witnesses full immunity from prosecution instead of merely prohibiting the use of incriminating evidence, the statute indicates long-awaited com-

pliance with the *Counselman* decision, and can be used to compel a witness to answer.

It would appear that witnesses will be afforded equally-wide protection from state prosecution, since the new statute retains the phrase "in any court." Whether this further interference with state powers raises a constitutional question not answered by the instant case remains to be seen.

Eileen Tomaka

FEDERAL PROCEDURE — SUBSTITUTION OF A PUBLIC OFFICIAL UNDER RULE 25 (d) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Petitioner unsuccessfully sought to compel the return of documents illegally seized and now held by the United States Attorney. The United States Attorney retired, and the court refused to substitute his successor in office on the grounds that this would be an exercise of original jurisdiction over a new party and a new cause. *Danenberg v. Cohen,* 213 F. 2d 944 (7th Cir. 1954).

At common law, an action against a public official abated with his death or retirement from office and could not be revived against his successor without statutory authority. In the very cases in which the Supreme Court recognized this principle, it also recognized the inexpedience of the rule and urged the enactment of remedial statutory authority. *United States* ex rel *Bernardin v. Butterworth,* 169 U. S. 600 (1898); Ex Parte *La Prade,* 289 U. S. 444 (1933).

In response to this judicial prompting, Congress enacted Rule 25 (d) of the Federal Rules of Civil Procedure which provides for substitution against a successor in office when "a substantial need for so continuing is satisfactorily shown." The dearth of cases interpreting "substantial need" necessitates a review of the *Bernardin* and *La Prade* cases, for an indication of judicial interpretation of "substantial need." In the *Bernardin* case the petitioner requested a writ of mandamus to force the successor in office to the head of the Patent Bureau to issue him a patent. The *La Prade* case was a suit against The Attorney General of Arizona to enjoin the enforcement of a statute relating to the size of railroad trains. In both cases the Court was forced to refuse substitution of their successors solely because of the absence, at that time, of statutory authority. A case decided after the enactment of statutory authority allowed substitution of a United States tax collector in a suit to enjoin an unconstitutional collection of an