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UNITED STATES ATTORNEYS

BULLETIN

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Vol. 10 March 9, 1962 No. 5

MONTHLY TOTALS

Whatever comparative standard is used, whether that of the previous month, or the similar period of the previous fiscal year, or any fiscal year since the backlog drive was begun, the present status of the caseload is most discouraging. Since December 31, 1960, the aggregate of pending cases and matters has risen in ten of the thirteen months, and the cumulative rise has reached 16.9 per cent, or 8,180 items more than were pending on December 31, 1960. In the last 13 months alone, triable criminal cases pending have increased 19 per cent and civil cases, excluding tax lien, have increased 27.5 per cent. Triable criminal cases are over 10 per cent higher than they were at the outset of the backlog drive, eight years ago, and civil cases, excluding tax lien are the highest they have been since May 31, 1956.

The reporting system was designed to give United States Attorneys a method of checking on their caseload, and of pinpointing those cases or matters which are delinquent. Apparently, the reporting system is not being utilized to its fullest extent. A periodic review of the workload by United States Attorneys would disclose many cases and matters which could be closed out with a small amount of effort. The less important cases and matters are the items which clog the workload for long periods--the more important items receive close attention until their disposition. United States Attorneys are urged to study their lists of pending cases and matters with a view to clearing out as many of the older items as possible.

The following analysis shows the number of items pending in each category as compared with the total for the previous month:

	December 31, 1961	January 31, 1962	
Triable Criminal	7,808	8,218	/ 410
Civil Cases Inc. Civil Less Tax Lien & Cond.	15,294	15,416	/ 122
Total	23,102	23,634	/ 532
All Criminal	9,377	9,807	/ 430
Civil Cases Inc. Civil Tax & Cond. Less Tax Lien	18,235	18,379	/ 144
Criminal Matters	12,089	12,955	/ 866
Civil Matters	14,510	15,361	/ 851
Total Cases & Matters	54,211	56,502	/ 2,291

The breakdown below shows the pending caseload totals on the same date in fiscal 1961 and 1962. It will be noted that while there has been an increase in the number of filings, there has been a greater decrease in the number of terminations. It will also be seen that in the short space of 7 months, the caseload has increased by 3,524 cases, or 12.20 per cent.

	First 7 Mos. F.Y. 1961	First 7 Mos. F.Y. 1962	Increase or Decrease Number	%
Filed				
Criminal	17,394	17,443	/ 49	/ 0.28
Civil	13,610	14,210	/ 600	/ 4.41
Total	31,004	31,653	/ 649	/ 2.09
Terminated				
Criminal	16,539	16,059	- 480	- 2.90
Civil	12,412	12,189	- 223	- 1.80
Total	28,951	28,248	- 703	- 2.43
Pending				
Criminal	8,458	9,807	/ 1,349	/ 15.95
Civil	20,419	22,594	/ 2,175	/ 10.65
Total	28,877	32,401	/ 3,524	/ 12.20

The high point of the present fiscal year for filings and terminations was October, 1960. Since that time they have declined. During January, however, filings increased over the previous month.

	Filed			Terminated		
	Crim.	Civ.	Total	Crim.	Civ.	Total
July	1,819	1,886	3,705	1,732	1,500	3,232
Aug.	2,163	2,126	4,289	1,629	1,595	3,224
Sept.	2,910	1,989	4,899	2,263	1,650	3,913
Oct.	2,715	2,259	4,974	2,709	1,951	4,660
Nov.	2,806	2,002	4,808	2,702	1,800	4,502
Dec.	2,429	1,821	4,250	2,766	1,841	4,607
Jan.	2,601	2,127	4,728	2,258	1,852	4,110

Last month a single collection of some $5. million in one district raised the month's collections to almost $11. million and brought aggregate collections for the first half of the fiscal year to 63.7 per cent above the same period of the prior year. During January, collections resumed their usual pattern, and $3,275,577 was collected. This brings the total for the first seven months of fiscal 1962 to $29,079,000. This represents an increase of $7,024,434, or 31.8 per cent over the $22,054,566 collected in the similar period of fiscal 1961.

During January $7,139,206 was saved in 86 suits in which the government as defendant was sued for $9,596,498. 34 of them involving $2,512,262 were closed by compromises amounting to $813,288 and 27 of them

involving $5,383,339 were closed by judgments amounting to $1,644,004. The remaining 25 suits involving $1,700,897 were won by the government. The total saved for the first seven months of the current fiscal year aggregated $34,341,439 and is an increase of $18,547,469 saved in the first seven months of fiscal year 1961.

DISTRICTS IN CURRENT STATUS

As of January 31, 1962, the districts meeting the standards of currency were:

CASES

Criminal

Ala., M.	Ga., S.	Mich., E.	N.C., M.	Tex., N.
Ala., S.	Idaho	Minn.	N.D.	Tex., W.
Alaska	Ill., N.	Miss., S.	Ohio, N.	Utah
Ariz.	Ill., E.	Mo., E.	Ohio, S.	Vt.
Ark., E.	Ill., S.	Mo., W.	Okla., N.	Va., E.
Ark., W.	Ind., N.	Mont.	Okla., E.	Va., W.
Calif., S.	Ind., S.	Neb.	Okla., W.	Wash., E.
Colo.	Iowa, N.	Nev.	Ore.	Wash., W.
Conn.	Iowa, S.	N.H.	Pa., E.	W.Va., N.
Del.	Kan.	N.J.	Pa., W.	Wis., E.
Dist.of Col.	Ky., E.	N.M.	P.R.	Wis., W.
Fla., N.	Ky., W.	N.Y., N.	R.I.	Wyo.
Fla., S.	La., W.	N.Y., S.	S.D.	C.Z.
Ga., N.	Maine	N.Y., W.	Tenn., E.	Guam
Ga., M.	Mass.	N.C., E.		

CASES

Civil

Ala., N.	Ind., S.	Neb.	Ore.	Utah
Ala., M.	Iowa, N.	N.H.	Pa., M.	Vt.
Ala., S.	Iowa, S.	N.M.	Pa., W.	Va., E.
Ark., E.	Kan.	N.Y., E.	P.R.	Va., W.
Ark., W.	Ky., E.	N.Y., W.	R.I.	Wash., E.
Calif., N.	Ky., W.	N.C., M.	S.C., W.	Wash., W.
Colo.	La., W.	N.C., W.	S.D.	W.Va., N.
Dist.of Col.	Maine	N.D.	Tenn., W.	W.Va., S.
Fla., N.	Mass.	Ohio, N.	Tex., N.	Wyo.
Fla., S.	Mich., E.	Okla., N.	Tex., E.	C.Z.
Ga., M.	Miss., N.	Okla., E.	Tex., S.	Guam
Hawaii	Mo., E.	Okla., W.	Tex., W.	V.I.
Idaho	Mo., W.			

MATTERS

Criminal

Ala., N.	Hawaii	Md.	N.D.	Utah
Ala., M.	Idaho	Mich., W.	Ohio, S.	Vt.
Ala., S.	Ill., E.	Miss., N.	Okla., N.	Va., E.
Ariz.	Ill., S.	Miss., S.	Okla., E.	Va., W.
Ark., E.	Ind., N.	Mo., E.	Okla., W.	Wash., W.
Ark., W.	Ind., S.	Mo., W.	Pa., W.	W.Va., N.
Calif., N.	Iowa, N.	Mont.	P.R.	W.Va., S.
Calif., S.	Iowa., S.	Nev.	S.D.	Wis., E.
Colo.	Kan.	N.J.	Tenn., E.	Wis., W.
Del.	Ky., E.	N.M.	Tenn., W.	Wyo.
Fla., N.	Ky., W.	N.Y., W.	Tex., E.	C.Z.
Ga., M.	La., W.	N.C., M.	Tex., W.	Guam
Ga., S.	Maine			

MATTERS

Civil

Ala., N.	Ill., N.	Minn.	N.C., M.	Tex., E.
Ala., M.	Ill., S.	Miss., N.	N.C., W.	Tex., S.
Ala., S.	Ind., N.	Miss., S.	N.D.	Tex., W.
Ariz.	Ind., S.	Mo., E.	Ohio, N.	Utah
Ark., E.	Iowa, N.	Mont.	Okla., N.	Vt.
Ark., W.	Iowa, S.	Neb.	Okla., E.	Va., E.
Calif., N.	Ky., E.	Nev.	Okla., W.	Va., W.
Calif., S.	Ky., W.	N.H.	Pa., E.	Wash., E.
Conn.	La., W.	N.J.	Pa., W.	W.Va., N.
Dist.of Col.	Maine	N.Y., E.	P.R.	Wis., W.
Fla., N.	Md.	N.Y., S.	R.I.	C.Z.
Ga., S.	Mass.	N.Y., W.	Tenn., E.	Guam
Hawaii	Mich., E.	N.C., E.	Tex., N.	V.I.
Idaho	Mich., W.			

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ANTITRUST DIVISION

Assistant Attorney General Lee Loevinger

SHERMAN ACT

Price Fixing; Judgment for Government in Drug Case. United States v. Utah Pharmaceutical Association. (D. Utah). On January 31, 1962, Judge Christenson entered a final judgment in the above-entitled case. The Government's complaint was filed on March 7, 1961; the matter was tried on November 21 and 22, 1961 and the Court's opinion was filed on January 3, 1962.

The complaint charged the Association and its pharmacist members with conspiring to fix the price of prescription drugs. The price-fixing was accomplished through the adoption and use of a prescription pricing schedule.

The judgment entered by the Court enjoins defendant from continuing to carry out the combination and conspiracy found in this case, and specifically enjoins defendant Association from fixing prices or other terms or conditions for the sale of prescription drugs, and from formulating or adopting or advocating or compelling the use of, any prescription pricing schedule by any pharmacist or any other person. The Association is further enjoined from policing prices for the sale of prescription drugs or the professional fees to be charged by any pharmacist in connection with the sale of prescription drugs.

The Association is required to dissolve its committee on Prescription Pricing, Wages and Hours and to furnish a copy of the judgment to each of its present and future members.

The judgment provides for a hearing upon petition by any agency of the United States or the State of Utah for an order enabling the defendant Association to negotiate and enter into a contract for the sale of prescription drugs where the price of such drugs will be paid by the petitioning agency. The petitioning agency may produce witnesses and other evidence in support of its petition and such petition shall be based on the grounds of undue hardships to the petitioning agency. Plaintiff and the defendant shall have the right to be heard and permission by the court to enter into any such contract shall not be considered an adjudication as to the legality or illegality of such contract under the antitrust laws nor shall it be deemed to estop plaintiff from attacking the legality of any such contract under the antitrust laws generally.

Staff: Lyle L. Jones, Don H. Banks and Gilbert Pavlovsky. (Antitrust Division)

Restrictive Practices - Air Conditioning Company. United States v. York Corporation of Delaware. (M.D. Pa.). On February 9, 1962, a civil antitrust complaint was filed against York Corporation of Delaware charging that illegally allocated territories and customers to the more than 550 members of its nationwide distribution system in violation of Section 1 of the Sherman Act.

The York Corporation, whose headquarters are in York, Pennsylvania, is a wholly owned Borg-Warner Corporation subsidiary, which markets air conditioning and refrigeration equipment made by Borg-Warner. York's 1960 volume of business was in excess of $87,000,000.

The complaint alleges that beginning some time in 1958, York required its distributors to agree to contracts limiting both territories and customers, and forbidding the distributors to compete with York in selling to the Government or for export or marine use. According to the complaint, the effect of the restrictive agreements has been to eliminate competition between York and the independent businesses which comprise its distribution system; and York customers, especially the United States, have been denied the benefits of a free competitive market.

The complaint prays that York be required to revise its distributor contracts eliminating territorial or customer limitations.

Staff: Joseph F. Tubridy and Jack L. Lipson (Antitrust Division).

CLAYTON ACT

Acquisition of Paper Company Challenged. United States v. Kimberly-Clark Corporation. (N.D. California). On February 15, 1962, the United States filed a complaint against Kimberly-Clark Corporation, alleging that its recent acquisition of Blake, Moffitt and Towne violated Section 7 of the Clayton Act.

Kimberly-Clark, whose headquarters are in Neenah, Wisconsin, is the fourth largest paper producer in the United States with 1960 sales of $407,758,696. It is an integrated producer of pulp and various kinds of paper. It is the world's largest producer of sanitary wadding products, Kleenex being one of its well known trade names; the leading United States manufacturer of publication type coated book paper, one of the five largest manufacturers of all types of book paper; and a major producer of cigarette, condenser and carbonizing paper.

Blake, Moffitt and Towne, prior to the acquisition, was the leading independent paper wholesaler in the West. It is headquartered in San Francisco and conducts branch operations through 36 warehouses located in California, Oregon, Washington, Idaho, Arizona and New Mexico. BMT's sales for the year 1960 exceeded $65,000.000. It purchased over $55,000,000 worth of paper and paper products from 33 different paper manufacturers and suppliers.

The complaint alleges that this vertical acquisition of BMT by Kimberly-Clark may substantially lessen competition among the suppliers of BMT, because their access to said company's large marketing facilities in the Western part of the United States is at the sufferance of Kimberly-Clark. It is also alleged that competitors of Kimberly-Clark will be encouraged to merge with and acquire other wholesalers and purchasers of paper to protect their own paper sales, with resulting further concentration in the manufacture and distribution of paper. The complaint alleges, in addition, that other paper wholesalers who heretofore competed with BMT may be foreclosed from access to a substantial source of supply, and be put at a competitive disadvantage.

The complaint requests that defendant Kimberly-Clark be required to divest itself of all assets formerly held by BMT which were acquired by Kimberly-Clark.

Staff: Philip L. Roache, Jr., Jack L. Lipson and Roy C. Cook. (Antitrust Division).

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CIVIL DIVISION

Assistant Attorney General William H. Orrick, Jr.

COURT OF APPEALS

ADMIRALTY

United States Held to Have Provided Reasonably Fit Vessel. William Morrell, et al. v. United States (C.A. 9, December 26, 1961). Libellants, shoreside repairmen, were injured while working on a vessel owned by the United States. The vessel was in the custody of a contractor for the purpose of making repairs. The Court of Appeals affirmed the district court's decision holding the United States not liable. It rejected appellant's arguments that (1) a shipowner must not only make available all devices required to make the vessel seaworthy, but has the further duty to see that shoreside repairmen do not disregard their use; and (2) that a seaworthy lifeboat may be made instantaneously unseaworthy by the improper use of a seaworthy safety device by a fellow worker. The Court held that although the owner's duty to provide a seaworthy vessel is absolute, "the standard is not perfection, but reasonable fitness."

Staff: Keith Ferguson (Civil Division).

ALIEN PROPERTY

Action Brought Under §9(a) of Trading With Enemy Act Properly Dismissed Upon Appellant's Failure to Produce Documents. Edward Von Der Heydt, et al. v. Kennedy (C.A. D.C., February 1, 1962). Appellant sought to recover property which had been seized in 1951 by the United States under the Trading with the Enemy Act. The Government defended on the ground that appellant was enemy-tainted. The district court ordered appellant to produce certain records which the Government alleged would show the taint. Upon appellant's failure to so produce, the district court dismissed the complaint. The Court of Appeals affirmed holding that it had been shown that the documents (1) existed, (2) were material and (3) were in the possession, custody and control of appellant.

Staff: Bruno A. Ristau (Civil Division).

FALSE CLAIMS ACT

Res Judicata; Prior Action on Defaulted Notes Precludes Subsequent Action Under False Claims Act for Fraudulent Procurement of Loans Which Were Subject of Notes. United States v. Paul L. Temple (C.A. 7, February 16, 1962). In this action for damages and forfeitures under the False Claims Act, 31 U.S.C. 231, it was alleged that defendant had fraudulently procured loans from the Smaller War Plants Corporation. Prior to this action, R.F.C. had taken a judgment against defendant for non-payment of the notes executed for the loans so procured and, although no cause of action based upon the fraud was alleged, it was clear that the fraud had then been discovered. One of the defenses to the False Claims action was that it was barred by the judgment in the prior action on the notes. The Court

of Appeals reversed the district court's determination in favor of the Government, holding that the Government had a single cause of action, for which two remedies, i.e., an action on the notes and an action under the False Claims Act, were available, and that the judgment in the former merged the latter. The Court reasoned that if the two actions had been brought simultaneously, the Government would have been required to elect its remedy, and that to allow a circumvention of that election by bringing separate, consecutive actions, would undermine the policies upon which the rules of res judicata are based.

Staff: Alan S. Rosenthal; Stanley M. Kolber (Civil Division)

FEDERAL TORT CLAIMS ACT

Section 7(b) of Federal Employees Compensation Act Bars Third-party Claim Against United States As Joint-tortfeasor for Contribution. Drake v. Treadwell Construction Company v. United States (C.A. 3, February 15, 1962). Drake, an employee of the United States, sued Treadwell for damages for injuries resulting from the explosion of a steel expansion tank which Treadwell had manufactured for the United States. Treadwell then filed a third party claim against the United States for indemnity or contribution. The trial court found that both Treadwell and the United States were responsible for Drake's injury and therefore awarded judgment to Treadwell against the United States for one-half the judgment Treadwell had to pay Drake. The Court of Appeals reversed. The Court held that Section 7(b) of the Federal Employees Compensation Act, 5 U.S.C. 757(b) would bar a tort suit against the United States on behalf of an employee covered by the Act and that the same principle applied to a third-party action seeking contribution from the Government on the ground that the Government was a joint tortfeasor.

Treadwell also asserted a claim of Tucker Act jurisdiction based upon an implied contract of indemnity with the Government. The Court rejected this claim noting that the claim was for more than $10,000 and under the Tucker Act could be brought only in the Court of Claims.

Staff: Anthony L. Mondello (Civil Division).

INTERSTATE COMMERCE ACT

District Court Has Jurisdiction to Review Order of ICC Denying Shipper's Claim for Reparations. General Motors v. United States, et al. (C.A. 6, February 17, 1961). General Motors filed a complaint before the ICC, asserting that certain railroads charged inapplicable and unlawful freight rates for the carriage of mixed carloads of appliances. After protracted proceedings, the ICC denied General Motor's claim for reparations, holding that the railroads' construction of their tariffs was correct. General Motors then brought an action against the Commission (and the United States as a statutory defendant), asking that the Commission's order be set aside as unlawful and unsupported by substantial evidence. The district court ruled that, since General Motors had elected initially to bring its claim before the Commission instead of before a district court, Section 9 of the Interstate Commerce Act (49 U.S.C. 9) precluded review of any kind

in the district court of the Interstate Commerce Commission's order. It ruled alternatively that there was a rational basis for the Commissioner's decision, so that it should be sustained on the merits.

On appeal, the United States took the position that the district court erred in ruling that there was no review for substantial evidence or errors of law. Although the ICC had urged the lack of jurisdiction before the district court, after the filing of the Government's brief on appeal, it conceded that there was jurisdiction. The Court of Appeals agreed, and held that the district court erred in ruling that there was no judicial review in cases in which the shipper had elected initially to seek reparations before the Commission. On the merits, the Court of Appeals affirmed the district court's judgment upholding the order of the ICC.

Staff: Morton Hollander; David L. Rose (Civil Division)

LONGSHOREMENS' AND HARBOR WORKERS' ACT

Deputy Commissioner Must Make Findings Where He Modifies Compensation Award Retroactively. Jarka Corporation v. Hughes (C.A. 2, February 6, 1962). Claimant, by the terms of the original compensation award, under the Longshoremens' Act, received payments for temporary total disability from November 2, 1948 to May 21, 1951, and temporary partial disability from May 22, 1951 to April 21, 1952. Pursuant to claimant's request for a modification, the Deputy Commissioner modified the prior award retroactively and found permanent total disability from date of injury. The district court rejected the employer's contention that the latter award was not supported by substantial evidence.

The Court of Appeals, without reaching the substantial evidence question, reversed and remanded. It held that where the Deputy Commissioner modifies a prior award retroactively, indicating that he believes that the prior determination of condition had been based on a mistake of fact, he must make appropriate findings showing in what respect the first order was mistaken.

Staff: Morton Hollander; Edward Berlin (Civil Division)

NSLI

Secondary Beneficiary of Gratuitious National Life Insurance Not Barred from Recovery by Failure of Primary Beneficiary to File Timely Claim. Philippine National Bank, et al. v. United States (C.A. D.C., February 15, 1962). Under 38 U.S.C. (1952 ed.) 802(d) (Now omitted) benefits are payable to a widow under a gratuitious National Service Life Insurance policy but if the widow is not "entitled thereto" the child of the insured is made the secondary beneficiary of the policy. Jose T. Tawaran, a United States soldier, died in action in the Philippines in 1942. His widow failed to file a timely claim for benefits. The Veterans Administration, however, originally allowed a claim on behalf of the infant son born in 1941. It then terminated the award holding that the contingency on which the son's claim accrued was the death of his father and as the claim had not been made on the son's behalf

until more than six years after the father's death, his claim was barred. The Bank, which was guardian for the boy, after repaying the benefits received on his behalf, then brought this action for the entire $5,000 of insurance. The Court of Appeals reversed the district court's dismissal of the action. It held that the fact that the widow had once been entitled to benefits did not bar the child from becoming entitled to the benefits once the widow's rights lapsed. Although the suit on behalf of the child was brought more than six years after the father died--the contingency on which the claim was founded--the Court held that the suit could be maintained because the statute provided that infants "shall have three years from the date of the removal of the disability to bring suit." 38 U.S.C. 784(b).

Staff: Peter C. Charuhas (Civil Division).

OFFICIAL IMMUNITY

Committee Investigator Immune From Suit for Damages for Recommending Issuance of Subpoena. Wheeldin, et al. v. Wheeler (C.A. 9, January 30, 1962). Appellants failed to appear before the House Un-american Activities Committee in response to a subpoena and were therefore convicted of contempt. They then brought this action for damages against the committee investigator who had recommended that they be subpoened. They argued that (1) the sole purpose of the subpoenas was to expose them to public scorn; and (2) the subpoenas had not been validly issued because they had been signed in blank and, consequently, the investigator had subjected himself to personal liability. The Court of Appeals affirmed the district court's dismissal of the action. It held that appellants should have raised the issue of the invalidity of the subpoena under the doctrine of Barr v. Matteo, 360 U.S. 544, and the investigator was immune from suit for carrying out his official investigative powers.

Staff: United States Attorney Francis Whelan; Assistant United States Attorneys Donald A. Fareed and Clark E. Knicely (S.D. Cal.)

DISTRICT COURT

SOVEREIGN IMMUNITY

State Department Suggestion of Recognition of Sovereign Immunity of Cuban Government Necessitates Court Renouncing Jurisdiction Over Property Belonging to Cuba. State of Florida, ex rel. National Institute of Agrarian Reform v. Honorable Hal P. Dekle, etc. (District Court of Appeal of Florida, February 6, 1962). A Florida state court ordered execution sale of real estate on December 1 and 8, 1961, belonging to the Cuban Government, in aid of a judgment previously rendered. The sale was set for January 9, 1962. On December 20, 1961, the United States Attorney for the Southern District of Florida filed a "suggestion" of the interest of the United States in the matter, which informed the court that the Department of State recognized the sovereign immunity from execution of the property ordered to be sold and further suggested that the court should cease the further exercise of jurisdiction over the property. The court, however, declined to issue an order releasing the property from execution. Cuba then instituted an

original action in the instant court seeking a writ of prohibition or mandamus directing the lower court to cease exercising jurisdiction over the property.

The District Court of Appeal, after staying the sale of the property, granted the writ. It held that (1) the United States had followed the correct procedure in filing its suggestion; (2) the suggestion was timely; (3) "once the Department of State urges sovereign immunity as to jurisdiction over the person or property of a foreign nation, a court should cease to assert jurisdiction." The Court further held that the procedure followed by Cuba in filing a suggestion which sought relief in the nature of prohibition and mandamus had been approved in similar situations.

Staff: United States Attorney Edward F. Boardman; Assistant United States Attorney Alfred E. Sapp (S.D. Fla.)

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CIVIL RIGHTS DIVISION

Assistant Attorney General Burke Marshall

Voting and Elections; Civil Rights Acts of 1957 and 1960. United States v. Estelle Wilder, Registrar of Voters of Jackson Parish, Louisiana, et al. (W.D. Louisiana). On February 21, 1962, the Department of Justice filed suit in the United States District Court for the Western District of Louisiana under the Civil Rights Acts of 1957 and 1960. Named as defendants are the Registrar of Voters of Jackson Parish, Louisiana; the State of Louisiana; the Citizens Council of Jackson Parish; and six individual members of this Citizens Council.

The complaint alleges that the defendants have deprived Negroes, on account of their race, of the right to register to vote (1) by purging in October 1956 from the voter registration rolls 953 of the 1,122 Negro voters and only 13 of the 5,450 white voters, and (2) by applying, during the period from 1956 to the present, to Negro applicants seeking to register or re-register different and more stringent registration standards than those applied to white applicants. The prayer, in addition to seeking a general injunction and a finding of a pattern and practice of discrimination, asks the Court to order the defendants to register those Negroes that were purged and other qualified Negroes who have applied unsuccessfully for registration.

Staff: United States Attorney T. Fitzhugh Wilson; John Doar, Frank M. Dunbaugh (Civil Rights Division).

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CRIMINAL DIVISION

Assistant Attorney General Herbert J. Miller, Jr.

FEDERAL HAZARDOUS SUBSTANCES LABELING ACT

Seizure of Dangerous Product for Mislabeling; Failure to Include Warning and Safety Statements in Label. United States v. 25 Cans of Yager's Soldering Salts (D. N.J.). In the first case under the Federal Hazardous Substances Labeling Act, which became fully effective on February 1, 1962, the United States Marshal in New Jersey on February 13, 1962, seized 25 one pound cans of Yager's Soldering Salts, a compound containing 88% zinc chloride. This product is extremely irritating and corrosive and, in fact, caused the death of a six year old child who had consumed only one mouthful. The parents had not been warned as to the product's lethal effect, since it had failed to contain the required labeling, including the common or usual name of the hazardous substances; the signal word "Danger"; an affirmative statement of the principal hazards involved; the precautionary measures describing the action to be followed or avoided in connection with the product; instructions for handling and storage; and the statement, "Keep Out Of The Reach Of Children," or an equivalent. The United States Attorney immediately filed the libel in this case upon receipt of the necessary information from the Food and Drug Administration, with the result that seizure of the offending product, with attendant desirable publicity, was promptly made. Steps have been and are being taken to remove immediately all stocks of this mislabeled product, in packages suitable for household use, from the market.

Staff: United States Attorney David M. Satz, Jr. (D. N. J.).

MOTION TO VACATE SENTENCE
28 U.S.C. 2255

Granting of Ex Parte Hearing Instead of Adversary Hearing When Motions and Files Do Not Raise Substantial Issue of Fact Discretionary With Court. United States v. Martin Joseph McNicholas (C.A. 4, January 5, 1962). Appellant entered a plea of guilty in the district court on four counts of bank robbery under 18 U.S.C. 2113 and was sentenced to twenty years' imprisonment on March 28, 1958. On August 24, 1960 appellant filed a Motion to Vacate Sentence under 28 U.S.C. 2255, contending that he was mentally imcompetent at the time he entered his plea in that he was suffering withdrawal symptoms from the influence of narcotics. In response to Government interrogatories, appellant stated that he concealed the narcotics while in prison prior to his arraignment and orally administered them to himself. The sentencing court's records disclosed that appellant had been represented by experienced Court-appointed counsel, had been given a psychiatric examination to determine his mental competence and found to be fully responsible and not a user of drugs and that before acceptance of his plea by the Court he had stated that it was made of his own free will with knowledge that he might receive a substantial prison sentence. Following an ex parte hearing the district court denied

appellant's motion. Thereupon appellant appealed claiming that under 28 U.S.C. 2255 he was entitled to a full adversary hearing on his motion and not merely the ex parte hearing at which he was neither present nor represented and of which he received no notice. In affirming the District Court's order, the Court of Appeals relied upon the very language of 28 U.S.C. 2255 to the effect that "the motions and the records of the case conclusively show that the prisoner is entitled to no relief" thereby obviating the hearing requirement. Describing appellant's bare allegations of incompetency as "incredible", the Fourth Circuit emphasized that appellant was entitled to no hearing of any kind because the motions and files of the case did not raise any substantial or material issue of fact.

The District Court's disposition of the motion in this case represents an interesting contrast to that of the court in David Holston Roddy v. United States, 296 F. 2d 9, C.A. 10, decided November 3, 1961 and reported in United States Attorneys' Bulletin December 15, 1961, page 727. In Roddy the Court granted the statutory hearing although the motion was equally unsubstantiated and the records of the sentencing court like those in this case contained psychiatric reports which clearly established defendant's competence at the time of his plea. However, the pure adversary nature of the hearing was diluted when the court permitted the Government to use interrogatories in adducing the opinion of the sentencing judge regarding defendant's competence. In McNicholas the court avoided the problem of granting a less than completely adversary hearing under 28 U.S.C. 2255 by simply conducting an ex parte hearing and determining that on the basis of the entire record the statutory hearing was not warranted. Finally, it is noteworthy that in the McNicholas ex parte hearing interrogatories were used only with appellant; whereas in the Roddy adversary hearing interrogatories were used with a witness.

Staff: United States Attorney Joseph D. Tydings; Assistant United States Attorney Daniel F. McMullen, Jr. (D. Md.).

ARREST

Probable Cause. Sammie Jackson, Jr. v. United States (C.A. D.C., February 8, 1962). Appellant was convicted on two counts of housebreaking and grand larceny under 22 D.C. Code 1801, 2201, and 2202. He appealed on the ground that the police lacked probable cause to arrest him without a warrant and that his motion to suppress certain evidence seized by the arresting officers when he was arrested should have been granted. The circumstances leading to appellant's arrest are as follows: Police, in recovering a stolen pistol from a pawnshop, were given the name of the individual, one Keyes, who pawned the pistol. The pistol was one of a number of items reported as stolen in a housebreaking two weeks earlier. Upon interviewing Keyes at his apartment, the police learned from a friend of Keyes who was present at the interview and from Keyes that appellant had given Keyes the pistol. The friend also indicated that appellant was a "bad one" and had been "locked up" for carrying a gun. At police request, the friend telephoned appellant and ascertained he was at home. Keyes, but not the friend, accompanied the police to appellant's apartment. En route the police read to Keyes a list of the items stolen in the housebreaking, and upon describing a

rhinestone bracelet they were told by Keyes that he had seen a bracelet corresponding to that description in a hall closet at appellant's apartment. The police, still accompanied by Keyes, met appellant at his door and arrested him.

The Court of Appeals held that although no one factor of information constituted probable cause, when all the information was considered together it was sufficient. The practical necessities of pursuit of appellant before he might be warned and disappear were held to justify the belief that the circumstances compelled prompt action without an arrest warrant.

Staff: United States Attorney David C. Acheson; Assistant United States Attorneys William H. Collins, Jr., Nathan J. Paulson, Thomas H. O'Malley and Arnold T. Aikens, (Dist. of Col.).

* * *

IMMIGRATION AND NATURALIZATION SERVICE

Commissioner Raymond F. Farrell

IMMIGRATION

Petition for Nonquota Status; Judicial Review of Denial; Petitioners' Ability to Care for Beneficiary. Montgomery et al. v. Ffrench (C.A. 8, February 9, 1962.) Applicants, husband and wife, sought judicial review of the administrative denial of their petition to accord a nonquota status in the issuance of an immigrant visa to their adopted (by proxy) Korean national daughter, a resident of Korea. The denial was because they had failed to establish that they will properly care for the eligible orphan beneficiary if she is admitted to the United States. Their appeal is from the district court's grant of the appellee's motion for summary judgment.

In the Court of Appeals they contended that they had been denied due process since they were given no fair hearing administratively on the merits of their petition; that its denial was arbitrary and capricious; that they had a right to bring such an eligible orphan to the United States under the law.

The Court of Appeals cited countless leading cases which hold that the admission of an alien to this country is a privilege and not a right and that whatever the procedure authorized by Congress is, as far as an alien applying for admission is concerned, it is due process.

In this case the Court said that the statute (8 U.S.C. 1155(b)) provides only for an "investigation of the facts". No hearing is required nor is one intended. No "right" has been established by or in behalf of such a beneficiary of a petition as in this case. The statute established merely a privilege which can be exercised only with the approval of the Attorney General or his designate.

The statute also specifically provides that petitioners (appellants) "shall establish to the satisfaction of the Attorney General that (they) will care for such eligible orphan properly if (she) is admitted to the United States . . .". Their petition was properly denied when they failed to so establish.

AFFIRMED.

LANDS DIVISION

Assistant Attorney General Ramsey Clark

Public Domain; Department of Interior Did Not Retain Jurisdiction to Adjudicate Validity of Mining Claim Where United States Condemned Land on Which Alleged Mining Claim Is Located. Humboldt Placer Mining Co., et al. v. Best (C.A. 9, August 18, 1961). On February 19, 1962, the Supreme Court granted the Government's petition for writ of certiorari in this case and it will be heard at the next term of court. See 9 U.S. Attys' Bul. No. 19, pp. 579-580.

Condemnation; Jurisdiction to Determine Recipient of Award; Injunction. George A. Hero, Jr., et al. v. City of New Orleans (La. Ct. App., November 6, 1961). On February 19, 1962, the Supreme Court of Louisiana agreed to hear this case. See 10 U.S. Attys' Bul. No. 3, pp. 96-97.

Mineral Lease Applications; Authority of Secretary of Interior to Require by Regulation That Application Must Cover at Least 640 Acres; Construction of "Open for Leasing"; Authority of Secretary to Cancel Lease Erroneously Issued. Boesche v. Stewart L. Udall, Secretary of the Interior (C.A. D.C.). On February 21, 1962, the Court of Appeals granted rehearing in this case, vacated the judgment and ordered that the rehearing be held en banc. See 9 U.S. Attys' Bul. No. 24, p. 703. Undoubtedly the reason is the conflict with the Tenth Circuit decision in Pan American Petroleum Corporation v. Pierson, 9 U.S. Attys' Bul. No. 3, pp. 90-91.

Condemnation; Wherry Housing Projects; Finding Based on Expert Opinion Without Record Support Is Clearly Erroneous; Scope of District Review of Report of Rule 71A(h) Commissioners; Authority of District Court to Make Its Own Findings, Rejection of "Going Concern" Value; Rejection of Reproduction Cost Evidence. United States v. Certain Interests in Cumberland County, North Carolina, 296 F. 2d 264 (C.A. 4, 1961). A Wherry Housing condemnation case was referred to commissioners under Rule 71A(h), F.R.Civ.P. They reported an award of $1,790,970.63 based primarily on a capitalization of income process. After securing a supplemental report, the district court held that the commission was clearly erroneous in using a 30-year economic life as testified to by the Government witness. The court adopted a 35-year economic life thereby increasing the award to $2,707,220.63.

The Court of Appeals affirmed. It first discussed some of the evidence concerning economic life and said "we are unable to say that the court's final judgment, increasing the award to the owners to $2,707,220.63 is clearly erroneous." The opinion stated that "The Government contends that the District Court had no authority to substitute its own findings for those of the Commission." It answered "where the factfinder bases a finding on opinion testimony of an expert witness whose stated reasons for his opinion are patently unsound and without support in the record, the reviewing court should reject, as clearly erroneous, the finding based on such testimony." It then quoted its earlier Twin City case that "We review the District Judge, not the Commissioners * * *" and then held that the court was justified in modifying the findings to conform to the evidence.

The former owners had also appealed. The Court first rejected their claim that economic life should be extended to 40 years on the ground that the district court's finding was within the range of the evidence. It held that to add "going concern" value as the owners claimed would produce duplication since the capitalization process assumes valuation of the property as a going concern. As to reproduction evidence, the Court held that the instructions to the commission were correct that before such evidence could be considered there must be a showing that a reasonably prudent man would reproduce the property at the date of taking.

The Department believes that this decision is wrong. This case and United States v. Tampa Bay Garden Apartments, Inc., 9 U.S.Attys' Bul. No. 21, pp. 623-624, represent applications of a unique principle as to Rule 71A(h) commissioners whereby the district court is authorized to make its own judgment as to value from the cold record and substitute it for that of the commission which saw the witness. The Department's position will be elaborated on in a special letter on this subject to be sent soon. The Solicitor General determined, because of deficiencies of the record in the case, that certiorari would not be sought on this subject at this time.

Staff: Roger P. Marquis (Lands Division).

Condemnation; Inter-State Highway Program; Interlocutory Appeals; Injunction Against State Court Proceedings; Consideration of Merits on Argument of Application for Stay. Eden Memorial Park Association v. United States (C.A. 9, February 15, 1962). The appropriate officials of the State of California sought to condemn cemetery lands for use as part of the Inter-State Highway System under the Federal-Aid Highways Act, 23 U.S.C. 1001. The state court held that authority had not been given for such condemnation. Proceedings were then brought by the United States in the federal court as provided in the Highway Act, 23 U.S.C. 107. A declaration of taking was filed and immediate possession was sought. The landowner answered, challenging the right to take primarily on the ground that, being unable to condemn the property, the state officials were not authorized to secure its condemnation by the United States and to receive it back after condemnation for execution of the project as provided by the Act. The court granted immediate possession and denied motions designed to stay the federal court proceedings.

In the meantime, the landowners had filed suit in the state court against the state officials alleging lack of authority and seeking an injunction against execution of the project. The state court denied a preliminary injunction, but enjoined construction of permanent facilities upon the land while permitting construction of temporary facilities. Thereupon, the United States moved in the condemnation proceeding to enjoin the landowners and their attorneys from prosecuting the state court action and to take affirmative action to secure vacation of the temporary restraining order. The district court granted the relief sought.

An interlocutory appeal was taken under 28 U.S.C. 1292(a) and a stay was sought of the condemnation proceedings pending disposition of

the appeal. The application for a stay was orally argued, at which time both parties asked the Court to consider the matter on the merits without further briefing and argument. The Court did so after having entered a limited stay pending consideration. It reversed the injunction order and directed vacation because it was not warranted, without passing upon the validity of the taking.

The Court of Appeals first noted the district court might properly enjoin state court proceedings to prevent impairment of any rights obtained or to be obtained in the condemnation proceedings. No such impairment was found to exist, however. Contrary to the district court, the Court of Appeals read the state court action as not contesting the ownership of the United States, also pointing out that, in any event, not being a party, it would not be bound by any decree seeking to do so. The Court also held that no attempt was being made to interfere with possession of the United States and that any action of the state officials to execute the federal purpose resulted, not from the condemnation proceedings, but from agreements made under the Highway Act. This condemnation proceeding was not the place to litigate any such contractual rights.

The Court of Appeals refused, however, to decide the underlying merits of the condemnation proceeding as requested by the parties. It pointed out that ordinarily validity of the taking may be tested only upon appeal from the judgment disposing of the whole case. It said:

> * * * Where, however, such a proceeding is before us to review an interlocutory order, we may review the validity of the taking if that question is ripe for review and if such review is necessary to dispose of the interlocutory appeal. But here we have already determined, for independently sufficient reasons, that the interlocutory order staying and enjoining state proceedings must be reversed.
>
> It is true that a present review as to the validity of the taking might expedite termination of the entire controversy in both its state and federal aspects. This would happen, however, only if such review resulted in an adjudication that the taking was invalid, or that it was valid and, by its own force, required the state to accept the land and construct a highway thereon. We have already held that the latter question cannot be determined in this condemnation proceeding.

The Court concluded that nothing would be gained by perfecting title in the United States in the condemnation proceedings until the State's ability to accept the conveyance and execute the project had been determined.

Staff: Roger P. Marquis (Lands Division).

Condemnation; Res Judicata; Omission of Parties; Effect of Joinder of County for Tax Purposes. United States v. Chatham (C.A. 4, February 1, 1962). As is not infrequent in the Southern Appalachian Mountains, two claims of record title, one the Heads, the other the McAdens, were disclosed by modern

survey to overlap. In 1935, the United States brought proceedings to condemn almost 3,000 acres of land in Cherokee, Jackson and Macon Counties, North Carolina, including that of the McAdens. The Heads were not joined as parties but Macon County was. Subsequent to the condemnation, Macon County taxed the lands in the name of the Heads, there was default and a tax sale to defendants who cut timber from the tract. The United States then brought this action to quiet title and for other relief. The district court granted summary judgment on the ground that Macon County had been a party to the condemnation proceedings, was estopped to claim the land adversely to the United States and so also were its grantees.

The Court of Appeals reversed. It gave alternative reasons. First, it said if the Heads were the owners after the condemnation proceedings, no reason appears why Macon County could not continue to tax the lands. Second, it said that estoppel rests on equitable grounds and does not extinguish the right, so that even if equity would prohibit Macon County from asserting its title, the equities of its grantees are different. This was so, the Court said, because examination of the record by them would not have disclosed the interest of the United States.

Staff: United States Attorney William Medford (W.D. N.C.)

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TAX DIVISION

Assistant Attorney General Louis F. Oberdorfer

CRIMINAL TAX MATTERS
Appellate Court Decision

Expert Testimony of Psychiatrists; Necessity of Applying Responsibility Test; If Defendant Is Responsible Under Applicable Responsibility Test, Degrees of Mental Illness Are Not Relevant Except in Connection With Considerations of Mercy After Conviction. United States v. Cain (C.A. 7, January 25, 1962). In a trial without a jury, defendant Alan Cain and his wife were each convicted of attempted evasion of income taxes, sentenced to prison for one year, and fined $2,000. The Court of Appeals affirmed.

Alan Cain is a practicing lawyer, and his wife handled his records and other matters pertaining to his law practice. At the trial he attempted, through testimony of medical witnesses, to show lack of wilfulness because of mental disorder. In rebuttal the Government presented testimony of lawyers and judges who said Cain was an intelligent and resourceful practicing lawyer. (See earlier discussion of this case at pages 223-225, Volume 9, No. 7, United States Attorneys Bulletin, April 7, 1961).

The Court of Appeals quoted the responsibility test used by the trial court, as follows:

> If a person can distinguish between right and wrong, or if he is aware of what he is doing and has the mental capacity to choose between a right and a wrong course of action, it is my view that the law requires that he be held responsible for his acts.

The Court of Appeals then held:

> We find no error in the test and agree with the trial court that the criminal law recognizes no gradations of responsibility for crime. For the purposes of conviction there is no twilight zone between abnormality and insanity. Holloway v. United States, D.C. Cir., 148 F. 2d 665, 667, (1945). Only when guilt is settled may considerations of mercy make degrees of mental illness relevant.

The case is important for its holding that medical testimony may be considered in determining whether a defendant had the requisite mental responsibility to commit a crime, but may not be further considered, once responsibility is established, on the question of whether the defendant acted wilfully. Defendants argued, in effect, that the testimony of the medical witnesses should be considered on the wilfulness issue, without attempting to apply any particular responsibility test. The Government

argued that the jury (in this case the trial Court), having applied the correct responsibility test and found defendant responsible, could not then lower its sights and consider the same psychiatric evidence in deciding whether defendant had the requisite wilfulness. The Government pointed out that the Supreme Court and the Court of Appeals for the District of Columbia, have held that the defense is not entitled to an instruction that mental deficiency not amounting to legal irresponsibility is a relevant factor in determining whether a defendant is guilty of murder in the first or second degree. Fisher v. United States, 328 U. S. 463; Stewart v. United States, 275 F. 2d 617, 623 (C.A. D.C. 1960), reversed on other grounds, 366 U. S. 1; Moore v. United States, 277 F. 2d 684, 686 (C.A. D.C. 1960). The Government argued that there would be even less reason for the defense to be entitled to an instruction that such psychiatric evidence is relevant when only intent or wilfulness, and no degrees of crime, are involved. Otherwise in practically any criminal case the defense could move into the province of the jury and present opinions of psychiatrists as to the effect of extremely minor mental disorders on wilfulness, without even attempting to apply the applicable responsibility test. This would be so even though the psychiatrists did not have all the facts nor the benefit of the Court's instructions as to the law regarding wilfulness. In this connection the Government conceded that there is dictum in Rhodes v. United States, 282 F. 2d 59 (C.A. 4, 1960), certiorari denied, 364 U. S. 912, indicating that even though the defense of insanity is not advanced, the defendant can still introduce psychiatric testimony on the wilfulness issue. However, the Government urged that the dictum in Rhodes should not be followed.

Although the Court of Appeals did not specifically discuss the Rhodes dictum it disagreed with it in effect since the implication in Rhodes is that there could be psychiatric opinion on intent alone, whereas in Cain the Court held a responsibility test is required. (Compare United States v. Benus, 196 F. Supp. 601, D.C. E.D. Pa., 1961, a non-jury trial with similar issues, where the trial Court took essentially the same position except that it applied the Third Circuit Currens responsibility test rather than the McNaghten right-wrong plus irresistible impulse test used by the Court in Cain.)

In view of the Supreme Court decision in Fisher, supra, and the opinion of the Court of Appeals in Cain, it is clear that the defense in a jury trial would not be entitled (and United States Attorneys should object) to an instruction that mental disorder which does not amount to legal irresponsibility under the existing responsibility test is a relevant factor to be considered on whether defendant has the requisite intent or wilfulness. Thus, in appropriate circumstances United States Attorneys should object to opinions of psychiatrists when presented on the intent or wilfulness issue alone (as distinguished from the issue of responsibility). However, United States Attorneys should be careful about attempting to exclude psychiatric testimony completely since "some evidence" of insanity places the burden on the Government of proving sanity beyond a reasonable doubt (United States v. Currens, supra, 290 F. 2d 751, 761, and cases cited).

Staff: United States Attorney James B. Brennan, Assistant United States Attorneys Matthew Corry and Phillip L. Padden (E.D. Wis.); Harlow M. Huckabee (Tax Division).

CIVIL TAX MATTERS
District Court Decisions

Injunctions--Suit to Enjoin Collection of Taxes; Jurisdiction. Louis F. Iraci and Angelo J. Paliotto v. Thomas E. Scanlon, Director, (E.D. N.Y.) Section 7421(a), Internal Revenue Code of 1954 states "Except as provided in Sections 6212(a) and (c) [not applicable here], no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." Injunctive relief against assessment and collection of taxes will not ordinarily be granted on principles of equity, but the courts have held that, in spite of this provision, injunctive relief should not be denied if the tax is illegal and extraordinary circumstances are present.

Plaintiffs were officers of the DuBois Concrete Products Corporation, which owed withholding and employment taxes from April 1, 1953, to December 31, 1954, but plaintiffs were not "in charge of the duty of preparing employment tax, withholding and other employment taxes on behalf of DuBois . . .". On February 21, 1957, the defendant District Director made a 100% penalty assessment against plaintiffs. Plaintiffs further claim that between October 1952 and December 1954, DuBois was the prime contractor for Hudson Contracting Corporation (Hudson); that during this period Hudson was in complete control of the management of DuBois; that Hudson actually withheld and retained the moneys upon which the claimed tax liability against plaintiffs arise, and that litigation is presently pending and undetermined in the State court concerning the moneys so claimed to be withheld and retained by Hudson.

The Court cited Botta v. Scanlon, 1961, 288 F. 2d 504 in which the Court of Appeals, reviewing the language of Section 6672, stated that not every officer or employee is subject to the penalty . . . . The only person liable for such penalty is the person required to collect, truthfully account for, or pay over any tax. The Court noted here that the defendant District Director asserted penalty liability against plaintiffs under Section 2707(a) and (d) of the Internal Revenue Code of 1939. In the opinion of the Court the real question presented was whether Section 7421(a), Internal Revenue Code of 1954, prohibited the enjoining of the collection of any penalty, and on plaintiff's allegations that they were not the officers required to collect and pay over the taxes the Court found that the taxes would appear illegal and special circumstances were present. The matter of appeal is under consideration.

Staff: United States Attorney Joseph P. Hoey (E.D. N.Y.)

Lien for Taxes--Levy Against Deposit of Nontaxpayer in Joint Bank Account; Presumption of Joint Tenancy. Bienvenida Riollano and Candia Garcia v. District Director of Internal Revenue (S.D. N.Y. Sept. 8, 1961) CCH 62-1 U.S.T.C. Par. 9264. This is a motion for summary judgment to recover a sum of money turned over to the Government by Chase Manhattan Bank, pursuant to a notice of levy served upon the bank. The money was deposited in a joint account under the names of Bienvenida Riollano, the nontaxpayer, and Candia Garcia, the taxpayer. Levy was made to effect

collection of income taxes assessed against Candia Garcia and her husband Henry.

It was plaintiff's contention that Riollano was and is the sole owner of the moneys deposited in the joint account, and she being a nontaxpayer, the turning over of the funds by the bank to the Government was illegal. The Government denied this contention. The New York Banking Law, Section 134, subd. 3, provides that a joint bank account such as the one at issue raises a presumption of joint tenancy. Marrow v. Moskowitz, 255 N. Y. 219, 174 N. E. 460 (1931). The Court held that the presumption may be rebutted by a showing through competent evidence that in the opening of the joint account something other than a joint tenancy was intended by the parties.

The Court further held that despite the mere fact that Riollano may have been the sole source of the deposit, it would not rebut the presumption of a joint tenancy. The Court in denying this motion for summary judgment indicated that the moving party bears the burden of showing the absence of any genuine issue of fact requiring a trial and that when there is the slightest doubt as to the facts, the motion for summary judgment should be denied, noting that the Government had not had an opportunity to take the depositions of the plaintiffs and exercise its right of cross-examination, which is vitally important in a case where all the facts are solely within the knowledge of the moving party.

Staff: United States Attorney Robert M. Morgenthau; Assistant United States Attorney Lola S. Lea; and Frank J. Violanti (Tax Division)

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