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In relation to the discharge rules of a quasi surety, we have seen that a quasi surety receives a pro tanto discharge to the extent of the value of the land, whether by an extension of the maturity date, or by refusal of tender, or under the rule of *Pain v. Packard.* In the case of an extension of the maturity date or a refusal of tender, the time for computation is the date of the extension or tender; while under the *Pain* rule, the time for computation should, it is submitted, be the last day of the excusable delay following the request to proceed against the primary fund. If the value of the land at the time for computation is more than or equal to the debt, the pro tanto discharge coincidentally results in a complete discharge of the quasi surety for any deficiency as did the "tender" discharge in the *Fermac* case. If the value of the land at the time for computation is less than the debt itself, the pro tanto discharge results in a release only from liability for the deficiency accruing subsequent to the time for computation. It does not result in a release from liability for a differential between the debt and the value of the land accruing prior to the time for computation.

THE DEFINITION OF AN OFFENSE IN THE NEW YORK PENAL STATUTES

INTRODUCTION

Although the New York Penal Law defines a crime as "an act or omission forbidden by law and punishable upon conviction . . . ,"[1] there have existed in the law certain acts of a lesser criminal nature, which, although punishable by the state, have always been excepted from this definition.[2] Such acts are referred to by a variety of names including: offenses, quasi-crimes, police violations, or police or traffic infractions. Although these offenses are recognized to be essentially criminal, it is equally well recognized that they are not crimes but rather of a sui generis nature, sharing some of the characteristics of crimes and at the same time being distinguishable from them.[3] Determining what

1. N.Y. Pen. Law § 2.

2. "In passing we may mention a third class of offenses which are neither felonies prosecuted by indictment and triable by a common-law jury . . . nor misdemeanors triable by Courts of Special Session with or without the statutory jury of six . . . , but petty offenses triable summarily by a magistrate without a jury." Cooley v. Wilder, 234 App. Div. 256, 255 N.Y. Supp. 218 (4th Dep't 1932).

Although this comment concerns itself principally with offenses as created in the New York penal statutes, it should be pointed out that almost every New York statute creates crimes and offenses covering matters peculiar to the subject matter which the statute covers. Offenses created in the various statutes are of the same nature as offenses created in the Penal Law, and the procedures applicable to them are essentially identical in every respect.

This comment will not consider certain provisions of law unique to minors, e.g. proceedings respecting wayward minors (N.Y. Code Crim. Proc. tit. VIII-A), which, although technically offenses, are more properly considered as a class by themselves. People v. Chesley, 282 App. Div. 821, 123 N.Y.S.2d 42 (3d Dep't 1953).

3. "It appears that, however inaccurate or illogical the distinction may be, summary proceedings for petty offenses leading to disorder have been considered not as prosecutions for

violations constitute offenses, and to what measure they shall be prosecuted as crimes has accounted for some measure of confusion in criminal law. The lack of statutory provisions precisely defining offenses has served to abet rather than allay this confusion.

Petty offenses were unknown at common law and any actions violative of the social order were either felonies or misdemeanors subject to severe penalties. But as English society developed and the problems of social living became more complex, there developed a need to discourage, but not criminally punish, many of the public nuisances and trivial disorders which interrupted community life.[4] Thus there developed a system authorizing justices of the peace to punish perpetrators of a variety of these disorderly offenses such as drunkenness, swearing and vagrancy.[5]

In New York, the Act of February, 1788, substantially duplicated the provisions of the English statutes concerned with disorderly conduct.[6] Later, with the adoption of the Revised Statutes, other acts of a quasi-criminal nature were added including such opportunists as "common gamblers, rope dancers, and showmen."[7] This expansion has continued to the present day, so that the word "offense" now encompasses a multitude of acts, including many foreign to the early statutes.

Offenses in New York

Since all crimes are statutory in New York,[8] it is the function of the legislature to designate whether a given violation should be treated as a crime or merely as an offense. Although at times the merit of making a distinction between a crime and any other type of criminal conduct has been criticized by the courts,[9] the legislature has, if not always too consistently, recognized and applied this distinction.[10] However, the failure of the legislature to adopt any standard in determining what acts they will designate mere offenses as

crimes, but for offenses against police regulations." Stienert v. Sobey, 14 App. Div. 505, 508, 44 N.Y. Supp. 146, 148 (2d Dep't 1897).

4. "The peace and security of the community were threatened by homeless able-bodied vagrants who supported themselves by preying on society, and refused to work for their living. The state, therefore, found it necessary to suppress these vagrants, and to distinguish between them and the impotent poor, who were unable to support themselves. The former must be dealt with by the criminal law; the latter were the fit objects of charity." 4 Holdsworth, History of English Law 607 (1922).

5. Kerr, Student's Blackstone 515 (12th ed. 1896).

6. Murphy, Proceedings in a Magistrates Court Under the Laws of New York, 24 Fordham L. Rev. 53 (1955).

7. Duffy v. People, 6 Hill (N.Y.) 75 (1843).

8. N.Y. Pen. Law § 22. This section abolishes all common law offenses. People v. Knapp, 206 N.Y. 373, 99 N.E. 841 (1911).

9. People v. Harvey, 307 N.Y. 588, 123 N.E.2d 81 (1954); People v. MacAffer, 282 App. Div. 287, 123 N.Y.S.2d 204 (3d Dep't 1953); Stienert v. Sobey, 14 App. Div. 505, 44 N.Y. Supp. 146 (2d Dep't 1897).

10. People v. Fox, 205 N.Y. 490, 99 N.E. 147 (1912); People v. MacAffer, 282 App. Div. 287, 123 N.Y.S.2d 204 (3d Dep't 1953); People v. Collins, 238 App. Div. 592, 265 N.Y. Supp. 475 (1st Dep't 1933).

contrasted with crimes has led to a measure of uncertainty in the interpretation of the penal statutes. Typical of this inconsistency is the seemingly arbitrary distinction[11] between section 720 (disorderly conduct as a misdemeanor) and section 722 (disorderly conduct as an offense) in the Penal Law. The essential difference between these two sections is merely that the misdemeanor section applies to conduct offensive to some one person while the offense section deals with acts offensive to a group of persons or to the public at large.

Punishment

The courts of many jurisdictions, in order to distinguish between crimes and offenses, rely on the test of punishment provided. A popular rule of thumb often employed in this country is that an offense is not to be punishable by a penalty greater than thirty days imprisonment and a fine of one hundred dollars,[12] but this test is clearly inapplicable in New York, there being several offenses in the Penal Law punishable by as much as six months confinement.

Further the New York statutes completely lack any thread of uniformity between the punishment provided and the grade assigned. For example, vagrancy,[13] disorderly conduct,[14] violations of the disorderly persons statute,[15] and public intoxication,[16] all held to be mere offenses, are punishable by six months imprisonment. On the other hand, the unlawful possession of an identification card issued by the United Nations, expressly declared to be a misdemeanor,[17] is punishable by not more than fifty dollars fine or ten days imprisonment or both, a substantially lighter penalty than that to which one found guilty of any of the offenses mentioned above might find himself subject. Similarly, one who fails to provide his motor boat with a muffler is a criminal,[18] guilty of a misdemeanor but is punishable by no greater penalty, if he is a first offender, than a fine, not exceeding twenty-five dollars. These and other sections of the Penal Law show that any attempt to distinguish between offenses and misdemeanors from the standpoint of punishment would be futile.

Expressed Legislative Intent

The only method of determining whether a given violation of law is an offense or a crime is that of expressed legislative intent. Such intent has been expressed either by providing that the violation shall not be a crime, as in the case of traffic infractions,[19] or by indicating simply that one violating a given section

11. ". . . [I]t is difficult to defend with logic the proposition that such an offense [disorderly conduct] which may lead to six months imprisonment, is not a crime." People v. MacAffer, 282 App. Div. 287, 123 N.Y.S.2d 204 (3d Dep't 1953).

12. District of Columbia v. Colts, 282 U.S. 63 (1930).

13. N.Y. Code Crim. Proc. § 887.

14. N.Y. Pen. Law § 722.

15. N.Y. Code Crim. Proc. § 899.

16. N.Y. Pen. Law § 1221.

17. N.Y. Pen. Law § 966.

18. N.Y. Pen. Law § 1510.

19. "Except that the acts defined as traffic infractions by the vehicle and traffic law, heretofore or hereafter committed, are not crimes." N.Y. Pen. Law § 2; N.Y. Vehicle & Traffic Law § 2(29).

"shall be guilty of an offense,"[20] or, as in the case of vagrants[21] and disorderly[22] persons by categorizing them under the heading of "special proceedings of a criminal nature." With the exception of public intoxication,[23] there is no case where a violation of a section of the Penal Law has been held to be merely an "offense" unless the statute itself so expressly provides. Conversely, by statutory provision[24] every violation of the Vehicle and Traffic Law is an offense (traffic infraction) unless it is expressly declared to be otherwise.

In the case of public intoxication[25] the courts were presented with the problem of discerning the intent of the legislature in the absence of any express provision. Originally this violation was declared to be a misdemeanor but the words "is guilty of a misdemeanor" were subsequently deleted by the legislature.[26] In *People v. Reson*[27] it was held that the elimination of that phrase did not alter the criminal character of the section and evinced no intent on the part of the legislature to reduce public intoxication from the status of a crime, since under section 29[28] it would be classified a misdemeanor without the necessity of the deleted portion. The court reasoned that since the legislature was careful to specifically except traffic infractions from the definition of a crime, it would have acted similarly in the case of public intoxication so as to leave no doubt.[29] In 1942, the Appellate Division of the Fourth Department[30] dismissed a prosecution charging the defendant with escaping from prison while confined therein for a misdemeanor,[31] to wit: public intoxication, taking the position that by virtue of the amendment of 1911 public intoxication was no longer a misdemeanor. This court was not willing to accept the 1911 amendment as being merely a vain act on the part of the legislature and concluded that it must have been intended to reduce the violation to the status of an offense. This decision was affirmed without opinion by the Court of Appeals.[32] In 1955 the public intoxication section was amended[33] thereby bringing that section within the general rule.

20. See N.Y. Pen. Law § 722.

21. See note 13 supra.

22. See note 15 supra.

23. Prior to the amendment of 1955; see note 33 infra.

24. N.Y. Vehicle & Traffic Law § 2(29).

25. "The provisions of section twelve hundred and twenty-one shall not apply to the City of New York." For New York City see N.Y. City Crim. Cts. Act §§ 120-21.

26. N.Y. Sess. Laws 1911, c. 700.

27. 249 App. Div. 54, 291 N.Y. Supp. 73 (3d Dep't 1936); but see People v. Waters, 153 Misc. 686, 257 N.Y. Supp. 864 (Sup. Ct. 1934).

28. "Where the performance of any act is prohibited by a statute, and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor." N.Y. Pen. Law § 29.

29. "If the Legislature by the 1911 amendment intended to remove public intoxication from the list of crimes it would undoubtedly have made a similar exception." People v. Reson, 249 App. Div. 54, 291 N.Y. Supp. 73 (3d Dep't 1936).

30. People v. Murphy, 263 App. Div. 1051, 33 N.Y.S.2d 963 (4th Dep't 1942).

31. N.Y. Pen. Law § 1694.

32. 288 N.Y. 613, 42 N.E.2d 612 (1942).

33. "If such charge is sustained the person found guilty of being intoxicated in public shall be deemed guilty of an offense." N.Y. Sess. Laws 1955, c. 823.

A complete analysis of the cases clearly demonstrates that irrespective of the grade of the violation, unless it is expressly declared an offense, it will be held a misdemeanor. The inconsistent results that will follow from this rule are matters of legislative concern that undoubtedly warrant revision of the state's penal statutes to achieve a just uniformity between grade of violation and its classification as either a misdemeanor or an offense. Unless such action is taken by the legislature, certain sections not yet judicially interpreted as for example, the unlawful placing of flower pots on window sills will result in a crime rather than an offense.

PROCEDURE

Once it has been established that the defendant is being charged with a petty offense, what procedural distinctions exist between his rights and those of a person charged with committing a misdemeanor? Although an offense does not carry with it the stigma of a crime, in order to safeguard the basic concepts of justice, the majority of procedural safeguards afforded a "criminal" are equally available to an "offender."

SUMMARY TRIAL

Inasmuch as it was the pettiness of the offense that lends itself to separation from the more serious crimes, it is natural that the most fundamental distinction between a crime and an offense is that the latter is never entitled to a trial by either a common law or statutory jury but rather is triable summarily.[34] The necessity of a summary method of prosecuting offenders was recognized at the very beginning of the development of the concept of quasi-crimes.[35] To effect this end the first English statutes vested summary jurisdiction in the justice of the peace but in many instances failed in its purpose by not providing for a simple procedure to handle these offenses.[36] The result was that, though labeled summary jurisdiction, the procedure was in fact as cumbersome as an ordinary criminal trial.

In New York the Code of Criminal Procedure originally vested jurisdiction over all offenses in courts of special sessions.[37] It also provided[38] that one charged with a crime over which these courts had jurisdiction could apply for a certificate of removal if it should appear that it was reasonable that such charge be prosecuted by indictment and trial by common law jury. It has been held, however, that this provision does not apply to offenses.[39] In addition, it

34. District of Columbia v. Colts, 282 U.S. 63 (1930); State v. Rodgers, 91 N.J.L. 38, 102 Atl. 433 (Ct. Err. & App. 1917); People v. Grogan, 260 N.Y. 138, 183 N.E. 273 (1932).

35. 1 Holdsworth, History of English Law 293 (1922).

36. See note 5 supra.

37. N.Y. Code Crim. Proc. § 56. See also N.Y. Second Class Cities Law § 182; N.Y. Village Law § 182. Within N.Y. City see N.Y.C. Crim. Cts. Act §§ 37 (Jurisdiction of Special Sessions), 102-02a (Jurisdiction of Magistrates).

38. N.Y. Code Crim. Proc. § 57.

39. ". . . [T]he fact that the legislature amended the opening paragraph of section 56, by chapter 368, Laws of 1948, to include 'offenses, violations of ordinances, and infractions,' while still retaining the word 'crimes' in section 57 providing for the removal of charges pending in courts of Special Sessions . . . we conclude was clear legislative recognition of a

has been held that a defendant charged with an offense cannot demand to be tried by a statutory jury of six.[40] An exception was originally made in the case of traffic infractions, at least one court holding[41] that one charged with a traffic infraction did have a right to be tried by a statutory jury. This court reasoned that since the Vehicle and Traffic law provided that such offenses are to be treated as misdemeanors for all procedural purposes the right to demand a jury trial should also apply. An amendment to the law vitiated the effect of this decision by expressly providing "that no jury trial shall be allowed for traffic infractions."[42]

In a recent amendment to the Penal Law, the legislature amended that section which grants jurisdiction over the offense of disorderly conduct[43] by granting to magistrates or other judicial officers having jurisdiction in the premises the power to hear and determine and to render final judgment upon conviction of disorderly conduct "or any other offense not constituting a crime."[44] Today therefore, it is clearly established that magistrates have exclusive summary jurisdiction over all petty offenses.

Consistent with this summary jurisdiction, an offender has no right to have the incidental issue of sanity determined by a jury[45] although he is entitled to an examination for the purpose of establishing his sanity.[46] As in all criminal cases an offender has no right to have the fact of "present insanity" determined by a jury.[47]

Finally, these hearings, although summary in form, are criminal trials. Therefore, a summary hearing constitutes jeopardy within the meaning of section 9 of the Code of Criminal Procedure and article 1, section 6 of the state constitution,[48] therefore precluding the defendant from being tried again for the same offense.

ARREST

The Code of Criminal Procedure permits a peace officer to arrest a person for a crime committed in his presence[49] provided he informs the person of his authority and the cause of arrest, except that when the person apprehended is in the actual commission of the crime, the officer need not state the cause of

distinction between crimes and offenses." People v. MacAffer, 282 App. Div. 287, 123 N.Y.S. 2d 204 (3d Dep't 1953).

40. People v. Rubin, 284 N.Y. 392, 31 N.E.2d 501 (1940); People v. MacAffer, 282 App. Div. 287, 123 N.Y.S.2d 204 (3d Dep't 1953); Cooley v. Wilder, 234 App. Div. 256, 255 N.Y. Supp. 218 (4th Dep't 1932).

41. People v. Bush, 160 Misc. 669, 290 N.Y. Supp. 495 (County Ct. 1936).

42. N.Y. Sess. Laws 1939, c. 420.

43. N.Y. Pen. Law § 724.

44. N.Y. Sess. Laws 1955, c. 272, § 1.

45. People v. Mills, 179 Misc. 58, 37 N.Y.S.2d 185 (Sup. Ct. 1942).

46. Application of Eaton, 196 Misc. 648, 92 N.Y.S.2d 461 (Sup. Ct. 1949).

47. See note 45 supra.

48. People v. Collins, 238 App. Div. 592, 265 N.Y. Supp. 475 (1st Dep't 1933); People v. Goldefarb, 152 App. Div. 870, 138 N.Y. Supp. 62 (1st Dep't), aff'd, 213 N.Y. 664, 107 N.E. 1077 (1912).

49. N.Y. Code Crim. Proc. § 177.

arrest.[50] In the case of a petty offense, however, it has been held that a peace officer has no right to arrest without a warrant unless such conduct constitutes a breach of the peace.[51] There are some limited statutory exceptions, such as the amendment to section 900 of the Code, authorizing the summary arrest of certain types of disorderly persons, notably fortune tellers, and sections 890 and 894 of the Code concerning vagrants, violations which would not normally constitute a breach of the peace.

In the case of traffic infractions the rule is not settled. In *Breland v. Gray*[52] it was held that a traffic infraction is not a crime and does not therefore come within the meaning of the summary arrest section of the Code and by applying the general rule concerning arrest for offenses decided there is no right to arrest for a traffic infraction unless it constituted a breach of the peace. In this case the defendant was arrested for parking his automobile a distance greater than six inches from the curb.[53] However, in *People v. Space*,[54] involving a speeding violation, it was held that a traffic infraction was a crime for purposes of arrest. The Court of Appeals in the recent case of *Squadrito v. Greibsch*[55] adopted the rule of the *Space* case, and extended the summary arrest concept, at least in the case of traffic infractions, to include section 180 of the Code,[56] ruling that when arresting a person for an "offense," the arresting officer has no duty to inform the offender of the cause of arrest when he apprehends him in the actual commission of the act. The *Squadrito* case involved an action for false arrest brought by a plaintiff who was arrested for speeding, on the theory that the arresting officer, by refusing to inform the plaintiff of the cause of arrest, had failed to comply with the requirements of the Code and therefore the arrest was unlawful. In upholding the arrest, the court reasoned that since the legislature has provided that traffic infractions are to be treated procedurally as crimes, they must have intended that they be treated as crimes for the purpose of arrest as well. Unfortunately the court did not distinguish the more fundamental problem raised by the *Breland* case in regard to the right of summary arrest for mere parking violations. But however distinguishable, from a practical standpoint, the *Space* and *Breland* cases may be, there is no provision to distinguish between types of traffic infractions made in the statute. It is inconceivable that the legislature intended to vest police officers with the authority to arrest without a warrant in the case of a parking violation, yet the decision

50. Id. § 180.

51. People v. Philips, 284 N.Y. 235, 30 N.E.2d 488 (1940).

52. 2 Misc. 2d 15, 37 N.Y.S.2d 291 (Sup. Ct. 1942).

53. N.Y. Vehicle & Traffic Law § 86(5).

54. 182 Misc. 783, 51 N.Y.S.2d 509 (County Ct. 1944).

55. 1 N.Y.2d 471, 136 N.E.2d 504 (1956).

56. "When arresting a person without a warrant the officer must inform him of the authority of the officer and the cause of arrest, except when the person arrested is in the actual commission of a crime, or is pursued immediately after an escape." N.Y. Code Crim. Proc. § 180. In the title of section 180 the word "felony" is used in place of the word "crime" which is in the text (one instance among many in the penal statutes demonstrating the need for extensive revision). The court in the Squadrito case held that the body of the statute was clear and unambiguous, consequently the title could not alter its meaning.

in the *Squadrito* case would support no other conclusion. It would seem that "the legislature has inadvertently caused a loophole to exist in the law which the majority has chosen to fill."[57]

Burden of Proof

The general criminal law principle that one is presumed to be innocent until proven guilty beyond a reasonable doubt applies equally to offenses.[58] In *People v. Hildebrant*,[59] it was held that ". . . there should be applied in the case of traffic infractions the criminal law rules of presumption of innocence and the necessity of proof of guilt beyond a reasonable doubt." This court reversed a speeding conviction based on the photographic evidence of a "photo traffic camera" without pursuit or arrest. The state argued that it may be presumed that the registered owner of the vehicle was operating it at the time of the violation, thereby imposing on the owner the burden of rebutting this presumption. The court rejected this reasoning and dismissed the conviction saying that speeding is a personal offense and the identity of the perpetrator thereof must be established by the prosecution beyond a reasonable doubt.

Miscellaneous Provisions

Although one tried for an offense is not entitled to a trial by jury, such an offense has all the characteristics of a criminal procedure and a conviction eventuates in a penal judgment and execution.[60] One charged with an offense must be warned of his right against self-incrimination.[61] In *Lea v. MacDuff*,[62] it was held that one charged with a mere offense need not be informed of his right to counsel but this decision would seem to be in conformity with the decisions denying such right in the case of all crimes tried in a court of special sessions.[63] This rule is prompted by the reasoning that the section of the Code which requires that a defendant be informed of his right to the aid of counsel[64] being "a part of part 4 of the Code which has to do with 'proceedings in a criminal action prosecuted by indictment,' has no application to cases in Special Sessions."[65] It has been cautioned, however, that in cases where the defendant

57. Note, 25 Fordham L. Rev. 735, 737 (1956).

58. People v. Gilbert, 12 N.Y.S.2d 632 (N.Y.C. Ct. Spec. Sess., App. Part 1939).

59. 308 N.Y. 397, 126 N.E.2d 377 (1955).

60. People ex rel. Stolofsky v. Superintendent of State Institution for Male Defective Mental Delinquents, 259 N.Y. 115, 181 N.E. 68 (1932); People v. Karnow, 204 Misc. 632, 123 N.Y.S.2d 537 (County Ct. 1953).

61. "The privilege against self-incrimination clearly applies to such a proceeding and the conduct of the trial, with respect to that privilege, should be precisely the same as that upon a charge of misdemeanor." People v. Chlebowy, 191 Misc. 768, 78 N.Y.S.2d 596 (Sup. Ct. 1948).

62. 205 Misc. 24, 126 N.Y.S.2d 646 (Sup. Ct. 1953); People v. Hogenson, 117 N.Y.S.2d 260 (N.Y.C. Magis. Ct. 1952).

63. People v. Johnston, 187 N.Y. 319, 79 N.E. 1018 (1907); People v. Park, 92 Misc. 369, 156 N.Y. Supp. 816 (County Ct. 1915).

64. N.Y. Code Crim. Proc. § 188.

65. People v. Yerman, 138 Misc. 272, 246 N.Y. Supp. 665 (County Ct. 1930).

is not represented by counsel, the court must be diligent to protect every right of the defendant.[66]

The Penal Law provides that anyone who commits an act which would make him an accessory if the principal crime committed were a felony, may be punished as a principal, "if the crime be a misdemeanor."[67] Despite this unequivocal language, it has been held that one who aids or abets in the offense of disorderly conduct may be convicted as a principal.[68]

In *People v. Erickson*,[69] it was held that an offense does not come within that section of the Criminal Code which requires that a confession be supported by some additional evidence. This case involved the offense of being a disorderly person and express provision is made in the Code that in such cases a confession alone will support a conviction.[70] However, applying the same reasoning as has been applied when the courts have considered the duty to inform a defendant of his right to counsel, it follows that this ruling should be equally applicable to all offenses, since the section of the Code requiring that a confession be supported by additional evidence is also found in part 4, relating to actions prosecuted by indictment.

An offense is not a crime within the meaning of the section of the Civil Practice Act[71] which admits evidence of a prior conviction for a crime to impeach the credibility of a witness.[72] Finally, a conviction for an offense gives the defendant the same right to appeal, including appeal to the Court of Appeals, as exists in the case of a misdemeanor, and such actions are governed by the rules concerning appeals as found in the Code of Criminal Procedure.[73]

Conclusion

Analysis shows that violations of the penal statutes have been held to be crimes unless it is expressly provided that it shall be something less than a misdemeanor. Comparisons, such as between penalty provided or apparent gravity of the wrong, display little consistency and cannot affect the rule. Further, looking beyond the words of the statute can only serve to create a problem where presently none exists.

Petty offenses serve an important function in the law by permitting the expeditious prosecution of the more common minor violations of law which could not possibly be handled by the time consuming process of a regular criminal trial. However, in order to afford full protection of the law to a defendant these offenses are treated procedurally as misdemeanors in every

66. See note 61 supra.

67. N.Y. Pen. Law § 27.

68. People v. Pearson, 188 Misc. 744, 69 N.Y.S.2d 242 (N.Y.C. Ct. Spec. Sess., App. Part 1947).

69. 171 Misc. 937, 13 N.Y.S.2d 997 (N.Y.C. Magis. Ct.), rev'd on other grounds, 283 N.Y. 210, 28 N.E.2d 381 (1940).

70. N.Y. Code Crim. Proc. § 901.

71. N.Y. Civ. Prac. Act § 350.

72. People v. Mealey, 287 N.Y. 39, 38 N.E.2d 21 (1941); McQuage v. City of New York, 285 App. Div. 249, 136 N.Y.S.2d 111 (1st Dep't 1943).

73. See note 67 supra.

respect consistent with the purpose they are intended to serve.[74] But any law which subjects a citizen to summary trial and punishment, however necessary it may be, is fraught with the danger of abuse. It is imperative that the courts remain vigilant to curtail such abuses if and when they arise.

74. Certain procedural modifications have been made by statute in regard to traffic infractions. Section 335-a of the Code of Criminal Procedure for example, requires that before accepting a plea of guilty to a violation of the Vehicle and Traffic Law, the defendant must be warned that he is liable to revocation of his driving privileges as well as to a penalty. Section 335(2) of the Code of Criminal Procedure provides that under given circumstances a plea of guilty to such violations may be submitted by mail, thereby waiving in such cases the requirement of submitting a personal plea as required in the case of other offenses. Gross v. MacDuff, 284 App. Div. 786, 135 N.Y.S.2d 435 (3d Dep't 1954).