

START

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CASE

EXHIBIT

1011

CASE 370

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

PART III

-----X
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 ^{in the Code} except as to punish-
ment, place of trial and disqualification.

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[illegible]

They which includes larvae of a ~~small~~ ^{large} ~~larva~~ ^{larvae} in such case up to the ~~larva~~ ^{larvae} of the

It is certainly clear that if ^{one} ~~a man~~ is indicted for burglary and subsequently convicted before another tribunal of unlawful entry, he cannot be proceeded against for the burglary, inasmuch as the entry is an essential feature of the crime of burglary; and if a person has been once tried for part of the crime, an essential part of it, it would surely be putting him in jeopardy again by trying

Under the circumstances I have decided to deny the motion to withdraw the plea of not guilty for the purpose of ^{which is made ~~to~~ I understand} demurring; but will allow the defendant, if he desires, to substitute a plea of guilty. *A Demurrer would be disallowed.*

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Judge Goldfogle, I have considered this case of Hol-
witz, 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~~ ^{for the delivery of the goods} order, and that constituted a forgery. *This people elected to*
to proceed against him for larceny, of which he
Now, he has been tried and duly convicted of the lar-
ceny, 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~~ another and different
~~crime~~ ^{committed while accomplishing the larceny} 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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