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Criminal Law—Right of Appeal

Myron Siegel

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THE COURT OF APPEALS, 1952-53 TERM

states the self-evident proposition that following an adjudication of guilt, judgment must be imposed and may not be deferred or postponed indefinitely.⁴⁰

Right of Appeal

It is a well established rule that appeal is not a matter of constitutional right, and in non-capital criminal cases an appeal lies only by statutory authorization.⁴¹ In the case of *In re Ryan*,⁴² petitioner's motion to dismiss four subpoenas duces tecum returnable before the Grand Jury was denied by the Court of General Sessions, which had only criminal jurisdiction.⁴³ The Code of Criminal Procedure⁴⁴ makes no provision for the review of an order denying a motion to vacate a subpoena.⁴⁵

The petitioner appealed under C.P.A. § 631 (2).⁴⁶ The Appellate Division held⁴⁷ that the order was appealable under this C.P.A. section but upon reviewing the merits, refused to vacate all the subpoenas.

The Court of Appeals in reviewing, after cross appeals, denied the petitioner any standing to appeal under the C. P. A. and thereby refused to review the merits of the case. The Court stated that the C. P. A. applies only to civil actions and civil proceedings except where otherwise specified. The petitioner chose to proceed in a court which had only criminal jurisdiction, in a matter somewhat related to criminal law, and thereby is deemed to have instituted a criminal proceeding, where the right to appeal is regulated by criminal procedure.

It is implied that the petitioner could have instituted his motion to dismiss the subpoena in a court of both civil and criminal jurisdiction, and by so doing may have been able to appeal under the applicable C. P. A. sections. The rule, though unclear, would seem to be that the right of appeal on a proceeding either civil or criminal in nature is dependent on the jurisdiction of the court in which the proceeding is originally brought.⁴⁸

40. The judge must pronounce judgment, either to sentence defendant to a term in prison or to suspend sentence, or to impose a sentence and suspend its execution.

41. *People v. Reed*, 276 N. Y. 5, 11 N. E. 2d 330 (1937); *People v. Zerillo*, 200 N. Y. 443, 93 N. E. 1108 (1911).

42. 306 N. Y. 11, 114 N. E. 2d 183 (1953).

43. CODE CRIM. PROC. § 51; *People ex rel Jerome v. Court of General Sessions*, 185 N. Y. 504, 78 N. E. 149 (1906).

44. CODE CRIM. PROC. § 517-520.

45. *Matter of Turcarno Contracting Co.*, 260 App. Div. 253, 21 N. Y. S. 2d 270 (2d Dep't 1940).

46. An appeal may be taken in special proceedings: "From an order, affecting a substantial right, made by a court of record possessing original jurisdiction, or a judge thereof in a special proceeding instituted in that court . . ."

47. *In re Ryan*, 281 App. Div. 953, 120 N. Y. S. 2d 110 (1st Dep't 1953).

48. See *Matter of Cluusi*, 296 N. Y. 354, 73 N. E. 2d 548 (1947).