

Sec. 1—Judicial Power, Courts, Judges

United Mine Workers,²³⁴ the Court held, first, that disobedience of a temporary restraining order issued for the purpose of maintaining existing conditions, pending the determination of the court's jurisdiction, is punishable as criminal contempt where the issue is not frivolous, but substantial.²³⁵ Second, the Court held that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings, even though the statute under which the order is issued is unconstitutional.²³⁶ Third, on the basis of *United States v. Shipp*,²³⁷ the Court held that violations of a court's order are punishable as criminal contempt, even if the order is set aside on appeal as in excess of the court's jurisdiction and even if the basic action has become moot.²³⁸ Finally, the Court held that conduct can amount to both civil and criminal contempt, and the same acts may justify a court in resorting to coercive and punitive measures, which may be imposed in a single proceeding.²³⁹

***Contempt Power in Aid of Administrative Power.*—**

Proceedings to enforce the orders of administrative agencies and subpoenas issued by them to appear and produce testimony have become increasingly common since the leading case of *ICC v. Brimson*,²⁴⁰ which held that the contempt power of the courts might by statutory authorization be used to aid the Interstate Commerce Commission in enforcing compliance with its orders. In 1947 a proceeding to enforce a *subpoena duces tecum* issued by the Securities and Exchange Commission during the course of an investigation was ruled to be civil in character on the ground that the only sanction was a penalty designed to compel obedience. The Court then enunciated the principle that, where a fine or imprisonment imposed on the contemnor is designed to coerce him to do what he has refused to do, the proceeding is one for civil contempt.²⁴¹ Notwithstanding the power of administrative agencies to cite an individual for con-

²³⁴ 330 U.S. 258 (1947). See also *International Union, UMW v. Bagwell*, 512 U.S. 821 (1994).

²³⁵ 330 U.S. at 292–93.

²³⁶ 330 U.S. at 293. See *Walker v. City of Birmingham*, 388 U.S. 307 (1967).

²³⁷ 203 U.S. 563 (1906).

²³⁸ 330 U.S. at 290–92.

²³⁹ 330 U.S. at 299. But see *Cheff v. Schnackenberg*, 384 U.S. 273 (1966), and “Due Process Limitations on Contempt Power: Right to Jury Trial,” *supra*.

²⁴⁰ 154 U.S. 447 (1894).

²⁴¹ *Penfield Co. v. SEC*, 330 U.S. 585 (1947). Note the dissent of Justice Frankfurter. For delegations of the subpoena power to administrative agencies and the use of judicial process to enforce them, see also *McCrone v. United States*, 307 U.S. 61 (1939); *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501 (1943); *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946).