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CONSTITUTIONAL LAW-LEGISLATIVE-POWER TO REDUCE GRADE OF CRIMINAL OFFENSE IN ORDER TO AVOID JURY TRIAL

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CONSTITUTIONAL LAW—LEGISLATIVE—POWER TO REDUCE GRADE OF CRIMINAL OFFENSE IN ORDER TO AVOID JURY TRIAL—A complaint was made in the Municipal Court of Hoboken against the defendant charging that he had willfully committed an assault and battery by spitting on another, in violation of the Disorderly Persons Law, which states: "Any person who commits an assault or an assault and battery is a disorderly person."¹ The defendant moved to dismiss the complaint on the ground that the statute violated his constitutional right to prosecution by indictment and trial by jury. The municipal court denied the motion. On certification to the New Jersey Supreme Court, *held*, the statute did not wrongfully deny defendant a jury trial. The statute refers only to simple assault and battery, which was punishable summarily at common law. Summary proceedings under the Disorderly Persons Act, which has been in existence in some form since 1799 and which

¹N.J. Sess. Laws (1951) tit. 2 A, §170-26.

for many years has contained offenses indictable at common law and more serious than assault and battery, has been challenged only once and then unsuccessfully. This acquiescence is supported by analogy to the judicially accepted practice of summary jurisdiction under municipal ordinances. *State v. Maier*, (N.J. 1953) 99 A. (2d) 21.

The right to trial by jury in criminal cases, which is explicitly protected by the constitutions of the United States and of every state, is generally held not to extend to those offenses which were tried in summary proceedings at common law at the time of the adoption of the federal or a state constitution² or to new statutory offenses within this class of cases.³ The extensive use made of summary proceedings both in England and in the American colonies during the seventeenth and eighteenth centuries has been noted by numerous writers,⁴ although the extent of this practice seems not to have been realized by many judges and lawyers eager to protect the institution of trial by jury.⁵ Persons accused of petty crimes,⁶ including most municipal offenses,⁷ are universally denied a right to jury trial in the United States. Although it is usually difficult to ascertain precisely what offenses may be designated as petty in any particular jurisdiction,⁸ the classification often includes viola-

² *District of Columbia v. Clawans*, 300 U.S. 617, 57 S.Ct. 660 (1937); *State v. Glenn*, 54 Md. 572 (1880); *Byers v. Commonwealth*, 42 Pa. St. 89 (1862); *Wilentz v. Galvin*, 125 N.J.L. 455, 15 A. (2d) 903 (1940). Where a state has adopted successive constitutions with substantially equivalent clauses protecting the right to trial by jury, there is a problem as to whether reference may be made also to practice under the previous constitutions. Compare *State v. De Lorenzo*, 81 N.J.L. 613 at 623, 79 A. 839 (1911), and *McCutcheon v. State Building Authority*, 13 N.J. 46, 97 A. (2d) 663 (1953), with *Town of Montclair v. Stanoyevich*, 6 N.J. 479, 79 A. (2d) 288 (1951).

³ *District of Columbia v. Clawans*, note 2 *supra* (dealing in second-hand personal property without license); *Wynehamer v. People*, 13 N.Y. 378 (1856) (prohibition violation); *Bd. of Health v. New York Central R. Co.*, 10 N.J. 294, 90 A. (2d) 729 (1952) (smoke ordinance violation); *Crichton v. State*, 115 Md. 423, 81 A. 36 (1911). *Contra*, *Van Swartow v. Commonwealth*, 24 Pa. St. 131 (1854). Compare the two opinions in *Katz v. Eldredge*, 97 N.J.L. 123, 117 A. 841 (1922).

⁴ See Frankfurter and Corcoran, "Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury," 39 HARV. L. REV. 917 (1926) (English and early American practice); BURN, *JUSTICE OF THE PEACE* (1755) (English practice); *State v. Glenn*, note 2 *supra*; WEBB, *ENGLISH LOCAL GOVERNMENT: THE PARISH AND THE COUNTRY* 418 (1924). Frankfurter and Corcoran, *supra*, at 930-933, cite cases of fines up to £500 and imprisonment up to a year.

⁵ This appears from the tone of the decisions concerning summary jurisdiction, and from the usually minor offenses and punishments involved in those cases.

⁶ Compare *District of Columbia v. Clawans*, note 2 *supra* (dealing in second-hand property without license, punishable by fine up to \$300 or 90 days, is a petty offense), with *District of Columbia v. Colts*, 282 U.S. 63, 51 S.Ct. 52 (1930) (reckless driving and speeding, punishable by fine up to \$125 and 30 days is not a petty offense). See the federal cases cited by Frankfurter and Corcoran, "Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury," 39 HARV. L. REV. 917 (1926).

⁷ See 9 McQUILLIN, *MUNICIPAL CORPORATIONS* §§27.32-27.39 (1950); 6 *id.*, c. 23 (1950), and cases cited therein.

⁸ A few states have hard and fast rules. E.g., Ohio, where any offense involving imprisonment or a fine above \$50 is within the jury trial guarantee. *Fremont v. Keating*, 96 Ohio St. 468, 118 N.E. 114 (1917); Ohio Rev. Code (Baldwin, 1953) §2945.17.

tions of ordinances forbidding disorderly conduct,⁹ certain activities on Sunday,¹⁰ disturbing the peace,¹¹ minor traffic violations,¹² and other such offenses. The determination of what is a petty offense is usually based in varying proportions on one or both of two considerations, viz., the extent of the penalty and the nature of the offenses.¹³ The same considerations prevail where the legislature reduces the grade of an offense to the status of a petty offense, thereby denying the alleged offender the protection of a jury trial.¹⁴ As the court in the principal case pointed out, there is evidence that at least in some cases simple assault and battery was tried summarily before a justice of the peace at common law.¹⁵ However, it is not certain that this procedure was used very often in the case of assaults and batteries so severe as to require punishment to the extent of \$1,000 or one year in jail, or both, the penalty under the statute in the principal case.¹⁶ It would seem that summary proceedings for relatively minor offenses, especially in congested centers of population,¹⁷ are necessary for the prompt and efficient administration of justice. In these situations, attention should be directed toward ensuring the accused a fair trial, and not toward guaranteeing him a trial by jury.

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⁹ *Ex parte Schmidt*, 24 S.C. 363 (1885); *State v. Glenn*, note 2 *supra*.

¹⁰ *Goddard v. State*, 12 Conn. 448 (1838).

¹¹ *Ex parte Hollwedell*, 74 Mo. 395 (1881).

¹² *Oshkosh v. Lloyd*, 255 Wis. 601, 39 N.W. (2d) 772 (1949). Cf. *District of Columbia v. Colts*, note 6 *supra*.

¹³ Considering both factors: *District of Columbia v. Clawans*, note 2 *supra*. Emphasizing nature of offense: *District of Columbia v. Colts*, note 6 *supra*; *Latimer v. Wilson*, 103 N.J.L. 159, 134 A. 750 (1926). Emphasizing punishment: *People v. Kaminsky*, 208 N.Y. 389, 102 N.E. 515 (1913).

¹⁴ See *Commonwealth v. Wesley*, 171 Pa. Super. 566, 91 A. (2d) 298 (1952) (disorderly house); *People v. Baird*, 11 Hun. (N.Y.) 289 (1877) (cannot make unlawful sale of liquor disorderly conduct). Statutes reducing illegal acts of juveniles to misdemeanors or juvenile delinquency and calling for summary disposition in juvenile court have caused courts trouble. See *State v. Goldberg*, 124 N.J.L. 272, 11 A. (2d) 299 (1940), *affd. per curiam* 125 N.J.L. 501, 17 A. (2d) 173 (1940) (reduction allowed as to charge of carrying concealed weapons and assault with intent to kill); *Ex parte Daniecki*, 117 N.J. Eq. 527, 177 A. 91 (1935), *affd. per curiam* 119 N.J. Eq. 359, 183 A. 298 (1936) (not allowed as to charge of murder). Cf. *People v. Kaminsky*, 208 N.Y. 389, 102 N.E. 515 (1913).

¹⁵ Principal case at 25-29. See also *People v. Justices*, 74 N.Y. 406 (1878); *PROFESSIONAL TRIAL BY JURY* 136 (1877).

¹⁶ N.J. Sess. Laws (1951) tit. 2 A, §169-4.

¹⁷ In New York City all misdemeanors may be tried summarily in the Court of Special Sessions. 66 N.Y. Consol. Laws (McKinney, 1945) part 3, p. 396, §31(1). A misdemeanor is punishable by imprisonment for one year, a fine of \$500, or both. 39 N.Y. Consol. Laws (McKinney, 1944) §1937. This jurisdiction includes simple assault and battery. 39 N.Y. Consol. Laws (McKinney, 1944) §§244, 245; *People v. Rytel*, 284 N.Y. 242, 30 N.E. (2d) 578 (1940).