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Constitutional Law—Legislative Encroachment on Judiciary—Power over Bar Admissions

CONSTITUTIONAL LAW—IMPRISONMENT FOR DEBT—"WORTHLESS CHECK" ACTS.—In a recent case the defendant was indicted for making and delivering a "cold check" under a statute punishing the making or delivering of a check, draft, or order for payment of money without sufficient funds, regardless of fraudulent intent or knowledge. *Held*, that the statute, since it did not make fraud an element of the crime, violated the provision in the state constitution forbidding imprisonment for debt, and was therefore void. *Burnham v. Commonwealth* (1929), 228 Ky. 410, 155 S. W. (2d) 256.

The constitutions of many of the states contain provisions prohibiting arrest and imprisonment for debt. Cases of fraud are usually excepted from this provision either expressly or by judicial interpretation. 5 C. J. 438. Statutes making it a criminal offense to issue a check without funds to meet it, the so-called "worthless check" acts, have been held generally not to violate constitutional provisions against imprisonment for debt. But in all these cases, with one exception, the statutes involved require the element of fraud in the transaction. Both knowledge on the part of the maker of the check or lack of funds and an intent to defraud are essential. *State v. Pilling* (1909), 53 Wash. 464, 102 Pac. 230; *State v. Meeks* (Ariz. 1926), 247 Pac. 1099. Or they require merely a knowledge of the insufficiency or lack of funds. *Hollis v. State* (1921), 152 Ga. 182, 108 S. E. 783; *State v. Avery* (1922), 111 Kan. 588, 207 Pac. 838; *State v. Yarboro* (1927), 194 N. C. 498, 140 S. E. 216. In the single exception noted, the case of *Neidlinger v. State* (1916), 17 Ga. App. 811, 88 S. E. 687, where the statute required neither intent to defraud nor knowledge of insufficiency or lack of funds, the court read into the statute a requirement of fraudulent intent, holding that unless the statute did require such intent it would be invalid, since it would violate the constitutional provision against imprisonment for debt. Although this is the only case which contains an express statement to this effect, the inference may be clearly drawn from the other cases that it is the requirement of fraudulent intent which relieves the statutes of constitutional objection.

The principal case, although it is the first case to hold a "worthless check" act unconstitutional, is in accord with the spirit of previous decisions upholding such acts where proof of fraudulent intent is made essential. And it is certainly consistent with the humane policy which has resulted in the near-extinction of the control of the creditor over the person of his debtor. P. S. A., '31.

CONSTITUTIONAL LAW—LEGISLATIVE ENCROACHMENT ON JUDICIARY—POWER OVER BAR ADMISSIONS.—Petitioner, having previously been disbarred by the Court of Appeals, applied to it for readmission to the practice of law. A statute provided that the Supreme Court should have the power of admission and disbarment, but that all applications for admission and readmission should be made to a board of governors of the state bar association. *Held*, that the statute is invalid as an encroachment on the power of the courts. Nevertheless, since the court believed that the procedure

described was beneficial, the petitioner was obliged to follow it. *In re Cate* (Cal. App. 1929), 270 Pac. 968. The bar association, considering the main ruling unfavorable to it, obtained two rehearings, the second of which is valuable because of its ably-written opinions. *In re Cate* (Cal. App. (1928), 273 Pac. 617.

The gist of the decision is that the power to admit to the bar is exclusively judicial and that therefore the legislature may not prescribe rules and regulations affecting this power. The basis of this reasoning is that since attorneys are officers of the court they are properly a part of the judicial department, and therefore neither the legislative nor the executive department can participate in their appointment or removal. Courts uniformly approve of this doctrine, but many have gone farther to say—believing that their statements are in no way inconsistent—that notwithstanding the jurisdiction of the courts over the subject the legislature may prescribe reasonable rules and regulations for admission to the bar which will be followed by the courts. *Ex parte Garland* (1866), 4 Wall. 333; *In re Applicants for License to Practice Law* (1906), 143 N. C. 1, 55 S. E. 635; *In re Bailey* (1926), 30 Ariz. 407, 248 Pac. 29; *In re Taylor* (1877), 48 Md. 28; *Cohen v. Wright* (1863), 22 Cal. 293; *In re Mock* (1905), 146 Cal. 378, 80 Pac. 64. With the exception of *In re Applicants for License to Practice Law, supra,* this has always been construed as not restricting the courts from imposing further requirements. *In re Bailey, supra; In re Day* (1899), 181 Ill. 73, 54 N. E. 646 and cases cited therein.

Most courts which profess to permit legislative action in this matter follow the logic of *Ex parte Garland, supra,* where the court said: "The Legislature may undoubtedly prescribe qualifications for the office to which he [the attorney] must conform, as it may, wherever it has exclusive jurisdiction, prescribe qualifications for the pursuit of any ordinary avocation in life. The question, in this case, is not as to the power of Congress to prescribe qualifications . . ." It is significant that no authority was cited for this view, and also that it was not the point at issue in the case. In *In re Day, supra,* the court declared: "The fact that the Legislature may prescribe qualifications of doctors, plumbers, horse-shoers, and persons following other professions or callings not connected with the judicial system, and may say what shall be evidence of such qualifications, can have no influence on the question. A license to such persons confers no right to put the judicial power in motion, or to participate in judicial proceedings." In the principal case it was announced that "the idea that the courts may frame rules governing admissions to the bar is utterly inconsistent with the idea that the Legislature, under any circumstances, may do the same thing."

It will be found that in most cases which support the power of the legislative department to fix standards for bar admission such holdings are merely dictum. Where the existence of this power has been the point at issue, courts have generally evaded the issue, adopting the regulations as their own but refusing to say whether they were valid without such adop-

tion. *In re Goodell* (1875), 39 Wis. 232. Recent cases have been more explicit. In *In re Bruen* (1918), 102 Wash. 472, 172 Pac. 1152, it was held that a statute giving the state board of law examiners power to hear and determine disbarment proceedings was unconstitutional in so far as it authorized the board to enter judgments of disbarment and valid only as to the delegated administrative function of reporting its findings to the court. And in *Olmsted's Case* (1928), 292 Pa. 96, 140 Atl. 634, the court declared: "'The true rule is as follows: Statutes dealing with admissions to the bar will be judicially recognized as valid, so far as, but no further than, the legislation involved does not encroach on the right of the courts to say who shall be admitted to that privilege." This is substantially in accord with the principal case.

The trend of the later cases seems to be that although the legislatures may require applicants to the bar to be good citizens, only the courts can set up standards for attorneys in their professional capacity. This principle is of immediate importance in view of the fact that requirements for admission to the bar in many states are not what they should be. The American Bar Association has drafted a model set of regulations, and has spent a great deal of effort in trying to convince backward legislatures to put them into the statute books. Under the ruling of the principal case, the courts need have no hesitancy in adopting the standards proposed without waiting for legislative enactment. J. A. G., '31.

CONTRACT TO MARRY—EFFECT UPON RIGHT OF CONVEYANCE.—*Taylor v. Taylor* (N. C. 1929), 148 S. E. 171, contrary to what might be supposed, is not exceptional in holding: "Where parties have bound themselves by a contract to marry, neither can give away his or her property without the consent of the other; and notice before marriage of such gift does not hinder the party injured from insisting on its invalidity." The defendant married the plaintiff after having seduced her through a promise of marriage. Two days before the marriage, the defendant conveyed all of his property to his father by deed purported to have been signed by the plaintiff as well as by the defendant. The latter, after the marriage, induced the plaintiff to go to California with him, but instead, they stopped at Reno, Nevada, where he forced the plaintiff to sign a deed of separation prepared by a North Carolina lawyer. The two continued to live together notwithstanding the deed of separation until the plaintiff by reason of continual indignities sued for alimony. The North Carolina Court granted the alimony, set aside the deed of separation as inconsistent with public policy, and declared the deed to the property fraudulent.

Wherever, in these cases, there is a voluntary antenuptial transfer of property without the knowledge or consent of the intended spouse and shortly before the contemplated marriage, the courts are quick to presume fraud. This is true even where the gift is genuine and not merely colorable as in the principal case. *Wallace v. Wallace* (1908), 137 Iowa 169, 114 N. W. 913. There is some authority to the effect that the courts would