

Bund's Camp Convictions Set Aside on Appeal

Court Rules Suffolk Jury Without Jurisdiction in Yaphank Case and Calls Nazi Oaths Unproved

The Appellate Division of the Supreme Court in Brooklyn unanimously reversed yesterday the conviction in Suffolk County Court on July 12 of six officials of the German-American Settlement League, Inc. which operated Camp Siegfried at Yaphank, L. I., for Nazi sympathies. The Appellate Division also reversed the conviction of the league itself on charges of violating the New York State civil rights law. A joint indictment against the league and its six officials was dismissed. The Suffolk County Grand Jury, the court of five judges, held that no jurisdiction to find the defendants guilty lay in the county where the papers of incorporation should have been filed. Not only was the indictment without jurisdiction, the court pointed out, but it also was faulty because the league was not proved to be an oath-bound organization and hence did not necessarily come under the law.

The German-American Settlement League, Inc. is a subsidiary of the German-American Bund, pro-Nazi organization headed by Fritz Kuhn of New York. Kuhn, who has been the storm center of Nazi activity and difficulties in the United States for the last year or two, recently con-

ducted a campaign through the columns of his organ, the "Weckruf und Beobachter," to raise funds to finance the appeal.

The fines of the six officials and the league were remitted by the decision and the bail of Ernest Mueller, of 2152 Himrod Street, Brooklyn, forty-two-year-old president of the league, who was sentenced to one year in jail, was discharged. Judge L. Barron Hill, who presided at the trial, levied fines of \$10,000 against the league and \$500 each against Mueller and the other five defendants upon conviction. Mueller's associates also drew suspended sentences of one year each, which were set aside by the decision.

Other Defendants

The other defendants were Henry Hauck, forty-four, manager of the camp; Henry Wolfgang, thirty-six, of 1713 Stephen Street, Ridgewood, Queens; Bruno Haehnel, fifty-two, of 301 Reid Avenue, Brooklyn; Herman Schwarzman, thirty-nine, of 344 Starr Street, Brooklyn, and Addo Bielefeld, fifty-four, of 2697 Heath Avenue, the Bronx. All were directors of the league.

James Wheeler-Hill, national secretary of the German-American Bund, was jubilant when informed of the decision. "It's great," he said. "We'll hold a victory celebration in Madison Square Garden in February." The alternative reason for the dismissal of the indictment was by far the more important as far as the bund was concerned, he pointed out, because it absolved the organization of the coercive charges leveled against it. District Attorney Fred J. Munder of Suffolk County said at Huntington, L. I., that no further action would be taken by his office.

The opinion of the court was: "The defendants were indicted by the Suffolk County grand jury and convicted in Suffolk County Court of the crime of failing to file with Secretary of State the docu-

ments should have been filed; that Article 5-A Section 53, of the civil rights law.

"Defendant German-American Settlement League, Inc. is a membership corporation having its principal office in Kings County and operating in Suffolk County a certain property known as Camp Siegfried. It was the theory of the prosecution that the corporate defendant is a society of the character contemplated by the foregoing statute, requiring an oath as a prerequisite or condition of membership.

Jurisdiction Denied

"Assuming that an oath was required, and that the corporate defendant would therefore be bound by the statute, the grand jury of Suffolk County had no jurisdiction to find the indictment. Jurisdiction is in the county where the documents should have been filed; that is, in Albany County.

"It is unnecessary to determine now whether jurisdiction might also be found in Kings County, where the corporation has its principal office. The lack of jurisdiction in the grand jury and the County Court of Suffolk County requires a dismissal of the indictment.

"It may well be that the indictment should be dismissed for a further reason. The Court of Appeals has distinctly held that an organization which exacts only a pledge of its members is not bound by Article 5-A, Section 53, of the civil rights law. (People ex rel Bryant v. Zimmerman, 241 N. Y. 405) It would seem that the words to which the witness Brandt testified constituted a pledge, rather than an oath, and were therefore under the foregoing authority, insufficient to form the basis of an indictment.

Remits Fines

"A statutory ban may not be enlarged by judicial construction, however desirable it may be to repress the promotion of discord and disloyalty by adherence of foreign forms of government; we should not attempt to remedy the evil by prosecution lacking the sanction of existing law. The interests of all are best served by applying the law as it stands. If there be a defect in the law, it should be remedied by appropriate new legislation.

"In view of these conclusions it is unnecessary to consider the re-

maining points raised by the appellants.

"As to defendant Mueller, the judgment should be reversed on the law, the indictment dismissed, the fine remitted and bail exonerated. The appeal from the order should be dismissed.

"As to defendants Schwarzman, Haehnel, Bielefeld, Hauck and Wolfgang, the judgment should be reversed on the law, the indictment dismissed, the fines remitted and defendants discharged from custody. The appeal from the order should be dismissed.

"As to defendant German-American Settlement League, Inc. the judgment should be reversed on the law, the indictment dismissed and the fine remitted. The appeal from the order should be dismissed.

The Brandt referred to in the decision is Willy Brandt, of 810 West Eighty-seventh Street, a former Nazi storm trooper who testified for the prosecution in the trial. The order cited in the decision, on which an appeal by the defendants to Justice Peter M. Daly in Supreme Court at Jamaica, Queens, was based, was a ruling by Judge Hill denying the defendants a new trial.

Veteran Complained

The six defendants and the league were indicted on June 1 on complaint of Ray P. Monahan, New York State commander of the Disabled War Veterans of America. The indictment charged specifically that the league failed to file a roster of its members and officers with the Secretary of State at Albany in accordance with Section 53 of Article 5-A of the civil rights law. The law, originally drafted to curb the Ku-Klux-Klan,

Mueller was released from Suffolk County jail at Riverhead, L. I., on July 29 on \$1,000 bail. A judgment entered against the league on July 25 by Lindsay R. Henry, Assistant District Attorney in Suffolk County, who prosecuted the case for failure to pay the \$10,000 fine was automatically dismissed by the decision.

Justices sitting yesterday were William F. Bagarty, William B. Carwell, John B. Johnston, George H. Taylor, Jr. and Frederick P. Ciose. Presiding Justice Edward Lazansky did not participate in the case. John Winans of Brooklyn represented the appellants, and Mr. Henry the state.