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Criminal Procedure - Jurisdiction - Juvenile Court's Right to Exclusive Jurisdiction Over a Contempt Proceeding Originally Initiated Against a Minor Child in a Court of General Jurisdiction

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CRIMINAL PROCEDURE — JURISDICTION — JUVENILE COURT'S RIGHT TO EXCLUSIVE JURISDICTION OVER A CONTEMPT PROCEEDING ORIGINALLY INITIATED AGAINST A MINOR CHILD IN A COURT OF GENERAL JURISDICTION — A seventeen-year-old minor sought a writ of prohibition against a circuit court to prevent it from enforcing a decree of contempt of court which resulted from her refusal to testify before a grand jury proceeding. She asserted that her refusal to testify was a public offense covered by the juvenile code, over which the juvenile court had exclusive jurisdiction. In an original proceeding, *held*, order of prohibition denied. The purpose of a direct contempt citation is to compel obedience to, and respect for, the court and not to punish for a public offense; consequently, because contempt is only quasi-criminal in nature, it does not fall within the meaning of the term "public offense" found in the juvenile code. Secondly, since contempt is an inherent attribute of every court of record, it may not be confined by limitations of a statute except in respect to punishment. *Young v. Knight*, 329 S. W. 2d 195 (Ky. 1959).¹

Through the use of informal proceedings, juvenile courts carry out the statutory purposes of correction and reformation of minors charged with

¹ The issue of self-incrimination has been omitted, since it is not material to the topic of this case note.

unlawful acts.² These courts have generally given a liberal construction to the juvenile code in order to effectuate these purposes, and have facilitated juvenile proceedings by recognizing the exclusive jurisdiction of the juvenile courts over the illegal acts of minors.³ The court in the principal case reverses the trend toward a more liberal construction by refusing to construe the juvenile statute to embrace contumacious conduct on the part of minors.⁴ To reach this result the court states that contempt proceedings are only quasi-criminal in nature and thus are not embraced by the juvenile code. It appears that the basic reason for this attitude, though not specifically discussed by the court, is the conflict between the court's "inherent power" of contempt⁵ and the traditional power of the state, under the concept of *parens patriae*, to protect the general welfare of minors and persons under disability.⁶

In the past, courts have generally assumed, without any extensive discussion of the matter, that the power of contempt was inherent to the common law system and as such became vested in the state courts through state constitutions.⁷ In recent years this view has been questioned both as

² It is generally recognized that the purpose of the juvenile codes is educational and correctional and not penal. KY. REV. STAT. §208.200 (1959); *People v. Deibert*, 117 Cal. App.2d 410, 256 P.2d 355 (1953); *Killian v. Burnham*, 191 Okla. 248, 130 P.2d 538 (1942). Juvenile proceedings are informal in nature. *Shioutakon v. District of Columbia*, 236 F.2d 666 (D.C. Cir. 1956). The lack of procedural requisites has been held not to violate due process of law. See, e.g., *United States v. Briggs*, 266 Fed. 434 (W.D. Pa. 1920); *In re Brodie*, 33 Cal. App. 751, 166 Pac. 605 (1917). Juvenile courts have the power to punish contumacious conduct committed in their presence. *Frowley v. Superior Court*, 158 Cal. 220, 110 Pac. 817 (1910); see Annot., 1916E Ann. Cas. 1013.

³ KY. REV. STAT. §208.020 (1959); *Ex parte Hallowell*, 84 Okla. Crim. 355, 182 P.2d 771 (1947); OKLA. STAT. tit. 10, §114 (1951), specifically provides that the juvenile code should be liberally construed. But for narrow statutory constructions, see *Mill v. Brown*, 31 Utah 473, 88 Pac. 609 (1907); *State v. Rose*, 125 La. 1079, 52 So. 165 (1910).

⁴ In the past Kentucky courts have recognized the exclusive jurisdiction of the juvenile courts over minors. *Watson v. Commonwealth*, 247 Ky. 336, 57 S.W.2d 39 (1933); *Childers v. Commonwealth*, 239 S.W. 2d 255 (Ky. 1951).

⁵ Criminal contempt proceedings are brought to preserve the power and dignity of the court, whereas civil contempt cases are instituted to enforce the rights of private parties. *Bender v. Young*, 252 S.W. 691 (Mo. 1923); *Brundage v. Peters*, 305 Ill. 223, 137 N.E. 118 (1922). See also *Nye v. United States*, 313 U.S. 33 (1941); *Green v. United States*, 356 U.S. 165, 215 (1958) (dissenting opinion). See generally Comment, 7 HASTINGS L.J. 312 (1956).

⁶ The state, under the doctrine of *parens patriae*, can act to protect the welfare of the child, *Eggeston v. Landrum*, 210 Miss. 645, 50 So.2d 364 (1951), by creating juvenile courts, *In re Hook*, 95 Vt. 497, 115 Atl. 730 (1922), by caring for the person and property of the minor, *Schuster v. Schuster*, 75 Ariz. 20, 251 P.2d 631 (1952), and by denying parents custody of their child, all without violation of due process of law, *Bryant v. Brown*, 151 Miss. 398, 118 So. 184 (1928). A state's power to legislate for the welfare and protection of minors has also been supported as a valid exercise of its police powers. *In re Hook*, *supra* note 6; *DeWitt v. Brooks*, 143 Tex. 122, 182 S.W.2d 687 (1944), *cert. denied*, 325 U.S. 862 (1944).

⁷ *Cooper v. People ex rel. Wyatt*, 13 Colo. 337, 22 Pac. 790 (1889); *Bradley v. State*, 111 Ga. 168, 36 S.E. 630 (1900); *Melton v. Commonwealth*, 160 Ky. 642, 170 S.W. 37 (1914). The Supreme Court of Michigan held it was within the inherent power of the court for a judge, while acting as a one-man grand jury, to charge a witness with contempt, and as the presiding judge at the hearing find the witness guilty of the charge. *In re White*, 340 Mich. 140, 65 N.W.2d 296 (1954), *rev'd sub nom. In re Murchison*, 349 U.S. 133 (1955), on the ground that such a proceeding was a denial of due process of law.

a historical thesis and as a matter of due process of law. In the leading case of *Green v. United States*,⁸ the dissenting opinion reassesses in detail the historical facts and concludes that summary proceedings for direct contempt are historically anomalous in the law. This opinion further points out that such proceedings are likewise questionable as a matter of due process for the substantive elements of the offense are vague and give the alleged contemner few safeguards against a judge's unlimited discretion in summarily passing judgment on acts committed in his presence.

With the apparent increase and complexity of the nation's juvenile delinquency problems it is recognized that there is a growing need for our juvenile courts, together with other social agencies, to detect and rehabilitate as well as punish minors committing criminal acts. To meet this need the juvenile courts have been given broad legislative authority to determine a plan of treatment for the juvenile offender as well as to administer the law.⁹ Because courts of general jurisdiction lack the legislative authority, the expertise, and the facilities to dispose of such cases, the over-all purpose of the juvenile code can best be effectuated by giving the juvenile courts exclusive jurisdiction over minors charged with, or convicted of, criminal contempt in the courts of general jurisdiction.¹⁰ Thus a conflict is created between the summary contempt power of the courts of general jurisdiction and the need of the juvenile courts for the exclusive jurisdiction over minors. Both public policy and that growing body of law which recognizes certain inadequacies in the summary contempt proceeding seem to weigh in favor either of removing from courts of general jurisdiction the power to cite minors for contempt or at least of allowing juvenile courts to handle the disposition of the offending minor after his conviction.¹¹

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⁸ 356 U.S. 165 (1958). The Court was split five to four.

⁹ For an extended discussion of the administration and rehabilitation of juvenile offenders, see Comment, 47 Nw. U.L. Rev. 224 (1952); Woldman, *Ohio's Juvenile Diagnostic Center and Juvenile Problems*, 31 OHIO B.J. 671 (1958); Gonas, *Therapy in the Juvenile Court*, Case & Com., July-Aug. 1958, p. 31; Eastman & Cousins, *Juvenile Court and Welfare Agency: Their Division and Function*, 38 A.B.A.J. 575 (1952).

¹⁰ The power of courts of equity in a civil case to impose conditional imprisonment for the purpose of compelling a person to obey an affirmative order or injunction is essentially a civil remedy designed for the benefit of the plaintiff and is not brought into question in this note. See *United States v. United Mine Workers*, 330 U.S. 258 (1946). A fine or fixed term of imprisonment to punish or coerce obedience of a court order is punitive in nature and imposed to vindicate the authority of the court. See KY. REV. STAT. §§421.110-421.140 (1959); see also note 5 *supra*.

¹¹ The contempt charge could then be tried on its merits in a juvenile court. Cf. *In re Murchison*, *supra* note 7, in which the court implies that the contempt charge must be tried before a judge other than the one who cites the defendant for contempt. *Accord*, *Tumey v. Ohio*, 273 U.S. 510 (1926); *Offutt v. United States*, 348 U.S. 11 (1954). See also *Sacher v. United States*, 343 U.S. 1, 14 (1951) (dissenting opinion).