As to what justifies a reasonable belief that an answer would incriminate the witness, the Court in *Carrera* held:

> ". . .it is not necessary that a real danger of prosecution exist to justify the privilege against self-incrimination. It is sufficient that the person questioned has reasonable cause to apprehend such damages. See *Hoffman v. United States*, 341 U.S. 479 (1951). Moreover, the privilege extends not only to the disclosure of facts which would in themselves establish guilt, but also to any fact which might constitute an essential link in a chain of evidence by which guilt can be established (citations omitted)." Supra 553.

In the case at bar, this Court does not find that Mr. Silver has reasonable cause to believe that his answers would be incriminating and that he would face criminal liability as a result of his answers. Trooper Wiegand told Mr. Silver that there was a potential violation of the Vehicle Code because of the sale of the automobile without the title. The "potential" violations mentioned by Trooper Wiegand apparently come under Section 1111(a) of the Vehicle Code, 75 Pa. C.S.A. 1111, or Section 1113, 75 Pa. C.S.A. 1113. Though Officer Wiegand has been aware of the situation since July 1978, no prosecution has been instituted against Mr. Silver or Sports Car Corral, Inc. Nor does it appear to the Court that there is likely to be any prosecution.

These violations are both summary offenses with the fine for Section 1111 being $100 for the first offense, and $50 for each offense under Section 1113. The statute of limitations for summary offenses under the Vehicle Code is thirty (30) days after commission or discovery of commission of the crime. 42 Pa. C.S.A. 5553. The Statute of Limitation has long since run. We do note that the courts have long held that one can claim privilege against self-incrimination even though the statute of limitations has run. *Commonwealth v. Lenart*, 430 Pa. 144 (1968) citing *McFadden v. Reynolds*, 20 W.N.C. 312 (1887); *Rosenbaum Co. v. Tomlinson*, 7 D&C 2d 500 (1956). However, the minor nature of the criminal act coupled with the running of the statute of limitation leads this Court to conclude that the possibility of prosecution is, at best, extremely remote.

The witness also claims that there is the possibility of a prosecution for fraud. Nothing in the record leads us to believe that there is any reasonable danger of Mr. Silver being prosecuted for fraud under any of the sections of the Crimes Code quoted in Mr. Silver's brief. Mr. Silver testified that he could not even remember if Trooper Wiegand used the word "fraud" when they spoke.

In reading *Carrera*, supra, it is clear that a witness claiming

the privilege against self-incrimination need not show that a real danger of prosecuiton exists. However, there must be a reasonable apprehension of such damages. When the possibility of criminal prosecution is so remote, as in the case at bar, we do not feel there is reasonable cause to fear incrimination.

Parenthetically, we note that the *Carrera* case has been followed by the Supreme Court in *Commonwealth v. Rodgers*, 472 Pa. 435 (1977), and *Commonwealth v. Lenart*, supra.

One further point to be mentioned is that certain questions propounded to Mr. Silver were intended as questions to him as an officer of Sports Car Corral, Inc. and not to him as an individual. Mr. Silver refused to answer these questions on the grounds of self-incrimination. "It is settled that a corporation is not protected by the constitutional privilege against self-incrimination." *Bearings Inc. v. Bethayres Concrete Products Co.*, 79 Montg. Co. L.R. 48, 50 (1961). Nor can an individual, when acting in his official capacity as a representative of a corporation, have a personal privilege against self-incrimination. *Curcio v. U.S.*, 354 U.S. 118, 1 L. Ed. 2d 1225, 77 S. Ct. 1145 (1957); *U. S. v. White*, 322 U.S. 694, 8 L. Ed. 1542, 64 S. Ct. 1248 (1944). *Kraepple v. Matthews*, 200 F. Supp. 229 (E. D. Pa. 1961); *Wild v. Brewer*, 324 F. 2d 924 (9th Cir. 1964); *Commonwealth v. Evans*, 190 Pa. Super. 179 (1959); *Commonwealth ex rel., Camelot Detection Agency v. Specter*, 451 Pa. 370 (1973); *Commonwealth v. Wilson*, 458 Pa. 470 (1974).

ORDER OF COURT

NOW, this 16th day of February, 1979, Barrett L. Silver is directed to appear before this Court at 3:00 o'clock P.M. on Tuesday, the 27th day of February, 1979 to answer under oath the questions propounded to him by counsel for Valley Bank and Trust Company, the plaintiff, on December 21, 1978.

SMITH v. SMITH, C.P. Franklin County Branch, No. F.R.D. 1979-137

Divorce - Indigent - Equal Protection - Due Process - Divorce Expenses

1. A local rule of court which requires an indigent plaintiff in a divorce action to initially determine whether the defendant can be responsible for all or part of the expenses is not a denial of due process and equal protection of law since the time consumed is no longer than that necessary where the non-indigent plaintiff compels the defendant to contribute to the divorce expenses.

Harry S. Geller, Esq., of Legal Services, Inc., Attorney for Plaintiff

OPINION AND ORDER

EPPINGER, P.J., February 9, 1979:

This is a divorce action and Crystal Smith, the plaintiff, is represented by Legal Services. She has asked to be excused from paying any costs and refuses to comply with 39th Jud. Dist. Civil R. 111.[1] This rule was adopted after it became apparent that some indigent plaintiffs were asking that all expenses be paid by the county, even though the defendant was capable of paying some or all of them. It was a common practice for a plaintiff to declare an inability to deterimine the defendant's earnings or holdings.

Requiring her to comply with 39th Jud. Dist. Civil R. 111, says Crystal Smith, is denying her due process and equal protection of the law. Due process and equal protection of the law mean that a person has the same right to process as others similarly situated, nothing less and nothing more. See e.g., *Commonwealth v. Kramer*, 474 Pa. 341, 346, 378 A.2d 824, 826 (1977), citing *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), rehearing denied 379 U.S. 870, 85 S.Ct. 12, 13 L.Ed.2d 76 (1964) (equal protection requires that uniform treatment be given to similarly situated parties).

In a case where a plaintiff does not qualify as indigent, the practice in Franklin County is to file a complaint and when the matter is at issue, the plaintiff deposits $225 with the Prothonotary and a master is appointed. Upon being appointed, the master holds a hearing after 15 days notice and must file the report with a transcribed record of the proceedings, findings of fact, conclusions of law, opinion and recommendation. The master's report must be filed within 90 days of the date of the appointment. The report then lies over in the Prothonotary's office for 5 days during which time exceptions can be filed and

[1]In every application to proceed without the payment of any portion of the costs in a divorce action, there shall be a statement included of the effort made by the applicant to determine the financial ability of the defendant to pay counsel fees and expenses, and such petition shall not be granted unless it has been shown affirmatively that the defendant is unable to pay such, or action has been taken and concluded on a petition for a rule upon a defendant to show cause why the defendant should not pay counsel fees and expenses.

thereafter the entire record is submitted to the court for final decision. This review by the court is sometimes time consuming too.

In the case where a non-indigent plaintiff does not have the funds to make the deposit, or is in need of counsel fees or support, that plaintiff must file an appropriate petition asking for the issuance of a rule. The rule generally provides for an answer within twenty or thirty days and then evidence is taken before an examiner. The examiner's report is filed and the court makes the final order. Generally only after this is done is the master appointed.

A party who is permittted to proceed as an indigent person must file a complaint and when the matter is at issue, merely asks the court for a time for hearing. In Franklin County the court hears all indigent divorces.[2] So 15 days notice of the time for hearing is given and the hearing is held. If the evidence supports the complaint, without transcribing the record or making any findings, the court grants the decree and there is no time consumed as in the master's proceedings, and the review of the master's report by the court. To assure that the case may be heard promptly by our court, we have set aside one day a month for this purpose.

It is apparent that the indigent plaintiff really makes out better, time wise, than one who is paying for his or her divorce. The time consumed in applying for alimony, counsel fees and expenses by an indigent plaintiff would be no longer than that necessary where the non-indigent plaintiff, in order to proceed, must compel the defendant to contribute all or part of the total expenses of the divorce.

We therefore believe it is entirely proper to require an indigent plaintiff to first determine whether the defendant can be responsible for all or part of the expenses before the case goes forward.

This Opinion is filed in support of the Order attached to the Petition.

[2]Though this court, like all others, is heavily burdened with work, this procedure makes it unnecessary for the county to pay master's fees. The standard master's fee at the present time is $125.00. In the five years ending December 31, 1978, at least 211 indigent divorces were granted by the court, to save the county $26,375.00.