

Court, and less expensive to the litigants.²⁰ It is submitted that a just rule fairly interpreted and enforced, wrongs no man. Ostensibly to be obeyed, but actually not enforced, it necessarily wrongs some men, viz: those who labor to obey it—the very ones it should not injure.²¹ It is well to note here that the Kansas City Court of Appeals, with similar rules, has repeatedly held in like cases, that the failure to bring up and present the evidence in *haec verba* forfeits the right to appellate review.²²

J. L. A. '37.

ATTORNEYS — CONSTITUTIONAL LAW-DISBARMENT — STATUTE OF LIMITATIONS.—A Minnesota statute provided that "no proceeding for the removal or suspension of an attorney at law shall be instituted unless commenced within the period of two years from the date of the commission of the offense or misconduct or within one year after the discovery thereof."¹ In the case of *In re Ithamar Tracy* the supreme court of Minnesota on March 27, 1936, declared this statute to be unconstitutional as a projection of the legislative power into the judicial department.²

Certain inherent powers have been given by the state and federal constitutions to the courts as a result of the separation of powers provided for in the respective constitutions. Among these inherent powers is that of regulating the admission and disbarment of lawyers.³ Although the former power is not universally admitted to be an inherent power of the court,⁴ the power to disbar is, in almost all jurisdictions, so recognized.⁵ No statute, rule, or constitutional provision is necessary to authorize the striking off the roles of attorneys in proper cases.⁶ Missouri is one of the many states which follows this prevailing rule.⁷

The matter of trial by jury in disbarment cases presents a similar problem to that presented by a statute of limitations in such actions. A disbarment proceeding being summary⁸ in nature, a jury trial cannot be demanded as a matter of right.⁹ Only in those states in which a disbarment

²⁰ *Supra* note 19.

²¹ *Sullivan v. Halbroom* (1908) 211 Mo. 99.

²² *Nichols v. Nichols* (1889) 39 Mo. App. 293; *Hull v. Hull* (1912) 168 Mo. App. 220, 153 S. W. 531; *Gorka v. Gorka* (1927) 221 Mo. App. 1033, 295 S. W. 515; *Chronos v. Panagos* (1928 Mo. App.) 7 S. W. (2d) 734; *McKitterick v. McKitterick* (1933) 227 Mo. App. 1002, 60 S. W. (2d) 671.

¹ *Mason's Minn. St.* 1927, sec. 5697-2.

² *In re Tracy* (Mar. 27, 1936) 2 Law Week 739.

³ *Ex parte Wall* (1882) 107 U. S. 265; Shanfeld, "The Scope of the Judicial Independence of the Legislature in Matters of Procedure and Control of the Bar," 19 ST. L. LAW REV. 163; Weeks, *On Attorneys at Law*, sec. 80, p. 140; 2 R. C. L. 1086; 6 C. J. 580.

⁴ *State v. Reynolds* (1916) 22 N. M. 1, 158 Pac. 413.

⁵ *Supra*, note 3.

⁶ Weeks, *op. cit.*

⁷ *In re Richards* (1933) 330 Mo. 907, 63 S. W. (2) 672, 19 ST. L. LAW REV. 146; *In re Sparrow* (1935) 90 S. W. (2) 401.

⁸ See 6 C. J. 602.

⁹ *Ex p. Wall* (1882) 107 U. S. 265; *In re Norris* (1899) 60 Kans. 649, 57 Pac. 528; *State v. Fourchy* (1901) 106 La. 743, 31 So. 325; *In re Carver*

proceeding is considered a civil action is trial by jury,¹⁰ as well as the statute of limitations for civil cases,¹¹ insured to the defendant attorney as a matter of right. In nine states in which jury trial has been disallowed statutes have been passed, some of which are still in existence, providing for trial by jury.¹² No cases have been found holding such statutes invalid as imposing an unreasonable restriction on the powers of the courts, or that the verdict in such cases should merely be considered directory.¹³ The constitutionality of these statutes seems never to have been questioned by the courts.¹⁴

In Tennessee a statute provided that if a license to practice law was procured by fraud it could be revoked at any time within two years.¹⁵ The court in the case of *State Board of Law Examiners v. Shimer*¹⁶ seemed to take the constitutionality of the statute of limitations for granted, but gave it a limited interpretation by saying it was "clear that it wasn't purpose of Legislature that the statute of limitations should begin to run until knowledge of the fraud had been brought home to the board (the state board of law examiners)."

(1916) 224 Mass. 169, 112 N. E. 877; *Ex p. Burr* (1823) 1 Wheel. Cr. 503; *State Bar v. Sullivan* (1912) 35 Okla. 745, 131 Pac. 703, L. R. A. 1915 D 1218, Note 45 A. L. R. 1111; *Dean v. Stone* (1894) 2 Okla. 13, 35 Pac. 578; *State v. Davis* (1893) 92 Tenn. 634, 23 S. W. 59; *Smith v. State* (1829) 1 Yerg. 228; *In re Haddad* (1934) 106 Vt. 322, 173 Atl. 103; *State v. Rossman* (1909) 53 Wash. 1, 101 Pac. 357, 21 L. R. A. N. S. 821, 17 Ann. Cas. 625.

As to right to the use of the statute of limitations in disbarment proceedings see: *In re Lowenthal* (1889) 78 Cal. 427, 21 Pac. 7; *In re Smith* (1906) 73 Kans. 743, 85 Pac. 584; *Ex parte Tyler* (1895) 107 Cal. 78, 40 Pac. 33; *U. S. v. Parker* (1899) 93 Fed. 414; *People v. Phipps* (1914) 261 Ill. 576, 104 N. E. 144; *People v. Hooper* (1905) 218 Ill. 313, 75 N. E. 896; *State v. Fourchy* (1901) 106 La. 743, 31 So. 325; *Matter of Leonard* (1908) 127 App. Div. 493, 111 N. Y. S. 905, aff. 193 N. Y. 655 mem., 87 N. E. 1121 mem.; *State Bar Commission v. Sullivan* (1912) 35 Okla. 745, 131 Pac. 703; *State Bd. of Law Examiners v. Shimer* (1915) 131 Tenn. 343, 174 S. W. 1142; *State v. Hays* (1908) 64 W. Va. 45, 61 S. E. 355; *State v. Jennings* (1931) 161 S. C. 263, 159 S. E. 627.

¹⁰ *Wernimont v. State* (1911) 101 Ark. 210, 142 S. W. 194, Ann. Cas. 1913D 1156; *State ex rel. Greene County Bar Association et al. v. Huddleston* (1927) 173 Ark. 686, 293 S. W. 353; *Maloney v. State ex rel. Cypert* (1930) 182 Ark. 511, 32 S. W. (2) 423.

¹¹ *Wernimont v. State* (1911) 101 Ark. 210, 142 S. W. 194, Ann. Cas. 1913D 1156.

¹² *Wernimont v. State* (1911) 101 Ark. 210, 142 S. W. 194, Ann. Cas. 1913D 1156; *Park's Ann. Code of Ga.* (1914), sec. 4976; *Reilly v. Cavanaugh* (1869) 32 Ind. 214; *State v. Fourchy* (1901) 106 La. 743, 31 So. 325; *Rev. St. Mo.* (1855) c. 14, sec. 15 (no longer on the statutes); *North Car. Code of 1927*, sec. 207, 213; *Vernon's Sayles' Stat. of Tex.* art. 329; *Legal Club of Lynchburg v. Light* (1923) 137 Va. 249, 119 S. E. 55; *Barnes Code of W. Va.* (1923) p. 2122; *State Board v. Phelan* (1931) 43 Wyo. 841, 5 Pac. (2) 263.

¹³ *State Board v. Phelan* (1931) 43 Wyo. 841, 5 Pac. (2) 263, l. c. 265.

¹⁴ *In re Wharton* (1896) 114 Cal. 367, 46 Pac. 172, 55 A. S. R. 72; *State Board v. Phelan* (1931) 43 Wyo. 841, 5 Pac. (2) 263.

¹⁵ Acts 1903, c. 247, sec. 5.

¹⁶ (1915) 131 Tenn. 343, 174 S. W. 1142.

In the case of *In re Mosher*¹⁷ the supreme court of Oklahoma, like the Tennessee court in the *Shimer* case, did not question the constitutionality of a statute¹⁸ similar to the Minnesota statute. But in a later case, *State Bar Commission ex rel. Williams v. Sullivan*,¹⁹ the court said, "Without attempting to decide anything but the pending case, we lay down the principle that the Legislature has no power to fix a limitation, either as to time or upon the power of this court, that could be set up in bar of this prosecution. . . . This court is one established by the Constitution, and it is not competent for the Legislature to abolish it directly or indirectly, nor can it take away from this court those powers which inhere in similar courts at common law and which vested in it by virtue of its very establishment by the constitution."²⁰ Seven years later, however, the same court in the case of *In re Evans*²¹ distinguished the *Sullivan* case on its facts and without considering the constitutional issue applied the statute to a disbarment proceeding without so much as mentioning the broad holding of the *Sullivan* case. The *Evans* case did say, however, that "While the inherent power of the courts to disbar an attorney cannot be defeated by Legislative enactment, the exercise of this power may be regulated within reasonable limits by statute." This leaves the inference that the Oklahoma courts might declare an unreasonable statutory limitation on the courts unconstitutional.

The best view seems to be that taken by the Minnesota court. If the power of the court to disbar is inherent, the legislature should not be allowed to interfere with the full exercise of this power by regulating the type of case that may come before it in matters of disbarment. A statute of limitations certainly curbs the power of the court to exercise its jurisdiction over matters regarding disbarment. To allow the legislature to set up statutes of this nature would be to open a way to future legislation which would perhaps negate this inherent power of the courts.²² The Missouri courts would probably follow the Minnesota view if a statute like the Minnesota statute were passed in this state as the latest Missouri cases²³

¹⁷ (1909) 24 Okla. 61, 102 Pac. 705, 20 Ann. Cas. 209, 24 L. R. A. N. S. 530.

¹⁸ Wilson's Rev. & Ann. St. Okla. 1903, sec. 12, c. 7, par. 234, being sec. 267 of Snyder's Comp. Laws of Okla. of 1909. It provided that ". . . all actions for suspension or removal shall be brought within one year after the act adopting Revised Laws of 1910 (Laws 1910-11, c. 39), because the statute was omitted therefrom.

¹⁹ (1912) 35 Okla. 745, 131 Pac. 703, L. R. A. 1915D 1218, Note 45 A. L. R. 1111.

²⁰ *Ibid.*, 711.

²¹ (1919) 72 Okla. 215, 179 Pac. 922.

²² See *In re Cate* (1928) 94 Cal. App. 222, 270 Pac. 968, in which it was said that the judiciary must be either wholly free or wholly subordinated to the legislature, for the American constitutional limitations upon the power of the three respective branches of the government does not permit the splitting up of jurisdiction over "indivisible subjects, so that one of the three branches of government may rove over a part of the subject and another branch may traverse the remainder."

²³ *Supra*, note 7.

seem strong enough to leave no room for doubt concerning the intention of the Missouri courts to control disbarment without any interference whatsoever from the legislature.

W. B. M. '38.

CONSTITUTIONAL LAW—EQUAL PROTECTION—COLLEGES AND UNIVERSITIES.—The application of Lloyd L. Gaines, a St. Louis negro, for admission to the law school at Missouri University has recently been denied by the University's board of curators.¹ Gaines is a graduate of Lincoln University, the state university for negroes, and is the petitioner in the mandamus suit now pending in Boone County Circuit Court in which the court is asked to compel the Registrar or the Curators of the University to act, and to act favorably, on his application for entrance to the law school. Hearing on this action is scheduled for the April term of court.

Gaines charges in his petition that, since Lincoln University has no law school, a refusal to admit him to the only law school maintained by the state solely because of his color is a violation of the equal protection clause of the Federal Constitution. The curators' answer to this, judging by their statement to the press, will be that the state legislature has given negroes substantially equal treatment by providing that "the board of curators of Lincoln University shall have the authority to arrange for the attendance of negro residents of the state of Missouri at the university of any adjacent state to take any course or to study any subjects provided for at the state university of Missouri and which are not taught at the Lincoln University and to pay the reasonable tuition fees of such attendance; provided that whenever the board of curators deem it advisable they shall have the power to open any necessary school or department."²

Whether this particular method of providing higher education for negroes meets the test of "equal protection of the laws" is an issue which no state or federal court has as yet passed on. But in *Pearson v. Murray*³ the Court of Appeals of Maryland has recently handed down a decision in which the issues were quite similar to those raised in the Gaines case. The appellee in the Maryland case was a young negro who had graduated from Amherst in 1934 and had met the standards for admission to the law school of the University of Maryland in all other respects, but was denied admission on the sole ground of his color. He was a resident of Baltimore, where the law school is situated. He brought mandamus against the officers and governing board of the University of Maryland to compel them to admit him into the law school. From an order for the issue of the writ the defendants appealed. In affirming this order the Court's reasoning, for the most part, followed a long and almost unbroken line of decisions. The equal protection clause of the Federal Constitution requires the states to extend to their colored citizens educational facilities substantially equal to

¹ St. Louis Post-Dispatch, March 28.

² R. S. Mo., 1929, Sec. 9622.

³ (Jan. 15, 1936) 182 Atl. 590.