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

set it aside even with knowledge on the part of the intended spouse, as seen in the dictum of *Taylor v. Taylor* and in *Poston v. Gillespie* (N. C. 1859), 5 Jones' Eq. 258.

Many of the cases arise where a man marries for the second or third time and, before his marriage, but after the contract to marry, makes provision for his children by a former marriage. Only if the conveyance represents a reasonable settlement will it be upheld. *Alkire v. Alkire* (1892), 134 Ind. 350, 32 N. E. 571; *Butler v. Butler* (1879), 21 Kan. 521; *Fennessey v. Fennessey* (1886), 84 Ky. 519, 2 S. W. 158; *Hamilton v. Smith* (1881), 57 Iowa 15, 10 N. W. 276; *Beechley v. Beechley* (1907), 134 Iowa 75, 108 N. W. 762; *Dudley v. Dudley* (1890), 76 Wis. 567, 45 N. W. 402; *Murray v. Murray* (1890), 90 Ky. 1, 13 S. W. 244; *Youngs v. Carter* (N. Y. 1875), 50 How. Prac. 410; *Pomeroy v. Pomeroy* (N. Y. 1875), 54 How. Prac. 228.

In *Chandler et al. v. Hollingsworth et al.* (1867), 3 Del. Ch. 99, the court said that there was no conflict whatever as to the power of a court of equity to relieve the wife. The widow is frequently able to establish dower in property of which her husband was never seized during the marriage because he conveyed it before marriage, if the deed was made without knowledge and consent of the contemplated wife. *Chandler v. Hollingsworth*, above; *Dunbar v. Dunbar* (1912), 254 Ill. 281, 98 N. E. 563; *Leach v. Duvall* (1871), 71 Ky. 201; *Beere v. Beere* (1890), 79 Iowa 555, 44 N. W. 809; *Ward v. Ward* (1900), 63 Ohio St. 125, 57 N. E. 1095; *Youngs v. Carter*, above. Inchoate right of dower is similarly protected in equity where the wife sues during marriage. *Deke v. Huenkemeier* (1913), 260 Ill. 131, 102 N. E. 1059. In a later hearing after the husband's death, the court refused to vest a fee simple in the land in question in the widow, but confirmed the right of dower granted in the earlier hearing. *Deke v. Huenkemeier* (1919), 289 Ill. 148, 124 N. E. 381; *Youngs v. Carter*, above. Many courts follow the Wisconsin Court which said in *Dudley v. Dudley* (1890), 76 Wis. 567 at 575, 45 N. W. 602, that a deed of this sort could be declared fraudulent and void only for the purpose of securing the wife's dower. Nevertheless, at least two other cases have set aside deeds made in contemplation of marriage for the purpose of providing alimony incident to a separation. *Goff v. Goff* (1906), 60 W. Va. 9, 53 S. E. 769; *Fahey v. Fahey* (1908), 43 Colo. 354, 96 Pac. 251.

In several cases it has been held that if the intent was to defraud whomsoever the grantor might marry, his conveyance would be void as to the woman who became his wife, even though he did not know her at the time of the conveyance. *Higgins v. Higgins* (1905), 219 Ill. 146, 76 N. E. 86; *Beechley v. Beechley* (1907), 134 Iowa 75, 108 N. W. 762. Such decisions, however, seem to go too far.

Most of these cases have dealt with the wife's right, but a husband may also appeal to equity to avoid his wife's gifts. *Tucker v. Andrews* (Me. 1836) 1 Shepley 125. *Goddard v. Snow* (1826), 1 Russ. 485; *England v. Downs* (1840), 2 Beav. 522 and dicta in later English cases support the

same view as the American cases, although some of the cases are put on different grounds.

In a few cases the courts have seemed too ready to call the transfer fraudulent, but this probably has resulted from the somewhat loose construction which they placed on what appeared to them an unfair transfer. *Leach v. Duvall* (1871), 71 Ky. 201; *Ward v. Ward* (1900), 63 Ohio St. 125, 57 N. E. 1095; *Youngs v. Carter*, above. *Taylor v. Taylor* justly follows a long line of authorities and does not unnecessarily presume fraud, which is patent in the case. G. S., '31.

COPYRIGHTS—MUSICAL COMPOSITION—RECEPTION FOR PROFIT.—In *Buck v Duncan et al.* (D. C. W. D. Mo. 1929), 32 F. (2d) 366, a suit for infringement of the copyright of a musical selection, the plaintiff, owner of the copyright, permitted a radio station to broadcast the piece. The defendant, owner of a hotel in Kansas City, received the selection over his master set and transmitted it to headpieces in each room in the hotel. The plaintiff sued for damages for infringement of its copyright upon the ground that the hotel owner performed the work publicly for profit. *Held*, there was not an infringement of the copyright.

The language of the copyright statute is as follows: "Any person entitled thereto upon complying with the provisions of this act, shall have the exclusive right: . . . To perform the copyright work publicly for profit if it be a musical composition and for purposes of public performance for profit." 17 U. S. C. sec. 1 (e). One who performs a copyright work publicly for profit without the consent of the owner obviously infringes.

The court holds to the view that in relaying the selections to each room the defendant was merely extending the hearing possibilities of his guests so as to allow them to hear the original performance as broadcast. The court concedes that there is a public performance for profit where a copyrighted phonograph record is played to an audience for a direct or indirect monetary gain. An unauthorized use of a music roll of a copyrighted selection in a player piano as an accompaniment to a photo-play for which admission is charged is an infringement. *M. Witmark and Sons v. Calloway et al.* (D. C. Tenn. 1927), 22 F. (2d) 412. But the court contends that there is a difference in fact between playing a phonograph record and receiving and using a record impressed on the ether. The court writes: "The record on bakelite is a separate and distinct thing from the original performance in the studio where it is made. Playing the record is performing anew the musical composition imprinted on it. The waves thrown out upon the ether are not a record of the original performance. Their reception is not reproduction, but a hearing of the original performance." This technical distinction seems too unreal to furnish a proper basis for the decision. Whether the master receiving set sends the original on to the rooms or sends it reproduced, the hotel owner profits by furnishing the composition to his guests. It is this economic fact which is determining in other cases.