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Criminal Law—Indictment

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there is no constitutional prohibition against a state enacting legislation to supplement the federal statute by permitting extradition on less exacting terms. Also, the federal statute prescribes only those terms upon which a state *shall* extradite, but does not prohibit a state from voluntarily providing to extradite under other circumstances less exacting.

The fact that an overwhelming majority of the states have adopted the Uniform Criminal Extradition Act, which allows extradition on an information supported by affidavit, is evidence that it is necessary for the states to supplement the federal statute in order to achieve a more cooperative effort in the prevention of crime and in the enforcement of their respective criminal laws.

Indictment

It has been a long standing practice to include in the indictment, allegations charging defendant as a prior offender and receiving proof thereof at the trial, in order that the judge can impose proper punishment for a multiple offender.[9] This obviously unfair practice will be allowed to continue unless abolished by legislative action. This is stated by the decision in *People v. De Santis*[10] where such prejudicial practice was held not to be reversible error.

From this decision it must also follow that § 1943 of the Penal Law passed in 1926, authorizing the District Attorney to proceed by information *after* the conviction or sentence, to secure heavier punishment, did not abolish the old method, but supplemented it.

In a dissenting opinion Julge Fuld reasoned that such a patently unfair practice was upheld prior to passage of § 1943 of the Penal Law, because it was the only method by which a heavier penalty provided for recidivists could be imposed. The new method is fairer, accomplishes substantially the same purpose, and should be used exclusively.

There was no legal barrier for the court to hurdle in eliminating this prejudicial practice, for no square holding on the intepretation of § 1943 had been previously made, although dictum in one case[11] stated that the "old practice is still permissible although no longer necessary." However, the legislative intent in passing this section would seem to sustain the majority, since the statute

9. *People v. Sickles,* 156 N. Y. 541, 51 N. E. 288 (1898); *Johnson v. People,* 55 N. Y. 512 (1874).
10. 305 N. Y. 44, 110 N. E. 2d 549 (1953), *cert. denied,* 345 U. S. 944 (1953).
11. *People v. Gowasky,* 244 N. Y. 451, 460, 155 N. E. 737, 740 (1927).

was directed at proper punishment of a prior offender, where there was no knowledge of the prior offense at the time of the trial.[12]

The practice presently allowed prejudices the jury against the defendant, without serving any useful function. The knowledge of a prior conviction is necessary only after the conviction and then merely to enable the trial judge to impose the proper punishment. If the court does not see fit to eliminate this prejudicial practice the legislature should act.

At The Trial

a. Evidentiary Ruling: The evidence allowed or denied admission at a trial is in many cases the determining factor in defendant's acquittal or conviction. His right to a fair trial is protected against prejudicial error by the appellate court's careful scrutiny of the evidentiary rulings objected to. Such a decision, however, is usually of little precedent value.

In *People v. Feld,*[13] the trial court admitted into evidence imperfect recordings of a telephone conversation[14] incriminating defendant. The recording was marred by many interruptions and contained defendant's name only once. The defendant contended that the recordings were mutilated or fabrications, and tried to introduce testimony by a wire tap expert to this effect. This testimony was denied admission, after evidence was admitted to the effect that the expert could not tell if the records were duplicates or originals.

The Court of Appeals in a 4-3 decision, ruled that failure to allow defendant a chance to disprove the authenticity of the recordings was not prejudicial error. Since the expert had already stated he could not tell if the recording were originals or duplicates his further testimony would have been valueless.

The dissent vigorously claims that the destruction of the authenticity of the recordings would have gone a long way in destroying the People's case and failure to admit testimony on this vital question should compel reversal and a new trial.

b. Testimony of Previous Identification: At common law it was a well settled rule that an identification by a witness, of a defendant at a trial, could not be further supported by testimony

12. See N. Y. Legis. Doc. No. 84 at 22 (1926).
13. 305 N. Y. 322, 113 N. E. 2d 440 (1953).
14. Code Crim. Proc. §813(a). The wire taps were made pursuant to an order of the court.