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Courts – Constructive Criminal Contempt

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social conditions, the judge reasons that the taxing aspects of the statute are not separable from the regulatory police power aspects. Since the regulatory requirements were deemed unconstitutional because they infringed upon the state's police powers, the whole statute must be voided. The court admits that federal courts generally do not inquire into the motives of Congress in passing tax legislation. By differentiating between *taxation* and *regulation* the court circumvents this rule.

It is interesting to note that the statute involved has been involved in four district court decisions. Although the first two cases did not present the same issue,⁶ one of them has already been affirmed by the Supreme Court.⁷ The other two district court decisions,⁸ decided upon the very same issue, have upheld the validity of the statute.

It is submitted that the *Constantine* case,⁹ which seemed to the judge in the instant case to "... reveal the silver thread of truth. . ."¹⁰ and which involved a similar tax statute, can be distinguished. That case involved a tax on *unlawful* conduct of retail liquor businesses and in effect imposed a federal penalty upon a state penalty. The statute in the instant case purposely avoids this pitfall of draftsmanship by requiring the registration and taxation of all persons engaged in wagering, regardless of legality under state laws.

Viewed in the light of present social conditions and the past decisions of the Supreme Court of the United States,¹¹ it seems almost certain that the instant case will be reversed on appeal. Present Supreme Court decisions strongly indicate the federal tax power is practically unlimited.

COURTS — CONSTRUCTIVE CRIMINAL CONTEMPT

In contempt proceedings brought by the United States against respondent, the district court found defendant guilty of criminal contempt for disobeying and resisting an order of a federal court¹ which demanded his surrender. Defendant appealed, pleading that there was no order actually issued at the time of the alleged contempt and that he had no

6. *United States v. Forrester*, 105 F. Supp. 136 (N.D. Cal. 1952) (safeguards against self-incrimination not infringed upon); *Combs v. Snyder*, 101 F. Supp. 531 (D.C. 1951) (action to restrain enforcement denied on ground that petitioner had unclean hands).

7. *Combs v. Snyder*, 101 F. Supp. 531 (D.C. 1951), *aff'd*, 342 U.S. 939 (1952).

8. *United States v. Smith*, 106 F. Supp. 9 (S.D. Cal. 1952); *United States v. Nadler*, 105 F. Supp. 918 (N.D. Cal. 1952).

9. 296 U.S. 287 (1935).

10. 105 F. Supp. 322, 323 (1952).

11. *Supra*, note 3.

12. *United States v. Sanchez*, 340 U.S. 42 (1950); *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937).

1. 18 U.S.C. § 401(3). "A Court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, as . . . disobedience or resistance to its lawful writ, process, order, rule, decree or command."

personal knowledge or notice of the order when it was finally issued. *Held*, affirmed. Evidence sustained the finding that defendant had actual knowledge through his attorney of the proposed issuance of the order and was required to surrender to the court at the time specified to the attorney even though the order was not in fact issued and the statement was made before the court had jurisdiction. *United States v. Hall*, 198 F.2d 726 (2nd Cir. 1952).

The power of the court to punish for contempt has defied any comprehensive definition.² Whether thought of as inherent³ or statutory⁴ in its nature, it certainly is extremely broad and discretionary in its scope. Contemptuous action has been said to include all acts which are in disrespect of a court or its process, and which obstruct the administration of justice or tend to bring the court into disrepute in the forum of public opinion.⁵ While all contempts are thought of as criminal in their nature,⁶ they are classified into civil and criminal contempts, depending on whether they are remedial⁷ and for the benefit of private parties,⁸ or arise from conduct directed against the authority and dignity of the court.⁹

Although the courts generally attempt to follow the procedural courses of criminal jurisprudence when trying contempt cases,¹⁰ there is no necessary pattern that they must adhere to.¹¹ In the trying of cases held to be civil, the courts often resort to civil procedural rules.¹²

Contempts are further distinguishable as those which are direct (committed in the presence of the court)¹³ and may be given summary judgment

2. See *In re Morse*, 98 Vt. 85, 126 Atl. 550 (1924); Note, *Civil and Criminal Contempt in Federal Courts*, 57 YALE L.J. 83 (1947); Note, *Criminal Contempt of Court Procedure: A Protection of the Rights of the Individual*, 30 CAN. B. REV. 225 (1952).

3. *Ex parte Robinson*, 19 Wall. 505 (U.S. 1873); *United States v. Landis*, 97 F.2d 378 (2nd Cir. 1938).

4. *In re Gottman*, 118 F.2d 425 (2nd Cir. 1941); *Rutherford v. Holmes*, 66 N.Y. 368, 35 N.Y. Supp. 115 (1877).

5. *Ex parte Robinson*, 19 Wall. 505 (U.S. 1873). See 1 BURDICK, *THE LAWS OF CRIME*, § 268 (1946).

6. *Bessette v. W. B. Conkey Co.*, 194 U.S. 324 (1904); *In re Reese* 107 Fed. 942 (8th Cir. 1901). Compare *Ex parte Moulton*, 100 Cal. App.2d 559, 224 P.2d 76 (1950); *Laurie V. Ryan*, 130 N.J. Eq. 248, 22 A.2d 6 (1941) (contempt is quasi-criminal).

7. *McCrone v. United States*, 307 U.S. 61 (1939); *Ex parte Earman*, 85 Fla. 297, 95 So. 755 (1923). Cf. *State v. Winthrop*, 148 Wash. 526, 269 Pac. 793 (1928).

8. *Nye v. United States*, 313 U.S. 33 (1941). Cf. *Boylan v. Detrio*, 187 F.2d 375 (5th Cir. 1951).

9. *Dale v. State*, 198 Ind. 110, 150 N.E. 781 (1926). Cf. *State v. Magee Pub. Co.*, 29 N.M. 455, 224 Pac. 1028 (1924); *In re Morse*, 98 Vt. 85, 126 Atl. 550 (1924).

10. *Butterfield v. State*, 144 Neb. 388, 13 N.W.2d 572 (1942). Cf. *Ex parte Genevov*, 143 Tex. 476, 186 S.W.2d 225 (1945).

11. *State v. Baker*, 222 Iowa 903, 270 N.W. 359 (1936). Compare *Bessette v. W.B. Conkey Co.*, 194 U.S. 324 (1904); *State ex rel Short v. Owens*, 125 Okla. 66, 256 Pac. 704 (1927) (that contempt proceedings are *sui generis*); *Lamb v. Cramer*, 285 U.S. 217 (1931) (prayer of petition for relief determines nature of contempt proceedings as criminal or civil).

12. *National Popsicle Corp. v. Kroll*, 104 F.2d 259 (2nd Cir. 1939). Cf. *In re Willis*, 242 Ala. 284, 5 So.2d 716 (1942).

13. *People ex rel. Chicago Bar Ass'n v. Barasch*, 338 Ill. App. 69, 86 N.E.2d 868

and execution,¹⁴ or those which are indirect (committed at a distance under circumstances that reasonably tend to degrade the court or interfere in any way with the administration of justice)¹⁵ and require notice in the form of an order to show cause why the contemner should not be cited.¹⁶

While the general area of contempt is still clouded because of the courts' refusal to limit or define their one means of enforcement, there has been a trend toward allowing the contemner, by statute and case law, more procedural and substantive advantages under due process. Today the right against self-incrimination,¹⁷ the right of notice¹⁸ and the presumption of innocence¹⁹ are all guaranteed in contempt proceedings. The right to trial by jury, however, must be expressly provided for by statute.²⁰

In criminal contempt proceedings arising from a violation of a court order, it cannot be doubted that the order must have been definite in its terms, fixed certain duties on the parties involved²¹ and the contemner must have had actual knowledge of the order before he can be said to be acting in violation of it.²² Once the contemner has received notice that the order has been issued he cannot act in violation of it even though it may have been improvidently rendered²³ or erroneous.²⁴ The Supreme Court in *United States v. United Mineworkers*²⁵ stated that a decree of the court must be obeyed "short of an indisputable want of authority" of the court making it. It has been held, under the *general* power of the court to punish for contempt, that one who anticipates a suit against himself may absent himself from the jurisdiction to avoid service of process without being guilty of contempt, but if the intent to evade

(1949). *But cf.* *People v. Hagopian*, 343 Ill. App. 640, 99 N.E.2d 726 (1951) (extended to include acts beyond the personal presence of the judge).

14. *In re Lands, Lots, or parts of Lots omitted from Foreclosure Proceedings*, 146 Ohio St. 589, 67 N.E.2d 433 (1944).

15. *People v. Ryan*, 412 Ill. 54, 104 N.E.2d 821 (1952). *Cf.* *Stewart v. Atate*, 140 Ind. 7, 39 N.E. 508 (1895).

16. *Provenzale v. Provenzale*, 339 Ill. App. 345, 90 N.E.2d 115 (1950). See *FED. R. CRIM. P.* 42(b).

17. *Samuel Gompers v. Buck's Stove and Range Co.*, 221 U.S. 418 (1911).

18. *Parker v. United States*, 153 F.2d 66 (1st Cir. 1946). *Cf.* *FTC v. A. McLean and Sons*, 94 F.2d 802 (7th Cir. 1938) (contemner is entitled to know whether proceedings are criminal or civil in their nature).

19. *Samuel Gompers v. Buck's Stove and Range Co.*, 221 U.S. 418 (1911). But, in civil contempt proceedings there is no presumption of innocence of defendant. *Coca Cola Co. v. Feulner*, 7 F. Supp. 364 (S.D. Texas 1934).

20. *FED. R. CRIM. P.* 42(b).

21. *Berry v. Midtown Service Corp.*, 104 F.2d 107 (2nd Cir.), *cert. dismissed*, 308 U.S. 629 (1939).

22. *Kelton v. United States*, 294 Fed. 491 (3d Cir. 1923), *cert. denied*, 264 U.S. 590 (1924).

23. *Douds v. Local 1250*, 173 F.2d 764 (2nd Cir. 1949). *Cf.* *SEC v. Okin*, 137 F.2d 862 (2nd Cir. 1943); *Farewell v. Horton*, 301 Ill. App. 372, 22 N.E.2d 958 (1939).

24. *United States v. United Mineworkers*, 330 U.S. 258 (1947). *Cf.* *Robertson v. Comm.*, 181 Va. 520, 25 S.E. 2d 352 (1943).

25. 330 U.S. 258, 310 (1947).

service is made after the suit is brought, not only to avoid process, but to frustrate any orders which may be issued, contempt will lie.²⁶

In the instant case, the court reasoned that respondent's flight, and the fact that his attorney had notified him of the court's proposed future issuance of the order, *together* with the fact that contemner knew that he was awaiting sentencing, justified the conclusion that he had actual knowledge of the issuance of the order. Rather than relying upon the inherent power of the court to punish for contempt, it cited respondent for violating a *particular* order which the court had issued. In reality the court has established a new interpretation of constructive contempt by holding that one may be guilty of contempt for violating a court order before the order has been issued. The holding presents a unique²⁷ conception of when contempt will lie under the statutory provision.²⁸ The court seems to be taking a strong backward step from the trend of expanding the rights of a contemner as expressed in recent statutes and court decisions.

COURTS—STATUTORY CONSTRUCTION—EXTRINSIC AIDS

Defendant failed to pay an income tax on money he had extorted. *Held*, by construction of § 22(a) of the Internal Revenue Code, money obtained by extortion is taxable income. *Rutkin v. United States*, 343 U.S. 130 (1952).

Statutes must be frequently applied to situations not contemplated at the time of their enactment. Any interpretation by the Supreme Court becomes an integral part of the statute and is positive law.¹ Because the separation of powers doctrine demands that the legislature make all major policy legislation,² the Court's duty is merely to determine probable legislative intent.³ To prevent unnecessary judicial "legislation," especially when construing legislation involving either federal or state supremacy or a question of balance of powers within the government itself,⁴ the Court, in its *first construction* of a statute, employs extrinsic aids such as previous legislative history,⁵ standing committee reports,⁶ sponsor's explanations⁷

26. *In re Rice*, 181 Fed. 217 (M.D. Ala. 1910). Cf. *Aarons v. State*, 105 Miss. 402, 62 So. 419 (1913).

27. See *United States v. Hall*, 198 F.2d 726, 729 (2nd Cir. 1952), Clark, J., dissenting: "... exhaustive independent research has disclosed no similar case. It is probably the first time that a proceeding like this has been before the courts."

28. See note 1 *supra*.

1. *Guaranty Trust Co. v. Blodgett*, 287 U.S. 509 (1933); *White County v. Gwin*, 136 Ind. 562, 36 N.E. 237 (1894).

2. *FTC v. Bunte Bros.*, 312 U.S. 349 (1940).

3. *Bardes v. Hawarden Bank*, 178 U.S. 524 (1900).

4. *Palmer v. Massachusetts*, 308 U.S. 79 (1939).

5. *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490 (1945); *Boone v. Lightner*, 319 U.S. 561 (1943); *Federal Communications v. Columbia Broadcasting System*, 311 U.S. 132 (1940).