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STATUTORY RESTRICTIONS ON THE POWER OF COURTS TO PUNISH FOR CONTEMPT.

In a case decided by the Supreme Court of Missouri recently, *State v. Shepherd,* 76 S. W. 79, an editor was fined for contempt for publishing an article accusing the court of corruption. This charge was made in connection with a case in which a motion for rehearing was then pending before the court. The statutes of Missouri, however, attempt to expressly define and limit the powers of courts in dealing with contempts, providing that "every court of record shall have power to punish, as for contempt, persons guilty of any of the following acts and no other," following which is an enumeration of five classes of acts which can, under no construction, include newspaper publications. In an interesting criticism the American Law Review (Sept.-Oct., 1903,) vigorously excepts to the action of the court as overriding that sovereignty which may properly be predicated of the legislature, and hence as "absolutely illegal and subversive of our free institutions."

Putting aside, however, all questions of the expediency of the exercise of its powers by the court in this case, ample authority supports the Missouri court. It has assumed an inherent constitutional right to punish contempts; a right not susceptible of abridgment even by legislative enactment. This assumption is sustained by *State v. Morrill,* 16 Ark. 384, in which the statute rejected by the

court as not binding upon it was substantially identical with that involved in the present case. See also *Little v. State,* 90 Ind. 338; *Hale v. State,* 55 Ohio St., 210; *Hawes v. State,* 46 Neb. 149. "That it is not competent for the legislature to abridge the powers of courts to punish summarily such wrongful acts as obstruct the administration of justice has been held in well-considered cases. The conclusion is a necessary inference from the very numerous cases in which it has been held that the power inheres in courts independently of legislative authority. A power which the legislature does not give, it cannot take away. If power, distinguished from jurisdiction, exists independently of legislation, it will continue to exist notwithstanding legislation." *Hale v. State, supra.* The Supreme Court of the United States has expressed doubt as to whether an act of Congress limiting the powers of the United States courts to punish for contempt would be binding upon it, while at the same time deciding that the act was binding upon the lower courts which were themselves created by Congress. *Ex parte Robinson,* 19 Wall. 505. The only case maintaining the opposite view seems to be *In re Oldham,* 89 N. C. 23, where handbills containing an account of a case were given to a juror summoned to serve at a term of court at which the case was to come up for trial. It was held that the statute was operative in confining contempts to the acts specified.

While the power of the legislature to abridge is thus almost universally denied, it is acknowledged that it may regulate the methods of procedure, and that such regulations will be binding. *Wyatt v. People,* 17 Colo. 252; *In re Shortridge,* 99 Cal. 526.

WILL EQUITY ENFORCE A FORFEITURE?

Until within a few years it has been universally held by courts of equity that no principle was more firmly established than this, that Equity will never lend its aid actively to enforce a forfeiture. Story says, "It is a universal rule in equity, never to enforce a forfeiture." 2 *Story Eq. Jur.,* section 1319. In 1 *Pom. Eq. Jur.* section 459, 460 it is stated that, "It is a well-settled and familiar doctrine that a court of equity will not enforce a forfeiture. The few apparent exceptions to this doctrine are not real exceptions, since they all depend upon other rules and principles. * * * There are, in fact, no exceptions to this doctrine; those which appear to be exceptions, are not so in reality." See also 2 *Beach Eq. Jur.* 1013. Very recently, however, certain courts, and following them the text-book authors, have apparently concluded that the rule has been too broadly expressed, and have introduced certain exceptions which appear to be not merely apparent but real. Thus Mr. Bispham says: "In some cases, however, the enforcement of a forfeiture may be regarded in equity with favor." *Bisp. Eq.* section 181 (6th ed.); citing *Brown v. Vandergrift,* 80 Pa. St. 142 (1875). In that case there was a lease of oil lands for 20 years, with a stipulation for

forfeiture unless operations should be commenced within sixty days. The lessee did not commence operations and further failed to pay his monthly rent as agreed. At the end of fifteen months a court of equity forfeited the lease on the ground that in such a case time was of the essence of the contract, and that equity would follow the law and enforce a forfeiture in order to do justice. The rule was stated to be that though equity abhors a forfeiture when it works a loss that is contrary to equity, it will enforce a forfeiture when to do so will work equity and protect the party seeking the forfeiture against the indifference and laches of the other party. This qualified statement of the rule was approved and followed, in a case involving a similar state of facts, in *Monroe v. Armstrong,* 96 Pa. St. 307 (1880). In a very recent case in Michigan, (*Negaunee Iron Co. v Iron Cliffs Co.,* 96 N. W. 468) it has had the sanction of the Supreme Court of that State also.

In this case a mining-lease for ninety-nine years was made to the defendant corporation in 1857, the lessor reserving to himself an individual one-half of all minerals contained in the property. The lessee made no attempts to mine on the land other than to make slight explorations. Later the complainant corporation acquired the interest of the lessor, expended large amounts, and developed valuable mines on the property. In 1900 the defendant corporation, which during the intervening period had stood by in silence and done nothing, served notice on the complainants that it proposed to commence operations under its lease. On a bill to quiet title being filed, a court of equity decreed the forfeiture of the defendant's lease.

These cases seem to establish a well-marked and well-founded exception to the general rule. The express purpose of the complainants in coming into equity was to enforce forfeitures, and the decrees of the courts were intended to accomplish that result. It seems hardly possible to say, in view of the facts, that these cases present exceptions which are "apparent, and not real." They come in none of the classes of what Prof. Pomeroy terms "apparent exceptions." We seem to see in them rather an illustration of the unwillingness of equity to be bound by any rule, however apparently universal, when its application would result in iniquity rather than equity; and of the "creative faculty" of equity which, as Mr. Bispham expresses it, has given birth in the past to the principles which compose it, and still continues in modern times to be energetic and productive, constantly modifying the old doctrines and inventing new ones, as justice demands.

THE CONSTITUTIONALITY OF THE MINIMUM WAGE LAW.

It is doubtful if any doctrine advanced by the courts in recent years has met with more general difference of opinion than that class of cases in which the legislature has attempted to exercise its police power in favor of some special class of people or of the

supposed betterment of social conditions. In the last thirty years these cases have arisen with marked frequency and there is apparently no limit on which they may touch. By the decision of the Supreme Court of Indiana in the recent case of *Street v. Varney Electrical Supply Co.*, 66 U. E. 895, another extension of the police power at the hands of the legislature has met frustration under cover of the Fourteenth Amendment to the United States Constitution.

The validity of a statute which declared that unskilled labor employed on the public work of the State or its political subdivisions should not be paid less than twenty cents per hour and that a contractor who did not comply with the statute should be guilty of a misdemeanor, was before the Indiana court. In the case then at bar, a laborer belonging to the class benefitted by the legislative enactment sued a private domestic corporation, which was engaged in the construction of an electric lighting plant for the city of Richmond, for wages due under the statutory provision. The court held that the act of the legislature was invalid on several grounds: (1) that it was an unreasonable assumption, by the legislature, of power over municipal corporations by the confiscation of the property of taxpayers in forcing them to pay a specified price for labor on public works; (2) that it operated to deprive a citizen of his property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution, and (3) that it was class legislation.

In so deciding this case, the court follows the decision of the Court of Appeals of New York in the case of *People, ex rel. Rogers, v. Coler,* 166 N. Y. 1. These two decisions seem to be the only authorities bearing directly on minimum wage laws. In the New York case, a statute providing that laborers on public work should be paid not less than going wages was involved. In the majority opinion, Justice O'Brien strongly condemned such an invasion of municipal rights by legislative enactment. It was remarked in his opinion that by these laws, "the right which is conceded to every private individual and every private corporation in the State to make their own contracts and their own bargains is denied to cities and contractors for city work. * * * The exercise of such a power by the legislature is inconsistent with the principles of civil liberty, the preservation and enforcement of which was the main purpose when the Constitution was adopted * * * The power to deprive master and servant of the right to agree upon the rate of wages which the latter was to receive is one of the things which can be regarded as impliedly prohibited by the fundamental law upon consideration of its whole scope and purpose." In view of the position which the courts of New York have generally taken with regard to the exercise of the police power, this seems to be a true statement of the principles which ought to govern a like case. It was contended, in the dissenting opinion of Chief Justice Parker, that while such a statute could not be applied to private corporations, yet as cities are mere creatures of the State for the purposes of

municipal government and there was no restriction in the State constitution on the legislative right to enact laws fixing the rate which laborers on public work should receive, the statute should be upheld. But it would seem indeed an unwarrantable interference of civic rights that a municipal corporation's ability to contract for its public works should be subordinated at will to the legislative authority which, in the course of events, might tend to most dangerous results. The principles of taxation as well as the Constitution of the country would thereby be violated.

The contention at times has been made by certain advocates of labor, and those interested in the solution of social problems, that the legislature might constitutionally fix minimum wages to govern private as well as public corporations. It is to be hoped that this mooted question will definitely be settled by the opinions of the highest courts in two of the States, as expressed in the above cited cases.

JURISDICTION OVER FOREIGN CORPORATIONS.

In the case of *Central Grain and Stock Exchange of Hammond, appellant, v. the Board of Trade of the City of Chicago,* not yet reported, but to be found in *Chicago Legal News* for Oct. 10, the necessity of deciding jurisdictional facts before considering the merits of a cause was passed upon. In that case the Board of Trade filed a bill to restrain the appellant, defendant below, from using its stock quotations without permission. A subpœna was served on the secretary and in due course the appellant appeared specially for the purpose of objecting to the jurisdiction, and on affidavits to the effect that the appellant was a foreign corporation not doing business in the State, or capable of doing business in the State, or ever having done business in the State, or having any officers in the State for the purpose of transacting the business of the appellant, moved to quash the writ of service. The court referred the question of jurisdiction to a master, and later, on motion of the plaintiff, who had been unable to serve the president of appellant as a witness before the master, ordered the appellant to cause the president to appear by a certain date. As the president did not appear a second motion was granted ordering the appellant to cause its president to appear or an injunction would issue as prayed by the plaintiff. On default of the president an order was issued to the master to defer his report until the president should appear before him, and a preliminary injunction was issued against the appellant. From this the appellant appealed. The Circuit Court of Appeals for the Seventh Circuit held that the order was unwarranted and dismissed the injunction. The conclusion reached would doubtless be followed except in those States where an appeal is held to be a waiver of jurisdictional rights; *Fee v. Big Sand Iron Co.,* 13 Oh. St. 563; *Ruthe v. Ry.,* 37 Wis. 344; *Hodges v. Frazier,* 31 Ark. 58; *Ry. v. Heath's Adm'r.,* 87 Ky. 651; and possibly in

Texas, where it has been held that appearance by a non-resident person, or corporation, when sued by citation, although expressly to plead to jurisdiction, is a waiver. *York v. State,* 73 Tex. 651. The federal authorities are uniform to the effect that appeal does not waive the right to plead to jurisdiction, provided a special appearance for the purpose of asserting these defects was interposed before a plea to the merits was made necessary by the overruling of the motion to set aside service. *I Foster's Federal Practice, 272; Harkness v. Hyde,* 98 U. S. 476.

Granting the truth of the appellant's affidavits, what would have resulted had he disregarded the injunction, or a judgment of the lower court instead of appealing as he did?

1. As to the effect of an injunction granted without jurisdiction over the person see *Hart v. Sansom,* 110 U. S. 154; *Bisph. Eq.* 67. In granting injunctions the court acts *in personam.* The persons to which its orders are addressed must be within reach of the court, or amenable to its jurisdiction; *Kerr Injunc.* 6: "While it is seen that courts of equity exact the most implicit obedience to the writ of injunction, and treat its willful violation as a most flagrant contempt of court, the doctrine is to be understood with the qualification that the court has jurisdiction over the subject-matter"; *High Injunc.,* sec. 1425, and in proceedings for contempt the proper inquiry is whether the court had jurisdiction over the parties and subject-matter, *High Injunc.,* sec. 1416; *State v. Baldwin,* 57 Ia. 266.

2. As to the effect of a judgment. A judgment would be void, 12 *Ency. Pl. & Prac.* 179; for a valid judgment *in personam* cannot be obtained against one not in the jurisdiction who has not been personally served with process. *Pope v. Terre Haute Car & Mfg. Co.,* 87 N. Y. 137. And by the great weight of authority there was no valid service, the rule being that if the corporation is not doing business within the State, service on an officer casually within the State is not service on the corporation. *Marshall Corp.* 1200; *St. Clair v. Cox,* 106 U. S. 350; *Goldey v. The Morning News Co.,* 156 U. S. 518. The agency of the person served for the purpose of accepting service must appear of record or any judgment is open to attack by showing it is void for want of jurisdiction. 6 *Thomp. Corp.,* sec. 7506; *Barrow S. S. Co. v. Kane,* 170 U. S. 100.

From the above it appears that the appellant might have disregarded the action of the lower court provided his jurisdictional affidavits should be upheld.