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Courts—Summary Punishment of Criminal Contempt

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But the foregoing rules as to "quotient verdicts" have no application to a judgment rendered by a trial judge without a jury; in the absence of a statute to the contrary, a verdict is a decision by a jury, while a finding by a judge results in an order or judgment and not a verdict. *Hancock v. Oliver,* 228 Ala. 548, 154 So. 571 (1934). This rule is applied not only to findings of fact, *Scott v. People,* 64 Colo. 396, 172 Pac. 9 (1918), but also to conclusions of law stated by the judge, whether made during or after the trial of the case, *Amsinck & Co. v. Springfield Grocer Co.,* 7 F. 2d 855 (8th Cir. 1925). Since the decision of the court is its judgment, while its opinion represents the reasons given for the judgment, such reasons are no essential part of the decision. *Crell v. Hammans,* 232 Iowa 95, 5 N. W. 2d 169 (1942), *Ombrello v. Duluth, S. S. & A. Ry.,* 252 Mich. 396, 233 N. W 357 (1930); *Galiger v. McNulty,* 80 Mont. 339, 260 Pac. 401 (1927), and in the eyes of the reviewing court are not material if the decision itself is proper. Thus, it has been held permissible for a court to change its oral decision, before judgment has been entered. *Ritter v. Johnson,* 163 Wash. 153, 300 Pac. 518 (1931); *Gates v. Green,* 151 Cal. 65, 90 Pac. 189 (1907).

The instant case, therefore, does not depart from established rules. However, it seems to be one of the rare instances where a judge sitting as a trier of fact and law expressly referred to a quotient method. While the trial judge may not have used the quotient method mechanically, it seems remarkable that, if he gave due consideration to the credibility and intelligence of the witnesses, he treated them all as equally credible and intelligent. While the holding is technically correct, it is submitted that the law should not condone the substitution of any mechanical process for the time-tested judicial process. In every case the decision or verdict should be the result of reason, reflection, and conscientious conviction.

John J. Callahan

COURTS—SUMMARY PUNISHMENT OF CRIMINAL CONTEMPT

Petitioners were defense counsel for the eleven communists tried for violations of the Smith Act, *Dennis v. United States,* 341 U. S. 494 (1950). At the conclusion of the trial, and after entry of verdict, the trial judge, relying on petitioners' misconduct during the course of the trial, cited them for criminal contempt. In so doing he acted summarily under Rule 42(a) of FEDERAL RULES OF CRIMINAL PROCEDURE. The sole question before the

Supreme Court was whether the contempt was one which the accusing judge was authorized under Rule 42(a) to determine and punish himself, or whether it was one to be adjudged and punished under Rule 42(b), by a judge other than the accusing one, and after notice and hearing. The Supreme Court affirmed the convictions, and *held* (6-3) that the word "summary" as used in Rule 42(a) does not refer to the time in which a judge must act, but rather to the procedure to be followed. A judge does not lose his power to punish summarily by waiting until the conclusion of the trial if the exigencies of the trial require delay. *Sacher v. United States,* 343 U. S. 1 (1952).

Federal courts have by statute the power to punish summarily specified criminal contempts. 62 STAT. 701, 18 U. S. C. §401 (1948); 63 STAT. 90, 18 U. S. C. §402 (1949). The Supreme Court has recognized that punishment without a trial is a departure from the usual requirements of procedural due process, *Cooke v. United States,* 267 U. S. 517 (1924), and must be exercised within the limits of the Constitution. *Hudgings v. United States,* 249 U. S. 378 (1918). There is, however, a narrow category of contempts which are an exception to the usual requirements of procedural due process. See In re *Oliver,* 333 U. S. 257 (1947). It includes acts of a violent nature, Ex parte *Terry,* 128 U. S. 289 (1888), committed in open court, In re *Oliver, supra,* where all essential elements are observed by the judge. Ex parte *Terry, supra,* and which threaten to disrupt the court's business, *Anderson v. Donne.* 6 Wheat. 204 (U. S. 1821), so that immediate punishment is necessary to prevent demoralization of the authority of the court. In re *Oliver, supra.*

The only basis for the existence of the power to punish summarily a criminal contempt is the *necessity* of immediate punishment. In re *Oliver, supra.* The Supreme Court has advocated extreme caution in the exercise of this power, Ex parte *Terry. supra; Cooke v. United States, supra;* and has stated that the use of such procedure should be limited "to the least possible power adequate to the end proposed." *Anderson v. Donne, supra* at 231; see also Frankfurter and Landis, *Power of Congress over Procedure in Criminal Contempts in Inferior Federal Courts,* 37 HARV. L. REV. 1010 (1923).

The holding of the *Sacher* case permits a judge to punish summarily a criminal contempt, long after the acts constituting the contempt were committed, and after any necessity for preserving the orderly conduct of the trial has ceased. Therefore, the holding in the instant case is an extension of the rule that summary procedure may be used only where the misconduct must be instantly suppressed. It is also a departure from previous holdings

that the statute defining the power to punish summarily must be strictly interpreted and its application narrowly limited. See *Nye v. United States,* 313 U. S. 32 (1940).

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LABOR LAW—DEFENSIVE LOCKOUT AS UNFAIR LABOR PRACTICE

When negotiations between a multi-employer association and union had reached an impasse, over an association-wide contract, the union struck against one member. The other eleven members immediately notified their employees that their stores were closed because of the union's action. The National Labor Relations Board ruled that the employers had committed an unfair labor practice. *Davis Furniture Co.,* 94 N. L. R. B. 279 (1951). On appeal, the Court of Appeals held that the evidence upon which the Board relied did not support its finding that such action was a mere reprisal to defeat the strike, and remanded the case to the Board for a determination of whether such a temporary lockout was lawful when used in a labor dispute solely as a counter-economic force to resist the strike. *Davis Furniture Co. v. N. L. R. B.* __ F. 2d __, 30 L. R. R. M. 2294 (9th Cir. May 29, 1952). The Board again found that this temporary lockout violated §8 (a) (1) and (3) of the LABOR MANAGEMENT RELATIONS ACT, June 23, 1947, 29 U. S. C. §158 (a) (1) and (3). *Davis Furniture Co.,* 100 N. L. R. B. No. 158 (Sept. 5, 1952).

At common law the lockout was considered a lawful device to resist the threat of the labor movement. *Iron Moulders Union v. Allis Chalmers Co.,* 166 Fed. 46 (7th Cir. 1908); *Sinsheimer v. United Garment Workers,* 77 Hun 215, 28 N. Y. Supp. 321 (Sup. Ct. 1894); see also Millis and Montgomery, ORGANIZED LABOR 555, (1945). The NATIONAL LABOR RELATIONS ACT, 49 STAT. 449 (1935), 29 U. S. C. §§151-166 (1947) which proscribes as unfair labor practices any interference with protected union activity does not expressly forbid *or* sanction lockouts. The Board has declared a lockout to be in violation of the Act where the plant was closed by the employer in circumstances that indicated that the real reason for the closing was to avoid and destroy the rights of the employees as provided by the Act. *N. L. R. B. v. Hopwood Retinning Co.,* 98 F. 2d 97 (2d Cir. 1939); *N. L. R. B. v. Stremel,* 141 F. 2d 317 (10th Cir. 1944). See also, Teller, LABOR DISPUTES AND COLLECTIVE BARGAINING (1940 ed.), I, 247, 494, and II, 771-772.

Lockouts have been permitted where the employer would otherwise be subjected to undue economic hardship, *e. g.:* (1) until