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INDICTMENT AND INFORMATION - REQUIREMENT OF SPECIFICITY IN CHARGING A STATUTORY OFFENSE

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INDICTMENT AND INFORMATION — REQUIREMENT OF SPECIFICITY IN CHARGING A STATUTORY OFFENSE — On an information charging the possession of "a certain habit forming drug, to wit: Marijuana . . . in violation of section 158, Chapter 91, Illinois Revised Statutes (1935)," defendant was convicted in the municipal court of Chicago. The Illinois adoption of the Uniform Narcotic Drug Act [1] made the possession of "any narcotic drug" unlawful; defined [2] "narcotic drugs" to include "cannabis"; and stated [3] that "Cannabis includes the following substances, under whatever names they may be designated: (a) The dried flowering or fruiting tops of the pistillate plant Cannabis Sativa L. . . . from which the resin has not been extracted; (b) the resin . . . ; (c) every compound . . . of . . . the resin or tops." *Held*, conceding that "marijuana" is "Cannabis Sativa L.," the information is nevertheless insufficient for failure to state that it was of the specific quality and kind defined by the statute. *People v. Sowrd*, 370 Ill. 140, 18 N. E. (2d) 176 (1938), reversing 295 Ill. App. 314, 14 N. E. (2d) 957 (1938).

Since the purposes of an indictment or information are to state the facts upon which the court's jurisdiction is to be supported,[4] to inform the court, and to apprise the accused with reasonable certainty of the nature of the accusation so that he can prepare his defense and can avail himself of an acquittal or conviction as a bar to further prosecution,[5] it is beyond cavil that the language employed must be definite and concise if the indictment or information is to remain a significant document, more than a mere process. But in the field of criminal procedure, as in other fields of the law, all too frequently have the ends of justice been submerged in legal formalism, and language and logic have been twisted in order to read out of the instrument the meaning which was

[1] Ill. Rev. Stat. (1937), c. 38, § 192.2.

[2] Ill. Rev. Stat. (1937), c. 38, § 192.1 (14).

[3] Ill. Rev. Stat. (1937), c. 38, § 192.1 (13).

[4] Collins v. Commonwealth, 195 Ky. 745, 243 S. W. 1058 (1922); State v. Hataway, 153 La. 751, 96 So. 556 (1923); Ex parte Waldock, 142 Okla. 258, 286 P. 765 (1930), dismissed Waldock v. Newel, 282 U. S. 906, 51 S. Ct. 100 (1930). Verdict and judgment not supported by the indictment are nullities. State v. Duhon, 142 La. 919, 77 So. 791 (1918).

[5] State v. LaFlamme, 116 Me. 41, 99 A. 772 (1917); Foster v. United States, (C. C. A. 10th, 1935) 76 F. (2d) 183; Claiborne v. United States, (C. C. A. 8th, 1935) 77 F. (2d) 682; People v. Gould, 237 Mich. 156, 211 N. W. 346 (1927).

obviously intended to be put in.[6] The best known example of this is, of course, the famous Missouri "The" case.[7] Strong criticism [8] and a desire to escape medieval formalism has resulted in a definite trend, in both legislatures [9] and courts,[10] toward a more sensible construction of the accusative documents. The principal case, it is submitted, out of line with this tendency, was wrongly decided. The argument that the word "marijuana" was not sufficiently definite to conform to the statute rests on the fact that of the cannabis plant it is only the dried leaves and flowers of the female which contain the resin from which the aphrodisiac drug is secured, and that, although conceding that "marijuana" is a proper designation of the plant, the word could as well be applied to the male plant, the resin of which is apparently harmless. This very line of reasoning was even more explicitly followed at the first hearing in *Simpson v. State*,[11] the authority apparently closest to the principal case on its facts. Here the indictment charged the possession of "eight cigarettes containing cannabis from which the resin had not been extracted," and the statute [12] was identical in wording. Reversing itself on rehearing, the Florida court held that the motion for a bill of particulars on this ground was properly overruled. The charge was worded slightly more definitely than in the instant case, but, as may be seen, still left open the possibility of construing the words to apply to the harmless portion of the plant. Certainly, the pleading need not be framed in the

[6] For an early example by Chancellor Kent, see People v. Guernsey, 3 Johns. Cas. 265 (N. Y. 1802). See People v. Cook, 2 Park Cr. 12 (N. Y. 1823). In People v. Miles, 9 Cal. App. 312, 101 P. 525 (1908), where the conviction was reversed because the indictment did not state that the victim of the rape was not the wife of the defendant. Perkins, "Absurdities in Criminal Procedure," 11 IOWA L. REV. 297 at 304 (1926), commented that if the purpose be to inform the defendant, "the difference between the name of the victim and his own name might have suggested to the defendant that she was not his wife, if the notion had never occurred to him before."

[7] State v. Campbell, 210 Mo. 202, 109 S. W. 706 (1907).

[8] See, for example, Perkins, "Absurdities in Criminal Procedure," 11 IOWA L. REV. 297 (1926).

[9] In New York a statute provides that the indictment is sufficient if it but name the offense charged, and a bill of particulars, if requested, describes the acts constituting the offense. N. Y. Crim. Code (1938), § 295d, upheld in People v. Bogdanoff, 254 N. Y. 16, 171 N. E. 890 (1930); see Nutting, "The Indictment in New York," 19 CORN. L. Q. 580 (1934). A short form of indictment has been adopted in Iowa: Iowa Code (1935), § 13732. See State v. Harness, 214 Iowa 160, 241 N. W. 645 (1931); and Perkins, "The Short Form of Indictment," 14 IOWA L. REV. 129 (1929). Provisions allowing the use of common words in indictments relating to the larceny of animals may be found in at least four states. Ala. Code (1928), § 4543; Mass. Gen Laws (1932), c. 277, § 27; Ore. Code Ann. (1930), § 13-711; and see Tex. Code Crim. Proc. (1925), art. 403.

[10] See, for example, People v. Quider, 172 Mich. 280, 137 N. W. 546 (1912); People v. Cohen, 303 Ill. 523, 135 N. E. 731 (1922); Holmgren v. United States, 217 U. S. 509, 30 S. Ct. 588 (1909).

[11] 129 Fla. 127, 176 So. 515 (1937).

[12] Fla. Laws (1933), c. 16087, § 1, ¶¶ 13, 14, and § 2: Comp. Gen. Laws (Perm. Supp. 1936), §§ 3397(2), 3397(3).

exact words of the statute; [13] indeed, even so to do is no guarantee of a properly worded document.[14] On the other hand, it may be conceded that to allege merely the possession of "a drug" or "a narcotic drug" is ordinarily not sufficient,[15] although it was held so in New York under its statutory short form of indictment.[16] The better view would seem to be that an offense is properly charged when the language used is sufficient to enable one of common understanding to know what is intended,[17] at least when, as here, there is a specific reference to the statute itself. It is well known that by the term "marijuana" is invariably meant that portion of the plant which contains the harmful resin, and that the harmless portions are not used except for propagation. The American Law Institute in its Code of Criminal Procedure [18] has adopted this reasonable construction of words by its statement of the rule that in an information or indictment it is sufficient to describe an article "by any term which in common understanding embraces such . . . thing and does not include any . . . thing which is not by law the subject of, or connected with, the offense." Three additional factors militate against the correctness of the decision in the instant case. This was a municipal court, and it is held that the same nicety of pleading is not exacted in such courts.[19] This was a conviction upon information, and there is authority that, although an information performs the same function as an indictment, the same preciseness is not required.[20] This was, it is submitted, at most a technical error, and the rule is that technical objections if first presented after conviction come too late.[21] Criticism of the principal case might well be couched in the words of a former decision from the same court that decided it: [22] "Great niceties and strictness of pleading should only be countenanced and supported when it is apparent that the defendant may be surprised on the trial, or unable to meet the charge or make preparations for his defense for want of greater certainty or particularity. . . . The criminal law is fast outgrowing those technicalities which grew up when the punishment for crime

[13] Smith v. United States, (C. C. A. 8th, 1936) 83 F. (2d) 631; Stumbo v. United States, (C. C. A. 6th, 1937) 90 F. (2d) 828; Carr v. People, 99 Colo. 477, 63 P. (2d) 1221 (1937).

[14] People v. Green, 368 Ill. 242, 13 N. E. (2d) 278 (1938); Liskowitz v. State, (Wis. 1938) 282 N. W. 103. On the advisability of following the statutory wording, see Sprague, "Criminal Pleadings and Procedure," 15 MICH. S. B. J. 350 (1936).

[15] Horton v. State, 123 Tex. Crim. 237, 58 S. W. (2d) 833 (1933).

[16] People v. Lee Foon, 275 N. Y. 229, 9 N. E. (2d) 847 (1937), reversing 250 App. Div. 616, 294 N. Y. S. 872 (1937).

[17] Johnson v. United States, (C. C. A. 9th, 1932) 59 F. (2d) 42, cert. den. 287 U. S. 633, 53 S. Ct. 84 (1932); see People v. Graves, 331 Ill. 268, 162 N. E. 839 (1928).

[18] Official Draft (1930), § 173.

[19] People v. Rosenbloom, 119 Cal. App. (Supp.) 759, 2 P. (2d) 228 (1931).

[20] People v. Strope, 151 Misc. 580, 272 N. Y. S. 268 (1934); but cf. People v. Taylor, 159 Misc. 536, 289 N. Y. S. 668 (1936).

[21] Holmgren v. United States, 217 U. S. 509, 30 S. Ct. 588 (1909); Blackman v. State, 169 Tenn. 197, 83 S. W. (2d) 899 (1935).

[22] People v. Cohen, 303 Ill. 523 at 525, 135 N. E. 731 (1922).

was inhuman, and when it was necessary for the court to resort to technicalities to prevent injustice from being done. Those times have passed . . . and it is fortunate for the safety of life and property that technicalities to a great extent have lost their hold."

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