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Consitutional Law—Courts—Power over Admissions to Bar

infrequent suits of individuals. The rule of exemption was not adopted with such institutions in mind. Neither was it contemplated that insurance could be successfully used to preserve charitable funds from damage claims. As times passes, it becomes increasingly difficult to justify the application of the rule to any circumstances, and no justification whatever exists in cases where insurance is carried. J. A. G., '31.

CONSTITUTIONAL LAW—COURTS—POWER OVER ADMISSIONS TO BAR.—An applicant to the bar had passed the educational test, but the board of bar examiners refused to grant him a certificate of good moral character. On application, the Supreme Court admitted him to practice despite the failure to obtain the required certificate, on the ground that it believed his character to be good. *Brydonjack v. State Bar of California* (Cal. 1929) 281 Pac. 1018. The court declared that its decision was not necessarily contrary to the statute creating the board, but the real issue was as to the legislature's power to regulate the bar.

Since attorneys are officers of the court, the power to admit applicants to practice is judicial and not legislative. But decisions generally concede that the legislature may, in the exercise of its police power, prescribe reasonable rules and regulations for admission to the bar. 6 C. J. 571, 2. With this as a basis, it has usually been held that compliance with statutory requirements does not make the practice of law a matter of right and that courts may impose additional requirements upon applicants. *Olmsted's Case* (1928) 292 Pa. 98, 140 Atl. 634; *In re Peters* (1927) 221 App. Div. 607, 225 N. Y. S. 144, *aff'd* 250 N. Y. 595, 166 N. E. 337; *In re Platz* (1913) 42 Utah 439, 132 Pac. 390. The only case which directly opposes this doctrine is *In re Applicants for License to Practice Law* (1906) 143 N. C. 1, 55 S. E. 635, in which two judges dissented.

The question raised by the principal case, however, is not whether courts may impose additional requirements, but whether they may admit attorneys to practice in spite of their failure to comply with existing statutory requirements. The only other case in which the question has been directly raised is *In re Bowers* (1918) 138 Tenn. 662, 200 S. W. 821, in which the court stated: "The question for determination now is whether upon exceptions to the board's report, this court will go into evidence and determine for itself contrary to the recommendations of the board that the applicant should be admitted to practice. It seems to us that the mere statement of the proposition is its own answer. . . The certificate of the board is the only thing which the Legislature intended that we should consider, and when the board refuses to make a certificate, or, as in this case, certifies that the applicant is an unfit person to be admitted to the practice, that ends the matter in the absence of allegation and proof of fraud, corruption, or oppression on the part of the board."

The police-power theory of the legislature's control over bar admissions is that the legal profession can be regulated just as other professions and businesses. But the legislature, under the police power, can regulate no business, profession, or occupation unless a reasonable necessity exists. 6

R. C. L. 218; *People v. Ringe* (1910) 197 N. Y. 143, 90 N. E. 451; *Ex parte Whitwell* (1893) 98 Cal. 73, 32 Pac. 870; *Toledo, Wabash & Western Railway Co. v. The City of Jacksonville* (1873) 87 Ill. 37; *State v. State Board of Medical Examiners* (1923) 209 Ala. 9, 95 So. 295; *Ex parte Hall* (1920) 50 Cal. App. 786, 195 Pac. 975. From this it may be concluded that while the power of the courts over attorneys is continuous, the legislature may regulate them only when a necessity for such regulation exists. In the principal case it might well have been argued that since the court had taken the particular case under its special consideration there was no necessity, in that case, for application of the legislative enactment. The court placed its decision on the ground that the board of bar examiners was a preliminary fact-finding body whose decision was in no way binding in a subsequent hearing by the court, which has plenary power to admit. Either mode of reasoning leads to the same result.

Aside from the police power, it may be argued that the legislature may control bar admissions consistently with its general legislative power exemplified in the enactment of rules of evidence and procedure. This consistency, however, is more apparent than real, since the legislative power over such elements of the judicial process as evidential and procedural rules has never been questioned and is imbedded in our constitutional system, while its powers over bar admissions has always been clouded in doubt. In any event, decisions rely rather on the police power theory; and it is now settled beyond doubt that the courts and not the legislature have fundamental rights of control over attorneys. See (1929) 15 ST. LOUIS L. REV. 96.

The decision in the principal case is open to one serious objection; as a practical matter it would be unwise to allow the courts to be burdened by appeals of disappointed applicants. This consideration seems to have influenced the decision in *In re Bowers*, above. But all difficulty may easily be eliminated by adopting as rules of court all regulations over the bar which the courts deem advisable. This has already been done by the Supreme Court of the United States and by those of a few states. Indeed, if the courts wish to preserve their inherent power over attorneys, this step seems essential. A complete set of court rules regulating bar admissions would make all statutes on the subject unnecessary, and it would seem to follow logically that the legislature would lose all control over the legal profession until a positive necessity arose for further regulation. J. A. G., '31.

CORPORATIONS—DISREGARD OF THE CORPORATE ENTITY—PERSONAL CORPORATIONS.—In the case of *Fidelity Trust Co. v. Service Laundry Co.* (Tenn. 1929) 22 S. W. (2d) 6, the will of the testatrix provided that any indebtedness upon the part of any of her nephews owing to her should be cancelled. One of the nephews was the sole owner of the stock of the Service Laundry Co., which corporation was indebted to the testatrix on a promissory note executed by the nephew, L. E. Williams, as president of the company. *Held*, that the bequest of the testatrix cancelled the debt owing from the corporation to the estate. This case raises the perplexing problem