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Constitutional Law - Due Process - Dismissal of Appeal as Exercise of Contempt Power

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CONSTITUTIONAL LAW—DUE PROCESS—DISMISSAL OF APPEAL AS EXERCISE OF CONTEMPT POWER—A superior court of the state of Washington rendered a $475,000 judgment against the petitioner union for the circulation of a libelous letter. The union filed an appeal to the Washington Supreme Court but obtained no stay of proceedings in the lower court because it made no offer of the required supersedeas bond. In a supplemental proceeding it was learned that the union had no substantial assets in Washington but did have $298,000 of United States bonds in its possession in California. The Superior Court ordered the union to deliver these bonds to the court's receiver to protect the judgment creditors pending the appeal of the main action. Upon failure to comply with the court order, the union was held in contempt. The Washington Supreme Court affirmed the contempt and ordered the appeal in the main action dismissed if the union did not purge itself of contempt within fifteen days.[1] The condition was not met and the appeal was dimissed. On certiorari to the United States Supreme Court, *held,* affirmed, two justices dissenting. The dismissal of the union's appeal was a reasonable action taken to sustain the effectiveness of the state's judicial process and did not violate due process of law. *National Union of Marine Cooks and Stewards v. Arnold,* 348 U.S. 37, 75 S.Ct. 92 (1954).

The proposition that a statutory review is not a requirement of due process has been recognized in stronger cases than the instant one, namely, where the judgment in the lower court resulted in the loss of life or liberty.[2] A right of appeal is not essential to due process as long as there is

[1] Arnold v. National Union of Marine Cooks and Stewards, 42 Wash. (2d) 648, 257 P. (2d) 629 (1953). This was on May 26, 1953. The original order to deliver the bonds to the court was made by the superior court on February 15, 1952, and the appeal from the original money judgment was not finally dismissed until August 19, 1953.

[2] McKane v. Durston, 153 U.S. 684, 14 S.Ct. 913 (1894); Allen v. Georgia, 166 U.S. 138, 17 S.Ct. 525 (1897).

a fair trial in the first instance,[3] for it is not "one of those fundamental rights, the observance of which is indispensable to the liberty of the citizen."[4] But a court has no power to strike the defendant's answer from the record as punishment for contempt, since that completely denies him a hearing on the merits of his case.[5] Since the union had already been given a fair hearing, the only real question the court answers is whether or not the state action was so arbitrary that it amounted to a denial of the fundamental fairness and justice which comprise the Court's subjective tests for due process.[6] The test is one of reasonableness, and the case affords some guidance as to what may comprise the future application of that standard to the punishment of contempt. Generally, punishment for civil contempt should be remedial, benefiting the complainant by coercing the contemnor to do what he has hitherto refused to do.[7] The contemnor usually gets relief from punishment by complying with the court order.[8] Yet in the principal case, once the appeal was dismissed, the contemnor could no longer get relief by purging itself of contempt.[9] Nevertheless, the dismissal was held to be a reasonable measure for the protection of the judgment creditor, in view of the fact that the union's assets in California could not be reached as long as the appeal was still pending in Washington. It is interesting to observe that the majority did not consider the possibility that the main suit and the supplemental proceeding were, in effect, two independent actions, as they would have been at common law.[10] Such a possibility would have raised a question as to the reasonableness of a punishment for contempt which cuts off the contemnor's right to appeal a case other than that in which he is guilty of the contempt. Yet, according to the broad language used by the court, even this would seem to be a reasonable exercise of the contempt power as long as the contemnor's

[3] Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74, 50 S.Ct. 228 (1930).

[4] Allen v. Georgia, note 2 supra, at 141.

[5] Hovey v. Elliot, 167 U.S. 409, 17 S.Ct. 841 (1897). However a statute denying a right to present a defense in the original suit is not contrary to due process if the defendant refuses to produce witnesses and material evidence particularly within his knowledge. In such a case the defendant's action creates a presumption of bad faith and want of merit in its answer. Hammond Packing Co. v. Arkansas, 212 U.S. 322, 29 S.Ct. 370 (1909).

[6] Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149 (1937); Haley v. Ohio, 332 U.S. 596, 68 S.Ct. 302 (1948).

[7] Gompers v. Bucks Stove and Range Co., 221 U.S. 418, 31 S.Ct. 492 (1911).

[8] See 39 CALIF. L. REV. 552 (1951).

[9] In spite of the statement to the contrary in the principal case (at 44), once the dismissal of the appeal from the judgment became final, it could no longer be viewed as merely a process to induce compliance with a court order; it had become a fixed punishment for criminal contempt.

[10] It is generally admitted that the supplemental proceeding is merely a simple and expedient method of inquiring into the affairs of the debtor and one which takes the place of the creditor's bill in equity. Arnold v. National Union of Marine Cooks and Stewards, 42 Wash. (2d) 648, 257 P. (2d) 629 (1953); Lore v. Citizens Bank of Winslow, 51 Ariz. 191, 75 P. (2d) 371 (1938). There is even a conflict of authority as to whether new service of process must be made for the supplemental proceeding. See the cases cited in 39 A.L.R. 1498 (1925).

conduct in the one action is such that it jeopardizes satisfaction of the money judgment secured in the other.[11] The fact that the majority is not disturbed by the duality of the proceedings in the case leads one to presume that the reasonableness of a state court's exercise of its contempt powers to dismiss an appeal will not be scrutinized too closely in determining whether or not a contemnor has been denied due process of law under the Fourteenth Amendment.

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[11] Principal case at 44.