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Civil and Criminal Contempt In Indiana

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COMMENTS

CIVIL AND CRIMINAL CONTEMPT IN INDIANA

The Indiana Supreme Court has recently given extensive and careful consideration to the problem of distinguishing civil and criminal contempt. The case referred to is *Denny v. State*,[1] which will undoubtedly settle the law on this subject in this jurisdiction.

In the *Denny* case, the defendants had been enjoined from operating jitney busses in the city of Muncie so as to compete with the street car company which operated in that city. Later, they were cited for an alleged violation of the injunction and were found guilty by the Circuit Court. That court then rendered a judgment fining one defendant $250 and the other $50. This judgment was reversed by the Supreme Court on the ground that the contempt was civil rather than criminal, and that no such punishment could properly be imposed.

The court decided that the statutes[2] under which the lower court had purported to act related solely to criminal contempt, and that there was no statute in this state specifically regulating the procedure as to civil contempt.[3] The injunction having been granted solely for the protection of the street car company, its violation was a wrong primarily to that company and not to the state, and was, therefore a civil rather than a criminal contempt. The court conceded that such a violation may also be a criminal contempt if the purpose of the offender is to defy the court and thus affront the dignity of the state; but no such purpose was disclosed in the present case, where the defendants in violating the injunction apparently intended merely to compete more effectively with the street car company. The court then held that a fine payable to the state is an improper punishment for such a civil contempt; if any payment is to be made by the defendant, it should go to the plaintiff in the injunction case to compensate the latter for the damages sustained through the violation of the injunction. The court further pointed out that imprisonment is improper as punishment for a civil contempt which has already taken place, though it may be used to coerce the defendant to cease from a continuing violation of an injunction, or to make some reparation other than monetary for his offense. But under such circumstances, the imprisonment

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[1] 182 N. E. 313, (July 29, 1932), opinion by Treanor, J.

[2] Burns' Annotated Statutes, Sec. 1076 ff. Sec. 1237, on which the lower court also relied, was held to have been repealed.

[3] The court intimated, however, that Burns' Annotated Statutes, Sec. 1238 ff, are still in force and partially outline the procedure in civil contempt cases.

can never be for a definite term. In other words, the remedies for civil contempt may be coercive or for the purpose of monetary reparation, but cannot be punitive.

It is clear that a criminal contempt while not precisely a crime,[4] is closely analogous thereto and is treated in much the same manner. In such a case, a definite fine collected by the state, or a definite term of imprisonment, or both, may be proper.[5] Furthermore, it is well settled that a denial under oath of the charge is conclusive in criminal contempt proceedings, and a defendant making such a denial cannot be punished for the alleged contempt.[6] It has been held, however, that it is not a sufficient justification for the defendant to show that he acted in good faith; he must deny that he committed the act alleged to be contemptuous, the nature of an admitted act being a question of law for the court.[7] Furthermore, no evidence is taken in criminal contempt proceedings.[8] If the denial is false, the defendant may be proceeded against for perjury but cannot be punished for criminal contempt.[9]

None of these rules apply to civil contempt. Here, the defendant's denial of the charge is not conclusive and the court may hear evidence.[10] However, as already stated, a defendant who is found guilty of a civil contempt cannot be fined nor imprisoned for a definite period.

The distinction which has been pointed out and which was clearly made in the *Denny* case would seem sufficiently obvious; but in fact it has been very far from being regularly understood or applied by the courts of this state. To be sure, a number of authorities have made or recognized the distinction.[11]

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[4] *Saunderson v. State* (1898), 151 Ind. 550, 52 N. E. 151; *Snyder v. State* (1898), 151 Ind. 553, 52 N. E. 152.

[5] *Whittem v. State* (1871), 36 Ind. 196.

[6] *State v. Earl* (1872), 41 Ind. 464; *Burke v. State* (1874), 47 Ind. 528; *Haskett v. State* (1875), 51 Ind. 176; *Wilson v. State* (1877), 57 Ind. 71; *Stewart v. State* (1894), 140 Ind. 7, 39 N. E. 508; *Zuver v. State* (1919), 188 Ind. 60, 121 N. E. 828.

[7] *Fishback v. State* (1891), 131 Ind. 304, 30 N. E. 1088; *Ray v. State* (1917), 186 Ind. 396, 114 N. E. 866; *Kilgallen v. State* (1921) 192 Ind. 531, 132 N. E. 682, 137 N. E. 178.

[8] *State v. Branner* (1910), 174 Ind. 684, 154 N. E. 478.

[9] *Stewart v. State* (1894), 140 Ind. 7, 39 N. E. 508.

[10] *Stewart v. State* (1894), 140 Ind. 7, 39 N. E. 508; See also Beale "Contempt of Court, Criminal and Civil," 21 Harvard L. Rev. 161 (1908).

[11] The leading American authority on this matter is *Gompers v. Bucks Stove Co* (1911), 221 U. S. 418, 31 Sup. Ct. 492. Indiana cases which most clearly make the distinction are *McKinney v. Frankfort R. R. Co.* (1894), 140 Ind. 95, 38 N. E. 170, 39 N. E. 500, and *Perry v. Pernet* (1905), 165 Ind. 67, 74 N. E. 609.

On the other hand, there are a number of decisions in this state which utterly disregard the distinction and approve the taking of penal measures against a defendant guilty of a civil contempt. A leading case on this point is *Ramer v. State*,[12] where the defendant was enjoined at the suit of an adjoining land owner from permitting the storage of explosives on his own land. On being found to have violated the injunction, the defendant was fined $500 and was ordered to be imprisoned, not, as would have been correct, until he removed the explosives, but rather until the fine was paid. The decision is clearly unsound, since the injunction was obtained by the adjoining land owner for his own benefit, the damage for violation of the injunction was sustained by him, and reparation should have gone to him rather than as a fine to the state. There are several other decisions which make precisely the same blunder, some of these decisions being referred to and adversely criticized in the principal case.[13]

It is true that there may be situations where the same act is both a civil and criminal contempt. Such was the situation in the famous *Debs*[14] case, where the defendants were enjoined from acts of violence against railroads resulting in the obstruction of interstate commerce and of the mails. They continued these acts of violence after the injunction was served and were held guilty of a criminal contempt and punished therefor, even though the injunction was obtained primarily for the benefit of the railroads and of the government itself in carrying the mails, and so its violation, had violence not been used, would probably have been only a civil contempt. The same situation arose in this state in *Hawkins v. State*,[15] where the court ordered that M be put in possession of certain land of which the defendants were in possession. The defendants forcibly resisted the deputies of the sheriff who attempted to oust them from the land. This was held to be a criminal contempt, in view of the fact that the defendants definitely and intentionally resisted the process of the court, although it was clearly, in addition, a civil contempt, since the court was acting primarily in the interest of M and not of the state.

It seems then that there may be cases which involve both sorts of contempt and, of course, there are many cases which, though only on one side of the line, are very close to it. This, however, does not change the fact that the line exists and that

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[12] 190 Ind. 124, 128 N. E. 440 (1920).

[13] *Shirk v. Cox* (1894), 141 Ind. 301, 40 N. E. 750; *Thistlewaite v. State* (1898), 149 Ind. 319, 49 N. E. 159, cited and criticized in the *Denny* case; *Kissel v. Lewis* (1901), 27 Ind. App. 302, 61 N. E. 209; *Anderson v. Indianapolis Co.* (1904), 34 Ind. App. 100, 72 N. E. 277, also criticized in *Denny* case; *Oakland Coal Co. v. Wilson* (1925), 196 Ind. 501, 149 N. E. 54.

[14] *In re Debs* (1895), 158 U. S. 564, 15 Sup. Ct. 900. See also Beale, "Contempt of Court, Criminal and Civil," 21 Harvard L. Rev. 161 (1908).

[15] 125 Ind. 570, 25 N. E. 818 (1890).

the situation on either side of it is very distinct. In view of the decision of the Supreme Court in the present case, there is no longer any excuse for the failure of the courts of this state to ignore this distinction, and, in particular, there is no longer any excuse for a defendant clearly guilty of a mere civil contempt to be fined, or imprisoned for a definite term. The *Denny* case has clearly and very soundly settled the law upon this point.

One other situation with respect to the law of contempt in Indiana is unfortunately far less satisfactory. This is with respect to the law of criminal contempt both in its substantive and procedural aspects.

It is well settled law in practically every jurisdiction that courts have inherent power to punish summarily direct criminal contempts.[16] Such are cases where the defendant is shown to have acted in a disorderly or disrespectful manner in the courtroom[17] or to have forcibly resisted the direct process of the court.[18] It has even been held that willful false testimony, though not on a material matter, is a direct contempt of court.[19]

When we pass from direct criminal contempt to indirect, the authorities are not so clear, but it seems to be generally held in this state that the court may summarily punish such contempt also.[20] Such are cases where the defendant publishes outside the courtroom articles reflecting upon the honesty or capability of the judge,[21] or where he sends communications to the judge of a like disrespectful nature.[22] Here it seems that a summary punishment is rather objectionable. It is not needed in order to enable trials to go on, as is the case with direct contempts, and it gives an undue opportunity for the wreaking of the personal spite, which even the most honest and fair minded judge is apt to feel under such circumstances. The United States Supreme Court took cognizance of the difficulties of this situation in *Cooke v. United States*,[23] where the defendants wrote a contemptuous letter to a judge with respect to a case just decided, their purpose being to have the judge voluntarily retire from

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[16] See Willis, "Punishment for Contempt of Court," 2 Ind. L. J. 309 (1927).

[17] *Mahoney v. State* (1904), 33 Ind. App. 655, 72 N. E. 151; *Kerr v. State* (1923), 194 Ind. 147, 141 N. E. 308.

[18] *Hawkins v. State*, 125 Ind. 570, 25 N. E. 818 (1890). It may be doubted, however, whether this is not really a civil contempt.

[19] *Young v. State* (1926), 198 Ind. 629, 154 N. E. 478.

[20] *Little v. State* (1883), 90 Ind. 338; *Ray v. State* (1917), 186 Ind. 396, 114 N. E. 866; *Kilgallen v. State* (1921), 192 Ind. 531, 132 N. E. 662, 137 N. E. 178; *Dale v. State* (1926), 198 Ind. 110, 150 N. E. 781, extensively considered and criticized by Willis, *supra* note 16.

[21] *Dale v. State* (1926), 198 Ind. 110, 150 N. E. 781.

[22] *Coons v. State* (1922), 191 Ind. 580, 134 N. E. 194.

[23] 267 U. S. 517, 45 Sup. Ct. 390 (1925).

other cognate cases still pending. The court, immediately, and without giving them any opportunity to obtain counsel or to show mitigating circumstances, sentenced them to imprisonment. The Federal Supreme Court reversed the decision, on the ground that this was not a direct contempt in the courtroom and that such summary punishment for indirect contempt was a denial of due process of law. The court suggested that in such a case a judge who considers himself insulted should, if possible, get another judge to sit in the contempt proceedings, although the court apparently refrained from saying that this latter was essential for due process. The *Cooke* case involved the Fifth Amendment, but in view of the similar language of the Fourteenth Amendment, it may be somewhat questionable whether summary punishment of an indirect contempt is not a violation of the defendant's rights under the Federal Constitution. However this may be, it is certainly highly objectionable, and it is to be hoped that the Indiana courts will eventually change their view on this point.

But even in the position of the Indiana courts that summary punishment for an indirect criminal contempt is sound, there are even more extreme positions which have been taken with respect to this matter, which certainly cannot be justified. In the first place, the court originally held, and entirely correctly, that there could be no punishment for an alleged contemptuous statement made after the case to which the statement related had been concluded.[24] If the judge considers that he has been the victim of libel or slander, he can, of course, obtain the same remedies to which any other person in a similar position is entitled; but he is not entitled to take advantage of his judicial office to decide the case in his own favor and inflict punishment on that basis. Such was supposed to be the law of Indiana, and it was highly desirable both inherently and as a partial corrective of the unfortunate rule that indirect criminal contempts were subject to summary punishment.

But even this safeguard was abandoned in *Coons v. State*,[25] where a defendant was held punishable for criminal contempt, in that as a member of a grand jury he signed a report accusing the judge of bias and corruption in a case then concluded. The court said that the fact that the case was concluded was not a defense, as this was a direct contempt. The line between direct and indirect contempt is, of course, not a very clear one, but it is entirely obvious that such a communication could not in any way affect the conduct of the trial. And it is only the necessity of protecting trials from disturbance that justifies any summary punishment for criminal contempt. This decision, therefore, seems unsound, at least as a matter of policy.

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[24] *Cheadle v. State* (1886), 110 Ind. 301, 11 N. E. 426. See also *Ray v. State* (1917), 186 Ind. 396, 114 N. E. 866.

[25] *Coons v. State* (1922), 191 Ind. 580, 134 N. E. 194.

Still worse was the decision in the well known case of *State v. Shumaker*.[26] Here, the defendant was held guilty of criminal contempt and sentenced to imprisonment for making criticisms, alleged to be false, of decisions of the Supreme Court in certain cases previously decided, these cases relating to various aspects of the administration of liquor laws. The court said that the fact that the cases which had been criticized had already been decided was no defense, because the court had on its docket, and would probably continue to receive, other cases involving somewhat similar points. As this Journal has already pointed out,[27] the decision amounts to an absolute prohibition of all criticisms of previous decisions of the court, since there is always the possibility and usually the probability of similar cases coming before the court in the future. The decision is wholly unjustifiable and should be overruled.

A subsequent decision in the *Shumaker* case on another point[28] also seems subject to very just criticism. It was there held that the Governor had no power to pardon a person guilty of a criminal contempt, on the ground that a criminal contempt is not a crime. The ground stated is technically correct,[29] but the decision seems very unfortunate as a matter of policy. The opposite result was reached by the Federal Supreme Court in *Ex parte Grossman*,[30] where it was held that the President may pardon a criminal contempt against the Federal Court. Much of the reasoning is on the basis of the history of the royal prerogative, but the court also suggests that the danger of arbitrary action by the court makes the power of pardon far more important in the case of criminal contempt than in the case of ordinary crimes. This suggestion seems just as applicable to any state court as to the Federal Courts. To say that a person convicted of a crime by a unanimous vote of the impartial jury needs, in addition, the protection of the executive pardoning power, but that a person penalized by this arbitrary action of a judge who believes himself to have been insulted by the unfortunate defendant needs no such protection, seems a curious, not to say outrageous, inversion of the ordinary requirements of justice.

The *Denny* case, then, represents a very important development in the law of contempt in Indiana. The court is entitled to great credit for having dispersed the fog of uncertainty as to the distinction between civil and criminal contempt and making that distinction clear and workable in the future. In this respect, the law of this state has now been put in a clear and satisfactory condition.

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[26] 200 Ind. 623, 157 N. E. 769, 162 N. E. 441 (1927).

[27] 3 Ind. L. J. 148.

[28] 200 Ind. 716, 164 N. E. 408 (1928).

[29] See the cases cited in note 4, *supra*.

[30] 267 U. S. 87, 45 Sup. Ct. 332 (1925).

As to the law of criminal contempt, the law is still far from being satisfactory, and it is to be hoped that the court will have an early opportunity (and embrace it) to reform its own previous deliverances. The *Coons*[31] and *Shumaker*[32] cases should be directly overruled in so far as they hold that a criticism of a judge with respect to a case which has already been decided can constitute criminal contempt and the doctrine of the later decision in the *Shumaker*[33] case, holding that the Governor has no power to pardon for a criminal contempt, should likewise be done away with. Both of these rulings are unsound in principle, and are apt to be shockingly unjust in application.

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[31] *Coons v. State* (1922), 191 Ind. 580, 134 N. E. 194.

[32] 200 Ind. 623, 157 N. E. 769, 162 N. E. 441 (1927).

[33] 200 Ind. 716, 164 N. E. 408 (1928).