Buffalo Law Review

Volume 6 | Number 2 Article 72

1-1-1957

Miscellaneous—Attorneys—Disbarment

Robert Rosinski

though not state-maintained, connected two state highways thus forming a continuous highway over which its users had to pass.

However, even where there is a duty to warn, a breach thereof will not automatically result in liability in the absence of proof that such breach was the proximate cause of the accident.[64] It is not clear from the decision whether a contrary finding, that the signs were inadequate to give a warning of the cut-off, would have resulted in a finding that such inadequacy was the proximate cause of the accident. The decision may merely indicate that since the signs were adequate there was no necessity to decide the question of proximate cause, and that such latter question would have to be decided on a case by case basis. It is submitted by the writer that in view of the immediacy of the hazard to the cut-off, the Court would have found proximate cause.

MISCELLANEOUS

Attorneys—Disbarment

In the case of *In Re Ginsberg*,[1] the Court held (5-1) that an attorney, upon conviction of a felony, is automatically disbarred even in the absence of entry of any order of disbarment. The situation here was novel, since no one saw to it that the attorney's name was stricken from the roll of attorneys and his conviction was subsequently reversed and a new trial ordered.

The wording of the statute[2] and the policy behind it make it evident that the disbarment is automatic upon conviction and that the provision for the removal of the attorney's name from the roll is no more than a formal recording of the existing fact of disbarment. There is no discretion in the court in such a case.[3] If the order had been entered before reversal and the indictment dismissed, the attorney would not be ipso facto entitled to reinstatement but rather it would merely open the door for an application for reinstatement.[4] The result should be no different in the instant case. In assuming the responsibilities of an officer of

64. *Nuss v. State*, 301 N. Y. 768, 95 N. E. 2d 822 (1950).

1. 1 N. Y. 2d 144, 134 N. E. 2d 193 (1956).

2. N. Y. JUDICIARY LAW §90(4). Any person being an attorney and counsellor-at-law, who shall be convicted of a felony, shall, upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

Whenever such attorney and counsellor-at-law shall be convicted of a felony, there may be presented to the appellate division of the supreme court a certified or exemplified copy of the judgment of such conviction, and thereupon the name of the person so convicted shall, by order of the court, be struck from the roll of attorneys.

3. *Matter of Donegan*, 282 N. Y. 285, 26 N. E. 2d 260 (1940); *In Re Scotti*, 266 App. Div. 279, 42 N. Y. S. 2d 234 (1st Dep't 1943).

4. *In Re Stein*, 249 App. Div. 382, 292 N. Y. Supp. 828 (1st Dep't 1937).

the court, an attorney is held to a higher standard of conduct than are his fellow citizens, and once his conduct becomes a matter of reasonable doubt, it is up to him to come forward and satisfy the court of his general fitness for his profession. The dividing line seems not to be ultimate conviction or acquittal on appeal, but rather intitial conviction or acquittal at the trial level.[5]

The dissent seems to confuse the difference in considerations between rights and privileges. In effect it states that an illegal conviction is a nullity[6] and of no effect and therefore the respondent stands in the shoes of a man waiting trial for the first time. This is undoubtedly true in any case concerning a person's legal rights.[7] However, the privilege of practicing law calls for conduct about which there is no reasonable doubt—the legality of which there is no need for a jury to decide. This, it seems, is implicit in the statute when it calls for summary disbarment upon a conviction for a felony[8] and then provides that upon a reversal of such conviction, an application for reinstatement must be made.[9]

Banking—Illegal Discounts

There is in New York a clear policy to prohibit corporations not subject to the supervision of the banking department from engaging in any form of banking.[10] An instance of this is the provision in section 18 of the General Corporation Law and section 131 of the Banking Law which prohibit non-banking corporations from discounting notes and make such discounted notes void.[11]

5. See note 4, *supra.*
6. *People ex rel Sloane v. Lawes,* 255 N. Y. 112, 174 N. E. 80 (1930).
7. See note 6, *supra.*
8. N. Y. JUDICIARY LAW §90(4), *supra,* note 2.
9. N. Y. JUDICIARY LAW §90(5). Upon a reversal of the conviction for felony of an attorney and counsellor-at-law . . . the appellate division shall have power to vacate or modify such order or debarment. *In Re Stein,* 249 App. Div. 382, 292 N. Y. Supp. 828 (1st Dep't 1937).
10. *New York Trust and Loan Co. v. Helmer,* 77 N. Y. 64 (1879); *Meserole Securities Co. v. Cosman,* 253 N. Y. 130, 170 N. E. 519 (1930); *But see Pratt v. Short,* 79 N. Y. 437, 35 Am. Rep. 531 (1880) terming the intent of the legislature in enacting the early counterpart of §131 N. Y. BANKING LAW merely an interest to protect the chartered banks in the monopoly of banking.
11. N. Y. STOCK CORPORATION LAW §18: No corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this state or the United States, and except as therein provided shall by any implication or construction be deemed to possess the power of carrying on the business of *discounting bills, notes or other evidences of debt* . . . or engaging in any other form of banking . . . (emphasis added). N. Y. BANKING LAW §131: . . . No corporation, domestic or foreign, other than a national bank or a federal reserve bank, unless expressly authorized by the laws of this state, shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits, *making discounts* . . . . All notes and other securities for the payment of any money or the delivery of any property, made or given to any such association, institution or company, or made or given to secure the payment of any money loaned or discounted by any corporation or its officers, contrary to the provisions of this section shall be *void.* (emphasis added).