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## Constitutional Law—Free Transcript Required for Appeal by Indigent Prisoner

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argued, there merely was a substitution of consideration in the resale—the exchanging of money for urban improvement.

The Court unanimously held that the sale was not unconstitutional, even though Fordham realized a financial benefit<sup>9</sup> by the transaction, because the City did not sustain a loss on the sale, but received more than the “re-use” valuation price for the property.

In the area of education, where both the Church and the State have an interest, the line of separation between Church and State can be a difficult one to draw.<sup>10</sup> In this area of mutual interest, at least,<sup>11</sup> a financial expenditure by a state or its subdivision which results in a religious organization<sup>12</sup> or its believers<sup>13</sup> acquiring a financial benefit is not necessarily unconstitutional as an act in aid of the establishment of religion.

To sustain the expenditure, however, there must be a valid public purpose for expending the funds.<sup>14</sup> Moreover, the expenditure must not constitute an endorsement of a particular religious belief, nor can it give preferential aid to one or more religious groups at the expense of others.<sup>15</sup>

In the instant case, the Court, by viewing the sale from the vantage point of the City, and in taking a broad approach to the definition of “loss,” finds that the expenditure is not only not an aid in violation of the New York Constitution, but is not visited with a preference for Catholicism.

### Free Transcript Required for Appeal by Indigent Prisoner

In *People v. Pride*,<sup>16</sup> the Courts held that a defendant may not be deprived of his right to appeal solely because of financial inability to procure the necessary transcripts of the trial. The defendant had been convicted of assault in the third degree in the City Court of Buffalo. He appealed to the Supreme Court<sup>17</sup> claiming the prejudicial error had been committed by the trial court, the ap-

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9. The benefit was obtaining the property at a low price otherwise unavailable, since plaintiffs would not have voluntarily sold the property to Fordham at \$7 per sq. ft.

10. Compare *Zorach v. Clauson*, 343 U.S. 306 (1952), with *McCullum v. Board of Education*, 333 U.S. 203 (1948).

11. Whether the State may expend public money on a non-preferential basis in a subject area where the Church and State do not have a mutual interest, whereby the Church acquires a financial benefit, raises problems beyond the scope of this note.

12. *Zorach v. Clauson*, *supra* note 10.

13. *Everson v. Board of Education*, 330 U.S. 1 (1947).

14. A classic example is the “child benefit theory” underlying *Everson v. Board of Education*, *supra* note 13.

15. KAUPER, *FRONTIERS OF CONSTITUTIONAL LIBERTY* 110-114, esp. 113 (1956).

16. 3 N.Y.2d 545, 170 N.Y.S.2d 321 (1958).

17. Buffalo City Court Act §76 (1909) as amended 1951.

peal necessitating a transcript of the trial record.<sup>18</sup> Defendant's motion that on account of his indigence he be supplied with a free transcript was denied.<sup>19</sup> The district attorney then moved to have the return served or, upon failure of that, to have the appeal dismissed.<sup>20</sup> The latter motion was granted.

The Court held that section 49 of the Buffalo City Court Act, inasmuch as it requires the payment of a fee prerequisite to obtaining a transcript for review, is ineffectual in the case of a indigent, and a copy of the transcript must be provided to the defendant.<sup>21</sup>

In New York, the right of appeal in criminal matters is guaranteed to all defendants as protection against error.<sup>22</sup> The federal Constitution, in both the equal protection and the due process clauses,<sup>23</sup> has recently been interpreted to prohibit a state that has granted the right of appellate review from discriminatory treatment of indigent defendants by failing to provide, without charge, the papers necessary for the defendant to commence his appeal.<sup>24</sup>

That it is a burden to provide a record of trial for appellate review has long been recognized in New York. In the past, other devices have been used to alleviate this situation.<sup>25</sup> The decision in the instant case is in accord with sound local and national policy, in that it reaffirms the principle of equal treatment for all.

### Right to Counsel On Appeal

In *People v. Breslin*,<sup>26</sup> decided this term, it was held that an indigent defendant does not have a constitutional right to the appointment of counsel upon an appeal after trial. The defendant appealed to the Court of Appeals after the Appellate Division had affirmed his conviction for larceny, without

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18. *People v. Giles*, 152 N.Y. 136, 46 N.E. 326 (1897).

19. The Buffalo City Court Act §49 (1909) as amended 1956 requires that a fee of \$.20 per folio of one hundred words be paid in advance to the stenographer to make a return of the evidence upon appeal.

20. N. Y. CODE CRIM. PROC. §761.

21. N. Y. CODE CRIM. PROC. §§756, 757 provide generally that a return must be made to the appellate court and this can be enforced by an order of the court. The effect of this case is that failure of the defendant to pay a required fee will not excuse compliance with these sections of the Code of Criminal Procedure.

22. N. Y. CODE CRIM. PROC. §517; *People v. Rirnauer*, 77 Misc. 387, 136 N.Y.Supp. 833 (1912).

23. U. S. CONST. Amend. XIV, §1.

24. *Griffin v. Illinois*, 351 U.S. 12 (1955).

25. *Labianca v. Digianna*, 137 Misc. 725, 244 N.Y.Supp. 437 (Sup.Ct. 1930). Return of evidence not required by Supreme Court judge on appeal from City Court of Buffalo where the reasons for the decision were fully contained in a letter of the trial judge.

26. 4 N.Y.2d 73, 172 N.Y.S.2d 157 (1958).