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Qualifications of Lawyers

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QUALIFICATIONS OF LAWYERS

It is an accepted rule that every word in a constitution shall be interpreted and given its usually accepted meaning where the case is one which properly involves constitutional construction.

Article 7, Section 21, of our State Constitution is as follows: "Every person of good moral character, being a voter, shall be entitled to practice law in all courts of justice."

Let us place a period after the word "law" and have the clause read thus: "Every person of good moral character, being a voter, shall be entitled to practice law." Obviously, the word "in all courts of justice" are words of limitation upon the grant of eligibility.

Another accepted rule of construction is that words of limitation which attend a grant against public welfare shall not be enlarged by inference but shall be construed strictly.

In the circumstances, it is obvious that it is only where the lawyer functions in court in the presence and under the control of a judge who is supposed to be learned in the law, that the lawyer can get by without qualifications other than suffrage and moral character.

A case which ought to be illuminative, though not an authority, came before the Supreme Court of the United States. It involved the right of trial by jury and it was an issue whether the judge was charged with a responsibility in the trial of jury casee. Mr. Justice Gray, writing the Court's opinion in *Capital Traction Co. v Hof,* 174 U. S. 1; 43 L. E. 873; 18 S. C. R. 580. presented an exhaustive survey of the province of the judge in the trial of cases and came to the conclusion that the province of the judge in the trial of cases in his court was not one of idleness. See also Baldwin's American Judiciary, page 187; II Federalist pp 119-129; Id. pp 135-151.

The value of this federal authority, as applied to illustrate the meaning of our Constitution, lies largely in the fact that the limitation which the Constitution thus imposes is rather against the judicial than against the legislative department of the State. By this, I mean that, while the courts are restrained by the Constitution from visitation upon the qualifications of lawyers, the restraint does not extend beyond the judiciary. The limitation, therefore, inveighs against that which otherwise might be urged as an inherent province of the Court to control its own officers and servants and to prescribe their qualifications.

The legislative power of the people is "vested" in the General Assembly, and is not delegated. It follows that the legislature has all the power of the people in the matter of making laws, except such power as the Constitution withholds. It should follow that the inquiry is: "Have the people divested themselves of legislative authority over all of their lawyers other than those who at the time are engagd in practice of law in the courts of justice?"

To state an acute point: Has the General Assembly authority to prescribe the qualifications of lawyers who practice before the indus-

trial commission, the securities commission, the public service commission, or any other non-judciial board or department? Obviously, there is no such limitation against the legislative power of the people and, if there be none against the people, then, there is none against the General Assembly in whom the legislative power of the people is vested.

The large domain of justice is divided into two provinces: One of these we call commutative justice; the other distributive justice.

The courts have to do only with distributive justice. The Constitution is distinct on that point. Section 12 of the Bill of Rights declares: "All courts shall be open; and every man, for injury done him in his person, property or reputation, shall have remedy by due course of law. Justice shall be administered freely and without purchase; completely and without denial; speedily and without delay."

So, it appears the courts can exercise jurisdiction only over those grievances which arise in the course of commutative justice. What an infinitismal part it is of the affairs of men, which ever become the subject of judicial controversy!

The judicial power, which the Constitution thus describes, was stated in the common law centuries before our Constitution was written.

Stephen in his work on pleading speaks of the antiquity of the power in these words: "This system, known by the name of pleading, of remote antiquity in its origin, has been gradually moulded into its present form by the wisdom of successive ages. Its great and extensive importance in legal practice has long recommended it to the early and assiduous attention of every professional student. Nor is this its only claim to notice, for, when properly understood and appreciated, it appears to be an instrument so well adapted to the ends of distributive justice, so simple and striking in its fundamental principles, so ingenous and elaborate in its details as fairly to be entitled to the character of a fine judicial invention."

Stephen's statement of the limitations upon justice which can become subjective to judicial inquiry unconsciously forecasts the statement of the same subject in Section 12 of our Bill of Rights. Stephen says: "Actions are divided into real, personal and mixed." Then he defines each class of actions.

For some distinctions between commutative justice and distributive justice, also the definition of "justice," see Leviathan by Thomas Hobbes, London 1651. See, also, Bentham and Burke.

In the ancient law and in the civil law, and where socialism prevails, justice, at the hands of law has a much broader scope than distributive justice has in common law tribunals. For the attempt of Plato to get a satisfactory description of justice, see his "Republic." For the attempt of Roman lawyers to get a satisfac-

tory definition, or rather description, of the words, see Justinian. For the civil law, see Code Napoleon.

Thus, it appears, the classification of justice has been a province of government from time immemorial. Therefore, the common law was guilty of no innovation when it made the distinctions which appear in it, and which it has transcribed into our Constitution and laws. Whether it did right or wrong in making the classifications, we need not now inquire. We made them and that matter is now beyond question.

It was a province of the common law from time immemorial to classify lawyers according to their points of contact with the law. Thus we had the counsellor, the solicitor, the sergeant and the barrister.

Therefore, we would be guilty of no innovation if we should attempt to classify lawyers and put those in a separate and special class who practiced law in the courts of justice.

In this aspect of the situation, it would seem entirely proper for the General Assembly to enact that it would be unlawful for an unqualified person to have and maintain a place where he counselled and advised in respect of the Constitution, laws and treaties of the United States; the Constitutoin and laws of Indiana, and other states; where he assumed to counsel and advise in respect of rights of person, property and reputation and the remedies for their protection and for the redress of wrongs committed against them; where he prepared papers and documents affecting legal rights, etc. And in such a statute, it would be proper for the General Assembly to prescribe the qualifications of lawyers and how those qualifications should be proven.

None of these prohibited acts would be to "practice law in all courts of justice" and it would not be within the limitation prescribed in the Constitution.

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