Volume 34 | Issue 4 Article 13

June 1928

Contempt--Interference with Receiverships

H. F. Porterfield
West Virginia University College of Law

CONTEMPT—INTERFERENCE WITH RECEIVERSHIPS.—It has been contended that when a court manages a business through a receiver, it is not exercising purely judicial functions, but administrative functions, and ought not to be permitted to use the summary proceeding in contempt as in a trial.[1] This observation is made upon a case in which a federal judge sentenced the comptroller of the City of New York for contempt. The judge had appointed one receiver for a transit company in which the city was interested. The comptroller had petitioned the judge to be appointed a co-receiver; in a letter written to the receiver, duly appointed, the defendant charged that the judge was responsible for a policy of denying the writer and certain other parties any access to the original sources of information concerning the property and affairs of the company. The judge, upon seeing this letter, held defendant guilty of contempt of court.[2] But on appeal, this decision was reversed on these grounds; (1) that defendant was not guilty of misbehavior in or so near the presence of the court as to obstruct the administration of justice—an essential element required by the Judicial Code, §268, (Comp. St., §1245); (2) there was not pending *sub judice* a proceeding before the court at the time the letter was written.[3] However, the question is presented; should the power of contempt process be available when the court in a receivership case acts in an administrative capacity? It is assumed that this power is proper in cases involving contempt when the court performs judicial functions.

A diligent search has revealed a paucity of authority on the subject. A few cases have been found to the effect that when a judge is acting in the performance of ministerial duties libelous publications are not a contempt of court. In one case,[4] a state statute required a judge of a county court to keep an account of his fees and emoluments. The appellate court said: "This duty and this responsibility are ministerial. There is no room for the exercise of discretion or of judgment, except in minor details of performance." It was held that such judge had no power to punish for con-

[1] See: "Our Courts and Free Speech," HARPER'S MONTHLY, September, 1927.
[2] *Ex parte* Craig, 266 Fed. 230 (1920).
[3] *Ex parte* Craig, 274 Fed. 177 (1921).
[4] Hamma *v.* People, 42 Col. 40; 94 Pac. 326; 15 L. R. A. N. S. 621 (1908).

tempt one who criticized the method of keeping these accounts. It would seem, however, that in this case, the county court was not a judicial court at all, but merely an administrative body. So the like distinguishing feature is applicable to the case[5] wherein one of the justices of a county court offered to the court protests against appropriations about to be made to pay for the erection of certain county buildings, and, among other things, was a statement that the county court had transcended the authority given it by law. Held, the justice was not guilty of contempt. No reasons were assigned. In another case,[6] a justice of the peace had issued an execution against a judgment debtor without giving a bill of particulars of the costs. The debtor went to the justice's office and made some slighting remarks while the justice was preparing the bill of costs. The court in holding that the justice of the peace could not punish the debtor for contempt, explained that the justice could only punish in this way when he was acting judicially and not ministerially. It is to be noted that the case was not pending before the justice as judgment had already been rendered. Hence, the words used did not tend to obstruct the administration of justice. The rule is that a remark to be a contempt of court must be one tending toward an interference with justice in a case pending before the court.[7] Lastly, there is a case[8] in which the judge, who had issued an execution on certain property, seized it and proceeded to sell the same as "ex-officio" sheriff. While engaged in the auction sale, the judge deemed himself insulted by a bystander. He thereupon fined and imprisoned the person offending his dignity. The appellate court held that the defendant was not guilty of contempt. Here also, since execution had issued on the judgment, the judicial duties were ended.

Obviously, none of these cases bear out the above mentioned contention. They are cited to show that sometimes the courts have distinguished between judicial functions and other functions of a court in contempt cases. But it appears that when a court acts ministerially it is not acting

[5] Stokely *v.* Commonwealth, 1 Va. Cas. 330; 15 Ann. Cas. 659.
[6] Fitler *v.* Probasco, 2 Browne (Pa.) 137; 15 Ann. Cas. 659.
[7] Patterson *v.* Colorado *ex rel.* Atty. Gen'l, 205 U. S. 454, 463 (1907). "Contempt" 13 C. J. §2, n. 2, p. 5.
[8] Detournion *v.* Dormenon, 1 Mart. (La.) 136, 15 Ann. Cas. 659 (1810).

as a court. The cases examined do not attempt to differentiate judicial and administrative duties of the court when it is acting as such.

On the other hand, the authority is to the effect that any interference with property in the hands of a receiver, without leave of court, or any criticism within the rule[9] directed toward the judge accusing him of bias or prejudice, is a contempt of court.[10] If the essential elements of contempt (as required by the Judicial Code) had been present in the Craig Case, *supra*, the appellate court would probably have sustained the judgment below.

Is, then, the contention sound on principle? It is believed that it would be impractical to draw a line between administrative and judicial functions in a case involving a receivership. Court supervision, apparently, is necessary to protect the rights of all parties at every stage in the proceedings. In this respect, a judge passing on the management of a business in the hands of a receiver differs in no practical way from a judge presiding in a trial between two individuals. Moreover, if such a distinction should be made between the two duties, confusion must inevitably arise. It would be exceedingly difficult to make a rule applicable to all cases. The judge, consequently, would be hampered in his work, and thereby would be rendered less efficient.

—H. F. PORTERFIELD.

PARTITION—JURISDICTION OF EQUITY COURT TO DETERMINE QUESTION OF TITLE ARISING THEREIN.—Section 1, Chapter 79 of the WEST VIRGINIA CODE provides that "Tenants in common, joint tenants and co-parceners shall be compellable to make partition, and the circuit court of the county wherein the land lies shall have jurisdiction of partition, and in the exercise of such may take cognizance of all questions of law affecting the legal title that may arise in any proceeding." This statute does not indicate whether the proceed-

[9] *Supra*, n. 7.
[10] Kneisel *v.* Ursus Motor Co., 316 Ill. 336; 147 N. E. 243; 39 A. L. R. 1 (1925).