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Criminal Law—Trial—Reversible Errors

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the stand¹⁸ may have been negatived. The Court would have been justified in finding that the statute created guilt by legislative fiat and so violated due process.¹⁹ In construing presumption statutes, the Court should not forget that great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact.

Trial—Reversible Errors

Irrespective of the guilt or innocence of a defendant, he is entitled to a fair and orderly trial. Of vital importance to him are the rules pertaining to the admissibility of evidence and the conduct of the prosecution. Two important decisions rendered by the Court in this regard are *People v. Ford*²⁰ and *People v. Hetenyi*.²¹

In the *Ford* case, the appellant had been found guilty of first degree murder.²² A psychiatrist had examined him before the administration of a "truth serum", again while appellant was under the effects thereof, and a third time after the effects had worn off. As a defense witness he was permitted to testify regarding the first and third examinations but not as to the second. Failure to permit the jury to hear and consider the results of this second examination was cited by the appellant on appeal as error entitling him to a reversal of the conviction. Although the conviction was affirmed, a vigorous dissent by Judge Desmond indicates that the use of the evidence offered by the defense is hardly startling in this scientific age.²³ Judge Desmond was of the opinion that the proffered evidence was not in the same class with the results of a lie detector test, which the New York courts have not accepted as admissible.²⁴ The Court's reluctance to accept the evidence is not in keeping with the spirit of judicial modernization exemplified in *Woods v. Lancet*.²⁵

18. CODE OF CRIM. PROC. § 393: "The defendant in all cases may testify as a witness in his own behalf, but his neglect or refusal to testify does not create any presumption against him."

19. See *Tot v. U. S.*, 319 U. S. 463 (1943).

20. 304 N. Y. 679, 197 N. E. 2d 595 (1952).

21. 304 N. Y. 80, 106 N. E. 2d 20 (1952).

22. PENAL LAW §§ 1044-1045.

23. There is widespread use of radar checks in obtaining convictions for speeding in the lower courts of this State. The sufficiency of the evidence has not yet been tested at the Court of Appeals.

24. *People v. Forte*, 279 N. Y. 204, 18 N. E. 2d 31 (1938).

25. See TORTS, this Section, 120-122.

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In *People v. Hetenyi*²⁶ the appellant had been previously tried and found guilty of second degree murder,²⁷ but on appeal the Appellate Division reversed, ordering a new trial.²⁸ On retrial, the appellant was found guilty of first degree murder.²⁹ From this second conviction he appealed directly to the Court of Appeals.³⁰ Over the objections of the defense, the prosecutor had obliquely commented on the appellant's refusal to take the stand, and in his summation had referred to the appellant's repeated changes of religious affiliation. The Court of Appeals, in a 4-3 decision, ruled for a new trial.³¹ If the alleged errors could in any way have produced the verdict returned by the jury, there should be a reversal. Difficulty arises when the Court, as in the *Hetenyi* case, is convinced that the facts proved at the trial have established the appellant's guilt.³²

The rule appears to be that where the appellant's guilt is borne out during the trial by the facts proved, the Court, on appeal, will cast an eagle's eye to the procedure used to reach the final verdict, and be prone to label errors as something more than "technical".

Coram Nobis

Ever since *Lyons v. Goldstein*,³³ the Court has been constantly adding to the body of law surrounding the post conviction relief of writ of error *coram nobis*. A case of major import involving the writ was *People v. Richetti*.³⁴ There the Court laid down the proposition that the denial of the writ without a hearing constituted a deprivation of due process whenever the petitioner's allegations were not *conclusively* refuted by unquestionable documentary proof.

26. *Supra* n. 21.

27. PENAL LAW §§ 1046-1048.

28. 277 App. Div. 310, 98 N. Y. S. 2d 990 (4th Dep't 1950).

29. PENAL LAW §§ 1044-1045.

30. CODE OF CRIM. PROC. §§ 517-520.

31. § 542 of the CODE OF CRIM. PROC. provides: "After hearing the appeal, the Court must give judgment, without regard to technical errors or defects or to exceptions which do not affect the substantive rights of the parties."

32. The Court's opinion as to the guilt of the appellant is unfortunate, and may prove prejudicial in the new trial ordered.

33. 290 N. Y. 219, 47 N. E. 2d 425 (1943).

34. 302 N. Y. 290, 97 N. E. 2d 908 (1951).