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Article 14

Contempt - Doctrine of "Purgation by Oath" Overruled in Illinois

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the slayer immediately committed suicide, equity would be achieved by permitting the innocent heirs of both joint tenants to share equally in the property. No doubt the problem would be best resolved by a legislative enactment setting down the requirements of the public policy of the state when one joint tenant murders the other.[19]

CONTEMPT–DOCTRINE OF "PURGATION BY OATH" OVERRULED IN ILLINOIS

Defendant Gholson was being tried on a criminal charge for violation of the Illinois Medical Practice Act.[1] A contempt petition was filed against him and his wife charging that they circulated an advertisement extolling defendant with intent to influence the jurors before whom he was to be tried. They were also charged with having organized a motor caravan of persons, whose attendance at the trial caused some disturbance, with intent to influence the jury. Defendants denied any unlawful intent in their verified answers, admitting the advertisement circulation and knowledge of the motor caravan. Defendants contended that they were purged of indirect contempt by virtue of their verified petition. The Illinois Appellate Court for the Second District affirmed the finding of the trial court that, under the doctrine of "purgation by oath," the answers of the defendants were insufficient to purge them of the alleged contempt.[2] Judgment was reversed and remanded by the Illinois Supreme Court in declaring that the doctrine of "purgation by oath" is no longer to be adhered to in Illinois. *People v. Gholson*, 412 Ill. 294, 106 N.E. 2d 333 (1952).

The power of the courts to punish for contempt is inherent,[3] and exists independent of statutes.[4] Contempt of court, as stated in the *Gholson* case, may be classified as criminal, civil, direct, or indirect. Criminal contempt is conduct directed against the dignity or authority of the court, while civil contempt consists of the failure to obey a court order.[5] Indirect contempt is a contempt committed outside the presence of the court, and direct contempt is one committed in the presence of the court while in session,[6] or in any place set apart for the use of any

[19] Many states have statutes preventing the acquisition of property by an unlawful killing. The constitutionality of such statutes was upheld in Hamblin v. Marchant, 103 Kan. 508, 175 Pac. 678 (1918). For a thorough explanation, see Wade, Acquisition of Property by Wilfully Killing Another, 49 Harv. L. Rev. 715 (1936).

[1] Ill. Rev. Stat. (1951) c. 91, §§ 1-16(x).

[2] People v. Gholson, 344 Ill. App. 199, 100 N.E. 2d 343 (1951).

[3] People v. White, 334 Ill. 465, 166 N.E. 100 (1929).

[4] People v. Hagopian, 408 Ill. 618, 97 N.E. 2d 782 (1951).

[5] People v. Gholson, 412 Ill. 294, 106 N.E. 2d 333 (1952).

[6] Ibid.

constituent part of the court.[7] Thus, the filing of a forged will for probate by an individual who knows it is such is a direct contempt.[8] One guilty of direct contempt may be punished summarily by the court.[9] In the case of an indirect contempt, however, there must be an information, notice, and a citation or rule to show cause served on the alleged contemnor, who is entitled to a hearing, unless the contempt is admitted in open court, in which case the contemnor may be punished summarily.[10] The mere fact that the contemnor's conduct also constituted a violation of a criminal statute is no bar to his punishment for contempt,[11] the proceeding for which is criminal in form.[12] In civil contempt, the defendant's guilt must be shown by a preponderance of the evidence, while in criminal contempt, it must be shown beyond a reasonable doubt.[13]

At common law, under the doctrine of "purgation by oath," applied in cases of indirect contempt, the defendant was entitled to be discharged if his sworn answer fully denied the charges against him, and, if the answer was false, he was then to be prosecuted for perjury. No evidence was admissible to contradict the answer.[14] Until the *Gholson* case, the Illinois courts had faithfully adhered to this common law doctrine.[15]

In Illinois, the doctrine has been applied only in cases of criminal contempt.[16] Under the common law it was often held that the doctrine would be applied only in contempt cases arising out of suits at law, but not in equity cases.[17] Although an early Illinois case assumed that to be the law,[18] it was stated in *People v. West Chicago Park Commis-*

[7] People v. Hagopian, 408 Ill. 618, 97 N.E. 2d 782 (1951).

[8] In re Estate of Kelly, 365 Ill. 174, 6 N.E. 2d 113 (1937).

[9] People v. Whitlow, 357 Ill. 34, 191 N.E. 222 (1934); People v. Rougetti, 344 Ill. 107, 176 N.E. 292 (1931).

[10] People v. Hagopian, 408 Ill. 618, 97 N.E. 2d 782 (1951).

[11] Dreman v. Fields, 406 Ill. 153, 92 N.E. 2d 654 (1950).

[12] People v. Harrison, 403 Ill. 320, 86 N.E. 2d 208 (1949).

[13] People v. Fusco, 397 Ill. 468, 74 N.E. 2d 531 (1947).

[14] People v. Gholson, 412 Ill. 294, 106 N.E. 2d 333 (1952); Brannon v. State, 202 Miss. 571, 29 So. 2d 916 (1947); 17 C.J.S., Contempt § 83(b) (1939).

[15] The following is a partial list of Illinois Supreme Court cases wherein the doctrine was announced to be law: People v. Hagopian, 408 Ill. 618, 97 N.E. 2d 782 (1951); People v. Whitlow, 375 Ill. 34, 191 N.E. 222 (1934); People v. Roughetti, 344 Ill. 107, 176 N.E. 292 (1931); People v. McLaughlin, 334 Ill. 354, 166 N.E. 67 (1929); People v. McDonald, 314 Ill. 548, 145 N.E. 636 (1924); People v. Severinghaus, 313 Ill. 456, 145 N.E. 220 (1924); People v. Seymour, 272 Ill. 295, 111 N.E. 1008 (1916); Oster v. People, 192 Ill. 473, 61 N.E. 469 (1901); Buck v. Buck, 60 Ill. 105 (1871); Crook v. People, 16 Ill. 534 (1855).

[16] Bender v. Frost, 317 Ill. App. 441, 46 N.E. 2d 393 (1943).

[17] 17 C.J.S., Contempt § 83(b) (1939).

[18] Buck v. Buck, 60 Ill. 105 (1871).

sioners[19] that "an examination of these cases . . . discloses that in none . . . was this stated to be the rule of practice. But the true test is whether the contempt charged is civil or criminal."[20]

The history of "purgation by oath" has come to an end in Illinois in the *Gholson* case when the court declared that the "doctrine . . . will no longer be adhered to by this court, and all previous decisions . . . upholding . . . that doctrine, in that respect, are hereby overruled."[21]

The doctrine has been abandoned by the United States Supreme Court,[22] and, apparently, by most of the state courts.[23] The Illinois court, in stamping out the "dying embers" of this doctrine, stated that a court cannot adequately preserve its authority without "power to inquire and determine if contumacious acts . . . have been perpetrated against the court. . . . We believe that if the contemnor can deprive the court of authority to inquire into . . . his acts, that would tend to destroy rather than to uphold public confidence and respect in our courts."[24] This view seems sound and logical.[25] Little, if anything, remains to be added to the reasoning of the court in the light of this progressive opinion, which remains a milestone in the recent display of legal realism of the Illinois Supreme Court.

TORTS–MISREPRESENTATIONS OF PRIOR OFFERS AS CONSTITUTING FRAUD

Plaintiff leased defendant's premises at $4,500 per year; he was told by his lessor that the latter had received a bona fide offer to lease the premises at $10,000 per year. Plaintiff was informed that unless he could meet that offer, defendant would evict him at the end of their current lease. Relying on defendant's representations, plaintiff signed a twelve year lease with a rent of $10,000 per year. After paying several monthly installments, he discovered that the lessor's representations had been completely false. Plaintiff brought an action for deceit and the trial court sustained defendant's demurrer. Reversing the lower court, the Supreme Judicial Court of Massachusetts held that the plaintiff had

[19] 275 Ill. App. 387 (1934).

[20] Ibid., at 391.

[21] People v. Gholson, 412 Ill. 294, 303, 106 N.E. 2d 333, 338 (1952).

[22] Clark v. U.S., 289 U.S. 1 (1933).

[23] Osborne v. Purdome, 244 S.W. 2d 1005 (Mo., 1951). In 12 Am. Jur., Contempt § 73 (1938), it is stated that the oath of a contemnor is no longer a bar to a contempt citation.

[24] People v. Gholson, 412 Ill. 294, 302, 106 N.E. 2d 333, 337 (1952).

[25] A rather recent case assumed the doctrine of "purgation by oath" to be a preservative of an important right and concluded it to be logical merely because of the fact that it was a common law rule. See Craft v. Culbreth, 150 Fla. 60, 6 So. 2d 638 (1942).