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Criminal Law—Trial—Right of Defendant to be Free of Shackles

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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).

in directing that a person charged with a crime shall be free from shackles during his trial except to the extent deemed necessary by the trial court.

In *People v. Mendola*,[22] the Court of Appeals unanimously reversed the Appellate Division[23] and held that the trial court had not committed an abuse of discretion, as a matter of law, in permitting the defendant to be handcuffed during his trial for a previous escape from prison. Defendant was admittedly desperate and had said that he would have escaped even if he "had one day to go." The Court pointed out that it might have been a better practice for the trial court to have heard testimony bearing on the necessity of the handcuffs, but held that in any event the record contained sufficient evidence to justify that court's action in refusing to order the handcuffs removed.

The case was remanded to the Appellate Division to give them an opportunity to exercise their discretion under section 527 of the Code of Criminal Procedure.[24] On subsequent determination[25] it was held that a new trial was necessary in the interest of justice. It would seem that much of the procedural difficulty involved in this type of case could be eliminated if the appellate court, in the first instance, would, whenever possible, rest its reversal both on the law and on the ground that it was necessary in the interest of justice, as was done in *People v. Strewl*.[26]

Recantation

Recantation, as applied within the scope of the law of perjury, is the renunciation or withdrawal of a prior statement made before a tribunal.[27] It has been recognized for centuries as a defense to the crime of perjury.[28]

People v. Ezaugi,[29] sets forth the criterion which the defendant must meet to apply this defense. The defendant in the instant case had intentionally testified falsely before a grand jury. After having left the witness stand, he discovered that the truth regarding his testimony was, and had been known all during the proceeding to the officials conducting the grand jury hearing. The defendant

22. 2 N.Y.2d 270, 159 N.Y.S.2d 473 (1957).
23. 1 A.D.2d 413, 151 N.Y.S.2d 278 (4th Dep't 1956).
24. N.Y. CODE CRIM. PROC. §527 provides:
> . . . And the appellate court may order a new trial if it be satisfied that . . . justice requires a new trial . . . .
25. 3 A.D.2d 811, 160 N.Y.S.2d 232 (4th Dep't 1957).
26. 246 App. Div. 400, 287 N.Y. Supp. 585 (3rd Dep't 1936), *appeal dismissed* 271 N.Y. 607, 3 N.E.2d 207 (1936).
27. Llanos-Senarillos v. United States, 177 F.2d 164 (9th Cir. 1949).
28. King v. Jones, 1 Peake's Rep. 51 (N.P. 1791); King v. Carr, 1 Sid. 418 (K. B. 1669).
29. 2 N.Y.2d 439, 161 N.Y.S.2d 75 (1957).