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governmental action and in no way protects a person from private reprisals and community censure, there is at least a sympathy for giving a witness some means of evading indefinite imprisonment. In opposition to this view, it may be enough to say that "[s]ociety is also entitled to full protection of the law."²⁰

MARKET VALUE DEFINED IN GRAND LARCENY PROSECUTIONS

Section 1305 of the New York Penal law provides: "In every other case not regulated by statute, the market value of the thing stolen is deemed its value."

A unanimous Court in *People v. Irrizari*,²¹ has authoritatively determined the meaning of market value as used in the above penal provision, for the first time. In determining whether grand larceny has been committed, market value is not the replacement cost to the owner, but rather the price in the market the thief would have had to purchase the goods had he not stolen them.²²

In the instant case the larceny consisted of the theft of a total of nine garments from three different department stores. Defendant, in seeking a reversal of his conviction, contended that wholesale rather than retail price should be determinative of market value.

In rejecting this contention the Court realized that the retail price of goods ordinarily reflects the retailers amortization of his merchandising expenses into the total cost of the goods, and, therefore, retail price is a truer reflection of market value in a consumer economy.²³

The Court is apparently making a clear pronouncement of law in an area where the need for clarification has been felt. This is evidenced by the fact that the Court is affirmatively answering a question it may not have had to answer. The defendant was convicted upon three counts of second degree grand larceny, which crime necessitates the theft of goods of a value of over one-hundred and under five-hundred dollars to ground a conviction.²⁴ Each of the three counts covered thefts from a single store. However, even had the defendant been successful in claiming wholesale price as market value the value of the goods under that standard would still have been in excess of one-hundred dollars on each count,²⁵ and the Court would have nevertheless sustained the conviction, since the defendant, in any case, would not have been

20. *Supra* note 6 at 803.

21. 5 N.Y.2d 142, 182 N.Y.S.2d 361 (1959).

22. The Court indicates, that such value is determined at the time and place where the theft occurred, and that it is open for the defendant to show that such retail price, is in fact, much higher than that of similar goods in the same locale.

23. The legislative intent regarding New York Penal Law Section 1305 is gleaned by the Court from a consideration of New York Penal Law Sections 1303, 1305. Under Section 1303, value of a stolen evidence of debt is the amount due upon it at the time of the theft, while Section 1304 states the value of a stolen passenger ticket to be the price at which it is sold.

24. N.Y. PEN. LAW § 1296.

25. The difference in value on each count at wholesale and retail prices respectively, was, first, \$114-\$190, second, \$252-\$440, third, \$114.90-\$199.85.

prejudiced by the jury charge, which allowed the panel to consider both wholesale and retail prices.

This being the case, the Court apparently felt the need to fill the gap left by *People v. Ruppoli*,²⁶ involving similar facts, in which the larceny conviction was sustained and the precise question as to market value was left unanswered by the Court.

It is also pointed out that in jurisdictions having a penal provision similar to that of New York the term market value is construed in a like manner.²⁷

RECIDIVIST STATUTES: SINGLE TRIAL FOR MULTIPLE OFFENSES CONSTRUED AS SINGLE CONVICTION

Section 1942 of the New York Penal Law, dealing with fourth felony offenders, provides *inter alia* that:

For purposes of this section, conviction of two or more crimes charged in separate counts of one indictment or information, or in two or more indictments or informations consolidated for trial, shall be deemed to be only one conviction.

The consolidation for trial, to which this section refers, is that permitted by the New York Code of Criminal Procedure, Section 279, where provision is made for the charging of crimes of the same or similar character in separate counts of one indictment, and if two or more indictments are found in such cases, the court may order them to be consolidated.

In *People v. Fay*²⁸ the relator had been convicted of three crimes in the State of Pennsylvania. The second and third convictions were for robbery and attempted robbery respectively, both committed on the same day against different victims. The crimes were charged on separate indictments, but were tried simultaneously. The jury returned a verdict of guilty on both offenses, and sentences were imposed to be served consecutively. Subsequently, he was convicted in New York of a felony and sentenced as a fourth felony offender to an indefinite term of 15 years to life.

Habeas corpus proceedings were commenced by the relator on the ground that he was improperly sentenced. He contended that, for purposes of Section 1942 of the Penal Law, the second and third indictments were consolidated for trial and constitute only one conviction. The Supreme Court dismissed the writ on the theory that:

26. 503 N.Y. 595, 105 N.E.2d 485 (1952). Defendant was convicted of the crime of receiving stolen goods, which under Section 1308 of the New York Penal Law, makes the crime a felony if the goods have a market value in excess of one-hundred dollars. The property involved had a wholesale value of \$120, and a retail value of \$201. The Court unanimously sustained a felony conviction, regardless of the fact that the trial judge had allowed the jury to consider retail price only. The correctness of this charge was not considered, since defendant's counsel had not excepted to the same, and in any case, the felony conviction could have been sustained on wholesale value alone being in excess of \$100.

27. See, *People v. Irrizardi*, *supra* note 21, at 146, 182 N.Y.S.2d 364 (1959).

28. *People v. Fay*, 6 N.Y.2d 88, 188 N.Y.S.2d 477 (1959).