Comment on Recent Decisions

ATTORNEYS—DISBARMENT—AUTHORITY OF COURT.—Alex Berg, of St. Louis, was kidnapped and held for ransom. Paul Richards accepted the position of go-between and attorney for Berg. The kidnappers delivered Berg's $50,000 note to Richards for collection agreeing to pay him $10,000 for his services. The note was never paid. The kidnappers were apprehended. Richards was indicted for kidnapping but was acquitted. The grievance committees of the St. Louis and Missouri bar associations filed a verified complaint in the Supreme Court of Missouri to disbar Richards. *Held:* Such conduct renders an attorney unfit to engage in the practice of law. Suspension would be inadequate. Respondent was, therefore, removed from the practice of law in the courts of Missouri and his license was revoked. *In Re Richards* (Mo. 1933) 63 S. W. (2) 672.

This unanimous decision of the Court sitting in banc is of inestimable significance. Previous Missouri decisions, if followed, would have compelled the discharge of Richards. *State ex rel. Selleck v. Reynolds* (1913) 252 Mo. 369, 158 S. W. 671; *Jones v. Sanderson* (1921) 287 Mo. 176; 229 S. W. 1087. Previous decisions have invariably had at least one dissent and often the majority agreed in result only; most of the doubt revolved about either the right of the court to take original jurisdiction in such proceedings or the interpretation of the statutory reasons for suspension or disbarment.

The court held that it has original jurisdiction in disbarment proceedings, citing State ex rel. *Selleck v. Reynolds, supra,* and *In Re Sizer and Gardner* (1923) 300 Mo. 369, 254 S. W. 82, and that the power, independent of express constitutional or statutory grant, existed in the judicial branch of the government. Thus the inherent power of the court to admit and disbar was affirmed conclusively. This is in accord with the great weight of authority, viz., the function is a judicial one and not legislative; while the legislature may regulate the power it does not create it and cannot frustrate or destroy it. 2 R. C. L. 1086; 6 C. J. 580. The primary purpose of disbarment proceedings is protection of the courts and of the public generally, and not punishment. It is to preserve a standard of integrity and honesty so that the court and its officers may be free from all suspicion. This is absolutely essential if the judiciary is to function and dispense justice properly. Nearly a century and a half ago Lord Mansfield, in *Ex parte Brounsall* (1778) 2 Cowp. Eng. 829, 98 Eng. Rep. 1385, held that an attorney who had been convicted of a felony should have his name stricken from the roll; that the question was not one of punishment but "whether after the conduct of this man it is proper that he should stand free from all suspicion." In the principal case the court held the proceedings to be neither civil nor criminal, but *sui generis,* so that Richards could not complain that the Supreme Court had only appellate jurisdiction.

It was contended, upon the authority of *State ex rel. Selleck v. Reynolds, supra,* and *Jones v. Sanderson, supra,* that where the offense charged in disbarment proceedings is an indictable one the defendant cannot be disbarred or suspended unless indicted and convicted and that the record of the court having charge of the criminal trial is conclusive upon the court hearing the disbarment proceedings and constitutes a valid defense. The *Selleck* de-

cision was by a bare majority of the court while the *Jones* opinion was based upon the precedent of the former. As the court in the principal case clearly shows the *Selleck* case was decided upon statutes which were repealed by the legislature in 1919. These statutes, R. S. Mo. (1909) secs. 956-960, provided that the court should have power only to suspend an accused from practice until the facts were ascertained in the criminal trial; the record of conviction or acquittal should be *conclusive* of the facts. The majority in the *Selleck* case interpreted these provisions to mean that an acquittal compelled the court to dismiss the disbarment proceedings. In 1919 what is now R. S. Mo. (1929) sec. 11712, was enacted to replace the "excuse for this judicial aberration." It provides, "If the attorney be acquitted or discharged upon his trial . . . the Court shall forthwith hear the evidence offered in support of said charge and the evidence offered by the accused, and shall determine the matter without delay."

The *Richards* decision, even had the 1909 statutes been in effect, would have been the same for the court says, "any statutory enactment undertaking to make an acquittal in a criminal prosecution a bar to such an investigation would be, as heretofore suggested, an unconstitutional encroachment of the legislative upon the judicial department of government. . . . it certainly does not follow that after acquittal thereon these same acts may not be charged and proved as reasons for disbarment if they in fact show that respondent is unfit to continue in the practice of the law." Generally the statutory grounds of disbarment are not exclusive and in those states where the legislature has attempted to specify causes for disbarment it is the rule that the courts may suspend or remove for other causes than those mentioned in the statute. 2 Thornton, Attorneys at Law, 759 and cases cited.

This declaration of the Supreme Court of Missouri that it has inherent power to disbar any attorney, regardless of statute, for any conduct that renders him unfit for the proper performance of his duties as an officer of court is a great step forward. It is at least a healthy tendency toward the development of the bar on a higher ethical plane. S. M., '34.

BANKS AND BANKING—DEPOSIT OF CHECK INDORSED IN BLANK—EFFECT OF INSOLVENCY OF COLLECTING BANK.—A bank accepted for deposit from the payee, giving immediate credit therefor, a check drawn by a loan association on another bank, and indorsed by payee in blank. The first bank subsequently failed to open for business, and depositor instructed the loan association to stop payment on the check. The bank now sues to recover the amount thereof. *Held:* Reversing the decision of the Springfield Court of Appeals (1932) 52 S. W. (2d) 608, for the loan association, on the ground that the Bank Collection Code made the bank only an agent of the depositor, who could therefore at any time revoke the agency, stop payment on the check, and himself collect directly from the other bank. *Farmers Exchange Bank of Marshfield v. Farm & Home Savings & Loan Assn. of Missouri* (Mo., 1933) 61 S. W. (2d) 717.

The common law rule according to "the great weight of authority supports the proposition that when a customer presents a check or draft to the bank for deposit, non-restrictively indorsed, and the bank gives him credit therefor, prima facie, the bank becomes the owner of the instrument and the