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## Criminal Law—Uniform Traffic Ticket Used as an Information for a Pleading

Robert Lane

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the plaintiff received must be limited to the same material and labor that a foreclosure of the mechanic's lien would have been limited to.

In substantiation of this principle the Court relied on two New York cases.<sup>24</sup> An examination of these cases indicates that the instant case is an extension of the law in this field, since neither of these cases squarely face the issue of whether or not payment for items of personalty can be included in the personal judgment given under the law when a mechanic's lien fails. Nor does the language of the governing statutes<sup>25</sup> clearly resolve this problem. The statute limiting the duration of a mechanic's lien<sup>26</sup> indicates that a personal judgment can be granted for the amount specified in the lien when it has lapsed. That, of course, would exclude personalty as an element of the judgment. The other statute<sup>27</sup> relied upon provides for a judgment where no lien is established. This indicates that the plaintiff can recover such sums as he might recover in an action on a contract. This would seem to include personalty.

This apparent contradiction has now been judicially obviated by the clear statement from the Court of Appeals that only matters which are the subject of a mechanic's lien can be assessed in arriving at the amount of the personal judgment given in an action to foreclose a mechanic's lien which has lapsed due to failure to file a notice of pendency.

## CRIMINAL LAW

### Uniform Traffic Ticket Used As An Information For A Pleading

In reversing the conviction in *People v. Scott*,<sup>1</sup> the Court held (4-3) that a uniform traffic ticket was not a sufficient information to be used as a pleading and also that such a defect was not waived by the defendant's plea of guilty. The defendant was convicted of operating a motor vehicle while intoxicated, in violation of the Vehicle and Traffic Law.<sup>2</sup>

Where the defendant is charged with a misdemeanor, an information is absolutely required.<sup>3</sup> The Code of Criminal Procedure defines an information as an "allegation made to a magistrate that a person has been guilty of some designated crime."<sup>4</sup>

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24. *McGraw v. Godfrey*, 56 N.Y. 610 (1874); *Darrow v. Morgan*, 65 N.Y. 333 (1875).

25. See note 21 *supra*.

26. N.Y. LIEN LAW §17.

27. N.Y. LIEN LAW §54.

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1. 3 N.Y.2d 148, 164 N.Y.S.2d 707 (1957).

2. N.Y. VEHICLE AND TRAFFIC LAW §70(5).

3. *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273 (1932).

4. N.Y. CODE CRIM. PROC. §145.

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The majority believed that the only purpose of a uniform traffic ticket was to notify the defendant that he was to appear in court so that he could be charged with a specific crime.<sup>5</sup> Therefore, it could not be classified as an information; for it wasn't an allegation that the defendant was guilty of a designated crime. Since the trial court had acquired jurisdiction over the defendant by virtue of a valid arrest, the dissent viewed the ticket as a pleading and nothing else.<sup>6</sup>

Relying upon *People v. Jacoby*,<sup>7</sup> the majority also stated that an information must be written, in a prosecution for a misdemeanor. As the dissent in the instant case points out however, the defendant's own affidavit was held to be sufficient in that case and therefore it could not be said that the information had to be in any particular form.

The fact that the traffic ticket as an information wasn't verified was also objected to by the majority.<sup>8</sup> Since neither statute nor the common law required that an information be sworn to, in a prosecution for a misdemeanor, this objection was also dismissed by the dissenters.<sup>9</sup>

Although authority may be found to the contrary,<sup>10</sup> the Court in the instant case also held that the lack of a verified information is a jurisdictional rather than a formal defect.<sup>11</sup> Therefore, not even a plea of guilty could waive the requirement of verification.

The purpose of the information is to inform the defendant of the nature of the charge against him so that he may prepare for trial and also to prevent him from being tried for the same offense a second time.<sup>12</sup> Since a traffic ticket would seem to accomplish that result in the instant case, it is hard to say that his rights would be violated by use of the traffic ticket as an information.

### Grand Jury Indictment

In *People v. Salerno*,<sup>13</sup> a grand jury directed the district attorney to proceed with the filing of an information charging misdemeanors. Under a plea of not

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5. *City of Buffalo v. Newbeck*, 209 App. Div. 286, 204 N.Y. Supp. 737 (4th Dep't 1924).

6. *People v. Belcher*, 302 N.Y. 529, 99 N.E.2d 874 (1951).

7. 304 N.Y. 33, 105 N.E.2d 613 (1952).

8. *People ex rel. Livingston v. Wyatt*, 186 N.Y. 383, 79 N.E. 330 (1906).

9. *Merrill v. United States*, 6 F.2d 120 (9th Cir. 1925).

10. *City of Buffalo v. Murphy*, 228 App. Div. 279, 239 N.Y. Supp. 206 (4th Dep't 1930).

11. *Albrecht v. United States*, 273 U.S. 1 (1926).

12. *People v. Zambounis*, 251 N.Y. 94, 167 N.E. 183 (1929).

13. 3 N.Y.2d 175, 164 N.Y.S.2d 720 (1957).