Michigan Law Review

Volume 48 | Issue 6

1950

EQUITY-FINANCIAL LIABILITY TO COMPLY WITH A DECREE-IMPRISONMENT FOR DEBT

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EQUITY—FINANCIAL INABILITY TO COMPLY WITH A DECREE—IMPRISONMENT FOR DEBT—Testator provided that a charge amounting to $16,000 was to be made on certain devised land and that a $5,000 legacy was to be paid to plaintiff educational institution from this sum. Defendant executors reported to the court, in 1921, that the charge had been collected and that the $5,000 legacy for plaintiff had been received. The court ordered them to hold the money in trust until plaintiff might qualify to take it. Actually, as shown by the executor's final report of 1941, no part of the $5,000 had been collected and all the money in the estate had been distributed to the residuary legatees. An equity remained in the devised land, which, the defendants testified, they had believed would cover the legacy when it became due. Because of the 1929 depression, however, this equity was partially wiped out and the defendants subsequently became personally insolvent. A decree was issued ordering the defendants to pay the amount still remaining due on the legacy. On trial for contempt of this decree, the defendants pleaded inability to comply as an excuse. *Held,* "The impecuniosity of the executors did not excuse their failure to obey the order . . . because the failure to pay it from estate funds was occasioned by their wrongful acts in distributing the assets of the estate."[1] *Society of the Divine Word v. Martin,* (Iowa 1949) 38 N.W. (2d) 619.

[1] Principal case at 621.

The American courts have uniformly held that inability to comply with the terms of an equity decree is sufficient to excuse a person charged with contempt of that decree if such inability is not attributable to the fault of that person.[2] When the inability to comply, however, is caused by some wrongful act on the part of the person so charged, the courts have been more disposed to hold the person liable for contempt and to brush aside the defense of impossibility of compliance.[3] Some courts will inquire as to whether the act was done with malicious motives or with wilfulness,[4] while others, like the court in the principal case, hold that such evidence is insufficient.[5] A vital question involved in all these cases is whether a statutory or constitutional prohibition against imprisonment for debt[6] will prevent the court from ordering the contemnor imprisoned.[7] The prohibition has been held inapplicable in cases of inability of compliance on the following theories: (1) that the contempt for which the person is being punished is not for a failure to satisfy the debt, but, rather, for not carrying out the terms of the decree of the court,[8] (2) that the amount owing by the executor is not a debt within the meaning of "debt" as used in the constitution or statute, since it is a sum held in a fiduciary capacity,[9] (3) that the executor is not an ordinary debtor, but is an officer of the court, and may be dealt with by the court as it sees fit without reference to the constitutional or statutory provisions.[10] The first of these theories offers an easy means of circumventing the constitutional provisions and, in the principal case, is not helpful since the act which would be held to constitute the contempt was performed prior to the issuance of the decree and it would seem immaterial whether

[2] See 17 C.J.S., Contempt, §19 (1939); 12 AM. JUR., Contempt, §72 (1938); 134 A.L.R. 932 (1941); 60 A.L.R. 326 (1929).

[3] See 17 C.J.S., Contempt, §19 (1939); 12 AM. JUR., Contempt, §72 (1938); 134 A.L.R. 933 (1941); 60 A.L.R. 329 (1929). At least one state statute makes no distinction between innocent and wilful inability to perform the decree. La. Gen. Stats. (Dart 1939) c. 15, §1733.

[4] Adair Bros. & Co. v. Gilmore, 106 Ala. 436, 17 S. 544 (1895); Andrews v. Andrews, 116 Misc. 385, 2 N.Y.S. 575 (1938).

[5] Messmore's Estate, 293 Pa. 63, 141 A. 724 (1928); 60 A.L.R. 324 (1929); 7 UNIV. CHI. L. REV. 137 (1939).

[6] "No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in case of fraud; and no person shall be imprisoned for a militia fine in time of peace." Iowa Const., Art. I, §19. Practically all the states have some provision concerning imprisonment for debt. INDEX DIGEST OF STATE CONSTITUTIONS 759 (1915); Ford, "Imprisonment for Debt," 25 MICH. L. REV. 24 (1926).

[7] It should be observed that the court in the principal case did not order imprisonment, but remanded the case to the lower court for further action in harmony with the opinion rendered. As imprisonment has long been used to coerce the defendant for contempt of a decree, it appears permissible to assume that this result may ultimately be reached in this proceeding.

[8] Rudd v. Rudd, 184 Ky. 400, 214 S.W. 791 (1919); In re Weaver, 114 Pa. Super. 439, 174 A. 905 (1934); In re Meggett, 105 Wis. 291, 81 N.W. 419 (1900); Bristol v. Pearson, 109 N.C. 718, 13 S.E. 925 (1891); Jastram v. McAuslan, 29 R.I. 390, 71 A. 454 (1909); In re Clift's Estate, 108 Utah 336, 159 P. (2d) 872 (1945).

[9] Cox v. Rice, 375 Ill. 357, 31 N.E. (2d) 786 (1941), criticized in 30 ILL. B.J. 112 (1941).

[10] Ex parte Smith, 53 Cal. 204 at 208 (1878), wherein it was stated, "An executor, although holding the assets of the estate in trust, as above stated, is not merely a trustee, but is in one sense an officer of the court . . . . no argument is needed to show that as an officer his obedience to the order of the court may be enforced by attachment for contempt."

that act was wilful or innocent.[11] Although the principal case may be sustained under the second or third theory, both of which have the effect of eliminating the constitutional guaranty as a restraint on judicial power, it is seriously questioned whether this is consistent with the underlying purpose of the constitutional provision.[12] Imprisonment to coerce the defendant into satisfying the plaintiff's judgment would seem to be impractical since it is likely to defeat the main object of inducing the contemnor's performance of the order.[13] It may be that the court had in mind pure punishment on a theory of criminal contempt for the original misrepresentation made to the court by the executors in 1921, though the opinion does not make clear the nature of the contempt proceedings. Unless it is believed that the contemnor has or can secure assets if subjected to additional pressure, it is difficult to see what result other than pure punishment can be achieved by the imprisonment or what its time limits will be.

Paul M. D. Harrison

[11] The act of distributing the assets in the principal case took place in 1923, while the decree was issued in 1946. In such a case, it would certainly appear that inability, not violation of the decree, is the thing that is being punished by the finding of contempt. See Adair Bros. & Co. v. Gilmore, supra, note 4; State ex rel. McClean v. District Court, 37 Mont. 485, 97 P. 841 (1908); Adams v. Haskell and Woods, 6 Cal. 316 (1856).

[12] Compare 3 FREEMAN, EXECUTIONS, 3d ed., §451 (1900); Ford, "Imprisonment for Debt," 25 MICH. L. REV. 24 (1926).

[13] This observation has been made by the Kansas court. "If the husband has the amount of money he has been ordered to pay and contemptuously disobeys the order, his commitment should be until he pay, for in that case he has the means to obtain his own release; by making the payment the jail is unlocked to him. If he does not have the money, and has no property which he can readily convert into money, it is obviously improper to commit him until the money is paid. Such a commitment under those circumstances would be indefinite imprisonment, from which the husband could never release himself." Wohlfort v. Wohlfort, 116 Kan. 154 at 163-4, 225 P. 746 (1924). See also, comment, 37 YALE L.J. 509 (1928); Cohen v. Mirviss Manufacturing Co. and others, 173 Minn. 100, 216 N.W. 606 (1927); Savannah and Ogeechee Canal Co. v. Shuman, 91 Ga. 400, 17 S.E. 937 (1893).