Security Storage and Trust Co. v. Martin (Md., 1924), 125 A. 449; and Harland v. Pe Ell State Bank (1922), 122 Wash. 289, 210 P. 681. Of some interest is the case of Young v. First. Nat. Bank of Oneida (1924), 150 Tenn. 451, 265 S. W. 681, where it was held that proof that a country bank, which did not represent or advertise that its safe deposit boxes were burglar proof, did not employ a night watchman, only kept the electric lights burning in the bank until approximately 11:00 p. m., did not equip the building with a burglar alarm, and deposited its own securities in a screw door steel safe, did not show lack of ordinary care to protect the plaintiff's bonds deposited in a safe deposit box from burglary. The matter may well be summed up in the words of St. Sure, J., in the case of Webber v. Bank of Tracy (1924), 66 Cal. App. 29, 225 P. 41, where he said: "In the absence of any stipulation between the parties, the limit of a bailee's obligation is the exercise of ordinary care, and he cannot be said to be an insurer of the property against theft, if he has exercised such care. * * * * It would seem that the ordinary care required of a bank in a case like this is that the construction of the bank building and the methods of protection and the general conduct of its business should conform to those of banks in similar communities." It was then held that the bank's negligence in caring for the contents of safe deposit boxes in the burglarized vault was not inferable from its failure to keep them behind the stronger door of the vault, where the bank was accustomed to use the same boxes for its own money and bonds. It was further held that a country bank conforming to the practice of all other such banks in the state of like population and character in maintaining safe deposit vaults in a building as good or better than the ordinary country bank building with the usual interior arrangement, and protecting the vault by doors similar to those of other such banks in similar sized communities, was not liable for the loss of the contents of safe deposit boxes by burglary, though it had neither a night watchman nor a burglar alarm, which no such bank in the state had up to the time of the burglary. J. T. B., '26.

CONTEMPT OF COURT—BILL OF EXCEPTIONS—INTENT. —United States v. Ford, 9 Fed. (2d) 990 (1925).

Defendant, an attorney, in a trial in which he was of counsel, filed a bill of exceptions containing 55 exceptions of which 27 were untrue in fact. One of his assignments of error was that the trial court erred

in denying his motion for a directed verdict. In fact no such motion was made. The bill of exceptions and assignments of error were drawn up for defendant by another person, and defendant disclaimed any knowledge of them until they were called to his attention by the opposing counsel, whereupon he struck out the untrue statements. He also disclaimed any knowledge of how the false exceptions had come into the bill, and any intent to deceive the court. But he made no attempt to explain the presence of the statements, and did not positively deny having dictated them. *Held,* the filing of such false bill of exceptions and assignments of error was punishable as a contempt of court. Though the language of the court indicated a strong suspicion that the act was willful, it further held that the absence of actual knowledge of the contents of documents which counsel presents to the court, and of malicious intent, is no defense, but only an extenuating circumstance going to mitigate the punishment.

It is a well established principle that it is the act, not the intent, which constitutes a contempt, and that absence of malice at most mitigates the penalty. The following cases illustrate this principle; but in each case the nature of the particular act constituting the contempt has some bearing on the question, as it is easier to imply the intent from the act in some cases than in others. In re Braun, 259 F. 309 (disobedience to court order); Wilcox Silver Plate Co. v. Schimmel et al., 59 Mich. 524, 26 N. W. 692 (disobeying injunction); Barber v. George P. Jones Shoe Co., 120 A. 80 (N. H.) (disregard of oral agreement with opposing counsel and court order to put it into written motion); Kneisel et al. v. Ursus Motor Co., People v Gilmore, 316 Ill. 336, 147 N. E. 243 (filing petition without leave of court); Wartman v. Wartman, Taney 362, Fed. Cas. No. 17, 210 (parting with trust fund pending disposition by court); Terry et al. v. State, 77 Neb. 612, 110 N. W. 733 (repeating application for habeas corpus after another has been refused on the same facts); Levinstein v. E. I. Du Pont de Nemours & Co., 258 F. 662 (refusing to testify); State v. Kaiser, 25 N. M. 245, 181 P. 278 (bribery and intimidation of witness); McDougall v. Sheridan et al., 23 Idaho 191, 128 P. 954 (publication attacking integrity of court); People v. Wilson, 64 Ill. 195, 16 Am. Rep. 528 (semble); State v. Howell, 80 Conn. 668, 69 A. 1057 (publication tending to obstruct the administration of justice); In re Chartz, 29 Nev. 110, 85 P. 352, 124 A. S. R. 915, 5 L. R. A. (N. S.) 916 (charges of corruption against court); Coons v. State, 191 Ind. 580, 134 N. E. 194 (accusations against judge by grand jury in its report); Dodge v. State, 140 Ind. 284, 39 N. E. 745 (insulting language

of counsel toward court); United States v. Anonymous, 21 F. 761 (interrupting examination of witness). In re P., 83 N. J. Eq. 390, 91 A. 326 (see below); State v. Finley, 30 Fla. 325, 11 So. 674, 18 L. R. A. 401 (see below). A few old cases are contra. Bond v. Bond, 69 N. C. 97 (disobedience to court order); Wells v. Commonwealth, 21 Grat. (Va.) 500 (attorney in good faith aiding in obstructing decree of court); Lightfoot & Flanders v. Freeman, 54 Ga. 215 (sheriff in good faith committing breach of duty involving decision of a difficult point of law); and the following cases of publishing contemptuous articles without wrongful intent: Ex parte Biggs, 64 N. C. 202; In re Moore et al., 63 N. C. 397; In re Walker, 82 N. C. 95; Buck v. Buck, 60 Ill. 105 (but see People v. Wilson, supra). An interesting group of decisions are those holding that publications alleged to be contemptuous, if capable of an innocent interpretation, are contemptuous only if the intent is malicious, but if they allow of only one construction, the intent is to be conclusively presumed from the act of publication. In re Wooley, 11 Bush (Ky.) 111; Fishback v. State, 131 Ind. 304, 30 N. E. 1088; In re Chadwick, 109 Mich. 588, 67 N. W. 1071; In re Fite, 11 Ga. App. 665, 76 S. E. 397. In re Hickey, 258 S. W. 417 (Tenn., 1924) deserves special mention because of its recency. It holds that an article charging a judge with incompetency is not a contempt, if it does not relate to a pending suit nor attack the judge's integrity, and no intent to attack his integrity is proved.

The cases most nearly resembling the instant case in their facts are those holding the following acts to be contemptuous: addition of immaterial words by an attorney to a decree of court after it has been signed (State v. Finley, supra, holding said act no ground for disbarment in absence of malice, but contemptuous); insertion by solicitor in chancery in decree of Vice-Chancellor, before he has signed it and without his knowledge, words which the solicitor thought had been unintentionally struck out (In re P., supra, also holding it no ground for a disbarment, though a contempt); knowingly interposing a false answer in a case (In re Hall, 85 Hun 620, decision in case not reported); submission by coroner to court of bill for services at inquest, containing false statements of fact (Ex parte Toepel, 139 Mich. 85, 102 N. W. 369); false statement by attorney of purpose for which evidence is introduced (Goodhart v. State, 84 Conn. 60, 78 A. 853); antedating filing of a paper by clerk of court, and inducing him to do so by attorney (Howard v. Gulf, C. & S. F. Ry. Co., 135 S. W. 707 (Tex. Cv. A.), holding the acts grounds as well for removal from office and disbarment, respectively). In the case of In re Jones, 103 Cal. 397,

37 P. 385, an attorney was penalized as for a contempt for what was in effect a false statement of law, rather than of fact, in presenting an affidavit for change of venue on the ground of partiality of the judge, where the statute did not authorize a change of venue on that ground. F. W. F., '27.

DOMESTIC RELATIONS—DIVORCE — VOLUNTARY SEPARATION.—Stitterson v. Stitterson, 131 S. E. 641, March 3, 1926.

This case arose in North Carolina under a statute providing for the allowance of absolute divorce by either party upon showing of (1) a separation lasting over a period of five years and (2) residence by the plaintiff within the state during that period. Mrs. Stitterson asked for a divorce under this statute, her husband having been sentenced to the penitentiary for twenty years and having been in prison for more than five years preceding the bringing of the action. North Carolina does not allow divorce for a felony committed by the other party so that Mrs. Stitterson's right to divorce depended entirely upon the statute. All these facts as stated and the plaintiff's required residence were proved. The court held that the statute was not intended to cover cases of "involuntary" separation; that, while the husband's commission of the crime was certainly voluntary, yet the sentencing of the husband was involuntary "and since this was the direct cause of the separation, the separation must be deemed involuntary; that therefore Mrs. Stitterson was not entitled to a divorce under and by virtue of the statute.

Several other states (Kentucky, Wisconsin, Rhode Island, and Louisiana) have statutes of a like nature. One of the statutes states that the separation must be voluntary. In the other states it has been decided by judicial decision that the separation must be voluntary whether it is so provided by the statute or not. Ferguson v. Ferguson, 8 Ky. L. Rep. 428; Thompson v. Thompson, 53 Wis. 153. In Rhode Island there has been no decision, to my knowledge, under the statute.

All of the courts have been very strict in construing these statutes, prehaps because all divorce statutes are in derogation of the common law. McDougal v. McDougal, 5 Wash. 802; Olson v. Olson, 28 Pa. Super. Ct. 128. Whatever the cause, the result has been that all courts have decided that the separation must be voluntary and that whenever possible the courts have decided disputed facts to indicate an involun-