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Constitutional Law: Privilege against Self-Incrimination--Testimony before Investigating Congressional Committees

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option gave the landlord the right to reenter and relet the premises which was the third of his four possible remedies. It is well settled under California law that the landlord has such a right even in the absence of a specific provision to that effect in the lease.[7] Hence, such provision in the present lease did not add anything to the ordinary rights of the landlord other than dispensing with the necessity of the usual notice to the tenant that he intended to take such action. In passing upon such provisions the California courts have held that they are not contrary to public policy and that they are controlling as to the rights of the parties.[8] At the time of the tenant's abandonment in the present case the landlord availed himself of neither of the options authorized by the lease. On the contrary he retook possession and operated the premises on his own account for nearly a year thus availing himself of the first of the above remedies. And although the lease provided in addition to the options that a *mere reentry* by the landlord should not constitute a termination of the lease, a long line of California cases have consistently held that a landlord reentering *and taking unqualified possession of the premises on his own account* brings the tenancy to an end by operation of law.[9] The result of the case seems to be, therefore, a repudiation of this well established doctrine.

It is submitted that the acts of the landlord in retaking possession and operating the premises on his own account *subsequent* to his reentry operated to take the case out of the terms of the lease. These acts, being inconsistent with the continued existence of the tenant's term, should have been held to have constituted a surrender of the lease by operation of law. The lease once having been terminated in this manner, the landlord's subsequent attempt to exercise a right given to him by the lease should have been held ineffectual.

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CONSTITUTIONAL LAW: PRIVILEGE AGAINST SELF-INCRIMINATION—TESTIMONY BEFORE INVESTIGATING CONGRESSIONAL COMMITTEES. — "No person . . . shall be compelled in any criminal case to be a witness against himself."[1]

Two recent cases warrant attention. They involve the applicability of the privilege against self-incrimination. They arose out of a grand jury investigation of Communist influence in the United States. Petitioners, subpoenaed before a United States grand jury, were asked questions concerning the Communist Party of Colorado and whether they were party employees. Petitioner Blau refused to answer any questions on the ground of possible self-incrimination.[2] A conviction for contempt was reversed by the

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[7]See note 4, *supra.*

[8]Brown v. Lane, 102 Cal. App. 350, 283 P. 78; Burke v. Norton, 42 Cal. App. 705, 184 P. 45; Security Realty Co. v. Kost, 96 Cal. App. 626, 274 P. 608.

[9]Bernard v. Renard, *supra,* note 3; Zantz v. Sebrean, 59 Cal. App. 781, 211 P. 834; Steel v. Thompson, 59 Cal. App. 191, 210 P. 430; Larson v. Taylor, 55 Cal. App. 370, 203 P. 422; Chase v. Oelke, 43 Cal. App. 435, 185 P. 425; Rehkoff v. Weiz, 31 Cal. App. 695, 161 P. 285; Baker v. Eilers Music Co., *supra,* note 3.

[1]United States Constitution, Amendment V.

[2]The questions petitioner Blau refused to answer were as follows: "Mrs. Blau, do you know the names of the state officers of the Communist Party of Colorado; 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 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 the persons who might now have the books and records of the Communist Party of Colorado?"

Supreme Court. Under the Smith Act (62 Stats. 803), 18 U. S. C. A. sec. 2385 (1948), it is a crime wilfully to advocate . . . the desirability of overthrowing the government of the United States by force or violence, or with knowledge of its objectives to be or to become a member of an organization advocating the desirability of overthrowing the government by force or violence. The questions asked, if answered, could provide a link in the chain of evidence necessary to sustain a conviction for violation or conspiracy to violate the Smith Act. (62 Stats. 701 (1938), 18 U. S. C. A. sec. 371 (1948).) *Blau* v. *United States* (1951), 304 U. S. 159, 71 S. Ct. 223, 95 L. Ed. (Adv. Ops.) 175). Petitioner Rogers admitted she had been treasurer of the party; that she had had certain records in her possession, but claiming the privilege against self-incrimination, refused to disclose to whom she had given the records. Her conviction for contempt, three justices dissenting, was affirmed. Disclosure of an incriminating fact waives the privilege as to related details. The danger of her own prosecution would not be increased by disclosing her successor. The dissent reasoned that the facts did not show a waiver; also, that the question called for further incriminating testimony. A conviction for violation of the Smith Act might result from the testimony of the witness the petitioner was asked to identify. (*Rogers* v. *United States* (Feb. 26, 1951), 71 S. Ct. 438, 95 L. Ed. (Adv. Ops.) 374.

The historic privilege against self-incrimination arose from the practice in the Star Chamber of placing those accused of heresy under inquisitional oath and requiring them to answer the charges. This procedure culminated in the famous trial of John Lilburn who refused to take the oath, proclaiming it against "the law of the land, the petition of right, and the law of God. . . ." In 1646 the House of Lords sustained Lilburn's contention and ordered that the sentence for refusal to take the oath "be totally vacated . . . as illegal, . . . and against the liberty of the subject, and the law of the land, and the Magna Charta. . . ." Meanwhile the notoriety of this and similar cases led the long Parliament of 1640 to abolish the Star Chamber and forbid "the ecclesiastical courts from requiring answers under oath on penal matters." (St. 16 Car. 1, cc. 10, 11.)[3] An early constitutional interpretation of the privilege was developed in *United States* v. *Burr*, 25 Fed. Cas. 38, No. 14692 e (C. C. D., Va. 1807). Chief Justice Marshall, on circuit, there held that the court must determine if any direct answer to the question might incriminate the witness. The witness is not bound to give further testimony "if such answer may disclose a fact which forms a necessary and essential link in the chain of testimony, which would be sufficient to convict the witness of any crime. . . ." (25 Fed. Cas. 28, 40.) In later applications it was determined that the privilege extends to a witness called before a grand jury investigating alleged violations of law and is not limited to cases of criminal prosecution against the witness himself. (*Counselman* v. *Hitchcock* (1892), 142 U. S. 547, 12 S. Ct. 195, 35 L. Ed. 1110.) But the protection is confined to real danger and does not extend to remote possibilities out of the ordinary course of the law. (*Mason* v. *United States* (1917), 244 U. S. 362, 37 S. Ct. 621, 61 L. Ed. 1198.) Even in the absence of an immunity statute which is coextensive with the rights guaranteed under the Constitution, the privilege against self-incrimination is applicable to congressional committee investigations. (*United States* v. *Bryan* (1950), 339 U. S. 232, 70 S. Ct. 724, 94 L. Ed. 884, rehearing denied), 339 U. S. 991, 70 S. Ct. 1018, 94 L. Ed. 1391 (1950). The present immunity statute, 52 Stats. 943 (1938), 18 U. S. C. A. sec. 3486 (1948), does not provide as broad a protection as the constitutional privilege, under which a witness may remain silent with impunity. (339 U. S. 323, 336.) The principal cases determined that an admission of communistic connections would be incriminating, and, therefore, the privilege against

[3]Wigmore, *Evidence* (3rd ed., 1948), sec. 2250. And see, E. M. Morgan, "*The Privilege Against Self-Incrimination*," 34 Minn. L. Rev. 630, where views of other scholars are listed.