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EQUITY - CONTEMPT - DURATION OF IMPRISONMENT

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EQUITY — CONTEMPT — DURATION OF IMPRISONMENT — Defendant, a trustee, refused to comply with a court order to turn over certain property to a receiver appointed by the court. She also refused to answer proper questions in a proceeding before a master. She was committed for contempt on January

5, 1934, to be held in jail till she complied with the court order and answered the questions. Her petition for release in July, 1937, was denied. *Held*, petition properly denied. *Tegtmeyer v. Tegtmeyer*, (Ill. App. 1937) 11 N. E. (2d) 657.

During the period of conflict between the law and equity systems in England, it was usually declared that equity could act only by personal decree enforced in personam.[1] Though no longer limited in this respect, equity courts have retained the power to compel obedience to their orders by contempt proceedings. Thus, a person who refuses to turn over specific property on the order of the court is punishable for contempt.[2] Imprisonment serves a dual purpose in such a case: the authority of the court is vindicated, and compliance with the order is obtained. Of necessity, the term for which the defendant is committed is indefinite in duration.[3] Today, with the constitutional guaranty against imprisonment for debt, the policy of the courts is to go beyond the express provision and limit the use of imprisonment as a civil remedy.[4] Consistently with this policy, in cases where it is clear that the defendant does not have the property which he is ordered to turn over, he will not be ordered confined till he shall obey.[5] In the case at bar, defendant was not able to show that she did not have the property. Had she been able to show this, imprisonment as a means of compelling her to turn over the property would have terminated.[6] There was a further ground for imprisonment. Defendant refused to answer proper questions. If it were impossible to compel a witness to answer proper questions, it would be possible to frustrate effective judicial action in many cases. Thus it is fundamental that a court may commit a witness who refuses to answer proper questions, to be released when he will answer the questions.[7] In the instant case,

[1] WALSH, EQUITY, § 10 (1930).

[2] RAPALJE, CONTEMPT, § 130 (1890); Lane v. Lane, 4 Hen. & M. (14 Va.) 437 (1809); Coyle v. Sawyer, 198 Iowa 1022, 200 N. W. 721 (1924); Tinsley v. Anderson, 171 U. S. 101, 18 S. Ct. 805 (1898); Ex parte Bergman, 3 Wyo. 396, 26 P. 914 (1890); Lane v. Alexander, 168 Ark. 700, 271 S. W. 710 (1925); Ex parte Haley, 37 Mo. App. 562 (1899); Mueller v. Nugent, 184 U. S. 1, 22 S. Ct. 269 (1901), in which the Court dismisses the argument that imprisonment in this type of case is imprisonment for debt, in violation of the Constitution. On the same point, see In re Milburn, 59 Wis. 24, 17 N. W. 965 (1883).

[3] People v. Fancher, 4 Thomps. & C. (N. Y.) 467 (1874); Bonney v. Bonney, 151 Ill. App. 221 (1909); Czarra v. Czarra, 124 Ill. App. 622 at 624 (1906), in which the court states that "fixing a definite term of imprisonment might defeat the purpose intended, as the party might prefer to serve the specified term, rather than obey the order."

[4] Aspinwall v. Aspinwall, 53 N. J. Eq. 684, 33 A. 470 (1895); 31 MICH. L. REV. 731 (1933); 33 COL. L. REV. 150 (1933); 46 HARV. L. REV. 1335 (1933).

[5] United States v. Collins, (D. C. Ore. 1906) 146 F. 553; Hogue v. Hayes, 53 Iowa 377, 5 N. W. 541 (1880); Nisbet v. Tindall, 115 Ga. 374, 41 S. E. 569 (1902). In an analogous situation, where a witness refuses to testify before a grand jury, and is committed till willing to testify, it is held that he is to be released after discharge of the grand jury, since it is no longer possible for him to comply with the order. See 22 A. L. R. 1356 at 1364 (1923) for cases.

[6] Clark v. Clark, 152 Tenn. 431, 278 S. W. 65 (1925).

[7] Rapalje, CONTEMPT, § 66 (1890); People v. Fancher, 4 Thomps. & C. (N. Y.)

defendant is starting her fifth year in jail. A sympathetic court might justify releasing defendant on the grounds that it is clear nothing is to be gained by holding her longer, and "equity will not do a vain thing." However, it is evident that the purposes of justice will be served best by keeping such persons as defendant under lock and key. She may well spend her life in confinement, unless her attitude changes.

467 (1874); Lott v. Burrel and Sandifer, 2 Mill Const. (S. C.) 167 (1818); contra, Atchison, Topeka, & Santa Fe R. R. v. Jennison, 60 Mich. 232, 27 N. W. 6 (1886), in which the court refused to order the judge to commit a witness till he would testify. Relator sought the testimony in Michigan to be used in a suit the witness had brought against him in Kansas. The Michigan court considered resort to imprisonment unnecessary, stating that the Kansas court could afford relator relief by refusing to let the witness proceed with his suit till he had given the testimony desired by relator.