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Contempt of Court -- Failure to Comply With Court Order to Produce Properties -- Inability as Defense

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In conclusion, it is submitted that the statute in question does not violate the constitutional prohibition against the establishment of religion. However, it would seem that, in the instant case, the statute interferes with the mother's constitutional right to determine her children's religion and that the state should not be allowed to assert that the welfare of the twins necessitated state interference with that religious liberty.

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Contempt of Court—Failure to Comply With Court Order to Produce Properties—Inability as Defense

When an individual has failed to comply with a court order requiring him to produce properties, and the court seeks to hold him in contempt, will his professed inability to obey the court order purge him of this contempt? Such a case was recently before the North Carolina Supreme Court, involving an appellant who had been ordered to produce the records of his grocery business. He explained that he was unable to obey the court order since the only records he ever prepared were income tax returns which he no longer possessed, and cash register receipts which he threw away after rats had gnawed them. The Supreme Court held the appellant had been improperly cited for contempt since his uncontradicted testimony showed that he was unable to comply with the trial court's order.[1]

It is generally held that a contemner's inability to comply with a court order is sufficient to purge him of contempt, if he is without fault, but it is often added that the contemner's inability is no defense where caused by his own "contumacious" acts.[2] The general rule seems quite

of its mother." (Emphasis added) The court said: "We do not attempt to discuss the philosophy underlying the concept that a child too young to understand any religion, even imperfectly, nevertheless may have a religion. We have no doubt that the statute was intended to apply to such children, and that in such instances the words 'religious faith * * * of the child' mean the religious faith of the parents, or in case of 'dispute' the faith of the mother." Petitions of Goldman, — Mass. —, —, 121 N. E. 2d 843, 846 (1954).

[1] Galyon v. Stutts, 241 N. C. 120, 84 S. E. 2d 822 (1954). This able opinion by Mr. Justice Johnson, after defining direct and indirect criminal and civil contempts, restates the necessity of an order to show cause in all contempt proceedings except those for direct criminal contempts.

[2] Tucker v. Commonwealth *ex rel.* Attorney General, 299 Ky. 820, 827, 187 S. W. 2d 291, 294 (1945): "Defendants [contemners] are correct and are sustained by authorities cited that the inability of the contemner, without fault on his own part, to obey the order holding him in contempt is sufficient to purge him of the contempt charged. 12 Am. Jur. § 72, p. 438 (1938); Rudd v. Rudd, 184 Ky. 400, 214 S. W. 791; Allen v. Woodward, 111 Tex. 457, 239 S. W. 602, 22 A. L. R. 1253. But where the contemner 'has voluntarily or contumaciously brought on himself disability to obey an order or decree, he cannot avail himself of a plea of inability to obey as a defense to a charge of contempt.'" *Accord:* McCormick

inclusive, but cases interpreting the contemner's "fault" or "contumacious" acts reveal that these are important exceptions.

The contemner's "fault" has been made his plea of inability to comply with a court order unavailing not only where his inability was the result of "fraud or sharp practice,"[3] but also where he acted negligently. Thus the courts hold in contempt the innocent fiduciary who fails to produce trust funds in obedience to a court order, although he is unable to comply because he negligently made an improper distribution of the funds,[4] explaining that the law imposes a special duty on the fiduciary that magnifies his negligence.[5] Even in the absence of any relationship of confidence or trust an individual has been held in contempt where his inability resulted from his failure to exercise "due diligence."[6] However, this does not appear to be a majority view. "Contumacious" acts are equated with action voluntarily bringing about the contemner's disability to comply with a court order,[7] as where neither a police officer nor a club owner could explain how slot machines disappeared from their custody,[8] and, of course, inability so caused is no defense in contempt proceedings based on a failure to comply with the order.

In the North Carolina case of In re *Haywood,*[9] a trial court ordered an attorney to turn over funds to his client which he had admittedly received for the client, but upon the lawyer's affidavit that he was totally insolvent, explaining that he had been "mad drunk" for eighteen months

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v. Sixth Judicial District Court, 67 Nev. 318, 218 P. 2d 939 (1950); Bradshaw v. Bradshaw, 23 Tenn. App. 359, 133 S. W. 2d 617 (1939).

For statement of the rule without mention of any exceptions as to the contemner's fault or "contumacious" acts, see: U. S. v. Bryan, 339 U. S. 323 (1950); Armijo v. Armijo, 29 N. M. 15, 217 Pac. 623 (1923).

For an application of the rule absent contemner's fault or "contumacious" acts, see In re Scarborough Will, 139 N. C. 423, 51 S. E. 931 (1905), where the contemner purged himself of contempt for failure to comply with a court order to produce a will by proving that the will was in the hands of a judicial officer who would not turn it over to the contemner.

[3] *See* Maglich v. Maglich, 61 N. E. 2d 507, 508 (Ohio 1945).

[4] Society of the Divine Word v. Martin, 240 Idaho 1084, 38 N. W. 2d 619 (1949); Rudd v. Rudd, 184 Ky. 400, 214 S. W. 791 (1919); Messmore's Estate, 293 Pa. 63, 141 Atl. 724 (1928).

[5] Messmore's Estate, 293 Pa. 63, 69, 141 Atl. 724, 726 (1928): "Although not charged with fraud arising malo animo, appellant [contemner] is guilty of maladministration of trust funds, and this is a species of fraud. He is, therefore, not in the position of one who pleads inability to pay because of poverty which came upon him through no fault of his own. The law is not lenient to those in the position of the appellant. . . .."

[6] Brown v. Clark, 260 P. 2d 544, 547 (Utah 1953) (Inability to produce a child placed in the contemner's custody resulted when the contemner negligently allowed the child's father to take him from the contemner.). It is elsewhere stated that the contemner's inability must not be caused by "his own neglect or misconduct." Hembree v. Hembree, 208 Ky. 658, 660, 271 S. W. 1100, 1101 (1925).

[7] See quotation from Tucker v. Commonwealth *ex rel.* Attorney General, 299 Ky. 820, 827, 187 S. W. 2d 291, 294 (1945), footnote 2 *supra.*

[8] Tucker v. Commonwealth *ex rel.* Attorney General, 299 Ky. 820, 187 S. W. 2d 291 (1945).

[9] 66 N. C. 1 (1872).

and didn't know what had happened to the money—except that he had not applied it to his own use, the court held he could not be adjudged in contempt for failing to deliver these funds to his client. Although the North Carolina Supreme Court has not spelled out what "fault" and "contumacious" acts causing the contemner's inability will defeat his plea of inability, it can be assumed that the law forbids a contemner to render himself unable to obey a court order by fraudulent conduct. Therefore, it logically follows from the *Haywood* case that in North Carolina a plea of inability is a complete defense unless caused by fraud, when proved to the court's satisfaction. *Quaere* whether the court would take such an extreme view if presently faced with a case involving gross misconduct.

Where the contemner raises his inability in defense to contempt proceedings, it is sometimes held that the contempt order must specifically answer this plea by finding that the contemner wrongfully or "contumaciously" made himself unable to comply with the court order.[10]

Once the court has evidence before it showing a court order, as well as the contemner's failure to comply with it and the contemner's plea of inability, according to the weight of authority the burden of proof is on the contemner.[11] Other jurisdictions reach much the same result by saying the complainant has thus established a prima facie case.[12] Alabama is a notable exception to this outlook since its courts have indicated that the burden of proof is on the complainant in this fact situation.[13] Similarly, the burden of proof is always on the complainant in the Oregon courts, but proof of the court order and failure to comply with it is said to make a prima facie case which throws upon the contemner the burden of going forward with the evidence.[14]

[10] White v. Adolph, 305 Ill. App. 76, 80, 26 N. E. 2d 993, 994 (1940): "We believe, therefore, that while it may have been perfectly proper for the court to find the appellant [contemner] guilty of contempt, before he could imprison the appellant, he should have found that such a failure to pay amounted to a wilful and contumacious refusal to obey the order of the court." *Accord:* Adams v. Rakowski, 319 Ill. App. 556, 49 N. E. 2d 733 (1943). *See* Maglich v. Maglich, 61 N.E. 2d 504, 508 (Ohio 1945).

[11] Wilson v. Wilson, 45 N.M. 224, 229, 114 P. 2d 737, 740 (1941): "'The burden . . . was upon the appellant [contemner] to affirmatively show his inability to make the payments required of him.' The almost universal rule is to this effect." *Accord:* Orr v. Orr, 141 Fla. 112, 192 So. 466 (1939); Lusty v. Lusty, 70 Idaho 382, 219 P. 2d 280 (1950); Hays v. Hays, 216 Ind. 62, 22 N. E. 2d 971 (1939); Meisner v. Meisner, 220 Minn. 559, 20 N. W. 2d 486 (1945); McCormick v. Sixth Judicial District Court for Humboldt County, 67 Nev. 318, 218 P. 2d 939 (1950); Hodous v. Hodous, 76 N.D. 392, 36 N. W. 2d 554 (1949); Bradshaw v. Bradsaw, 23 Tenn. App. 359, 133 S. W. 2d 617 (1939); De Younge v. De Younge, 103 Utah 410, 135 P. 2d 905 (1943).

[12] *Ex parte* Resner, 67 Cal. App. 2d 806, 155 P. 2d 667 (1945); State *ex rel.* Houtchens v. District Court for Ravalli County, 122 Mont. 76, 199 P. 2d 272 (1948).

[13] Robertson v. State, 20 Ala. App. 514, 104 So. 561, 575 (1925); *Ex parte* Gunnels, 25 Ala. App. 577, 151 So. 605 (1933).

[14] State *ex rel.* Matheny, 188 Ore. 502, 216 P. 2d 270 (1950); State *ex rel.* Blackwell v. Blackwell, 181 Ore. 157, 179 P. 2d 278 (1947).

The North Carolina Supreme Court has recently said that the burden to "establish facts" is on the contemner when he seeks to purge himself,[15] but earlier statements by the court explained that a contempt proceeding is properly begun by proof of facts constituting a prima facie case which made it encumbent upon the contemner to answer, without specifying upon whom the burdens of proof or going forward rested.[16] Under these decisions it appears that the procedure in North Carolina is not greatly different from that of most other jurisdictions, because the complainant must first prove a court order and failure to obey it whereupon the contemner must satisfy the court of his inability to comply.[17]

There are conflicting views as to the intensity of the evidence required to adjudge an individual in contempt for failure to comply with a court order, and it is variously held: the evidence must be beyond a reasonable doubt;[18] a mere preponderance of the evidence is insufficient;[19] the evidence need be only of the greater weight.[20]

A requisite to a valid contempt citation in North Carolina[21] and in some other jurisdictions[22] is the appearance in the contempt order of a finding upon proper facts that the contemner was able to comply with the court order he disobeyed.

The most delicate problem arising in the application of the foregoing rules of evidence is the effect to be given the contemner's sworn testimony or affidavit that he is unable to comply with the court order. If

[15] Hart Cotton Mills, Inc. v. Abrams, 231 N. C. 431, 439, 57 S. E. 2d 803, 809 (1950): "The respondents [contemners] having sought to purge themselves, the burden was on them to establish facts sufficient for that purpose."

[16] *In re* Walker, 82 N. C. 96, 97 (1880): "In cases of alleged contempt out of the presence of the Court the practice is to have a foundation laid by facts shown forth, by affidavit or otherwise, constituting a *prima facie* case, and then by a rule to put the accused to show cause against the attachment by an answer denying the alleged facts of which he had notice in the rule or on the record, or excusing his conduct, or, where the gravamen of the charge rested on intention, by a disavowal of the imputed purpose." See *In re* Moore, 63 N. C. 396 (1896).

[17] For a case where the contemner did not satisfy the court of his inability after admitting the court order and failure to comply, see Smith v. Smith, 92 N. C. 304 (1885).

[18] Robertson v. State, 20 Ala. App. 514, 104 So. 561 (1925).

[19] *Ex parte* Lande, 96 Cal. App. 2d 926, 216 P. 2d 909 (1950).

[20] State *ex rel.* Attorney General v. Blackwell, 181 Ore. 157, 179 P. 2d 278 (1947).

[21] Contempt order was reversed because record failed to include facts showing ability to comply with court order: Berry v. Berry, 215 N. C. 339, 1 S. E. 2d 871 (1939); Vaughn v. Vaughn, 213 N. C. 189, 195 S. E. 351 (1938).

[22] Loy v. Loy, 32 Tenn. App. 470, 479, 222 S. W. 2d 873, 878 (1949): "A judgment of contempt must contain an affirmative finding of defendant's [contemner's] ability to pay." *Accord: Ex parte* Cardella, 47 Cal. App. 2d 329, 117 P. 2d 908 (1941) (Record failed to include facts revealing ability to comply, although it did recite such a finding.); Kinner v. Steg, 74 Idaho 382, 262 P. 2d 994 (1953); *In re* Burns, 83 Mont. 200, 271 Pac. 439 (1928); Osterweil v. Osterweil, 133 N. J. Eq. 36, 29 A. 2d 868 (1943); De Younge v. De Younge, 103 Utah 410, 135 P. 2d 905 (1943).

the testimony is uncontroverted some courts rule that it is controlling,[23] as did the court in the principal case,[24] and the contemner's affidavit has even been held conclusive where the complainant had filed an affidavit contradicting the contemner's testimony.[25] However, where the contemner fails to make a complete revelation of the circumstances causing his inability,[26] or even without this justification,[27] a contra view maintains that the court need not accept the contemner's uncontroverted testimony but may hold him in contempt. Of course, where there is conflicting evidence the issue of the contemner's inability is for the court to determine.[28]

In the situation where the contemner says he is unable to comply with a court order, there is an obvious analogy to cases involving contempts for false swearing, for in both situations the court is required to decide whether a witness's testimony is true. Although such a comparison is not often made, at least one court has punished a contemner for false swearing rather than disobedience to a court order when he untruthfully explained his inability to the court,[29] thus indicating that

[23] Banks v. Banks, 188 Ga. 181, 182, 3 S.E. 2d 717, 718 (1939): "If the evidence is uncontroverted that he [the contemner] is unable to comply with the order . . . by reason of . . . inability, it is error to adjudge him in contempt." *Accord:* Hansbrough v. State *ex rel.* Pittman, 193 Miss. 467, 10 So. 2d 171 (1942); Lakewood Trust Co. v. Lawshane Co., Inc., 102 N. J. Eq. 270, 140 Atl. 334 (1928).

In Robertson v. Johnson, 210 Mo. App. 585, 243 S. W. 215 (1922), it was said that the contemner's uncontroverted statement of inability made a prima facie case for him in defense.

Compare the quotation from Lester v. Lester, 63 Ga. 356, 359 (1879), note 38 *infra.*

[24] *Accord:* Lamm v. Lamm, 229 N. C. 248, 49 S. E. 2d 403 (1948).

[25] Laff v. Laff, 161 Minn. 122, 200 N. W. 936 (1924).

[26] Huddleston v. Huddleston, 189 Ga. 228, 5 S. E. 2d 896 (1939) (Contemner failed to offer information as to an automobile that he owned.); Ekblad v. Ekblad, 207 Minn. 346, 291 N. W. 511 (1940) (Contemner produced no evidence as to cost or records concerning contracts alleged to be in his possession.); Armijo v. Armijo, 29 N. M. 15, 217 Pac. 623 (1923) (Contemner did not show the value of real property that he owned.).

[27] Meisner v. Meisner, 220 Minn. 559, 20 N. W. 2d 486 (1945).

[28] State *ex rel.* Houtchins v. District Court for Ravalli County, 122 Mont. 76, 199 P. 2d 272 (1948) (Contemner showed he was unable to make alimony payments pursuant to court decree because he was unemployed and without property, but other evidence revealed that the contemner was young and able to earn income; held in contempt.); Bradshaw v. Bradshaw, 23 Tenn. App. 359, 133 S. W. 2d 617 (1939) (Contemner said he was unable to make alimony payments as ordered because he had to support dependents, but it was proved that he had a job or received unemployment insurance; held in contempt.); Razall v. Razall, 242 Wis. 121, 7 N. W. 2d 417 (1943) (Conflicting evidence as to contemner's sickness causing his inability to comply; held not in contempt.).

[29] Eykelboom v. People, 71 Colo. 318, 325, 206 Pac. 388, 390 (1922). Here the contemner, an officer in a business in receivership, was ordered to produce letters concerning the business, but said he was unable to comply because the letters had "disappeared." In affirming a judgment of contempt the court said: "The falsity of that justification appears from his own testimony. . . . It is the law that a court has the right to punish as a contempt manifest perjury committed in its presence, where the court knows, judicially and beyond doubt, that the testimony is false."

the analogy is not inappropriate.[30] It is hardly necessary to indicate that the jurisdictions are not in accord on this subject.[31] One extreme maintains that a single judge cannot find testimony to be false when the witness denies the falsity of his statements.[32] A more frequently applied rule holds that a court may adjudge a witness in contempt for false swearing only when he admits his guilt, or the court through personal observation or judicial notice knows that the testimony is false,[33] and some courts add requirements that the false answer must have a directly obstructive effect and be pertinent to the issues.[34] Another view

[30] See Robertson v. Johnson, 210 Mo. App. 585, 243 S. W. 215 (1922), where despite court order the contemner failed to produce a diamond ring, explaining that she had lost it at the theater, and the court held her uncontroverted statement prima facie purged her of contempt, stating: "To find her guilty of contempt under those circumstances was equivalent to finding her guilty of perjury."

[31] *Ex parte* Holbrook, 133 Me. 276, 284, 177 Atl. 418, 422 (1935): "Innumerable citations might be added, but these suffice to illustrate the various positions taken by the courts concerning the question under discussion. They may be divided into four groups: The first holding that perjury always constitutes contempt and may be punished as such; the second, that certain other definite factors must accompany perjury in order to make it a basis for contempt charges; the third, that it is only when the presiding justice has judicial notice of the falsity of the testimony that he may regard it as contempt and inflict summary punishment; and the fourth, that a single justice is entirely without authority to make a finding that perjury has been committed in any case under any circumstances and, on the basis of such a finding, punish for contempt."

[32] People v. Richman, 222 Ill. App. 147 (1929); *Ex parte* Holbrook, 133 Me. 276, 177 Atl. 418 (1935); *Ex parte* Creasy, 243 Mo. 679, 148 S. W. 914 (1912); State v. Illario, 10 N. J. Super. 475, 77 A. 2d 483 (1950) (Recognizing an exception in special circumstances.).

[33] *Ex parte* Blache, 40 Cal. App. 2d 687, 105 P. 2d 635 (1940) (judicial knowledge); Wilder v. Sampson, 279 Ky. 103, 129 S. W. 2d 1022 (1939) (judicial knowledge); McInnis v. State, 202 Miss. 715, 32 So. 2d 444 (1947) (personal or judicial knowledge); Lopez v. Maes, 38 N. M. 524, 37 P. 2d 240 (1934) (judicial knowledge).

The requirement that the court must have judicial knowledge of the falsity of the contemner's testimony was carried to the extreme in Russell v. Field, 192 Ky. 262, 232 S. W. 475 (1921), when the contemner by signed affidavit had admitted his testimony was false but the appellate court said it was not within the judicial knowledge of the trial court, reversing a judgment of contempt. A contrary result was reached in People v. Katelhut, 322 Ill. App. 693, 54 N. E. 2d 590 (1944), where the contemner admitted his false testimony and it was held that the trial court need not have personal knowledge of the falsity in such a case.

[34] A frequently quoted statement of this view appears in Hegelaw v. State, 24 Ohio. App. 103, —, 155 N. E. 620, 621 (1927): "To justify a finding of guilty of contempt . . . the following elements must subsist: (1) That the alleged false answer had an obstructive effect. (2) Judicial knowledge of the falsity of the testimony. (3) The question must be pertinent to the issue." *Accord:* Hunder v. Gordon, 111 Colo. 234, 140 P. 2d 622 (1943); State *ex rel.* Luban v. Coleman, 138 Fla. 555, 189 So. 713 (1939).

Compare the rigid requirements set out in People v. Hille, 192 Ill. App. 141, 147 (1915): ". . . it must appear beyond a reasonable doubt from the personal knowledge of the court, or be admissions from the lips of the defendant himself in open court, and in the presence of the court, and from no other source whatsoever, that (1) the representations so made were false and untrue when made; (2) that the defendant knew of their falsity when he made them; and (3) that he made them knowing their falsity and with a wilful and malevolent intention of assailing the dignity of the court or of interfering with its procedure and the due administration of justice.

indicates that a witness may be held in contempt if all the evidence indicates his testimony is inherently false,[35] and the federal rule is similar to this, but requires that the perjury actually obstruct the court.[36]

Similar to the principal case are proceedings in bankruptcy or receivership where a contemner is ordered to turn over business records, property or money, and he attempts to excuse his failure to comply by showing that he does not possess the articles he is ordered to produce. The United States Supreme Court has said that the trial court has power to determine whether there is a present ability to comply with its order and may discount denials which it finds "incredible in context."[37] Our highest court indicates that a plea of inability "is given credit after demonstration that a period in prison does not produce the goods,"[38] a procedure that bears some similarity to medieval trial by ordeal. After applying this rule, one state court found that a denial of the possession of inventory records was "incredible in context" since the contemner had previously said he possessed the records.[39] Earlier cases in state courts held the contemner's explanation insufficient where he said he lost a roll of bills worth $18,000 while "bird hunting in Norfolk County [Virginia],"[40] or that important letters had simply "disappeared."[41] While these cases did not restrict their holdings to contempts arising in insolvency proceedings, other courts have said that there is a duty on the contemner making a plea of inability to disclose completely his

[35] Re Gitkin 164 Fed. 71 (E. D. Pa. 1908); Crumnal v. K. L. R. Realty Corporation, 265 App. Div. 22, 37 N. Y. S. 2d 645 (1942) (Court said it was clear from all evidence that contemner's testimony was false.). *See Ex parte* Blache, 40 Cal. App. 2d 687, ——, 105 P. 2d 635, 637 (1940); Hunder v. Gordon, 111 Colo. 234, 240, 140 P. 2d 622, 624 (1943).

[36] U. S. v. McGovern, 60 F. 2d 880 (2d Cir. 1932). *Ex parte* Hudgings, 249 U. S. 378 (1919), makes clear the requirement that false testimony must obstruct the court before it is punishable as contempt. See Maggio v. Zeitz, 333 U. S. 56 (1948), note 37 *infra*, and discussion of the Maggio case in the text *infra*.

[37] Maggio v. Zeitz, 333 U. S. 56, 76 (1948).

[38] *Id.* at 76. An earlier, similar statement is found in Lester v. Lester, 63 Ga. 356, 359 (1879): "We cannot say that the judge, under the circumstances, abused his authority in not accepting the respondent's answer as satisfactory, and in ordering an attachment for contempt. The attachment will bring the actual resources of the respondent to a practical and decisive test. Pressure is a great concentrator and developer of force. Under the stress of an attachment, even the vision of the respondent himself may be cleared and brightented [*sic.*], so that he will discern ways and means which were once hidden from him, or seen obscurely. It is a great help to a thing to feel that it must be done, and that there is no evading it. Harsh as was the old remedy of imprisonment for debt, it had this wholesome effect in many cases, and was, so far, a beneficial instrumentality. While the imprisonment which impends over the respondent is not for debt, it can be prevented by the same means as if it were; that is, by payment."

[39] Dishinger v. Bon Aire Catering, Inc., 336 Ill. App. 557, 84 N. E. 2d 562 (1949) (receivership).

[40] Drake v. National Bank of Commerce of Norfolk, 168 Va. 230, 190 S. E. 302 (1937) (Money was insurance proceeds paid to a business in receivership.).

[41] Eykelboom v. People, 71 Colo. 318, 206 Pac. 388 (1922) (Letters were connected with business which had gone into recievership.) See note 29 *supra*.

financial condition when it is peculiarly within his knowledge,[42] thus revealing added justification for the insolvency decisions.

The typical case where inability is raised as a defense involves the husband who fails to make alimony or support payments.[43] He may prove his inability to comply by showing that he is without money, owns no property and does not receive sufficient income to make the ordered payments to hs wife due to sickness,[44] injury[45] or business difficulties.[46] In some jurisdictions it is not necessary to justify the inadequacy of the husband's income, for these courts evidently secure to the divorced husband the "unalienable right to starve to death" when it is said they are without power to compel an individual to work.[47] There is authority very much in conflict with this view, adjudging the husband in contempt when he failed to take the highest paying job available, but accepted employment which paid a lower salary but offered an interest in the capital,[48] or paid the husband in the form of free room and board.[49]

Certainly a court order to produce evidence is not "an invitation to a game of hare and hounds" but an implement necessary to the administration of justice; on the other hand, the colorful observation that "the devil himself knoweth not the mind of man" indicates that courts are properly reluctant to determine summarily the truth of a contemner's testimony. Granting the propriety of broad powers in the court to protect its processes against those who do not respect them, the writer believes some protection should be afforded the individual. Accordingly, where an individual has failed to comply with a court order but professes his inability to obey it, it is suggested that the better policy under constitutional safeguards would require that there be evidence tendered to the court, or facts within the court's personal knowledge, showing the individual's testimony to be untrue, or that his inability resulted from his own misconduct or "contumacious" acts.

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[42] State *ex rel.* Blackwell v. Blackwell, 181 Ore. 157, 164, 179 P. 2d 278, 281 (1947): "The financial condition of defendant was a matter peculiarly within his own knowledge, and, when charged with failure to comply with the decree of the court as to payment of money, it was incumbent upon him, if seeking to excuse his failure to make payments, to make a full and complete disclosure of the facts showing his inability to pay." See Laff v. Laff, 161 Minn. 122, 200 N. W. 936 (1924).

[43] In *Ex parte* Risner, 67 Cal. App. 2d 806, 155 P. 2d 667 (1945), a contempt judgment was upheld in habeas corpus proceedings, where a *wife* had failed to comply with a court decree ordering her to make alimony payments to her *husband.* Is this a straw in the wind?

[44] Razall v. Razall, 242 Wis. 121, 7 N. W. 2d 417 (1943).

[45] Caffrey v. Caffrey, 4 F. 2d 952 (D. C. Cir. 1925).

[46] Chong v. Chong, 35 Hawaii 541 (1940).

[47] *Id.* at 544: "This conclusion is in harmony with the authorities which do not recognize the right of a court in cases of this kind to control a man's economic ventures, although insistent that if he is able he shall obey the orders of the court."

[48] Osmers v. Osmers, 114 Utah 216, 198 P. 2d 233 (1948).

[49] State *ex rel.* Houtchens v. District Court for Ravalli County, 122 Mont. 76, 199 P. 2d 272 (1948).