

University of Miami Law Review

Volume 9
Number 3 *Miami Law Quarterly*

Article 5

5-1-1955

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Recommended Citation

Barton S. Udell, *Contempt of Court in Florida*, 9 U. Miami L. Rev. 281 (1955)
Available at: <https://repository.law.miami.edu/umlr/vol9/iss3/5>

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COMMENTS

CONTEMPT OF COURT IN FLORIDA

INTRODUCTION

The power of the courts to punish for contempt is apparently part of the western judicial system. It has been so in Florida at least since the Nineteenth Century. The reason for this power is seen in an early case¹ in which a contemnor refused to testify after being ordered to do so. After holding the court's order lawful the Supreme Court concluded: ". . . the court may resort to all measures given by the law to compel obedience thereto. Having given petitioner an opportunity to be heard, the court had the inherent right to punish, as for a contempt, a violation of its order to maintain its dignity, authority, and efficiency in the proper administration of the law."²

That such power exists without legislative aid was clearly enunciated in *In re Hayes*,³ when the court said: "The Supreme Court has, independent of statutory authority, inherent power to punish for contempt of court."⁴ But the Florida Legislature has by statute declared that the courts, both civil and criminal, have the power to punish contempts, and has, in addition, defined the act itself. The following sections of Florida Statutes (1951), are applicable to this subject:

§ 38.22 Power to punish

Every court may punish contempts against it, but the punishment imposed by a justice of the peace shall not exceed twenty dollars fine or twenty-four hours imprisonment.

§ 38.23 Contempts defined

A refusal to obey any legal order, mandate or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly. But nothing said or written, or published, in vacation, to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt.

§ 932.03 Contempts

Said courts, in the exercise of their criminal jurisdiction may punish for contempts as in the exercise of their civil jurisdiction, and the criminal courts of record shall possess, in this respect, the same powers as the circuit courts.

1. *Ex parte Beville*, 58 Fla. 170, 50 So. 685 (1909).

2. *Id.* at 184, 50 So. at 689.

3. 72 Fla. 558, 73 So. 362 (1916).

4. *Id.* at 568, 73 So. at 365.

Recognizing the statutory authority granted in Section 38.22, F.S. (1951), the court in *State ex rel. Giblin v. Sullivan*⁵ pointed out again that the courts have both inherent and statutory powers to punish contempts. Even more recently the court has taken notice of this statutory grant, but stated: "A grant of power to a court is tempting but the acknowledgement of it presupposes the authority to withdraw same. As we have said, the power to punish contempt is a necessary and inherent one in a court. Therefore we take notice of the statute but decline to place a construction upon it."⁶

CLASSIFICATIONS OF CONTEMPT

Having concluded that the power to punish contempts is not only necessary but also an inherent and legislatively authorized power, it is important to notice that there are several classifications of contempt.⁷ The classic definitions in Florida were laid down in the landmark case of *Ex parte Earman*,⁸ as follows:

An offense against the authority or the dignity of a court or judicial officer when acting judicially is called contempt of court, a species of criminal conduct. Contempts may be direct or indirect or constructive, or criminal or civil according to their essential nature. Contempts of court are committed against courts and judicial officers who are vested with a portion of 'the judicial power of the State,' when judicial functions are interfered with or impugned by the contemptuous acts or conduct. A direct contempt is an insult committed in the presence of the court or of a judge when acting as such, or a resistance of or an interference with the lawful authority of the court or judge in his presence, or improper conduct so near to the court or judge acting judicially as to interrupt or hinder judicial proceedings. This species of contempt may be punished at once and summarily by the court that is offended, in order to maintain its authority and dignity, but the punishment must be appropriate to the offense and not excessive.

An indirect or constructive contempt is an act done, not in the presence of a court or of a judge acting judicially, but at a distance under circumstances that reasonably tend to degrade the court or the judge as a judicial officer, or to obstruct, interrupt, prevent, or embarrass the administration of justice by the court or judge.

A criminal contempt is conduct that is directed against the authority and dignity of a court or [of a judge acting judicially as in unlawfully assailing or discrediting the authority or dignity of the court or judge or in doing a duly forbidden act.]

A civil contempt consists in failing to do something ordered to be done by a court or judge in a civil case for the benefit of the opposing party therein.⁹

5. 157 Fla. 463, 26 So.2d 509 (1946).

6. *State ex rel. Franks v. Clark*, 46 So.2d 488, 489 (Fla. 1950).

7. See *Courts—Constructive Criminal Contempt*, 7 *MIAMI L.Q.* 253, for a discussion of the classes of contempt generally.

8. 85 Fla. 297, 95 So. 755 (1923).

9. *Id.* at 315, 95 So. at 760.

An example of these distinctions in the actual context of a case is seen in the following words of the court:

The petitioner has been found guilty of an indirect civil contempt. [He had failed to pay alimony under a divorce decree.] It was indirect because it was not in the presence of the court and because proof thereof was necessary in order that the chancellor be advised of the facts going to the determination of the contempt.

It was civil because it was for the benefit of the wife and the chancellor's order was for coercive purposes, to wit: Perform his obligations to his wife, relative to maintenance and support.¹⁰

As noted in these quotations contempt of court may be direct or indirect, civil or criminal. In addition, some note must be taken whether the action was in equity or at law. We may summarize this section on classification and definition by referring to the language of the court in *Ex parte Crews*:¹¹

It may be said broadly, but certainly, that any act which is calculated to embarrass, hinder, or obstruct the court in the administration of justice, or which is calculated to lessen its authority or its dignity is a contempt.

The test is not the physical propinquity of the act to the court, but its tendency to directly affect the administration of justice.¹²

CONTEMPT PROCEEDINGS

Initiating a contempt proceeding

Where there has been a direct, criminal contempt of court, as pointed out in the *Earman* case,¹³ the court may punish summarily. But where the action alleged contemptuous is indirect, whether civil or criminal, a petition is usually made to the court for the judge to issue a rule to show cause (rule nisi) why the alleged contemnor should not be adjudged in contempt. A hearing is had upon the rule where there is a return or answer. The discretion of the court in initiating such proceedings has been excepted to in one situation in the case of *Orr v. Orr*¹⁴ where the Circuit Court of Dade County was requested by the alleged contemnor's former wife to adjudge her divorced spouse to be in contempt of court for not obeying a final decree and paying the wife's attorneys' fees. The Supreme Court heard the case on the wife's appeal, when the rule nisi was discharged by the circuit court after a hearing. The court said:

As a general rule an applicant is not entitled—as a matter of right—to an order for commitment of a person for contempt, but the application is addressed to the discretion of the court.

The rule, however, is different where the person, sought to be cited for contempt, wilfully refuses to comply with the order of

10. State *ex rel.* Carroll v. Sullivan, 160 Fla. 115, 117, 33 So.2d 735, 736 (1948)

11. 127 Fla. 381, 173 So. 275 (1937).

12. *Id.* at 389, 173 So. at 279.

13. See note 8 *supra*.

14. 141 Fla. 112, 192 So. 466 (1939).

the court commanding him to pay alimony, costs and attorneys' fees

It inevitably follows, then, that such an arrant noncompliance with the order of the court in the final decree allowing costs and attorneys' fees may be made grounds for an adjudgment of contempt of court and the application for citation in such a case is not addressed to the discretion of the court, but is a matter of right to those who have a pecuniary interest in the enforcement of the decree.¹⁵

Thus it has been said generally that the rule is not a pleading, but merely process founded upon a motion and affidavits. If the affidavits or motion were defective or the showing made for issuing the rule was insufficient, the proper practice was to move to discharge or to quash the rule, and a demurrer could not have been entertained.¹⁶

Limitations on the court

The determination of whether or not an act is contemptuous will often depend upon the substantive law and the rights of the party. As we shall see later, many actions are privileged and these cannot therefore be held contemptuous. Further, the court is limited to contempts affecting it alone. In one case a circuit court issued rule to show cause to one who failed to pay alimony under the decree of the court of another county.¹⁷ The party petitioned the Supreme Court for a writ of prohibition which was granted. The court noted:

. . . a court is not authorized to require respecting or to punish contempt of any other courts or tribunal unless the latter be an agency or a part of the court in which the contempt is charged. The contempt must, therefore, be recognized as a contempt of the court proposing to inflict the punishment and judgment for contempt. The power to punish is an incident for maintaining its authority¹⁸

The same rule is true regarding statutes. In *Ex parte Turner*,¹⁹ the court adjudged in contempt those who secured the release of one sent to jail by the Circuit Court of Columbia County for aggravated assault. The Supreme Court discharged the contemnors because the sentence and custody of a prisoner is regulated by statute and not judicial order, thus interference with the prisoner's custody was a violation of state regulations only, and not a contempt of court.

Appeal

The history of appeal and review from an adjudication of contempt in Florida has been one of significant change. The early view is well expressed in the following excerpts:

15. *Id.* at 116, 192 So. at 467.

16. *Continental Nat. Building & Loan Ass'n v. Scott*, 40 Fla. 386, 24 So. 473 (1898).

17. *State ex rel. Sherman v. Thomas*, 128 Fla. 231, 174 So. 413 (1937).

18. *Id.* at 235, 174 So. at 415.

19. 73 Fla. 360, 74 So. 314 (1917).

In the absence of any statutory limitations or restrictions, the power of the several courts over 'contempts' is omnipotent, and its exercise is not to be enquired into by any other tribunal. This is the great bulwark established by the common law for the protection of its courts of justice, and for the maintenance of their dignity, authority and efficiency, and neither in England nor in the United States has this unrestricted power been seriously questioned.²⁰

An appeal will not lie in such case [fine for contempt in disregarding an injunction], as matters of contempt of the authority of a court are entirely within the province of the court adjudging the same, and not subject to be reviewed upon writ of error or appeal.²¹

Of course, this view did not mean that once contempt had been adjudged the matter was entirely closed, regardless of the facts. But the rule against opening the case by collateral attack was rather strict. In *Palmer v. Palmer*,²² the court said in dictum:

We may remark that, where the judgment is void, as for want of jurisdiction of the court, the remedy is by habeas corpus, and where it is merely irregular or erroneous there is no appeal or other right of review.²³

The same rule was given in the landmark case of *Ex parte Senior*²⁴ where the court stated:

As a general rule, habeas corpus does not lie to correct mere irregularities of procedure where there is jurisdiction; and in order to sustain the writ there must be illegality, or want of jurisdiction.²⁵

Although this rule seems firmly embedded in early Florida law, a different result was reached in *Sanchez v. Sanchez*,²⁶ which involved a divorce bill in equity. Appellant had filed the bill, but by *ex parte* hearings, of which he had no notice and at which he made no appearance, he was required to pay alimony. Failing to so pay he was held in contempt of the Circuit Court of Levy County. His *appeal* was taken. Five years later the dissenting pudge in *Florida Central Peninsular Ry. v. Williams*²⁷ believed it necessary to discuss the earlier case. The facts here, were that the defendant was enjoined from laying certain railroad track. It was found in contempt, assessed fines and ordered to remove the track laid in violation of the injunction. The defendant company appealed. Citing the *Caro* case²⁸ the court said that "An appeal does not lie from an order of the circuit court imposing fine for a contempt in violating an injunction."²⁹ It went on to state that it considered the fines and the order

20. *Ex parte Edwards*, 11 Fla. 174 (1867).

21. *Caro v. Maxwell*, 20 Fla. 17 (1883).

22. 28 Fla. 295, 9 So. 657 (1891).

23. *Id.* at 300, 9 So. at 658.

24. 37 Fla. 1, 19 So. 652 (1896).

25. *Id.* at 14, 19 So. at 653.

26. 21 Fla. 346 (1885).

27. 45 Fla. 295, 33 So. 991 (1903).

28. See note 21 *supra*.

29. *Ibid.*

both to be punitive and subject only to collateral attack by habeas corpus. But the dissenting judge claimed that removal of the track was remedial and under the *Sanchez* case an appeal would lie.

This point of contention concerning the remedial or punitive nature of a decree is apparently not discussed elsewhere as such. However, the differentiation between civil and criminal contempts which may depend upon the remedial nature of a decree and its subsequent violation remains very much in evidence.

The decision in the *Sanchez* case was certainly overlooked when the court held in a 1913 case³⁰ that an appeal does not lie from an order punishing a party for contempt for the violation of an injunction granted in a chancery cause. The court concluded, "The remedy, if any, is habeas corpus for an illegal imprisonment."³¹

Even more broad was the language of the court in *Miller v. Miller*³² where it said:

In such cases appeal does not lie from a commitment or *fine* for violating, or for refusal to comply with, an order of the court made in due course and within the jurisdiction of the court. (emphasis supplied)³³

The tenacity with which the court has clung to the presumption of propriety in the action of the trial court cannot be overstated. It is clearly seen in a 1930 case³⁴ where the court stated that if the trial judge makes a statement as to the facts before him, they shall be regarded as an absolute verity.

The principle that habeas corpus proceedings afford the only proper remedy is restated in the case of *Jones v. King*.³⁵ The Supreme Court admonished the circuit court for summarily denying habeas corpus, noting that the only remedy for contempt was such a proceeding. But this by no means infers that the decision of the lower court will be lightly set aside, for we have already noted that such is not the case. Moreover, the validity of our conclusion may be reinforced by the language of the court in *Richey v. McLeod*:³⁶

It is true that where the judgment in contempt clearly appears to have been arbitrary and capricious it may be adjudged illegal in habeas corpus proceedings but before such result obtains the showing must be clear and unequivocal that the action of the court in imposing the judgment was arbitrary and capricious.³⁷

30. *McCall v. Lee*, 66 Fla. 14, 62 So. 902 (1913).

31. *Id.* at 16, 62 So. at 902.

32. 91 Fla. 82, 107 So. 251 (1926).

33. *Id.* at 83, 107 So. at 251.

34. *State ex rel. Grebstein v. Lehman*, 100 Fla. 481, 129 So. 818 (1930).

35. 120 Fla. 87, 162 So. 353 (1935).

36. 137 Fla. 281, 188 So. 228 (1939).

37. *Id.* at 287, 188 So. at 230.

However, by 1931 the court seemed to be saying that in cases of civil contempt the action was reviewable, although it hinted that such would not be the case with criminal contempt.³⁸

The major change in this area did not occur until the *Pennekamp* cases³⁹ of 1945, when the editor of a Miami paper and his publishing company were both fined for printing two editorials and a cartoon. The earlier of the two cases was to determine whether an appeal or certiorari would lie. The court said:

Heretofore we have reviewed judgments in contempt by habeas corpus. Such remedy is not applicable to this case inasmuch as the judgment does not detain the appellants. Contempt proceedings are criminal in nature. Rule 37 of this Court provides that appeals shall be taken in criminal cases in conformity to Section 290, Florida Criminal Procedure Act, F.S.A. § 924.11.

We hold that appeal is the proper method to review the judgment.⁴⁰

In the second case, the court conveniently gives a brief summary of the history of procedural rules in contempt actions:

The early contempt cases to reach this court were brought by attachment as in England In some of these cases it was held that appeals would not lie Later their validity was tested by habeas corpus The practice in contempt has never been regulated by statute in Florida as it is by Congress in the Federal Courts. It has been regulated by the State Courts and the regulation has been so satisfactory that the tendency of the Legislature has been to extend rather than limit the power of the courts.⁴¹

After taking the view in the *Pennekamp* cases that the ordinary procedure of appeal is open to one adjudged to be guilty of criminal contempt and fined, it is only a matter of degree to say that when the penalty is detention the same procedure should be available without resort to the extraordinary writ of habeas corpus. However, in a recent case⁴² the Supreme Court heard a case upon petition for a writ of habeas corpus where the petitioner had been adjudged in contempt by the Circuit Court of Dade County for refusing to answer questions before the Dade County Grand Jury regarding gambling activities although he was protected by the state immunity statute. The petitioner was sentenced to six months in jail. The questionability of resorting to the extraordinary writ is expressed in the specially concurring opinion of Justice Paul D. Barns:

38. *Seaboard Air Line Ry. v. Tampa Southern Ry.*, 101 Fla. 468, 134 So. 529 (1931).

39. *Pennekamp v. State*, 156 Fla. 227, 22 So.2d 875 (1945), *rev'd on other grounds*, 328 U.S. 331 (1946); *Pennekamp v. Circuit Court of Dade County*, 155 Fla. 489, 21 So.2d 41 (1945).

40. *Pennekamp v. Circuit Court of Dade County*, *supra* note 39.

41. *Pennekamp v. State*, 156 Fla. 227, 236, 22 So.2d 875, 880 (1945).

42. *State ex rel. Mitchell v. Kelly*, 71 So.2d 887 (1954).

This habeas corpus proceeding instituted in this court is a collateral attack on a judgment of criminal contempt. The judgment is final in its nature and the appropriate method of procuring review is by appeal. The necessity of resort to habeas corpus no longer exists.⁴³

A more typical case under the modern procedure allowing appeal is that of *Clein v. State*⁴⁴ where a newspaper editor called before a grand jury refused to reveal the sources for certain information he had printed. After being held in contempt and ordered to confinement he appealed, and the procedure was apparently acceptable for there was no discussion concerning it.

But some doubt still remains on the matter of appeal when the court proceeds as it did in *Petition of Campbell*.⁴⁵ In that case a ward regaining his sanity applied for an order requiring settlement of property in the hands of his guardian. Failing to turn over the property, the guardian was held in contempt and sentenced until she performed. However, another judge of the same court set aside the contempt order. The ward appealed but the Supreme Court ruled that certiorari was the proper procedure.

Nevertheless, even with the noted exceptions, the rule today apparently is that an appeal will lie from an adjudication of contempt. It should be noted collaterally, that appeals have been utilized even before this "new rule," but in special cases only. For example, an appeal was taken by one held in contempt for violating the order of a circuit court, when such order was issued pursuant to a mandate from the Supreme Court.⁴⁶ The court said: "This appeal is proper for our consideration because the order which petitioner violated was entered pursuant to a mandate from this court."⁴⁷ Under the *Pennekamp* rule the appeal was proper in any event.

Interlocutory appeals

It has been said that, "Orders of the Chancellor made in the course of the hearing in determination of a contempt proceeding, but prior to a decision in the contempt proceedings on its merits pursuant to a rule nisi, are not appealable interlocutory orders within the purview of Section 4966, C.G.L."⁴⁸ Earlier cases have expressed the same view.⁴⁹

These cases were reviewed in a 1948 case,⁵⁰ and the court admitted it was well aware that on the same facts as it was concerned with, there could have been no review by certiorari. However, the court stated:

43. *Id.* at 897.

44. 52 So.2d 117 (Fla. 1950).

45. 72 So.2d 59 (Fla. 1954).

46. *State Board of Funeral Directors v. Cooksey*, 155 Fla. 761, 21 So.2d 542 (1945).

47. *Id.* at 765, 21 So.2d at 544.

48. *Hamilton v. State ex rel Hamilton*, 248 Fla. 551, 552, 4 So.2d 660, 660 (1941).

49. *Culpepper v. Culpepper*, 103 Fla. 390, 138 So. 799 (1931); *Miller v. Miller*,

91 Fla. 82, 107 So. 251 (1926).

50. *State ex rel. Carroll v. Sullivan*, 160 Fla. 115, 33 So.2d 735 (1948).

We now recede from that position and hold that such procedure may be employed, a view which we consider justified by our Rule No. 34, as follows:

(a) Interlocutory Appeals to Be by Certiorari. All appeals from interlocutory decrees as authorized by statute including orders or decrees after final decree, shall be prosecuted to this court by certiorari. This rule shall not preclude the review of such orders and decrees on final decree, if found more expedient.⁵¹

Dissenting judges in the case felt that the most that they could agree to would be that interlocutory appeal by certiorari is a concurrent remedy with habeas corpus, but not exclusive. The decision seems to have been followed very shortly thereafter, when a writ of certiorari initiated the review of an interlocutory decree in *Yandell v. Yandell*.⁵²

EVIDENCE

"A proceeding for contempt is a criminal proceeding in its nature and is to be prosecuted by the rules governing criminal prosecution."⁵³ Therefore, criminal contempts will have to be proven as any other crimes. A problem arises since the general rule exists that the weight of evidence and the credibility of witnesses will not be considered in habeas corpus proceedings; but we have already noted, for a long time, that habeas corpus was the only method of reviewing adjudications of contempt, and the court would not sit idly by, apathetic to contempt judgments lacking sufficient evidence to support a criminal charge. Thus, where the charge of the sole witness was unsupported, and the defendant corroborated his denial of criminal intent, the evidence was considered, and the defendant remanded for discharge unless legally sufficient evidence to support the charge could be adduced.⁵⁴ However, in a companion case, where the record amply showed the verity and legal sufficiency of the evidence, the defendant was remanded to custody.⁵⁵ Where contempt cases are still reviewed by habeas corpus the same rules apply.⁵⁶

INTENT

The element of intent is very important in contempt cases. The court noted this point when it said ". . . a process contempt commitment for refusing to obey an order of court must be based on an affirmative finding that it is within the power of the defendant to obey the order, and such finding must be made to appear on the face of the order of commitment, else it is void."⁵⁷ Thus, inability to perform would preclude a showing of intent not to perform, necessary to constitute contempt. Further, where a defendant appealed from a final decree enjoining his advertising in a

51. *Id.* at 117, 33 So.2d 736.

52. 160 Fla. 164, 33 So.2d 869 (1948).

53. *Ex parte Crews*, 127 Fla. 381, 388, 178 So. 275, 278 (1937).

54. *Stokes v. Scott*, 138 Fla. 235, 189 So. 272 (1939).

55. *Williams v. Scott*, 138 Fla. 239, 189 So. 274 (1939).

56. *Marshall v. Clark*, 45 So.2d 667 (Fla. 1950).

57. *State ex rel. Trezevant v. McCord*, 126 Fla. 229, 230, 170 So. 735 (1936).

certain fashion and continued advertising during the appeal, a contempt order was reversed, for the judge found, "There was no intent to disobey the order and I understand intention to be one of the elements of contempt."⁵⁸

The question that should next be considered is how the alleged contemnor may rebut the contemptuous intent and the effect of his rebuttal. The leading case in this area in *Ex parte Earman*⁵⁹ wherein a municipal court judge wrote a letter to a circuit court judge concerning habeas corpus proceedings pending in the latter's court. The letter was held contemptuous, but the contemnor was released after denying under oath the requisite intent. The court felt that in the case of an indirect contempt which involved the use of ambiguous words, the key factor is intent, and if such intent be denied under oath it is sufficient to discharge the alleged contemnor; for if he has perjured himself, a separate prosecution for perjury will lie. That such oath, denying the intent, is conclusive where there is ambiguity, was reaffirmed in another decision⁶⁰ handed down the same day as was the *Earman* case.

Where the contempt consists of a continued doing of what was commanded not to be done, by an injunction, the rule is, of course, not applicable.⁶¹ Further, where there is no ambiguity, that is, the words or acts are clear, the only question is if the words were said, or if the act was done; an oath by the defendant is neither sufficient nor conclusive.⁶²

In noting that denial of intent might be perjury we are led to the interesting question, of when perjury equals contempt. We have at least a partial answer in *State ex rel. Luban v. Coleman*⁶³ where the problem of an untruthful witness, called by the state, was presented. The court established three tests: (1) the alleged false answers must be obstructive; (2) there must have existed judicial knowledge of the falsity of the testimony; (3) the question was pertinent. Where there is conflicting evidence as to the falsity of the statements the proper course is prosecution for perjury and not a direct contempt proceeding.

In *Croft v. Culbreath*,⁶⁴ in 1942, the court tried to clarify an *apparent* inconsistency in the holdings of the earlier cases, allowing discharge of defendants upon denial of intent under oath, and the later cases, allowing no discharge. It pointed out that the more recent cases merely demonstrated that if the overt act were admitted, it might of itself constitute contempt, for the offender is presumed to have intended the natural con-

58. *Florida Ventilated Awning Co. v. Dickson*, 67 So.2d 218, 219 (1953).

59. 85 Fla. 297, 95 So. 755 (1923).

60. *Ex parte Biggers*, 85 Fla. 322, 95 So. 763 (1923).

61. *Ex parte Peaden*, 88 Fla. 273, 102 So. 160 (1924).

62. *Wilson v. Joughin*, 105 Fla. 345, 353, 141 So. 178, 182 (1932); *Baumgartner v. Joughin*, 105 Fla. 335, 141 So. 185 (1932).

63. 138 Fla. 555, 189 So. 713 (1939).

64. 150 Fla. 60, 6 So.2d 638 (1942).

sequences of his act. In the older cases, where the action was ambiguous, a denial of intent was sufficient.

Apparently speaking of a denial of the act itself, the court, in *Ex parte Maniscalco*,⁶⁵ said:

For the return under oath to operate as a discharge it must be direct, specific, full and unequivocal. The failure to deny any material act will render it ineffectual.

The rule applied in the Croft case, *supra*, is that the return must be so specific in its language of denial that a charge of perjury may be based thereon, if the denial be false. A general denial of being guilty of contempt is not sufficient.⁶⁶

Similarly, the court did not allow discharge for a return and answer of denial under oath to rule nisi in *State ex rel. Franks v. Clark*.⁶⁷ It stated its position clearly, "The answer did not deny the acts charged. It only denied the motive, hence the cited cases are not in point."⁶⁸

TERM OF DETENTION

No set period is to be found in the cases for detaining the contemnor when a jail sentence is ordered. But it is clear that one cannot be sentenced to an indefinite term under the Florida Constitution.⁶⁹ In *State ex rel. Grebstein v. Lehman*⁷⁰ the circuit court judge who was offered \$5,000 if he decided a pending case for the defendant, Alphonse Capone, found the contemnor in contempt and ordered "that he be committed to the county jail of Dade County until further order of this court." This was held to be an invalid commitment for lack of a definite term. However, in the companion case under the same style,⁷¹ the court decided whether, because of the impropriety of the punishment, the defendant would be discharged or remanded was within the discretion of the Supreme Court, and since the circuit court should fix its own punishments for contempts before it, the defendant was remanded.

A defendant imprisoned for contempt of the Circuit Court of Hillsborough County for refusing to comply with a court order by paying alimony was committed until he comply or until further order of the court.⁷² In discharging the defendant, the Supreme Court said, ". . . the contempt being in its nature a punishment for what the defendant has heretofore done, is void because it specified no definite time of imprisonment."⁷³

65. 153 Fla. 666, 15 So.2d 445 (1945).

66. *Id.* at 668, 15 So.2d at 446.

67. 46 So.2d 488 (Fla. 1950).

68. *Id.* at 489.

69. FLA. CONST. DECLARATION OF RIGHTS, § 8.

70. 100 Fla. 473, 128 So. 811 (1930).

71. See note 34 *supra*.

72. See note 57 *supra*.

73. *Ibid.*

The court has similarly said, "The judgment is fatally defective because it condemns the petitioner to imprisonment for an indefinite and indeterminate period,"⁷⁴ where the judgment read as follows:

It is, therefore, ordered and decreed that the said Claude T. Bearden shall be confined in the Sarasota County jail for a period of—days, or until the said Claude T. Bearden shall purge himself for contempt of the Court for his failure to comply with the Court Order entered in this cause.⁷⁵

After reaffirming the above principles by stating that "The law is well settled in this State that an order in contempt must be definite and certain,"⁷⁶ the court has gone on to tell what is required:

The order should be so full and complete that no further direction should be required by the executive officer to fully execute the same and also release the contemnor when the order is satisfied.⁷⁷

That this area of the law of contempts is certain, may also be seen in the summary statement to be found in *Avery v. Sinclair*:⁷⁸

The law is well settled in this state that where a contempt order is predicated on a finding of past noncompliance with a court order, and not on any present failure to comply therewith although able so to do, the order, being in its nature a punishment for what the contemnor has heretofore done, must specify a definite term of imprisonment.⁷⁹

PURGING CONTEMPTS

Several of the sections previously discussed are reflected in the area of purging contempts. We have already seen when and how an oath denying contemptuous intent will discharge an alleged contemnor. We will not see if an apology or reparation will discharge an admitted contempt.

In a case involving contemptuous newspaper statements the court said, "The apology offered for the mistake of fact contained in the publication and the disclaimer of intent to reflect upon 'the acting Judge' do not deprive the publication of its contemptuous nature, and the judge had authority to impose appropriate penalties for the contemptuous publication."⁸⁰ This case also held that even if a circuit court judge seated in the criminal court of record was not properly assigned, he was still a judicial officer of the state and hence had the authority to punish for a contempt.

*Orr v. Orr*⁸¹ noted that in cases where the contempt resulted from failure to pay certain fees ordered by the court, the defendant might purge

74. *State ex rel. Bearden v. Pearson*, 132 Fla. 879, 182 So. 233 (1938).

75. *Ibid.*

76. *Ex parte Koons*, 148 Fla. 626, 4 So.2d 852 (1941).

77. *Ibid.*

78. 153 Fla. 767, 15 So.2d 846 (1943).

79. *Id.* at 768, 15 So.2d at 847.

80. *Cormack v. Coleman*, 120 Fla. 1, 16, 161 So. 844, 849 (1935).

81. 141 Fla. 112, 192 So. 466 (1939).

the contempt by a showing of inability to pay not caused by his own neglect of misconduct.

In a case of failure to pay alimony the lower court said that the defendant might purge himself of contempt and secure his release by payment of the sum found owing and costs.⁸² The dissenting opinion in another case⁸³ felt that prompt compliance after minor violations of a court order was sufficient purging to discharge the contemnor.

When a contempt occurs in the course of a trial, the suit is interrupted by the contempt proceedings. One may inquire as to what will then happen. The answer is given by the court in *Palm Shores, Inc. v. Nobles*.⁸⁴

It appears to be the law that a party in contempt is not entitled to insist upon a hearing or a trial of the case out of which the contempt arose until he first purges himself of the contempt.

A party against whom a judgment of contempt is entered has the right to purge himself of the contempt and thereupon to be reinstated to all his rights and privileges.⁸⁵

CONTEMPTUOUS ACTS IN FLORIDA

Acts involving supersedeas

As early as 1869, an appointed receiver, who was to relinquish his receivership during an appeal under supersedeas and failed to do so was held in contempt of court.⁸⁶

In general the writ is considered ineffective before being perfected. In *Smith v. Whitfield*⁸⁷ the plaintiff secured an injunction to stop the defendants from removing phosphate rock. The injunction was dissolved and before the plaintiff took his appeal and supersedeas was perfected, the defendants sold rock to an innocent third party. Upon perfection of the supersedeas and during the appeal, the plaintiff sought to have the defendants held in contempt for removing the rock. But the court held that the third party obtained his rights before the supersedeas and the defendants were therefore not guilty of contempt in satisfying such rights.

A similar situation arose where the defendant in a chancery cause was enjoined from obtaining a tax deed to certain lands. He entered an appeal from the interlocutory decree which the circuit court judge ordered to operate as a supersedeas. The defendant proceeded to obtain the deed. The court in discharging the contempt noted that a supersedeas prevents, for the time being, all proceedings to enforce an injunction appealed from, or to punish for its violation during the pendency of the supersedeas. Thus, the defendant did not violate the injunction.⁸⁸

82. *Avery v. Sinclair*, 153 Fla. 767, 15 So.2d 846 (1943).

83. See note 46 *supra*.

84. 149 Fla. 103, 5 So.2d 52 (1941).

85. *Id.* at 106, 5 So.2d 53.

86. *State v. Johnson*, 13 Fla. 33 (1869).

87. 38 Fla. 211, 20 So. 1012 (1896).

88. *Powell v. Florida Land & Improvement Co.*, 41 Fla. 494, 26 So. 700 (1899).

That we are still interested in intent in these cases is seen in *Strickland v. Knight*,⁸⁹ where a temporary injunction restraining county commissioners from issuing a certain liquor license was dissolved. An appeal was taken and supersedeas granted, suspending the effect of the order dissolving the injunction. Pending the appeal, the commissioners, upon advice of counsel, granted the permit and a rule to show cause issued. The court stated that violation of a supersedeas which is as broad as an injunction would be contemptuous, but since the defendants were acting in good faith and meant no disrespect to the court, their only punishment was the cost of the contempt proceeding.

Similarly, a rule nisi was quashed where an attorney had proceeded improperly but apparently in good faith. The necessary facts are contained in the following excerpt:

We are convinced from the record in the involved case and the allegations in the return that the respondent did not apprehend that by proceeding in the Court of the Justice of the Peace in a manner not violative of the terms of the alternative writ of prohibition issued in the involved cause he was in any wise violating the terms of the supersedeas order of the Circuit Court and that he in no wise intended to violate such order.⁹⁰

Interference with property in custodia legis

The court has stated that "The law is well settled that an interference with property in custody of the law amounts to contempt of court."⁹¹ In that case a deputy sheriff had taken constructive possession of chattels on a writ of attachment and the defendants had obtained a writ of execution on the same chattels. Knowing of the prior attachment, the defendants nevertheless removed some of the property. The court found that the attachment was valid, giving constructive possession, and concluding with the statement above the court remanded the defendants to the custody of the sheriff.

Usually the difficult question here is whether or not the property is in *custodia legis*. Thus, where the defendant, in a foreclosure proceeding, in which a writ of assistance and order for possession of certain real estate had issued, removed trees and shrubbery from the property, it was necessary to ascertain the custody of the property.⁹² The court felt that any wrong by the defendant was not against the court because the sheriff was responsible for the premises since the purchaser was not yet in possession. "This property was not in *custodia legis* merely because a foreclosure sale had been had and a writ of assistance issued, and therefore the proceedings here is not governed by the rules obtaining in such cases."⁹³ It has thus

89. 46 Fla. 467, 35 So. 868 (1904).

90. *In re Maser*, 149 Fla. 765, 7 So.2d 455 (1941).

91. *Ex parte Fuller*, 99 Fla. 1165, 1168, 128 So. 483, 484 (1930).

92. *Ex parte Bostick*, 102 Fla. 995, 136 So. 669 (1931).

93. *Id.* at 999, 136 So. at 671.

been held that where logs were sold to a purchaser by a receiver under the authority of the court, they passed out of the actual or constructive custody of the court so that any interference with them was not contempt of the court concerned.⁹⁴

The rule is well demonstrated in *Southern Cotton Oil Co. v. Bates*,⁹⁵ in which the contempt proceedings involved the removal of property allegedly in *custodia legis* during an appeal under a supersedeas. The facts failed to show whether or not the property removed (six bales of cotton) was part of the property seized by the sheriff in aid of a foreclosure. The court properly ruled that there must be a showing that the property removed was indeed in *custodia legis*. Since that was impossible under the facts of the case, the court dismissed the cause.

Cases involving attorneys

The earliest Florida case concerning attorneys states a court rule that bears a very close resemblance to one of the present rules of practice.⁹⁶ For purposes of comparison the statement of the court follows:

No attorney or other officer of the Court shall enter himself or be taken as bail in any criminal case, or as security in attachment, appeal or writ of error, or other proceeding in Court, on pain of being considered in contempt and of having the proceeding dismissed on account thereof.⁹⁷

The main problem in this area relates to various procedures involved in litigation which the court might take to be contemptuous. For example an attorney was given money by one judge of a circuit court while an appeal was being taken from an order of another judge of the same court. The latter judge felt that while the appeal was pending the other judge had no jurisdiction to disburse the funds and if the attorney did not pay the money back into court he should be held in contempt. Fortunately for the attorney the Supreme Court took the view that the orders in question were not of individual judges, but rather of the circuit court and to hold the attorney in contempt would be in excess of the judge's authority.⁹⁸

An interesting sidelight is presented in the case of *Granat v. Dulbs*,⁹⁹ where an attorney had been fined \$100 by the Supreme Court of Florida. The court had adjourned and the attorney's petition for remission of the fine, coupled with an explanation of his conduct, came before a different court. The court admitted that in all likelihood the petition would have

94. *Ex parte Edmondson*, 68 Fla. 53, 66 So. 292 (1914).

95. 105 Fla. 378, 141 So. 316 (1932).

96. FLA. R. CIV. P. 1.5(c) (1954) reads as follows: "No attorney or other officer of court shall enter himself or be taken as bail or surety in any proceeding in court on pain of being considered in contempt."

97. *Love v. Sheppelin & Co.*, 7 Fla. 40, 41 (1857).

98. *State ex rel. Brooks v. Freeland*, 103 Fla. 663, 138 So. 27 (1931).

99. 108 Fla. 116, 145 So. 879 (1933).

been granted but felt it was without authority to remit the fine. It referred the attorney to the State Board of Pardons and stated that either payment or remission by the board would purge the contempt.

A point of contention in this area is where the attorney, following statutory procedure by and large, attempts to have the trial judge disqualified. In one case where a writ of prohibition was sought to prevent a county judge from determining a contempt instituted against an attorney the court stated:

The County Judge has jurisdiction to determine in the first instance whether or not the acts set forth in the citation for contempt do, or do not, constitute a contempt under the circumstances alleged

Judicial wisdom and the experiences of the past would seem to demand that the extraordinary powers given to courts to punish for contempts be not used except to prevent actual and direct obstruction of, or interference with, the administration of justice, by the acts of attorneys at law in the manner or means used to present their controversies in the courts.

This is especially true of cases where attorneys have felt it their duty to invoke the provisions of our statutes allowing a challenge to be interposed against judges on the ground of their alleged prejudice. In such cases attorneys at law, when acting in good faith, should not be unduly embarrassed in the performance of their official responsibilities by being subject to an atmosphere of threatened punishment for contempt that may make the attorney's position before the court one of being psychologically overawed.

But even in cases of proceedings to invoke the disqualification of a judge, the power to punish for contempts exists where there are such uncalled for acts or wrongful conduct as amounts to an actual and direct obstruction to, or interference with, the administration of justice, and it is only with erroneous or abusive exercises of such power to punish for contempt that this court can be concerned when properly called on to grant relief.¹⁰⁰

Much the same reasoning was employed in the case of *Zaeate v. Culbreath*¹⁰¹ when the court said:

It appears to us that it would violate the fundamental principals of justice to hold that when a litigant files a suggestion of the disqualification of a trial judge such judge, though recusing himself because the petition, aside from the offending allegations, alleges sufficient grounds, may hold petitioner in contempt of court on the ground that the judge did not, in doing an act, evince the attitude which the suggestion alleges he did evince in doing the act. [Petitioner alleged in one count that the judge did 'angrily refuse to entertain said application' for reduction of bond.]¹⁰²

100. *State ex rel. McGregor v. Peacock*, 113 Fla. 816, 817, 152 So. 616 (1934).

101. 150 Fla. 543, 8 So.2d 1 (1942).

102. *Id.* at 549, 8 So.2d at 3.

Not far removed from the disqualification cases was the case of *State ex rel. Giblin v. Sullivan*.¹⁰³ The alleged contemnor had filed an injunction under Florida Statutes Section 823.05 (1941) to enjoin a nuisance in the form of gambling. The defendants asked the judge to disqualify himself and upon his refusal, the relator withdrew and under Florida Statutes Section 64.13 (1941) filed an affidavit of his reasons for so doing. Among other things, the affidavit included charges that the judge was aiding the gamblers and paying them a debt he owed them for his getting into office. It concluded, "... I wish to file another and similar bill and to have the new suit heard and tried by a judge in whose honesty and integrity I have confidence."¹⁰⁴

The petitioner was then held in contempt and sentenced to six months detention. The Supreme Court of Florida decided that the petitioner should have been advised of the charge and given an opportunity to defend himself instead of being summarily sentenced. The court went on to say:

As a general rule, any publication tending to intimidate, influence, impede or embarrass or obstruct courts in the due administration of justice in matters pending before them constitutes contempt. The filing of papers, however, which are gross and indelicate in language, the use of scandalous language in a brief, or the making of statements therein charging the court with improper motives in rendering a certain line of decisions, may constitute contempt.¹⁰⁵

After further proceedings the case again appeared as *Giblin v. State*¹⁰⁶ and the court put the issue thusly:

The vital question we must now settle is whether the language used in the motion was privileged Freedom in the exercise of a lawyer's right should not depend on the nicety and precision of judicial judgment in choice of remedies

We will not discuss the cases here because the motion was filed by virtue of a statute which required a showing to be made as a prerequisite to obtaining an order of dismissal

When appellant filed the motion pursuant to the statute his statements were privileged.¹⁰⁷

It is palpably clear from these cases that what may constitute contempt by one person, or under one set of facts, may not be so under a dissimilar set of facts.

When the court states that the exercise of a lawyer's rights "should not depend on the nicety and precision of judicial judgment in choice of

103. 157 Fla. 496, 26 So.2d 509.

104. *Id.* at 505, 26 So.2d at 515.

105. *Id.* at 507, 26 So.2d at 516.

106. 158 Fla. 490, 29 So.2d 18 (1947).

107. *Id.* at 493, 29 So.2d at 19.

remedies . . .", one is reminded of the case heretofore discussed under *supersedeas*¹⁰⁸ in which the court felt there was no contempt where the attorney had proceeded in another court in violation of the terms of the *supersedeas* order.

Another feature of these cases occurred again in *Lee v. Bauer*¹⁰⁹ where an attorney, ordered to attend a pretrial conference failed to appear in person and was fined with the stipulation that failure to pay would result in dismissal. The attorney paid under protest and sought *certiorari* to review the order of the trial court. In much the same language as is found in *State ex rel. Giblin* the court said that the attorney should not have been summarily fined but that the proper procedure would have been to issue a rule to show cause, thus giving him an opportunity to defend himself.

A recent case arose when a defense attorney interviewed the prosecuting witness in the presence of his stenographer and during the trial used the stenographic transcript to formulate his questions during the cross-examination.¹¹⁰ The prosecution demanded the transcript for re-direct examination. The defense attorney refused to hand over the paper, even after an order of the court. The court subsequently found him guilty of contempt. The Supreme Court held that the transcript was of a private and unofficial nature and moreover, was private property which the trial judge could not compel the attorney to deliver to the county solicitor.

Thus we see that an attorney may do some acts, which form an integral part of his practice, that might ordinarily constitute contempt of court, but in this instance are either privileged or permissive.

Contempts by witnesses

Refusal of a witness to testify before a grand jury against her husband as to matters not involving marital confidences and as to a crime not committed upon her person has been held contemptuous.¹¹¹ Thus, the court order for the witness to testify was held lawful and ". . . the court may resort to all measures given by the law to compel obedience thereto. Having given petitioner an opportunity to be heard, the court had the inherent right to punish, as for a contempt, a violation of its order to maintain its dignity, authority, and efficiency in the proper administration of the law."¹¹²

Similarly, refusal of a witness summoned by the state's attorney to be interrogated under oath because she was to be a witness of the defendant in a proposed trial, though not yet served with process, has also been held

108. See note 90 *supra*.

109. 72 So.2d 792 (1954).

110. *Whitaker v. Blackburn*, 74 So.2d 794 (1954).

111. *Ex parte Beville*, 58 Fla. 170, 50 So. 685 (1909).

112. *Id.* at 184, 50 So. at 689.

to constitute contempt.¹¹³ Further, this witness had been ordered by the circuit court judge to appear and testify. She appeared, but refused to testify. The Florida Supreme Court said that even if the defense of being a witness in the proposed trial were good, it did not apply here since there was no process. Further, since the state's attorney had the right to have her testify, she was in contempt of court for refusing to do so.

The problem of reluctant witnesses who are protected by state immunity statutes has already been discussed in the section on appeals.¹¹⁴ It was also involved in the case of *Lorenzo v. Blackburn*,¹¹⁵ where a witness refused to answer most of the questions put to him under oath by the county solicitor, who was conducting an investigation. The refusal was based on the witnesses' belief that his testimony might tend to be incriminatory. The reviewing court agreed with the circuit court that the witness was protected by the state immunity statute¹¹⁶ and was properly remanded to custody.

Another type of case is typified by *Mitchell v. Parrish*¹¹⁷ where witnesses called by the county solicitor in an action in the criminal court of record gave testimony which was allegedly different from that which they had given to the solicitor previously. Upon motion by the county solicitor the court held a hearing and adjudged the witnesses to be in contempt. The reviewing court reversed and remanded, noting that the court below had not been sure if the defendants had lied in court or to the solicitor. If the latter, a separate action for perjury would have been proper. Thus, the testimony could not be deemed contemptuous.

Persistence of the defendant in characterizing the actions of the plaintiff in a way felt improper by the trial judge, in an assault and battery suit, resulted in an adjudication of contempt in that case.¹¹⁸ The comments of the defendant that a sound truck had been playing "some kind of communistic, socialistic or 'Red' program, or whatever you want to call it" caused a mistrial and when the defendant repeated such statements at the next trial, he was held in contempt of court. The reviewing court discharged the writ of habeas corpus and remanded the defendant to custody.

Attempted bribery and corruption of judges, jurors and witnesses

An attempt to offer a judge money to decide a case for one of the contestants has, of course, been held to have been contemptuous.¹¹⁹ The following statement to a man drawn for jury duty in a pending trial was held to constitute a contempt: "You have been drawn on the jury,

113. *Collier v. Baker*, 155 Fla. 425, 20 So.2d 652 (1945).

114. See note 42 *supra*.

115. 74 So.2d 289 (Fla. 1954).

116. FLA. STAT. § 932.29 (1951).

117. 58 So.2d 683 (Fla. 1952).

118. *Richey v. McLeod*, 137 Fla. 281, 188 So. 228 (1939).

119. See note 71 *supra*.

I see Would you be interested in a proposition, a pretty good proposition?"¹²⁰ The court stated that an attempt to impugn the integrity of a juror was a direct attack upon the court and although jury tampering is also a crime, the court is not thereby deprived of its inherent power to punish contempts.

Similarly, a promise to a prospective juror that ". . . in case it is a mistrial it is \$100, and if it is an acquittal it is \$200" has been held contemptuous.¹²¹ But in a companion case, the statement to a prospective juror by the alleged contemnor that he did not want the defendant in a criminal case electrocuted, was held ambiguous by the Supreme Court of Florida and an oath denying the contemptuous intent was sufficient for discharge.¹²² The lower court felt that the statement was clearly contemptuous however.

On the other hand, telling a grand juror, before the grand jury reconvened, to look out for one's interests was found to amount to a contempt in *Sloan v. Brown*.¹²³ But failure to produce legally sufficient evidence to support the charge that one had approached the foreman of a grand jury and offered him \$300 to adjourn the jury without returning an indictment resulted in a discharge in *Stokes v. Scott*.¹²⁴ While in a companion case ample evidence supporting a similar charge resulted in the defendant being remanded to custody for a contempt.¹²⁵

In another case, after holding that an information was sufficient, though the allegations made therein were based on information and belief by the state's attorney, the court remanded the petitioner in a habeas corpus proceeding who had been sentenced for contempt.¹²⁶ The charge was that the defendant had failed to report information about a fugitive from justice; that he had intimidated a witness to make the latter force the prosecutrix to drop a rape action against the fugitive; and that he had offered the witness money to leave the jurisdiction.

In another case where insufficient evidence was adduced, the defendant was discharged although he had been cited with contempt for attempting to corrupt two veniremen.¹²⁷ And contempt has been found where one acting as a special investigator for a defendant in a murder trial called upon prospective jurors and asked them questions relating to their giving the defendant a fair chance; and their views on circumstantial evidence as grounds for conviction.¹²⁸ When one juror replied that she was acquainted

120. *Baumgartner v. Joughin*, 105 Fla. 335, 337, 141 So. 185, 186 (1932).

121. *Wilson v. Joughin*, 105 Fla. 345, 348, 141 So. 178, 180 (1932).

122. *Wilson v. Joughin*, 105 Fla. 353, 141 So. 182 (1932).

123. 114 Fla. 739, 154 So. 514 (1934).

124. 138 Fla. 235, 189 So. 272 (1939).

125. See note 55 *supra*.

126. *Ex parte Maniscalco*, 153 Fla. 666, 15 So.2d 445 (1943).

127. See note 56 *supra*.

128. See note 6 *supra*.

with the defendant's attorneys, the investigator advised her not to mention it.

Thus one can quickly conclude that any attempt to bribe, corrupt or intimidate judges, jurors, grand jurors, or witnesses, is certain to constitute contempt even though other crimes may be involved.

Contempt by publication

The earliest case in this area is *In re Hayes*,¹²⁹ wherein an editor and reporter of a newspaper referred to the Supreme Court of Florida, in an action then pending, as "partisan," "stubborn," "hostile to counsel" and "ignorant." The court said:

This is the first time in the history of Florida that this court has issued a rule against the editor and reporter of a newspaper to show cause why they should not be attached for contempt because of the publication of a libelous article impugning the integrity, dignity, and authority of this court.¹³⁰

After reiterating that "The Supreme Court has, independent of statutory authority, inherent power to punish for contempt of court",¹³¹ the court went on to state the rule that "Publications concerning a pending cause which reflect upon the court constitutes contempt."¹³²

Where an official of West Palm Beach, while in Miami, referred to the circuit judge of his district as being "weak as water" and further said that "our court is absolutely annulled if a man has money and influence" the court found that since the official was in another circuit and did not *cause* his statements to be printed in the newspapers, there was no contempt.¹³³ The court also considered that there was no real tendency of the statements to hinder or impede the lower court and that the remarks were directed against the judge personally and not against him in his judicial capacity.

For contempts caused by editorials and cartoons, one should again look at the *Pennekamp* cases¹³⁴ in the section on appeal. It should be noted in this connection that no attempt has been made to discuss the constitutional law aspects of those cases or the cases in this section. Such a discussion is clearly beyond the scope of this comment.

As we have also noted in another connection, the failure of a newspaper editor to reveal his sources of information, for stories he has printed, to a grand jury, constitutes contempt.¹³⁵ The court noted therein that "Members of the journalistic profession do not enjoy the privilege of confidential communication, as between themselves and their informants, and

129. 72 Fla. 558, 73 So. 362 (1916).

130. *Id.* at 559, 73 So. at 363.

131. *Id.* at 568, 73 So. at 365.

132. *Ibid.*

133. See note 60 *supra*.

134. See note 39 *supra*.

135. *Clein v. State*, 52 So.2d 117 (Fla. 1951); see also note 44 *supra*.

are under the same duty to testify, when properly called upon, as any other person."¹³⁶

Miscellaneous

Failure to pay back sums received from a court which then vacates and sets aside its earlier judgment constitutes contempt of that court.¹³⁷ It has also been held that before contempt may be shown where a final decree calls for a deed, there must be a showing that the deed was prepared by plaintiffs in the action and that the defendant had only to execute it.¹³⁸ This case rested upon the reasoning that defendants should not be bound at their peril to prepare and execute a deed in accordance with the decree of court.

In an action for divorce the court adjudged the suing husband to be in contempt for concealing the fact that he was under order of a domestic relations court in New York to pay for the support of his wife.¹³⁹ The Supreme Court quashed the contempt order, saying, "No disobedience of the courts' order is intimated, no disrespect to the court is shown and the administration of justice was not impeded."¹⁴⁰

Where the law was not clear and there was no intention of violating a final decree, proceedings instituted by the City of Miami Beach were held not to be contemptuous in *Young v. Miami Beach Improvement Co.*¹⁴¹

The Supreme Court has also found where a nuisance action is brought against the owner of property, that one leasing the land, who is not served with process, though he has actual notice, is not bound by the action and failure to comply with a court order therein does not constitute contempt.¹⁴²

CONCLUSION

Within this study an attempt has been made to make a general survey of the law of contempts in Florida. It is obvious that no hard and fast rules may be set down for words and actions which will constitute contempt, however, in general the areas are clear of conflict, with the unfortunate exception of the appellate area.

Maintenance of the boundaries of common decency and due respect to the dignity, integrity and honor of the courts will serve in most cases to preclude an adjudication of contempt. Thus, common sense and a cursory perusal of the cases will reveal the tack to be followed. But once one has been held in contempt the way to review by the Supreme Court of Florida is obscure at best.

136. *Id.* at 120.

137. *Revell v. Dishong*, 129 Fla. 9, 175 So. 905 (1937).

138. *State ex rel. Everette v. Petteway*, 131 Fla. 516, 179 So. 668 (1938).

139. *Bernstein v. Bernstein*, 160 Fla. 654, 36 So.2d 190 (1948).

140. *Id.* at 655, 36 So.2d at 191.

141. 46 So.2d 26 (Fla. 1950).

142. *Savage v. Winfield*, 152 Fla. 165, 11 So.2d 302 (1943).

The Supreme Court has been cognizant of this fact and has upon occasion attempted to clarify the issue. But a scattering of divergent cases still leaves much doubt. The problem is an immediate one, for the Florida courts, which have handled contempt so adequately without legislative interference in the past, have failed to perfect the machinery of appeal.

It is therefore submitted that the normal course of appeal be open to those held in contempt of the lower courts of the state where there has been a final judgment. The necessity of resorting to the extraordinary writ of habeas corpus should clearly be removed, whether the contempt adjudication has resulted in detention or a fine.

BARTON S. UDELL

THE FLORIDA LAW OF ASSIGNMENTS FOR BENEFIT OF CREDITORS

INTRODUCTION

The notion of an "assignment for benefit of creditors"¹ is not a new one. Actually the doctrine existed at common law²—although the common law procedure itself left much to be desired. Thus, the common law approach represented a simple procedure whereby a debtor conveyed property to a trustee, so that the latter distributed the sales proceeds to the creditors.³ The entire proceeding was therefore a mere adaptation of the traditional law of trusts.⁴ The unsatisfactory nature of these proceedings was evident from the fact that partial assignments were permitted, creditors could be preferred, and the debtor could even demand releases from consenting creditors.⁵ Definitely, the creditors were placed in an undesirable position. A more satisfactory system was required,⁶ and

1. The term "assignment for benefit of creditors" is a popular one, and it carries the connotation of a general assignment (in trust) for the benefit of one's creditors. Thus, this is the term that appears in volume 6 of *Corpus Juris Secundum* at page 1211, and other reference text books. Statutes, however, vary in their terminology. For example, FLA. STAT. c. 727 (1953) uses the title "General Assignments," although the language of the statute repeatedly contains the phrase, "assignment for benefit of creditors." Regardless of these differences in phraseology in Florida and elsewhere, the theory and purpose remains the same.

2. 6 C.J.S., *Assignment for Benefit of Creditors* § 3.

3. *McMullin v. Keogh-Doyle Meat Co.*, 96 Colo. 298, 42 P.2d 463 (1935).

4. Thus, this trust notion is mentioned in the early Florida case of *Bellamy v. Bellamy's Adm'r.*, 6 Fla. 62 (1855).

5. For a more complete discussion, see Weintraub, Levin and Sosonoff, *Assignments for the Benefit of Creditors and Competitive Systems for Liquidation of Insolvent Estates*, 39 CORNELL L.Q. 3 (1953); and BURRILL, *ASSIGNMENTS*, 23-24, 171 (6th Ed. 1894).

6. The earliest apparent Florida case involving such assignments is *Holbrook v. Allen*, 4 Fla. 87 (1851). During the ensuing century, only about three dozen cases were adjudicated. It is therefore apparent that situations involving an assignment for benefit of creditors rarely found themselves in the courts. This is as it should be, since the entire arrangement is for the purpose of achieving an amicable, unlitigated settlement.