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Evidence--Privilege Against Self-Incrimination--Constitutionality of Immunity Statute

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actively engaged, and the lack of any other obstacle to enforcing payment. Further, the statement by the payee that "Not one dollar of this debt has ever been paid" was insufficient to rebut, even though he was a competent witness. The court indicated that the presumption *would* be rebutted by proof of payment of interest during the twenty year period, continued absence from the country by the obligee, continued insolvency of the obligor, or other strong circumstances showing nonpayment or good cause for longer forebearance. *Supra* at 403-04. The presumption may be rebutted by payment of part of the principal of the debt, *Camden v. Alkire, supra,* or by acknowledgement by the debtor, *Payne v. Dudley, supra.* None of the above seemed to be present in the principal case. However, the court apparently placed emphasis on the fact that the obligees and the widow of the obligor were related, and that the plaintiffs did not wish to create a hardship on her by forcing a sale of her home. This circumstance was held to excuse the delay in enforcing the debt, thereby precluding the defense of laches, but in view of the strength of the presumption as stated in the *Criss* case, *supra,* it is questionable whether this factor alone should be a sufficient rebuttal. Evidently, when the above relationship was considered in conjunction with the possession of the note by the obligees, it was enough to rebut the presumption.

The case stands as a warning to the title examiner who finds an unreleased deed of trust, when the obligation it secures became due prior to 1921. The abstractor must evaluate the strength of the presumption as applied to the facts of the particular case and advise accordingly. An unreleased encumbrance is excepted from the provisions of a title insurance policy, and the insured is not protected against its enforcement. GAGE, LAND TITLE ASSURING AGENCIES 91 (1937). Therefore, it is important to determine what weight the court is going to give to the presumption of payment, if and when the question again arises.

C. M. C.

EVIDENCE — PRIVILEGE AGAINST SELF-INCRIMINATION — CONSTITUTIONALITY OF IMMUNITY STATUTE.—*D* was adjudged guilty of contempt of court for refusing to testify before a grand jury investigating matters concerned with attempts to endanger the national security. *D* had been ordered by a federal district court, under the authority granted by the Immunity Act of 1954, to testify with

respect to such matters as were under inquiry by the grand jury. The immunity statute provided: "[I]n any case or proceeding before any grand jury . . . involving any interference with or endangering of . . . the national security or defense of the United States by treason, sabotage, espionage . . . upon order of the court such witness shall not be excused from testifying . . . on the ground that the testimony . . . may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted . . . for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination . . . ." 68 STAT. 745 (1954), 18 U.S.C. § 3486 (c) (Supp. II, 1955). *D* contended that the statute was unconstitutional as being in violation of the privilege against self-incrimination for the reason that it did not grant immunity from prosecution under state law. *Held,* that the immunity statute was constitutional and therefore, the defendant could be so compelled to testify. *Ullman v. United States,* 24 U.S.L. WEEK 4147 (U.S. Mar. 26, 1956).

The court, in the instant case, held the statute constitutional on the authority of *Brown v. Walker,* 161 U.S. 591 (1896). In the *Brown* case, the statute provided: "That no person shall be excused from attending and testifying . . . in any cause or proceeding . . . based upon or growing out of any alleged violation of the act of Congress, entitled, 'An act to regulate commerce,' . . . on the ground or for the reason that the testimony . . . may tend to criminate him . . . . But no person shall be prosecuted . . . for or on account of any transaction, matter or thing, concerning which he may testify. . . ." 27 STAT. 443 (1893), 49 U.S.C. § 46 (1952). Brown was subpoenaed to testify before a grand jury which was investigating alleged violations of the Interstate Commerce Act. Invoking the privilege against self-incrimination, he refused to answer certain questions. The court adjudged him guilty of contempt. The holding in the *Brown* case is summarized by the court in the principal case as follows: "[A] statute which compelled testimony but secured the witness against a criminal prosecution which might be aided directly or indirectly by his disclosures did not violate the fifth amendment's privilege against self-incrimination and that the 1893 statute did provide such immunity." *Ullman v. United States, supra* at 4149.

It appears that all the Supreme Court is doing in deciding the principal case is reaffirming the proposition that Congress has the

authority to deny a witness the privilege against self-incrimination and thereby, can compel him to testify where the statute grants complete immunity to the witness from prosecution concerning such matters.

R. W. F.

PROPERTY—JOINT TENANCY—EFFECT OF MURDER ON THE RIGHT OF SURVIVORSHIP.—*H* and *W*, husband and wife, owned property in joint tenancy. *H* murdered *W*, was convicted, and was sentenced to the penitentiary. *W*'s heir-at-law sued to recover the property from *H*, contending that *H* held the property on a constructive trust for *W*'s heir. *Held*, that a joint tenant who murders his cotenant destroys all rights of survivorship and retains only the title to his undivided one-half interest in the property as a tenant in common with the heir-at-law of the decedent. *Bradley v. Fox*, 7 Ill.2d 106, 129 N.E.2d 699 (1955). In so holding, the court overruled its earlier decision in *Welsh v. James*, 408 Ill. 18, 95 N.E.2d 872 (1950).

It is a maxim of equity that "No person will be permitted to benefit from his wrong." This, however, comes into conflict with the right of inheritance (1) when an heir murders an ancestor, (2) when a legatee or devisee murders the testator, (3) when a beneficiary of a life insurance policy murders the insured, and (4) when a joint tenant murders his cotenant. [Tenancies by the entirety are generally treated the same as joint tenancies. For a collection of cases, see Annot., 32 A.L.R.2d 1102 (1953).]

Different courts have reached different results in determining this conflict. In the first three situations the courts allow the murderer to take the inheritance but require him to hold it on a constructive trust so that he will not benefit from his wrong. RESTATEMENT, RESTITUTION, §§ 187, 189 (1937). But in dealing with a joint tenancy, the courts have divided at least five different ways. This diversity is caused by the legal fiction that a joint tenant holds the entire estate from the time of the original investiture, which factor is not present in the other situations.

In *Neiman v. Hurff*, 11 N.J. 55, 93 A.2d 345 (1952), where the husband murdered his wife with whom he held stocks as a joint tenant, the court held that the husband would take all the shares of stock, but would hold them in trust for a legatee under his wife's will, subject to a lien for the commuted value of his interest in the stocks which would be a life estate in one-half of the net income.