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THE PROGRESS OF THE LAW

THE CASE OF ARNOLD SCHUSTER

ON November 11, 1958, the Court of Appeals, in a 4 to 3 opinion, held that a municipality is under a duty to exercise reasonable care for the protection of a person who has cooperated with it in the apprehension of a criminal. Arnold Schuster was responsible for the capture of Willie Sutton when he recognized the nationally known bank robber on a subway train in New York City. Three weeks later, after letters had been received by Schuster threatening his life, he was shot and killed near his home. His father, as the administrator of his son's estate, brought suit against the

City of New York on the theory that the City had failed to protect Schuster after Sutton's capture.

The Special Term dismissed the complaint on the ground that no such duty existed on the part of the City and the Appellate Division affirmed. The Court of Appeals, per Judge Van Voorhis, held that, since the municipality, through flyers, had called upon persons for information about Sutton, it was not acting in a passive manner and that "under such circumstances," as had been indicated in an earlier case, "we there said 'there exists a relation out of which arises a duty to go forward.'"

NEW COURT PLAN

THE Judicial Conference of the State of New York has just offered another plan for the modernization of the existing court system. This plan has been eagerly awaited since the reforms proposed by the Tweed Commission were defeated at the last session of the Legislature.

The new plan calls for the elimination of many local courts outside of New York City, including justices of the peace and police justices. In addition, it recommends for the same areas establishment of a County Court with a full-time judge who will be prohibited from the practice of law. In the Conference's words "we disapprove of a person practicing law and also sitting as a

judge . . . the dubious economics of a low-paid part-time judge for some few counties cannot justify continuance of the practice."

Both these ideas had been incorporated in the Tweed Commission's recommendations and proved anathema to up-state legislators whose supporters hold many of the posts that would be abolished. However, the Conference's plan is expected to find more support in the Legislature because it retains the Surrogate's Courts although transferring its jurisdiction in adoption cases to a new Family Court. The latter would replace the Domestic Relations Court in New York City and the Children's Court in other parts of the state.

LEGALIZATION OF GAMBLING

MAYOR Robert F. Wagner has appointed a special committee to study the possibility of legalizing off-track betting in the City of New York in lieu of a possible rise in the sales tax. The committee, headed by Robert W. Dowling will make an extensive study of the problem, but much criticism of the plan has already been voiced.

MARIE TORRE LOSES APPEAL

MARIE TORRE, a television columnist for the New York Herald-Tribune, refused, in a pre-trial examination in a breach of contract and libel action filed by Judy Garland against the Columbia Broadcasting System, to reveal the name of a CBS executive who had given her certain information about Miss Garland which appeared in Miss Torre's column on January 10, 1957. She was found in contempt of court by United States District Judge Sylvester J. Ryan who sentenced her to ten days in jail. She appealed to the United States Court of Appeals for the Second Circuit on the ground that the judge's order was a violation of her First Amendment rights. The Court of Appeals affirmed Judge Ryan's sentence.

On December 8, 1958, the United States Supreme Court refused to review Miss Torre's conviction without opinion. Only one Justice, William O. Douglas, voted to grant the writ of certiorari necessary to bring the matter before the court. In the Court of Appeals opinion, which was written by Justice Potter Stewart, now a member of the Supreme Court (who took no part in this hearing), it was stated that "Freedom of the press, hard won over the centuries by men of courage, is basic to a free society. But basic, too, are courts of justice, armed with the power to discover truth. The concept that it is the duty of a witness to testify in a court of law has roots as deep as does the guarantee of a free press."

ADOPTION LAW REVISION URGED

THE New York State Congress of Parents and Teachers has called for an overhauling of the state's adoption laws. Claiming that these laws had had no significant change in twenty years, the congress urged immediate revision.

A single court to handle all adoption procedures was urged with im-

proved investigation of prospective parents and the registration of all adopted children with the State Welfare Department.

This recommendation followed a summer-long investigation conducted by the Joint Legislative Committee on Matrimonial and Family Law which held hearings throughout the

state in July and August. This Committee, under the chairmanship of Assemblywoman Janet Hill Gordon,

is expected to hold further hearings before the Legislature reconvenes next February.

WIFE'S TESTIMONY BANNED

THE Supreme Court has just reaffirmed the time-honored rule that a wife may not testify against her husband, even voluntarily. Mr. Justice Black, writing for a unanimous Court in a Mann Act prosecution of James C. Hawkins, said that the prohibition was designed to "foster family peace."

The government had wanted to use the testimony of Hawkins' wife in view of her desire to testify against her husband. Justice Black indicated a reluctance to change so

broad a rule in the context of an individual case. He indicated that any needed change would be better made by Congress or by a general revision of Federal court rules by the Supreme Court.

Justice Potter Stewart, in a concurring opinion, stated that he personally would like to permit a spouse to testify against the other, whether voluntarily or not. However, he agreed that the present case was not an appropriate one in which to reach this conclusion.

BAUMES LAW REVISION URGED

HARRIS B. STEINBERG, a New York attorney, recommended on November 21, 1958 that the Baumes Law which requires more severe penalties for second, third and fourth offenders, be revised. Mr. Steinberg, speaking to the members of the Penal Law and Criminal Procedure Committee of the State Bar Association in Albany, said that the law

was not clear in felony interpretations, particularly in connection with crimes committed in other states. "What may constitute a felony in New York State does not bear the same classification in the laws of other states," he stated. "By the same token, a felony out-of-state may not be so considered here."

ALABAMA SCHOOL LAW UPHELD

ON November 24, 1958, the Supreme Court upheld Alabama's school placement law. This act, similar to those passed by many southern states since the 1954 Supreme Court decision declaring pub-

lic school segregation unconstitutional, directs school boards to consider a number of factors in assigning children to schools. Among these are mental attitude, psychological qualifications and "the maintenance

or severance of established social and psychological relationships with other pupils and with teachers."

The Court affirmed a lower court ruling that the statute was not unconstitutional on its face. A three-judge district court said that the act was capable of fair application and

should not be struck down unless applied discriminatorily. "We must presume," the lower court said, "that it will be administered . . . without regard to race or color. If not, in some future proceeding it is possible that it may be declared unconstitutional in its applications."

WORLD COURT

LITTLE has been written about the work of the International Court of Justice which sits in the Peace Palace at the Hague. For example, the Court has just finished a case involving the right of Sweden to keep under control a Dutch girl for whom a guardian was appointed in the Netherlands. It is now considering a case entitled "The Right of Passage over Indian Territory," which concerns Goa, the Portuguese territory on the Indian subcontinent, over which a dispute has raged since 1954. These two cases suggest the range of subjects coming before the Court which is the principal judicial organ of the United Nations.

The stated membership of the Court is fifteen with judges chosen to represent the principal legal systems of the world. The court's official languages are French and English, but the use of any other language can be authorized by the court. There are thirty-one countries, including the United States, which have filed declarations giving the Court jurisdiction in matters affecting them. Such declarations bear the reservation that they apply only to states undertaking the same

obligations. These obligations give the Court jurisdiction to interpret treaties, settle international law questions, determine breaches of international obligations and assess reparations.

The Court has jurisdiction to handle any disagreements between two states that may decide to submit an issue to the tribunal, even if it is not covered by an advance declaration of jurisdiction. There are also in existence more than 200 international agreements that give the court power to settle disputes by such means as appointing an arbitrator.

Contested cases are considered by the Court on written briefs and then public hearings are held. Decisions are reached at private sessions by a majority of the judges. If a member of the Court is from a country which has a dispute pending before the tribunal, he continues to sit but the other party may name an additional judge. If neither party has a national on the Court, each may pick an extra judge.

There is no appeal but states may ask for a revision of the judgment if new facts which bear on the dis-

pute are discovered. Decisions are binding upon the disputing countries.

The United States has filed two complaints with the Court against the Soviet Union. The first concerned a Russian fighter attack on a

B-29 over Japan on October 7, 1952 while the second dealt with the treatment of a United States Air Force crew in Hungary in 1954. The Soviet Union refused to confer jurisdiction on the Court and neither case was heard.