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Case Notes

the serious threat of imprisonment will dissipate any intellectual craving for such drugs.

The proposals for amendment of the uniform acts and revision of commitment provisions are suggested as alternatives to the adoption of a more liberal attitude toward legalized maintenance of opiate drugs. However the dangerous drug legislation, and the proposals for regulation of hallucinogenic drugs, are suggested as necessarily exclusive of the approach taken to opiate addiction, which is a distinct phenomenon.

The law dealing with opiate addiction and dangerous drug abuse is seriously in need of revision. This article was submitted in the hope that careful consideration will be given to the facts of the drug problem and the various alternative approaches which have been suggested for handling it, in order that the amendment of old legislation and the enactment of new will result in a just and effective system of dealing with that problem.

Case Notes

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Trial Court's Comment Reflecting On Veracity Of Prosecution Witness Held To Be Reversible Error—*Dunfee v. State*, 412 S.W.2d 614 (Ark. 1967). Defendants were convicted of assault with intent to kill for wounding one O'Neal during an argument over hunting rights on a certain tract of land. Defendants assigned as error the trial court's comment that everyone on the witness stand is presumed to tell the truth. This comment was made after defense counsel asked a prosecution witness, "You had that pretty well memorized, didn't you?"

The Supreme Court of Arkansas held that the words of the court were prejudicial error in violation of article 7, §23 of the state constitution which provided that, "Judges shall not charge juries with regard to matters of fact. . . ." The court pointed out that from his authoritative position the trial judge was able to influence the jury in their decision and thus should take great care in choosing words or conduct which would support or destroy the testimony of any witness.

Government Vouching For The Credibility Of Witnesses As Reversible Error—*Gradsky v. United States*, 373 F.2d 706 (5th Cir. 1967). The defendant was convicted of mail fraud, fraud in the sale of securities, and conspiracy. Much of the strength of the government's case rested upon the credibility of two government witnesses, alleged co-conspirators who testified as to the defendant's activities. The prosecutor in his argument to the jury stated that the government vouched for the credibility of the two witnesses, that "the government representatives don't put a witness on the stand unless there appears to be some credibility, until he appears to be a truthful witness," and that "the government has every opportunity to check out and to judge the credibility and truthfulness" of the witnesses and "in that context" offered their testimony. The defendant appealed from the denial of a motion for a mistrial following the prosecutor's statement.

The Court of Appeals reversed. Applying the test of whether the prosecutor's statement might reasonably lead the jury to believe that other evidence existed, unknown or unavailable to the jury, on which the prosecutor was convinced of the defendant's guilt, the court held that the prosecutor's statement was highly prejudicial error, since the language could only be construed to imply that the government had "run a check" on the two witnesses and on the basis of that check, the results of which were out of the reach of the jury, had concluded that the witnesses were truthful.

Invited Error Doctrine Is Not Unlimited—*State v. Smith* 420 P.2d 278 (Ariz. 1966). The defendant was convicted of first degree robbery. At the trial the defense counsel noted defendant's failure to testify and explained the reasons other than guilt for so doing. In the state's closing argument, the prosecuting attorney referred to the defense counsel's statements and said:

> [If the defendant had taken the stand] he would be asked about anything . . . in the past, any trouble he had been in, any conviction he may have had, and certainly if he had

been in trouble before, he wouldn't want to take the stand.

The defendant had not objected to this statement at the trial but the Supreme Court of Arizona held that there had not been a waiver of the right to claim error and reversed the conviction.

The court held that while it is true that the "invited error"

> doctrine provides that where remarks of the prosecuting attorney, even though improper, are invited or occasioned by accused's counsel, . . . they are generally not grounds for reversal.*** But the remarks of the prosecuting attorney [here] went far beyond the comments of the defense attorney. . . .

The court concluded that as a result of the innuendos raised by the prosecution, the defendant had been deprived of his constitutional right to remain silent.

Substitution Of Alternative Juror After Commencement Of Jury Deliberation—*People v. Ryan*, 224 N.E.2d 710 (N.Y. 1966). Defendants were charged with robbery and assault in the second degree and tried on those charges. Five hours after the jury began deliberating one of the jurors became ill and an alternate juror, who had been in the sheriff's custody and had not theretofore been involved in the deliberation, was substituted with the consent of defendant's counsel. This was consistent with section 358-a of the New York Code of Criminal Procedure which provides that:

> After final submission of a case, the court may discharge the Alternate Jurors, or if the court deem it advisable he may direct that one or more of the Alternate Jurors be kept in the custody of the sheriff or one or more court officers, separate and apart from the regular jurors until the jury have agreed upon a verdict. If after final submission of the case and before the jury have agreed upon a verdict, a juror die or become ill, or for any other reason he be unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall then take his place. . . .

Defendant was convicted and on appeal contended that substitution in this case violated his constitutional right to trial by jury.

The conviction was reversed by the Court of Appeals, two judges dissenting. The majority stated that in order to give the defendant's right to trial by jury meaning there must be a full opportunity for twelve jurors to deliberate the merits of the case, exchanging views, and finally coming to a decision. In this instance such a procedure was impossible.

First, the twelve original jurors had already sifted the evidence and, in all probability, had formulated their preliminary positions when the alternate juror entered the proceedings. They would, therefore, not have the advantage of the alternate juror's ideas, nor he, theirs. "If deliberations had progressed to a stage where the original eleven were in substantial agreement," the court said, "they were in a position to present a formidable obstacle to the alternate juror's attempts to persuade and convince the eleven remaining original jurors." Furthermore, if this procedure were allowed, there would, in effect, be thirteen people participating in the deliberations. The State constitution, however, only authorized a common law jury of twelve. The court also found that consent given by the defendant's attorney was insufficient where under state law waiver of jury trial may be made only "by a written statement signed by the defendant in open court and with the approval of the judge. . . ."

Refusal To Testify And Freedom Of Religion—*In Re Williams*, 152 S.E.2d 317 (N.C. 1967). Defendant, a Baptist minister, was subpoenaed, by both the prosecutrix and the accused, to testify at a trial in which the accused was charged with rape. The defendant refused to be sworn or to take the stand. He based his refusal on the fact that members of his parish were involved in both sides of the trial, and any confidential communications between himself and his parishioners were privileged. The trial judge agreed that although the confidential communications between the minister and those of his flock on trial were privileged, the clergyman's knowledge gained from other sources was not privileged. Reverend Williams replied that he refused to take the stand under any circumstances, since he felt that "taking sides" in the case would be a breach of his professional duty. The defendant was summarily adjudged in contempt of court and was sentenced to ten days in jail.

On appeal, the defendant contended, *inter alia*, that any knowledge he had regarding the circumstances surrounding the rape was acquired in his professional capacity, and to force him to reveal

this information was a violation of his first amendment right to the free exercise of his religion.

The Supreme Court of North Carolina, in affirming the contempt conviction, prefaced its opinion by noting that the right to the free exercise of religion granted in the first amendment did

> not provide immunity for every act which one's conscience permits him to do, or even for every act which one's conscience classifies as required by ethics, nor [does it] shield the defendant from a command by the State that he do an act merely because he believes it morally or ethically wrong.

The court then reasoned that if a clergyman was protected from being forced to testify because he feels that to do so would contravene his religious duty, then a layman having such a belief would also be protected. Such a consequence would intolerably deprive the court of testimony needed to administer justice.

The court said that the free exercise of religion is necessarily impaired by government compulsion that one act against his religious belief. However, the government acts only when there is a compelling state interest. The court concluded that the effective operation of the courts of justice of a state is a compelling state interest, and hence, the state could order Reverend Williams to testify.

In Re Jenison Contempt Proceedings, 120 N.W.2d 515 (Minn. 1963), was distinguished by the court, in that it involved a prospective juror who refused to serve on religious grounds. The court felt that obtaining competent jurors was not an interest sufficient to override one's religious beliefs.

Permissible Regulation Of News Gathering In The Interest Of A Fair Trial—*Seymour v. United States*, 373 F.2d 629 (5th Cir. 1967). The defendant, a television news photographer, was found guilty of criminal contempt and fined for violating a standing order of the court which prohibited the taking of photographs "in connection with any judicial proceeding . . . upon the same floor of the building upon which the courtrooms are located."

On appeal, the defendant contended that the order was an unconstitutional prior restraint upon the first amendment freedom of the press. The Court of Appeals affirmed, holding that the order "falls within the ambit of permissible maintenance of judicial decorum and represents a reasonable implementation of the due process mandate to preserve at all costs an atmosphere essential to . . . a fair trial." The court reasoned that even assuming that the first amendment protections from unreasonable restraints upon the dissemination of news information extended to the *gathering* of such information, such a right to gather news was not unconditional.

Ordinance Pertaining To Solicitation By A Prostitute Held Void For Vagueness—*City of Detroit v. Bowden*, 149 N.W.2d 771 (Mich., Ct. of App. 1967). Defendant was convicted of violating an ordinance making it unlawful for a known prostitute to "repeatedly stop or attempt to stop any pedestrian or motor vehicle by hailing, whistling, waving of arms or any other bodily gesture, while such person is on any public sidewalk or street. . . ." A known prostitute was defined as "anyone who, within two years of arrest for violation of this section, has been convicted of prostitution or related crimes." The court reversed the conviction holding the ordinance invalid for vagueness, for denial of due process, and for violation of the privilege against self-incrimination.

The court stated that the ordinance was so vague that it made criminal an innocent act, holding that "it makes it criminal for a person, once convicted of [prostitution] to hail a taxi, greet a friend, or do any one of a multitude of innocent, legal acts." The court based its holding first on the principle that a person must be able to prepare a defense against a charge and that the ordinance in the present case is so vague that such a defense could not be formulated. Secondly, it stated that the ordinance creates an invalid presumption of guilt in that once the state has produced evidence that the defendant was seen doing the act the ordinance proscribes and that she is a known prostitute "she is more than presumed guilty of violating the ordinance. She is guilty." In relation to this point the court said that there is no rational connection between the act performed and the charge of soliciting. The ordinance has the effect of shifting the burden of proof to the defendant and stripping her of a defense merely because of her prior conviction. Finally, the court stated that the ordinance violates the privilege against self-incrimination in that, by making the defendant rebut the presumption of guilt, she has lost her right to remain silent.

The Admissibility Of Business Records—*Carroll v. Houtz*, 225 A.2d 584 (New Jersey 1966). This was an action for wrongful death brought by the

administratrix ad prosequendum of the deceased's estate. After deceased's death an autopsy was performed by two assistant county physicians. There was a state requirement that a toxicological analysis of the deceased's blood and brain tissues be made. The hospital at which the autopsy was conducted had no facilities to make the required analysis so the specimens were sent to an outside laboratory for analysis. This outside analysis was made part of the autopsy report. The outside report was admitted into evidence over the objection of the administratrix. A judgment was awarded to the defendant. The administratrix appealed contending that the admission of the outside report violated the hearsay rule.

The Supreme Court of New Jersey affirmed the judgment holding that the report made by the outside laboratory and made part of the autopsy file fell within the ambit of the Uniform Business Records As Evidence Act, as enacted in New Jersey:

> A record of an act, condition or event, shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

The outside laboratory's report are included in the category of hospital and medical records. Therefore, when properly authenticated these records are admissible into evidence.

Expansion Of The Rights Of The Indigent—*People v. Watson* 221 N.E.2d 645 (Ill. 1966); and *People v. Miller* 221 N.E.2d 653 (Ill. 1966). The Supreme Court of Illinois, heeding the admonition of the Supreme Court of the United States that "there can be no equal justice where the kind of a trial a man gets depends on the amount of money he has", *Griffin v. Illinois*, 351 U.S. 12,19 (1956), has held that the state must pay for expert witnesses and must provide free transcripts of prior proceedings for some indigent dependants.

In the *Watson* case, the defendant had been convicted of attempted forgery of a travelers check. The defendant contended in the trial court that a handwriting expert could prove that it was not his signature on the check and requested the court to appoint an expert and have the state pay his fee. The trial judge refused and the supreme court found this to be reversible error.

The court reasoned that while the Illinois legislature had seen fit to restrict the payment by the state of expert witnesses to capital trials of indigents, there was no less a constitutional deprivation of equal protection in a non-capital case. The court rejected the state's contention that the ordinary subpoena rights of an accused were sufficient since an "appearance itself [of the expert] would be of no value unless he had been able to make findings upon which to base his testimony". It was the expenses in connection with the pre-trial preparation, the court said, which the state should be required to pay to insure that the trial testimony of the expert was adequate.

In the *Miller* case, the defendant had been convicted of armed robbery after having had two mistrials. It was contended by the defendant that certain testimony in the two mistrials was in conflict and also conflicted with the testimony given at the final trial. The defendant requested the trial court to order the state to provide free transcripts of the mistrials to be used to impeach the witnesses. The trial court refused and the Supreme Court of Illinois reversed.

The court agreed with the defendant that the *Griffin* case, which only required the state to provide trial transcripts for indigents for appeal, should not be read narrowly but rather its meaning, if not its language, was meant to include the present situation if the courts are to give "the defendant . . . the equal protection of the laws and the same fair trial which a defendant with funds would have obtained".

What Is Obscene?—*United States v. One Carton Positive Motion Picture Film Entitled "491"*, 367 F.2d 889 (2d Cir. 1966). Janus Films, Inc. had attempted to import the Swedish film "491", which depicted the lives of several juvenile delinquents and their housefather in rather vivid sexual detail. The title of the film was taken from a Biblical commandment to forgive sin "seven times seventy" and the actions of the boys were equated with the 491st sin.

When the film arrived in New York it was given a screening by the Collector of Customs and determined to be obscene. Thereafter, the Attorney General filed suit in the federal district court to have the film forfeited. The district court found the

film obscene and ordered its forfeiture. (247 F.Supp. 450.) Janus Films appealed and the Court of Appeals in a 2–1 decision reversed.

The court stated that if

> "491" is viewed solely as an exhibition on the screen of sexual acts (1) sodomy (buggery); (2) intercourse with a prostitute; (3) a homosexual act; (4) intercourse between the prostitute and a dog; and (5) of self-mutilation, then the picture might well be characterized as "utterly without redeeming social significance".

The court makes a seemingly futile effort at really deciding whether the film is beyond community standards, or appeals to the prurient interest, or even what segment of the population's prurient interest is relevant, although Judge Waterman in a concurring opinion states:

> It is inconceivable to me that a film so degrading of human dignity and so brutally animalistic and which negates in every particular the mores of our civilization could possibly appeal to the prurience of any average American.

The real issue upon which the court held the film not to be obscene was its redeeming social value as a sociological study of delinquents. The court cited the numerous witnesses presented for each side as to the social value of the film and said that "a fair appraisal of their testimony and the picture as a whole require the conclusion of at least [a] "minimal value". Judge Waterman in his concurring opinion stated:

> The film cannot truthfully be said to be utterly without redeeming social importance. It attacks broadside the Christian ethos, it exemplifies the worthlessness of humans devoid of innate spiritual resources.... Is it not socially important to have one's notions of the good, the pure, and the beautiful subject to analyses, even if the analyses are in poor taste, objectionably set forth, and Karate-administered?

Presumption Overturned In Gun Case—*State v. Lewis*, 255 A.2d 582 (N.J., Super. Ct., App. Div. 1966). The defendant was convicted of carrying a concealed weapon when police officers searched the car in which he had been riding (in the back seat) and discovered a gun in the pocket of a jacket on the front seat. There was no proof that the jacket or the gun belonged to the defendant, but a New Jersey statute provided that "The presence of a firearm . . . in a vehicle is presumptive evidence of possession by all persons occupying the vehicle at the time."

The Appellate Court reversed the conviction holding that even assuming that the statutory presumption was constitutional "as applied to appropriate facts, we think it would be an unconstitutional construction to hold that under it the mere unexplained presence of a gun concealed in a coat worn by or belonging to one passenger justifies the conviction of another passenger of unlawful possession."

Arrest—*People v. Garay*, 56 Cal. Rpt. 55 (Dist. Ct. App. 1967). The defendant was convicted of stealing two wristwatches. The police were alerted to the defendant's possible shoplifting activities by the manager of the hotel where defendant lived. The hotel manager had observed numerous items of tagged clothing in defendant's room. The police staked out the hotel and frequently observed him leaving the hotel empty handed and returning to his room with his coat bulging and his hands in his pockets apparently holding something under his coat. Just prior to his arrest the defendant was heard to say to an accomplice, "look at the shirts I just stole."

The Court of Appeals affirmed the conviction holding that the arrest was lawful since the officers had reasonable cause to believe that a felony had been committed.

Illegal Seizure By Private Policeman Not Violative Of Fourth Amendment—*Wright v. United States* 224 A.2d 475 (Dist. of Col. Ct. App. 1966). Defendant was convicted of illegal possession of a sawed-off shotgun. The shotgun had been found by a plant guard in the defendant's locker at the factory where he worked. The guard called the police and asked what he should do about the gun. The police told him to leave the gun in the locker but the guard removed it anyway, and took it to the manager's office. The next morning the guard turned the gun over to the police who arrested the defendant. The defendant objected to the admission of the gun at his trial on the basis that it had been illegally seized. The Court of Appeals affirmed the conviction.

> The court held that the fourth amendment's origin and history clearly show that it was intended as a restraint upon the activities of

sovereign authority, and was not intended to be a limitation upon other than governmental agencies.

Having found that the search and seizure itself was not violative of the fourth amendment, since the seizure was by other than a government agent, the court analogized the admissibility of the gun to the pre-*Mapp* cases involving state seized objects being admitted in federal prosecutions. Prior to *Mapp v. Ohio*, 367 U.S. 643 (1961), the Supreme Court in *Elkins v. United States*, 364 U.S. 206 (1960) had held that evidence which would have been illegally seized and therefore inadmissible under federal law, if seized by state authorities acting independently of federal law enforcement, was admissible since the fourth amendment did not apply to state actions. The court here felt that the reasoning of the *Elkins* case was equally applicable to the instant case, since the guard had acted independently of the police and his seizure of the gun was not prohibited.

Police Searching For Gas Leak May Seize Gambling Material—*State v. Puryear*, 227 A.2d 139 (N.J., App. Div. 1966). Defendant had been convicted for unlawfully keeping a place to which persons may resort for engaging in gambling and for knowingly possessing lottery slips.

The evidence used against defendant was obtained in the following way: On November 5, 1962 a member of the Newark Bureau of Industrial Hygiene and Air Pollution Control was assigned to investigate a complaint that an odor of "coal gas" was emanating from defendant's apartment. Detecting an odor there and not being able to gain entry, he summoned the police emergency squad. Three members responded and broke into the apartment wearing gas masks. They found burning sulfur candles and further noticed gambling paraphernalia. They summoned detectives specializing in gambling violations. Upon confirmation that the evidence indeed was gambling material, the officers seized it and later arrested defendant.

On appeal defendant claimed that admission of the evidence seized at the apartment was inadmissible because it was found during a search not incident to an arrest, pursuant to a search warrant or with the consent of the owner. He also contended that the admission of such evidence was contrary to a municipal ordinance requiring information obtained by the Air Pollution Bureau to be kept confidential.

The appellate court, in upholding the second count of the indictment, (the first was dismissed on other grounds), and the admission of this evidence, indicated that there are "exceptional circumstances" in which, on balancing the need for effective law enforcement against the right of privacy, a search warrant can be dispensed with. Here, it was found, the police officers were acting in response to an emergency—the threat that people would be injured by a possible explosion of the escaping gas—in their official capacity as police and not as agents for the Bureau of Air Pollution. The court held, therefore, that the police officers lawfully entered defendant's apartment, and, upon discovering gambling paraphernalia in plain view, had the right and duty to seize it. The court did not regard the delay brought about by calling in the detectives as contaminating the evidence seized since such further inspection by experts could do nothing but confirm the suspicions of the investigating officers.

Fruit-Of-The-Poisonous-Tree Doctrine—*People v. Stoner*, 55 Cal. Rptr. 897 (Cal. 1967). The defendant was convicted of robbery in the first degree. The prosecution's case rested upon the defendant's confession to the robbery and the robbery victim's courtroom identification of the defendant. This confession was obtained after the defendant was shown clothes (worn during the robbery) which the police had illegally seized from his apartment and after the defendant was identified by the robbery victim in a lineup where the defendant was told to wear the illegally seized clothes.

The Supreme Court of California reversed the conviction on the ground that the admission of the confession into evidence was error because it was the ultimate product of an illegal search and seizure, thus becoming a "fruit of the poisonous tree." But the court did hold that the fruit of the poisonous tree doctrine is inapplicable to testimony of a witness to a crime where the identity of the witness is not learned through any police misconduct. Although the victim's courtroom identification of the defendant was partially dependent upon his viewing of the defendant dressed in the illegally seized clothes at the lineup, the court held that it was "sufficiently distinguishable to be purged of the primary taint" and thus admissible under the doctrine of *Wong Sun v. United States*, 371 U.S. 471 (1963).

Search Of Car In Driveway Incident To Arrest—*United States v. Francolino*, 367 F.2d 1013 (2d

Cir. 1966). Defendant was convicted of passing counterfeit money in a department store. The manager of the store noticed the phony bills and followed the defendant outside. He observed her leave in a car and phoned the police giving them the license number. The police traced the car to the defendant's home where they arrested her. The police asked for and were given the keys to the car by the defendant, whereupon the officers went out to the car which was parked in front of the house, opened the trunk and found a quantity of phony bills bearing the same serial number as those passed by the defendant in the store. The state introduced the seized bills at trial over the defendant's objection. The defendant appealed and the appellate court affirmed.

The appellate court, in sustaining the conviction, quoted the case of *Agnello v. United States*, 269 U.S. 20,30 (1925) which said "that the right of search incident to an arrest extended not only to the person but to the place where the arrest is made. . . ." The court noted the numerous modern cases which have consistently upheld this principle and the wide range of areas which fell under it, including rooms other than the one the accused is arrested in. The court, agreeing with the case of *Drummond v. United States*, 350 F.2d 983 (8th Cir. 1965), held that there is "no reason in principle why a car parked immediately outside a house should stand better than a room in it which was not the place where the defendant was arrested", and deemed the search in this case permissible. The court stressed that it felt the proper test of a search was "whether there was fair basis for belief that the placed searched—whether inside the house or immediately outside it—would contain instruments or fruits of the crime for which the arrest was made".

Probable Cause Necessary Even When Police Voluntarily Admitted To Premises—*Massachusetts v. Painten*, 368 F.2d 142 (1st Cir. 1966). Defendant, convicted in a state court on a charge of armed robbery sought a writ of habeas corpus in the federal district court.

At the state trial, money and two guns were introduced into evidence which had been seized at the apartment of the defendant and his accomplice. The police were investigating an armed robbery in the neighborhood and went to the defendant's without any grounds for suspicion even remotely amounting to probable cause. The defendant answered the policeman's knock at the door and admitted the police to the apartment. Upon entering the apartment one of the officers noted a bulge in the defendant's pocket and found therein a wad of bills. The officer called to his partner who had been stationed outside the rear of the building. The other officer told the officer in the apartment that a gun had been thrown from the window which they found on the fire escape under the window. The defendant objected to the admission of the gun and the money. Defendant appealed from an order denying the writ and the Circuit Court of Appeals reversed.

The court distinguished this case from those in which it had been said that where the police having reasonable suspicion, but not probable cause, were invited to enter premises there was voluntary consent and any objects seized would be admissible. Here the court found that the officers had no grounds at all to suspect the defendant of this crime and had gone to the apartment solely because of defendant's past convictions.

Polygraph Licensing Statute Not Unconstitutional—*Dovalina v. Albert*, 409 S.W.2d 616 (Tex. Civl. App. 1966). Appellant, a polygraph examiner, failed a licensing examination and was refused a license by the Board of Polygraph Examiners. He sued the Board asking that a writ of mandamus issue to compel the granting of a license to him or, in the alternative, to have the court declare the Texas licensing statute unconstitutional on various grounds. The trial court refused relief and the Court of Civil Appeals affirmed.

Appellant first contended that the licensing statute was invalid under the Texas constitution because it impaired his obligation under existing contracts that he had entered into with employers before the passage of the act. The court held, however, that the act did not operate directly upon appellant's contracts, but instead simply regulated the business of polygraph examination with only an incidental effect upon existing contracts. Since the legislature had the power to regulate polygraph examinations, the court said, the statute was constitutional. The court also held that the act was not void for regulating contracts, even incidentally, retroactively, since there was nothing in the record to show that the act, by its terms, prohibited appellant from recovering for examinations conducted prior to the effective date of the act.

Appellant also contended that the "grandfather clause" of the act, licensing existing polygraph