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Contempt - Direct Contempt - Right of the Court to Punish Summarily

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directing it to choose between the lex loci delicti or the lex loci mortis.[13]

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CONTEMPT — DIRECT CONTEMPT — RIGHT OF THE COURT TO PUNISH SUMMARILY — The defendant, who had continually interrupted the court in its attempt to examine a witness, was charged with direct contempt of court and sentenced to twenty days in jail. The judge sentenced the defendant on the day after the trial, refusing to allow the defendant to explain his actions. The United States Court of Appeals, Second Circuit, *held,* one judge dissenting, that the court had power to convict the defendant for direct contempt under Rule 42a of the Federal Rules of Criminal Procedure.[1] The dissent argued that no one is to be punished under our laws without the opportunity to be heard. *United States v. Galante and Mirra,* 298 F.2d 72 (2d Cir. 1962).

The power of courts over contempt is practically plenary and in the absence of constitutional or valid statutory restrictions, the exercise of such power should not be questioned by any tribunal.[2] This power is established to protect courts of justice and to maintain their dignity and authority.[3] However, the power to punish for direct contempt is not arbitrary. It must be exercised in accordance with the rules of procedure established by the courts or prescribed by statute.[4] Punishment of contempt committed in the presence of the court is within the court's sound discretion and will not be disturbed on appeal, unless the discretion is abused.[5] However, the lack

13. Kilberg v. Northeast Airlines, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961). Wherein the Court applied the substantive law of the forum, the plaintiff's domicile, rather that the law of the place of injury, **lex locus delictus,** for the reason that it was repugnant to the public policy of the forum-state to limit wrongful death recovery to the amount prescribed by the **lex locus delictus.** (Indicative of a trend to give more recognition to the law of the state whose interests are most affected); See generally Morris, **The Proper Law of a Tort,** 64 Harv. L. Rev. 881 (1951); (Critical attack upon the inflexibility of the "Last event" doctrine); Note, 45 Iowa L. Rev. 125, 133 (1959); Note, 6 N.Y.L.F. 484 (1960).

1. Fed. R. Crim. P. 42 (a); "CRIMINAL CONTEMPT—SUMMARY DISPOSITION—A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order for contempt shall be signed by the judge and entered of record."

2. State **ex rel.** Grebstein v. Lehman, 100 Fla. 481, 129 So. 818 (1930).

3. **Ibid.**

4. State **ex rel.** Rankin v. District Court of First Judicial District, 58 Mont. 276, 191 Pac. 772 (1920).

5. United States v. Bollenback, 125 F.2d 458 (2d Cir. 1938).

of statutory limitations on the District Court's power to sentence for criminal contempt has led the United States Supreme Court to hold that the sentence is subject to review on appeal.[6]

Every judge who presides over a court of law has the power to punish for contempt.[7] Where the contempt is committed in open court it may be adjudged and punished summarily on the court's knowledge of the facts.[8] The failure to present a formal complaint or give the contemnor an opportunity to defend does not violate due process of law;[9] and since the contemnor is already in court, neither written charges nor process is required.[10] Summary punishment may be given without notice, affidavit, hearing or trial by jury.[11] An incomplete petition charging contempt is immaterial since no petition is necessary,[12] providing the action to punish is taken within a reasonable time after the trial.[13] If not, process is required.[14]

North Dakota holds that a criminal contempt committed within the personal knowledge and observation of the presiding judge can be punished summarily without the use of pleadings or evidence other than the judge's senses.[15] North Dakota has a statutory limitation for punishment of criminal contempt — a fine not to exceed $250.00 or 30 days in a county jail or both.[16]

The minority viewpoint on the power to punish summarily considers that even though the court has the power to punish summarily, the defendant still has all the rights given him by law.[17] One convicted of criminal contempt should be ac-

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6. Brown v. United States, 359 U.S. 41 (1959).
7. Sacher v. United States, 343 U.S. 1 (1952) (dictum).
8. **Ex parte** Terry, 128 U.S. 289 (1888) (dictum); **Ex parte** Morris, 252 Ala. 551, 42 So. 2d 17 (1949).
9. Rubin v. State, 192 Wis. 1, 211 N.W. 926 (1927).
10. Garland v. State, 99 Ga. 826, 110 S.E.2d 143 (1959); State **ex rel.** Rankin v. District Court of First Judicial District, 58 Mont. 276, 191 Pac. 772 (1920).
11. Shotkin v. Atchison Topeka & Santa Fe R.R., 124 Colo. 141, 235 P.2d 990 (1951); See **In re** Manufacturers Trading Corp., 194 F.2d 948 (6th Cir. 1952).
12. **In re** Kelly's Estate, 365 Ill. 174, 6 N.E.2d 113 (1936).
13. Curran v. Superior Court, 72 Cal. 258, 236 Pac. 975 (1925).
14. Shibley v. United States, 236 F.2d 238 (9th Cir. 1956).
15. State v. Root, 5 N.D. 487, 67 N.W. 590 (1896).
16. N.D. Cent. Code § 27-10-02 (1961).
17. **Ex parte** Sullivan, 10 Okla, Crim. 465, 138 Pac. 815 (1914).

corded the same orderly trial as any other defendant.[18]

It is submitted that the power given courts to punish for a direct contempt is an irregularity in our system that guarantees due process of law. It seems to permit punishment without actual due process of law. The summary punishment power is given to the courts because they have already heard the facts that would be brought out in the trial for contempt and it enables the courts to preserve their existence and power. The exercise of the formalities of law would not be an expedient means of handling cases of direct contempt. The defendant does not lose his rights; justice is afforded the defendant by appeal if he feels the sentence received is excessive for the contempt he has committed, or that the court has abused its discretion.

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CONTRACTS — RESTRAINT OF TRADE OR COMPETITION IN TRADE — CONSTRUCTION OF RESTRICTIVE COVENANTS — The Plaintiff, a partnership, sought to enjoin the defendant, an ex-partner, from practicing medicine in violation of a restrictive convenant entered into between the plaintiff and the defendant in a contract for employment. The contract expressly stated that should the defendant terminate his employment with the plaintiff, he would refrain from practicing medicine or surgery within a 25 mile radius for three years. Defendant subsequently left the plaintiff's employ and soon thereafter opened a practice within the area mentioned in the contract.

The Supreme Court of Iowa *held,* two judges dissenting, that the injunction should be granted since the covenant imposed restrictions which were reasonable as to time and area and not in conflict with public policy.

The dissent considered the restriction as to area to be unreasonable, since there were few orthopedic surgeons practicing within the heavily populated 25 mile radius, and therefore the restriction was greater than necessary to protect the plaintiff. *Cogley Clinic v. Martini,* 112 N.W.2d 678 (Iowa 1962).

Injunctive relief is granted not as an absolute right, but

18. People v. Spain, 307 Ill. 283, 138 N.E. 614 (1923).