

Courts--Contempt--Circulation of Derogatory Printed Report (State v. Shumaker, et al., 157 N.E. 769 (Ind. 1927))

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unintentional and occurred occasionally and incidentally. Moreover, only a few suffered by reason of it. But here the inequalities are not so limited for a great class of persons are harmed purposely and pervasively, this fact being unqualifiedly true when the gift is moderate in amount and goes to a husband and wife.

There is evident injustice, too, in the provision which would put in force the taxing at a single rate the gift of an humble worker for the support of his wife and child and the gift of a banker or merchant prince to a distant relative or friend. The legislature that would not permit such a system for its own citizens, now attempts to place this burden upon non-residents.

While it may be proper for a state to forego taxes upon a transfer by a non-resident of a particular state, so that a reciprocity plan might be effectuated, any attempt to impose an excessive or unequal rate in those instances where such reciprocity is lacking, is to be strongly condemned.

The court, in ruling on the unconstitutionality of the statute, submitted the very persuasive conclusion that after all the principle of equal treatment for the citizens of all the states is a good more precious than the gain in revenue that may be incident to a high tax rate on transfers by non-residents.⁵

COURTS—CONTEMPT—CIRCULATION OF DEROGATORY PRINTED REPORT.—An information charging contempt of court was filed against the defendants herein, officers of the Anti-Saloon League who had attacked the views and decisions of the Supreme Court of Indiana with respect to the enforcement of prohibition laws. The attack was in the form of a widely-circulated, printed report which contained many belittling remarks, much caustic comment and a distinct falsehood as to the disposition of a recent case before the Court. Appeals were made for the election of a Judiciary that would be "dry" and not "wet" and for one possessing such a sense of honor and loyalty to the Constitution that it would render decisions carrying out both its letter and spirit. *Held*, that the defendants, excepting one, were guilty of contempt of court. *State v. Shumaker, et al.*, 157 N. E. 769 (Sup. Ct. Ind. 1927).

Contempts of court are generally classified as civil and criminal, under one classification, and as direct or constructive under another classification.¹ A direct contempt of court may occur by reason of an open insult to the person of the court, which is misconduct tending to obstruct or to interfere with the proper administration of justice.² A constructive contempt consists of an act which, although not done in the presence of the court, is nevertheless of such character as to belittle or degrade the court, or to obstruct, interrupt, prevent or embarrass the proper administration of justice.³ This case can be

⁵245 N. Y. 486, 496; 157 N. E. 753, 757

¹13 C. J. 5.

²*People v. Newburger*, 98 App. Div. 92, 90 N. Y. Supp. 740 (1st Dept., 1904).

³*Saal v. South B'klyn R. R.*, 122 App. Div. 364, 106 N. Y. Supp. 996 (2nd Dept., 1907); *Stuart v. Reynolds*, 204 Fed. 709 (C. C. A. 5th, 1913).

classified directly under the heading of constructive contempt of court. An inherent power within the general jurisdiction of courts is to punish those who have been guilty of a contempt of court.⁴

In the well-written opinion in the instant case, it is stated that the report published, neither in its nature nor in its purpose, could be deemed to fall within the confines of fair criticism. It is settled that the constitutional guaranty of freedom of speech is not so broad as to permit publications which are of such a nature as to interfere with the due administration of justice.⁵ Furthermore, "the power of the judiciary rests upon the faith of the people in its integrity and intelligence. Take away this faith and the moral influence of the courts is gone and the respect for the law is destroyed. * * * The one element in government and society which the people desire above all things else to keep from the taint of suspicion is the due administration of justice in the courts."⁶

CRIMINAL LAW—MURDER IN FIRST DEGREE—CONTEMPORANEOUS FELONY. Again the Court of Appeals has had occasion to reverse a verdict in a murder trial on the ground of an erroneous charge of the lower court. At the trial of this case, controverted evidence was introduced to show that the defendant, while riding in an automobile, was ordered to stop by two policemen who suspected him of being guilty of the commission of a crime; and that the defendant thereupon shot first one, and then the other, officer. The trial court sent the case to the jury with the single charge of murder in the first degree.¹ This charge was based on the mistaken theory that the defendant, in killing one policeman was committing the felony which supplied the intent necessary to make out first degree murder in the second killing. *Held*, judgment reversed and new trial granted. *People v. Moran*, 246 N. Y. 100, 158 N. E. 35 (1927).

It has long been the rule that where one, while engaged in the commission of a felony, kills another, he is guilty of first degree murder.² However, it is in the application of this doctrine that confusion has arisen. Before such theory ought to be relied on by the prosecution, it should be able to show that the felony complained of was not a part of the homicide and merged therein. It must show that while the felony upon which it relies may be a part of the homicide, yet, that the other elements thereof are so distinct from that of the homicide, as not to be an ingredient thereof.³ Thus in *People v. Wagner*,⁴ the defendant, while assaulting a woman, shot and killed the deceased who had come to the aid of the assailed. The conviction was affirmed, the court reiterating the rule: "The felony that eliminates the quality of the intent must be one that is independ-

⁴ *Michaelson v. United States*, 266 U. S. 42 (1924).

⁵ *People v. News-Times Pub. Co.*, 35 Colo. 253, 205 U. S. 454 (1907); *State v. Morrill*, 16 Ark. 384 (1855).

⁶ *In re Fite*, 11 Ga. App. 665, 680, 76 S. E. 397, 404 (1912).

¹ N. Y. Penal Code, § 1044, Sub. 2.

² 4 Black. Com., §§ 178-201.

³ *People v. Spohr*, 206 N. Y. 516, 100 N. E. 444 (1912).

⁴ 245 N. Y. 143, 156 N. E. 644 (1927).