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Article 11

Courts: Attorney and Client

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of Congress, to apply the law of the land to facts developed of record in matters committed by Congress to our jurisdiction."

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Courts: Attorney and Client

State v. Cannon.[1]

This was an action to disbar from the practice of law, the defendant, Raymond J. Cannon. The original action against Cannon was begun in the Wisconsin Supreme Court by the State Bar Commissioners, May 10, 1928, pursuant to the provisions of section 25628 of the Statutes of 1927.

The Honorable E. C. Fiedler was referred to the case, and it was he who took the testimony and reported the fact. He recommended that Cannon be suspended from practice for two years, and that he be required to pay the expenses and costs of the action. The defendant was disclosed by the record as a man whose purpose it was to let nothing stand in the way of making his profession yield him the largest possible financial return, without regard to the established canons of professional conduct. To accomplish that end, the referee found that he began the Huelse suit without authority from the injured man; that he improperly displaced attorneys previously retained; that he purposely and knowingly misled and deceived courts; that he collected excessive, exorbitant, and unconscionable fees from his clients; and that he commercialized his profession by the organized solicitation of business.

Because of the severe penalty imposed upon Cannon for his "ambulance chasing" proclivities, the case should command the attention of the entire Wisconsin bar, because its interests are at stake. In fact, Justice Crownhart in his dissenting opinion said: "If attorneys may be subjected to such inquisitions and ruthless charges in the future, we may expect a weak and spineless bar—one that will be afraid to fight the battles of the poor and humble as they ought to be fought to secure justice."

The question of the powers of the courts to disbar attorneys was an important one. This case is not the first one in which the unethical conduct of attorneys has been criticized. The power to protect courts and the public from the official ministration of persons unfit for practice in them was fully established in the former decision of the court in this case, *State* v. *Cannon,*[2] where it was held that, when the people by means of the Constitution established courts, they became endowed with all judicial powers essential to carry out the judicial functions delegated to them.

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[1] 226 N.W. 385; Wis.

[2] 196 Wis. 534, 221 N.W. 603.

The efficient administration of justice by the courts demands that they should be aided by members of the bar who are "quasi officers of the state whose justice is administered by the court."[3] In this respect the bar is as important as the bench. "It is very important to the people and the court that the standard of admission to the place and retention thereof should be as high as practicable in law, and maintained as high as practicable in fact. Much power in that regard is vested in the court by the Constitution, incidental to its possession of judicial power and its duty to enforce, through careful administration, legislative tests of eligibility."[4]

Should these legislative tests of eligibility be absent, the courts are empowered to protect themselves and clients from attorneys who have disabled themselves as ministers of justice.

"It is well settled that a court authorized to admit an attorney has inherent jurisdiction to suspend or disbar him for sufficient cause, and that such jurisdiction does not necessarily depend upon any express constitutional provision of statutory enactment."[5]

In Wisconsin the courts frequently exercised this inherent power before the enactment of Chapter 84, Laws of 1903, which was the first legislative act upon the subject of disbarment in Wisconsin. But the deciding statute in the Cannon case was section 256.26, Stats. 1927.

It was shown that Cannon had bargained with a district attorney in an abortion case, where Cannon promised that his client would plead guilty, if the district attorney would permit his client to retain his license to practice medicine. Such conduct, however, has been aptly characterized by Chief Justice Ryan: "Any agreement of the character here in question . . . . between a public prosecutor and an attorney of the defendant in an indictment is . . . . a bargain for judicial action and judgment, hardly, if at all, distinguishable in principle from a direct sale of justice.[6]

Cannon had perfected a very efficient organization for the solicitation of negligence and criminal cases. This practice has been criticized by the Supreme Court as "the most abominable and offensive professional misconduct."[7] It is a practice to which "no reputable attorney in this state will resort."[8]

The Cannon case is distinguishable from the Kiefer case by the fact that the defendant in that case had demonstrated by his conduct that he "was fully convinced of the unprofessional conduct involved in those

[3] *In re Mosness,* 39 Wis. 509,510, 20 Am. Rep. 55.
[4] *Vernon County Bar Assoc.* v. *McKibbin,* 153 Wis. 350, 352, 141 N.W. 283, 284.
[5] 6 C.J. 580.
[6] *Wright* v. *Rindskopf,* 43 Wis. 344, 354, 356, 357.
[7] 222 N.W. 795, 796.
[8] *C. M. St. P. R. Co.* v. *McGinley,* 175 Wis. 565, 185 N.W. 218, 223.

practices." The court therefore concluded that a suspension of the license to practice was "not necessary to give time for reformation of the defendant."[9]

Cannon, on the other hand, although criticized in *Hepp* v. *Petie*,[10] for similar misconduct, had shown up to the time of trial no reformation of practice methods, and so was suspended from the practice of law in the state of Wisconsin for two years. The referee found that the defendant charged unconscionable and excessive fees for services performed. He thus showed that he had not recognized the fact that "the practice of law is not a trade, but a ministry."[11]

It is as true today as it was fifty years ago, when Chief Justice Ryan said in his address before the graduates of the University Law School, that "the pursuit of the legal profession for the mere wages of life is a mistake alike of the means and the end. It is a total failure of appreciation of the character of the profession."

CARL F. ZEIDLER

Guaranty: Liability: Compromise and Settlement

When a party guarantees that an agent will perform his contract with his principal by guaranteeing to pay anything due under the terms of the contract, said party thereby makes himself primarily liable to the principal. Any settlement made by the agent with his principal will not release the guarantor from his liability because of a lack of consideration, the agent being a stranger to the contract made between the principal and the guarantor. In case the agent defaults or fails to perform his contract, and there is still money due and owing the principal, the principal can accept whatever the agent is able to advance. Such acceptance does not constitute a wavier of the principal's right to collect the deficiency from the guarantor. He has in fact contracted to answer to the principal in just such a situation as this.

The simple rule of law that a guaranty contract involves primary liability is quite fundamental and necessary knowledge for the practicing attorney to have tucked away in his mind. It concerns a situation that is common and liable to confront him any day. The recent case of the Wisconsin Supreme Court, *Swift and Co.* v. *Geraghty*, 226 N.W. 381, furnishes a foundation for this brief review on the nature of a guaranty contract of this kind. The main fact to bear in mind is that the guaranty contract is separate and apart from the contract entered into between principal and agent. It concerns only principal and guarantor, the

[9] *State* v. *Kiefer* (Wis.) 222 N.W. 795, 797.
[10] 185 Wis. 350, 200 N.W. 857.
[11] *Ellis* v. *Frawley*, 165 Wis. 381, 385, 161 N.W. 364, 366.