

1932

Attorney and Client - Constitutional Law

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Repository Citation

Eugene Paul Lecher, *Attorney and Client - Constitutional Law*, 16 Marq. L. Rev. 213 (1932).
Available at: <https://scholarship.law.marquette.edu/mulr/vol16/iss3/9>

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NOTES AND COMMENT

ATTORNEY AND CLIENT—CONSTITUTIONAL LAW. In the instant case the Wisconsin Court was called upon to consider the defendant's application for reinstatement to practice before the Wisconsin Bar. In this connection the court chose to declare itself on the validity of chapter 480, Laws 1931, "in so far as it purports (1) to reinstate Raymond J. Cannon (defendant) as an attorney at law; and (2) in so far as it purports to remit the costs imposed upon Mr. Cannon by the order of suspension." (Opinion, page 443.) The statute reads as follows: "The license to practice law, duly issued to Raymond J. Cannon on the thirteenth day of April, 1914, and revoked by the judgment of the supreme court on July 5, 1929, is hereby restored, and the costs imposed by said judgment are hereby remitted, and the said Raymond J. Cannon is hereby authorized, henceforth, to exercise all the rights and privileges of a duly licensed member of the bar." The court held: The statute was utterly void and unconstitutional, first, because the ultimate power to determine who shall be admitted to the practice of law rests exclusively with the judiciary; secondly, because the act is partial and attempts to inure benefit to a single individual contrary to the general spirit of legislative power, which is to be exercised only "through general laws which apply to all alike and accord equal opportunity to all;" (3) because the statute is an unlawful attempt to exercise the power of appointment in a field which belongs exclusively to the judiciary; (4) because the act attempts to set aside and annul a court judgment (order of suspension—see *State vs. Cannon*, 199 Wis 534), a power clearly beyond the scope of any legislature. *State vs. Cannon. In re Cannon*, 240 N.W. 441 (Wis.).

At present there is a great conflict of opinion and confusion both of thought and expression as to which agency of our state governments is invested with the power to regulate and control the legal profession. 4 *Texas Law Review* 2. And it is on that aspect of the problem which has to do with admissions to the practice that the instant case sheds a most significant light.

It is generally conceded that attorneys at law are officers of the court; the control they have over the writs of the court etc. makes them responsible in no small degree for the quality of justice administered by the court. Their relation to the court is one of trust and confidence. Every court must have a bar, and necessarily rely on it in furthering the ends of justice. It is not illogical, therefore, that the courts should claim the power to admit attorneys to the practice of law to be exclusively a judicial function. *Ex. p. Garland*, 4 Wall 333; *In re Day*, 181 Ill. 73; *Vernon County Bar Assn. vs. McKibbin*, 153 Wis.

350. A power necessarily inherent in the court. *Ruling Case Law*, Vol. II, p. 942. Yet, due to the fact that many of the legislatures in this country have presumed to prescribe qualifications for the admission of attorneys to the practice of law, no little confusion exists as to whether the power to admit (and disbar) is inherent in the courts. *State vs. Cannon*, 196 Wis. 534.

The court's claim to the inherent power to admit attorneys to the practice is bottomed on the fact that for six centuries prior to the adoption of our federal constitution the English court exercised such inherent power (for summary see pages 445-448, opinion), and it was this type of court (the English court) with all its incidental, implied, and inherent powers, not expressly limited by either federal or state constitution, that was borrowed for use in the federal and local jurisdictions of this country. *State vs. Cannon*, 199 Wis. 401.

The legislature's power to prescribe qualifications which must be possessed by those who become licensed attorneys at law is bottomed on the theory that it is a necessary incident to its police power. Under the head of police power one of the very important functions of the legislature is to protect the public from the results of incompetence, imposition, and fraud on the part of those who undertake to practice the learned professions and occupations requiring skill and special training. As those who undertake to practice the legal profession may through want of proper learning and good moral character work great harm on those who have a right to assume that they are properly qualified to advise and protect them in their legal rights, the prescribing of qualifications to be possessed by those who ultimately become licensed attorney at law is properly a judicial function. (See Wis. Stat. 1929, 256.28.)

In the instant case the Wisconsin Court recognizes the fact that the legislature as well as the judiciary has an interest in the caliber of the bar of the state, and for that reason should be accorded the voice which it now holds in the matter, namely, the prescribing of qualifications for admission (see st. supra). But beyond this the court is unwilling to accord the legislature any power in the matter. This limitation on the power of the legislature results from the fact "that the courts have an interest in the quality of the bar quite distinct from and additional to the reasons which motivate legislative regulation" (opinion page 445). As has been mentioned supra the courts must necessarily rely on the bar for help in administering the powers of sovereignty with which the courts have been entrusted by the constitution, therefore, any misconduct or unfaithfulness on the part of any member of the bar may very easily bring about maladministration of their powers, and consequential scandal and reproach of the courts by the

people. With the responsibility for the plane on which the administration justice is maintained resting, then, exclusively on the courts, which must necessarily rely on the bar to aid them in performing their tasks, it is not illogical that the courts' interest in the quality of the bar should transcend that of the legislature, which is in no way responsible for the manner in which the courts exercise their sovereign powers.

In the instant case the court bottomed its claim to the right to ultimately determine who is to be admitted to practice before it on the ground of inherent power. It is respectfully submitted that whenever a court claims inherent power it opens itself to collateral attack by those who deny the existence of inherent power in our American courts. It was to defeat just such an attack as this that the learned justice bolstered his decision in the case by intimating that those who deny the court inherent power in the premises, nevertheless, readily concede that it possesses implied power therein (opinion page 449), and once the court's power be conceded in the premises, in the words of the learned justice, "the matter of its proper designation may afford an intriguing subject for mental sparring; but whether it be implied or inherent results in no substantial difference to the citizen or the rights and liberties of the people."

Disregarding the other points involved in the case, which in the opinion of the reviewer require no special elucidation or comment, the significant rule of the case is the holding—that a legislature is without power to enact a statute restoring to an attorney his license previously revoked by the supreme court, on the ground that it is an encroachment of the judiciary's power to fix additional qualifications for attorneys, which in the opinion of the judiciary are necessary for the proper administration of judicial functions.

EUGENE PAUL LECHER

CONSTITUTIONAL LAW—TAXATION—HUSBAND AND WIFE. In a recent decision, *Hoeper vs. Tax Commission of Wisconsin*, --- U.S. ---, 52 Sup. Ct. Reporter 120, the United States Supreme Court in overruling the Supreme Court of Wisconsin, declares void the enactments of the Wisconsin legislature, (Wis. Stats. 1929, 71.05 (2) ; 71.09 (4),¹ providing for the addition of the wife's income to the husband's

¹ Sec. 71.05 (2) (d) : In computing taxes and the amount of taxes payable by persons residing together as members of a family, the income of the wife, and the income of each child under eighteen years of age shall be added to that of the husband or father, or if he be not living, to that of the head of the family and assessed to him except as hereinafter provided. The taxes levied shall be payable by such husband or head of the family but if not paid by him may be enforced against any person whose income is included within the tax computation.