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Learning in the Law and Admission to Practice (closing argument)

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LEARNING IN THE LAW AND ADMISSION TO PRACTICE

BERNARD C. GAVIT

In view of the fact that I started the argument I am entitled to a few words in the nature of a closing argument.

I want merely to call attention to the fact that Mr. Hurley still keeps his end of the subject immersed in generalities and that the only evidence he produces to sustain his position is his own self-serving declaration. The quotations which he sets out read well, but decide nothing. I should be willing to accept them at their face value and ask, what application do they have to this specific situation? But on the other hand I should also be interested to know what the court *decided* in each of those cases in addition to what it said. I always got little comfort out of the preliminary general statements by the courts, when they actually decided the case against me. It's another situation where actions speak louder than words, and is somewhat equivalent to the one where X hits me in the face while assuring me, "Now I'm not hitting you." I'm inclined to believe that the latter is just talk and has little to do with the merits of the case.

The only case Mr. Hurley refers to with which offhand I am familiar is the case of *Gibbons v. Ogden*. The case is the basic one construing the Commerce Clause in the Federal Constitution. I should like to have anyone show me how the language which is quoted formed a rule of guidance for the court in that case or in any of the subsequent eight hundred cases in the Supreme Court construing the Commerce Clause. How do the holdings that insurance is not interstate commerce, but a correspondence school is business follow from that language? Why is it that a state privilege tax is a regulation of interstate commerce, but a property tax is not? Why is it that a state quarantine law prohibiting the interstate shipment of diseased cattle is not a regulation of interstate commerce, but that a Federal quarantine law prohibiting the same action is one? Why is it that "commerce" includes non-business transactions?¹

¹ Witness the cases under the White Slave Act.

Can one go back and decide that latter question on the "intention" of the people? All that is necessary is to give to the word its normal meaning, and while many people might assume that "commerce" necessarily includes a business transaction if he take the trouble to consult a dictionary he will find that the Supreme Court's definition is in accordance with good common usage.

No evidence has been produced so far to the effect that either the Constitutional Convention or the people used the phrase "good moral character" in anything other than its good common usage. Since my other articles were written I have consulted the files of one of the leading newspapers of the state covering the time in question, and there is no expression of opinion in it on the subject. The truth is that very, very little was said on any phase of the constitution, and it seems to have been adopted without discussion and as a matter of course.

"Good moral character," then is to be determined pragmatically, and I assert again that all of the evidence indicates quite conclusively that the proper definition of the phrase includes mental honesty. The thing is so obvious that there is little use to argue the matter further.

But it may be well to call attention to the fact that the constitution really adds nothing to the common law requirement. It was always a prerequisite to the practice of law. In the Federal Courts, where there is no statute governing the matter, it is nevertheless the law that "good moral character" is required.² In the case quoted the court decided that exact and full truthfulness was a part of it. The attorney in that case concealed what he should have revealed. It proves the proposition heretofore advanced; that is, that a person may be convicted of a lack of character by what appears to be only an omission, but which nevertheless as affirmatively shows a lack of character as would the commission of a serious crime.

Other states employing the phrase in statutory requirements have consistently construed it as including more than physical morality and have emphatically said that a lack of it may be proved by conduct which is neither criminal, nor in the ordinary individual reprehensible.³ Would it not be indeed strange if we

² See, *e. g.*, *In re Thatcher*, 190 Fed. 969 (1911).

³ See *e. g.*, case and note 69 L. R. A. 701, and *In re* _____ (Wis.), 42 N. W. 221 (1889).

set a high professional standard for character after one is licensed to practice, but said that character at the time of his application for admission was something less than that? He can be disbarred for mental dishonesty; must he be admitted only to be disbarred? The Indiana cases and all of the cases give the lie to that proposition, for it is quite consistently held that one can only be disbarred for reasons sufficient to have kept him out in the first instance.

In conclusion I want again to call attention to the fact that the Denny and Boswell cases decide nothing on the question of good moral character; and Mr. Hurley's assertion that "in effect" they do is not borne out by his own statement of the cases. In both of those cases the trial court found that the applicant did possess a good moral character, and the correctness of that conclusion was neither presented nor decided. The only point upon which either case is a precedent is as to the adoption of the constitutional amendments.

Despite Mr. Hurley's assertions to the contrary I have never contended that there is any ambiguity in the phrase in question. My arguments have been, first, that the phrase defined in its common meaning means more than physical morality and includes mental honesty; second, that there is no evidence that either the Constitutional Convention or the people used it as specifically meaning the same thing as if they had said "good moral character, not including mental honesty;"⁴ third, that if we accept the proposition that the factual content of the phrase in 1852 did not include more than physical morality accepted principles of constitutional interpretation allow the court today to give it its modern factual content. In other words the phrase expresses an idea, the specific content of which may damage. The instances are innumerable where Constitutional language has been so construed. And fourth, it is still arguable in any event, and in the light of the early authorities, that the Constitution sets a minimum and not a maximum requirement.

Mr. Hurley has attempted to meet only the first of those propositions and the only evidence he adduces is his own opinion.

⁴ Evidence is sometimes admissible to prove the exact intention of a convention or legislature. As pointed out several times heretofore the only available evidence points to the conclusion that the specific intent was: "good moral character, including mental honesty."

It is, of course, entitled to some weight, but I believe that the clear preponderance of the evidence lies with the original proposition. The dictionary sustains it; a jury of laymen has so decided; all of the authorities in the field of ethics sustain it; the earlier cases and legislation in this state sustain it, as well as the authorities from other states.