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Contempt of Probation Order

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competition.¹⁵ The doctrine is not fully established and there are recent cases indicating that an action will not lie, unless a valid contract was in existence.¹⁶ But, the majority rule and decided trend is in accord with the *Zoby* case.

The *Zoby* case, while no more than persuasive authority in the state courts at the present time, offers a rational and legally sustainable approach to the troublesome problems that are certain to arise in this area of litigation. Its adoption is recommended as the guiding rule for Virginia.

P. T. W.

CRIMINAL LAW—CONTEMPT OF PROBATION ORDER

The Supreme Court of Appeals of Virginia in a recent case¹ reversed a judgment of the Circuit Court of Hanover County which was a summary punishment for contempt of judicial process.

The appellant, appearing in the trial of his wife on a house-breaking charge, had requested that she be released on probation, and in response to the court's verbal order had promised to assist in her probation. Subsequent reports by probation officers resulted in a rule against appellant to show cause why he should not be punished for contempt. Appellant was convicted and sentenced to twelve months in jail for contempt in interfering with the probation of his wife.

Two basic issues were presented to both the trial court and the Court of Appeals: (1) The jurisdictional power of the court to issue the order to assist in probation; and (2) The sufficiency of the evidence to support the charge of contempt. The trial court held that it had general jurisdictional power of both the subject matter and the parties, and further that the evidence of the husband's conduct was sufficient to support a contempt proceeding.

¹⁵ *Union Car Advertising Co., Inc. v. Collier et. al.*, 263 N.Y. 386, 189 N.E. 463 (1934).

¹⁶ *Morgan v. Speight*, 242 N.C. 603, 89 S.E.2d 137 (1955).

¹ *Bryant v. Commonwealth*, 198 Va. 148, 93 S.E.2d. 130 (1956).

The Supreme Court of Appeals of Virginia reversed the trial court on both issues, holding that jurisdiction was lacking by reason of sections 53-266 through 53-280,² and that the evidence was insufficient to sustain the contempt prosecution.

In reaching its decision the trial court considered these factors:

- (1) That the husband had requested probation for his wife;
- (2) That he had promised to assist in the probation (a fact upon which the court had relied in granting it);
- (3) That he had personally appeared and had taken part in the probation hearing, and was thereby a party to the proceedings; and
- (4) That sections 53-266 through 53-280³ applied exclusively to supervision of probation and not to assisting.

The Supreme Court of Appeals ignored the first three of the above listed considerations, and based the reversal on the jurisdictional issue of the specifically limited powers granted by the Code, in which there are no provisions for probation of a defendant other than under the supervision of a duly qualified probation officer. The Supreme Court of Appeals failed to distinguish between persons in a supervisory capacity—and thus specifically within the statutes relied upon—and those ordered merely to assist in probation who are clearly not within the scope of the statute. Since the statutes do not apply, the trial court had general jurisdiction, and thus had authority to order the husband to assist in the probation of his wife. But even if the order were assumed to have been erroneous, the impossibility of its being void having been shown, one who had disobeyed such an order would have been liable for contempt.⁴

In the contempt trial the following items were submitted in evidence:

- 1) Appellant had failed to support his wife;

² Va. Code 1950.

³ *Ibid.*

⁴ *Robertson v. Commonwealth*, 181 Va. 520, 255 S.E.2d 352 (1943). See also *Ferry v. Commonwealth*, 196 Va. 428, 83 S.E.2d 782 (1954), distinguishable from the instant case in that the court had no general jurisdiction and specifically limited powers had been provided by statute.

- 2) He had failed to provide her with sufficient clothes;
- 3) He was consorting with a woman not his wife;
- 4) He would stay away from home at nights, often without the wife's knowledge of his whereabouts;
- 5) He had suggested that he would procure men for her for prostitution purposes, which under subsection 5, section 18-255, Code of Virginia of 1950, was contempt since adultery is a crime in Virginia (and such a suggestion would be clearly considered as an interference with his wife's probation); and,
- 6) He had told her that he was tired of supporting her and had made the prostitution suggestion as a possible means for her self-support.

The trial court below held that these matters were full and complete and would support the conviction for contempt. Had some third party, knowing of the wife's probation,⁵ solicited her for a career in prostitution, he could be held in contempt. Yet the Supreme Court of Appeals reversed the trial court, finding these evidentiary details insufficient.

It is submitted that the trial court had authority both inherently and in accordance with section 18-255(5), Code of Virginia 1950, to punish summarily any person for disobedience of a court order, and that it was correct in its application of the law to the facts. The Supreme Court of Appeals of Virginia, by its extensive reliance upon statutes inapplicable to the facts and issues presented, was not responsive to those issues and has erroneously reversed the correct result reached by the trial court.

S. J. B.

PROCEDURE—MANDAMUS IN ELECTION ACTION

In two recent cases¹ the Supreme Court of Appeals of Virginia has decided that a writ of mandamus will not lie to order election

⁵ Calamos v. Commonwealth, 184 Va. 397, 71 S.E.2d 159 (1945).

¹ Hall v. Stuart, 198 Va. 315, 94 S.E.2d 284 (1956); Whited v. Fugate et al., 198 Va. 328, 94 S.E.2d 292 (1956).