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Constitutional Law—Civil Rights—Kangaroo Court

CONSTITUTIONAL LAW—CIVIL RIGHTS—KANGAROO COURT—[Federal].—The sheriff of Crittenden County, Arkansas, two of his deputies, a state highway patrolman, a practicing lawyer of the county, and an inmate of the county jail formed a conspiracy to cause the arrest of innocent individuals for the purpose of extorting them. These persons (referred to by the court as "victims") would be severely beaten, prevented from communicating with people outside the county jail, abused in a cruel "kangaroo court,"[1] and forced to employ the attorney who was party to the conspiracy. Arrest and imprisonment would then follow based on trumped-up charges filed by fellow-conspirators; and huge sums of money were extorted from these victims upon promise of release which sums were in turn distributed among the conspirators. Those conspirators who were law enforcement officers were charged with the violation of Section 20[2] of the United States Criminal Code which makes it a crime for officials, acting under color of law, to subject an inhabitant of a state "to the deprivation of his rights, privileges, or immunities." The lawyer and the convict who were not law enforcement officers and could not therefore be found guilty of violating Section 20 were indicted by a Federal grand under Section 37[3] of the U. S. Criminal Code for having conspired to commit an offense against the United States by aiding and abetting the officers indicted under Section 20. Two defendants were acquitted, one died before the trial, and the three appellants were convicted by a jury verdict after their demurrer to the indictment was overruled. *Held:* Judgment affirmed. The defendants were guilty of the offenses charged in the indictments as, under color of the law that created their offices, they did conspire to deprive inhabitants of the state of Arkansas of rights, privileges and immunities secured and protected by the Constitution and laws of the United States. *Culp v. United States.*[4]

There are two principal federal statutes that protect the civil rights guaranteed by the Constitution. The first of these is Section 19[5] of the

1. See Ballentine's *Law Dictionary* (1930) 717: Kangaroo court—"a mock court composed of fellow prisoners of one confined in a jail or prison, by which he is tried for assault or other offenses alleged to have been committed by him against them or any of them." See 2 R. C. L. 1184.

2. (1909) 35 Stat. 1092, c. 321, 18 U. S. C. A. 52. "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

3. (1909) 35 Stat. 1096, c. 321 §37, 18 U. S. C. A. sec. 88. "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties shall be fined not more than $10,000, or imprisoned not more than two years, or both."

4. (C. C. A. 8, 1942) 131 F. (2d) 93.

5. (1909) 35 Stat. 1092, c. 321, 18 U. S. C. A. 51. "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by

United States Criminal Code which provides for the punishment of individuals who conspire to prevent any United States citizen from exercising the rights that are protected by the Constitution and laws thereunder. This statute was primarily intended to outlaw the Klan-like activities that were so common after the adoption of the Fourteenth Amendment. The statute has not been held applicable to actions against individuals as contrasted actions against states because of its dependency on the Fourteenth Amendment, and all such actions have been successfully demurred to. The second federal statute concerned with the protection of the civil rights of individuals is Section 20 of the U. S. Criminal Code. The provisions of Section 20[6] prescribe the punishment for anyone who acting under color of law subjects any inhabitant of a state of the United States to the deprivation of his constitutionally-guaranteed rights or to punishments, pains, or penalties because of such person's alienage, color, or race.

The constitutional basis of both sections is the Fourteenth Amendment to the Constitution. The derivation[7] of the statutory provisions is found in Section 5 of the amendment itself which provides:

> "The Congress shall have power to enforce by appropriate legislation, the provisions of this article."

The guarantee of fundamental rights by the Fourteenth Amendment does not operate against encroachments by individuals;[8] but, if the individual who deprives another of any right, privilege, or immunity acts in an official capacity either *de jure* or *de facto* in the clothing of the law, the guarantee is applicable.

Relatively little case law has been developed regarding Section 20. Prior to the instant case only five successful prosecutions resulted under the statute. The precise meaning of the section was clouded by judicial confusion as to its provisions in the early cases. The early decisions did not carefully analyze the provisions of the statute that outline the two offenses defined by it. In the case of *United States v. Buntin*[9] a teacher of a rural school was convicted under Section 20 for depriving Negro children of their right to attend school when, acting under color of the law that authorized his position, he excluded them from the rolls of the public

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the Constitution or laws of the United States, or because of his having so exercised the same, or, if two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000, or imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or the laws of the United States."

6. See note 2, *supra*.

7. But see Victor W. Rotnem, The Federal Civil Right Not To Be Lynched (1943) 28 WASHINGTON UNIVERSITY LAW QUARTERLY 57, 64.

8. United States v. Cruikshank (1876) 92 U. S. 542, 554 "It simply furnishes an additional guarantee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society."

9. United States v. Buntin (C. C. S. D. Ohio 1882) 10 Fed. 730.

schools. The second case on this point, *United States v. Stone*,[10] resulted in the conviction of two election officials who, under color of office, refused to honor the ballots of certain Negro voters; it was held that they deprived citizens of the right to vote on account of their color. These decisions failed to distinguish between convictions that could be held under part of Section 20 dealing with the guarantee of fundamental rights and convictions for enforcing illegal punishments because of race, color or alienage.

Under this statute are found two offenses: the first is the wilful deprivation of the fundamental rights guaranteed by constitutional provisions; the second is the administration of punishments, pains, and penalties on certain persons because of alienage, color, or race different from those penalties prescribed for citizens. The judges in the *Buntin* case and the *Stone* case applied the language concerning race, color, and alienage to the first as well as to the second offense under Section 20. In his opinion in *United States v. Classic*,[11] Justice Stone sets forth the distinctions between the offenses and interprets the language in question as applicable to the act of forcing extra-legal punishments and pains, not to the deprivation of rights. This distinction is of great importance in using the statute to preserve civil liberties because, by limiting the phrases relating to race, color, and alienage to the second offense, the courts may uphold indictments against individuals who persecute others whether because of race, color, or alienage or not if these persons are deprived of their civil rights. Thus, in the present case, the demurrer to the indictment was properly overruled although nothing pertinent to race, color, or alienage was alleged.

From 1911 until 1940 no cases relative to Section 20 were reported although there grew up a wealth of case law about Section 19. The reason for this is the number of prosecutions that resulted from the lynching activities that Section 19 was intended to outlaw. Indictments were not issued under Section 20 because of the requirement that the defendant's actions must have been cloaked in the color of law.[12] In the overwhelming majority of cases state or municipal officers or others acting under color of law either did not participate in the lynchings or could not be held at the time of arrests.

The determining factor in the prosecutions under Section 20 is the definition of the phrase "under color of law." Two courts have recently defined these words. In the opinion of the *Classic* case it is stated, ". . . . Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." Another definition of the phrase is found in *United States v. Sutherland*.[13] Here a policeman was indicted and con-

10. United States v. Stone (D. C. D. M. D. 1911) 188 Fed. 836.
11. (1941) 313 U. S. 299.
12. See United States v. Ellis (D. C. W. D. S. C. 1942) 43 Fed. Supp. 321 for distinction between the acts of public officials and private individuals.
13. (D. C. N. D. Ga. 1940) 37 F. Supp. 344. For a discussion of the words "state action" also see Ex Parte Virginia (1879) 100 U. S. 399; Home Telephone and Telegraph Co. v. Los Angeles (1913) 227 U. S. 278; Hague v. C. I. O. (1939) 307 U. S. 496.

victed under Section 20 for torturing a colored boy with a hot iron into making a confession. His demurrer to the indictment was overruled on the grounds that he had acted under authority of the state law that created the position of policeman and prescribed its duties. Therefore, the demurrer in the *Culp* case to the indictments against the sheriff, his deputies, and the highway patrolman was properly overruled; for these men did deprive persons of the right to be granted due process of law acting under the laws of Arkansas that authorized their jobs.

In regard to the defendants who did not act under color of law, that is, the lawyer and the convict, the court said that, although they alone could not be charged under Section 20 which is limited to defendants who act in any official capacity, by agreeing with the conspirators and furthering the conspiracy, these defendants can be held under Section 37.[14]

The decision in the *Culp* case is in accord with the interpretation of Section 20 since the *Classic* case and a subsequent case, *Catlette v. United States*,[15] corroborates this theory. The *Catlette* case arose when a deputy sheriff and others clothed in color of office refused police protection to citizens of West Virginia and wrongfully detained them and subjected them to unspeakable humiliation and cruelty as a persuasion to leave the municipality, and it resulted in convictions after a demurrer to the indictment was overruled.

Cases under Section 20 are rather few; but, since the clarification of the confusion that surrounded its interpretation prior to the *Classic* case, the statute's importance as a practical method of guaranteeing civil rights protected by the Constitution and laws of the United States has increased; yet it can be over-emphasized. As Victor W. Rotnem pointed out in a recent article for the *Bill of Rights Review*, "It must be remembered, however, that this inertia is due, in no small part, to two rules of law which are themselves safeguards of the liberty of individuals."[16] Firstly,[17] criminal statutes must be strictly construed. Secondly, the government has a limited right of appeal from adverse results in criminal cases; the safeguard against double jeopardy found in the Bill of Rights being the source of limitation." B. G.

EXECUTORS AND ADMINISTRATORS—INVENTORY—DISTRIBUTION UNDER MUTUAL AGREEMENT OF THE HEIRS—[Missouri].—The intestate left eight envelopes, each containing notes or other property, in his safety deposit box. Each envelope was labeled with the name of one of his eight heirs. At the time the inventory was made the heirs met with the administrator and each took the envelope bearing his respective name, and all executed a written waiver of claim to the contents of the envelopes. The contents of

14. Coffin v. United States (1896) 162 U. S. 664; United States v. Rabinowich (1915) 238 U. S. 78; Carter v. United States (C. C. A., 1927) 19 F. (2d) 431; Curtis v. United States (C. C. A. 10, 1933) 67 F. (2d) 943.

15. (C. C. A. 4, 1943) 132 F. (2d) 902.

16. Clarification of the Civil Rights Statutes (1942) 2 Bill of Rights Review 252, 261.

17. McBoyle v. United States (1931) 283 U. S. 25.