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THE PROGRESS OF THE LAW

NO DISHONORABLE DISCHARGES FOR PRE-INDUCTION ACTIVITIES

In a recent case, the United States Supreme Court held that an inductee could not be issued a discharge in any other form than honorable by the Secretary of the Army because of his pre-induction activities. In a per curiam opinion, the court asserted, quoting appropriate Army regulations, that "The purpose of a discharge certificate is to cause the separation of an individual from the military service and to specify the character of service rendered during the period covered by the discharge." In the cases before the Supreme Court, two servicemen had been discharged from the Army because certain pre-induction activities were deemed to render them undesirable security risks. However, there was no claim that their military service was anything but honorable. Therefore the Court reversed the District Court and Court of Appeals of the District of Columbia, both of which had held that the former was without jurisdiction to grant the relief requested by the ex-servicemen, and ordered the lower court to direct the Secretary of Army to issue honorable discharges to them.

COURT REORGANIZATION PLAN

Harrison Tweed, Chairman of the Temporary Commission on the Courts, which had recommended drastic changes in New York's court system, recently blamed certain "judges and other politicians" for his plan's defeat in the 1958 Legislature. This reorganization plan, known as the Tweed Plan, was the major project in the Commission's court reform program, and it would have simplified and modernized the court system which has not had a thorough overhauling for more than 100 years. It was approved by the Senate but was recently defeated by the Assembly.

Mr. Tweed stated that "the relationship between judges and politicians is very close and their combined influence in the Legislature is very great." He called on the Bar and the public to organize to carry on a campaign for court reform. As he put it "The cause of court reform is not dead. The public will neither forget nor forgive. It will hold accountable both major political parties and their representatives in the Legislature."

Among those criticized by Mr. Tweed were Governor Harriman and his counsel, Daniel Gutman, Carmine G. DeSapio, Speaker Oswald D. Hecht, most of the state's Supreme Court Justices and Surrogates, some Bar Associations and the League of Women Voters.

As reported in the *N. Y. Times*, Daniel Gutman, Governor Harriman's counsel, called Mr. Tweed's statement "in very poor taste". He stated that "for three years I have

been advising Mr. Tweed that his plan would undoubtedly meet opposition because he was giving in to pressure from his own party leaders. If anything, he should blame his own party for not supporting his final proposals."

Shortly after the Tweed criticism, Mr. DeSapio announced that Governor Harriman was in favor of having the state's top judges join in drafting a new plan to overhaul New York's Judicial System.

JUDGE CRITICIZES CHURCH SUIT

UNITED STATES District Judge Archie O. Dawson recently criticized litigants for dragging a religious matter through a civil court even though he decided to let a church lawsuit go to trial. He suggested that such litigants would be better off if they spent their time and money promoting the faith and he stressed his point by quoting from St. Paul's Epistle to the Corinthians. In his ruling, Judge Dawson refused to dismiss the suit brought to block a merger of the majority of Congregational Christian Churches and the Evangelical and Reformed Churches, which would be known as the United Church of Christ. The original complaint had been filed by a number of Congregational Christian Churches and ministers against the Evangelical and Reformed Church. The defendant moved to have the action dismissed on the ground that the Court did not have jurisdiction to try the case. Judge Dawson denied this motion but added the following postscript to his opinion. "The Court feels that it should not conclude this opinion without pointing out to the litigants that it is unfortunate that ministers and churchmen who proport to abide by christian principals should engage in this long and expensive litigation. It would seem to a Christian layman that if the ministers and churches involved in this litigation would use more Christian charity and understanding it would be possible for them as men of good will, actuated by high principles, to adjust their differences so that their time and money might be devoted to the promotion of Christianity rather than to the maintenance of acrimonious and expensive litigation."

It might be noted at this point that one of the most celebrated recent court cases involving churches is coming to an end with the signing of an order directing Rev. William Howard Melish to vacate the Rectory of the Protestant Episcopal Church of the Holy Trinity, in Brooklyn, within thirty days or face eviction.

CURB ON FIFTH AMENDMENT

THE United States Supreme Court by a five-to-four majority has just held that a defendant who takes the witness stand voluntarily waives any right to plead the Fifth Amendment during cross-examination in a civil

trial. Justice Frankfurter's opinion said that a defendant in a de-naturalization suit "could not take the stand to testify in her own behalf and also claim the right to be free from cross-examination on matters raised by her own testimony on direct examination." Justice Black dissented and called the ruling "Another decision by this Court eroding the Constitutional privilege against self-incrimination." The case involved a woman who claimed the privilege, during cross-examination, and was held in contempt by the lower court.

KWAJALEIN SUIT DISMISSED

THREE years ago the nine year old son of a Navy Lieutenant picked up a rusted 20-mm. shell on the beach of Kwajalein Island in the Central Pacific. The shell exploded, so severely injuring the boy's right hand that it had to be amputated. The boy's parents sued the United States under the Federal Tort Claims Act, charging that the Government had been negligent but the United States District Court ruled that the Government could not be held responsible for the accident.

Recently the Court of Appeals for the Second Circuit, in a 2-to-1 decision, upheld the lower court's ruling on the theory that when the accident occurred the United States stood, not as a sovereign in Kwajalein, but as a trustee under the United Nations. Because of this, the majority held that it had no responsibility under the Federal Tort Claims Act. Judge Clarence Galston, writing for the majority, pointed out that under the charter of the United Nations "The United States is designated as the administering authority of the trust territory." Therefore, Kwajalein has to be considered as a foreign country and the Federal Tort Claims Act did not apply.

In a strongly worded dissent, Judge J. Edward Lombard thought that, even though sovereignty lay elsewhere, the United States, by the act of accepting the trusteeship from the United Nations, assumed binding legal obligations thereby which would make the Federal Tort Claims Act applicable to the case in question.

CONTINGENT FEES

ON January 1, 1957, a new schedule of contingent fees went into effect in the First Department. (See Progress of the Law, NEW YORK LAW FORUM, September, 1956) The new rule, known as Rule 4, only pertains to actions for personal injuries or wrongful death. Any fees in excess of the percentages set forth in Rule 4 "shall constitute the exaction of unreasonable and unconscionable compensation."

Trial lawyers opposed Rule 4 from its inception and brought a proceeding to invalidate it in the Supreme Court, New York County, which held that the Appellate Division had no constitutional and statutory authori-

ty to determine contingent fees. The appeal from this decision was transferred to the Appellate Division, Third Department, in order to avoid having New York judges sitting in judgment on their own case. Recently this court upheld the lower court's decision and invalidated the schedules established by Rule 4. It is expected that this fee battle will be carried to the Court of Appeals in the near future.