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no *true* oath (as in the *Latiolais* situation) then the crime of perjury is impossible and therefore could not have been attempted. However, the fact that the substantive crime is impossible does not make the attempt to commit the crime impossible. Intent, when coupled with an overt act tending toward the substantive crime, is a vital element which makes an attempt to commit a crime (including perjury) punishable, if the actor believed he had the ability to commit the basic offense. When the prosecution is only for an attempt to commit that crime, then the element of intent sweeps away any bars that would have blocked a conviction for the substantive crime when such bars were unknown to the defendant.

By this *Latiolais* decision, loopholes for escaping punishment for perjury have not been removed, but the attempting perjurer cannot escape all possible punishment by later setting up objections to the substantive crime unknown to him at the time of the attempt. He will be readily punished for attempted perjury Secondly, this case strengthens the precedents for punishing frustrated attempts to commit other crimes. Those who believe that social necessity requires that the law be a useful instrument in crime punishment and prevention will agree with this writer that *State v. Latiolais*[26] is a firm step in the proper direction.

Gerald N Hill

DISBARMENT· ADMISSION TO THE BAR OBTAINED BY FRAUD.

In the recent case of *In re Hyra*,[1] Hyra was suspended from the practice of law for two years because in his application for admission to the bar he falsely answered "no" to the following question:

> "Have you ever been concerned as a party plaintiff or defendant, or witness in any legal proceedings? If so, state fully the court, administrative office or tribunal, the character of the proceedings and your relationship to it."

When he was 18 years old Hyra had been convicted on five counts of burglary and larceny His sentence had been suspended and he had been placed on probation.

The majority of the court, in a three to four decision, was of the opinion that severe disciplinary action had to be taken. However, the court felt that disbarment was too severe in view of the fact that, except for the crimes he had denied, he had led an exemplary life both before and after the false swearing.

The minority was of the view that mitigating circumstances were not in question. If Hyra obtained his license to practice law by fraud he had to be disbarred.

The dissent is detailed with citations from various jurisdictions. At first reading it appears to be the better conclusion, especially since the majority's opinion is brief and includes no cited authority whatsoever.

Two questions are presented by the decision:

1. Is a license to practice law which is obtained through fraud absolutely void or is it merely voidable?

2. What degree of latitude do judges possess in disciplinary proceedings against a lawyer?

As to question No. 1, if we find that the license is voidable only, then the majority opinion can be supported on the theory that in not revoking the license

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[26] See note 1 *supra*.

[1] 15 N.J. 252, 104 A.2d 609 (1954).

the court has waived its option to disaffirm the license. The license being valid and subsisting can, therefore, be the subject of suspension.

It is interesting to note that the courts do not use the words "void" and "voidable" in this connection. Yet it is clear from a reading of the cases that the status of the license is a primary question even though the cases do not directly state which class they deem the license to be in. Most of the courts state that obtaining a license to practice law by false statements or concealment of facts is a fraud upon the court.[2] Some of the courts then go on to say that this requires disbarment,[3] while others state that the license should be revoked.[4]

If disbarment is the proper procedure, the license must be deemed to be only voidable. Disbarment presupposes membership in the bar. A void license having no legal existence is in reality no license at all. Without a license how can one be a member of the bar? On the other hand, a voidable license is valid and such a valid license *would* support membership in the bar until revoked.

Thus it may be said that cases holding such fraud *requires* disbarment are stating a conclusion on the facts of the case and not an absolute rule. The court may conclude on the facts involved that the particular fraud requires disbarment. It does not hold that every such fraud, without consideration of the facts and circumstances, requires disbarment.

In cases where the license is required to be revoked it is more proper to consider the license as void. If the license were only voidable the holder would have to be disbarred. Most of the courts simply say that the license is revoked and the attorney's name is to be stricken from the rolls.[5] A few cases have held that the license is revoked and the holder disbarred.[6] It would seem quite clear that in these cases the license is deemed to be only voidable. Still another line of cases hold that such fraud is *ground* for revoking the license.[7] Here is would appear that the court deems the license to be only voidable; but they use revocation alone, failing to order disbarment.

Thus, as seen above, most of the cases can be construed as holding the license to be only voidable. The only cases that cannot be so construed are those holding that such fraud *requires* revocation of the license. Upon what basis can it be held that a license obtained by fraud is void? Is it by analogy to contract principles or by a legislative or judicial rule which the court must follow?

If the analogy is to contract, the license must be construed as only voidable for the reason that it would be fraud in the inducement and not fraud in the inception (fraud in factum). To be fraud in the inception the court, in granting the license, must have thought that it was granting the person something other than that which it actually did grant.[8] In the present case, the court intended, and did give, Hyra a license to practice law The only fraud involved was in the reason which induced the court to issue the license, and this would clearly be fraud in the inducement.[9]

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[2] *In re* Moshkow, 250 App.Div 780, 294 N.Y.S. 474 (1937), State v Pedell, 189 Wis. 457, 207 N.W 709 (1926). See also cases collected in 165 A.L.R. 1133.

[3] *In re* Price, 226 App.Div 460, 235 N.Y.S. 601 (1929).

[4] *In re* Bladwin, 258 App.Div. 661, 17 N.Y.S.2d 727 (1940), *In re* Mash, 28 Cal.App. 692, 153 Pac. 961 (1915).

[5] *In re* Bladwin, *supra* note 4.

[6] Prapper v Owens, 136 Ga. 787, 72 S.E. 242 (1911).

[7] *In re* Marx, 115 App.Div 448, 101 N.Y.S. 608 (1906).

[8] Lovato v. Catron, 20 N.M. 168, 148 Pac. 490 (1915)

[9] *Ibid.*

As for a rule that requires disbarment in such cases, there is no such statute in New Jersey; and as this was a case of first impression within the state, there was no prior decision to bind the court upon principles of *stare decisis*.

There is another point in favor of construing the license as voidable. Such a construction would in no way affect the stability of adjudicated cases whereas if it were held void it might. An example of this would be where one has been charged in a state court with a felony The charged felon has the right to the asssitance of counsel guaranteed by the Fourteenth Amendment to the Constitution.[10] Counsel has been defined to include only those admitted to the bar of the state.[11] A person under a void license would not have been counsel whereas if it were only voidable he would have been.

Chief Justice Vanderbilt's argument in his dissent that since the court could have refused to grant the license had they known of Hyra's past conviction the license is therefore void, oddly enough lends itself to the view that the license is voidable. The court, on Hyra's admission, had the choice of either admitting him or not. It appears quite reasonable that when they find out about it later they should have the same choice and be able to revoke the license or affirm it.

It seems to this writer that the better position is that the license is merely voidable. It being merely voidable, the court, in suspending Hyra, waived its option to revoke the license and thereby affirmed it.

The court's position may be sustained on a much broader principle than the one given above. The courts have great latitude in matters of admission and discipline of the bar as this is a sphere where the court has inherent judicial power.[12] Inherent power of the judiciary has been defined to mean, "that which is essential to the existence, dignity and functions of the court from the very fact that it is a court."[13]

Several reasons have been given to show that regulation of lawyers falls within this power. The more salient ones can be classified into three major groups.

1. The court should regulate lawyers for its own sake. Attorneys as such first decide the law when a client comes to them; their ability to decide means much to the court.[14] Another reason is that the bench is recruited in the most part from the ranks of the bar.[15] Perhaps the reason given most often is that a lawyer is an officer of the court (not in the sense that he can bind the court by his actions, but due to the lawyer's close relationship with the court). As such it is important for the court to exercise its control over the attorney [16]

2. The court should regulate the bar for the sake of the public. If people could not put their faith in attorneys, the function of the bench would decrease and its dignity be lowered.[17]

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[10] Williams v. Kaiser, 323 U.S. 471 (1944).

[11] Higgins v. Parker, 354 Mo. 888, 191 S.W.2d 668 (1945).

[12] *In re* Keenan, 310 Mass. 166, 37 N.E.2d 516, 137 A.L.R. 766 (1941), Montgomery Co. Bar. Assn. v. Rinalducci, 329 Pa. 296, 197 A. 924 (1938).

[13] Re Integration of Nebraska State Bar Assn., 133 Neb. 283, 275 N.W 265, 114 A.L.R. 151 (1937).

[14] Dowling, *The Inherent Power of the Judiciary*, 21 A.B.A.J. 635 (1935).

[15] *In re* Application for License to Practice Law, 67 W Va. 213, 67 S.E. 597 (1910), Fairfield Co. Bar v. Taylor, 60 Conn. 11, 22 A. 441 (1891).

[16] Carpenter v. State Bar of California, 81 Cal. 114, 295 Pac. 23 (1931), People *ex rel.* Karlin v. Culkin, 248 N.Y. 465, 162 N.E. 487 (1928).

[17] State Bar of California v. Superior Court, 207 Cal. 590, 278 Pac. 432 (1929), *In re* Co-Operative Law Co., 198 N.Y. 478, 92 N.E. 15 (1910).