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# Criminal Law—Grand Jury

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The defendant in *People v. Easton*,[21] was convicted of driving while intoxicated.[22] City Court allowed an amendment to the information which permitted an allegation of the date of the commission of the violation as December 17, 1952 instead of December 17, 1953, the latter being a date yet in the future. County Court dismissed the information as fatally defective. The Court of Appeals reversed, and reinstated the judgment of City Court on the grounds that the amendment was allowed to correct a typographical error in the information, and that no purpose would have been served by a new information alleging the correct date sworn to by the arresting police officer, who was in court at the time amendment was sought, since defendant had ample notice of the crime charged and was neither surprised nor prejudiced by the correction. The court took pains to distinguish the amendment of the information from an amendment to an indictment, and pointed out the established rule in other jurisdictions which allows a court to amend freely an information even as to matters of substance.[23]

In a dissenting opinion by Judge Dye, in which Judge Froessel concurred, it was emphasized that an indictment which charges the commission of a crime subsequent to the finding of the same by the grand jury may not be amended, for the defect is deemed one of substance and not form.[24] The logical analogy from such a defect in an indictment to one in an information led the dissent to conclude that since in point of law no distinction exists between an indictment and an information as to the statement of facts sufficient to constitute a crime, an information cannot be amended when, as a matter of law, no crime has been charged.[25]

*Grand Jury*

*a. Jurisdiction of motion for inspection of minutes:* In *Schneider v. Aulisi et al.*,[26] the Court of Appeals was presented with the narrow inquiry, whether a motion for inspection of grand jury minutes may be made at Supreme Court in a county and judicial district other than that in which the indictment had been found, where such indictment, found in Supreme Court, had been transferred to County Court. Modifying, and affirming as modified, an order of the Appellate Division[27] denying the application of the District Attorney to prohibit Supreme Court Justice Aulisi

21. 307 N. Y. 336, 121 N. E. 2d 357 (1954).
22. VEHICLE AND TRAFFIC LAW § 70 (5).
23. See note 20 *supra*.
24. *People v. Guiley*, 222 N. Y. 548, 118 N. E. 1072 (1917); *People v. Schweizer*, 160 Misc. 23, 289 N. Y. Supp. 964 (County Ct. 1936); see note 18 *supra*.
25. *Cf. People v. Zambounis*, 251 N. Y. 94, 167 N. E. 183 (1929).
26. 307 N. Y. 376, 121 N. E. 2d 375 (1954).
27. 283 App. Div. 253, 126 N. Y. S. 2d 874 (4th Dep't 1954).

from further proceeding under an order granting a motion for a stay of trial and the inspection of grand jury minutes, the court granted that the Supreme Court had jurisdiction to permit an inspection.[28] The court pointed out the general, state-wide jurisdiction of the Supreme Court, confined and limited in the exercise thereof only by the Legislature in certain situations.[29] There being no legislative restriction of the jurisdiction of the Supreme Court to hear and determine a motion for inspection of grand jury minutes, even though in a county and judicial district other than that in which the indictment was found, it is within the sound judicial discretion of the Supreme Court judge whether or not to grant such a motion.[30] Having settled the question of jurisdiction to grant the motion, and noting that incidental thereto was the authorization to pass on the sufficiency of the motion papers, the court concluded that although the Supreme Court, in possession and control of the minutes of the grand jury, had power to permit an inspection,[31] that power was confined to such permission, and did not extend to motions designed to test the validity or sufficiency of the indictment, over which motion the court to which transfer was made now has jurisdiction.[32] Finally, the stay of the action in County Court was held proper since the Supreme Court has inherent power to restrain the actions of parties before it which threaten to defeat or impair its jurisdiction.[33] Hence it was held that so much of the petition as requested an order in the nature of prohibition with respect to that segment of the motion which seeks a dismissal of the indictment should be granted, and the balance of the Appellate Division denial affirmed.

Judge Dye and Judge Van Voorhis, in a dissenting opinion, disagreed with the modification of the order effected by the majority on the ground that there was insufficient demonstration of anything in the record to indicate that Justice Aulisi would do

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28. *People ex rel. Hirschberg v. Sup. Ct. of New York,* 269 N. Y. 392, 199 N. E. 634 (1936); see *Linton v. Perry Knitting Co.,* 295 N. Y. 14, 17, 64 N. E. 2d 270, 271 (1945); CODE CRIM. PROC. § 952-t. See also N. Y. CONST. Art. VI, § 1.

29. *E. g.,* JUDICIARY LAW § 149 regulates the term at which a motion involving a matter pending before an extraordinary term may be made; CODE CRIM. PROC. § 355 regulates the county in which an indictment is to be tried; CODE CRIM. PROC. § 344, 346 regulates term at which motions may be made for removal of an action from County Court to a term of Supreme Court, or from Supreme Court or County Court to a term of Supreme Court in another County.

30. The general practice of moving for an inspection of grand jury minutes before a justice of the Supreme Court other than that in which the indictment is pending is frowned upon as an interference with the orderly administration of judicial functions. *See People ex rel. Newton v. Special Term, Supreme Court, N. Y. County,* 193 App. Div. 463, 472, 184 N. Y. Supp. 193, 199 (1st Dep't 1920).

31. See note 28 *supra* at 395. 396, 199 N. E. 634, 635.

32. CODE CRIM. PROC. § 39 (2).

33. See, *e. g., Colson v. Pelgram,* 259 N. Y. 370, 375-376, 182 N. E. 1921-22 (1932); *People v. McLaughlin,* 150 N. Y. 365, 376, 44 N. E. 1017, 1020 (1896); *Cushman v. Leland,* 93 N. Y. 652, 653-654 (1883).

more than entertain a motion for inspection, and hence an invocation of the extraordinary remedy of prohibition was unwarranted.[34]

*b. Contempt, refusal to answer after immunity:* Once a witness before a grand jury is properly apprised of his statutory immunity from prosecution for any crime disclosed by his testimony,[35] even though such witness may suspect that he himself may be one of the targets of the investigative proceedings,[36] he may not refuse to answer questions propounded by that body on the ground of his constitutional protection against self-incrimination.[37]

Defendant, in *People v. Breslin*,[38] was a witness before a grand jury inquiring into the commission of the crimes of bribery, conspiracy and gambling who refused to answer questions by that body after he had been advised of his statutory immunity from prosecution for any crimes his answers might reveal. The Court of Appeals, in a *per curiam* opinion, affirmed the conviction of defendant in the court below of criminal contempt of court, noting that the defendant was not entitled to remain silent even though he feared the implication of himself in criminal matters once adequate immunity had been granted.[39]

*Bail*

As a general matter, sureties are held to rigid accountability on their bailbond in the event of their principal's disappearance;[40] and this, clearly, is for the purpose of promoting the administration of the criminal law.[41] Although the bondsman's horizon is not, therefore, devoid of the clouds of risk, under certain circumstances the remission of a forfeited bailbond may be warranted.[42]

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34. See *Hogan v. Court of General Sessions of New York County*, 296 N. Y. 1, 68 N. E. 2d 849 (1946).

35. See PENAL LAW §§ 381, 584, 996 (applicable immunity statutes).

36. Such compulsory disclosure is warranted only when the protective purview of the immunity completely obviates the possibility of prosecution for crimes principally or incidentally disclosed. See *Heike v. United States*, 227 U. S. 131, 142 (1913); *Matter of Doyle*, 257 N. Y. 244, 250-251, 177 N. E. 489, 491 (1931).

37. N. Y. CONST. Art. I, § 6 provides that no person ". . . shall be compelled in any criminal case to be a witness against himself."

38. 306 N. Y. 294, 118 N. E. 2d 108 (1954).

39. See, *e. g.*, *Matter of Doyle*, note 36 *supra*; *Matter of Rouss*, 221 N. Y. 81, 116 N. E. 782 (1917); *People v. Reiss*, 255 App. Div. 509, 8 N. Y. S. 2d 209 (1st Dep't 1938), *aff'd*, 280 N. Y. 539, 20 N. E. 2d 8 (1939); *People v. Cahill*, 126 App. Div. 391, 110 N. Y. Supp. 728 (2d Dep't 1908), *aff'd*, 193 N. Y. 232, 86 N. E. 39 (1908).

40. See *People v. Parkin*, 263 N. Y. 428, 432, 189 N. E. 480, 482 (1934).

41. *People v. Schwarze*, 168 App. Div. 124, 126, 153 N. Y. Supp. 111, 112 (2d Dep't 1915); *People v. Licenziata*, 230 App. Div. 358, 360, 244 N. Y. Supp. 731, 733 (2d Dep't 1930), *aff'd*, 256 N. Y. 534, 177 N. E. 129 (1931).

42. CODE CRIM. PROC. §§ 597, 598; see *People v. Spear*, 1 N. Y. Cr. Rep. 538 (1883).