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THE PROGRESS OF THE LAW

POWERS OF STATE COURTS ENLARGED

IN what may prove to be an historic decision, the Supreme Court, speaking through Justice Black, has held that a California state court could obtain jurisdiction over a Texas insurance company, even if the latter had never done any regular business in California. Prior to this case, corporations which did not do enough business in any particular state to make it equitable for them to be sued locally could only be brought to trial in states where they did sufficient business. This rule, established a decade ago in *Washington* v. *International Shoe Company,* may have been overturned by this recent decision.

In the case in question—*McGee* v. *International Life Insurance Company*—the corporation was sued in California by the beneficiary of a policy who resided in that state. The only connection between California and the defendant was the fact that the policy was serviced in that state. International was served by registered mail sent to it in Texas and failed to answer the complaint. A judgment in plaintiff's favor was refused full faith and credit in Texas but the Supreme Court reversed and ordered Texas to honor the California judgment.

In his opinion, Justice Black stated that "these residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant state in order to hold it legally accountable. When claims were small or moderate, individual claimants frequently could not afford the cost of bringing an action in a foreign forum—thus, in effect, making the company judgment-proof." How far he and his brethren intend this decision to go remains to be seen.

LABOR COURTS RECOMMENDED

LOUIS HOLLANDER, president of the State Congress of Industrial Organizations, has called for a special court within the labor movement to try union officials accused of questionable practices. This recommendation was prompted by the scandals exposed by the Senate Select Committee on Improper Activities in the Labor or Management Field.

Mr. Hollander recognized that the establishment of such a court would necessitate a change in the A. F. L.-C. I. O. constitution and possibly "in our concept of autonomy." However, he went on to say that "while autonomy should be respected and protected, it must not be used by any union to shield corrupt practices."

At the same time, industry and labor spokesmen clashed before a joint New York State legislative committee on proposed amendments to the state's labor laws to curb

racketeering and corruption in unions, while Senator John L. McClellan stated in Washington that it would "take some laws" to clean up labor corruption and that he would urge the new Congress to enact them.

AMBULANCE-CHASING INQUIRY UPHELD

THE validity of a twelve-month-old ambulance-chasing inquiry being conducted in Brooklyn before Justice George A. Arkwright has been sustained by the Appellate Division, Second Department. The question was raised by a lawyer and a physician who had been subpoenaed to testify in the inquiry. Justice Arkwright had fined each one $250 for criminal contempt for refusing to testify.

The Appellate Division upheld the legality of the proceeding and affirmed the fine against the lawyer but annulled that against the physician. What effect the latter determination will have on the outcome of the inquiry remains to be seen. However, the court reaffirmed its order that the inquiry must continue to operate with the utmost secrecy. It directed that the papers and records "shall be sealed and deemed private and confidential and no one shall have access to them without further order of this court." It was as good as its word and listed the lawyer and the physician as "M. Anonymous" and "S. Anonymous."

WIRETAPPING LAWS AND DECISIONS

THE revelation that the New York City Transit Authority had wiretapped the offices of the Motormen's Benevolent Association during the recent subway strike instituted a searching inquiry into the legality of this procedure by New York's Joint Legislative Committee on Privacy of Communication. Assemblyman Anthony P. Savarese, Jr., the Committee's chairman, indicated that he was convinced that the Transit Authority had committed a crime in "bugging" the motormen's headquarters.

During a lull in his investigation, Mr. Savarese stated that "we are going to get legislation. I see that Governor Harriman wants it, and I see that Mayor Wagner wants it. I don't know what form it will take." He indicated that it would drastically limit police "bugging."

At the same time, the special committee on wiretapping and eavesdropping of the New York State Bar Association recommended that a court order should be obtained "where eavesdropping is to be maintained over any appreciable period of time."

In the midst of the subway strike, the Supreme Court, in a decision of far-reaching import, held that evidence obtained by the use of a state-authorized wiretap, operated solely

by local police officers for local reasons, was not admissible in a federal criminal trial. In *Benanti* v. *United States,* Chief Justice Warren reversed the lower courts and ordered a new trial for a defendant who had been convicted of transporting cans of alcohol without federal tax stamps. Benanti had been convicted upon evidence obtained by New York City police while tapping the telephone wires of a bar frequented by the defendant. However, on the same day that the Benanti decision was announced, the Court, in *Rathbun* v. *United States,* held that listening over an extension telephone with the consent of one party to the conversation is not an illegal wiretap and the "eavesdropper's" testimony may be admitted in a criminal prosecution of the other party.

TORT ACTION SURVIVES MARRIAGE

A NEW JERSEY court has just decided that a plaintiff who is suing the defendant for injuries sustained by her while riding as a passenger in his car may continue her suit even if she marries him after the commencement of the action. The court disapproved of the doctrine of identification which previously precluded tort actions between spouses. It maintained that the only rationale for the rule was that it might tend to prevent marital discord but that this reason was not applicable to this case. According to the judge, if the pending lawsuit did not prevent the parties from marrying each other, it could hardly be called a threat to domestic harmony.

JUDGE ATTACKS DEFINITION OF CRIMINAL INSANITY

A WESTCHESTER County Judge recently refused to dismiss a first-degree murder indictment against a former mental patient and, in the process, attacked the New York definition of criminal insanity. The district attorney had recommended a dismissal on the ground that the defendant was insane when he murdered his wife last summer after being released from a mental hospital. Judge Harold T. Garrity, holding that there was an issue of fact as to the defendant's sanity under the McNaughton rule, ordered that he stand trial.

However, he suggested that the McNaughton rule be scrapped in favor of that recommended by the Model Penal Code of the American Law Institute. Instead of classifying a criminal defendant as insane only if he can prove that he did not know the nature and quality of his act or that it was wrong, he would be held responsible for his acts only if he had "substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."

Judge Garrity said that he would

not "presume to attempt a substitute definition" but suggested that the State Legislature consider remedial legislation along the line of the Model Penal Code. In this connection, Governor Harriman recently appointed a committee of penologists, psychiatrists, and laymen to consider a change in the McNaughton rule.

NEW LAWS AGAINST OBSCENE LITERATURE URGED

BOTH in Albany and Washington, campaigns are under way to, as Representative John Dowdy of Texas recently stated, "put the fear of the law . . . into peddlers of smut and filth." Dowdy was disturbed by the fact that the Supreme Court had recently held that the Post Office could not bar certain material from the mails. He urged support for two bills he had introduced during the last session of Congress. One would permit publishers of obscene material to be prosecuted in the district where it is delivered instead of only where it is mailed. The other would stiffen the penalties for persons peddling obscene books and pamphlets to juveniles.

The New York State Legislature's Committee on Obscene Literature has been holding public sessions in Albany to determine whether further legislation is necessary in order to prevent the circulation of indecent literature. It will be interesting to see what state or national legislation is enacted in view of the Supreme Court's new definition of obscenity as material which appeals "to prurient interest."

BAR ASSOCIATIONS HELD NOT CHARITABLE

UNDER the Federal Estate Law, a deduction is permitted for bequests to public, charitable and religious organizations. Thus the executors of a will which bequeathed large sums to several bar associations took the position that these gifts entitled the estate to equivalent deductions. However, a federal judge pointed out that bar associations exist for the benefit of members of the legal profession, primarily as a lobbying mechanism, and that their basic character was not charitable, scientific, literary or educational. Hence, no deduction.

FORMER COMMUNIST NOT DEPORTED

THE Supreme Court has just ruled that an alien cannot be deported solely because he was a member of the Communist Party for one year when he worked in a Communist book store. In *Rowoldt* v. *Perfetto,* Justice Frankfurter, speaking for a bare majority of the court, held that this evidence was too insubstantial to support an order of deportation of a man who had resided in the United States since 1914. He inferred that the Internal Security Act, which was the au-

thority for the deportation order, was a severe statute which called for merciful application. The dissenting justices, led by Justice Harlan, felt that since the statute provided for deportation of aliens who were at the time of their entry into the United States or thereafter "members of or affiliated with . . . the Communist Party" there was no room for argument and defendant should be deported.