

**START**

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CASE 370

COURT OF GENERAL SESSIONS OF THE PEACE  
IN AND FOR THE COUNTY OF NEW YORK

PART III

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THE PEOPLE OF THE STATE OF NEW YORK : Before  
vs. : Hon. MARTIN T. McMAHON, J.  
MICHAEL L. HOLWITZ :  
-----X

Indictment filed May 28, 1903.

Charge: Forgery in the Second Degree.

New York, June 9, 1903.

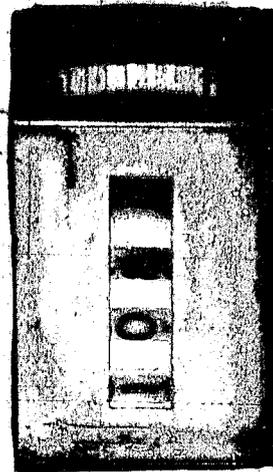
A p p e a r a n c e s :

For the People: Assistant District Attorney ROBERT TOWNSEND

For the Defendant: HENRY M. GOLDFOGLE, Esq.

DECISION ON MOTION TO WITHDRAW PLEA FOR THE PURPOSE OF DEMURRING.

THE COURT: I have given this case careful attention,  
~~and~~ there are not only conflicting decisions, but conflict-  
ing opinions by elementary writers. Most of the decision,  
however, relate to a time when the distinction between  
felony and misdemeanor was marked and well defined in the  
laws of this State. This, however, has ceased to be the  
case, and little distinction remains <sup>in the Code</sup> except as to punish-  
ment, place of trial and disqualification.



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Judge Goldfogle, I have considered this case of Holwitz, and, as I intimated before, I shall not allow him to withdraw his plea for the purpose of demurring to the indictment, because I would overrule his demurrer and there would be merely a loss of time; but I will allow him to substitute, if he pleases, a plea of not guilty for that of guilty.

MR GOLDFOGLE: The defendant throws himself upon the mercy of the Court.

THE COURT: Then he changes his plea to guilty?

MR GOLDFOGLE: Yes. I have indicated to the Court the facts.

THE COURT: Yes; I am perfectly aware of them; I am aware of the facts disclosed in the case. As I understand this man started out to commit a larceny, and did commit a larceny. In committing that larceny he committed another crime even more serious. In other words, he signed ~~the~~ <sup>for the delivery of the goods</sup> order, and that constituted a forgery. *The people elected to* ~~to proceed against him for larceny, of which he~~ <sup>Now, he has been tried and duly convicted of the lar-</sup> ~~larceny, and is undergoing a sentence for it.~~

It seems to me that a commonsense view of it is that to try him for ~~trying to accomplish~~ <sup>committed while accomplishing the larceny</sup> another and different crime would be twice putting him in jeopardy; and under the circumstances, I do not think that he deserves any

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further punishment, inasmuch as the crime he intended to commit and really committed was larceny, and he is now undergoing what I consider an adequate sentence for that offense.

I shall, therefore, suspend sentence on him for the forgery, and shall make a memorandum on the indictment setting forth the facts and the reasons for my action .

MR GOLDFOGLE: Your Honor will kindly endorse it on the indictment?

THE COURT: I shall have it placed with the indictment. I will suspend sentence in this case.

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