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Contempt of Court -- Civil or Criminal

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NOTES AND COMMENTS

Contempt of Court—Civil or Criminal

The two types of contempt proceedings recognized in the United States are criminal and civil.[1] Criminal contempt proceedings are those brought to preserve the power and to vindicate the dignity of the court and to punish disobedience of its processes and orders.[2] Usually they are separate and independent proceedings at law, with the public on one side and the respondent on the other.[3] The purpose of the sentence in such proceedings is punitive as it is in the public interest to vindicate the authority of the court and to deter other like derelictions.[4] On the other hand, civil contempt proceedings are those instituted to preserve and enforce the rights of private parties to suits and to compel obedience to orders and decrees made for the benefit of such parties.[5] These proceedings are remedial and coercive in their nature, and the parties chiefly interested in their conduct and prosecution are those individuals for the enforcement of whose private rights and remedies the suits were instituted.[6]

This distinction between the two types of contempt has been recognized in North Carolina. The North Carolina Supreme Court said in *Galyon v. Stutts:*[7]

> "With us contempts are defined and classified generally by two statutes: G. S. 5-1 and G. S. 5-8. These statutes recognize

[1] *Ex parte* Grossman, 267 U. S. 87, 111 (1924); Bessette v. W. B. Conkey Company, 194 U. S. 324, 328 (1904); Boylan v. Detrio, 187 F. 2d 375, 378 (5th Cir. 1951); Parker v. United States, 153 F. 2d 66, 70 (1st Cir. 1946); *In re* Nevitt, 177 Fed. 448, 458 (8th Cir. 1902); Blackard v. Arkansas, 217 Ark. 661, 664, 232 S. W. 2d 977, 979 (1950); State *ex rel.* Jones v. Miller, 147 Kan. 242, 243, 75 P. 2d 239, 240 (1938); Marcum v. Commonwealth, 272 Ky. 1, 6, 113 S. W. 2d 462, 465 (1938); Holt v. McLaughlin, 357 Mo. 844, 845, 210 S. W. 2d 1006, 1007 (1948); Swanson v. Swanson, 10 N. J. Super. 513, —, 77 A. 2d 477, 480 (1950); Canavan v. Canavan, 18 N. M. 640, 643, 139 Pac. 154, 156 (1914); Bridges v. Oklahoma, 9 Okla. Crim. 450, 452, 132 P. 503, 504 (1913); Lief v. Lief, 14 N. J. Misc. 27, —, 178 Atl. 762, 763 (1935); O'Brien v. State *ex rel.* Bibb, 26 Tenn. App. 270, 273, 170 S. W. 2d 931, 932 (1942); Local 333B, United Marine Division of International Longshoreman's Ass'n. v. Virginia Ferry Corp., 193 Va. 773, 779, 71 S. E. 2d 159, 163 (1952).

[2] Galyon v. Stutts, 241 N. C. 120, 123, 84 S. E. 2d 822, 825 (1954).

[3] Parker v. United States, 153 F. 2d 66, 70 (1st Cir. 1946). See also, 17 C. J. S. *Contempt* § 5 (1939).

[4] *Ex parte* Grossman, 276 U. S. 87, 111 (1924).

[5] Blackward v. Arkansas, 217 Ark. 661, 664, 232 S. W. 2d 977, 979 (1950).

[6] *Ex parte* Joe L. Earman, 85 Fla. 297, 314, 95 So. 755, 760 (1923); Marcum v. Commonwealth, 272 Ky. 1, 6, 113 S. W. 2d 462, 465 (1938); Galyon v. Stutts, 241 N. C. 120, 123, 84 S. E. 2d 822, 825 (1954). See also, 12 AM. JUR. *Contempt* § 6 (1938).

[7] 241 N. C. 120, 124, 84 S. E. 2d 822, 825 (1954).

and preserve the fundamental distinction between civil and criminal contempt in substance but not in name. Acts or omissions which ordinarily constitute criminal contempt as defined in the textbooks are designated by our statute (G. S. 5-1) as punishable 'for contempt,' without further designation; the acts or omissions which ordinarily constitute civil contempt as defined in the books are designated by our statute (G. S. 5-8) as punishable 'as for contempt.' Thus, under our statutes the proceedings for criminal and civil contempt are 'for contempt' and 'as for contempt,' respectively."

In an earlier case,[8] the North Carolina Supreme Court had this to say:

"A person guilty of any of the acts or omissions enumerated in the eight subsections of G. S. § 5-1 may be punished for contempt because such acts or omissions have a direct tendency to interrupt the proceedings of the court or to impair the respect due to its authority. A person guilty of any of the acts or neglects catalogued in the seven subdivisions of G. S. § 5-8 is punishable as for contempt because such acts or neglects tend to defeat, impair, impede, or prejudice the rights or remedies of a party to an action pending in court."

The statutes to be discussed in this note are N. C. General Statutes § 5-1, § 5-4, § 5-8 (1953). The pertinent subsection of G. S. § 5-1 is subsection three, which reads as follows:

"Any person guilty of any of the following acts may be punished for contempt:

3. Wilful disobedience of any process or order lawfully issued by any court."

The punishment for a violation of this statute is limited by G. S. § 5-4, which provides:

"Punishment for contempt for matters set forth in the preceding sections shall be by fine not to exceed two hundred and fifty dollars, or imprisonment not to exceed thirty days, or both, in the discretion of the court."

The applicable subsection of G. S. § 5-8 is subsection two:

"Every court of record has power to punish as for contempt when the act complained of was such as tended to defeat, impair, impede or prejudice the rights or remedies of a party to an action, then pending in court—

[8] Luther v. Luther, 234 N. C. 429, 431, 67 S. E. 2d 345, 347 (1951).

2. Parties to suits, attorneys, and all other persons for the non-payment of any sum of money ordered by such court in cases where execution cannot be awarded for the collection of the same."

Much confusion has arisen in the application of these statutes. The statutes heve been applied by the lower courts and the attorneys to the wrong situations. In several cases,[9] the lower court has sentenced the offender to imprisonment until he should comply with the court's orders. The supreme court in considering these cases has said that the action was brought under G. S. § 5-1, but in reversing on other grounds (lack of evidence to show willful failure to comply with the court's orders), the court has failed to mention that the sentences were in conflict with G. S. § 5-4 which limits the imprisonment under G. S. § 5-1 to thirty days. Probably the court failed to mention the conflict because it was reversing on other grounds, but it is submitted that if it had discussed it, or had said that the facts presented made out a situation under G. S. § 5-8, punishment for which is not limited by G. S. § 5-4, some of the confusion as to which statute to use would have been removed. It was thought that this confusion would be cleared up by the court's statement in *Galyon v. Stutts,*[10] in which the court indicated which statute was applicable to which situation. But not all of this has been eliminated, as evidenced by the recent case of *Basnight v. Basnight."*[11]

In that case a wife had been awarded one hundred dollars per month as support for herself and her children. Her husband had failed to make these support payments, and the wife instituted contempt proceedings to compel payment. The lower court found the husband guilty of willfully and contumaciously failing to make the payments and sentenced him to imprisonment until he should comply with the order. Upon appeal, the North Carolina Supreme Court split three to three for reversal on the ground that the evidence did not make out the willful and contumacious failure to pay, but reduced the sentence to thirty days' imprisonment, saying that the sentence for contempt was limited by G. S. § 5-4 to thirty days.

The action was to enforce payment of support. Many jurisdictions,[12]

[9] Lamm v. Lamm, 229 N. C. 248, 49 S. E. 2d 403 (1948); Smithwick v. Smithwick, 218 N. C. 503, 11 S. E. 2d 455 (1940); Vaughan v. Vaughan, 213 N. C. 189, 195 S. E. 351 (1938); West v. West, 199 N. C. 12, 153 S. E. 600 (1930).

[10] Galyon v. Stutts, 241 N. C. 120, 123, 84 S. E. 2d 822, 825 (1954).

[11] 242 N. C. 645, 89 S. E. 2d 259 (1955).

[12] Robertson v. Alabama, 20 Ala. App. 514, —, 104 So. 561, 565 (1924); Henderson v. Henderson, 86 Ga. App. 812, 814, 72 S. E. 2d 731, 733 (1952); Perry v. Perry, 165 Ind. 67, 74 N. E. 609 (1905); Barrett v. Barrett, 287 Ky. 216, 220, 152 S. W. 2d 610, 613 (1941); Thomas v. Thomas, 132 Neb. 827, 830, 273 N. W. 483, 484 (1937); Canavan v. Canavan, 18 N. M. 640, 643, 139 Pac. 154, 154 (1914); *Ex parte* Bighorse, 178 Okla. 218, 219, 62 P. 2d 487, 489 (1936); Hillyard v. District Court of Cache County, 68 Utah 114, 208 P. 2d 1113 (1949);

including North Carolina,[13] have said that contempt proceedings for the enforcement of alimony and support payments are civil rather than criminal. This seems to be the logical proceeding as alimony and support are private rights secured by a court order for the benefit of the wife or children,[14] and, as noted above, the purpose of these contempt proceedings is to enforce the private rights of parties to suits and to compel obedience to the court's orders for the benefit of these parties.[15]

It was stated in the plaintiff's brief that the contempt proceeding had been brought under G. S. § 5-1. It is submitted that the wife's interests would have been better served if the contempt proceeding had been brought under G. S. § 5-8.[16] This statute has been said to embody the textbook definition of civil contempt.[17] The punishment for civil contempt is usually imprisonment of an indefinite duration, that is, until the offender shall comply with the court's order or process.[18] Therefore, G. S. § 5-8 should have been used, as it is not limited in its punishment, and because an unlimited imprisonment has the desired coercive effect, whereas a limited imprisonment only punishes the offender who, upon completion of his sentence, cannot again be tried for contempt for the same dereliction, as the prior action would be *res judicata* in the second action.

Obviously the wife brought the contempt proceeding to coerce the husband into paying the support rather than to punish him for his disobedience of the court's order. In view of this fact, it is respectively submitted that despite the apparent error of plaintiff's attorney in asserting that the contempt proceeding was under G. S. § 5-1, the court should have ignored this contention, pointed out that the facts made out a case under G. S. § 5-8, and affirmed the sentence of the lower court. By so doing, the court would not only have more effectively re-

Simmons v. Simmons, 66 S. D. 76, 78, 278 N. W. 537, 538 (1938); Eddens v. Eddens, 188 Va. 511, 523, 50 S. E. 2d 397, 403 (1949); Smith v. Smith, 81 W. Va. 761, 95 S. E. 199 (1918). See also, 12 AM. JUR. *Contempt* § 6 (1938).

[13] Dyer v. Dyer, 213 N. C. 634, 197 S. E. 157 (1938).

[14] *Cf.* Taylor v. Taylor, 93 N. C. 418, 420 (1885). See also, 17 AM. JUR. *Divorce and Separation* § 496 (1938).

[15] Parker v. United States, 153 F. 2d 66, 70 (1st Cir. 1946); Blackwood v. Arkansas, 217 Ark. 661, 664, 232 S. W. 2d 977, 979 (1950); Cromartie v. Commissioner, 85 N. C. 211, 215 (1881).

[16] It is assumed that the plaintiff was privileged to bring the action under G. S. § 5-8 as it was stated in the plaintiff's brief that the husband did not own any property upon which an execution would lie.

[17] Galyon v. Stutts, 241 N. C. 120, 123, 84 S. E. 2d 822, 825 (1954).

[18] Parker v. United States, 153 F. 2d 66, 70 (1st Cir. 1946); Chitwood v. Eyman, 74 Ariz. 334, 343, 248 P. 2d 884, 890 (1952); Hervey v. Hervey, 186 Ark. 179, 52 S. W. 2d 963 (1932); State *ex rel.* Cash v. District Court of First Judicial District, 78 Mont. 92, 95, 252 Pac. 388, 399 (1927); Delozier v. Bird, 123 N. C. 689, 694, 31 S. E. 834, 835 (1898); Cromartie v. Commissioner, 85 N. C. 211, 216 (1881); Hutchinson v. Canon, 6 Okla. 725, 55 Pac. 1077 (1898); Phillips v. Phillips, 165 Wash. 616, 6 P. 2d 61 (1931).

solved the rights of the litigants, but would have succeeded in clearing up a considerable amount of the confusion which has so long existed in this area.

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Contracts—Conditional Acceptances—Variations in the Construction of the Offeree's Language

There is uniform adherence to the rules that: (1) "To consummate a valid contract an acceptance must be unequivocal and must not change, add to or qualify the terms of the offer."[1] (2) Variations do not change, add to or qualify the terms of the offer when additional language is framed in words of request[2] or when additional language merely recites conditions implied in fact or in law from the offer.[3] Paradoxically, however, there seems to be little uniformity in the application of these rules to individual cases in which the language, although not changing the terms of the price, or nature of the subject matter of the contract, does to some extent create contingencies. The following cases, all concerned with transactions for the sale of real estate, with the exception of one, are illustrative of this problem.

The phrase "subject to" has traditionally been a conditional expression.[4] One court, in construing what it determined to be a conditional acceptance said: "The meaning usually attributed to such words as 'subject to' is that a promise that is so limited is a conditional promise, one that is different from that for which the offeror bargained."[5] However, in a recent North Carolina case, the court had no difficulty in construing the defendant's use of "subject to" as a phrase which did not affect the validity of an acceptance.[6] Defendant had used the following language in replying to plaintiff's offer. "Your telegram . . . is accepted subject to details to be worked out by you and [my lawyer]."[7] Defendant contended that his reply did not constitute an acceptance because the language was conditional. The court decided that the phrase "subject to details to be worked out . . ." was "an expression of hope or suggestion."[8] In the court's discussion may be found

[1] Recent Cases, 20 CIN. L. REV. 68, 69 (1952).
[2] 1 WILLISTON, CONTRACTS § 79 (rev. ed. 1936).
[3] *Id.* § 78.
[4] 1 CORBIN, CONTRACTS § 61 (1950).
[5] Lawrence Block Co. v. Palston, 123 Cal. App. 2d 300, —, 266 P. 2d 856, 862 (1954).
[6] Carver v. Britt, 241 N. C. 538, 85 S. E. 2d 888 (1955).
[7] *Id.* at 539, 85 S. E. 2d at 889.
[8] *Id.* at 541, 85 S. E. 2d at 890. The court quoted as follows from 17 C. J. S., CONTRACTS at 384: "'If an offer is accepted as made, the acceptance is not conditional and does not vary from the offer because of inquiries whether the offeror will change his terms, or as to future acts, or by the expression of a hope, or suggestion as to terms, or by the intimation that a time be fixed for the con-