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THE PROGRESS OF THE LAW

SETTLEMENT FOR BURIAL IN POTTERS FIELD

A RATHER interesting suit against the City of New York and Knickerbocker Hospital, brought by the parents of a 26-year-old Navy veteran who was mistakenly buried in Potters Field, was settled on January 23, 1956 for $25,000.

A Navy veteran, Murray L. Keller, became ill on a subway train on October 21, 1953. He was removed from the train and taken to Knickerbocker Hospital where he died several hours later of what the hospital reported was a cerebral hemorrhage. In some unexplained manner, both the hospital and the police recorded the decedent's name as Murray Solnard despite the fact that his wallet was filled with identification cards which bore his real name.

After his death, his body was unclaimed until November 5, 1953 when he was buried in Potters Field on Hart's Island, the customary burial ground for the City's unknown dead. It was not until October of 1954 that his parents discovered what had happened to him and he was then taken from Potters Field and reburied under his correct name in Beth Israel Cemetery in New Jersey.

After the reburial his parents brought suit against the City of New York for $300,000 and Knickerbocker Hospital, claiming that they had shown "gross carelessness and wanton negligence". The suit was settled during trial for $25,000, half of which will be paid by each defendant.

DIVORCE LAW STUDY GROUP

A COMPROMISE has apparently been reached on the extremely controversial divorce law study group and it is expected that the New York State Legislature will now create a joint committee on divorce actions in the near future. Appropriate legislation will be introduced shortly by Assemblywoman Janet Hill Gordon (R., Norwich). Mrs. Gordon has been attempting for six years to obtain legislative approval for a commission to study the entire divorce problem and in the 1955 session such a bill jointly sponsored by her and Senator Dutton S. Peterson (R., Odessa), was defeated on the Assembly floor and tabled. This bill would have created a 23-member Temporary State Commission "to study problems created by marriage and matrimonial matters and actions".

The Committee created by the new bill will not study the grounds for divorce but will concern itself solely with methods and procedures in divorce actions. It has been so drawn to meet the objections of previous opponents of Mrs. Gordon's legislative attempts in this field and the sharp reduction in the proposed committee field of action should avoid strong floor debate.

EVIDENCE OBTAINED BY RADIO INTERCEPTION

THE United States Supreme Court agreed on January 23, 1956 to review whether evidence obtained by listening in on a legal radio broadcast may be used before grand juries and in criminal trials.

Mr. and Mrs. Robert Sudgen, cotton farmers of Yuma, Arizona, were indicted for conspiracy to violate the immigration laws in the employment of Mexican "Wetbacks". They maintained a farm radio station which they used to broadcast messages to truck operators who were working in the fields. A Federal Communications Commission engineer monitored these broadcasts, resulting in government charges that the radio equipment was used to warn farm employees that immigration officers were in the vicinity.

The United States District Court for Arizona invalidated the indictment on the ground that federal law prohibits such interception and disclosure of radio messages. However, the Court of Appeals for the Ninth Circuit reversed the District Court and the Sudgens appealed to the Supreme Court on the ground that the reversal "condones conduct by federal officers and the Department of Justice in defiance of public policy" against wire-tapping. For a treatment of this decision in one of the LAW FORUM's recent issues, see Note, 1 N. Y. L. F. 493 (1955).

PRESIDENT ADVOCATES "DISABILITY" LAW

PRESIDENT EISENHOWER, at his news conference on January 19, 1956, advocated legislation to determine whether a President is suffering a sufficient disability so that the Vice-President should succeed him.

The Constitution does not indicate who is to determine the President's disability. A House Judiciary subcommittee headed by Rep. Emanuel Celler (D., N. Y.), has been studying the question for some time. In connection with its work it has mailed a questionnaire dealing with the subject to sixty authorities, including former Presidents Hoover and Truman, as well as former Vice-Presidents, Secretaries of State, political scientists and teachers of Constitutional Law.

The House of Representatives, by resolution, has already proposed a constitutional amendment permitting Congress by a two-thirds vote to suggest that a President is unable to perform his duties, leaving the final determination to the Supreme Court, which would also be authorized to determine when and whether the President is able to return to his duties. In the Senate, the Payne Bill would amend the United States Code to permit the President to notify Congress of his own disability, in which event the Vice-President would take over the presidential duties until the President notified Congress of his ability to resume his duties or until a new President was elected. Furthermore, the Vice-President would be

authorized to ask the Chief Justice of the Supreme Court to appoint a medical panel to examine a President and, if it agreed unanimously that the latter was disabled, the Vice-President would take over until the disability was corrected or a new President elected.

NEW YORK LAW SCHOOL LIBRARY

THE New York Law School Library has been designated by the New York State Library as a selective depository for state documents. The library will receive such documents as the governor's various Messages to the Legislature, the Rules of the Senate and the Assembly, including Concurrent Resolutions, and the reports of the various Authorities and Commissions.

CONGRESSIONAL COMMITTEES CURBED

THE United States Court of Appeals for the District of Columbia has held that Congressional Committees have no authority to compel witnesses before them to expose former communists simply for the sake of exposure.

In so deciding, the Court voided the contempt of Congress conviction of John T. Watkins, an Illinois labor leader. Mr. Watkins had refused to tell the House Un-American Activities Committee whether certain fellow union members with whom he had associated between 1942 and 1947 were communists.

The Court of Appeals indicated that such questions could be asked only in pursuit of a valid legislative purpose and it found no such purpose in Mr. Watkins' interrogations. In its opinion the Court said that, since Congress has no powers of law enforcement, it could not "expose former communists, even if there were a law requiring that former communists be exposed" unless it did so with a view to proposing remedial legislation.

In a dissenting opinion, Judge Walter M. Bastion stated that the majority's decision "puts us in the position of a Court of Appeals over Congress and its committees . . . and limiting the scope of such inquiries to what this court thinks that scope should be." Unless this decision is reversed by the Supreme Court, it should have the effect of drastically curtailing investigative activities of both the Un-American Activities Committee and the Senate Internal Security Sub-Committee.

PHOTOS AT TRIALS

RECENTLY the Colorado Supreme Court commenced hearings to study arguments by newspapers, radio and television officials that the present ban on photographs and broadcasting during a trial should be lifted.

Witnesses before Justice O. Otto Moore have thus far been unanimous

in advocating the lifting of the prohibition. E. Ray Campbell, the President of the Denver *Post*, testified that the prohibition against photographs "is harsh and unnecessary and should be replaced by a reasonable regulation". District Judge James M. Noland stated that "our court rooms are public forums" and that the public has a right to know what is occurring in them. David Rosner, representing the Colorado Bar Association indicated that it should be up to the presiding judge to determine what goes on in his own court room and that, if he felt that either photographs or broadcasting did not hinder justice, that he should have the power to permit them.

In a previous issue of the LAW FORUM (1 N. Y. L. F. 335 (1955), the practice of planting secret microphones in jury rooms during five civil cases in Wichita, Kansas was discussed. At that time, it was the opinion of the Attorney General of the United States as well as the editorial writers of most leading newspapers that this practice was detrimental to the administration of justice.

SOUTHERN DISTRICT COURT CALENDARS

IN the LAW FORUM for December, 1955 (1 N. Y. L. F. 472), the transfer of calendar control in the District Court for the Southern District of New York from a clerk to a judge in the interest of clearing the Tort Jury Calendar congestion was discussed. On January 27, 1956, Attorney General Herbert Brownell, Jr. complained to the New York State Bar Association about the backlog of cases in federal courts in certain districts. In his address he quoted a British jurist as stating "that it takes an average of four years to try a civil case in the Southern and Eastern Districts of New York". Following his talk, Mr. Brownell, in answer to direct questions by reporters, said that congestion in those two districts was "as bad as any in the United States".

On January 30, 1956, at the opening of his court, Federal Judge John F. X. McGohey, bitterly criticized Mr. Brownell's remarks. He accused the Attorney General of distorting the truth and indicated that, as of December 15, 1955, with one exception, every one of the five calendars provided for in the Rules of the Southern District was current. The one exception had to do with personal injury cases where a delay of eighteen months on November 17, 1955 had been reduced to eight months by December 15, 1955. With reference to these cases he stated as follows:

"The plaintiff in every personal injury case in which a Note of Issue is filed, has had his case called for a review by the judge and been afforded the opportunity to have it placed on the Ready Trial Calendar from which it will be sent out for actual trial in from six to eight weeks thereafter."

PORTAL-TO-PORTAL PAY

IN 1946 the United States Supreme Court ruled that certain types of employers had to pay for such activities on the part of their employees as walking to work, washing and changing clothing. As a result of this ruling, lawsuits totalling some $6,000,000,000 were brought against affected employers causing Congress to pass the "Portal-To-Portal Act" in 1947 which outlawed pending portal pay suits except those covered by wage contracts or industry custom.

Two cases involving this act were recently decided by the Supreme Court. In one the question was whether employees of a battery company who handle dangerously caustic and toxic materials must be paid for the time it takes them to shower and change clothes at the end of their tour of duty. In holding that the Portal-to-Portal Act did not cover this situation, Chief Justice Warren said that "it would be difficult to conjure up an instance where changing clothes and showering are more clearly and integral an indispensable part of the principal activity of the employment than in the case of these employees".

In the other case, the court held that butchers employed by a packing company must be paid for the time they spend each day sharpening their knives. As with the previous case, the court indicated that Congress did not intend to deprive employees of wage-hour law benefits for activities before and after regular hours when they are "an integral part of and indispensable to their principal activities".

FERGUSON NAMED TO MILITARY COURT

HOMER FERGUSON, former Republican Senator from Michigan and present Ambassador to the Philippines, has been nominated for a fifteen-year term on the Court of Military Appeals. Mr. Ferguson will succeed Judge Paul W. Brosman who died on December 21, 1955.

The Court of Military Appeals is the final Appellate Tribunal on court-martial convictions. It is a three-judge bench with no more than two members of the same political party permitted to serve at any one time. If Mr. Ferguson's nomination is confirmed by the Senate, the Court will then be composed of two Republicans and one Democrat.

AMERICAN SOLDIERS MAY BE TRIED IN JAPANESE COURTS

THE District Court for the District of Columbia recently upheld the legality of an international agreement between the United States and Japan which became effective on September 29, 1953, and gave the latter country exclusive jurisdiction over American soldiers for offenses which violated its law but not that of the United States.

District Judge Joseph C. McGarraghy denied the plea of four American soldiers for an injunction to halt their trial in a Japanese court on charges of obstructing justice, as-

sault, and assault and battery. He upheld the agreement between the two countries as a valid exercise of executive power and assumed that the men would receive a fair trial in the Japanese Court.

The agreement has been the target of much criticism recently by the American Legion and some members of Congress. At present, a House Foreign Affairs subcommittee is holding hearings on resolutions calling for the President to repudiate it.

MEDINA CALLS FOR MORE APPELLATE JUDGES

JUDGE Harold R. Medina, of the Court of Appeals for the Second Circuit, informed a House Judiciary subcommittee which is currently considering legislation authorizing the appointment of additional federal judges, that his court is staggering under its case load.

The Judicial Conference of the United States has recommended that one additional judge be added to the Second Circuit but Judge Medina indicated that at least two would be necessary to alleviate the present situation. He testified that he was forced to work from early morning to night as well as Saturdays and holidays to keep up with the increased number of appeals which come mainly from the Southern District of New York.

MIXED MARRIAGES

THE United States Supreme Court has been asked to by-pass the Virginia Supreme Court in a case involving the constitutionality of that state's law prohibiting interracial marriage.

Hay Say Naim, a Chinese, whose marriage to a white woman was annulled under Virginia's miscegenation statute, moved the Supreme Court for an order requiring that state's highest court to obey its mandate. On November 14, 1955, the Supreme Court had ruled that it could not decide the appeal without a more complete record and, accordingly, returned it to Virginia. On January 18, 1956, the Virginia tribunal held that it could not return the case to the trial court and reaffirmed its previous decree sustaining the miscegenation statute.

It is Mr. Naim's contention that he and his wife were not bona fide residents of Virginia when they were married and that that state has, therefore, no power to set the marriage aside. Furthermore, he is attacking the constitutionality of the miscegenation statute itself.

DIPLOMATIC IMMUNITY

SAUL J. ALLEN, Director of the Traffic Summons Control Bureau of the City of New York, has just revealed that the Consul Generals of Bolivia and Argentina have diplomatic immunity as far as parking tickets are concerned. The two men, with thirty-one and twenty-six park-

ing tickets respectively, recently appeared on Mr. Allen's list of scofflaws and the city has taken the position that they are entitled to diplomatic immunity with respect to the offenses involved.

JUDGE TO FORCE SALARY RISES

JUDGE John A. Mullen has served notice on the City of New York that his court would make full use of the mandatory powers conferred upon it by the State Legislature to make its own budget. He informed Budget Director Abraham D. Beame that he would permit no change in the budget of his court and that the 5% increases in salaries had to be met by the city.

At the same time, Justice Francis E. Rivers, representing the City Court and Judge Nathan R. Sobel representing the Kings County Court, both of which are empowered to mandate their salary increases, indicated that they desire to reach an amicable settlement with the city. In view of this desire, it was stated that the courts would not sue the city to compel payment of the new salaries as some mandatory courts have done in the past.