

A. D. J. KING, Petitioner, v. **JOS. R. MOORE**, Respondent.

RE- SUBMITTED FEBRUARY 17, 1911. DECIDED FEBRUARY 24, 1911.

Toliver, C. J., Wood and McCants-Stewart, JJ.

To constitute a contempt, there must be improper conduct in the presence of the court, or so near thereto as to interrupt or interfere with its proceedings; or some act must be done not necessarily in the presence of the court, which tends to adversely affect the administration of justice.

Mr. Justice McCants-Stewart delivered the opinion of the court :

Contempt—Certiorari to Review Proceedings. This case comes before us on a writ of certiorari granted petitioner.

The petitioner was arrested by order of respondent, who is the judge of the Court of Quarter Sessions and Common Pleas of Grand Bassa County ; and petitioner was found guilty of contempt of court and fined twenty-five dollars and costs.

The undisputed facts are stated in petitioner's petition, as follows :

"One J. J. Gerring was duly summoned as a grand juror for the June term of court, 1909, and in keeping with the long established practice when one is unable to attend court, to send a substitute, the said J. J. Gerring by written communication to the judge and sheriff of said county substituted your humble petitioner; and before the convening of, said court one Joseph R. Moore went about the streets of the City of Edina speaking disparagingly about your petitioner, to wit : 'That Jacob P. King looked like a grand juror,' as though he, your petitioner, was a disfranchised citizen. Said information being conveyed to your petitioner as to the words used by the said Joseph R. Moore, he, your petitioner, on the 26th of June, 1909, in the City of Edina, went in a peaceable manner and inquired from the said Joseph R. Moore the cause of said remarks, which he in answer said, that your petitioner must get off his lazy self and stop waiting to get in court, which occasioned a quarrel; and on Monday, the 28th of June, 1909, your petitioner was arrested by an order of the said Joseph R. Moore for contempt of court, and on the 1st day of July, 1909, imposed a fine and costs on your petitioner amounting to \$31.00."

The controversy between the petitioner and respondent was a personal quarrel. The judge should not have allowed himself to be drawn into it. Unfortunately, he became

so incensed that he brought his judicial power into use, and committed a wrong against a citizen by arresting him without just cause.

Judges should be careful and conservative in the use of process for contempt, as the liberty of the citizen is above the dignity of the judge.

To constitute a contempt there must be improper conduct in the presence of the court, or so near thereto as to interrupt or interfere with its proceedings; or some act must be done, not necessarily in the presence of the court, which tends to adversely affect the administration of justice.

In this case, there was no court in session; nor was the petitioner interfering in any respect with the machinery of justice. He met the judge upon a public street and asked him for an explanation of certain derogatory remarks which the judge had been making about him. Whereupon a private quarrel ensued, and the judge smarting under it unlawfully directed the clerk of the court to issue a warrant of arrest against the petitioner. Whereupon petitioner was arrested and fined for contempt of court.

Such conduct on the part of a judge deserves severe censure. He is charged with the responsibility of upholding the Constitution and the laws, and he should not violate them; he is the guardian of the liberty of the citizen and he should not destroy it. He should be unto the people an example of forbearance and patience. Having great power, he should be slow to use it.

The fine for contempt was illegally imposed, and it is void ; and the respondent should pay the amount of such fine to the petitioner with interest at the rate of six per cent per annum, and the costs of this proceeding, the same to be paid by respondent within thirty days from the receipt by him of a certified copy of the judgment herein from the clerk of this court ; and upon respondent's failure so to do, the judge of the Court of Quarter Sessions and Common Pleas for Grand Bassa County should be directed to issue execution for said amount ; and it is so ordered.

P. J. L. Brumskine, for petitioner. *Joseph R. Moore* in person.