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Contempt - Contempt of Court by Publication - Intent as an Element of Contempt

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Since the passage of the Nebraska Installment Sales Act[16] in 1959 a vast amount of sales have taken place in compliance with it.[17] Because *Elder v Doerr*[18] applied retroactively, these contracts are uncollectable if the finance charges exceed the amount of interest allowable in Nebraska for a loan of money

It is submitted that since the *Elder v Doerr* decision would necessarily have a tremendously adverse impact on the financial institutions of the state, the majority of the court should have at least considered a "prospective only" application of its holding. Such a ruling would have avoided the unjust results of which the instant case is an example.

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CONTEMPT—CONTEMPT OF COURT BY PUBLICATION—INTENT AS AN ELEMENT OF CONTEMPT—The defendant newspaper was indicted for contempt of court for publishing a false and grossly inaccurate report of proceedings in court in violation of New York statute.[1] The indictment was dismissed in County Court, but the Supreme Court, Appellate Division, reversed and reinstated the indictment. The New York Court of Appeals reversed and dismissed the indictment by a three to four decision, holding that there must be an intent to defy the dignity of the court for a contempt to have been committed. The dissenting justices felt that the liability of a publisher is strict and that his intentions are immaterial. *People v Post Standard Co.*, 13 N.Y.2d 185, 195 N.E.2d 48 (1963)

Twelve states,[2] including North Dakota,[3] have a statute

16. NEB. R. R. S. § 45-361 to 312 (1960).

17. See citations note 12 *supra.*

18. 175 Neb. 483, 122 N.W.2d 528 (1963).

1. N.Y. PEN. LAW § 600. "A person who commits a contempt of court, of any one of the following kinds, is guilty of a misdemeanor: (subd. 7) Publication of a false or grossly inaccurate report of its proceedings. But no person can be punished as provided in this section, for publishing a true, full, and fair report of a trial, argument, decision, or other proceeding had in court."

2. ARIZ. REV. STAT. ANN. § 13-341 (West 1956) CAL. PEN. CODE ANN. § 166 (West 1954) IND. ANN. STAT. § 3-905 (Burns 1946), IDAHO CODE ANN. § 18.1801 (1947), MICH. COMP. LAWS § 605.1 (1948), MINN. STAT. ANN. § 613.69

identical to the New York law under which the indictment in the principal case was drawn. Most jurisdictions follow the rule that the statutes merely make the named contempts misdemeanors,[4] and punish the contempt under their inherent common law powers.[5] These states, therefore, look to the common law for the elements of contempt by publication. The majority view, apparently based on Blackstone's views of contempt,[6] is that the intentions of the publisher are not relevant in determining his accountability for contempt.[7] It has been held that this is not the true common law concept of contempt and that, in reality, the alleged contemnor was allowed to purge himself by swearing that he had no intention of defying the dignity of the court.[8]

Nevertheless, the majority of the courts hold that good intentions can neither justify[9] nor excuse[10] the publication of a false report of court proceedings. This rule has the effect of requiring a newspaper to report court proceedings at its peril.[11] The publisher's intent is sometimes taken into account in mitigation of his punishment,[12] and a few courts have followed the true common law approach requiring an intent to defy the dignity of the court.[13]

The rule in federal courts appears to be that there can be no contempt liability for an honest mistake.[14] It should be noted that statute limits the power of the federal courts to punish contempts by publication.[15] This forces them to a different approach on the subject.

(1945) MONT. REV. CODE ANN. § 94-3540 (1947) NEV. REV. STAT. § 199.340 (1961) S.D. CODE § 13.1235 (1935) WASH. REV. CODE ANN. § 9.23.010 (1961) WIS. STAT. ANN. § 256.01 (West 1958).

3. N.D. CENT CODE § 27-10-01 (1961).

4. *E.g.*, Hughes v. Territory, 10 Ariz. 119, 85 Pac. 1058 (1906) State *ex rel* Metcalf v. District Court, 52 Mont. 46, 155 Pac. 278 (1916).

5. *E.g.*, *In re* Nelson, 103 Mont. 43, 60 P.2d 365 (1936) Murphy v. Townley 67 N.D. 560, 274 N.W 857 (1937) State v. Morrill, 16 Ark. 384 (1855).

6. See, 4 BLACKSTONE, COMMENTARIES 285 (Lewis' ed. 1897).

7. *E.g.*, *In re* San Francisco Chronicle, 1 Cal. 2d 630, 36 P.2d 369 (1934) People v. Goss, 10 Ill. 2d 533, 141 N.E.2d 385 (1957).

8. Freeman v. State, 188 Ark. 962, 69 S.W.2d 267 (1937), Ray v. State, 186 Ind. 396, 114 N.E. 866 (1917) See Respublica v. Oswald, 1 U.S. 334 (Pa. 1788).

9. Van Dyke v. Superior Court, 24 Ariz. 508, 211 Pac. 576 (1922) Telegram Newspaper Co. v. Commonwealth, 172 Mass. 294, 52 N.E. 445 (1899).

10. State v. Howell, 80 Conn. 668, 69 Atl. 1057 (1908) People v. Gilbert, 281 Ill. 619, 118 N.E. 196 (1917).

11. *In re* Providence Journal Co., 28 R.I. 489, 68 Atl. 428 (1907).

12. State v. Howell, *supra* note 10.

13. Fishback v. State, 131 Ind. 304, 30 N.E. 1088 (1892) Percival v. State, 45 Neb. 741, 64 N.W 221 (1895).

14. Craig v. Harney, 331 U.S. 367 (1947).

15. 18 U.S.C.A. § 401 (1950).

In following the minority rule, and in effect rejecting the harsh majority view, the New York court is following the trend it has established in considering other types of contempt.[16]

North Dakota did not discuss the publisher's intent in the only Supreme Court case on contempt by publication.[17] In *State v McGahey*[18] contempt was not found since there was no intent to defy a court order It is submitted that North Dakota should follow the rule laid down in the principal case making intent a prerequisite to the finding of a contempt of court by publication. The contrary approach would unduly restrain a responsible press.

ALAN GRINDBERG

FEDERAL CIVIL PROCEDURE—FEES AND COSTS—WITNESS FEES—REJECTION OF THE 100-MILE RULE FOR TAXING TRAVEL COSTS—After directing a verdict for the defendant, the court assessed as costs against the plaintiff full travel expenses for witnesses, three from Saudi Arabia, called by the defendant from outside the judicial district. On re-trial the jury found against the plaintiff, and the trial court reduced the costs to $16 each for the witnesses (eight cents a mile each way for 100 miles) [2] While no statute or rule expressly limits mileage for witnesses from outside the district to be taxed as costs, a 100-mile limitation has been considered implicit in the Federal Rules of Civil Procedure.[3] The Court of Appeals *held*, four judges dissenting, that the long-standing limitation on taxation of travel costs from without the district to no more than 100 miles from the place of trial is supported

16. See People v. Court of Oyer and Terminer, 101 N.Y. 245, 4 N.E. 259 (1886) (Juror not guilty of contempt for innocently disobeying court order) *In re* Rotwein, 291 N.Y. 116, 51 N.E.2d 669 (1943) (Attorney not guilty of contempt as he had acted without intent to assail the dignity of the court) Spector v. Allen, 281 N.Y. 251, 22 N.E.2d 360 (1939) (No contempt as disobedience had not been shown to be willful).

17. State v. Nelson, 29 N.D. 155, 150 N.W 267 (1914).

18. 12 N.D. 535, 97 N.W 865 (1903)

1. Farmer v. Arabian Am. Oil Co., 176 F Supp. 45 (S.D.N.Y. 1959), *rev'd*, 277 F.2d 46 (2d Cir. 1960), *cert. denied*, 364 U.S. 824 (1960).

2. Farmer v. Arabian Am. Oil Co., 31 F.R.D. 191 (S.D.N.Y. 1962).

3. Barnhart v. Jones, 9 F.R.D. 423 (S.D. W Va. 1949) See 6 MOORE FED. PRAC. 1363 (2d ed. 1953).