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New Jersey Court of Errors and Appeals

In the matter of SIMON HAHN, a Solicitor of the Court of Chancery.

On Motion to Dismiss Appeal.

Brief for Appellant.

By an order of the Court of Chancery (Case p. 1) the appellant was adjudged to have been guilty of malpractice as a solicitor and was thereby debarred from thereafter appearing in chancery as a solicitor or counsellor, and prohibited from exercising any of the functions, rights or privileges of a solicitor or counsellor of that court. He duly perfected his appeal to this court, which appeal the solicitor appointed by the Court of Chancery now moves to dismiss on the ground that the order appealed from lies solely within the jurisdiction of the Court of Chancery and is not appealable.

The appellant bases his right to appeal fundamentally and directly upon section 111 of the Chancery Act of 1902, which has recently been amended by Chapter 86 of the Laws of 1914 (P. L. 1914-133; the presently material part of which is unaffected by that amendment and reads:

> "All persons aggrieved by any order or decree of the Court of Chancery, may appeal from the same, or any part thereof, to the Court of Errors & Appeals; * * *"

As counsel for the motion says in his brief, these very words have existed since first they were put in that form by section 13 of the Chancery Act of 1820. The very sweeping language of this statute

is, if possible, strengthened by the decisions of this court in construing the same.

Camden & Amboy R. Co. v. *Stewart,* 6 C. E. Gr., 484 (Errors & Appeals 1870). In this case Beasley, *C. J.,* speaking for the unanimous court said, p. 485, 486:

> "The question was raised on the argument of this cause, whether an order sustaining exceptions to a bill on the ground of impertinence, was subject to an appeal to this court. The objection to such a course of proceeding appeared to be that the order was one merely incidental in the progress of the cause, and which was addressed to the discretion of the Chancellor.
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> The language of the statute upon the subject is, that 'all persons aggrieved by any order or decree of the Court of Chancery may appeal from the same, or any part thereof, to the Court of Errors and Appeals.' Nix. Dig. 116, pl. 80. * From the terms here used, it is clear that the intention was to give a wide scope to appeals. The only limit imposed on the right is the circumstance that the party appealing must be, in a legal view, 'aggrieved' by the order sought to be reviewed. The restriction obviously excludes from the category of appealable matters, all orders which lie wholly in discretion, and which have no tendency to affect any right in litigation. It was on this ground that this court declined to take cognizance of an appeal from an order of the Chancellor refusing to pass to a general guardian moneys derived from the sale of the minor's real estate. In the matter of Anderson, 2 C. E. Gr., 536. The same principle is recognized in Garr *v.* Hill, 1 Halst. Ch., 641, and The Attorney-General *v.* Paterson, 1 Stockt., 625.
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> "But these decisions simply show that there are specific cases which are not the objects of

> appeal. They provide no practical test, nor do they establish any general rule. And, indeed, a little reflection will satisfy any one that it is not possible to adopt any universal criterion."

That same learned judge, speaking for this court in *Pennsylvania Railroad Co.* v. *National Docks &c. Co.*, 9 Dick., 647, said, in referring to this statute, and to the constitution of 1844, on p. 653:

> "The effect of those two acts is, in my opinion, as plain as anything can be. They give the right to any person aggrieved to appeal—that is, to call upon the superior court to decide whether his rights or property shall be affected by the decree in the court below, and if so, to what extent. * * * Deriving from our own statute the right of appeal with the inherent force just defined, it becomes unnecessary to examine the remedy as it exists in in other jurisdictions. * * * But the legislation referred to does not impart to this court an appellate power similar to that possessed by the English court of last resort, or similar to that of any other court, but confers the prerogative unrestricted by reference to practice or model."

The only question therefore, is, whether or not the appellant is "aggrieved" by the order appealed from. He certainly is in every practical sense of that word aggrieved by an order which debars him from following his profession in a court that administers one-half of the jurisprudence of this state. Can it be that he is not aggrieved also in the eyes of the law? Both reason and authority answer that it cannot.

First, to consider reason, we find that the appellant is the holder of a license or commission under the great seal of this state appointing him an attorney at law and solicitor in chancery, during his good behavior, authorizing him to take and

receive all legal fees thereunto appertaining, and directing all judges to take notice of his right. We apprehend that the holder of such a license or commission is entitled to all the rights thereby conferred upon him until he shall, in fact, have ceased to behave himself well in the office in question, and the fact of his misbehavior shall have been judicially determined by a tribunal having jurisdiction so to determine. The appellant asserts not only that he has not been guilty of misbehavior in his office, but also that the Court of Chancery has no jurisdiction to determine that question or remove him therefrom. He certainly is therefore, in a legal sense, aggrieved by the order below.

Turning to the decisions, we find the following: In *N. J. Building & Loan &c. Co.* v. *Lord,* 21 Dick., 344, this court held that a party is not aggrieved by a decree made upon a bill which has been regularly taken as confessed against him for want of a plea, demurrer or answer. Green, *J.* speaking for the court, said, p. 349:

> "A defendant is truly aggrieved only when, by appropriate pleadings and proofs, he has become an active party to an issue or controversy which is adjudged against him."

Stevens, Executrix, v. *Stevens, Executor,* 9 C. E. Gr., 547 (Errors & Appeals 1874). This case held that an order staying proceedings under an original bill until the cross-bill should be answered is not appealable. Beasley, *C. J.,* said on p. 576:

> "Among the class thus indicated as being clearly not appealable, are all the ordinary orders made in the progress of the suit for the purpose of putting the case fairly at issue, obtaining the requisite evidence, and affording the parties a hearing. No one pretends that any orders of this kind will form a basis for an appeal."

No one pretends that the order appealed from in the case at bar is a mere step in a cause. Counsel, however, argues, first, our cases have established that no one is aggrieved unless the order appealed from injuriously affects his property right or other right, involving the element of pecuniary interest, and secondly, that the order affects no such right. The first branch of this argument is clearly defective as appears from *Baird* v. *Baird,* 4 C. E. Gr., 481 (Errors & Appeals 1868). In this case this court entertained an appeal from a decree of the Chancellor awarding to one parent the permanent custody of a child. It cannot be contended that there is even a flavor of pecuniary interest involved in that appeal.

The second branch of the argument is equally defective. Counsel does not indeed assert that to be a solicitor in chancery is not pecuniarily valuable, but he says that the right so to be is one which the courts are not bound to respect,—that it is a mere privilege revocable at the Chancellor's will. We are not here concerned with the right to practice law as a constitutional inherent or natural right. We are concerned only with the removal from an office. *In Re. Branch,* 41 Vr., 537, which dealt with applicants for admission as attorneys, is therefore, not in point. Let it be admitted that no one has an inherent right to be admitted to the bar upon the conditions existing at the time of the commencement of his study, that does not mean therefore that after he has been admitted he can be deprived at the will and pleasure of the Chancellor of an office which he holds during good behavior.

This difference was recognized by Baldwin, *J.*, speaking for the Supreme Court of Errors of

Connecticut, *In Re. O'Brien's Petition,* 63 Atl., 777, at p. 780. He said:

> "To disbar an attorney is to deprive him of what, within the meaning of our constitutions of government may fairly be regarded as property. Bradley *v.* Fischer, 13 Wall., 335-354; 20 L. Ed. 646, but one who asks the privilege of admission to the bar is simply seeking to obtain a right of property which he has not got."

In *Ex Parte Garland,* 4 Wall., 333, the Supreme Court of the United States speaking through Field, *J.,* said at p. 378:

> "The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counsellors and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court and are responsible to it for professional misconduct. They hold their office during good behavior and can only be deprived of it for misconduct ascertained and declared by the judgment of the court, after opportunity to be heard has been afforded."

And again on page 379:

> "The attorney and counsellor being by the solemn judicial act of the court clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors and to argue causes is something more than a mere indulgence revocable at the pleasure of the court or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court for moral or professional delinquency."

That great tribunal consistently reviews the determinations of the lower federal courts in proceedings of this character.

Reference is had to:

Ex Parte Bradley, 7 Wall., 364; and

Ex Parte Robinson, 19 Wall., 505.

It is true that the court has given its review by exercising its prerogative writ of mandamus, but as Chief Justice Marshall said in *Ex Parte Crane,* 5 Peters, 190, at 193:

> "A mandamus to an officer is held to be the exercise of original jurisdiction; but a mandamus to an inferior court of the United States is in the nature of appellate jurisdiction."

Counsel cannot maintain his point unless he shows that the order appealed from is in its nature inherently not reviewable by a superior tribunal. It is utterly immaterial to this court by what means other tribunals obtain jurisdiction of the proceedings of their inferior courts. Section 111 of the Chancery Act, which is buttressed by the Constitution of 1844, gives this court jurisdiction to review all orders which are not in their nature, and by well established principles, not the subject of review. We rely, then, on cases where the review has been by means of a mandamus. Another such a case was *People* v. *Justices of Delaware,* 1 Johns. Cas., (N. Y.), 181. In this case the court held that the Common Pleas did not possess the exclusive power of determining on the conduct of its attorneys, but that the Supreme Court could exercise supervision, and, being of opinion that the ground of removal was too slight for so severe a punishment, issued a mandamus to re-instate the attorney. This power has for centuries been exercised by the Court of Kings Bench in England.

See *White's Case,* 6 Modern, 18.

See *Shortt on Informations* * p. 281, note q.

Nor is the review exercised by the English courts limited to cases where the removal has been by an inferior as distinguished from a superior court.

In re Hardwick, 12 Q. B. D., 148.

Here the Queen's Bench Division of the High Court of Justice ordered a solicitor to be struck off the roll for misconduct. The Court of Appeal, after argument, expressly held that it had the power to review. Section 19 of the English Judicature Act of 1873, which gives the general jurisdiction on appeal, is not a bit more sweeping than our Chancery Act.

See also *In re Edde,* 25 Q. B. D., 228.

Other cases of appeals from superior courts are:

In re Monckton, 1 Moore P. C., 455 (Privy Council appeal from Prince Edw. Is. 1837).

Smith v. *Justices of Sierre Leone,* 3 Moore P. C., 62 (Privy Council appeal from Sierre Leone 1841).

Smith v. *Sierre Leone,* 7 Moore P. C., 174 (Privy Council appeal from Sierre Leone).

In re Stewart, L. R.—2 P. C. 88. (Privy Council appeal from High Court in Bengal).

The appellate jurisdiction of the Privy Council from the High Court in Bengal is no more extensive than that conferred by our Chancery Act, as appears from a perusal of the Letters Patent for the High Court of Judicature at Fort Williams in Bengal, bearing date Dec. 28th, 1865; 6 Statutory Orders of Rules Revised—India, p. 3, paragraphs 39 to 42; 10 Halsbury's Laws of England 604—Dependencies and Colonies, Section 1056.

In this country the courts of appeal almost universally review determinations in disbarment matters.

See, for instance, the cases from Connecticut cited in Mr. Gaskill's brief and also *In Re Eldridge,* 82 N. Y., 161, which held that an order of the Supreme Court punishing an attorney for pro-

fessional misconduct not committed in the presence of the court, but based upon evidence, is reviewable upon the facts in the Court of Appeals.

Bar Ass'n. v. *Greenhood,* 46 N. E., 568 (Mass.).

In Massachusetts Public Statutes, chapter 152, section 10 it is provided:

> "A party aggrieved by a judgment founded upon matter of law apparent on the record in any proceeding, civil or criminal, except a judgment upon an answer or plea in abatement, or motion to dismiss for defective form of process, may appeal therefrom to the Supreme Judicial Court."

We here find the very word "aggrieved," and the decision is therefore directly in point.

Counsel does not cite a single unoverruled case denying the right of review over orders of disbarment.

Counsel refers to the well established principle that an order adjudging one to be guilty of a criminal contempt and punishing him therefor, is not appealable. He argues that, therefore, an order of disbarment is not appealable. The first answer to this is that even punitive contempt orders can be questioned by an appellate court with respect to the jurisdiction of the lower court.

> *Frank* v. *Herold,* 19 Dick., 371 (Errors & Appeals 1901).
>
> *Seastream* v. *N. J., &c., Co.* 2, Buch., 377 (Errors & Appeals 1906).

The appellant seriously challenges the jurisdiction of the Chancellor to make the order appealed from in this case. This court, therefore, must examine and determine the question of the Chancellor's jurisdiction.

There is, however, a distinction, or rather lack of similarity, between an order culminating a proceeding instituted solely to vindicate the dignity and authority of the court, and an order depriving

an officer of the court of his office. This difference has in effect been recognized by each of the many cases allowing appeals in disbarment proceedings. By comparing the number of such cases in the different jurisdictions with the universally accepted doctrine that punitive contempt orders are not in the absence of special legislation appealable or reviewable in any collateral proceeding whatsoever, (*Ex Parte Kearney,* 7 Wheaton (U. S.), 38; *In re Fernandes,* 6 H. & N., 717), the recognition of this dissimilarity clearly appears.

Indeed, in *Smith* v. *Justices of Sierre Leone,* 3 Moore, P. C., 362, *supra,* the very distinction was taken in the case. There the Colonial Court disbarred the appellant and struck him from the roll and also fined him for contempt. In that case the opinion of the Privy Council was as follows:

> "Their Lordships have fully considered the whole of the evidence before them in this case and have attended also to everything that has been urged by counsel on both sides with great anxiety in consideration of the nature and circumstances of the case. They are clearly of opinion that the order for striking Mr. Smith off the rolls was without any foundation, however, ought not to have been made and must be rescinded. They are, however, of opinion that they can make no order respecting the fine imposed by the court below upon Mr. Smith, but their Lordships are clearly of the opinion that upon the whole of the evidence in this cause that there is nothing whatever to affect in any respect the character of Mr. Smith."

The case of *Strong & Sons* v. *Munday,* 7 Dick., 833 (Errors & Appeals) should be considered in this connection. In this case the complainant's solicitors had retained out of the proceeds of a foreclosure sale, moneys for their compensation over and above their taxed costs. The complain-

ant presented a petition in the cause praying that the solicitors be summarily ordered to pay over the amount retained. Such an order was made by the Chancellor. (*Munday* v. *Schantz,* 7 Dick., 444). The solicitors appealed and the order was reversed. Here is a decision of this court showing that an order made in the exercise of the Chancellor's summary jurisdiction over solicitors in chancery is appealable. The only possible similarity between punitive contempt orders and orders of disbarment is that both are taken in summary proceedings and pursuant to the court's authority over those who come before it, either as parties, witnesses or solicitors. But with that the similarity ceases. The power of punishing for contempt exists to enable the court to preserve order and to enforce the due observance of its decrees, and this power exists as well over solicitors as others. The summary power of the court over its officers' fees, and over their offices is clearly quite different; and *Strong & Sons* v. *Munday, supra,* shows that this court has held the latter kind of summary orders to be subject to its review.

The Chancellor Has No Jurisdiction to Make the Order Appealed From.

Counsel for the respondent assumes, rather than proves, that the Chancellor of New Jersey has jurisdiction to deprive one who has been duly admitted to practice as a solicitor of his right to continue in the practice; or in other words, that the Court of Chancery has jurisdiction to determine whether or not the appellant's good behavior, in the terms of his commission or license from the Governor, has ceased. Our theory, on the other hand, is that under the system of jurisprudence existing in New Jersey, the Chancellor has no jurisdiction to admit or remove a solicitor. We

shall not delve into the abtruse meta-physical problem of whether there are several offices of attorney at law on the one hand, and solicitor in Chancery on the other; or whether there is but one office, with two names expressing the different fields of the office's activity. It would seem indeed that an attorney or solicitor is an officer of each of the several courts in which he may practice. That as an attorney of the Supreme Court he holds one office; that as an attorney of the Essex Circuit Court he holds another; of the Essex Common Pleas a third, and as a solicitor in Chancery a fourth, and so on. We think the aforesaid problem is immaterial and the position to be maintained properly stated is: that in this state, it is, and from the earliest times has been, the law, that he who has been duly admitted to practice as an attorney at law of the Supreme Court is thereby entitled to practice as a solicitor in Chancery; that, admitting for the sake of argument the separate existence of the offices in question, an attorney at law of the Supreme Court is *ipso facto* a solicitor in Chancery. We further maintain that the only way one can become a solicitor in Chancery is by becoming an attorney at law. Conversely, the only way one can be deprived of one's right to continue to be a solicitor in Chancery is by being deprived of the office of attorney at law. Furthermore, we contend, nor can it be seriously disputed, that under our law, the Supreme Court has exclusive jurisdiction to remove an attorney at law. Lastly, the order appealed from is an attempted removal from the office of solicitor in Chancery. The conclusion irresistibly follows that the order is *coram non judice* and void.

It is perfectly true that the High Court of Chancery in England had the power to admit solicitors and strike them from its roll.

See *Mitchell's Case,* 2 Atk., 173.
Re Collins, 7 DeG. M. & G., 558.
Thorndyke v. *Hunt,* 5 Jurist N. S., 879-882.

But in England each of the three superior courts of Westminster separately admitted and separately removed its own attorneys.

In re Collins, 18 C. B., 272.
Ex parte Hague, 3 Brod. & Bing., 257.
Ex parte Yates, 9 Bing., 455.
In re Whytehead, 4 Man. & Gr., 768.
In re M. —— *T.* —— *L. R.,* 8 Ex., 62.

By becoming an attorney of the court of the King's Bench, one did not *ipso facto* become an attorney of the Common Pleas nor a solicitor in Chancery. Likewise on being removed by anyone of the courts, he did not *ipso facto* lose his position in the others, but separate proceedings had to be taken. The cases last above cited are authorities for this proposition.

Turning to the State of New Jersey, we find that a totally different procedure is adopted, which procedure has been supported by custom and sanctioned by statute. As said by Stevenson, *V. C.,* in *In re Raisch,* 13 Buch., 82, the origin of the New Jersey custom in lost in obscurity. No better authority for the custom has been found than that suggested by the learned Vice Chancellor, (In re Raisch *supra*), namely, Lord Cornbury's Commission. See 4 C. E. Gr., 578, Leaming & Spicer 651. At any rate, we know that by 1752, the Supreme Court recommended applicants to the Governor who were by him licensed to practice. See the rule of August term, 1752, 41 Vr., 835. No express reference is found in this rule to the right to practice before the little used Colonial Court of

Chancery. In the colony of New York, whose government under the crown, was, as is well known, similar to that of New Jersey, the Governor likewise licensed attorneys; and such a license being produced in court and the oath taken, the attorney was qualified to practice in every court of the province. See the learned argument of Theodore W. Dwight, Esquire, in *In re Cooper,* 22 N. Y., 67, 78 and 79. A difference between the New York procedure, and that of New Jersey, is that in the former colony, the attorneys were sometimes licensed for particular courts, (in *In re Cooper, supra*), while there is no record that such procedure was ever followed in New Jersey.

In this situation, there was, in 1799, passed "An act to regulate the practice of the courts of law," Paterson, 355, (Revision of 1821, 413). The first three sections of this act provided:

> "1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same. That every person of full age and sound memory may appear and prosecute, or defend any action in any of the courts of judicature of this state, in person, or by his solicitor in Chancery or attorneys at law.
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> "2. And be it enacted, that no person, except in his own case, or in the case of an infant, shall be permitted to appear and prosecute or defend any action in any of the said courts, but such as is a licensed solicitor or attorney at law, who shall be under the direction of the court in which he acts.
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> "3. And be it enacted, that if any counsellor, solicitor or attorney at law shall be guilty of malpractice in any of the said courts, he shall be put out of the roll, and never after be permitted to act or practice as a counsellor, solicitor or attorney at law, unless he

shall obtain a new license and be again enrolled in due form of law."

An interesting commentary upon the situation in 1821 by a learned member of this bar is found in 4 Griffiths Law Register 1158:

> "A. All attorneys and counsellors are recommended by the justices of the Supreme Court to the governor for licenses; and upon such recommendation, they are licensed as of course by him under the great seal of the state.
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> "The Supreme Court by *rule* regulates the mode of obtaining a recommendation; and the license as attorney when obtained authorizes the licentiate to practice as such, and also as counsel or advocate in all the inferior courts, but only as attorney in the Supreme Court and Court of Appeals, and as solicitor in Chancery and proctor in the prerogative court.
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> "The counsellors license admits him as an advocate, in all the courts of the state. * * *
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> "Upon obtaining the governor's license, the licentiate presents it in open court to the justices of the Supreme Court and thereupon after taking the oath to support the constitution of the United States, the oath of allegiance to this state, and the oath of office as attorney or counsellor, he signs the roll of attorneys or counsellors as the case may be, which roll remains with the clerk of that court."

How different was the practice in our adjoining states which adhered more closely to the English system. As to the State of Delaware, we find from 4 Griffiths Law Register, 1024, that attorneys at law are admitted by the Supreme Court and the Court of Common Pleas, each of which is a court of state-wide jurisdiction, and that when admitted by one, he is on motion admitted by the other, upon his taking the same oath which he

took upon his admission in the first. The learned author continues to say:

> "A person to be admitted a solicitor to practice in the Court of Chancery must have studied three years under the direction of some gentleman of abilities in the practice of the law, and have been admitted an attorney of the Supreme Court or Court of Common Pleas of this state, and must be examined in the presence of the Chancellor, and such other officers of the Court as may think proper to attend by two solicitors to be appointed by the Chancellor. He must take the same oaths taken in the other courts by an attorney."

See *In re Hoffecker,* 60 Atl., 981 (Del.).

In New York State, Section XXVII of the Constitution of 1777, provided among other things:

> "And that all attorneys, solicitors, and counsellors at law hereafter to be appointed, be appointed by the court and licensed by the first judge of the court in which they shall respectively plead or practice, and be regulated by the rules and orders of the said courts."

See also *People* v. *Justices of Delaware,* 1 John. Cas. (N. Y.), 181.

In re Peterson, 3 Paige, 510.

Indeed, in the early statutes of New York State, we find a very careful code governing the admission and removal of attorneys and solicitors.

See the revised statutes of New York of 1827 and 1828, pages 108 and 109, sections 20 to 25.

The three sections of Paterson's practice act hereinabove quoted, were re-enacted as sections 1, 2 and 3 of "An Act to regulate the practice of the courts of law (revision of 1846)." In the next revision, that of 1874, section 1, with slight changes, became section 15; section 2, became section 16 and section 3, section 5. The original sec-

tion 2 was in effect amended by chapter 272 of the laws of 1889, which provided:

> "That no person, except in his own case or in the case of an infant, shall be permitted to appear and prosecute or defend any action in any court of this state, unless he is a licensed attorney at law of the Supreme Court of this state, who shall be under the direction of the court in which he acts; provided, that nothing in this act shall apply to actions before justices of the peace."

These sections now exist respectively as sections 16, 17 and 5 of the Practice Act of 1903, section 16, with no further changes, section 17 with the omission of the proviso in the act of 1889, and section 5, with the inclusion of a provision for damages, originally embodied in section 6 of Paterson's act.

Never in all these years, has there been the slightest effort by the Court of Chancery to admit, as solicitors, any one not duly admitted as an attorney, nor to exclude one duly admitted as an attorney from practising in Chancery as a solicitor, until *In re Raisch, supra,* in 1914, (in which case the point was not argued by counsel), with the possible exception of the unreported case, *In re Edmunds,* referred to by Stevenson, *V. C.,* in which case it seems that no order was ever actually entered. We do not argue that the Court of Chancery has lost this power by non-use. Our contention is that the power never existed in that court, and we cite their non-exercise of the power as evidence of its non-existence under the local common law of New Jersey. The English High Court of Chancery is admittedly the prototype of our court. The early conditions, however, in the Province of New Jersey as to legal practitioners made inapplicable that part of the English law of the English Court of Chancery which had to do

with the admission and removal of solicitors. Lord Cornbury's ordinance of 1705, creating a Court of Chancery is significant in this connection. It reads in part (4 C. E. Gr., 579):

> "It is hereby ordained, that there shall be commissionated and appointed during pleasure, to masters of the said court, a Register, who shall also be Examiner and Purse-bearer or seal-bearer and sealer of writs, which place in case of sickness or such absence as shall be allowed of by the Governor, may be executed by the sufficient deputy or deputies, two clerks and one sergeant-at-arms and one messenger, and no other officer or officers whatsoever."

And yet the same ordinance further ordains (4 C. E. Gr., 580), that not more than two counsel shall be allowed on a side. So legal practitioners in Chancery were recognized but the Chancellor was not to admit them.

Indeed, with the passage of time, both common practice or custom and the statute law have tightened the hold of the existing system on the jurisprudence of this state. We see, in the first place, that there have never been, and are not in this state, but two rolls, one the roll which is signed upon being admitted as an attorney and solicitor, and the other, the roll of counsellors, both of which are in the office of the clerk of the Supreme Court. Beginning with 1843, the oath at the top of the attorneys' roll reads that the deponent will demean himself "in the practice of an attorney at law and solicitor in Chancery of New Jersey." See *in re Raisch, supra.* And in 1889, the statute, which, until then, from its enactment, as the second section of Paterson's practice act, forbade anyone to practice "but such as is a licensed solicitor or attorney at law" was changed to read: "unless he is a licensed attorney at law of the Supreme Court

of this State." A further piece of evidence is the fact that the Supreme Court in *In re Cahill,* 37 Vr. 527, has made an order of disbarment where the sole charge against the respondent was a fraud of imposition upon the Court of Chancery in a divorce suit. Moreover, it is well known that the examinations for recommendations for the Governor's license cover Chancery law and practice.

Here is all the evidence. What is the inference to be drawn? It is that from the first, several peculiarities have persisted in the jurisprudence of this state with reference to the admission of legal practitioners. The only road to the practice of the law leads through the Supreme Court, first, substantially, by obtaining its recommendation, thence through the Governor's office where his license both as attorney and solicitor followed as a matter of course, and thence again to the Supreme Court for the final formality, the signing of the roll, and the taking of the oath.

Everything about our practice tends toward the concentration in the Supreme Court of responsibility for admission to the practice of the law. It is, indeed, impossible to argue otherwise, if for no other reason than because of the provisions of Section 2 of Paterson's Act of 1799, now existing as Section 17 of the Practice Act of 1903, in the following strengthened form.

> "17. No person, except in his own case, or in the case of an infant shall be permitted to appear and prosecute or defend any action in any court, unless he is a licensed attorney at law of the Supreme Court of this state, who shall be under the direction of the court in which he acts."

If the foregoing proposition be indisputable, it is then argued by counsel for the repsondent, that, granting the Chancellor has nothing to do with the admission to the practice of the law, and that

the Supreme Court can disbar for mis-conduct solely in the Court of Chancery, still the Chancellor may remove a solicitor from office. The reason assigned is that the English Court of Chancery did so, and for that reason the power so to do must inhere in our Court of Chancery. But in England one could be a solicitor in the Court of Chancery without being an attorney at law. Here you cannot become a solicitor except by becoming an attorney. There each court admitted its own officers. Here, either one is an officer of all the courts, or by being duly admitted to be an attorney of the Supreme Court, becomes by that very fact an officer in each of the other courts in the state. As we have said, this cannot be disputed. It follows, therefore, that the converse is true, that one cannot be removed from the practice of the law piecemeal, but only once for all.

In *In re petition from Antigua,* 1 Knapp P. C. 267, the British Privy Council said:

> "Now advocates and attornies have always been admitted in the Colonial Courts by the judges, and the judges only. The power of suspending from practice must, we think, be incidental to that of admitting to practice as is the case in England with regard to attornies. In Antigua the characters of advocates and attornies are given to one person; the Court therefore that confers both characters may for just cause take both away."

The learned author in 2 Halsbury's Laws of England, 360, referring to the position of barristers-at-law, said:

> "As the degree of barrister could only be conferred by the Inns of Court, so it could only be taken away by them."

In *Bradley* v. *Fischer,* 13 Wallace (U. S.), 335, Field, *J.* said at page 354:

> "This power of removal from the bar is possessed by all courts which have authority to admit attorneys to practice."

See also *People ex rel. Field* v. *Turner,* 1 Cal., 190. Here several attorneys admitted by the Supreme Court were expelled from the bar of the eighth district by the judge thereof. The Supreme Court allowed an alternative mandamus to reinstate them. Hastings, *C. J.,* said:

> "The proceedings of the court are irregular and inasmuch as the relators have received from this court a license to practice as attorneys at law in the Supreme Court, and by the rules of court are authorized by virtue thereof, to practice in all the courts of this state, we are called upon to afford relief."

At one time, at least, the statutes of Illinois expressly enacted a situation remarkably similar to the situation which in New Jersey is grounded on the local customary law aided by statute and now confirmed by the Constitution. That Illinois legislation appears in the Revised Statutes of Illinois of 1845, Ch. XI, p. 73:

> "Section 1. No person shall be permitted to practice as an attorney or counsellor at law, or to commence, conduct, or defend any action, suit or plaint, in which he is not a party concerned in any court of record within this state, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose from some two of the justices of the Supreme Court, which license shall constitute the person receiving the same and attorney and counsellor at law, and shall authorize him to appear in all the courts of record within this state, and there to practice as an attorney and counsellor at law, according to

the laws and customs thereof, for and during his good behavior in said practice, and to demand and receive all such fees as are or hereafter may be established for any services which he shall or may render as an attorney and counsellor at law in this state.

"Section 2. No person shall be entitled to receive a license as aforesaid, until he shall have obtained a certificate from this court of some county, of his good moral character.

"Section 3. It shall be the duty of the clerk of the Supreme Court to make and keep a roll or record stating at the head or commencement thereof, that the persons whose names are therein written have been regularly licensed to practice as attorneys and counsellors at law within this state, and that they have duly taken the oath to support the Constitution of the United States and of this state, and also the oath of office prescribed by law which shall be certified and endorsed on the said license.

"Section 4. And no person whose name is not subscribed or written on the said roll, with the day and year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practice as an attorney or counsellor at law within this state, under the penalty hereinafter mentioned, anything in this chapter to the contrary notwithstanding, and the justices of the Supreme Court, shall have power at their discretion, to strike the name of any attorney or counsellor at law from the roll for malconduct."

In this condition of the written law we find the case of *Winkelman* v. *People,* 50 Ill., 449 (1869).

In this case the Circuit Court suspended an attorney. He appealed to the Supreme Court, which held that the Circuit Court exceeded its jurisdiction. Breese, *C. J.,* said at page 451:

"The subject of attorneys and counsellors at law has been considered by the legislature

and no power over them for malconduct, and such was the import of the charge against appellant, has been confided to the Circuit Courts. No power has been given them to strike an attorney from the rolls for any cause, in the Supreme Court alone is that power reposed. Suspension from practice may be equivalent to striking from the rolls in its effect and consequences as where an attorney has an established and profitable practice in the circuit of his choice depriving him of it, by suspension, is no less than striknng his name from the rolls. Various considerations may forbid him from attempting to practice in another circuit and years might elapse before he could be able to obtain practice in one to which he was a stranger. The legislature has conferred this power expressly on this court. By the fourth section of the act respecting attorneys and counsellors at law it is provided among other things that the Justices of the Supreme Court in open Court, shall have power, at their discretion to strike the name of any counsellor-at-law from the roll for malconduct in office. Gross' Comp. 41. And there is propriety in this, as the appointment of attorneys and counsellors is made by that court, and the power of removal appropriately rests with the power to appoint. In some states they are appointed by the Circuit Courts and of course removable by them for proper cause. We know of no power inherent in the Circuit Courts to suspend from practice an attorney duly licensed by this court, at least none, so as to suspend him, as virtually to strike him from the roll.

"But it may be asked has a Circuit Court no power over an attorney who shall be guilty of mal-conduct such as charged against the appellant? The answer is, such court possesses ample power in the premises altering the pleas of a court is not an offence of a

grave character, but being done without the authority of the court in which the files are, is a contempt of that court, its usages and customs, and is punishable by fine and imprisonment. On the possession of this power can those courts safely repose, and in its exercise protect itself from such abuses as appellant is alleged to have committed. We think the court exceeded its power in the order of suspension. It may be the court would be justified in suspending an attorney from practice until the term of the Supreme Court next to be holden, in order that proceedings might be there instituted and strike his name from the roll, but further than that, we are not of opinion, the court could go in that direction.

"Should parties interested, or the state's attorney, make no movement in the Supreme Court at its next term to have the name stricken from the roll, the Circuit Court, on being advised thereof, would rescind the order of suspension as the case stands, the suspension being equivalent to striking from the roll, we are satisfied, the Circuit Court exceeded its power and we must reverse the order."

This limitation upon the power of the Court of Chancery does not emasculate that court. It can still punish for contempt, and control its solicitors, counsellors, and other officers in the several particular causes of proceedings in which they may act. Perhaps it can temporarily suspend a solicitor until the Supreme Court shall have passed upon his final punishment. All this follows from that part of the second section of Paterson's act of 1799, now Section 17 of the Practice Act of 1903, which provides:

"Who shall be under the direction of the Court in which he acts."

This was the opinion of Judge Hudspeth, as to the power of the Hudson Quarter Sessions in *In*

re Simpson, 21 N. J. L. J., 109. The doctrine contended for by the respondent would necessarily confer upon any one of the several courts of common pleas, for instance, the power permanently to prevent an attorney from acting as such in such one of those courts, although there had been no action by the Supreme Court. We have seen how the Common Pleas in England had this power, and how even inferior local courts in that country had each their own peculiar set of attorneys (*Rex* v. *Sheriffs of York,* 3 B. & Ad. 770; *Regina Mayor, etc.* v. *London,* 13 Q. B. 1), and we have seen that the case was the same in early New York State. (*People* v. *Justices of Delaware,* 1 Johns. Cas., 181). But such an idea is wholly foreign to the jurisprudence of New Jersey. And yet, counsel for the respondent would build it up out of the recently quoted statutory provision "who shall be under the direction of the Court in which he acts."

But when the learned draftsman intended to refer to disbarment, how clearly did he do so. In section 3 of the act of 1799, he said:

> "If any counsellor, solicitor or attorney at law shall be guilty of malpractice in any of the said courts, he shall be put out of the roll and never after be permitted to act or practice as a counsellor, solicitor or attorney at law, unless he shall obtain a new license and again be enrolled in due form of law."

"Guilty of malpractice in any of the *said* courts." Which courts? Any of the courts of judicature in this state, as appears from the first section of that act. "Put out of the roll." Which roll? The only roll there ever has existed, the roll of the Supreme Court. This requires the Supreme Court to strike him off the roll if he has been guilty of misconduct in Chancery, and it forbids him from practicing in any court until he has again been duly enrolled in the Supreme Court. So

if, in spite of all, Chancery has power to put him out, nevertheless, the Supreme Court must act, and if the Supreme Court has acted, the Chancellor has no power to re-admit him, and since the Supreme Court must always act, the Chancellor is left without power to re-admit any solicitor whom he may have expelled. In view of all this, can it be for a moment believed, that the Chancellor has any power permanently to exclude?

We do not contend that Paterson's act was anything but a codification of the existing unwritten law. It certainly did not *weaken* the powers of the Supreme Court. Among its well established, high prerogative, exclusive powers established beyond attack by the Constitution of 1844 is the exclusive power to pass upon the fitness of those whom it recommends to the Governor for an attorney's and solicitor's license. *In re Branch,* 41 Vr., 537. Likewise entrenched among that court's unassailable powers is the power to determine sufficient cause for the revocation of that license. An attempted exercise of such a power by the Court of Chancery is, therefore, patently unconstitutional.

The order appealed from is such an order. While it does not in express terms revoke the appellant's license in part or in whole, yet it very efficaciously deprives him of his right conferred by the license to practice as a solicitor in Chancery. The order unquestionably is an attempted exercise of jurisdiction to remove the appellant from the office of solicitor in Chancery. Its rather clumsy phraseology, adopted from the opinion of Stevenson, *V. C.,* in *In re Raisch,* 13 Buch., 82, 117, is used because more appropriate terms such as striking the appellant from the roll, disbarring him, or revoking his license, would more clearly disclose the court's want of jurisdiction.

It is therefore, confidently submitted that the Chancellor had no jurisdiction to make the order appealed from.

If, then, the order appealed from was made without jurisdiction on the part of the Chancellor, surely the appellant must have a right to review and reverse the order, and this lack of jurisdiction simply accentuates our contention that the order is appealable, and, as it is, renders necessary that this court hear and determine the case on its merits.

Respectfully submitted,

GEORGE W. C. McCARTER,
ROBERT H. McCARTER,
Counsel for Appellant.

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NEW JERSEY
Court of Errors and Appeals

IN THE MATTER OF SIMON HAHN, A SOLICITOR OF THE COURT OF CHANCERY OF NEW JERSEY. } On Appeal.

ORDER CONVICTING SOLICITOR OF MALPRACTICE AND DEBARRING HIM FROM PRACTICE.

(Filed July 10, 1915.)

IN CHANCERY OF NEW JERSEY.

An order having heretofore been made in this cause, upon sufficient proof, charging Simon Hahn with violation of his duties to the Court and to his client, Charles S. Peake, in the matter therein mentioned, amounting to malpractice, and requiring him to show cause before the Court why he should not be adjudged guilty of malpractice as a solicitor in the matters aforesaid, and be disbarred from further practice as a solicitor or counsellor of this Court, or be suspended from practice, as such, for such period of time as the Chancellor might order, or be otherwise disciplined and punished for his misconduct, as might be decreed equitable and just; and the matter coming on to be heard in the presence of Halsey M. Barrett, Esq., assigned by the

Court to conduct these proceedings, and in the presence of the respondent, Simon Hahn, and of Messrs. McCarter & English, his counsel, and the Court having heard and considered the proofs and the arguments of the respective counsel, and being now of opinion that the said respondent, Simon Hahn, is guilty of the malpractice so as aforesaid laid to his charge, and that for his gross misbehavior in his office of Solicitor in Chancery he should be debarred from practice as solicitor and counsellor therein:

It is thereupon on this 10th day of July, nineteen hundred and fifteen, of the Court's own motion, ordered that the said respondent, Simon Hahn, be and he is hereby debarred from appearing hereafter in this Court as a solicitor or counsellor, and prohibited from exercising any of the functions, rights or privileges of a solicitor or counsellor of this Court.

E. R. WALKER, *C.*

IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF SIMON HAHN, A SOLICITOR OF THE COURT OF CHANCERY OF NEW JERSEY.

NOTICE OF APPEAL.

(*Filed July 20, 1915.*)

The respondent, Simon Hahn, hereby appeals from the order of the Chancellor, made the tenth day of July, nineteen hundred and fifteen, convicting the respondent of malpractice and debarring him from practice, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated July 19, 1915.

McCARTER & ENGLISH,
Solicitors of Respondent.

I conceive there is good cause for appeal in the above-stated cause.

ROBERT H. MCCARTER,
Of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE MATTER OF SIMON HAHN, A SOLICITOR OF THE COURT OF CHANCERY OF NEW JERSEY. } On Appeal.

PETITION OF APPEAL.

(*Filed July 22, 1915.*)

To the Honorable the Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Simon Hahn, respondent, the appellant in the above-entitled cause, respectfully shows that the said appellant finds himself aggrieved by the order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the tenth day of July, nineteen hundred and fifteen, in the matter of Simon Hahn, a Solicitor of the Court of Chancery of New Jersey, in this respect, to wit, that the said Chancellor did thereby order and adjudge that the appellant was guilty of malpractice, and did order that he be debarred from practice as solicitor and counsellor of the Court of Chancery of New Jersey, and your petitioner humbly appeals from the said order and from the whole and every part thereof on the ground that the same is erroneous, for that the Chancellor should have adjudged that the appellant was not guilty of malpractice and should have discharged the rule requiring him to show cause why he should not be debarred from further practice as a solicitor and counsellor of the Court of Chan-

cery, and also should have dismissed the said proceedings against him because the Chancellor had no jurisdiction to make said order appealed from.

Your petitioner therefore prays that the said order of the Chancellor may in all respects be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet and just.

McCarter & English,
Solicitors of Appellant.
Robert H. McCarter,
Of Counsel.

New Jersey Court of Errors and Appeals.

In the Matter of Simon Hahn, a Solicitor of the Court of Chancery of New Jersey. } On Appeal.

ANSWER.

(*Filed September 10, 1915.*)

The answer of the Court of Chancery of the State of New Jersey to the petition of appeal of the above-named appellant:

This respondent, not acknowledging any or all of the matters contained in the said petition of appeal to be true, and not acknowledging jurisdiction in the Court of Errors and Appeals in the premises, but protesting that the said order of the Court of Chancery of the tenth day of July last past, mentioned in the said petition of appeal, is not appealable, nevertheless, for answer to the said petition of appeal, says and admits that the said order was made and entered for the purpose set forth in the said petition, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent avers that the said order of the Court of Chancery is in all things just and lawful, and therefore prays that the said order may be affirmed with costs.

HALSEY M. BARRETT,
Solicitor appointed by the Court of Chancery of New Jersey.

We consent to the filing of the within answer as of due time.

McCARTER & ENGLISH,
Solicitors of Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE MATTER OF SIMON HAHN, A SOLICITOR OF THE COURT OF CHANCERY OF NEW JERSEY. } On Appeal.

NOTICE OF MOTION TO DISMISS.

(*Filed October 25, 1915.*)

To Messrs. McCarter & English, Solicitors and of Counsel with Simon Hahn, Appellant:

Take notice that on Tuesday, the sixteenth day of November, nineteen hundred and fifteen, at the State House, in the city of Trenton, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall move to dismiss the petition of appeal filed by you in the above-stated cause, for the reason that the said order, dated July tenth, nineteen hundred and fifteen, debarring the said Simon Hahn from practicing in the Court of Chancery of New Jersey, is an order which lies solely within the jurisdiction of the said Court of Chancery of New Jersey, and is not appealable

therefrom to the Court of Errors and Appeals, or to any other jurisdiction whatsoever.

Dated September 7, 1915.

HALSEY M. BARRETT,
Solicitor appointed by the Court of Chancery of New Jersey.

Service of the within notice is hereby acknowledged this eighth day of September, 1915, as of due time.

McCARTER & ENGLISH,
Solicitors of Appellant.