any intimation regarding the seriousness of such a claim.

Mr. Justice CLARK, whom Mr. Justice HARLAN and Mr. Justice WHITTAKER join, dissenting.

This case having now been in the courts for some six years, we think that proper judicial administration would require the Court to decide the question of collateral estoppel, raised belatedly and *sua sponte*. As we see it, if the Court can raise that issue here, certainly we can decide it without the additional delay of having the parties go through the motions of amending the pleadings, as suggested. The Court could then pass upon the constitutional issue and advise the Congress of its power in this important field, in which it legislated some 16 years ago.

362 U.S. 402

Milton R. DUSKY, Petitioner,

v.

UNITED STATES of America.

No. 504, Misc.

April 18, 1960.

Defendant was convicted of unlawfully transporting in interstate commerce a girl who had been kidnapped. The United States Court of Appeals, Eighth Circuit, 271 F.2d 385, affirmed, and defendant petitioned for certiorari. The Supreme Court, Per Curiam, held that record insufficiently supported finding of competency to stand trial.

Judgment of Court of Appeals reversed and case remanded to District Court with directions.

1. Mental Health ⇐432

Test of defendant's competency to stand trial is whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has rational as well as factual understanding of proceeding against him, and it is not enough that he is oriented to time and place and has some recollection of events. 18 U.S.C.A. § 4244.

2. Mental Health ⇐434

Record insufficiently supported finding of competency to stand trial. 18 U.S.C.A. § 4244.

3. Criminal Law ⇐1189

In view of doubts and ambiguities regarding legal significance of psychiatric testimony in case and resulting difficulties of retrospectively determining defendant's competency to stand trial, Supreme Court, holding that finding of competency to stand trial was insufficiently supported by record, would reverse judgment of Court of Appeals affirming judgment of conviction and would remand case to District Court for new hearing to ascertain defendant's present competency to stand trial and for new trial if he should be found competent.

Mr. James W. Benjamin, for petitioner.

Solicitor General Rankin, for the United States.

PER CURIAM.

[1–3] The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. Upon consideration of the entire record we agree with the Solicitor General that "the record in this case does not sufficiently support the findings of competency to stand trial," for to support those findings under 18 U.S.C. § 4244, 18 U.S.C.A. § 4244 the district judge "would need more information than this record presents." We also agree with the suggestion of the Solicitor General that it is not enough

for the district judge to find that "the defendant [is] oriented to time and place and [has] some recollection of events," but that the "test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him."

403

In view of the doubts and ambiguities regarding the legal significance of the psychiatric testimony in this case and the resulting difficulties of retrospectively determining the petitioner's competency as of more than a year ago, we reverse the judgment of the Court of Appeals affirming the judgment of conviction, and remand the case to the District Court for a new hearing to ascertain petitioner's present competency to stand trial, and for a new trial if petitioner is found competent. It is so ordered.

Reversed and remanded with directions.

362 U.S. 396

Raymond P. WARD, Petitioner,

v.

ATLANTIC COAST LINE R. CO.

No. 485.

Argued March 31, 1960.

Decided April 18, 1960.

Action against railroad by plaintiff, who was employed by railroad as laborer on section gang with regular work week from Monday through Friday, for injuries sustained when he was working, on Saturday, on privately owned siding. The United States District Court for the Northern District of Florida rendered a judgment for the defendant and plaintiff appealed. The United States Court of Appeals for the Fifth Circuit, 265 F.2d 75, affirmed, and certiorari was granted. The Supreme Court held that the company which owned the siding and which had engaged railroad's foreman to recruit his crew to make repairs on siding under his direction, on their day off, was not the agent of railroad within meaning of Federal Employers' Liability Act and held that trial judge erred in giving instructions as to factors to be considered in determining whether plaintiff was an employee, limiting inquiry to question of whether plaintiff was aware that railroad considered him not to be working for it but for some third party.

Reversed.

Mr. Justice Harlan and Mr. Justice Whittaker, dissented.

1. Courts ⇐383(1)

The Supreme Court granted certiorari to consider issues presented with respect to plaintiff's alleged status as employee of defendant railroad in light of two of its decisions, one of which was an intervening decision.

2. Master and Servant ⇐88(1)

A company which had an agreement with railroad calling for railroad to make inspections of track on its private siding and for repairs to be made at expense of company and which engaged railroad's foreman to recruit crew to do necessary work on their day off, under his direction, was not the "agent" of railroad, with respect to repair of its siding, within meaning of provisions of the Federal Employers' Liability Act. Federal Employers' Liability Act, § 1, 45 U.S.C.A. § 51.

See publication Words and Phrases, for other judicial constructions and definitions of "Agent".

3. Courts ⇐383(1)
Master and Servant ⇐292

In action under the Federal Employers' Liability Act brought against