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Criminal Law—False Pretenses

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did not base its decision on this point. In a recent case the Court refused to apply this statute in a criminal prosecution of a referee, holding that this statute relates to commercial fraud practiced by an employee against the financial or business interest of the employer, not to bribery of a referee in a professional game of sport. Sports, though conducted for money, are not trade or commerce in the commonly accepted sense of the word.⁸ It is well to notice in this connection that section 439 falls within Article 40 of the Penal Law, entitled "Business and Trade."

Criminal convictions under this statute are very few; most of them involve convictions of employees rather than donors of bribes. As for civil actions instituted under this section, no new remedy or cause of action based solely upon its violation is created, irrespective of actual damages.⁹

False Pretenses

An interpretation of section 934 of the Penal Law¹⁰ relating to the fraudulent obtaining of property for charitable or benevolent purposes faced the Court of Appeals in *People v. LeGrande*.¹¹ In this case women dressed themselves as nuns and sat in front of department stores soliciting funds; they retained all of the donations in excess of \$2.50 per day, which sum was turned over to the pastor of a church.

The Appellate Division, by giving a very narrow interpretation to the phrase "for any alleged or pretended charitable or benevolent purpose," excluded from its meaning a contribution solicited for a pretended *religious* purpose and held that section 934 had not been violated. In reversing, a unanimous court felt that the term "benevolent organization" was broad enough to include a church,¹² and that, since the main object of defendants' solicitation was their own emolument, the token payment to the religious organization did not prevent this from being a fraud upon the public. In light of the purpose of the section,¹³ defendants' actions

8. *People v. Levy*, 283 App. Div. 383, 128 N. Y. S. 2d 275 (1st Dep't 1954).

9. *Schank v. Schuman*, 212 N. Y. 352, 106 N. E. 127 (1914).

10. N. Y. PENAL LAW §934. A person who wilfully, by . . . false pretense, obtains . . . any money or property, for any alleged or pretended charitable or benevolent purpose, is punishable. . . .

11. 309 N. Y. 420, 131 N. E. 2d 712 (1956).

12. A charitable corporation has been defined as one freely and voluntarily ministering to the physical needs of those pecuniarily unable to secure for themselves; a benevolent corporation was held to be one that ministered to all, with the purpose being anything that promotes the mental, physical or *spiritual* welfare of man. *In Matter of Rockefeller's Estate*, 177 App. Div. 786, 165 N. Y. Supp 154 (1st Dep't 1917).

13. "The purpose of this section is to prevent impositions upon those who are induced to part with their property as a result of commendable charitable impulses, subsequently finding out that they have been duped and that their property has been diverted or converted to some other use." *People v. Yarmish*, 189 Misc. 1041, 68 N. Y. S. 2d 628 (1947).

would seem to fall directly within the area that the section was designed to cover, and thus the broad interpretation given to the term "benevolent organization" by the Court of Appeals appears to be correct.

Possession of Dangerous Weapons

Convictions under section 1897 of the Penal Code for unlawful possession of firearms have been sustained where the possession was constructive as well as actual.¹⁴ *Possession*, as used in this section, has been construed to mean that which places the weapon within the accused's immediate control and reach and available for use if he so desires.¹⁵ It must also be a knowing and voluntary possession.¹⁶ Examples of how far the courts have gone in finding possession include the finding of a loaded pistol in the glove compartment of defendant's car¹⁷ and the finding of one lying on the back ledge of the auto.¹⁸

In the instant case,¹⁹ defendant was convicted of, *inter alia*, unlawful possession of a pistol which had been stolen and which was found in the luggage compartment of his wife's car, to which he had access. Defendant's claim was that he had recently purchased the pistol. The Court of Appeals held that since the pistol was not in the possession of its lawful owner, someone was guilty of unlawful possession, thereby establishing the crime by independent evidence. This fact, when coupled with the fact the defendant had access to the compartment where the gun was found, and his statement that he bought it were deemed sufficient to convict him of the crime. It further held that the trial court could have found that the weapon was within the immediate control and reach of the accused, available for unlawful use if he so desired.

This expansion of the concept of *possession* seems only a logical extension of prior law. Under the facts of the case, it would seem that any other decision would be contrary to all principles of reason and logic.

14. N. Y. PENAL LAW §1897(4). Any person . . . who shall have in his possession . . . any pistol, revolver or other firearm . . . without a written license therefor . . . shall be guilty of a misdemeanor, and if he has been previously convicted of any crime, he shall be guilty of a felony.

15. *People v. City Prison*, 154 App. Div. 413, 139 N. Y. Supp. 277 (1st Dep't 1913).

16. *People v. Persce*, 204 N. Y. 397, 97 N. E. 877 (1912).

17. *People v. Russo*, 278 App. Div. 98, 103 N. Y. S. 2d 603 (1st Dep't), *aff'd*, 303 N. Y. 673, 102 N. E. 2d 834 (1951); *People v. Evergood*, 74 N. Y. S. 2d 12 (Mag. Ct. 1947).

18. *People v. Russo*, 278 App. Div. 98, 103 N. Y. S. 2d 603 (1st Dep't), *aff'd*, 303 N. Y. 673, 102 N. E. 2d 834 (1951).

19. *People v. Spillman*, 309 N. Y. 295, 130 N. E. 2d 625 (1955). The court also dismissed a conviction for possession of burglar's tools, deciding that rubber gloves and a claw hammer, in and of themselves, are not burglar's instruments.