

June 2014

Criminal Law--Larceny (People v. Noblett, 244 N.Y. 355 (1927))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1927) "Criminal Law--Larceny (People v. Noblett, 244 N.Y. 355 (1927))," *St. John's Law Review*. Vol. 1 : No. 2 , Article 18.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol1/iss2/18>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

S. W. 740 (1905). Thus where the debtor has been lulled into a feeling of false security by the statements of the defendant, the latter is estopped from setting up the statute of frauds because the instrument was not in writing. *Combs v. Little*, 4 N. J. Eq. 310 (1843), 40 Am. Dec. 207. In view of the strict scrutiny of this class of case by the New York courts, it is doubtful whether the instant holding would be supported in New York. But it is clearly established in this jurisdiction that where the parties stand in close confidential relations, an abuse of confidence produced by fraud will move a court of equity to grant relief. *Wood v. Rabe*, 96 N. Y. 414 (1884); *Goldsmith v. Goldsmith*, 145 N. Y. 313, 318, 39 N. E. 1067 (1895); *Leary v. Corvin*, 181 N. Y. 222, 228, 73 N. E. 984 (1905).

CRIMINAL LAW—LARCENY.—The defendant was the tenant of an apartment under a lease, the term of which had expired, but the right of occupation and possession continued under statute. He inserted an ad in a newspaper offering to sub-rent by month or year. The complaining witness answered the ad and paid the defendant a sum which represented the agreed rental, but did not receive possession either on the day when the contract was made or any other time. The defendant continued to run the ad. The indictment contained two counts. The first charged obtaining money under false pretenses and the second with larceny by trick and device. The first count was dismissed and the defendant was found guilty on the second. *Held*, that the evidence was insufficient to support the indictment charging larceny by trick and device. Judgment reversed and indictment dismissed, two judges dissenting. *People v. Noblett*, 244 N. Y. 355 (1927).

For a discussion of the principles involved see *supra*, page 176.

CONSTITUTIONAL LAW—The action was brought to test the constitutionality of sec. 167-174 of the General Business Law of New York which forbade the resale of theatre tickets at an advance of more than 50 cents above the printed price. The case was heard by a special Constitutional Court below and the decree dismissing the bill was brought to the Supreme Court for review. *Held*, the act is unconstitutional in that it deprived the plaintiff of property without due process of law. Decree reversed and injunction granted. *Tyson v. Banton*, 47 Sup. Ct. 426 (U. S. 1927).

In this case the Supreme Court holds unconstitutional a statute of the State of New York fixing the resale price of theatre tickets by so called brokers to fifty cents above the price printed on the ticket. Other features of this statute had already been upheld by the court. See *Weller v. New York*, 268 U. S. 319 (1926). It follows that the only difficulty with the statute was that it attempted to fix prices. This the majority said can not be done in an industry not affected with a public interest. The majority reaffirm Lord Hale's proposition concerning industries affected with a public use but leaves wide open the discovery of a method of ascertaining which industries can be included under that head. It must appear therefore that the ultimate solution to the problem is to be found by the judicial method of inclusion and exclusion. The dissenting judges divide into three classes. Mr. Justice Stone points out that the statute does not necessarily fix prices but can