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Criminal Law—People's Right to Appeal from Dismissal of Information

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financial assets of the defendants are a pertinent source of inquiry in a proceeding of this type, the grand jury should not be restricted in its investigation of public officials. In *People v. Stern*⁹⁰ the court noted that traditionally the grand jury has been afforded the widest possible latitude in the exercise of the powers conferred upon them by the Constitution and Legislature, and these powers should not be curtailed by implication.

In *Allen v. State*⁹¹ the court held that a court has the power not only to compel answers from a witness orally but to require him to perform acts incidental to testifying orally. This explicit authority of a court to compel incidental acts, it is argued, implicitly establishes the existence of an analogous power in the grand jury.

Although the defendant may have reasons for not wishing to produce written evidence as opposed to oral evidence, the Court's conclusion as to the validity of a written questionnaire does not unduly stretch the meaning of Section 248. That this grand jury is investigating public officials, who are subject to special scrutiny, is an additional reason for construing their powers liberally.

PEOPLE'S RIGHT TO APPEAL DISMISSAL OF INFORMATION

The New York Judicial Council, in 1939 and 1942,⁹² recommended that Subdivision 3 of Section 518 of the New York Code of Criminal Procedure be amended so as to correct a deficiency which had been pointed out by the decision in *People v. Reed*.⁹³ In that case the Court held that under the then existing statutory provisions, the People could not appeal from an order made during the trial dismissing an indictment on the ground that it failed on its face to charge a crime, even though the Trial Court's ruling on the sufficiency of the indictment would have been appealable if it had been made prior to the trial. In 1942, the Legislature amended Subdivision 3, so as to allow the People to appeal from the dismissal of an indictment or information "on a ground other than the insufficiency of the evidence adduced at the trial."⁹⁴ This amendment was intended to allow the People to appeal from dismissals made on the law regardless of the time of the dismissal.⁹⁵

During the past term the Court of Appeals had occasion to interpret the meaning of Section 518(3) as amended. In *Kramer v. County Court of Suffolk County*⁹⁶ the People appealed to the County Court from the dismissal in Police Court of an information for trespass upon privately owned under-

90. 3 N.Y.2d 658, 171 N.Y.S.2d 256 (1958).

91. 183 Md. 603, 39 Atl. 820 (1944).

92. 5TH ANNUAL REPORT OF N.Y. JUDICIAL COUNCIL (1939), at 40, 41; 8TH ANNUAL REPORT OF N.Y. JUDICIAL COUNCIL (1942), at 62, 63.

93. 276 N.Y. 5, 11 N.E.2d 330 (1937).

94. N.Y. SESS. LAWS 1942 c. 832.

95. Cf. N.Y. CODE CRIM. PROC. § 518(5), which denies the right of appeal after a verdict of not guilty.

96. 6 N.Y.2d 363, 189 N.Y.S.2d 878 (1959).

water land.⁹⁷ A trial of the matter had been held, and the Police Justice dismissed the information at the close of the evidence.⁹⁸ Defendant in the original action brought an action to prohibit the prosecution of the appeal.⁹⁹ The Appellate Division granted an order restraining the appeal,¹ and the Court of Appeals affirmed in a four-three decision.

The Trial Court in a lengthy opinion had concluded that the defendants were not guilty of criminal trespass as charged because the waters in question were navigable and as such open to public use. At the trial, entry onto the waters in question was conceded by defendants, and the evidence there adduced pertained to the classification of those waters as navigable. The nature of the Trial Court's dismissal is determinative of the People's right to appeal under Section 518(3). If it was upon the "insufficiency of the evidence adduced at the trial" no appeal lies. If, on the other hand, it was upon the legal insufficiency of the information regardless of the time of dismissal, the Section allows an appeal. The evidence of the navigable nature of the waters in question tended to prove that the defendant's admitted acts did not constitute a crime. Is such evidence that alluded to in Section 518(3)? The Judicial Council in its 1942 report "would *not* allow an appeal from an order dismissing an indictment for reasons connected with the weight or sufficiency of the evidence."² If the rule were otherwise, a possible question of double jeopardy might arise.³

The majority in this case held that the Trial Judge's dismissal was on the weight of the evidence, while the minority indicated that it was on the legal insufficiency of the information. It cannot be disputed that the "evidence" (as used in a generic sense) presented by the People in this case was not sufficient to persuade the Trial Judge. However, all of that evidence related to a point of law, not one of fact. The insufficiency of such evidence does not appear to be the same "insufficiency" to which Section 518(3) refers. The purpose of that Section is to prevent the relitigation of a factual determination. The evidence concerning the navigable nature of the water in question here seems to relate to the determination of the sufficiency of the information as a matter of law.

SUFFICIENCY OF INFORMATION

An information must state facts necessary to constitute a designated crime or it is defective, and for that reason void.⁴ The information in *People v. McGuire*⁵ charged that defendant "did unlawfully and willfully possess and

97. *People v. Kramer*, 14 Misc. 2d 42, 177 N.Y.S.2d 425 (County Ct. 1958).

98. *People v. Kramer*, 7 Misc. 2d 373, 164 N.Y.S.2d 423 (Police Ct. 1957).

99. The action was brought under the authority of Article 78 of the Civil Practice Act.

1. 7 A.D.2d 644, 180 N.Y.S.2d 408 (2d Dep't 1958).

2. 8TH ANNUAL REPORT OF N.Y. JUDICIAL COUNCIL, *supra* note 92 at 63.

3. SEE 5TH ANNUAL REPORT OF N.Y. JUDICIAL COUNCIL, *supra* note 92 at 41 and the cases cited therein.

4. N.Y. CODE CRIM. PROC. § 145 provides: The information is the allegation to the magistrate, that a person has been guilty of some designated crime.

5. 5 N.Y.2d 523, 186 N.Y.S.2d 250 (1959).