Buffalo Law Review

Volume 7 | Number 1 Article 55

10-1-1957

Criminal Law—Public Trial

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adjournments and delays but also failed to raise the point until the appeal in the Appellate Division. The Court held that such conduct constituted a waiver. A defendant cannot participate in a trial and save his objection of undue delay to challenge an adverse verdict.

In *People v. Chirieleison*,[96] the defendant, after completion of a prison sentence, was held for trial on a five-year old charge. After denial of his motion to dismiss the indictment and the dismissal of his appeal by the Appellate Division upon the ground that the order was intermediate and not appealable,[97] the defendant pleaded guilty to a lesser crime. Holding that the indictment should have been dismissed when the motion was first made, the Court said that the defendant's subsequent plea of guilty may not be deemed a waiver.

The weight of precedent gives credence to the decisions reached in the above instances. In *People v. Perry*,[98] defendant's attorney consented to postponement of the trial. The court in holding this conduct to be a waiver of the defendant's right to a speedy trial said, as did the court in *Beavers v. Hanbert*,[99] that the right of a speedy trial is necessarily relative and may be waived; it depends upon the circumstances. In *People ex rel Ianik v. Daly*,[1] the defendant's acquiescence in postponement of the trial was held to be a waiver. In *People v. Russo*,[2] the defendant sought to have the conviction vacated alleging that he had been deprived of his right to a speedy trial. The court in denying the defendant's motion replied that the defendant's failure to raise the objection at the time of trial constituted a waiver.

While it is well settled that an indicted person has a right to a speedy trial,[3] he is not affirmatively obliged to seek such a trial.[4] If the prosecution delays in procuring a trial, the defendant may raise the objection that he has not been granted a speedy trial and move for the dismissal of the indictment.[5]

Public Trial

In interpreting statutory provisions the spirit and purpose of the statute and the objectives sought to be accomplished by the legislature must be borne in

96. 3 N.Y.2d 170, 164 N.Y.S2d 726 (1957).
97. N.Y. CODE CRIM. PROC. §517; In re Montgomery, 126 App. Div. 72, 110 N.Y. Supp. 793 (1st Dep't 1908), *appeal dismissed*, 193 N.Y. 659, 87 N.E. 1123 (1908); People v. Reed, 276 N.Y. 5, 11 N.E.2d 330 (1937).
98. 196 Misc. 922, 96 N.Y.S.2d 517 (County Ct. 1949).
99. 198 U.S. 77 (1905).
1. 30 N.Y. Crim. Rep. 47, 142 N.Y. Supp. 297 (Sup. Ct. 1913).
2. 3 Misc. 2d 916, 155 N.Y.S.2d 765 (County Ct. 1956).
3. N.Y. CODE CRIM. PROC. §8.
4. People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955); Petition of Provoo, 17 F.R.D. 183 (1955), *aff'd on motion*, 350 U.S. 857; 6 BUFFALO L. REV. 53 (1956).
5. N.Y. CODE CRIM. PROC. §668.

mind.[6] But the ordinary meaning of the words used, and the grammatical construction should be adhered to unless it is at variance with that legislative intent.[7]

The Court in *New York Post Corp. v. Leibowitz*,[8] by statutory interpretation, found that mandamus was an appropriate remedy to obtain a copy of the charge to the jury, on the grounds that the judge had a duty to make them available upon request. This duty was found by holding that a charge to the jury was a "decision" within the meaning of the constitutional mandate requiring that judicial opinions or decisions be free for publication.[9] The right of the plaintiff newspaper to the charge to the jury was found in the Public Officers Law[10] and the Judiciary Law.[11] The former requires a person having custody of records or papers in a public office to make transcripts of them upon request and payment of a fee. The latter dictates that a court stenographer must write out the minutes of a proceeding if requested by the judge of the court or by a person legally entitled thereto. The Court found that the notes of the stenographer were records, and that the stenographer was a person in public office within the meaning of the Public Officers Law. From this the Court concluded that anyone upon request and payment of a fee is entitled to a copy of the stenographer's notes, and that the stenographer, under the Judiciary Law, is required to write out the notes of the proceeding requested. The Court felt that any other interpretation of these statutes would result in a conflict with the constitutional requirement of free publication of judicial decisions.

There is no doubt that one of the basic freedoms of our society is a public trail, nor is there any doubt that complete press coverage insures that a trial will be public.[12] That a newspaper be entitled, as a matter of right, to a charge to the jury does not seem to raise any serious objections, but the reasons the Court advances as a basis for this right are not entirely persuasive. The Court seems to hinge this right upon the conclusion that a charge to the jury is a "decision" under the Constitution. The cases they cite hold that a charge to the jury may become the law of the case if not objected to by either party or if affirmed upon appeal.[13] But the law of a case is not necessarily a decision, rather it is usually an instruc-

6. People v. Ryan, 274 N.Y. 149, 8 N.E.2d 313 (1937); River Brand Rice Mills v. Latrobe Brewing Co., 305 N.Y. 36, 110 N.E.2d 545 (1953).

7. United States v. Montgomery Ward, 150 F.2d 369 (4th Cir. 1945); Surace v. Sanna, 248 N.Y. 18, 161 N.E. 315 (1928).

8. 2 N.Y.2d. 677, 163 N.Y.S.2d 409 (1957).

9. N.Y. CONST. art. VI, §22, states:

> . . . all laws and judicial opinions or decisions shall nevertheless be free for publication by any person.

10. N.Y. PUBLIC OFFICERS LAW §66.

11. N.Y. JUDICIARY LAW §301.

12. Snyder v. Massachusetts, 291 U.S. 97 (1934); Note, 6 TEMP. L.Q. 381 (1932).

13. Lenard v. Home Owners Loan Corp., 297 N.Y. 103, 75 N.E.2d 261 (1947); Buchin v. Long Is. Ry., 286 N.Y. 146, 36 N.E.2d 88 (1941).

tion, a jury charge, or a ruling made on a former appeal,[14] and its effect is limited to a court of co-ordinate jurisdiction.[15] Nor does the law of the case necessarily involve reaching a conclusion, as does a decision.[16] Even if it is assumed that a charge to the jury is a decision there is no authority given for the contention that the Constitution intended to apply to decisions not filed in the office of the clerk of the court. Therefore it seems questionable whether mandamus should lie on the grounds that the judge had a duty to make the charge available.

The Court also seems to be reaching too far in calling the stenographers' notes records in a public office. The statutes provide a means for having the notes written out and filed with the clerk of the court;[17] until this is done they can hardly be termed as records.[18] Further to say that the stenographers' notes are records and thereby requiring the stenographer to write them out upon anyone's request seems to defeat the purpose of section 301 of the Judiciary Law, since that section requires the court stenographer to write out the notes of a proceeding only if the judge of the court so directs, or if required to do so by a person entitled by law to a copy. Section 300 of the Judiciary Law defines persons entitled to a transcript as being the party, his attorney, the judge, and in criminal cases, the prosecuting attorney. The interpretation that the Court placed upon these statutes seems to go beyond their ordinary meaning, and the intent of the legislature. The "right" given to the plaintiff to obtain a copy of the minutes of a proceeding, thought not objectionable in itself, lacks adequate definition. Is the "right" only available to one who seeks it for publication purposes, or is it available to anyone for any purpose? Is the "right" to be available in cases where the court excludes the general public for purposes of preserving the public decency? If such a right is to be created the power to create it lies in the legislature, where it can be adequately defined and controlled, and not in the courts.[19]

Trial—Right Of Defendant To Be Free Of Shackles

Section 10 of the Code of Criminal Procedure[20] codifies the common law[21]

14. Mann v. Simpson & Co., 286 N.Y. 450, 36 N.E.2d 658 (1941); Douglas v. Manfree Realty Corp., 263 App. Div. 998, 33 N.Y.S.2d 423 (2d Dep't 1942); Walker Memorial Baptist Church v. Saunders, 173 Misc. 455, 17 N.Y.S.2d 842 (Sup. Ct. 1940).

15. Walker v. Gerli, 257 App. Div. 249, 12 N.Y.S.2d 942 (1st Dep't 1939).

16. Lambros v. Young, 145 F.2d 341 (D.C. Cir. 1944).

17. N.Y. JUDICIARY LAW §13.

18. People v. Clurman, 290 N.Y. 242, 48 N.E.2d 505 (1943); American District Telegraph Co. v. Woodbury, 127 App. Div. 455, 112 N.Y. Supp. 165 (3d Dep't 1908); Goldsmith v. Hubbard, 183 Misc. 889, 52 N.Y.S.2d 871 (Sup. Ct. 1945).

19. International News Service v. Associated Press, 248 U.S. 215 (1918); Crowley v. Lewis, 239 N.Y. 264, 146 N.E. 374 (1925); Briggs v. Partridge, 64 N.Y. 357 (1876).

20. N.Y. CODE CRIM. PROC. §10 provides:

> . . . [N]or can a person charged with a crime be subject, before conviction, to any more restraint than is necessary for his detention to answer the charge.

21. COMMISSIONERS ON PRACTICE AND PLEADINGS, REPORT 10 (1850).