

Federal Suit Seeks to Permit A Mixed Marriage in Alabama

By JACK ROSENTHAL DEC 4 1970
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WASHINGTON, Dec. 3—The Justice Department asked a Federal Court today to strike down provisions of Alabama's Constitution and laws that make it a crime for whites and Negroes to marry. It was the first such action taken by the Government.

The suit, filed in Birmingham, Ala., and announced in Washington, asked the court to order state officials to permit the marriage of Sgt. Louis Voyer, a white soldier stationed at Fort McClellan, Ala., and Phyllis Bett, a black woman from Anniston.

The couple sought a marriage license Nov. 10, the department's complaint said, but were denied it on the basis of the state's Constitution and laws,

which make it a crime to issue such a license.

Probate Judge C. Clyde Brittain of Calhoun County, who denied the license, and the State of Alabama were named as defendants.

The suit said that the judge's action denied the couple their constitutional rights against improper state action and im-

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posed an undue burden on the rights of Federal military personnel.

The Federal complaint cited a 1967 Supreme Court decision that struck down a similar antimiscegenation statute in Virginia. That case was filed privately and did not involve the Federal Government.

At the time of the decision—June 12, 1967—other states, including Alabama, carried antimiscegenation statutes. Justice Department officials were not able to say today how many of the statutes remained in force.

Subject to Penalty

The department asked for immediate interim Federal orders to permit Sergeant Voyer and Miss Bett to marry and live in Alabama. It said that, otherwise, they intended to marry in another state and, because of the sergeant's military obligation, return to Alabama to live.

This would make the couple subject to criminal penalty. A hearing on the request was scheduled by the court for Tuesday.

The suit was filed at the request of the Judge Advocate General's office at Fort McClellan.

Taking note of the 1967 Supreme Court decision, the department filing said: "The success of the United States with respect to the merits of this matter is very likely. In this case, the law is clear. There is no doubt that the state cannot constitutionally prohibit racially mixed couples from marrying."

As the Supreme Court stated, the department continued, "freedom to marry" has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. There is patently no legitimate, overriding purpose independent of invidious discrimination which justifies this classification."

A section of the Alabama Constitution forbids the State Legislature to pass any law permitting whites and Negroes to marry, and a state law forbids such marriages under a maximum penalty of seven years in prison.

The Justice Department's suit asked the Federal District Court in Birmingham to order the state to notify appropriate officials of the invalidity of the constitutional and statutory provisions forbidding miscegenation.