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.

the eight envelopes were omitted from the inventory. All of the heirs joined in a petition to the Probate Court asking for an order relieving the administrator of including the property contained in the envelopes in the inventory of the estate. The court entered such an order. Three of the heirs thereafter filed proceedings to discover assets, and sought to charge the administrator with all the property contained in the eight envelopes, contending that the signatures to the waiver were obtained by fraud, and that the waiver was void, being against public policy. Held, judgment for administrator affirmed. *Estes v. Estes.*[1]

The administrator must include in his inventory all of decedent's property, and he should take all of the personal property into his possession, except the property reserved as the absolute property of the widow.[2] Under the common law, personal property, including choses in action as well as goods and chattels, vested on death of the owner in his executor or administrator, and did not descend to his heirs except through the medium of administration.[3] Title to personal property of decedent vests in his personal representative for purposes of administration so that devisees or heirs acquire no title thereto until the estate is settled.[4]

The heirs own the beneficial interest in the personal property, subject to the claims of creditors and expenses of administration, as the administrator takes for the sole purpose of administration.[5] The heirs have an interest in the personal property in regard to which they may contract, or waive their interests, or mutually divide among themselves, or even dispense with administration entirely where the rights of creditors are not affected.[6] Where one having the right to accept or reject a transaction takes and retains the benefits thereunder, he ratifies the transaction, is bound by it, and cannot avoid its obligation or effect by taking a position inconsistent therewith.[7]

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1. (Mo. Supp. 1942) 166 S. W. (2d) 1061.

2. R. S. Mo. 1939 §57; Eisiminger v. Stanton (1908) 129 Mo. App. 403; In re Van Fossen (1929 Mo. App.) 13 S. W. (2d) 1076; Williams, *Executors and Administrators*, p. 980; Schouler, *Law of Executors and Administrators*, p. 301.

3. Bomar v. United States (1935) 12 F. Supp. 881. (This was instance where sole heir of insured under war risk insurance policy brought suit to enforce payment. Policy was payable to estate of insured. Sole heir held not to be proper party.) State ex rel. Hounsom v. Moore (1885) 18 Mo. App. 406 (where sole heir attempted to recover personal property belonging to decedent. Held not to be proper party plaintiff.) Darwin v. Moore (1900) 58 S. C. 164, 36 S. E. 539; Ballenger v. United States (1935) 11 F. Supp. 911.

4. Moore's Adm'x v. Brookins (1936) 92 S. W. (2d) 813; 263 Ky. 519; Green v. Tittman (1894) 124 Mo. 372; 27 S. W. 391.

5. In re Elliott's Estate (1889) 98 Mo. 379; Armor v. Lewis (1913) 252 Mo. 568.

6. In re Elliott's Estate (1889) 98 Mo. 379; In re Martin's Estate (1924) 219 Mo. App. 51, 266 S. W. 750; McCracken v. McCaslin (1892) 50 Mo. App. 85; Adamack v. Herman (Mo. App. 1930) 33 S. W. (2d) 135; Roberts v. Messinger (1913) 134 Pa. 298, 19 Atl. 625; Hinn v. Gersten (1904) 122 Wis. 222; 99 N. W. 338.

7. Adamack v. Herman (1930 Mo. App.) 33 S. W. (2d) 135; Thompson v. Simpson (1891) 128 N. Y. 270, 28 N. E. 627 (A general principle of the

A contract between heirs as to division of personal property made to circumvent the claims of creditors is not valid.[8] Contracts or settlements among heirs with reference to property of an estate, so long as they do not affect rights of creditors, are legal and binding.[9] The Missouri courts have handed down the following rule: "The heirs of a decedent may distribute among themselves his property without the appointment of an administrator, which is an exception to the rule that title to personalty left by the intestate vests in his administrator, is applicable only when three things concur: First, the absence of debts against the estate; second, the legal age of the heirs entitled to share in the distribution; and, third, a unanimity among them as expressed by their agreement or acts to dispense with an administrator."[10] A long lapse of time since the death of the decedent without administration may raise a presumption against the necessity of any administration.[11]

Unquestionably, the general rule is that the administrator should inventory all the property, and take all the personal property into his possession except that reserved for the widow as her absolute property.[12] The facts in the instant case, however, present a situation which calls for an exception to the general rule. The court found no evidence of fraud; There were no creditors; the parties were all of legal age, and there was a definite unanimity among them as expressed by their written agreement and their conduct. In view of these findings it is submitted that the view of the court is both practical, and in keeping with the weight of allowable exceptions.

G. C. B.

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law of estoppel, and there is no reason why it will not apply to a situation o fthis kind if the parties all act with knowledge and without fraud.)

8. Tyler v. Larimore (1885) 19 Mo. App. 445 (creditors have prior claim upon the assets of the estate, and any contract the heirs might enter into does not affect rights of creditors.)

9. Adamack v. Herman (Mo. App. 1930) 33 S. W. (2d) 135 (Court here states that such contracts are favorites of the law.) Cotterell v. Coen (1910) 246 Ill. 410, 92 N. E. 911; Robertson v. Robertson (1889) 120 Ind. 388, 22 N. E. 310; Douglas v. Albrecht (1906) 130 Iowa 132, 106 N. W. 854; Murphy v. Murphy (1906) 42 Wash. 142, 84 Pac. 646.

10. Griesel v. Jones (1907) 123 Mo. App. 45, 99 S. W. 769 (This is general rule.)

11. Richardson v. Cole (1901) 160 Mo. 372, 61 S. W. 182, 83 Am. St. Rep. 479 (Was there held that administration will not be granted after lapse of twelve years.) Hill v. Young (1893) 7 Wash. 33, 34 Pac. 144 (No administration after eight years.) Duncan v. Veal (1898) 49 Tex. 603 (No administration after fourteen years.)

12. The exception to this general rule should be applied with caution. In fact the application of the exception often brings difficulties to the heirs. All the facts in each individual case must be carefully considered. (1) There is a possibility of unknown claims against the estate; (2) there is a possibility of having to recover chattels of deceased from third persons, or bring suits on choses in action; (3) the necessity of transfer of registered stocks, or bonds, or endorsement of notes and bills payable to deceased; (4) satisfaction of mortgages and deeds of trust, payable to deceased, and not endorsed by him during his life time; and (5) questions of inheritance tax, are all to be considered in appyling this exception to the general rule requiring complete administration of an estate.