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LEARNING IN THE LAW AND ADMISSION TO PRACTICE

By THOMAS J. HURLEY*

"Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." Sec. 21, Art. 7, Constitution of Indiana.

I had high hope that Professor Bernard Gavit would discover, in his search of its records, some evidence of the intention of the Constitutional Convention of 1850 that no limit should be placed upon the courts or the legislature in requiring educational qualifications in those presenting themselves for admission to practice law. He is a keen student and a tireless worker; and if such proof were to be found he would uncover it. But much as I desire his success and firmly as I believe that all applicants for admission to practice law should be made to show that they know the subject well, I am of the opinion that a fair reading of the section of the constitution quoted does not warrant saying that it means what we would like to have it.

Protracted and involved argument should not be and is not necessary to determine the meaning of such a simple sentence. I find no ambiguity in it. As a consequence, if I am right, there is then no need for applying legal rules of construction. "Good moral character" is a phrase of such plain, everyday meaning that the most simple of us knows its import. It is freely granted that whether a particular person is of good or bad moral character may present its difficulties in a stated case; but that is not involved here. There isn't any more uncertainty about its meaning than the word "voter." "Shall be entitled to admission" is likewise wholly free from ambiguity.

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Very frankly it seems to me that the purpose in attempting to impose construction upon this section is to accomplish an end or purpose by indirection after the failure of the direct attack; that is, after the miscarriage of two or three attempts to amend this section of the Constitution by vote of the people, some lawyers are contending that it means the same as though the amendment were accomplished. Doing violence to plain English language doesn't seem to be an obstacle at all.

By what authority can it be said that "entitled to admission" means "entitled to take an examination on learning in the law?" Admission means the privilege of entering and to add any conditions or tags to it deprives it of its plain and usually accepted sense. Let us apply it thus: "You are entitled to admission to (enter) your house." Does that mean that you must first be examined to determine if you know how to act after you enter?

Equally ridiculous is the postulate that one who seeks admission, not having the necessary learning in jurisprudence to equal a standard that has not been determined in Indiana, is *ipso facto* of bad moral character. The acrobatics of this proposition show the sponsors to be in distress for reasons to uphold other weak arguments and seeking to rely upon assumed lazy mental processes of their listeners to get by with sophistry. One may well be a very erudite lawyer and at the same time of such rotten moral character that no one would associate with him. Likewise he may be of the most excellent moral character and know absolutely nothing of the laws nor the degree of proficiency necessary to practice it. Ignorance never has been, to my knowledge, a factor in moral character. Do the proponents of this anomalous doctrine mean that he cannot help knowing that his lack of learning in this special field will, without any possible chance to the contrary, result in losses to his prospective clients and that in all honesty he must stay out of it or be branded as of bad moral character? If so, they still are in error. They reverse one of the most deeply-rooted presumptions known to our law, that everyone is presumed to act in good faith until the contrary is proved. But presumptions are not needed in this case. How are we to decide that the applicant has not ample learning in the law until after an examination? He refuses to be examined because, as he contends, he has the right reserved to him in the fundamental law to be admitted upon his proof of good moral character and being a voter. That is what

it says as plainly as it can be written; and that is what it means! No mention or suggestion is made, expressly or by inference, of an academic inquisition into his knowledge of law and procedure, much less of any means or method of doing it, nor by whom.

No one seeking the services of a lawyer can be deceived or defrauded in Indiana solely by reason of persons being admitted to practice without legal learning. Everyone is presumed to know the law which includes the Constitution. So they know and are bound to know that he may be so admitted with no other requirement than "good moral character, being a voter."

The contention of these gentlemen leads to some very strange results, to say the least. We can not pass upon his ignorance of nor his learning in the law without proof; and that must come from within his mind after the examination. If he persists in keeping the extent of his knowledge to himself, when shall we reach a decision as to his character? Should he submit to the examination and fail to pass, regardless of the standard set, he must be of bad moral character. He later has the stain removed and is restored to good moral character by reading law books. Or, he is of good moral character in one county and bad in another, measured by the kind or severity of examination he is subjected to; or perhaps dependent upon whether he has friends on the board; or maybe their own learning or lack of learning in the law. Whether the judge slept well or had a bad breakfast might also have its effect.

That time has varied the precise shade of meaning of words is true but makes no difference. Let them be defined as of today but do not distort them. The stumbling block in this affair is that the thing has been written into and is an integral part of our state constitution, with all of the incidents of that exalted place. Of course, it should not have been put there. I agree. But it is there. And it was put there as a limitation upon the powers that govern. The courts will not be so fast in declaring that the convention, with its many learned lawyers, when it said "entitled to admission," meant "not entitled to admission," or "entitled to seek admission," or anything else so foolish. I will look for at least one dissenting opinion when the Supreme Court affirms the decision of a trial judge that an applicant was found to be a voter and of good moral character, but that having failed to pass the examination prescribed by the committee his

good moral character vanished mysteriously and his petition was denied.

Let us abandon efforts to amend the Constitution by judicial construction and fallacious argument and put the question to the people in the method prescribed by law if a change is necessary, and keep at it until the time comes that a sufficient number of votes are cast to say if the change is wanted by the people or not. The entire basic law of the State can be annulled by changing the dictionary. But I think that will not happen.