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## Domestic Relations--Desertion--Necessary Intent to Abandon

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F.2d 646 (10th Cir. 1956). The district court's decision was commented upon in 58 W. VA. L. REV. 187 (1956).

M. J. P.

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CRIMINAL LAW—INSANE PERSONS—COMPETENCY TO STAND TRIAL.—Petitioner was indicted for felonies in violation of federal statutes by a grand jury of the western district of Missouri. Petitioner signed a waiver of trial in the western district of Missouri and was transferred to the eastern division of the northern district of Ohio. After a hearing pursuant to 18 U.S.C. §§ 4244-4248 (1949), during which it was determined that the petitioner's mental condition was such that it was doubtful that he could have understood the significance of the waiver, the district court of Ohio remanded the case to the district court for the western district of Missouri for disposition. That court transferred petitioner to the custody of the State of Ohio as being mentally incompetent. While in Ohio, the examining psychiatrist found that petitioner had recovered, and the Ohio authorities released him. Petitioner was rearrested, examined again by court appointed psychiatrists, and a hearing was held at which there were conflicting reports by psychiatrists. The district court for the western district of Missouri found that petitioner was mentally incompetent to stand trial and ordered him committed to the custody of the attorney general. The court of appeals for the eighth circuit affirmed, one judge dissenting. Certiorari granted. *Held*, that the assertion of the authority is pursuant to a valid statute which is within the congressional power under the necessary and proper clause of U. S. CONST. art. I, § 8, cl. 18, and that the statute deals with mental disorders which are permanent as well as temporary in nature. *Greenwood v. United States*, 76 Sup. Ct. 410 (1956).

For a discussion of the problems involved in application of 18 U.S.C. §§ 4244-4248, see Comment, 58 W. VA. L. REV. 94 (1955).

H. R. A., Jr.

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DOMESTIC RELATIONS—DESERTION—NECESSARY INTENT TO ABANDON.—P, as committee for W, insane wife of D, sues for separate maintenance and support of W. W left D and approximately four months later entered a medical center for the mentally disturbed. As to justification of W's action, the evidence is conflicting. The

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commissioner to whom the cause was referred found for *D* on the basis that *W*'s leaving *D* was unjustified. The trial chancellor entered a decree affirming the findings of the commissioner, which decree is appealed. *Held*, that the commissioner's and the trial chancellor's findings of fact that *W* deserted *D* without justification and that *W* was sane at the time she did so are warranted by the evidence and are not clearly wrong or against the preponderance of the evidence, and therefore, the decree of the trial chancellor is affirmed. *Snyder v. Lane*, 89 S.E.2d 607 (W. Va. 1955).

In an earlier consideration of this case on the pleadings only, the court held that insanity of the deserted party cannot be asserted by the wrongdoer as a ground for demurrer to a bill of complaint by a committee on behalf of the wronged party for separate maintenance on the ground that the commissioner is not a proper party. *Snyder v. Lane*, 135 W. Va. 887, 65 S.E.2d 483 (1951).

The principal case is noteworthy since few cases have passed on the effect of insanity on the necessary intent to abandon in the case of desertion. The principal case shows clearly that in a suit for separate maintenance, based on W. VA. CODE c. 48, art. 2, § 29 (Michie 1955), a showing that the plaintiff was the deserter and was sane at the time of the abandonment is a sufficient defense, even though the plaintiff may later become insane. In *Fisher v. Fisher*, 54 W. Va. 146, 46 S.E. 118 (1903), the court held that insanity of the defendant *after* the passage of the requisite desertion period was no defense to a bill of complaint for a divorce. As has been pointed out, the *Fisher* case clearly intimates that, had the insanity occurred *before* the passage of the requisite desertion period, the insanity would be a defense, because of the impossibility of entertaining the requisite intent. Colson, *West Virginia Divorce Law*, 43 W. VA. L.Q. 203, 208 (1937). In the principal case, the court indicates that if the plaintiff had been insane at the time of the separation, the fact that the plaintiff left the defendant would have been no defense, for the plaintiff in such case could not have the requisite intent to abandon.

H. R. A., Jr.

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NEGLIGENCE—LIABILITY OF AUTOMOBILE DRIVER INJURING OTHERS AFTER SUDDEN PHYSICAL OR MENTAL INCAPACITATION.—X, driving his automobile, suddenly lost control thereof, and the automobile ran onto a sidewalk and hit P. At the time of the accident, or within