

sections. Such a construction gives an appropriate meaning to each section and avoids what, it seems to me, might result in illegal discrimination.

As amended in 1935, the same subject is dealt with by said section as was embraced in the original section, providing, however, a different method of sale. Instead of offering a part of one tract for the delinquency on *all* tracts, the section now requires the offering of a part of each tract for the delinquency on that tract alone. If the bid is not sufficient, then the entire of the separate tract is to be offered "to the highest bidder for cash." This is the same language as was used in the original section and which, as we have pointed out, was never deemed to require the sale for less than the amount due except under the circumstances set out in said section 261; and we see no reason requiring a different construction of the language as used in the amended section 265. Indeed, the language, literally interpreted, does not require a sale upon an insufficient bid. It requires only an offer.

In my opinion chapter 262 of the Acts of 1935 amending section 265 of chapter 59 of the Acts of 1919 does not repeal section 261 of the 1919 Act, *supra*.

**FARM, INDIANA STATE: Contempt, imprisonment for—
civil and criminal contempt—term and place of confinement.**

January 16, 1937.

Hon. Ralph Howard,
Supt. Indiana State Farm,
Rural Route No. 2,
Greencastle, Indiana.

Dear Mr. Howard:

I have at hand your inquiry concerning a commitment of one Frederick S. Cook, No. 77246, received by your institution from the Marshall Circuit Court. The commitment in question reads in part as follows:

"Comes now the plaintiff, by George F. Stevens, her attorney, comes also the defendant in person, and the court finds that the defendant Frederick Cook, is 36 years of age, and that said defendant is guilty of the

crime charged namely: Contempt of Court, failure to comply with order of court.

"It is by the court, therefore, ordered and adjudged that the said defendant for the offense by him committed, that he be imprisoned in the Indiana State Farm, until defendant pays to the clerk of the Marshall Circuit Court the sum of \$75.00 for benefit of plaintiff for support of children of parties."

You ask if you are correct in assuming that the prisoner should be released at the end of seventy-five (75) days if the said sum of \$75.00 is not paid.

From the portion of the commitment quoted above, which is the only part of the commitment or of the court record with which I have been furnished, it would appear that the judgment of imprisonment was entered in a *civil* contempt proceeding, as distinguished from a prosecution for *criminal* contempt. Apparently the proceeding was brought by affidavit, motion or petition in the divorce action out of which it arose, instead of being filed as an independent action brought in the name of the State of Indiana and prosecuted by the prosecuting attorney, which are necessary and distinguishing incidents of an action for criminal contempt.

Denny v. State, 203 Ind. 682, 706-708.

Furthermore, it is obvious that the contempt proceedings in this case were instituted for the purpose of *enforcing or protecting the rights of the complainant* in the divorce action, and that the imprisonment was adjudged as a *coercive* measure. This is another matter of distinction between actions in civil contempt and those in criminal contempt, as in the latter class of actions the imprisonment is *punitive* in purpose and is designed to punish a contempt which is "characterized by a deliberate intention to defy the authority of the court."

Denny v. State, *supra*;

• Perry v. Pernet, 165 Ind. 67.

Since the action was for civil contempt, the imprisonment is not governed by the provisions of section 3-906, Burns Annotated Indiana Statutes, 1933 Revision, which limits the punishment to a fine not exceeding \$500.00 or imprisonment not exceeding three months, or both.

Section 3-906, Burns Ann. Ind. Statutes, 1933;
Section 3-910, Burns Ann. Ind. Statutes, 1933;
Perry v. Pernet, *supra*;
Muchliki v. Woefel, 192 Ind. 62.

Where, as in the instant case, the action was for civil contempt and the object was not to punish for an act done in contempt of court but to compel the defendant to pay the amount due under an order of court in a divorce action for payment of support money for a wife or children, the imprisonment is not for a definite term but until the amount is paid or until the defendant is discharged by further order of the court.

Perry v. Pernet, *supra*.

Consequently, in my opinion the term of imprisonment of the prisoner in question will not expire automatically at the expiration of seventy-five (75) days, but will continue until the said amount is paid as ordered, or until further order of the court releasing or discharging him from such imprisonment. However, it is my further opinion that this prisoner properly should have been imprisoned in the county jail, and not committed to your institution, since the statute regulating commitments to the Indiana State Farm authorizes such commitments only upon conviction of "violation of *any criminal law* of this state now in force or hereafter enacted, or of *any ordinance* now in force or hereafter enacted." (Section 13-507, Burns Annotated Indiana Statutes, 1933). Our italics.)

It is apparent in the instant case that the defendant was not committed in violation of a criminal statute or of an ordinance, but was sentenced for civil contempt.