The decisions of the Supreme Court are heightened in significance particularly in those situations where, unless the appealing parties were entitled to review as on an involuntary nonsuit, the filing of a new suit would be barred by the Statute of Limitations.[8]

This decisive declaration by the Supreme Court not only clarifies a matter of technical procedure, but also removes the injustice of denying the right to appellate review, because of non-conformance to what was at best an arbitrary and fictional requirement, *i. e.*, the actual reading of the peremptory instruction to the jury which had no more than a ministerial function to perform.[9]

J. K.

ATTORNEYS—PRACTICE OF LAYMEN BEFORE ADMINISTRATIVE TRIBUNALS—CONCURRENT REGULATORY POWERS OF JUDICIAL AND LEGISLATIVE DEPARTMENTS.—[Missouri].—The Missouri Supreme Court, in a recent decision,[1] was confronted with the question whether statutes regulating the practice of law constitute an encroachment upon the power of the courts to define and regulate the practice of law. The three unlicensed lay respondents admitted that they had appeared before the Public Service Commission, a statutory tribunal, representing parties litigant for a valuable consideration. The court en banc decided unanimously that the respondents were in contempt of court. Two judges reached this conclusion without applying a statute which made the respondents' behavior a crime.[2] The majority, in a well written opinion by Chief Justice Ellison, held that the statute was a valid manifestation of the legislative police power, and also that it furnished a norm by which the court could judge persons accused of contempt for practicing law illegally. The majority also stated that if a statute should frustrate the administration of justice, the statute would be ignored.

In Re Richards[3] recognized that the Supreme Court has inherent power to define and regulate the practice of law, and has original jurisdiction to disbar attorneys. This involves the correlative power to prevent unauthorized persons from practicing law. The respondents in the instant case apparently contended that this judicial power was *exclusive* and therefore that the General Assembly could not by legislation enter any field reached by the court in the exercise of its inherent powers.

This theory of the respondents was accepted in 1909 in the *Gildersleeve* case,[4] which held that the courts have *unlimited* power to punish for con-

8. R. S. Mo. 1929, secs. 850, 860-864.

9. State ex rel. Witte Hardware Co. v. McElhinney, 100 S. W. (2d) 36 (Mo. App. 1937).

1. Clark v. Austin; Same v. Coon; Same v. Hull, 101 S. W. (2d) 977 (1937) (original proceedings in the Missouri Supreme Court).

2. R. S. Mo. 1929, sec. 11693.

3. 333 Mo. 907, 63 S. W. (2d) 672 (1933).

4. C., B. & O. Ry. Co. v. Gildersleeve, 219 Mo. 170, 181, 118 S. W. 86, 16 Ann. Cas. 749 (1909).

tempt and therefore that the legislature cannot pass laws on that subject. The court apparently feared that if the legislature had the power to regulate the practice of law, it would necessarily have the power to destroy judicial independence. However, Judge Lamm, in the minority opinion of the *Gildersleeve* case, demonstrated that "the power to regulate does not in all cases . . . mean the power to destroy."[5] Four years later in *Ex parte Creasy*,[6] the *Gildersleeve* decision was overruled, and the minority opinion of Judge Lamm was followed by the court without dissent. This minority opinion was unanimously followed a second time in *State ex rel. Selleck v. Reynolds;*[7] and both decisions are referred to and followed in the *Richards* case.[8]

The *Richards* case, and many others cited therein, further concede that the legislature may enact laws on that same subject. The court in discussing its inherent power to disbar attorneys, said: "In the harmonious coordination of powers necessary to effectuate the aim and end of government, it may be regulated by statutes to aid in the accomplishment of the object but not to frustrate or destroy it."[9]

Mr. Justice Story discussing the principle of separation of powers said: "The true meaning is that the *whole* power of one of these departments should not be exercised by the same hands which possess the *whole* power of either of the other departments."[10] This theory is supported by many authorities.[11]

The doctrine of the complete separation of powers has never been entirely true in practice. The courts in this state have repeatedly recognized that each of the three departments normally exercises powers which are not strictly within its province.[12] This literal and reasonable construction is founded on the necessities inherent in all governments.

Moreover, statutes regulating the practice of law, have been passed since the earliest days in our history.[13] The great weight of authority holds that the enactment of such statutes is a valid exercise of the police power.[14]

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5. Ibid.
6. 243 Mo. 679, 708, 148 S. W. 914, 41 L. R. A. (N. S.) 478 (1912).
7. 252 Mo. 369, 379, 158 S. W. 671 (1913).
8. In Re Richards, 333 Mo. 907, 915, 63 S. W. (2d) 672 (1933).
9. Ibid.
10. 1 Story, *Constitution* (5th ed. 1905) sec. 525, p. 393.
11. Rhodes v. Bell, 230 Mo. 138, 150, 130 S. W. 465 (1910); State ex rel. Manion v. Dawson, 284 Mo. 490, 506, 225 S. W. 97 (1920); People v. Simon, 176 Ill. 165, 171, 52 N. E. 910, 68 Am. St. Rep. 175, 44 L. R. A. 801 (1898).
12. State ex rel. Manion v. Dawson; Rhodes v. Bell; both supra, note 11; In Re Birmingham Drainage District, 274 Mo. 140, 150, 202 S. W. 404 (1918).
13. R. S. Mo. 1835, p. 89.
14. 6 C. J., Attorney & Client (1916) 572, sec. 16; In Re Day, 181 Ill. 73, 95, 54 N. E. 646, 50 L. R. A. 519 (1899) (a leading case on this question); State ex inf. Miller v. St. Louis Union Trust Co., 335 Mo. 845, 865, 871, 74 S. W. (2d) 348 (1934). In Ex parte Garland, 71 U. S. 333, 379, 18 L. ed. 366 (1866), the Supreme Court of the United States said: "The legislature may undoubtedly prescribe qualifications for the office [of attorney] to which he must conform."

The decisions quoted and cited above clearly establish the proposition that in Missouri the General Assembly may enact statutes regulating the legal profession, as it does other professions and businesses. The enactment of such statutes is not an encroachment upon the inherent power of the Supreme Court to define and regulate the practice of law. The two powers, judicial and legislative, exist concurrently so long as the legislative power does not destroy or frustrate the judicial power.[15]

A. K. S.

BANKS AND BANKING—CONTRACTS OF INFANTS—DISTINCTION BETWEEN LOAN AND DEPOSIT.—[Missouri].—Plaintiff, a minor, placed $900 with defendant bank on time deposit, receiving a time certificate of deposit payable six or twelve months after date, bearing interest. Thereafter defendant bank became insolvent, and plaintiff, having reached the age of twenty-one, filed claim for the $900. Her claim was classified as a common claim. Plaintiff filed a bill in equity disaffirming the contract and praying that she be given a prior lien on the assets of the bank. *Held*, that disaffirmance of the contract rendered it void *ab initio*, and that plaintiff was entitled to a prior lien.[1] The reason given for the decision was that the transaction was not a deposit, but a loan to the bank, and was therefore voidable at her option, either during minority or within a reasonable time after attaining majority. The court indicates that had the transaction been a "deposit," the result might have been different, citing *Phillips v. Trust Company*.[2]

In the *Phillips* case plaintiff was a St. Louis school child, who, with many other children, had placed money with defendant trust company in a savings account, evidenced by a pass book. When the company became insolvent, plaintiff brought suit to establish the balance due him as a preferred claim against the company's assets. The court held that although disaffirmance of a minor's contract renders it void *ab initio*, yet where the contract is beneficial to the minor, he cannot disaffirm—an exception to the general rule of disaffirmance.[3] Plaintiff attempted to establish a trust, but the statute upon which he relied was construed to mean that a minor may deposit his money in a savings account and withdraw it as though he were of full age.[4] A similar statute applies to a bank like that in the instant

15. Clark v. Austin; Same v. Coon; Same v. Hull, 101 S. W. (2d) 977 (Mo. 1937).

1. Stinson v. Bank of Queen City, 101 S. W. (2d) 537 (Mo. App. 1937).
2. 85 S. W. (2d) 923 (Mo. App. 1935).
3. Pinnell v. St. Louis San Francisco R. Co., 263 S. W. 182, 41 A. L. R. 1092 (Mo. 1924); Smalley v. Central Trust and Savings Co., 72 Ind. App. 296, 125 N. E. 789 (1920); Robinson v. Coulter, 90 Tenn. 705, 18 S. W. 250, 25 Am. St. Rep. 708 (1891); Aborn v. Janis, 113 N. Y. Supp. 309, 62 Misc. Rep. 95 (1907).
4. Phillips v. Trust Co., 85 S. W. (2d) 923, 927 (Mo. App. 1935). The statute, R. S. Mo. 1929, sec. 5465, provides: "When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien