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Evidence--Admission of Judgment Roll of Civil Action in Criminal Trial (People v. Rosenzweig, 265 N.Y. 323 (1934))

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of the statute, it is necessary to present the facts to the court so as to enable it to pass upon the reasonableness of the groupings.[6]

While the presumption is that the statute enacted by the legislature is valid,[7] yet a complaint, based upon the alleged unconstitutionality of that statute, should not be dismissed without a hearing of the evidence for otherwise the right of the people to guard against an infringement of their rights would be seriously impaired.[8]

V. A. P.

EVIDENCE—ADMISSION OF JUDGMENT ROLL OF CIVIL ACTION IN CRIMINAL TRIAL.—The defendant was convicted of extortion.[1] At the trial the defendant claimed that the complaining witnesses were acting in bad faith and were motivated by a desire to punish the defendant for his part in obtaining a contract from the said complaining witnesses for a labor union. To rebut and partially discredit this position of the defendant, the state introduced the judgment roll in a prior civil action upon labor union contracts wherein the said contracts were held unenforceable because they had been obtained by duress practiced by this defendant's union.[2] It was not

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state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." Rast v. Van Deman & Lewis Co., 240 U. S. 342, 36 Sup. Ct. 370 (1916); Tanner v. Little, 240 U. S. 369, 36 Sup. Ct. 379 (1916); Radice v. People of State of N. Y., 264 U. S. 292, 44 Sup. Ct. 325 (1924); Clark v. Deckeback, 274 U. S. 392, 47 Sup. Ct. 630 (1927); Ohio Oil Co. v. Conway, 281 U. S. 146, 50 Sup. Ct. 310 (1930); State Board of Tax Commissioners v. Jackson, 283 U. S. 527, 51 Sup. Ct. 540 (1931); Smith v. Calhoon, 283 U. S. 553, 51 Sup. Ct. 582 (1931).

[6] Southern Railway Co. v. Greene, 216 U. S. 400, 30 Sup. Ct. 287 (1910); Air-way Electric Appliance Corp. v. Day, 286 U. S. 71, 45 Sup. Ct. 12 (1924); Concordia Fire Ins. Co. v. Illinois, 292 U. S. 535, 54 Sup. Ct. 830 (1934).

[7] Lindsley v. Natural Carbonic Gas Co., *supra* note 5; Hammond v. Schappi Bus Line, *supra* note 3; O'Gorman & Young v. Hartford Fire Ins. Co., 282 U. S. 251, 51 Sup. Ct. 130 (1931).

[8] Chastleton Corp. v. Sinclair, Hammond v. Schappi Bus Line, Inc., both *supra* note 3; Equity Rule 70½ (28 U. S. C. A. §723).

[1] N. Y. PENAL LAW (1909) §850.

[2] The material and relevant portions of the judgment roll are:

> EIGHTH: That the said instrument was extorted from the defendants by the plaintiff and others acting on behalf of the plaintiff, by duress and coercion in so threatening the ruin of the defendant's business, in consequence of which and in fear and apprehension thereof, the defendant, Kleen Laundry Service, Inc., signed and executed the instrument.

revealed on the trial that the judgment in the civil case had been reversed. *Held,* that admission of the judgment roll was unduly prejudicial to the defendant's rights and the conviction must therefore be reversed. *People* v. *Rosenzweig,* 265 N. Y. 323, 193 N. E. 161 (1934).

The essential obstacle to the use of the judgment roll as evidence was the fact that this court was of the opinion that it would be difficult for the jury to distinguish between the contracts referred to in the judgment roll and the contract in the instant case. "The fact that the judgment of the court was in a civil action, while their judgment was called for in a criminal action would make no difference to a jury, whatever the difference might be to a lawyer." [3] While the court conceded that it might have been proper to place before the jury the fact that the Supreme Court in a civil action had held these contracts void,[4] nevertheless, to permit the introduction of the entire judgment roll was error.[5]

The law aids juries to arrive at verdicts by the means of presumptions and inferences.[6] In civil cases, all presumptions are binding upon the jury, unless disproved.[7] On the other hand, in criminal trials, all presumptions, except three,[8] are dissolved into infer-

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NINTH: That the Union agreement is harsh, unfair, unconscionable, and impossible of performance, and so detrimental to the corporate defendant that to perform it would mean great loss to the defendant corporation and ruination of its business.

[3] Instant case at 330, 193 N. E. at 163.

[4] "We think the people, in view of the evidence introduced by the defendant regarding the 1934 contract, were justified in showing that, in a Supreme Court action, those contracts had been rendered null and void or set aside; * * *." *Ibid.*

[5] "* * *; but we think that it was going entirely too far to show that the judge had made findings in a decision showing threats and coercion by the defendant's union in procuring those contracts." *Ibid.*

[6] A presumption is defined as a rule of law that courts and judges shall draw a particular inference from a particular fact or from particular evidence, unless the truth of such inference is disproved. United States v. Sykes, 58 Fed. 1000 (1893); Ulrich v. Ulrich, 136 N. Y. 120, 32 N. E. 606 (1892); Brandt v. Morning Journal Ass'n, 81 App. Div. 183, 80 N. Y. Supp. 1002 (1st Dept. 1903).

An inference has been defined as a deduction based upon facts proved which the jury may, or may not, make as it sees fit according to its own conclusions. Cross v. Passumpsic Fiber Leather Co., 90 Vt. 397, 98 Atl. 1010 (1916); Chambers v. Hunt, 18 N. J. Law (3 Har.) 339 (1841).

[7] See definition of presumption, *supra* note 6.

[8] Those presumptions which do not dissolve into inferences are those of:

Innocence: N. Y. CODE OF CRIMINAL PROCEDURE (1881) §389; People v. American Ice Co., 120 N. Y. Supp. 443 (1909); People v. Nileman, 8 N. Y. St. 300 (1887); People v. Baker, 96 N. Y. 340 (1884); People v. Dixon, 2 Abb. Pr. 395, 4 Park. Cr. 651 (1856); People v. Thayer, 1 Park. Cr. 595 (1825).

Sanity: Davis v. United States, 160 U. S. 469, 16 Sup. Ct. 353 (1895); O'Connell v. People, 87 N. Y. 377 (1882); Williams v. State, 13 Ala. App. 133, 133 So. 376 (1915); Bell v. State, 120 Ark. 530, 180 S. W. 186 (1915);

ences.[9] An inference, however, is not a conclusion which the jury *must* reach.[10] But since an inference must be based on a proved fact,[11] it cannot be the foundation of another inference.[12] The admission of the judgment roll in this case would allow the jury to base an inference upon an inference.[13]

J. A. R., JR.

HOMICIDE—UNCORROBORATED DYING DECLARATION OF VICTIM —IDENTIFICATION OF DEFENDANT.—The appellant was convicted of murder in the first degree. Deceased was shot from behind and no one testified to any act on the part of deceased indicating that he turned around or saw his assailant. Appellant was not connected with the crime by eye witnesses. The only evidence offered which might tend to show that appellant was the man who did the shooting was a dying declaration.[1] *Held,* reversed, the dying declaration is insufficient to support a conviction where other evidence of the identity of the murderer is unsatisfactory. *People* v. *Ludkowitz,* 266 N. Y. 233, N. E. (1935).

People v. Loomis, 170 Cal. 347, 149 Pac. 581 (1915); Pribble v. People, 49 Colo. 210, 112 Pac. 220 (1910); State v. Curtin, 28 Dela. 518, 95 Atl. 232 (1914); Johnson v. State, 57 Fla. 18, 49 So. 40 (1909); State v. Wetter, 11 Idaho 433, 83 Pac. 341 (1905); People v. Spencer, 264 Ill. 124, 106 N. E. 219 (1914); State v. Thomas, 172 Iowa 485, 154 N. W. 768 (1915); Ford v. State, 73 Miss. 734, 19 So. 665 (1896); State v. Hill, 65 N. J. Law 626, 47 Atl. 814 (1901); Maas v. Territory, 10 Okla. 714, 63 Pac. 960 (1901); King v. State, 91 Tenn. 617, 20 S. W. 169 (1892); State v. Mewhinney, 43 Utah 135, 134 Pac. 632 (1913); State v. Harris, 74 Wash. 60, 132 Pac. 735 (1913); State v. Pressler, 16 Wyo. 214, 92 Pac. 806 (1907); McNaughten's Case, 1 C. & K. 130, Note a (1843).

Knowledge of the Law: Brunaugh v. State, 173 Ind. 483, 90 N. E. 1019 (1910); State v. Jones, 118 La. 369, 42 So. 967 (1907); Crain v. State, 69 Tex. Cr. 55, 153 S. W. 155 (1913); Taff v. State, 69 Tex. Cr. 528, 155 S. W. 214 (1913).

[9] Since the defendant has the benefit of the presumption of innocence, the court cannot compel the jury to find any fact detrimental to the defendant.

[10] *Supra* note 7, definition of inference.

[11] *Ibid.*

[12] Every inference must be based upon some fact or facts which have already been proved; it may not be based upon another inference. Lamb v. Union Ry. Co., 195 N. Y. 260, 88 N. E. 371 (1909); Warner v. New York, O. & W. Ry., 209 App. Div. 211, 204 N. Y. Supp. 607 (4th Dept. 1924); Plotnick v. Plotnick, 185 App. Div. 15, 172 N. Y. Supp. 584 (1st Dept. 1918).

[13] Using the judgment roll the jury could infer that this contract was unenforceable and, with this as a basis, they could infer that it was secured by the same means; and further, that since this defendant was the agent for the Union for procuring the contracts he was the party who exercised the coercion and uttered the threats.

[1] Made in response to questions written on a regulation police blank.