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Criminal Law—Coram Nobis

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THE COURT OF APPEALS, 1951 TERM

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).

In *People v. Langan*,³⁵ the Court added to the body of law surrounding the writ of error *coram nobis*. In the *Langan* case the Court further defined the unquestionable documentary proof which will make the petitioner's personal presence futile at a hearing to decide the application for the writ. In the instant case, the petitioner had applied to the Court of General Sessions of New York County for a writ of error *coram nobis*, to vacate a conviction rendered against him in 1930. Petitioner insisted that he had not been advised of his right to counsel, and that he was not represented by counsel at the time of the conviction. The facts alleged by the petitioner were contained in a verified petition. The district attorney in opposing the petition had submitted an unverified memorandum refuting the allegations and invoked the rule that the proceedings were presumed to have been regular.³⁶ The Court of Appeals granted the writ. The *Langan* cases puts the presumption of regularity in a special light. Originally, the burden was on the petitioner in a *coram nobis* proceeding to sustain his allegations by a fair preponderance of the credible evidence.³⁷ Later, the Court of Appeals held that a presumption of regularity exists only until contrary substantial evidence appears: once petitioner goes forward with sufficient proof, the presumption is out of the case; an inference of nonconformance is raised, the presumption of regularity disappears, and the burden is on the People to establish compliance.³⁸ The significance of the *Langan* case attaches here. Now, an inference of nonconformity can be raised if the answer by the People to a verified petition for a writ of error *coram nobis* is incomplete in substance, form, or both. The *Langan* decision is in keeping with our spirit of justice and fair play. It recognizes that every right is entitled to its full share of protection to the last.

Conclusion

The foregoing is only a suggestion of the monumental task the Court of Appeals faces in the field of criminal law. Decisions rendered by the Court may sometimes be subject to criticism. However, it is concluded that the process of adjudication by the judges of the highest court of this State is attended with a devotion which guarantees that our system of justice is functioning well.³⁹

35. 303 N. Y. 474, 104 N. E. 2d 861 (1952).

36. *People v. Richetti*, *supra* n. 34.

37. *People v. Shapiro*, 188 Misc. 363, 67 N. Y. S. 2d 774 (Gen. Sess. 1947), also see 1 Bflo. L. R. 272 (1952) for a history of the writ of error *coram nobis* in N. Y.

38. *People v. De Bernardo*, 199 Misc. 563, 106 N. Y. S. 2d 515 (Co. Ct. 1951).

39. See Remarks on Retirement of Judge Bromley, 300 N. Y. ix, (1949).