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Criminal Law—Venue

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would be unnatural and could only lead to increased premiums for policy holders. The dissent found that the hospital services were actually provided for *ultimately* by the common law of negligence and not by the Workmen's Compensation Statute, and that the clear meaning of the exclusion clause showed that the intent of the parties was to relieve the insurer from liability *only* when the Compensation Law was the ultimate source of liability. The dissent was also of the opinion that the majority had ignored the rule that uncertain words in an insurance policy are to be construed most strongly against the insurer.

A recent Michigan case has reached a similar result where the policy excluded from coverage persons to whom "benefits are payable" under any workmen's compensation law.[67]

V. Criminal Law

During the course of its last session, the Court was confronted with various appeals in the field of criminal law, which ran the gamut from jurisdiction over the subject matter to the post-trial relief of writ of error *coram nobis*. Several of the decisions rendered are noteworthy for their clarifying effect on certain obscure areas of the criminal law, while others are important because they serve to establish a new and positive stand by the Court on questions previously considered well settled. Unfortunately, however, the Court, in some of its decisions, has succeeded in settling the appeals without deciding in any helpful manner the issues which the appeals had framed.

Venue

The case of *Murtagh v. Leibowitz*[1] occupies a high position in the field of clarifying decisions. Under the common law it was required, in general, that all offenses should be inquired into, as well as tried, in the county in which they were committed.[2] A defect developed, in that if the alleged act was committed partly in one county and partly in another, *neither* county had jurisdiction.[3] The legislature has now provided, however, by §134 of the Code of Criminal Procedure that "When a crime is committed partly in one county and partly in another, or the acts or effects

67. *Bonney v. Citizen's Mut. Auto Ins. Co.*, 333 Mich. 436, 53 N. W. 2d 321 (1952).

1. 303 N. Y. 311, 101 N. E. 2d 753 (1951).

2. *People v. Mitchell*, 168 N. Y. 604, 61 N. E. 182 (1901).

3. See *People v. Vario*, 165 Misc. 842, 2 N. Y. S. 2d 611 (Co. Ct. 1938).

thereof, constituting or requisite to the consummation of the offense, the jurisdiction is in either county." In the instant case, an information had been filed in the County Court of Kings County, charging the petitioner, the Commissioner of Investigation for the City of New York, with the crimes of neglect and omission of duty.[4] The petitioner was required by law to make an investigation into the police department. It was alleged that he made such investigation in Kings County and failed to report the results thereof. The petitioner, contending that no part of the alleged crimes had occurred in Kings County, sought a writ of prohibition to restrain the County Judge from assuming further jurisdiction of the matter. The Appellate Division denied the writ and rendered the following interpretation of §134 of the Code of Criminal Procedure: If, in order to convict a defendant, the People must prove not only a criminal act in one county, but also an innocent or lawful act committed in another, the venue may be laid in either county.[5] The Court of Appeals, in an opinion by Judge Desmond, unanimously reversed the lower courts, contending that the purpose and meaning of §134 are plain from its title: "When a crime is committed partly in one county and partly in another." In other words, if a crime is to come under this section, it must be divisible into parts. The innocent acts of the petitioner performed in Kings County were not parts of the crime charged in the information, and are not within the contemplation of the statute.

The reason becomes evident when the alleged crime of omission is analyzed. The omission was the failure to perform a required duty. This duty had to be performed in New York County. The petitioner could fail to perform his duty only in that county. The affirmative acts performed in Kings County by petitioner were part of his legal duties in the investigation and do not constitute a crime in themselves, and an act of commission is no part of the crime of omission. The decision adds new light to §134.

Written Information

The Court was very exact in the handling of the issues in the *Murtagh* case, and the decision is solid enough to qualify as good hornbook law. However, a case involving the requirement of a written information in misdemeanor cases was indecisively "settled" by a 3-1-3 decision, so that what vague law there was on the point in issue has now become more obscure. That point was, what is the jurisdictional significance of the lack of a written information

4. N. Y. Penal Law §§ 1841, 1857.

5. 278 App. Div. 512 at 514, 105 N. Y. S. 2d 752 at 754 (1951).