

1965

Cases Noted

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Erratum

PAGE 347, SECOND CASE, LINE 1: change "council" to "counsel."

CASES NOTED

INTERNAL REVENUE — INCOME TAXES — LITIGATION EXPENSES — *Tellier v. Commissioner*, 342 F.2d 690 (2d Cir. 1965) — Plaintiff claimed a deduction in his income tax of over \$22,000 as expenditures incurred in his defense in criminal proceedings. The court held that legal expenses for the unsuccessful defense of a criminal action are deductible since: nothing in 26 U.S.C. § 162(a) (1954) suggests disallowing such a deduction (nor was this the intent of the legislature); there is no provision which expressly prohibits the deduction (26 U.S.C. § 262); the expense is ordinary and necessary because it arose out of the conduct of the business and is a required outlay; and there is no sharply defined public policy discouraging the hiring of counsel and incurring other legal expenses in defending against a criminal charge.

CONSTITUTIONAL LAW — HABEAS CORPUS — WAIVER OF COUNCIL — *United States v. Fay*, 242 F. Supp. 273 (S.D.N.Y. 1965). — Petitioner, a sixteen year old of limited education, claimed that he was never fully advised of his right to counsel and that he did not intelligently and consciously waive that right. The court upheld these contentions, although the state's evidence consisted of a printed form containing the question, "Do you require counsel?," to which petitioner had written "No." The court held that this evidence was insufficient since petitioner was not advised that the state would provide counsel if he were indigent. Therefore he was not fully and adequately informed of his rights.

CIVIL RIGHTS — DISCRIMINATION AS TO PUBLIC ACCOMMODATIONS — *Pinkney v. Meloy*, 241 F. Supp. 943 (N.D. Fla. 1965). — Plaintiffs, all Negroes, brought suit under the Civil Rights Act of 1964 against a Florida barber for his refusal to render barbering services to plaintiffs as required by section 201 of the Act. Defendant claimed, *inter alia*, that he lacked the proficiency and skill necessary to cut plaintiffs' hair because it was different in growth and texture from that of his regular white customers. The court refused to consider this a valid defense, emphasizing that since defendant operated his shop in the basement of a hotel, he was subject to the public accommodations provisions of the Act.

ARMED SERVICES — CIVIL LIABILITIES FOR INJURIES TO PERSONNEL — *Bailey v. De Quevedo*, 241 F. Supp. 335 (E.D. Pa. 1965). — Plaintiff, a member of the Armed Forces, claimed that during his treatment in a United States Army hospital, a non-dissolving suture was left in his abdominal cavity by defendant, also a member of the Armed Forces. The court held that plaintiff failed to state a claim upon which relief could be granted because "the relationship between members of the Armed Services is peculiar to that calling and . . . a superior is immune from civil action arising out of the discharge of [his] duties."

CRIMINAL LAW — TRIAL — RIGHTS AND DUTIES OF PROSECUTING ATTORNEY — *McMullen v. Maxwell*, 3 Ohio St. 2d 160, 209 N.E.2d 449 (1965). — Plaintiff contended that he had been deprived of a fair trial for murder because the prosecutor knew that ballistics tests showed that the bullets were probably not fired from the gun in question but failed to inform the defense of this fact or introduce evidence of it at trial. The court held that while a prosecutor is normally justified in ignoring evidence favorable to the defense, a disclosure of the ballistics test results here was essential to affording plaintiff a fair trial, since it would probably have given the jury reasonable doubt concerning plaintiff's guilt.

ELECTIONS — RIGHT OF SUFFRAGE AND REGULATION THEREOF — *Van Berkel v. Power*, 16 N.Y.2d 37, 261 N.Y.S.2d 876 (1965) — Plaintiff, a naturalized citizen, sought to have certain provisions of the state election law and Article 2, § 1 of the New York Constitution declared null and void insofar as they imposed on naturalized citizens a 90-day waiting period from the date of naturalization to the date on which they could vote in an election. The court held that the 90-day waiting-period provision was valid since plaintiff could overcome the presumption of validity in favor of legislative enactments by merely showing the lack of a reasonable basis for the provision. The court found the provision reasonable in that it gave the new citizen time "to consider his new responsibility and how to exercise it." Further, the court held that there was no constitutional conflict since a state may impose voting restrictions which are not arbitrary or unduly oppressive.