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Disciplinary Powers

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DISCIPLINARY POWERS

Disciplinary powers given the California Bar by statute are being so clarified by court decision, that the complaint registered by one or two dissatisfied practitioners as to the procedure has lost practically all of its force. This is important to North Dakota for the reason that the 1931 annual meeting approved the California plan in principle.

In the October issue we quoted a Mr. Brennan under the heading of "Not Smooth Sailing". Subsequent articles in the California Bar Journal have not only set forth the rather biased character of Mr. Brennan's criticisms, but have clearly demonstrated the advisability of adopting California's step forward.

Summarizing a review of the California decisions in disciplinary cases, Mr. Philbrick McCoy, Counsel for the State Bar of California, states:

"Opinions with regard to the powers of the state bar have of necessity differed; but because of those differences there has now been established, through the cases here reviewed, an interpretation of those powers by the courts which cannot but lead to a more efficient performance of the duties imposed upon the state bar by the act. And it must be clear, too, that notwithstanding the obvious necessity for discipline, the Supreme Court has been jealous in its protection of the profession in all matters coming before it for consideration. In the very nature of things it must have been contemplated that the volume of disciplinary work of the state bar would, at the outset, be great, and that until such time as discipline should be meted out to those of its members who did not respect their oaths as attorneys, and until such time as effective means could be devised to keep out of the profession those persons who could not satisfactorily prove their moral or their educational fitness to practice law, the time and effort which might otherwise be devoted to the more constructive work of the state bar would be limited.

"It is too early to measure the effectiveness of recent act of legislature respecting the admission of persons to practice law, but certainly it may be said that it can only result in raising the standard of the entire profession. Can we expect the same of the disciplinary activities? Unfortunately our answer, though in the affirmative, has to be qualified in this, that the result can only be expected when not only the members of the state bar, but the public as well, come as they must, to a realization that the state bar will, in the continued performance of its obligations, use every effort, as it has in the past with the approval of the Supreme Court, to see 'that every lawyer recognizes that one who practices holds a position of public trust and that his primary duty is to be faithful to that trust.' Nor can it be gainsaid that, within the limits of its powers as herein discussed, the state bar has, in the work already done, amply justified its existence."

It may be of interest to note some of the recent decisions of the California Supreme Court, which are here cited:

Aydelotte vs. State Bar, 290 Pac. 41
In re Stafford, 284 Pac. 670
In re Richardson, 288 Pac. 669
McIntosh vs. State Bar, 294 Pac. 1067
In re Graves, 221 Pac. 411
In re Peterson, 280 Pac. 124
Golden vs. State Bar, 2 Pac. (2nd) 325

Howe vs. State Bar, 298 Pac. 25
Bailey vs. State Bar, 288 Pac. 433
Mills vs. State Bar, 296 Pac. 280
Irving vs. State Bar, 1 Pac. (2nd) 2
Townsend vs. State Bar, 291 Pac. 837
In re Shattuck, 279 Pac. 998
In re Winne, 280 Pac. 113
In re Cate, 279 Pac. 131
Vaughan vs. State Bar, 284 Pac. 909
Brydonjack vs. State Bar, 281 Pac. 1018
Green vs. State Bar, 82 Cal. 254
Fish vs. State Bar, 82 Cal. 616
Dudney vs. State Bar, 82 Cal. 637
Clark vs. State Bar, 82 Cal. 665

NORTH DAKOTA DECISIONS

Ruble vs. Nyseth: Over a period of years one O. loaned various sums of money to defendant. Settlement was finally made and note and mortgage given. O. and other mortgagees agreed to a sale of the property, the understanding being that the proceeds should go to the mortgagees. Such disposition was made, partly, but there was about $757.29 in the hands of the auctioneer when garnishment was served upon him. O. claimed this amount, it being less than his account on the note and mortgage. HELD: That O. had a valid and subsisting mortgage lien upon the property and the proceeds of the sale; that same was superior to the lien of the plaintiff on his garnishment proceeding.

Kittleson vs. Collette: Plaintiff, an auto dealer, and defendant, a farmer, made a deal whereby defendant turned over to plaintiff a house as part of the purchase price of a car. Shortly thereafter, defendant sold the lot on which the house stood, giving a warranty deed. The tenant in the house had, in the meantime, been requested to vacate, and did so. At time of sale of the lot, mention of sale of the house was made, but no reference thereto was placed in the deed. Plaintiff rented the house to another without defendant's knowledge. The lot was then sold to C., with instruction that the house had been sold to plaintiff, but no mention was made in that deed. Plaintiff told various people he owned the house, tried to sell it, and made arrangements for moving it. Plaintiff's tenant then moved out of the house, but the last owner of the lot moved in, without the knowledge or consent of plaintiff or defendant. C. sold the lot to P., who, in turn, sold it back to C. This action is for the value of the house. HELD: The parole evidence rule applies only to parties and privies. "Where a controversy arises between a party to written contract and one who is neither a party to it nor privy to one who is the rule excluding parol evidence to explain, modify, or contradict the writing does not apply." Since, however, there was no time fixed for removal of the house, the law gave the plaintiff a reasonable time to do so. The matter of reasonable time is a question for the jury. Hence, a new trial is ordered.

CHAIN STORE LICENSING

Under this heading we quoted extracts from the U. S. Supreme Court decision in *Indiana vs. Jackson, 51 Sup. Ct. Rep. 540* (September