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Abstracts of Recent Cases

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ABSTRACTS OF RECENT CASES

CONSTITUTIONAL LAW—WAIVER OF COUNSEL—CAPACITY TO WAIVE—Petitioner, a 17 year old of limited education and mental capacity, without the aid of counsel, pleaded guilty to a charge of murder and was sentenced to prison for life. Twelve years later he filed a delayed motion for a new trial, asserting the constitutional invalidity of his conviction and sentence because he did not have the assistance of counsel at the time of his plea and sentence. The motion was denied by the circuit court, and the supreme court of Michigan affirmed. Moore v. Michigan, 344 Mich. 137, 73 N.W.2d 274 (1955). Petitioner then applied to the United States Supreme Court for a writ of certiorari, which was granted. Held, that as a matter of due process, the petitioner, unless he intelligently waives his constitutional right, was entitled to representation by counsel, since the extent of the availability of various defenses and the proceedings to determine the degree of murder raised difficult questions beyond his capacity to comprehend; and that he did not intelligently and understandingly waive his right to counsel. Moore v. Michigan, 91 S. Ct. 191 (1957).

The delay of twelve years presented no difficulty to the Court in sustaining petitioner's motion for a new trial. The test applied, and properly so, was whether the petitioner's waiver of counsel was intelligently and understandingly made. If not, there was no waiver. The defendant in such a case, however, once he has established his constitutional right to the benefit of counsel, must carry the burden of proving nonwaiver by the preponderance of the evidence that he did not intelligently and understandingly waive his right to counsel. Thus, it would seem that a delay would only affect the defendant by hindering him in the production of proof in order for him to sustain the burden of showing nonwaiver. For further discussion and cases see Annot., 3 A.L.R.2d 1003 (1949); 149 A.L.R. 1403 (1944); 93 L. ed. 140 (1950). See also Quicksall v. Michigan, 339 U.S. 660 (1949).

EVIDENCE—GENERAL REPUTATION OF DISORDERLY HOUSE TO ESTABLISH KNOWLEDGE ON PART OF DEFENDANT HELD ADMISSIBLE.—D, lessor of a hotel, was found guilty of contempt for the violation of an injunctive order restraining him from knowingly permitting his hotel to be used as a common and public nuisance. The hotel
was ordered padlocked and D was sentenced to six months in the county jail. D appealed the conviction to the Supreme Court of Appeals of West Virginia. Held, that the evidence was insufficient to justify the finding that D was guilty of contempt, but for the purpose of establishing "knowledge" on part of D evidence of the general reputation of the hotel was properly admitted. State v. Taft, 100 S.E.2d 161 (W. Va. 1957).

The admission in evidence of the general reputation of a disorderly house to show knowledge of such is generally permissible in jurisdictions having statutes making it unlawful to "knowingly" permit one's premises to be used as a common and public nuisance. Kahan v. Wallander, 83 N.Y.S.2d 570, 193 Misc. 190 (1948). For further discussion and cases see 17 Am. Jur., Disorderly Houses §§ 18-21, 35 (1957); 6 Wigmore, Evidence § 1789 (1940); 20 Am. Jur., Evidence § 462 (1940).

Property—Joint Tenancy—Language Intending to Create Held Sufficient.—P instituted proceedings for partition of real estate conveyed to his wife and himself by two separate deeds. One deed granted real estate to the parties "for and during their natural lives as joint tenants with remainder in fee to the survivor". The other granted real estate to them "as joint tenants with the right of survivorship". Circuit court held that the parties, being husband and wife, took an estate by the entirety in the property and as such it is not susceptible to partition. P appealed to the Supreme Court of West Virginia. Held, that common law estates by entireties have been abolished. The deeds created joint tenancies in the grantees, vesting each with an undivided one-half interest in the property conveyed, subject to the survivorship rights of each other. Partition of the real estate conveyed is compellable. Wartenburg v. Wartenburg, 100 S.E.2d 562 (W. Va. 1957).

In so holding the court has applied W. Va. Code c. 1., art. 36, § 19 (Michie 1955), and indicated that the language in a conveyance stating "as joint tenants with the right of survivorship" is a sufficient expression of intention in the conveying instrument to create a joint tenancy, thereby relaxing somewhat the need for stricter and more complete expression of such intention before a joint tenancy can be created. For a full discussion see McNeely
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For further text and cases indicating language sufficient to create joint tenancies see Annot., 161 A.L.R. 457 (1946); 85 A.L.R. 282 (1933).

WRONGFUL DEATH AWARD—ADOPTED CHILDREN NOT ENTITLED TO SHARE IN AWARD FOR WRONGFUL DEATH OF NATURAL FATHER.—Decedent left a widow and four children, two by his first marriage. The children of the first marriage had been adopted by the first wife's present husband. The Illinois wrongful death statute provides that the wrongful death award shall be distributed on the basis of dependency to the widow and the next of kin, in the proportion determined by the court. Held, that the children of the first marriage, since they were not dependent upon the decedent for their support, were not entitled to share in the distribution of the wrongful death award. Rust v. Holland, 146 N.E.2d 82 (Ill. 1957).

Under the rule pronounced by the court it would be entirely possible that children of a deceased person, who had reached majority and were no longer directly dependent upon the deceased for future support, even in the absence of other children dependent upon the deceased, might be precluded from sharing in the wrongful death award. It is well to note, however, that the next of kin, although not entitled to share in the wrongful death award, may still share in the estate of the deceased in case of intestacy under the statutes of descent and distribution. For a complete discussion of distribution of wrongful death award see Annot., 112 A.L.R. 30 (1938); 14 A.L.R. 532 (1921); 16 Am. Jur., Death, §§ 247-251 (1938).