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An Act to Regulate the Admission of Attorneys to Practice Law in Kentucky

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Mr. Reuben B. Hutchcraft, Jr., who graduated from Transylvania University with the degree of Bachelor of Arts and from the Harvard Law School with the degree of Bachelor of Law, after practicing his profession for four years, has been made a full Professor of the Law Faculty. Mr. Hutchcraft has served one term in the Kentucky Legislature. While in Harvard he served two years on the staff of the Harvard Law Review.

Two thousand volumes have been added to the Law Library since September 1st, and the library now contains about 9,000 volumes. The last contribution contains all the reported cases of 27 of the leading States from the beginning up to the National Reporter System.

The school year opens with unusual promise and bids fair to be by far our most successful year.

AN ACT TO REGULATE THE ADMISSION OF ATTORNEYS TO PRACTICE LAW IN KENTUCKY

As Proposed by Judge W. T. Lafferty, Chairman of Committee on Legal Education and Admission to the Bar,
of the Kentucky Bar Association.

Be it enacted by the General Assembly of the Commonwealth of Kentucky.

Section 1. No person shall hereafter be licensed as an attorney or counselor at law in this State except as herein provided for.

Section 2. The Court of Appeals of Kentucky shall from time to time make and adopt such rules and regulations as said court may see proper, fixing moral qualifications of all applicants, and a standard of acquirement both academic and legal, to entitle them to admission to practice law in the courts of this Commonwealth. No applicant, however, shall be under the age of 21 years.

Section 3. There is hereby created a Board of Examiners on Admission to the Bar. The Board shall consist of three (3) members, each of whom shall possess the qualifications of a Circuit Judge, who shall be appointed by the Court of Appeals of Kentucky and shall hold office for the term of three (3) years and until the appointment and qualification of their successors respectively, except that the three (3) examiners first appointed shall hold office for one, two and three (1, 2 and 3) years, respectively, the said court indicating at the time of their appointment which of said examiners shall hold for each of said terms. All vacancies, however, occurring shall be filled by appointment by said court. The member of said Board who is senior in point of service shall act as its chairman, except that of the members constituting the first Board; the holder of the shortest term shall be its chairman.

Section 4. The members of the Board shall be appointed within thirty (30) days after this Act shall take effect, a majority of them shall constitute a quorum, and said Board shall proceed promptly after their appointment to the performance of its duties.

Section 5. Applicants before the Board for license to practice law shall be examined as to their qualifications. All such examinations shall be in writing and be on such subjects as shall be prescribed by said Court of Appeals and the answers of the applicants to the questions propounded to them shall be graded by said Board and no such applicants shall be granted license unless he secures a general average of seventy-five (75) per cent.

The said Board shall certify to said Court the name of each applicant who shall have passed the required examination before it. The said Court shall enter an order licensing and admitting to practice as an attorney and counselor in all the courts of this state each person who complies with the rules and regulations it shall adopt; which license if procured by fraud may be revoked by the Court at any time within two years from its issuance. The applicant before beginning the practice of law will take the oath as now required.

Section 6. The Court of Appeals shall at the time of its appointment of the first Board of Examiners prescribe the subjects upon which the examination of applicants for license before the Board shall be made, and from time to time make such changes in the list of subjects prescribed as to said Court may seem proper; and the Board of Examiners

shall from time to time make such rules and regulations as to the manner of holding and conducting its meetings and proceedings as said Board may deem proper. Provided, however, that no more than four (4) sessions of said Board may be held in any one year, and said sessions should be held at as nearly regular intervals as may be deemed advisable and must be held at such a place or places as may be selected by the said Court.

Section 7. Each person who applies for license to practice law in this State shall file a written application with the Clerk of the Court of Appeals on such form as may be adopted by the Court, and shall pay to said Clerk a fee of \$10.00, and in case of the failure of such applicant to secure his license, he shall at the time of any subsequent application pay a fee of five (\$5.00) dollars; but no one shall be permitted to file another application within six months next after his last application. All fees collected as aforesaid shall be paid by the said Clerk at once into the State Treasury. The said Court of Appeals shall make an allowance to each of said examiners for his services, which shall be paid out of the fees so paid in (and from no other source) a sum not to exceed two hundred dollars per annum, and his necessary expenses while engaged in the performance of his duties, the same to be paid in quarterly installments on statements filed with the Court.

Section 8. A certified copy of the license granted by the said Court may be had at any time, and it shall be as valid as the original order. Each applicant shall pay to the Clerk of said Court the fees allowed by law in connection with his application.

Section 9. The Court of Appeals shall make such provisions, rules and regulations as it may deem proper for the admission to practice law in this State of persons who have been licensed to practice law in other States or counties.

Section 10. The provisions of this Act shall not apply to any person now holding a license to practice law in this State.

Section 11. All laws and parts of laws in conflict with this Act are hereby repealed.

the construction and interpretation of the courts of Kentucky of the traverse under the Code of Practice.

Mr. Perry stated as one of the properties of pleading in general: "Every pleading must be an answer to the whole of what is adversely alleged.

Example: In an action of trespass for breaking a close and cutting down three hundred trees, if the defendants plead as to cutting down all but two hundred, some matters of justification or title and to the two hundred trees says nothing, the plaintiff is entitled to sign judgment as by way of *nil dicit*, against him in respect to the two hundred trees and to demur or reply to the plea as to the remainder of the trespasses."

In the case of the Trustees of the Kentucky Female Orphan School vs. Flemming, 10 Bush 234. Judge Cofer delivering the opinion of the court said: "The Code (section 125) which is the only authority now for this character of pleading, requires denial of each allegation of the petition by the defendant or any knowledge or information thereof, sufficient to form a belief." It may be true as alleged in the answer that the appellee had not sufficient knowledge, yet he may had such information as was sufficient to form a belief that the note was genuine.

It will be noticed that the appellee by his answer stated that he did not have such information or knowledge to form a belief, when he should have denied having ANY knowledge or information. Hence by his answer, the appellee admitted having SOME knowledge, thus making his pleading not answer to the whole of what was adversely alleged.

Again Perry on Common Law Pleading, p. 281, states: "Every pleading is taken to confess such traversable matters alleged on the other side as it does not traverse. The rule, however, it will be observed, extends only to such matters as are traversable; for matters of law and any other matters which are not fit subject to traverse, are not taken to be admitted by pleading over."

The general rule of traverses has been embodied almost verbatim in section 125 of the Civil Code, which declares: "Every material allegation of pleading must, for the purpose of the action, be taken as true unless specifically traversed, excepting these which must be proved, though not traversed.

- 1—Allegations against the defendant under disability, etc.
- 2—Allegations of answer—seeking recovery against new party, etc.
- 3—Against defendant constructively summoned, etc.
- 4—Concerning value or amount of damages, etc.’

It will be impossible to consider all the various phases of traverses in this short treatise. It will suffice to say that we might go much further in our comparison of the traverses sanctioned by the Code and the courts of Kentucky, and the traverse at common law. Whenever a case involving a traverse has come before the Court of Appeals it has confirmed the nature and the property of the common law traverse. Perhaps the only exception is in the manner and form of denial.

After the declaration, the parties at each stage must demur or plead by way of traverse or by way of confession and avoidance. If a party is unwilling to traverse the petition of the plaintiff, he may plead by way of confession and avoidance. This is one of the common law rules of establishing an issue. The exception to this rule, the party must demur or plead by way of traverse or confession and avoidance, is in pleas of estoppel. Perry states: “If issue be well tendered, both in point of substance and in point of form, nothing remains for the opposite party but to accept it or join it, and he can neither demur, traverse, nor plead in confession in avoidance; but he may plead in estoppel.

B. D. SARTIN (Glasgow Bar).

J. J. GRADDY, Mgr., NICK RYAN, Sec.-Treas., T. C. BRADLEY, Pres., JAS. T. McCARTY, V. Pres.

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