Denver Law Review

Volume 5 | Issue 3 Article 4

January 1928

Benjamin F. Butler's Examination for Admission to the Bar

Denver Bar Association Record

Benjamin F. Butler's Examination for Admission to the Bar

Benjamin F. Butler's Examination For Admission To The Bar

"AS the law then stood, (1840) if a student had slept in a lawyer's office for three years, claiming that he was studying law, and his teacher would give him a certificate that he had done so, he could be admitted to the bar as a matter of course. But if the student had passed any less time in a lawyer's office, he had to be subjected to an examination by the judge of the higher courts before he could be admitted. Mr. Smith made an application for me to the judge for admission upon examination, stating that he thought I could pass the examination. The judge appointed an hour early that evening, at his lodgings, for me to appear to be examined. He received me very kindly, and asked me when and where I graduated, and what I had done since. To all of this I answered, saying only that I had been attending to the law for two years, with the exception of three months that I had been engaged in teaching. He then asked me what text-books I had read. I told him. He said, "You have read very few text-books". That was too true to be denied. He said that he thought I had better read a year longer, and that he would advise me to do so. I said I was very much obliged to him, and thought I had better read five years longer, but the difficulty was I did not see how I could get the means to do it. He said that under the circumstances unless I insisted, he would rather not examine me. I said to him that it was necessary that I should be examined, if I were to enter the profession, and if I were not he would soon show me wherein I was deficient, and if it would not trouble him too much I desired the examination. He said, "Very well", and began a series of questions upon the practice of the law. He supposed I had no knowledge of this, and thought he could easily convince me that I ought to have some. But the tuition that I had got from my friend, Judge Locke, was too much for him. That part of the law I knew better than some gentlemen who had been in practice for years. I remember that among the questions he asked was this: "If you had a deed to prove in court where both the maker and the subscribing witness were dead, how would you prove it?" I answered him at once: "By calling somebody who knew the handwriting of the subscribing witness and proving his handwriting." He said to me: "Why not prove the handwriting of the maker?" "Because the subscribing witness", was my reply, "was called by the parties as a sort of attestor, and, therefore, we prove the signature of the subscribing witness and not the maker's". He continued that kind of examination for a long space of time. He then put me this question: "I see you have always been in court while I have been here holding session, apparently attending to the cases as they go on. Do you understand the proceedings?" "I try to do so, sir, and I think I do understand some of them at least." "Well", he said, "we sat a little later than usual tonight, and I observed that you remained there until the case was finished". "Yes, sir." "Will you state to me, in your own way, what that case was, and the points raised, and the ruling of the court?" I answered: "That case was a suit brought by the indorsee of a promissory note against the maker. The defense was that the maker was an infant, i. e., under twenty-one years of age, when he made it. The answer to that was that after he

became twenty-one years of age, when it was presented to him he had promised to pay the note. The reply to that was that the promise was after the indorsement, and although the note was negotiable, it did not pass to the indorsee." He said: "You have stated the case with correctness; I so ruled." "Yes", I said, "and directed a verdist for the defendant". I then looked up and said: "I thought your honor ruled incorrectly." He, with a kind smile, said: "What reason, Mr. Butler, have you for that?" I said: "Because the note was negotiable when it was made, and remained so, and when the infant became of age, promised to pay it, it then became a note precisely as it would have been if it had been made upon that day. The note was sued upon as a negotiable note, then made, and it was not the promise passed by the endorsement, but the note." "That view of the case was not put to me by the counsel." "I observed that it was not", said I, "and as it has been my habit to do, I went to my office to look for an authority which I thought I remembered. I found it, and the exact case has been decided, and upon the reasons I have given." "When you go back to your office, Mr. Butler, can you send me up that authority?" "No, your honor; I am the youngest in that office, and I have nobody to send, but I can bring it to you if you desire." "You will do me a great favor if you will do so." I went home and hunted up the authority in the "English Common Law Reports", and put in a mark, and gave it to the clerk of the hotel to hand to the judge. I did not sleep much that night. I went into the court the next morning, and after some of the motions of court were passed upon, which was the habit in those days, the judge called the counsel who had tried the case the night before, and said to them: "Upon reflection, I think I made a mistake in the ruling I made last night, and as whichever way I rule I suppose the case will go up on exceptions, it will make no difference which way I rule except to myself. If you will consent, I will reverse the decision and have the jury give the verdict for the plaintiff, no business having intervened since." The counsel seemed surprised, but consented. This comforting thought passed through my mind: "If you do not admit me now, judge, I will tell on you." That thought was an unworthy one. The next thing that he said was: "Mr. Clerk, Mr. Butler was examined by me for admission to the bar, and you can administer the oath and enter his name on the rolls. It is due him to say that the matter of my ruling came up in the course of his examination, and his suggestions led me to examine the matter further, and change my ruling." He was one of the few judges I have known who was big enough to do such a thing as that. From that day to the day of his death we were fast friends. If any one should desire to see the case, it will be found in the 1st Metcalf Mass. R., *Reed v. Batchelder*, p. 559, where the judge's ruling was sustained by the Supreme Court. It may enliven any legal reader to tell that another young gentleman was examined for admission some little time after, and the morning following, he said to me: "The judge asked me a question last night which I do not know whether I answered right or not. He asked me what was an administrator *de bonis non*, and I told him it was an administrator where there was not any goods." I said, "I hope he won't reject you on account of that answer, because it is generally right in point of fact, even if wrong in point of law."

Butler's Book, page 74 et seq.

(Reported by William J. McPherson, of the Denver Bar, 1928)

An Invitation

The foundation for the advancement of the Social Sciences, of University of Denver, extends a cordial invitation to members of the Bar to attend the lectures to be given under its auspices by Miss Maude Royden of England.

Miss Royden has won general recognition as one of the great minds among the women of the world. As an author and lecturer upon subjects dealing with society, government and religion, she is exerting an influence upon British thought probably equaled by no other woman and surpassed by few men.

The circumstances of birth gave her peculiar advantages which she has capitalized in a rare way. Born of a family of wealth and distinction, the daughter of Sir Thomas Royden, Miss Royden received the finest education England affords for women, including study at Chiltenham Ladies' College and Lady Margaret Hall, Oxford. She has devoted her unique gifts of intelligence and personality to the betterment of social conditions in England and the improvement of international relations. For several years Miss Royden has preached on Sunday evenings in London to capacity audiences. She has the reputation of being the most eloquent woman preacher of today.

The range of Miss Royden's interests is indicated by the titles of some of her books: "Women and the Sovereign State," "The Hour and the Church," "Blessed Joan of Arc," "Political Christianity."

In her lectures in Denver, Miss Royden will deal with international issues. Admission to the lectures will be by ticket, which may be secured without cost by telephone or writing to the Foundation for the Advancement of the Social Sciences, University of Denver. Her addresses will be given in the auditorium of East High School at 8:30 on Wednesday, Thursday and Friday evenings, March 7, 8 and 9.

Notice

The Denver Bar Association has gone on record as favoring the following proposed Amendment to Section 30, of Article V of the Constitution of Colorado:

The salaries of the Governor, the Governor's Secretary, and the Judges of the Supreme and District Courts of the State shall be fixed by legislative enactment: provided, that the salaries of said officers heretofore fixed by the Constitution shall continue in force until otherwise provided for by legislative enactment. No law shall extend the term of any public officer, or increase or decrease his salary, after his election or appointment, as fixed by legislative enactment.

On Friday, Feb. 3, 1928 an organization meeting was held to outline the proposed campaign in support of this amendment. Mr. Fred Y. Holland was designated to act as Secretary. An urgent request is made for speakers. All those desiring to aid in this will please get in touch with Mr. Holland, Phone: Main 5480.

"No Man Higher Than the Law"

"No man in this country is so high that he is above the law. No officer of the law may set that law in defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."—*From opinion of Samuel F. Miller in the Arlington cases, 106 U. S., 106 and 196 (1882).*