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ruled the motion, because the assignees could have no interest in a suit for an infringement committed before their right accrued.*

Attempt is made to distinguish the case at bar from the rule established in those cases, but, in the view of this court, without success.

JUDGMENT REVERSED. NEW VENIRE ORDERED.

RANDALL *v.* BRIGHAM.

1. An action for damages does not lie against a judge of a court of general jurisdiction, for removing, whilst holding court, an attorney-at-law, from the bar, for malpractice and misconduct in his office, the court being empowered by statute to remove attorneys for "any deceit, malpractice, or other gross misconduct;" and having heard the attorney removed, in explanation of his conduct in the transaction which was the subject of complaint. And such action will not lie against the judge, even if the court, in making the removal, exceeds its jurisdiction, unless perhaps in the case where the act is done maliciously or corruptly.
2. All judicial officers are exempt from liability, in a civil action, for their judicial acts, done within their jurisdiction; and judges of superior or general authority, are exempt from such liability, even when their judicial acts are in excess of their jurisdiction, unless perhaps where the acts in excess of their jurisdiction are done maliciously or corruptly.
3. Formal allegations, making specific charges of malpractice or unprofessional conduct, are not essential as a foundation for proceedings against attorneys. All that is requisite to their validity, is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made, and opportunity afforded him for explanation and defence. The manner in which the proceeding shall be conducted, so that it be without oppression or injustice, is a matter of judicial regulation.
4. The construction given to a provision of the constitution of a State, by the highest court of that State, not called in question by any conflicting decision of that court, is conclusive upon this court.

ERROR to the Circuit Court for the District of Massachusetts.

This action was brought by the plaintiff, who was formerly an attorney and counsellor-at-law in Massachusetts,

* Kilborn *v.* Rewee, 8 Gray, 415; 1 Hilliard on T. 521; Eades *v.* Harris, 1 Younge & Collier, 230.

against the defendant, who was one of the justices of the Superior Court of that State, for an alleged wrongful removal by him, of the plaintiff from the bar.

The substantial facts, as established by the evidence produced by the plaintiff, and by the records of the State court, introduced by consent, upon which the removal was made, were these:

In August, 1864, one Leighton was arrested upon a charge of larceny, and confined in jail in Boston to await the action of the grand jury in the Superior Court, upon his failure to give a recognizance with sureties in four hundred dollars, required for his appearance. While thus confined, he retained the plaintiff as his attorney, to whom he expressed a willingness to enlist in the army or navy of the United States, if the prosecution could be discontinued. The plaintiff thereupon proposed to the district attorney to dispose of the prosecution in this way. That officer declined to accede to the proposition at that time, but encouraged the plaintiff to expect that he would not object to such an arrangement in court, if the presiding judge approved of it, when the indictment was presented.

The plaintiff and his father, without any further arrangement with the district attorney, thereupon became sureties for Leighton, who, upon his release, proceeded to the office of the plaintiff, and there signed with his mark—he not being able to write—an agreement to enlist as a substitute for one Brown, of Lowell, for four hundred dollars, which sum was to be retained by the plaintiff, without any subsequent claim upon him, as indemnity for his becoming surety on the recognizance, and also to pay the plaintiff four hundred dollars for furnishing bail.

Leighton subsequently enlisted in the naval service as a substitute for Brown, who paid the plaintiff, for the enlistment, eight hundred and thirty dollars. Of this sum, the plaintiff gave Leighton, when the latter went on board the vessel to which he was assigned, the sum of ten dollars. Subsequently he paid one hundred dollars to Leighton's order. The balance he retained.

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Some weeks afterwards, Leighton wrote a letter to the captain of his vessel, stating that he was promised four hundred dollars for his enlistment, by his lawyer, the plaintiff; that he had only received ten dollars; and that, when he applied to the plaintiff for settlement, evasive answers were all he obtained. He referred, in the letter, to the fact that he had a wife and two children dependent upon him for support, and he appealed to the captain to see that justice was done him. This letter was shown to the plaintiff, who replied that he had paid Leighton all he had agreed to, and should not pay him another cent. The wife of Leighton also applied to the plaintiff for a portion of the bounty of her husband, in his hands, stating that the destitution of herself and children was such that she should be obliged to give them up to the city, to whom he replied by advising her to do so, and gave her nothing.

The captain then sent the letter to the grand jury of the county, at the time sitting upon Leighton's case. The jury, of course, could not act upon the letter, and its foreman requested the prosecuting officer to bring it before the court. This was accordingly done, the defendant being at the time the presiding justice. The plaintiff was thereupon sent for, and, in open court, his attention was called to the letter, and it was notified to him that on the following Wednesday, then five days distant, his professional conduct and standing at the bar would be considered.

At the time designated, he appeared, and showed that, after his citation, he had paid to Leighton the balance of the four hundred dollars, which Leighton claimed he was entitled to receive. This right of Leighton was never admitted until after the attention of the court had been directed to the matter.

The court being of opinion that the plaintiff took advantage of the situation of Leighton, and obtained from him an agreement, which, under the circumstances, was unconscionable and extortionate, and therefore grossly unprofessional; that he had induced Leighton to enlist by making him believe that his release from the prosecution would be accom-

plished by his enlistment, and that the money obtained by the enlistment subsequently paid to Leighton was paid only in consequence of the inquiry instituted into the professional conduct of the plaintiff, he having previously denied that he was bound to pay anything, found that he had violated his oath of office as an attorney-at-law, and was guilty of malpractice and gross misconduct in his office, and consequently ordered that he be removed from his office as an attorney-at-law within the commonwealth of Massachusetts. Thereupon, the plaintiff brought this suit. The declaration charged the removal to have been made without lawful authority, and wantonly, arbitrarily, and oppressively.

Upon the evidence produced, the court below instructed the jury that the action could not be maintained, and that their verdict should be for the defendant. Such verdict was accordingly rendered, and the plaintiff brought the case here.

The general statutes of Massachusetts* provide that "an attorney may be removed by the Supreme Judicial Court or Superior Court, for any deceit, malpractice, or other gross misconduct;" and also that "a person admitted in any court may practise in every other court in the State; and there shall be no distinction of counsellors and attorneys."

The oath required of attorneys on their admission is as follows:

"You solemnly swear that you will do no falsehood, nor consent to the doing of any in court; you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney, within the courts, according to the best of your knowledge and discretion, and with all good fidelity as well to the courts as your clients. So help you God."

The Superior Court of Massachusetts is a court of general jurisdiction. Indeed, its jurisdiction is the most general of any court in Massachusetts.†

* C. 121, § 34.

† General Statutes, c. 114.

Mr. Randall, plaintiff in error, in propriâ personâ:

I. The plaintiff's office of attorney-at-law is property. And it has been variously declared by the courts to be a "license," a "privilege," a "franchise," a "freehold," a "right to practise law in courts," a "profession which is the high road to wealth and distinction."

The grant of the "office of attorney," at common law, is the grant of an office for the life, or during the good behavior, of the grantee.

In *Hurst's Case*,* a mandamus was granted to restore an attorney to his office, because, declares Lord Holt,

"He is an officer concerning the public justice, and is compellable to be attorney for any man, and has a *freehold* in his place."

In *Ex parte Garland*,† this court says:

"An 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."

In *Ex parte Austin*,‡ Gibson, C. J., delivering the opinion of the Supreme Court of Pennsylvania, thus speaks:

"An attorney-at-law is an officer of the court, and his office is an office *for life*. The grant of an office without express limitation at common law being taken most strongly against the grantor, endures for the life of the grantee; and though the principle has not been applied to offices within the grant of the executive, it must necessarily be applied to the office of attorney. For, to subject the members of the profession to removal at the pleasure of the court, would leave them too small a share of the independence necessary to the duties they are called upon

* 1 Levinz, 75. † 4 Wallace, 333. ‡ 5 Rawle, 194.

to perform to their clients and to the public. As a class, they are supposed to be, and, in fact, have always been, the vindicators of individual rights, and the fearless assertors of the principles of civil liberty; existing, where alone they can exist, in a government, not of parties or men, but of laws."

And this view of the dignity of the attorney's office is supported by all authorities.*

II. The constitution of Massachusetts ordains as follows:

"No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and *formally*, described to him. And every subject shall have a right to meet the witnesses against him, face to face, and to be fully heard in his defence."

"And no subject shall be deprived of his property, immunities, or privileges, but by the judgment of his peers, or the law of the land."

At the common law, the words *crime* and *offence* are used as synonymous and universal terms, and as comprehending every act for which a forfeiture of any legal right might be worked, or penalty imposed, or punishment inflicted, in any form of judicial proceeding.†

* 7 Bouvier's Bacon Abr., title "Office," 308; Gillman *v.* Wright, 1 Siderfin, 410; White's Case, 6 Modern, 18; King *v.* Sheriff of York, 2 Shower, 154; In re the Justices of Antigua, 1 Knapp's Privy Council, 267; In re King, 8 Q. B. 129; Ex parte Hennen, 13 Peters, 259; Ex parte Swett, 20 Pickering, 1; Ex parte Secombe, 19 Howard, 9; Ex parte Burr, 9 Wheaton, 529; Ex parte Sayre, 7 Cowen, 368; Ex parte Leigh, 1 Mumford, 481; Ex parte Fisher, 6 Leigh, 619; "Judges' Opinions," 20 Johnson, 492; Anonymous, 4 Johnson, 191; Mill's Case, 1 Michigan, 392; Bradley's Case, 19 Law Reporter, 430; In re Dorsey, 7 Porter, 381; People *v.* Turner, 1 California, 151; Fletcher *v.* Daingerfield, 20 Id. 430; Commonwealth *v.* Judges, 1 Sergeant & Rawle, 187; Chapman's Case, 11 Ohio, 430; State of Iowa *v.* Start, 7 Iowa, 499; In re Cooper, 22 N. Y. 81; Bruce *v.* Fox, 1 Dana, 450; Vise *v.* Hamilton, 19 Illinois, 78; Ex parte Heyfron, 7 Howard's Mississippi, 127; The People *v.* Lamborn, 1 Scammon, 123.

† Bouvier's Law Dictionary, title "Crime;" 4 Blackstone's Comm. 5, 6, and note 3, Wendell's Edition; Commonwealth *v.* Dennison, 24 Howard, 99; 1 Chitty's Prac. 14; The King *v.* Shaw, 12 Modern, 113; Bonaker *v.* Evans, 16 Q. B. 171; James Prescott's Trial, 124.

Argument for the attorney.

The words, the "law of the land," mean "due process of law," and this implies that there shall be some form of legal process, sufficient allegations or charge, due notice to the party proceeded against, the opportunity to answer to and contest the charge or allegations, and to be heard or tried in a legal and regular course of judicial proceedings, by an impartial judge. And these rights exist in all cases, civil or criminal, whether by the exercise of a court's ordinary jurisdiction, with trial by jury, or by the exercise of the discretionary or summary jurisdiction of a court, without the right to trial by jury.*

III. At common law, whether a proceeding be criminal or civil, or of a mixed nature, *if it has the character of a judicial proceeding*, some form of legal process, adapted to the particular case, must universally be instituted or laid as the foundation of *the proceeding*, notice of the same given, and the opportunity presented to the party to make his defence; and to be legally and regularly tried or heard ere any judgment, or order of forfeiture, or deprivation of any *freehold office*, or other legal right, can lawfully be effected or inflicted, *for any purpose*, by any tribunal whatsoever; and if, in any *essential* particular, *the proceeding* is irregular or defective, *the conviction* will not be by "due process of law," and the judgment will be a nullity.†

* Regina *v.* Baines, 2 Lord Raymond, 1265; Dimes *v.* Canal Co., 3 House Lords, 759; Ex parte Ramshay, 18 Q. B. 187; Capel *v.* Child, 2 Crompton & Jervis, 558; Murray's Lessees *v.* Hoboken Land Co., 18 Howard, 280; Bank of Columbia *v.* Okeley, 4 Wheaton, 244; Greene *v.* Briggs, 1 Curtis, 325; In re Pitman, 1 Id. 186; Commonwealth *v.* Davis, 11 Pickering, 434; Commonwealth *v.* Dean, 21 Id. 334; Commonwealth *v.* Phillips, 16 Id. 213; Commonwealth *v.* Blood, 4 Gray, 32; Fisher *v.* McGirr, 1 Id. 37; Taylor *v.* Porter, 4 Hill, 146; Wynehamer *v.* The People, 3 Kernan, 392; In re Dorsey, 7 Porter, 405; Bank of Columbia *v.* Ross, 4 Harris & McHenry, 455; McGinnis *v.* State, 9 Humphreys, 43; Murry *v.* Askew, 6 J. J. Marsh. 27; Wells *v.* Caldwell, 1 Marshall, 441; Lewis *v.* Garrett, 5 Howard's Mississippi, 434; Hoke *v.* Henderson, 4 Devereux, 15; Ervine's Appeal, 16 Pennsylvania State, 263; Norman *v.* Heist, 5 Watts & Sergeant, 171.

† Rex *v.* Lediard, Sayer, 6; The Queen *v.* Saddlers' Co., 10 House Lords, 404; The Queen *v.* Smith, 5 Q. B. 621; In re Monckton, 1 Moore's Privy Council, 455; Bowerbank *v.* Bishop of Jamaica, 2 Id. 470; Smith *v.* Justices

Argument for the attorney.

IV. "Due process of law," in the case of attorneys-at-law, is held to require, whatever may be the form of process or mode of procedure, and for whatever cause (invariably limited to causes involving moral or professional delinquency), that there shall be a sufficient charge or allegation in writing, duly filed of record in court, specifying the particular offence or matter complained of (usually supported by the oath of the party preferring the accusation); and, unless waived of record, written notice served on the attorney to show cause why he should not be removed from his office, or his name stricken from the roll of attorneys, for the offence or matter complained of; and which notice should specify the time when, the place where, and the tribunal before which he is to appear and answer. The attorney is entitled to a *day in court*, on which to make defence, and the trial is to be conducted like all other trials in summary proceedings at the common law, and the attorney convicted only if the proofs shall establish or conform to the allegations.*

In numerous cases,† the judgments or orders removing the attorneys from their offices, having been made without

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of Sierra Leone, 3 Id. 361; Gahan *v.* Lafitte, Id. 382; Willis *v.* Sir G. Gipps, 5 Id. 379; Wildes *v.* Russell, C. B. 722, Eng. Law Rep. 1866; Capel *v.* Child, 2 Crompton & Jervis, 558; Rex *v.* Gaskin, 8 Term, 209; Howard *v.* Gosset, 10 Q. B. 381; Bonaker *v.* Evans, 16 Id. 162; Ex parte Ramshay, 18 Id. 187; Ex parte Kinning, 4 C. B. 507; Dynes *v.* Hoover, 20 Howard, 82; Gorham *v.* Luckett, 6 B. Munroe, 146; Murray *v.* Oliver, 3 Id. 1; Greene *v.* Briggs, 1 Curtis, 325; Sevier's Case, Peck, 334; Sheldon v. Newton, 3 Ohio State, 498; McClure *v.* Tennessee, 1 Yerger, 223; United States *v.* Duane, Wallace's Circuit Court, 5; Ex parte Heyfron, 7 Howard, Mississippi, 127; Fletcher *v.* Daingerfield, 20 California, 427; People *v.* Turner, 1 Id. 150; Fisher's Case, 6 Leigh, 619; James Prescott's Trial, 1821, page 164, and Appendix, pages 212 to 219.

* Ex parte Burr, 9 Wheaton, 529; The People *v.* Turner, 1 California, 150; Iowa *v.* Start, 7 Iowa, 499.

† Ex parte Heyfron, 7 Howard's Miss. 127; Fletcher *v.* Daingerfield, 20 California, 430; People *v.* Turner, 1 Id. 143, S. C. 190; In re Monckton, 1 Moore's Privy Council, 455; Smith *v.* Justices of Sierra Leone, 3 Id. 361; In re Downie, 3 Id. 414; In re Arrindell, 3 Id. 414; Smith *v.* Justices of Sierra Leone, 7 Id. 174; Emerson *v.* The Justices of the Supreme Court of Newfoundland, 8 Id. 157.

"due process of law," were declared to be *illegal and void* (and were also reversed), by courts having a superintending or appellate jurisdiction.

V. An action on the case may be maintained at common law for the disturbance of a party in the possession and enjoyment of an office, franchise, or other incorporeal right.*

It is no objection to the maintenance of a suit simply that it involves a determination of a party's title to his office.†

VI. In an action against a judge of any court, whether of record or otherwise, for any act done by him or by his command, the question in every case to be determined is, *was the act done a judicial act, done within his jurisdiction?* If it was not, he can claim no immunity or exemption by virtue of his office from liability as a trespasser; "for if he has acted without jurisdiction, he has ceased to be a judge."‡

* Walker *v.* Lamb, Croke Car. 258; Ferrer *v.* Johnson, Croke Eliz. 336; Lee *v.* Drake, 2 Salkeld, 468; Jones *v.* Pugh, Id. 465; Hastings *v.* Prothonotary of Stepney Court, 1 Siderfin, 410; Strode *v.* Byrt, 4 Modern, 418; Crowder *v.* Oldfield, 6 Id. 19; Beau *v.* Bloom, 3 Wilson, 456; Sutherland *v.* Murray, cited in 1 Term, 538; Carrington *v.* Taylor, 11 East, 571; Thompson *v.* Gibson, 7 Meeson & Welsby, 456; Peter *v.* Kendal, 6 Barnewall & Creswell, 703; McMahon *v.* Lennard, 6 House of Lords Cases, 970; Rogers *v.* Dutt, 13 Moore's Privy Council, 209; Townsend *v.* Blewett, 5 Howard's Mississippi, 503; Wammack *v.* Holloway, 2 Alabama, 31; Palmer *v.* Fiske, 2 Curtis, 14; People *v.* Turner, 1 California, 190; Bruce *v.* Fox, 1 Dana, 450; Glen *v.* Hodges, 9 Johnson, 67.

† Arris *v.* Stukely, 2 Modern, 260; Boyter v. Dodsworth, 6 Term, 681; Drew *v.* Fletcher, 1 Barnewall & Creswell, 283; Capel *v.* Child, 2 Crompton & Jervis, 558; Lightly *v.* Clouston, 1 Taunton, 113; Wildes *v.* Russell, C. B. Law Rep. for Dec. 1866, p. 728; Hearsey *v.* Pruyn, 7 Johnson, 179; Avery *v.* Tyringham, 3 Massachusetts, 160; Allen *v.* McKeen, 1 Sumner, 317.

‡ 2 Institutes, 427; The Marshalsea Case, 10 Reports, 76 A; Floyd *v.* Barker, 12 Id. 23; Hoskins *v.* Matthews, 1 Levinz, 292; Martin *v.* Marshall, Hobart, 63; Bushell's Case, 1 Modern, 119; Hamond *v.* Howell, 2 Id. 219; Smith *v.* Bouchier, 2 Strange, 993; Groenvelt *v.* Burwell, 1 Ld. Raymond, 454; Miller *v.* Seare, 2 W. Blackstone, 1141; Perkin *v.* Proctor, 2 Wilson, 386; Mostyn *v.* Fabrigas, 1 Cowper, 161; Sutton *v.* Johnstone, 1 Term, 493; Welch *v.* Nash, 8 East, 402; Burdett *v.* Abbott, 14 Id. 1; Ackerley *v.* Parkinson, 3 Maule & Selwyn, 411; Mitchell *v.* Foster, 4 Perry & Davison, 153; S. C., 12 Adolphus & Ellis, 472; Garnett *v.* Ferrand, 9 Dowling & Ryland, 670; Van Sandau *v.* Turner, 6 Q. B. 773; Gossett *v.* Howard, 10 Id. 411; Houlden *v.* Smith, 14 Id. 841; Kinning *v.* Buchanan, 8 C. B. 271; Watson *v.* Bodell, 14 Meeson & Welsby, 70; Fergurson *v.* Kinnoull, 9 Clark &

Argument for the judge.

Mr. Dawes, who filed a brief of Mr. Allen, A. G. of Massachusetts:

I. Both the admission and removal of attorneys are judicial acts.*

II. It is a general principle, applicable to all magistrates, even to those of inferior jurisdiction, that they are not liable to an action for any judicial act done within their jurisdiction. In reference to inferior magistrates, it has been said that they are only protected while they act within their jurisdiction.

But in reference to judges of courts of general jurisdiction, the rule is not thus limited. Such judges are not liable to actions for their judicial acts, whether within or without their jurisdiction.

1. The extent of a judge's jurisdiction is often the very question which he is called on judicially to determine. To decide upon this question is as much a judicial decision as any other. And the question may be a difficult and doubtful one. Yet he is bound to decide, and to decide according to his judgment. But shall he decide in fear or peril of a lawsuit?

2. The reason applicable to inferior magistrates does not apply. There must be some point in the administration of the law where unqualified confidence is to be reposed and acknowledged; some ultimate repository of justice, so far as individuals are concerned. In England, the king's judges

Finelly, 296; Miller *v.* Hope, 2 Shaw's Appeal Cases, H. L. 125; Calder *v.* Halket, 3 Moore's Privy Council, 28; Taaffe *v.* Downes, Id. 36; Gahan *v.* Lafitte, Id. 382; Hill *v.* Bigge, Id. 465; Wise *v.* Withers, 3 Cranch, 331; Anderson *v.* Dunn, 6 Wheaton, 204; Kendall *v.* Stokes, 3 Howard, 89; Mitchell *v.* Harmony, 13 Id. 144; Dynes *v.* Hoover, 20 Id. 65; Yates *v.* Lansing, 5 Johnson, 282; Bigelow *v.* Stearns, 19 Id. 39; Cunningham *v.* Bucklin, 8 Cowen, 178; Horton *v.* Auchmoody, 7 Wendell, 200; Bevard *v.* Hoffman, 18 Maryland, 479; Lining *v.* Bentham, 2 Bay, 1; Miller *v.* Grice, 2 Richardson, 27; Greene *v.* Mumford, 5 Rhode Island, 472; Scovil *v.* Geddings, 7 Ohio, 566; Piper *v.* Pearson, 2 Gray, 120; Clarke *v.* May, Id. 410; Kelly *v.* Bemis, 4 Id. 83; Noxon *v.* Hill, 2 Allen, 215; Revill *v.* Pettit, 3 Metcalf, Kentucky, 314.

* Ex parte Secombe, 19 Howard, 9, 15; Ex parte Garland, 4 Wallace, 378, 379.

occupy this position; the judges of courts of general jurisdiction. To them is delegated the whole judicial power of the sovereign; and they are responsible to the sovereign alone.* As long ago as 1608, in *Floyd & Barker's Case*,† it was said:

"The reason and cause why a judge, for anything done by him as judge, by the authority which the king hath committed to him, and as sitting in the seat of the king (concerning his justice), shall not be drawn in question before any other judge, for any surmise of corruption, except before the king himself, is for this: the king himself is *de jure* to deliver justice to all his subjects; and for this, that he himself cannot do it to all persons, he delegates his power to his judges, who have the custody and guard of the king's oath. And forasmuch as this concerns the honor and conscience of the king, there is great reason that the king himself shall take account of it, *and no other*."

This general doctrine is especially applicable in America, where, by our National and State constitutions, judicial power is vested exclusively in the courts. The duties of a judge are public duties imposed by law. He must perform them. If he acts corruptly or incompetently, he may be impeached. And in Massachusetts, he may be removed by the governor, with consent of the council, upon the address of both houses of the legislature.

It is inconsistent with the nature and true theory of the judicial functions, that an action should lie against a superior judge, for any judicial act, even though in excess of his jurisdiction.

3. The very foundation of this principle is to protect judges *when they have erred*. If they have decided rightly, they need no protection, for the correctness of their decision will vindicate them. To secure the maximum of impartiality, a judge must be protected from personal responsibility for his errors, if he happens to make any. It would be absurd to say that

* Taaffe *v.* Downes, in note, 3 Moore's Privy Council, 41.

† 12 Reports, 23.

he should receive the protection of the law only in those cases where no protection is required.*

Accordingly, for more than five hundred years, by a uniform series of decisions, judges have been held exempt from personal responsibility for their judicial words and acts.†

Consider the results which would follow from a contrary doctrine. Suppose that the defendant consulted several of his associates, who all concurred with him, or suppose that two or more of the justices acted together upon this matter, and that they nevertheless came to a wrong decision, would all be liable in damages? If so, should they be sued jointly or severally? In case one dissented, should he be held liable with the rest, or should he, by reason of his dissent, be exonerated, and the rest held liable? This would be to offer a bounty on dissent. Suppose the case was carried by appeal, or otherwise, before another tribunal, which ratified the doings of the first, and yet this court should think both tribunals mistaken, should the justices of the higher tribunal be also liable in damages? And if so, should they be sued separately, or jointly with the justices of the Superior Court? Are the justices of the Supreme Judicial Court of Massachusetts, who held that the doings of defendant, now sued, were, in all respects, conformable to the constitution and

* See Taafe *v.* Downes, *supra*, 533.

† (A.D. 1354.) Book of Assizes, 27 Edw. III, pl. 18; (A.D. 1431.) 1 Rolle's Abridgment, 92; 9 Hen. VI, 60, B.; (A.D. 1561.) Gwynne *v.* Poole, Lutwyche, 937, *arguendo;* (A.D. 1589.) Green *v.* Hundred of Buccles Church, 1 Leonard, 323, *arguendo;* (A.D. 1608.) Floyd & Barker's Case, 12 Reports, 23; (A.D. 1616.) Bagg's Case, 11 Id. 93 *b;* (A.D. 1621.) Aire *v.* Sedgwicke, 2 Rolle, 199; (A.D. 1633.) Metcalfe *v.* Hodgson, Hutton, 120; Bushell's Case, 1 Modern, 119; Hamond *v.* Howell, Id. 184; S. C. 2 Mod. 218; Groenvelt *v.* Burwell, 1 Ld. Raymond, 454; S. C. 1 Salkeld, 200; Anon. 1 Salkeld, 201; Mostyn *v.* Fabrigas, 1 Cowper, 172; Duke of Newcastle *v.* Clark, 3 Taunton, 632; Garnett *v.* Ferrand, 6 Barnewall & Creswell, 611; Miller *v.* Hope, 2 Shaw's Appeal Cases, 125; Kemp *v.* Neville, 7 Jurist (N. S.), 913; Scott *v.* Stansfield, Law Reports, 3 Exchequer, 220; Brodie *v.* Rutledge, 2 Bay, 69; Phelps *v.* Sill, 1 Day, 315; Yates *v.* Lansing, 5 Johnson, 283; S. C. 9 Id. 395; Cunningham *v.* Bucklin, 8 Cowen, 178; Weaver *v.* Devendorf, 3 Denio, 117; Burnham *v.* Stevens, 33 New Hampshire, 247; Kelley *v.* Dresser, 11 Allen, 31.

laws, also liable in damages? If so, before what tribunal should they be sued? If small damages were claimed, would a justice of the peace, or a judge of inferior jurisdiction, have authority to entertain the case, and pass upon the question whether his superior judges acted and decided rightly or wrongly? It cannot be that such is the law. "There is no court," it was said in *Le Caux* v. *Eden*,* "equal to the trial of a superior judge." Were the law otherwise (to use the words of Lord Stair†), "no man but a beggar or a fool would be a judge."

This question does not depend upon reasoning alone. The case of *Ackerley* v. *Parkinson*‡ is in point, and other cases are to the same effect.§

Mr. Justice FIELD, after stating the case, delivered the opinion of the court, as follows:

The Superior Court of Massachusetts is a court of general jurisdiction, and is empowered by statute to admit attorneys and counsellors to practise in the courts of the State, upon evidence of their possessing good moral character, and of having devoted a prescribed number of years to the study of the law, in the office of some attorney in the State, and to remove them "for any deceit, malpractice, or other gross misconduct."

Both the admission and the removal of attorneys are judicial acts. It has been so decided in repeated instances. It was declared in *Ex parte Secombe*,‖ and was affirmed in *Ex parte Garland*.¶

Now, it is a general principle applicable to all judicial officers, that they are not liable to a civil action for any judicial act done within their jurisdiction. In reference to judges of limited and inferior authority, it has been held

* Douglas, 594.

† 2 Shaw's Appeal Cases, 134.

‡ 3 Maule & Selwyn, 411.

§ The Marshalsea, 10 Reports, 68 b; Gwynne *v.* Poole, Lutwyche, 937; Lowther *v.* Earl of Radnor, 8 East, 113; Truscott *v.* Carpenter, Ld. Raymond, 229; Yates *v.* Lansing, 5 Johnson, 289.

‖ 19 Howard, 9.

¶ 4 Wall. 378.

that they are protected only when they act within their jurisdiction. If this be the case with respect to them, no such limitation exists with respect to judges of superior or general authority. They are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, unless perhaps where the acts, in excess of jurisdiction, are done maliciously or corruptly. This doctrine is as old as the law, and its maintenance is essential to the impartial administration of justice. Any other doctrine would necessarily lead to the degradation of the judicial authority and the destruction of its usefulness. Unless judges, in administering justice, are uninfluenced by considerations personal to themselves, they can afford little protection to the citizen in his person or property. And uninfluenced by such considerations they cannot be, if, whenever they err in judgment as to their jurisdiction, upon the nature and extent of which they are constantly required to pass, they may be subjected to prosecution at the instance of every party imagining himself aggrieved, and be called upon in a civil action in another tribunal, and perhaps before an inferior judge, to vindicate their acts.

This exemption from civil action is for the sake of the public, and not merely for the protection of the judge. And it has been maintained by a uniform course of decisions in England for centuries, and in this country ever since its settlement.

In England the superior judges are the delegates of the king. Through them he administers justice, and to him alone are they accountable for the performance of their trust. And it was said as long ago as 1608, as reported by Lord Coke in Floyd and Barker's case,* that insomuch as the judges of the realm have the administration of justice, under the king, to all his subjects, they ought not to be called in question for any judicial proceedings by them, except before the king himself, "for this would tend to the scandal and subversion of all justice; and those who are most sincere would not be free from continual calumniations."

* 12 Coke, 25.

Opinion of the court.

In the United States, judicial power is vested exclusively in the courts. The judges administer justice therein for the people, and are responsible to the people alone for the manner in which they perform their duties. If faithless, if corrupt, if dishonest, if partial, if oppressive or arbitrary, they may be called to account by impeachment, and removed from office. In some States, and Massachusetts is one of them, they may be removed upon the address of both houses of the legislature. But responsible they are not to private parties in civil actions for their judicial acts, however injurious may be those acts, and however much they may deserve condemnation, unless perhaps where the acts are palpably in excess of the jurisdiction of the judges, and are done maliciously or corruptly.

In *Taaffe* v. *Downes*,* this subject was most elaborately and learnedly considered, and all the English authorities commented upon, by the Court of Common Pleas of Ireland, in 1813. The defendant was chief justice of the King's Bench in Ireland, and had issued a warrant at chambers for the arrest of the plaintiff for a breach of the peace. The plaintiff was accordingly arrested and held to bail; and he afterwards brought an action against the chief justice for assault and false imprisonment. It was urged, in argument, that it was not lawful or defensible for a judge, without any offence committed, or charge made upon oath of crime, or suspicion of crime committed, to imprison a subject. But it was held that the action would not lie against the judge for acts judicially done by him. "Liability," said Mr. Justice Mayne, one of the justices of the court, "to every man's action, for every judicial act a judge is called upon to do, is the degradation of the judge, and cannot be the object of any true patriot or honest subject. It is to render the judges slaves in every court that holds plea, to every sheriff, juror, attorney, and plaintiff. If you once break down the barrier of their dignity, and subject them to an action, you let in upon the judicial authority a wide, wasting, and harassing

* Given in a note in 3 Moore's Privy Council, 41.

persecution, and establish its weakness in a degrading responsibility." And the justice observed that no action of the kind was ever sustained, and save one in London and one in Ireland, none was ever attempted. The one mentioned as arising in Ireland was not against any judges, but against the governor of the country, and may perhaps be subject to other considerations. In the case in London,* the action was against the recorder, who, as one of the judges of *oyer and terminer*, had fined and imprisoned a petit jury for rendering a verdict against the direction of the court and the evidence. This act was declared illegal, by the Court of Common Pleas, in discussing the case on *habeas corpus*.† Upon that decision the action was brought by one of the jurors, but the court held that the action would not lie, and were of opinion "that the bringing of the action was a greater offence than the fining of the plaintiff, and committing of him for non-payment; and that it was a bold attempt, both against the government and justice in general."

Mr. Justice Fox, in the case of *Taaffe* v. *Downes*, conceded that the act of the chief justice was illegal, but held that he was not responsible in the action, and observed that, without the existence of the principle, that a judge, administering justice, shall not be liable for acts judicially done, by action or prosecution, it was utterly impossible that there should be such a dispensation of justice as would have the effect of protecting the lives or property of the subject. "There is something," he said, "so monstrous in the contrary doctrine, that it would poison the very source of justice, and introduce a system of servility, utterly inconsistent with the constitutional independence of the judges, an independence which it has been the work of ages to establish, and would be utterly inconsistent with the preservation of the rights and liberties of the subject."

The same subject was considered very elaborately in the case of *Yates* v. *Lansing*,‡ in the Supreme Court and in the

* Hamond *v.* Howell, 1 Modern, 184; 2 Id. 218.

† Bushell's Case, Vaughan, 135.

‡ 5 Johnson, 283; 9 Id. 395.

Court of Errors of New York. Lansing was chancellor of the State, and had committed Yates, one of the officers in chancery, for malpractice and contempt. A judge of the Supreme Court discharged him, and thereupon the chancellor ordered him to be recommitted. He then brought an action to recover a statute penalty for the recommittent. It was held that the action would not lie, Mr. Chief Justice Kent observing that the chancellor may have erred in judgment in calling an act a contempt which did not amount to one, and in regarding a discharge as null when it was binding, and that the Supreme Court may have erred in the same way, but still it was but an error of judgment for which neither the chancellor nor the judges were or could be responsible in a civil action, and that such responsibility would be an anomaly in jurisprudence. "Whenever," said the learned chief justice, "we subject the established courts of the land to the degradation of private prosecution, we subdue their independence and destroy their authority. Instead of being venerable before the public they become contemptible."

The Superior Court of Massachusetts, as we have already stated, is a court of general jurisdiction, and is clothed by statute with authority to admit and to remove attorneys-at-law. The order removing the plaintiff was made by the court, and not by the judge in chambers. The inquiry into his conduct was before the court, and before it he was notified to appear. His claim is that the court never acquired jurisdiction to act in his case, because there was not a formal accusation made against him, or statement of grounds of complaint, and formal citation issued to him to answer them. If this were so, his case would not be advanced. Under the authorities cited he could not seek redress in that event by an action against the judge of the court, there being no pretence or shadow of ground that he acted maliciously or corruptly. But the claim of the plaintiff is not correct. The information imparted by the letter was sufficient to put in motion the authority of the court, and the notice to the plaintiff was sufficient to bring him before it to explain the

transaction to which the letter referred. The informality of the notice, or of the complaint by the letter, did not touch the question of jurisdiction. The plaintiff understood from them the nature of the charge against him; and it is not pretended that the investigation which followed was not conducted with entire fairness. He was afforded ample opportunity to explain the transaction and vindicate his conduct. He introduced testimony upon the matter, and was sworn himself.

It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defence. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation.

The authority of the court over its attorneys and counsellors is of the highest importance. They constitute a profession essential to society. Their aid is required not merely to represent suitors before the courts, but in the more difficult transactions of private life. The highest interests are placed in their hands, and confided to their management. The confidence which they receive and the responsibilities which they are obliged to assume demand not only ability of a high order, but the strictest integrity. The authority which the courts hold over them, and the qualifications required for their admission, are intended to secure those qualities.

The position that the plaintiff has been illegally deprived of rights which he held under the constitution of Massachu-

setts, which declares that "no subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him;" nor be "despoiled or deprived of his property, immunities or privileges, put out of the protection of the law, exiled or deprived of his life, liberty or estate, but by the judgment of his peers, or the law of the land,"* is answered by the construction which the Supreme Court of that State has given to these provisions. It has held that the proceeding taken for the removal of the plaintiff could not in any just and proper sense be deemed a criminal procedure, in which a party has a right to a full, formal, and substantial description of the offence charged; and that it was not essential to the validity of the order of removal that it should be founded on legal process according to the signification of the words "*per legem terræ*" as used in Magna Charta, or in the Declaration of Rights.† This construction of the highest court of the State, not called in question by any conflicting decision of that court, is conclusive upon us.‡

We find no error in the ruling of the Circuit Court, and its judgment must therefore be

AFFIRMED.

PALMER v. DONNER.

A district judge has no authority to sign a citation upon a writ of error to a State court. When the citation has been thus signed, the writ of error will be dismissed on motion.

THIS was a motion, made by *Mr. J. H. Bradley*, to dismiss a writ of error directed to the Supreme Court of the State of California, on the ground that the citation had been signed by a district judge, which the record showed was the fact.

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* Declaration of Rights, Art. 12.

† Randall, Petitioner for Mandamus, 11 Allen, 473.

‡ Provident Institution *v.* Massachusetts, 6 Wallace, 630.