

a foreign country, for the personal use of the importer, is protected by the interstate commerce law, and that this protection is continued over the importation after its arrival, so long as this personal use and consumption continues. If, however, this personal use and consumption cease, the protection ceases also. In the present case, Mr. A. E. Gonzales imported for his own use two packages. One continued in his own use and for his own consumption. The other did not. He gave it away. The police law of this state forbids this. Indeed, if packages could be imported by any one for his own use, and, after arrival, could be given to others, there could be no limit to the number so imported by one person, or to that of the recipients after they were imported. The protection of the interstate commerce law is a personal privilege. It cannot be transferred to another person, and give to him the protection given to the importer, only because he actually imported the goods. The package belonging to A. E. Gonzales is in the possession of the respondent F. M. Mixson. Let him deliver it to the owner. After such delivery, this rule will be discharged. The other package, that now owned by Mr. W. E. Gonzales, has been withdrawn from the jurisdiction of this court.

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UNITED STATES ex rel. TAYLOR v. CLARK.

(District Court, D. Alaska. March 30, 1896.)

1. INFORMATION IN DISBARMENT.

In disbarment proceedings, based upon a criminal conviction of the attorney, the information must set out the offense of which the attorney was convicted.

2. CONVICTION OF MISDEMEANOR.

Where the conviction is of a misdemeanor, the offense must be one involving moral turpitude, as provided by section 1047, p. 691, Hill's Code, and the information must so aver. Following State v. Bannon (Or.) 42 Pac. 869.

3. DEFECTIVE INFORMATION.

Although courts possess the inherent power to purge the bar, an order of disbarment, rendered upon an information which is fatally defective, will be set aside.

(Syllabus by the Court.)

This was a petition to vacate an order of disbarment.

Burton E. Bennett, U. S. Atty.

Willoughby Clark, in pro. per.

DELANEY, District Judge. This is an application on the part of the defendant to vacate an order of disbarment entered against him in November, 1892. The application is supported by a majority of the resident members of the bar, who have signed a petition to the court in the defendant's behalf. The proceedings in disbarment were instituted on the motion of the court, and were commenced by an information filed on the 23d day of November, 1892. The information charges that the defendant, being an attorney of this court, had theretofore been indicted, tried, and convicted of larceny as a bailee, by appropriating to his own use certain lawful

money of the United States, belonging to another, which had come into the hands of the defendant as bailee. The information further states that after such conviction he was punished by a fine of \$60. Upon this information an order of perpetual disbarment was entered against the defendant on the 23d day of November, 1892. The proceedings in the criminal trial are, of course, not subject to review, and this inquiry must be directed to the disbarment proceedings only. In pursuing the inquiry, however, the Criminal Statutes of Oregon must necessarily pass under consideration so far as they relate to the offense upon which the order of disbarment is grounded. By these statutes (Hill's Code, p. 913, § 1771) it is provided that any bailee who wrongfully converts to his own use the money or property of another, delivered or intrusted to his care or control, shall be deemed guilty of larceny, and punished accordingly. The offense here stated is generally called "embezzlement," and was not known at common law. Its first appearance is in St. 21 Hen. VIII. c. 7, which makes the conversion of property of a master by a servant embezzlement. This statute has undergone an immense amount of legislative patchwork, both in England and this country, until finally the offense of conversion or embezzlement by a bailee has been evolved which the Code of Oregon declares to be larceny, and punishable as such. The Code continues in principle the grades of larceny known at common law as grand and petit, and makes the former a felony and the latter a misdemeanor. Hill's Code, p. 910, § 1763. From the punishment stated in the information to have been inflicted on the defendant in the criminal trial, the conviction, laid as the ground of disbarment, appears to have been of the lesser offense of misdemeanor.

The disbarment proceedings were brought under paragraph I, § 1047, p. 691, Hill's Code, which provides that an attorney may be suspended or removed "upon his being convicted of any felony, or of a misdemeanor involving moral turpitude." It is patent upon the face of this statute that, while conviction of any felony will authorize disbarment, conviction of any misdemeanor will not. In the case of a misdemeanor, it must be one involving moral turpitude, and the information to disbar must so state. Moral turpitude is a material ingredient, if not the gravamen, of the misdemeanor of which the attorney must have been convicted before he can be disbarred under the paragraph of the statute cited, and an information in disbarment proceedings, which fails to set out that the conviction relied upon to disbar was a felony, or a misdemeanor involving moral turpitude, is fatally defective. The rules of pleading, both civil and criminal, are to this effect. The most critical examination of the information in this case fails to disclose any such averment, and, consequently, no valid order or judgment can be based upon it. This question is not now an open one in this court, as this construction has been placed upon the paragraph mentioned by the supreme court of Oregon in the case of *State v. Bannon*, reported in 42 Pac. 869. In that case the information for disbarment as filed by the attorney general alleged that the defendant *Bannon*, an attorney of that court, was indicted, tried, and convicted

in the district court of the United States for the district of Oregon of the crime of conspiracy in confederating and combining with others to commit an offense against the United States by unlawfully aiding and abetting the landing of Chinese laborers not lawfully entitled to enter therein. After citation served, the defendant appeared, and demurred to the information on the ground that it did not state that the crime of which he was convicted was a felony, or a misdemeanor involving moral turpitude. The court sustained the demurrer in the following language:

"The information charges the defendant with having been convicted of a misdemeanor, but does not state that any moral turpitude was involved in the unlawful agreement, or in any act of the conspirators resulting therefrom. It is not every misdemeanor that authorizes the suspension or removal of an attorney, but only those that involve moral turpitude. This is a material averment in pleading the conviction of a misdemeanor, without which the information fails to state a cause sufficient to give this court jurisdiction, and hence the demurrer must be sustained." *Id.*

It is proper to state here that this decision was rendered on the 23d day of December last, and therefore the judge presiding in this court at the time of the disbarment proceedings could not have had the benefit of it. The decision, however, disposes of this case.

In addition to the provisions of the act of congress of May 17, 1884, extending the laws of Oregon to this district, the rule is now universal in the United States courts that the decisions of the court of last resort in any state upon the statute law of such state will be followed by the federal courts; and, while this application is addressed to the discretion of the court, and is in the nature of an appeal for clemency, upon the record in the disbarment proceedings, and under the Oregon case above cited, there is no room for the exercise of any discretion whatever. The law determines the matter. The order of disbarment is void *coram non judice*, and the petitioner is entitled to have it vacated as a matter of legal right.

The court does not desire to intimate what course might have been pursued were the matter of disbarment now here in the first instance, nor what conclusions might have been reached if this application were open to the exercise of a discretion, further than to remark that transactions, on the part of attorneys, of the character of those alleged against this defendant in the criminal trial, cannot be tolerated. Independent of any statutory provisions, and without any criminal conviction, courts possess the inherent power to purge the bar of members who are guilty of unprofessional conduct, or who are so devoid of moral character as to render them unfit to participate in the administration of justice; and this court will not hesitate to use that power without fear or favor, should occasion demand it. It is hoped, however, that no case of this character will ever again arise in this court. Attorneys should never forget that the profession of the law is the noblest one to which the intellect of man has ever devoted itself. And I trust the gentlemen of the bar, who are here to aid the court in laying the foundations of the legal jurisprudence of this new country, will set for themselves a high standard of professional conduct, and that

all will, to some degree, at least, seek to emulate the examples set by the illustrious men of the profession whose names now comprise a long and brilliant list in the history of the bar of England and the United States, and whose lives have shed imperishable luster upon the profession of the law wherever the English tongue is spoken. They who follow their lights cannot go astray. For reasons of law stated, the order of disbarment is set aside.

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SCOTT v. LITTLE et al.

(District Court, S. D. New York. October 31, 1896.)

**BANKRUPTCY—AVOIDING BANKRUPT'S DEED—TWO YEARS' LIMITATION—RENUNCIATION OF TITLE—SECTION 5057.**

The bankrupt, in 1875, several years before his bankruptcy, made and recorded a deed to his son-in-law to whom he was indebted, and informed him of the fact; to which no dissent was then expressed. The grantee did not receive or see the deed until several years afterwards, some two or three months before the bankruptcy in 1878, when finding an objectionable assumption clause, he sought to have it remedied, which was not done. Within a year or two after the bankruptcy, the assignee was informed of all the facts, and died some years after without taking any action in regard to the deed under which the defendant then claimed title. Long afterwards a new assignee was appointed, who in 1896 brought this suit in equity to have the deed declared void as a cloud on the assignee's title after the grantee and his assigns had been many years in possession: *Held*, that there was no sufficient evidence of any renunciation of title by the grantee before the bankruptcy, and that this action was barred by the two-years limitation of section 5057, Rev. St.

This was a suit by William F. Scott, as assignee in bankruptcy of James Boyle, against Andrew Little, Eleventh Ward Bank, Henry Steers, and others. The cause was heard on a motion for an injunction.

William Ford Upson and Wager Swayne, for complainant.  
Abner C. Thomas, for defendant Little.

**BROWN**, District Judge. A motion is made in the above cause for an injunction against the defendants as grantees and mortgagees of two lots of land on Mangin street, which were conveyed on November 1, 1873, by deed from the bankrupt James Boyle and his wife to the defendant Little and recorded on the same day in the register's office. Boyle was adjudicated a bankrupt on April 29, 1878. On the 13th of July, 1878, an assignment was made of all his property to John Nikla, as assignee in bankruptcy. The assignee died in 188-, and recently the complainant Scott was appointed as new assignee, and the present action was commenced to set aside the deed of 1873 as a nullity and cloud on the title to the two lots, on the contention that the conveyance was made to Little without his knowledge; that he never accepted the deed prior to the bankruptcy, but refused to accept it; that the title never vested in him; and that the other defendants are not bona fide purchasers or mortgagees.