

February 1928

Contempt–Evasion of Criminal Process as Contempt of Court

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Recommended Citation

T. W. Arnold, *Contempt–Evasion of Criminal Process as Contempt of Court*, 34 W. Va. L. Rev. (1928).
Available at: <https://researchrepository.wvu.edu/wvlr/vol34/iss2/9>

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the common law remain to plague us because courts have refused to recognize changing conditions and have followed judicial formula where a bold and sweeping change amounting to judicial legislation would have been of the utmost social benefit. We believe, nevertheless, that those cases should be confined to that numerous class where there is no substantial difference of opinion as to the social desirability of a change. They should be cases where reasonable men would not differ as to the necessity of a new policy. When the courts, however, announce a new policy not based on previous custom and necessity, which is intended to mold the economic development of public utilities and when the result is not one which is arrived at by the construction of specific words in legislative enactment, or in determining whether a specific statute is unconstitutional or not, we believe that they have abandoned the proper field, which is the construction of statutes and the determination of private rights and have embarked on a hazardous venture of economic experimentation.

In dealing with the acts of Public Utilities Commissions we prefer the view that courts should give them as free a hand as is possible under constitutional provisions. In the absence of an appropriation of property without due process of law, or mere arbitrary and capricious action on the part of the Commission the court we believe should let its action stand. The Commission is certainly a proper forum in which economic and social arguments may be used. It is a fitting instrument for economic experimentation. It should be let alone so far as possible to investigate the economic principle involved in Mr. Hardman's thesis before this principle is permanently established as part of the judicial law.

—T. W. ARNOLD.

CONTEMPT—EVASION OF CRIMINAL PROCESS AS CONTEMPT OF COURT.—In a recent case¹ the Supreme Court of Iowa de-

¹ *Burtch v. Zench*, 200 Ia. 49, 202 N. W. 542, 39 A. L. R. 1349 (1925).

cided that one who destroyed liquor in order to prevent police officers armed with a search warrant from obtaining evidence of violation of the prohibition law could be punished for contempt of court. The court was content to rely on a quotation from Corpus Juris as authority² for this somewhat unusual decision. The only other case on all fours with it was decided in 1911 in Arkansas and related to gambling.³ There the proprietor of a gambling resort delayed the officers by refusing to surrender the key until they had concealed the gambling devices for which the officers were searching.

The Arkansas case was decided upon the inherent common law powers of a court to punish for contempt. In the Iowa case the destruction of the evidence was decided to be contempt within a statute providing that illegal resistance to any order or process made or issued by a court was contempt. The reasoning of both cases is the same, *i. e.*, that the destruction of evidence is an illegal resistance to a search warrant aimed at finding that evidence.

The West Virginia statute⁴ is substantially the same as the Iowa statute in that it provides that "disobedience or resistance * * * * to any lawful process, judgment or decree or order" of the court is punishable by contempt.

The following questions therefore arise: (1) Is a law violator who escapes conviction by destroying evidence sought under a search warrant guilty of resisting an order or process made by the court? (2) If he is guilty of such resistance what line of distinction can be drawn between his act and the act of any criminal who hides from the police? (3) If an innocent man, through fear, hides from the police and attempts to destroy evidence which might incriminate him, may he also be prosecuted for contempt because he has been offering resistance to a warrant which is termed a process issued by the court?

In other words, if we accept the Iowa decision as a correct interpretation of a statute or the Arkansas decision as a correct interpretation of the common law, where will the line be drawn? What is to prevent the court from assuming the general punishment of criminals without a jury,

² 13 C. J. 43 *et seq.*

³ *Bryan v. State*, 99 Ark. 163, 137 S. W. 561, Ann. Cas. 1913A 908 (1911).

⁴ BARNES W. VA. CODE, 1923 Ch. 147, §27.

not for the crime they commit, but for their attempts to evade the consequences of these crimes.

The idea that obstructing or delaying service or execution of legal process is contempt is well established.⁵ However just what legal process is has not been clearly defined in this connection. Courts have punished for contempt parties who interfere with officers attempting to levy writs of attachment,⁶ or who prevent the service of a writ of replevin.⁷ Yet it has also been held that mistreatment of an officer serving a writ may not be contempt.⁸ Contempt proceedings are not ordinarily allowed against persons who evade service of subpoena issued for their appearance as the witness.⁹ Though it has been held that evasion of service of summons in a suit may be contempt where it is contended to frustrate orders of court in collateral proceedings by so doing.¹⁰ It has also been decided that perjury or false swearing may be punished under certain circumstances as contempt.¹¹

The court, in deciding the Iowa case above cited, relied on these cases without question in making its ruling that a criminal who evades a search warrant is guilty of contempt of court.

It should be noted however, that in those cases where avoidance of legal process was held to be contempt, the sole purpose of the act was to frustrate the orders of the court. In the case above cited where service of summons was contempt,¹² it clearly appeared that service was being avoided to prevent the carrying out of an order issued in a collateral suit. Without these circumstances avoidance of service of summons in a civil suit is not contempt.

⁵ *In re Rice*, 181 F. 217. Ann. Cas. 1913A 252 (1911); *Aaron v. State*, 105 Miss. 402, 62 So. 419 (1913); *In re S.*, 83 N. J. Eq. 607, 91 Atl. 801 (1914); *Alberton v. The P. I. Nevius and The Wide Awake*, 48 Fed. 927 (1892); *People v. Gard*, 259 Ill. 238, 102 N. E. 255 (1913); *State ex rel. Bruce v. District Court of Second Dist. for Silver Bow County*, 33 Mont. 359, 83 Pac. 641 (1906); *In re Taylor*, 62 N. J. L. 101, 40 Atl. 691 (1898); *Boren v. Brotherhood of R. R. Trainmen*, 145 Mo. App. 136, 129 S. W. 491 (1910); *Carter v. Commonwealth*, 96 Va. 791, 32 S. E. 780, 45 L. R. A. 310 (1899).

⁶ *In re Noyes*, *In re Geary*, *In re Wood*, *In re Frost*, 121 Fed. 209 (1902). *Cf. State v. Nansen*, 132 Wash. 563 232 Pac. 329. When defendant in contempt proceedings had taken property which was not properly levied on by officer executing writ of attachment. Though he acted in disobedience of the officer he was not liable for contempt.

⁷ *State ex rel. Bruce v. Dist. Court of Second Dist. for Silver Bow County*, 33 Mont. 359, 83 Pac. 641 (1906).

⁸ *Adams v. Hughes*, 129 Eng. Rep. 632 (1819).

⁹ *Broderick v. Genessee*, 125 Mich. 274, 84 N. W. 129 (1900).

¹⁰ *In re Rice*, 181 Fed. 217 (1911).

¹¹ *Riley v. Wallace*, 188 Ky. 471, 222 S. W. 1085, 11 A. L. R. 337 (1920), where the court had judicial knowledge of the falsity of the statements.

¹² *Supra*, n. 10.

The cases where perjury is held to be contempt are limited to cases where the object of the perjury is to delay or frustrate some order of the court.¹³ Of course it can be argued that all perjury tends to obstruct the processes of the court, yet it has been held that such perjury is contempt only where the court can take judicial knowledge of the falsity of the statements and no reasonable doubt on this question exists.¹⁴ The court cannot decide, on evidence in a disputed case, the question of perjury and punish for contempt "because a sound public policy requires that such offender be left to the criminal law."¹⁵ This distinction has not been closely observed in all cases, particularly those dealing with bankruptcy,¹⁶ but it is submitted that it is sound.

The New York court has held that a defendant who disposed of his property in anticipation of a judgment against him was not guilty of contempt.¹⁷ Why then should one who disposes of his liquor in anticipation of a possible conviction be guilty of this offense? Considering the questions above outlined it is submitted that no court should punish the criminal who attempts to avoid arrest, either by trying to escape or by destroying evidence in a criminal case where the liberty of the party is at stake. The object of the destruction of the evidence is not contempt of court but fear of punishment. If we consider that the purpose of the power of courts to punish for contempt is to uphold the respect and dignity of these courts, that purpose is fulfilled when the summary powers of the courts are exercised on those offenders who attempt to obstruct their processes for purposes other than their personal safety. For example, a man who takes an automobile away from an officer who is attempting to attach it, is doing something which directly impairs the prestige of the court because no reasonable man would attempt, for a mere property or money consideration, to evade the order of the court. However, when we get into criminal cases what else can society expect of its criminals than that they will attempt to escape? To call

¹³ 11 A. L. R. 342-357, Annotation.

¹⁴ *People v. Stone*, 181 Ill. App. 175 (1913); *People v. Hille*, 192 Ill. App. 139 (1915).

¹⁵ *Edwards v. Edwards*, 87 N. J. Eq. 546, 100 Atl. 608 (1917).

¹⁶ *In re Getkin*, 164 Fed. 71 (1908); *In re Shear*, 188 Fed. 677 (1911).

¹⁷ *Grad v. Tumminelli*, 168 N. Y. S. 11 (1918).

such attempt contempt of court is to give the court not only jurisdiction to punish criminals who may inadvertently be acquitted, but also innocent men, who through fear or mere foolishness, attempt to avoid the police.

It is interesting to note that the only two cases where attempts to escape from criminal process are held to be contempt are cases connected with offenses which are common, not only to the criminal, but also to the respectable elements of society. One is a gambling den, the other a prohibition case.

The Iowa case above cited is of interest in West Virginia because of the similarity of the statutes regulating direct contempts in both states. If a court in West Virginia had before it the question as to whether it could punish for contempt one who destroyed liquor to evade the consequences of a lawful search the Iowa case would be a persuasive authority. We are convinced however that that case is wrong in principal. The decision ignores the real purpose of the power of contempt, which is to protect the dignity of the court, and embarks on the hazardous undertaking of using that power to enforce the prohibition laws. Such an attempt will have a negligible effect on prohibition enforcement, and will create an embarrassing precedent in the administration of criminal law.

—T. W. ARNOLD.