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Criminal Law—Sufficiency of Indictment

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twice in jeopardy for the same offense, particularly since the sources of the information were subsequently produced in court. The minority felt that the majority decision was unduly restrictive, in that it added new and unnecessary requirements for a pleading-type information, and that any restriction should come from the legislature.

The majority decision indicates a trend of the Court over the past few years to extend more protection to an accused against groundless prosecutions.[72] In the instant case, the majority recognized that to allow an information, insufficient to support a warrant of arrest, to confer jurisdiction on a magistrate to try the defendant would be to reward the prosecution for an illegal arrest. Little objection can be found to the majority's position that no defendant should be required to defend against criminal charges based solely on unidentifiable hearsay.

Sufficiency of Indictment

Section 1864 of the Penal Law provides that a public officer who wrongfully obtains or converts property held, owned, or in the possession of any county is guilty of a felony. In a plan to get drugs for a retail store at institutional rates the defendant, a county health officer, purchased goods through a county home. When the drugs were delivered to the home, the defendant took possession of the drugs and transported them to a retail druggist who then paid the drug manufacturer by cashier's check. The defendant was indicted for a felony under section 1864. Upon appeal from denial of a motion to dismiss the indictment the defendant contended that he could not be guilty of violation of section 1864 because the county did not have an ownership interest in the property taken by the defendant. Until the present case there had been no judicial interpretation of the word "possession" in the section. The Court held that the county need not have an ownership interest in the property but only a right to possession in order that a public official be held liable under section 1864.[73] The county became a gratuitous bailee with a right and duty to retain possession for the manufacturer until he could determine the rightful owner. Thus the statute makes a public official criminally liable for purchasing goods for himself under the county or other office's name and with his own funds. The Court indicated that this reasoning would not apply where the seller knows that the goods were for other then official use.

The Court also refused to dismiss an indictment charging defendant with larceny, holding that a person who with criminal intent and false representation of fact relied on by the seller, obtains more than that to which he knows he would

72. See People v. Scott, *supra* note 67; People v. Jacoby, *supra* note 68.
73. People v. Kirkup, 4 N.Y.2d 209, 173 N.Y.S.2d 574 (1958).

be entitled were he to tell the truth is guilty of larceny. The Court cited no authority to substantiate this holding.

A person who wrongfully takes any personal property, by any means whatever, from the possession of the true owner is guilty of larceny. It is no defense that the accused obtained possession with the consent of the owner provided he induced such consent by a false or fraudulent representation.[74] In the present case the defendant clearly deprived the manufacturer of his property by false representations. It is immaterial that the goods were paid for because the price paid was only a small percentage of the actual market value.[75]

Sufficiency of Indictment

Where an indictment informs the accused of the charge against him in order to enable him to prepare for his trial, protects the accused from double jeopardy, and enables the court to rule on evidence and upon conviction to pronounce just sentence, the indictment is deemed sufficient.[76] Furthermore, in determining the sufficiency of an indictment, courts should be liberal and not technical.[77] Reflecting just such a liberal attitude, the Court of Appeals, in *People v. Lieberman,*[78] reversed the lower court and held the indictment to be sufficient.

The record shows that the defendant, Lieberman, and one Melvin Mittman were indicted upon a charge of second degree manslaughter. The indictment stated that the defendants, acting in concert and each aiding and abetting the others without a design to affect the death, in the heat of passion, struck and beat Rheinhold Peter Ulrickson with their fists causing him to sustain injuries as a result of which he died. The facts show that defendant joined three others for the purpose of beating up tramps; and while in the act of beating up one John Perrett, Ulrickson intervened. Mittman punched him and Ulrickson fell and received fatal injuries.

The lower court dismissed the indictment on the grounds that the evidence before the Grand Jury was insufficient to support the allegations of the indictment within the meaning of §258 of the Code of Criminal Procedure.[79] They felt

74. N. Y. PENAL LAW §1290.
75. People v. Yarmish, 189 Misc. 1241, 68 N.Y.S.2d 618 (Gen.Sess. 1957).
76. N. Y. CODE CRIM. PROC. §284.
77. People v. Weiss, 252 App.Div. 463, 300 N.Y.Supp. 249 (2d Dep't. 1937), reversed on other grounds, 276 N.Y. 384, 12 N.E.2d 514 (1938).
78. People v. Lieberman, 3 N.Y.2d 649, 171 N.Y.S.2d 73 (1958).
79. N. Y. CODE CRIM. PROC. §258: the grand jury ought to find an indictment, when all the evidence before them taken together is such as in their judgement would, if unexplained or uncontradicted, warrent a conviction by the trial jury.