

PUBLICATION OF CRITICISM OF THE COURT DECISION HELD TO BE IN CONTEMPT

(Continued from First Page.)

ish summary for contempt is essential to its very existence, and that right exists without the interposition of a jury.

"11. The inherent power of the court to punish for contempt was not derived from the legislature, and such power does not depend upon the legislative will.

"12. The legislature has not the authority to restrict the inherent power of the court to punish for contempt.

"13. 'Due process of law' does not require a jury in contempt proceedings, and there is no necessity for calling upon a jury to assist the court in the exercise of that power.

"14. The legislature may prescribe any reasonable procedure to be followed in contempt proceedings, but it has failed to provide any procedure, and under the provisions of Section 3925, Revised Codes, when the procedure is not provided by the legislature, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the Code.

"15. Under the provisions of Section 5168, Revised Codes, the judgments and orders of the court, or judges, in cases of contempt are made final and conclusive.

"16. Where certain acts of contempt are made a crime under our statute, the making of such acts punishable as crimes does not affect any power conferred on the court to impose or inflict punishment for contempt. (Section 6305, Revised Codes.)

"17. Section 5529, Revised Codes, provides that certain contempts are misdemeanors, and Section 7211 provides that a criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

"18. The inherent power of the court to punish for contempt cannot be interfered with or abridged by the legislature, so far as courts of record are concerned.

"19. The freest criticism of all decisions of the court is allowed and invited, but criticism ceases and contempt begins when malicious slander, vilification and defamation brings the courts and the administration of the law into dishonor and disrepute among the people.

"20. Article 1, Section 9, of the state constitution, provides that 'Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty. While certain liberty is thus guaranteed, in the last clause of said section the responsibility for the abuse of that liberty is fixed.

"21. Said section is not and cannot be made a refuge for malicious slanders and libels.

"22. Held, that the evidence is sufficient to show that the defendants are guilty of wilful contempt of this court.

Opinion Rendered.

The opinion of a majority of the court rendered by Justice Sullivan is as follows with the heretofore published matter including the complaint, answer, demurrer and evidence extracted:

"This action involves proceedings for contempt. A verified information by the attorney general of the state, in his official capacity, was filed in this court on the second day of December, 1912, charging the defendants, R. S. Sheridan, C. O. Broxon and A. R. Cruzen, with publishing in the Evening Capital News certain articles, wilfully and maliciously misrepresenting the position of this court in a certain case then pending before it, entitled *Spofford vs. Gifford*, secretary of state, . . . Pac. . . . and charging that said articles wilfully and maliciously misrepresented the court, and that said articles were unwarranted, contemptible, defamatory and a contemptuous attack upon this supreme court and the judges thereof."

Cite Roosevelt Appeal.

"In limine, if the judges of this court, in the discharge of their official duties, could permit themselves to be influenced by personal considerations, they certainly would deplore the occurrence of this case. Should the judges be reduced to the alternative of either submitting tamely to contumely and insult, or resorting to the doubtful remedy of an action at law if such a state of things existed, it would rest in the discretion of every party in court to force the judge either to shrink from his duty or incur the degradation of his authority, which must unavoidably result from the adoption of either of the above alternatives. The judges cannot but feel it a delicate task to define and decide upon the extent of their own powers, nor are they ignorant of the fact that the judgment they are called upon to render in this case may expose them, on the one hand, to the imputation of cowardice, timidity and irresolution, or, on the other hand, to that of usurpation and tyranny. The verity of these imputations or suspicions would not be more unworthy of the judges than the fact of their shrinking from this question because of the consequences in which they themselves might be involved by it. Every occasion of resort to their extraordinary powers should without doubt be carefully avoided by them, but when forced upon them, as in this case, should be met with deliberation and firmness.

"With such sentiments and convictions we have entered upon the consideration of this case, conscious that we, as judges, have less at stake than the people, and regardless of consequences which we could not have averted without a dereliction of duty and a degradation of the court.

Demurrer of Defendants.

"In presenting the demurrer, counsel for defendants, Sheridan and Broxon, argued, first, that the information alleged no contempt; second, that the state should have been made the plaintiff in this proceeding; third, that the case concerning which said publications were made, to-wit: The state of Idaho ex rel. Spofford vs. W. L. Gifford as secretary of state of the state of Idaho, was not pending before this court at the time said publications were made; fourth, that the court has no jurisdiction of this proceeding.

"(1) The first question then, is, Does the information allege sufficient facts to show contempt? 'It is alleged that said defendants, Sheridan, Broxon and Cruzen, controlled the policy of said Evening Capital News during the time said publications were made; that said articles were intended to influence this court in its decision in said case, and that said editorials and articles tended to bring said supreme court into disrepute and lessen the respect due its authority and were unwarranted and contemptible and is a contemptuous attack upon said court and the judges thereof and are defamatory and were calculated to impede the administration of justice; that said editorials and other articles were wilful and malicious misrepresentations of the attitude and holding of said court concerning said case, and wilfully and maliciously misrepresented the position the court took with reference to said case and matter; and that said articles were intended to distort said decision and were intended and calculated to impede the administration of justice and to defame the court.

"In five of said articles the following language appears: 'It is impossible to protest too strongly against what is literally the infamy of this decision; 'reactionary conduct of a reactionary court; 'It is an attempt to beat the cause by trickery and chicanery.' And in another article the following language is used: 'The decision is an outrage and a flagrant injustice, unfortunately rare, of the attempted control of politics by the bench. It is tyrannical as the action of the Taft state committee at Aberdeen and the national committee at Chicago, and worse, because it was perpetrated by a court.' In another: 'The more convincing becomes the belief that the decision was purely and solely a political and personal one.' And again: 'Our state supreme court is the accommodation one.' Again: 'A decision which is defended and supported in Idaho by no honest or honorable man today.' And referring to said decision, it is said: 'The Republican state central committee is directly responsible for one of the greatest crimes ever committed against the electoral franchise of the people of the United States.' In large headlines is said the following: 'Only a part of the story is told. Agreement on senatorship is said to be far-reaching. Recalls decision of the supreme court.' It is stated in that article that the action of the court paved the way for Haines for governor and Stewart for justice of the supreme court for United States senator.

Refers to Senatorship.

"Said article purports to give a rumor to the effect that upon the death of Senator Heyburn an agreement was made whereby Judge Alshie was to receive sufficient support to elect him United States senator and that Judge Budge of the Fifth judicial district court would be elevated from the district court bench to the supreme bench to fill the vacancy caused by the election of Judge Alshie, and that in order to carry this plan to completion, it would be necessary to procure the election of Haines as governor, and in order to satisfy the parties who were in the combination, the Roosevelt electors were eliminated from the ticket by a decision of the supreme court upon a suit filed for that purpose, and that in order to obtain a unanimous decision of the supreme court, it was necessary to take care of Judge Stewart, who was a candidate for re-election, and that if this combination could be carried out by the court on its part by rendering said decision, the southeastern, or Mormon counties, and the entire Republican ticket. The closeness and absurdity of this statement are made apparent at once when attention is called to the fact that Senator Heyburn's death occurred unexpectedly ten days after the decision of the Spofford case was rendered. The direct charge is there made against the court that it rendered said decision by reason of a political trade or bargain and not on the law and facts. What greater wrong can be charged against a court than that its decision was obtained by a political trade or bargain? Official corruption of the worst kind is there charged. That charge was made recklessly and deliberately and is a criminal contempt. In effect it charges the judges with the violation of their official oaths and the court with being actuated by motives as base as any human mind can conceive.

"The charges made in those publications were of an extraordinary character and if true are sufficient to warrant the impeachment of the members of said court. They were intended to degrade the court and bring it into the contempt of the people. They were made for political purposes and charge the court with improper and criminal personal and political motives. They require no innuendoes to explain them. Many of them were repeated

time and again and emphasized by printing in capital letters, showing the maliciousness of the publishers. They were intended to raise a popular clamor against the court. There was an attempt by wanton defamation and falsehood to insult and intimidate the judges and degrade the court and destroy its power and influence and to inflame and prejudice the people. The liberty of the press is often called as a cover by character assassins to gratify ill will and passion or to pander to the passion and prejudices of others. The liberty of the press in its true sense must be upheld, but flagrant abuses of that liberty must be punished.

"Judge Freeman in his note to *Perkins v. State*, 50 Am. St. Rep. 574, divides contempts of courts by newspapers and similar publications into two classes: First, those in which it is claimed that the object of the publication was to affect the decision of a pending cause; second, those which have for their apparent purpose the bringing of courts, or the judges and other officers constituting an essential part thereof, into discredit. The articles complained of in this proceeding, really come under both of those heads, as no doubt the object and purpose of some of those publications was to affect the decision of a pending cause and some of them were for the purpose of bringing the court into discredit. It was a direct attack upon the court as a court, and the judges, by prosecuting a civil action for libel or slander, could not protect the honor of the court and the court could not bring a private action to protect itself, and its only means of protecting its honor is by a contempt proceeding.

"It was said in a late case, decided by the supreme court of Georgia, on Oct. 12, 1912, in *re Fite*, 76 S. E. 397, as follows: 'It is suggested that the proper remedy, where no case is pending and the court is scandalized, is prosecution for criminal libel. Where a publication which constitutes contempt contains libelous attacks, a prosecution for libel can also be instituted; but the character of a publication as a criminal contempt is separate from its character as a criminal libel. The one is punished by the court whose judicial integrity is assailed, the other may be prosecuted before a jury for a violation of the criminal statute. It would be the grossest injustice to compel a judge to leave the bench and assume the role of prosecutor to protect the court from libelous and contemptuous attacks. Courts are not required to enforce respect through verdicts by juries, but possess the power to punish, as for criminal contempt, libelous publications upon their proceedings, present and past, upon the ground that such publications tend to degrade the tribunals, destroy public confidence and respect for their judgments, and effectually obstruct the free and impartial cause of justice.

"If this court does not defend and protect itself from slanderous charges of the character contained in the article, the individual judges would deserve and should promptly receive the contempt of all intelligent and honorable men; for the court which is too weak to demand and enforce decent and respectful treatment cannot expect to secure or retain the respect and confidence of the people.'

"Proceedings in contempt were sustained in *ex parte Baird*, 27 N. B. 99, based upon a publication which charged a judge with having granted, for purely political motives, a writ of prohibition to stay a proceeding to recount votes polled at a recent election.

"The liberty of the press is not protected against the publication of deliberate falsehood and misrepresentation in regard to decisions of courts, even though the publishers may think that public or political interests would be served by such falsehood and misrepresentation. The contention that the public good requires the publication of the news of the day even though such news be malicious falsehood and slander is without any merit whatever. The public press is not licensed to do evil even under the misapprehension that good may result therefrom. The public press has no more license to publish falsehood and defamation than has a private individual. If there be a sentiment among the people demanding the publication of falsehood and calumny, and charging courts with selling their decisions, it must have been formed very recently from the utterances and publications of yellow journals and muck-raking magazines and violent and depraved agitators who seek to annul the constitution of the United States and the constitutions of the several states, and who have vilified and undertaken to degrade the courts established by the people themselves. But we do not believe there is a public sentiment in this state that demands that the public press make false charges against the courts in order that good may come therefrom or to promote some contemplated reform. It has been universally recognized that injury would flow from unbridled tongues and pens, and by conceding to the courts the power to punish contempts against them, generally the people have recognized since the foundation of our government the trustworthiness of the judiciary in vindicating by summary process their own authority and dignity, and not a single instance of the abuse of that inherent power has been called to our attention.

"In *re Cheseman*, 49 N. J. L. 137, 60 Am. Rep. 596, the court said: 'The importance of the "liberty of the press" is urged upon us. We do not underestimate it; but after all, the liberty of the press is only the liberty which every man has to utter his sentiments, and can be enjoyed only in subjection to that precept both of law and morals, *Sic utere tuo ut alienum non laedas*. Use your own in order that you may not injure another's.' In a government where order is secured, not so much by force as by the respect which citizens entertain for the law and those charged with its administration, nothing tends to preserve that respect from forfeiture, on the one hand, and detraction, on the other, can be hostile to the commonwealth.

"Misrepresentation and falsehood are not justifiable criticisms; they are not criticism at all and the Defendants Sheridan and Broxon in this proceeding have attempted in their answer to justify their misrepresentation and

falsehood in regard to said decision of this court on the ground of the great public interests involved. But as before stated, great or any public interest does not demand the malicious defamation and vilification of our courts.

"The information states a cause of contempt.

"(2) It is next contended by counsel that the state should have been made the plaintiff in this proceeding. That contention is without merit as this is not a criminal action but a proceeding to punish summarily for contempt and the statute does not require that such proceedings be brought in the name of the state. Certain contempts, however, are made crimes by our statute and are punishable by information or indictment the same as any other crime, and in such an action the state must be made a plaintiff. But in a proceeding for contempt, it is not necessary to name the state as plaintiff. In the punishment of crimes on information and indictment, the defendant is entitled to a jury; but not so in contempt proceedings.

"It was held in *re Debs*, 158 U. S. 594, 39 L. Ed. 1092, that one accused of contempt is not entitled to a jury trial; and in *re Fellerman*, 149 Fed. 244, the court held that a contempt proceeding is not a criminal action, and that it may be considered as having the same meaning as a misdemeanor but it differs from it in this, that it is not indictable but punishable summarily. No court has ever held that a party is entitled to a trial by jury in a proceeding for contempt. It must therefore follow that the rules regarding the trial for crimes by information or indictment are not applicable to proceedings for contempt. We have no statute requiring contempt proceedings to be brought in the name of the state. In the *Chadwick* case, 109 Mich. 558, the contempt proceeding was entitled '*re Chadwick*.' In a New Mexico contempt proceeding against Hughes et al. the case was entitled '*In re Hughes et al.*' This proceeding was begun in the name of and by the attorney general of the state and was properly brought in that name. There is, therefore, nothing in the contention that the state should have been named as plaintiff.

"(3) The third point contended for by counsel for the Defendants Sheridan and Broxon was that the publications referred to in the information were made in regard to the decision of the court in the case of the state of Idaho on the relation of Spofford versus W. L. Gifford, as secretary of the state of Idaho, and that said case had been finally determined and was not pending before the court at the time said publications were made.

"The original decision in that case was handed down on the 8th of October, 1912, and the petition for rehearing was filed on the 15th of October, which was considered by the court and denied on the 23rd of October, 1912. The cause was therefore pending until the petition for rehearing was determined, and the principal publications and articles referred to in said information were published prior to that date. Those published after and attached to said information simply show the viciousness of the former publications.

"At the time the Spofford-Gifford case was decided, the court concluded it would give the usual time for presenting a petition for rehearing. After the opinion in said case was filed, there was much newspaper talk about a petition for a rehearing and on the 15th of October, 1912, after the time for rehearing was filed on the 15th of October, which was considered by the court and denied on the 23rd of October, 1912. The cause was therefore pending until the petition for rehearing was determined, and the principal publications and articles referred to in said information were published prior to that date. Those published after and attached to said information simply show the viciousness of the former publications.

"The reason for the strict rule in regard to contempt cases is obvious to any earnest student of our republican institutions. The language used in the editorials and articles attached to the information has the effect of destroying in a measure at least public confidence in the highest judicial tribunal of the state, thus impairing respect for the authority of the court. If any considerable portion of the people is led to believe that the highest court of the state is guilty of selling its opinions and decisions, and that they cannot rely upon the courts to administer justice, the result may be mob violence with all its detestable features.

"Any tribunal that cannot tolerate criticism of its decisions is justly entitled to contempt, but on the other hand, little respect is due a court that will hesitate to check or discipline those who vilify and maliciously misrepresent it with the object and purpose of degrading it and bringing it into contempt. The court is charged by said articles with depriving the people of the right to vote in violation of law. Is it possible to stab the court more fatally than charging that by its decision it has in violation of law deprived the people of the right to vote? I think not. No court objects to having its decisions honestly criticized either as to the law or facts, but it is not criticism to impute base motives and dishonesty to the court in rendering its decisions. Show by fair criticism that a decision is contrary to the law or facts and no court would object to such criticism. The freest criticism of all decisions of the court is allowed and invited, but criticism ceases and contempt begins when malicious slander, vilification and defamation bring the courts and the administration of the law into dishonor and disrepute among the people.

"In *re Breen* (Nev.), 93 Pac. 997, the court correctly held that one may criticize the opinion of the court, take issue with it in its conclusions of law and question its conception of the facts, so long as his criticisms are made in good faith and in ordinarily respectful language, and when not designed to vilify or maliciously misrepresent the position of the court, or to bring it into disrepute, or to lessen the respect due the authority to which a court is entitled.

"Assailing the constitution as anti-

the administration of justice and that the moment that courts of the United States were called into existence and vested with jurisdiction over any subject, they became possessed of this inherent power. *Ex parte Terry*, 128 U. S. 289, 32 L. Ed. 405; *In re Debs*, 158 U. S. 565, 39 L. Ed. 1092.

"It was held in *State v. Howell* (Conn.), 69 Atl. 1057, that the power to punish contempts is inherent in courts of record to enable them to preserve their own dignity and duly administer justice. *In re Woolley* (Ky.), 11 Bush, 95; *Cooper v. People*, 13 Colo. 337; *In re Chadwick*, 109 Mich. 559.

"Numerous cases are cited in the latter opinion holding that the power to punish for contempts is inherent in all courts of record. *People v. News-Times Pub. Co.* (Colo.), 84 Pac. 912; *State v. Woodfin*, 27 N. C. (5 Fred.) 199, 42 Am. Dec. 151; *In re W. Merrill*, 16 Ark. 384, the court held that the power to punish for contempt was inherent in courts of justice as a necessary incident to the exercise of the powers conferred upon them. *In re Perkins*, 100 Fed. 950; *State ex rel. Attorney General v. The Circuit Court*, 97 Wis. 1.

"In *re Woolley*, 11 Bush, 95, the court held that the inherent right in the court to punish for contempt was not derived from the legislature and that such power could not be made to depend upon the will of the legislature. In *Hale v. The State* (Ohio), 36 L. R. A. 254, the court held that the legislature was without authority to abridge the power of a court created by the constitution to punish contempts summarily, such power being inherent and necessary to the exercise of judicial functions.

"The legislature has not the authority to restrict the inherent power of the court to punish for contempt, for if it has the power to restrict such right, where will the line be drawn? If it could abridge the right, it could so minimize it as to make it ineffective for any purpose.

"In matters of contempt a jury is not required to try the matter under that provision of the constitution providing for 'due process of law.' *Interstate Commerce Com. v. Brimson*, 154 U. S. 447, 38 L. Ed. 1647; *Ellenbecker v. The District Court*, 134 U. S. 30, 33 L. Ed. 801. In the latter case it was held that the power to punish for contempt was inherent in the courts without the necessity of calling upon a jury to assist the court in the exercise of this power. *In re Fellerman*, 149 Fed. 244, the court held that a person charged with contempt was not entitled to a jury trial and that the rules regarding indictments were not applicable to such proceedings.

"In regard to punishment of contempts by courts under the statutes of this state. Sec. 5155 provides that certain acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court, and then proceeds to define 12 different acts or omissions. Said section does not declare that the contempts therein mentioned are misdemeanors or other crimes.

"Under the foregoing provisions of our statute, judgments and orders in contempt proceedings are made final and conclusive and certain contempts may be punished as a misdemeanor and also as a contempt. It is also provided that certain contempts are misdemeanors and also that a criminal act is not the less punishable as a crime because it is punishable as a contempt. The statute in no manner interferes or could interfere with the inherent power of the court to punish for contempt.

"As appears by the authorities heretofore cited, the inherent power of the court to punish for contempt cannot be interfered with or abridged by the legislature, at least so far as courts of record are concerned. While the legislature may prescribe any reasonable proceedings to be followed in contempt proceedings, it has failed to do so, and hence the provisions of our statute, when proceedings are not provided by the legislature, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the code. (See section 3925, revised codes.)

"The reason for the strict rule in regard to contempt cases is obvious to any earnest student of our republican institutions. The language used in the editorials and articles attached to the information has the effect of destroying in a measure at least public confidence in the highest judicial tribunal of the state, thus impairing respect for the authority of the court. If any considerable portion of the people is led to believe that the highest court of the state is guilty of selling its opinions and decisions, and that they cannot rely upon the courts to administer justice, the result may be mob violence with all its detestable features.

"Any tribunal that cannot tolerate criticism of its decisions is justly entitled to contempt, but on the other hand, little respect is due a court that will hesitate to check or discipline those who vilify and maliciously misrepresent it with the object and purpose of degrading it and bringing it into contempt. The court is charged by said articles with depriving the people of the right to vote in violation of law. Is it possible to stab the court more fatally than charging that by its decision it has in violation of law deprived the people of the right to vote? I think not. No court objects to having its decisions honestly criticized either as to the law or facts, but it is not criticism to impute base motives and dishonesty to the court in rendering its decisions. Show by fair criticism that a decision is contrary to the law or facts and no court would object to such criticism. The freest criticism of all decisions of the court is allowed and invited, but criticism ceases and contempt begins when malicious slander, vilification and defamation bring the courts and the administration of the law into dishonor and disrepute among the people.

"In *re Breen* (Nev.), 93 Pac. 997, the court correctly held that one may criticize the opinion of the court, take issue with it in its conclusions of law and question its conception of the facts, so long as his criticisms are made in good faith and in ordinarily respectful language, and when not designed to vilify or maliciously misrepresent the position of the court, or to bring it into disrepute, or to lessen the respect due the authority to which a court is entitled.

"Assailing the constitution as anti-

quated, holding the laws in contempt and vilifying the courts through the yellow journals of the country, have encouraged criminals in their criminal acts and the result has been an unprecedented wave of crime over our country. More than a hundred criminal cases of dynamiting, the destruction of vast amounts of property and the murder of scores of innocent persons have been the result of those criminal acts. And the criminals have received great encouragement from the scurrilous, villainous and criminal publications of such journals. Courts have been almost powerless in the matter because of the corruption and intimidation practiced by such criminals and journals on the people and juries. For making and yellow journals are largely responsible and the result has been that but very few of the criminals have been convicted. The tide, however, seems to be turning. Two dynamiters pleaded guilty and a jury has recently found 35 more guilty. If the public press can do those things with impunity, the average citizen or jurymen cannot be expected to hold the courts or the law in very high respect and enforce or feel much inclination to enforce the law as jurymen.

"If the time has arrived in this country when the courts may be vilified, abused, unjustly and without any foundation in truth, and are deprived of the right to punish for contempt, the plan adopted by the founders of our government to have a co-ordinate branch of the government in the judiciary had as well be abandoned and let every man be a law unto himself and let anarchy and 'mob-ocracy' reign.

Demurrer Overruled.

"The demurrer to the complaint must be overruled and it is so ordered. On the 20th of December, 1912, the defendants Sheridan and Broxon filed an answer."

"After completely reviewing the evidence in the case the opinion continues:

No Evidence.

"The foregoing is the substance of the evidence introduced on the trial so far as Cruzen was concerned. The attorney general thereupon offered in evidence the information and the exhibits attached thereto in the case of Broxon and Sheridan. No objection being made thereto, the same were received and counsel for Broxon and Sheridan declined to introduce any evidence whatever on their behalf. Thereafter the case was argued to the court by A. A. Fraser, Esq., on behalf of Cruzen, and the attorney general on behalf of the plaintiff. Counsel for Sheridan and Broxon declined to make an argument in the case and the case was taken under advisement by the court.

"The maliciousness of the defendants as shown by the fact that they did not publish the decision in the Spofford-Gifford case so that the readers of the Evening Capital News might determine for themselves the conclusions reached by the court and the reasons given for those conclusions, but they maliciously and wilfully misrepresented said decision in order to deceive its readers and vilify the court.

"Sheridan and Broxon by their failure to answer after the demurrer to their answer had been sustained, admitted the allegations of the information so far as they were concerned and the court holds that said editorials and articles so published are contemptuous and defamatory of the court and that said defendants are guilty of contempt of this court.

"As to the defendant, Cruzen, he admits that he was very friendly with Sheridan and Broxon and the Capital News, had frequent interviews with them, visited the office of the Capital News frequently; that Sheridan and Broxon came to his office at his call over the telephone; that they discussed the political policy of the paper; that the policy pursued was mostly in accord with the views of Cruzen; that candidates for political offices who sought favor with that paper consulted with Cruzen and that the political policy pursued by the paper was substantially in accord with Cruzen's views; that he foretold what the policy of the paper would be in certain matters before it adopted such policy; that he told numerous persons, many of them the leading citizens of the state, that he controlled the political policy of that paper, and those statements are corroborated by the policy pursued by the paper, regardless of the testimony of Broxon who was merely hired by the month to write for the paper, that he controlled its political policy.

Broxon testified that he controlled and dictated the policy of the publication of the editorials and other articles on which this contempt proceeding is based. However, all of the testimony when taken together shows that that conclusion of the witness is not correct. He testified to a conclusion or ultimate fact. A conclusion or ultimate fact is established by probative facts, and the probative facts as revealed by all of the testimony do not establish the truth of that ultimate fact or conclusion testified to by him.

"The probative facts show that he did not have control and dictate the policy of the Capital News nor that he was the only one responsible for the editorials and articles on which this contempt proceeding is based. The evidence shows that Broxon did not have that exclusive honor but that Sheridan and Cruzen shared it with him. Broxon's testimony on that point is only his conclusion formed in his own mind, but the probative facts do not sustain him in that conclusion. One of the questions in this case is who is responsible for said publications and that question must be determined by this court from all of the evidence and not from the testimony of a single witness who swears to the bald conclusion that he is or is not responsible. The same may be said of Cruzen's testimony wherein he stated that he had no control or influence in the publication of said articles. However, the testimony shows that Sheridan was the owner and manager of said paper and Broxon testified that he and Sheridan had no disagreements over the policy of the paper and when not designed to vilify or maliciously misrepresent the position of the court, or to bring it into disrepute, or to lessen the respect due the authority to which a court is entitled.

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sometimes not; that a case had never arisen where they had disagreed as to the policy of the paper, and simply because there were no disagreements between Sheridan and Broxon. Broxon evidently concluded, even though he were only an employe, that he controlled the political policy of that newspaper. The evidence shows that Cruzen and Sheridan were quite frequently together either at Cruzen's office or at Sheridan's office, and discussed politics and that Broxon also discussed politics with Cruzen, and while Broxon testified positively on his direct examination that he did not show certain articles to Cruzen before they were published, on cross-examination he admits that he may have done so but had no recollection of it; that he worked in absolute harmony with Sheridan, and the evidence shows that Sheridan and Cruzen were in harmony on the general political policies of the paper, and consulted very frequently together. Broxon admitted that he talked with Cruzen in regard to some of said articles after they were published but did not recollect whether or not he talked with him about them before they were published. He also testified that during the campaign he went to Cruzen's office and that he did discuss some of those publications with Cruzen; that Cruzen doubted the advisability of publishing some of said articles and of what Broxon had said in them. Why should Cruzen doubt the advisability of any article Broxon said in those articles if he had no right to advise in the matter? He also testified that he and Cruzen were very much interested in the campaign and that Cruzen was frequently in Broxon's office during the campaign. Broxon, as a witness for himself, admitted that he had told many people that he controlled the political policy of the Evening Capital News. He apparently made these statements in regard to that matter when there was no inducement for him to misrepresent. However, he testified that he did it as a 'political stunt' whatever that may be. But all of the facts and circumstances surrounding the matter show that he was very much interested in the campaign and was very much interested in consultation with Sheridan and Broxon and that the Capital News advocated the political policy which was in accord with Cruzen's views, so far as said publications were concerned. He admits that he told many of the leading citizens of Boise and politicians that he controlled the Capital News, and office-seekers sought him out of Sheridan and Broxon to procure the favors of that paper in their political aspirations. After informing so many people that he had control of the Capital News, it seems that he was willing to have that distinction until he was confronted by a contempt proceeding, and then he went on the stand and testified that he had been lying about his control of said paper, and testified to the effect that he had no influence or control over it. Taking Broxon's entire testimony, it does not corroborate Cruzen in his sworn statement that he exercised no influence in controlling the political policy of said newspaper, but does corroborate the statement made by Cruzen to many people to the effect that he did exercise some influence in the publication of said articles. Regardless of the positive sworn statement of Cruzen, the facts, circumstances and probabilities of the case are all against him, and clearly support the view that he was telling the truth when he told so many people that he was controlling the political policies of that paper during the last campaign, and not telling the truth when on the witness stand he testified that he had no influence or control over it. 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