THE CURRENT CHANCERY INVESTIGATION

By order entered May 3rd, 1932, Chancellor Walker initiated a sweeping investigation into the administration of receiverships in the Court of Chancery of New Jersey.[1] This action is perhaps unique in the judicial system of the state, yet it finds its counterpart in investigations of somewhat similar character in a number of other states and invites a glance into fundamental questions of the extent to which courts may exercise powers independently of litigious proceedings.

Ancient English precedents are of peculiar force in a court like the Court of Chancery where "the constitutional powers of the Chancellor are the powers possessed by the English Chancellor as a judge of the Court of Equity at the time of the

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[1] The chancellor's order follows:

"Upon reading and filing the verified petition of the New Jersey State Bar Association and it appearing that an investigation as therein prayed should be made, and the committee of one hundred (100), representing certain business and trade groups of this state, appearing by counsel and several of the members of the executive committee and concurring orally in the said prayer of the said petition: It is accordingly on this 29th day of April, 1932, ordered that Charles L. Carrick be and he hereby is appointed master and authorized and directed to conduct an investigation into the practice which has existed and which exists on the part of members of the bar in soliciting receivership cases and the handling thereof. Into the administration of receivership and other trust estates in the past and present, including the fees allowed and paid to receivers, solicitors for and counsel with receivers and other trustees, auctioneers, appraisers, accountants, masters and any other officers of this court; including fees paid to officers or attorneys in the administration of the affairs of closed banks and other financial institutions; and whether or not any fees allowed to any of such officers have been split, and with whom, and whether any officer of the court has benefited directly or indirectly in any fees allowed any other officers or appointees of the court.

"It is further ordered that such master shall commence hearings within ten (10) days from the date hereof at such place or places within this state as he may designate, and he is permitted to hold his hearings in any Chancery chambers in this state.

"It is further ordered that such master be and he is hereby authorized and empowered to issue any subpoenas that may be necessary in the course of investigation to compel the production of witnesses, books, documents or other evidence before him.

"It is further ordered that such master be, and he is hereby authorized, after consultation with the officers of the State Bar Association and the executive committee of the committee of one hundred (100), to appoint counsel in such proceeding; said counsel, with the approval of the master may designate associate counsel, and such legal, clerical, investigating and stenographic assistance as may be necessary properly to conduct such investigation, but at the cost of the State Bar Association unless the Legislature shall make appropriation therefor, except a stenographer allowed by statute.

"It is further ordered that the said master make a report to the Chancellor

Declaration of Independence."[2] The English barristers were not considered to be officers of the court. They were associated in unincorporated associations known as inns of court, the members of which exercised the power of nominating individuals to be called to the bar. Barristers were subject to discipline by the benchers of the inns, and their conduct could be inquired into by the judges acting as visitors.[3] Considerable record remains of the exercise of this control by the judges. On the other hand, attorneys were officers of the court. Not only was the conduct of attorneys regulated by general orders of the courts, but as far back as 1567[4] an inquiry into wrongdoing by officers of the Court of Common Pleas was ordered by the lord chief justice. The inquiry was conducted by a special jury made up of officers, clerks and attorneys. It is noteworthy that this was not a grand jury since the Court of Common Pleas had no criminal jurisdiction. Similarly in 1654[5] the summoning of such juries once in every year in Michaelmas Term was ordered by the Common Pleas and the King's Bench. The orders were wide in scope, the order of the Common Pleas providing that the jury shall inquire:

> 1. Of the points usually inquirable by writ, viz., falsities, contempts, misprisions and offences.
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> 2. Of such who have been admitted attorneys or clerks and are notoriously unfit, their names to be presented to the court, and they to be punished or removed, as the case shall require.

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with all convenient speed. Said report may be submitted in sections or chapters from time to time as the master shall direct.

"It is further ordered that the clerk of this court shall co-operate with the master and send him, as though he were a vice chancellor to whom the cause had been referred, the files in any designated cause and or furnish him with copies of any papers required, free of costs or other fees."

[2] 2 KEASBEY, THE COURTS AND LAWYERS OF NEW JERSEY (1912) 506. See also Van Fleet, V.C. in Southern Nat. Bank v. Darling, 49 N.J.Eq. 398, 23 Atl. 475 (1892).

[3] King v. Benchers of Gray's Inn, 1 Doug. 353 (1780); King v. Benchers of Lincoln Inn, 4 B & C 855 (1825).

[4] COOKE, RULES AND ORDERS IN THE COMMON PLEAS (2d ed. 1747).

[5] PEACOCK, RULES AND ORDERS OF THE COURT OF KING'S BENCH, (1811) 19-24. This was an order providing for the general regulation of the Bar. All officers and attorneys were ordered to be "admitted of some inn of court or Chancery 'and be in' Commons one week in every term and take chambers there; or in case that cannot be conveniently done, yet to take chambers or dwellings in some convenient places, and leave notice with the butler where these chambers or habitations are, under pain of being put out of the roll of attorneys."

> 3. Of new or exacted fees, and of those that have taken them under whatsoever pretense, and to preface and present a table of the due and just fees that the same may be fixed and continue in every office, and likewise for the Fleet.
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> And that some persons be enjoined and sworn to give evidence, viz., some clerks of the court, and some attorneys in every county, not excluding others.

The power of control here exercised by courts of law over attorneys was also exercised by the English Court of Chancery over its solicitors. It was the practise to admit as solicitors all applicants who had been admitted as attorneys-at-law or applicants who passed a special examination for admission as solicitor. "For malfeasance the English court of chancery always exercised the power of striking the name of the convicted solicitor from its rolls."[6]

These ancient instances of the control of a court over its own officers find striking parallels in our own day. In 1928 the Appellate Division of the Supreme Court of New York ordered a general investigation into the practice of ambulance-chasing, at the petition of three bar associations.[7] The court, in granting the petition, mentioned the statutory[8] authority of the Supreme Court to inquire into charges of professional misconduct against an attorney, but it stated that the disciplinary power of the court "is not limited to the exercise of jurisdiction only in cases where specific charges are made against a named attorney. It has power to act itself, whenever it has probable cause to believe that professional misconduct has occurred, irrespective of whether that misconduct be that of a single respondent or of a particular class."[9] Most important is the statement that "the proposed investigation can be ordered as an exercise of a power

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[6] In re Raisch, 83 N.J.Eq. 82, 87, 90 Atl. 12, 15, (1914).

[7] In re Association of the Bar of the City of New York, 222 App. Div. 580, 227 N.Y. Supp. 1 (1928). At the same time a similar proceeding was instituted by the Brooklyn Bar Ass'n. In re Brooklyn Bar Ass'n, 223 App. Div. 149, 227 N.Y. Supp. 666 (1928).

[8] JUDICIARY LAW 1909, c. 35, § 88 (2):

"2. The Supreme Court shall have power and control over attorneys and counselors at law, and the Appellate Division * * * is authorized to censure, suspend from practice or remove from office any attorney * * * who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice * * *"

[9] *Supra* note 7, 222 App. Div. at 586, 277 N.Y. Supp. at 8.

inherent in, and an essential attribute of, courts of general jurisdiction."[10]

The order instituting the investigation designated a justice of the Supreme Court, with full power to summon witnesses and to compel the giving of testimony. The investigation was to extend "not only to the practice of 'ambulance chasing' as set forth in the petition, and to the conduct of the attorneys claimed to be engaged in such practice, but to all those engaged with them in such practice as their agents, servants, employees, representatives, runners, investigators, or by whatever name they may be called, as well as those who have procured or induced the placing of claims in their hands, or have been parties thereto, no matter what other activities they may have been following at the time."[11] The investigation was also to extend to practices and methods of attorneys for defendants in negligence cases, to any other persons acting as intermediaries between attorneys for plaintiff and for defendant, to divisions of fees, and to any practices of attorneys "which are obstructive or harmful to the administration of justice, or unjust to litigants on either side, or corrupt, unlawful, fraudulent, or unprofessional."

The validity of this action of the Appelate Division was tested on *habeas corpus* by an attorney who had been committed for contempt for refusal to testify. The opinion[12] of Chief Judge Cardozo speaking for the Court of Appeals in upholding the Appelate Division, may stand as the landmark of this subject.

In the argument before the Court of Appeals much stress had been laid on the line of cases limiting judicial investigations to the action of the grand jury.[13] These cases go back to

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[10] *Id.*

[11] *Id.* 222 App. Div. at 590, 277 N.Y. Supp. at 11.

[12] The People of The State of New York *ex rel.* Karlin v. Culkin, 248 N.Y. 465, 162 N.E. 487 (1928) Commented on (1928) 42 HARV. L. REV. 104; (1928) MINN. L. REV. 62 ("There is no logical reason why any court, whether of limited or general jurisdiction, should not have the inherent power to do whatever might be necessary to protect itself in the administration of justice"); (1928) 77 U. OF PA. L. REV. 132; ("Although the exercise of this power has lain dormant for three centuries, its revival when necessary must be viewed with gratification"); (1928) 2 So. CALIF. L. REV. 167.

[13] Matter of Both, 200 App. Div. 423, 192 N.Y. Supp. 822 (1922); People *ex rel.* Travis v. Knott, 204 App. Div. 379, 198 N.Y. Supp. 142 (1923); Ward Baking Co. v. Western Union Telegraph Co., 205 App. Div. 723, 200 N.Y. Supp. 865 (1923).

the early seventeenth century when royal commissions of enquiry with general powers to investigate violations of the law were held illegal by the courts.[14] All of these cases exhibit the reluctance of courts to allow investigations of persons suspected of crime by other than the traditional agencies of the grand jury and the committing magistrate, with their careful procedural safeguards in favor of the accused. Yet a different situation is here presented. Those cases involve attempts to replace the ordinary agency of criminal investigation by some other body with wide and ill-defined powers. Here the possibility that the investigation may uncover acts criminal in nature is merely incidental. The main purpose of the investigation is the desire of the court to find out whether its own house is in order. The limits of the investigation are set by its object: the determination whether the officers of the court have conducted themselves properly in their official duties towards the court. Disciplinary action by the court by suspension or striking from the rolls is the primary sanction, but this is not punishment within the meaning of the criminal law.[15] That criminal punishment, preceded by presentment to a grand jury may follow, is merely incidental and does not affect the independent character of the general investigation. The safeguards of persons under investigation must be found in the discretion and consideration of the court desirous of protecting the fair name of the bar.[16] No better answer to the question can be given than in the words of Chief Judge Cardozo:

> "The grand jury inquires into crimes with a view to punishment or correction through the sanctions of the criminal law. There are, however, many forms of professional misconduct that do not amount to crimes. Even when they do, disbarment is not punishment with-

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[14] Commissions of Enquiry, 12 Co. 31 (1608); Entick v. Carrington, 19 How. St. Tr. 1029 (1765).

[15] Matter of Rouss, 221 N.Y. 81, 85, 116 N.E. 782, 783 (1917).

[16] See the remarks of Master Carrick as reported in the Newark Evening News, May 19, 1932: "No hearings at which witnesses will be examined in public should be held until after careful examination by counsel to assure the presentation of trustworthy evidence only, of substantial grounds of complaint. It would be an abuse of the master's office if he should permit the hearings to be used by irresponsible and prejudiced persons to make loose charges of improper conduct by judicial officers or trustees which might, in all likelihood, cause irreparable injury to persons innocent of wrongdoing."

> in the meaning of the criminal law. Inquisition by the court with a view to the discipline of its officers is more than a superfluous duplication of inquisition by the grand jury with a view to the punishment of criminals. The two fields of action are diverse and independent. True, indeed, it is that disbarment may not be ordered without notice of specific charges. So also, an indictment must precede a conviction of a felony. We cannot know today whether charges will be laid against the relator as an outcome of his testimony or of the testimony of others. If preferred they will be subject of a separate proceeding, as separate as proceedings before and after an indictment. The requirements of a charge are inapplicable to an inquisition in advance of the charge."[17]

Similar considerations apply to the citation of cases denying the right of administrative bodies, such as the Interstate Commerce Commission, to engage in general "fishing expeditions."[18] Such expeditions are attempts by bodies with limited powers to secure information by general investigation where they are required to act on specific cases brought before them. They can offer no parallel to the examination by a court of the conduct of its own officers, persons over whom its control is plenary.

Impressive also is the language of the Wisconsin Supreme Court in sustaining[19] a judgment holding in contempt of court an attorney who had refused to testify before a special tribunal designated by the Supreme Court to investigate ambulance chasing.

> "Judicial action is not confined to lawsuits which have parties plaintiff and defendant and which lead to a determination that is binding upon particular parties. In the great realm of judicial procedure com-

[17] People *ex rel.* Karlin v. Culkin, *supra* note 12, 248 N.Y. at 470, 162 N.E. at 489.

[18] Harriman v. Interstate Commerce Commission, 211 U.S. 407 (1908); Ellis v. Interstate Commerce Commission, 237 U.S. 434 (1915); Federal Trade Commission v. American Tobacco Co., 264 U.S. 298 (1924). See Mechem, *Fishing Expeditions by Commissions,* (1924) 22 MICH. L. REV. 737.

[19] Rubin v. The State, 194 Wis. 207, 216 N.W. 513 (1927). An earlier stage of the proceedings is State *ex rel.* Reynolds v. Circuit Court, 193 Wis. 132, 214 N.W. 396 (1927).

monly denominated special proceedings, judicial powers may be exercised without having designated plaintiffs or defendants before the court and without arriving at decisions or judgments which are binding upon designated parties * * * In the exercise of their power to promote justice and to expedite the business of the courts, judicial tribunals are not compelled to ask the aid of the district attorney or to await the slow process of calling the grand jury. Even though a grand jury might have dealt with the matter on the ground that champerty and maintenance are offenses against the law, still that remedy was not exclusive. Courts possess the inherent power to do whatever may be necessary to purge their calendars of champertous cases and to discipline members of their bars. In this case the court was not proceeding in an action against a single offender. It was a proceeding against an offending practice which was more far reaching in its results than the acts of a single individual could be. The powers that have inhered in courts from the earliest days of their history give these tribunals ample authority to deal with situations like that presented by the Churchill petition. It is absolutely essential to the exercise of such powers that courts should have the right to require testimony to be given under oath. * * * This power on the part of courts, is not based upon legislative action. It inheres in the nature and constitution of judicial tribunals. Without it the courts could not continue to function as the needs of justice may require."[20]

The action of a third state may be mentioned in this connection, i.e., the order of the Court of Common Pleas of Summit County, Ohio, instituting an investigation into ambulance chasing. The terms of the order are as broad as those of the order of the New York Appelate Division.[21] The Court of Appeals[22] of Ohio denied a writ of prohibition sought, by an attorney who had been subpoenaed, against the judge conducting the investi-

[20] *Id.*, 194 Wis. at 213, 216 N.W. at 516.
[21] (1928) 26 OHIO LAW REP. 355.
[22] *Id.* at 514.

gation. The Court of Appeals based its decision on "the inherent power vested in it (the Court of Common Pleas) as a court, to investigate the matters set forth in the petition filed by the complainants in the *ex parte* matter now pending in the said court and referred to in the petition of the plaintiff, and therefore this court does not have the power and authority in this proceeding to prohibit said court of common pleas from exercising its jurisdiction in said proceedings."

The common ground of judgment in all these cases is that an Anglo-American Court has "inherent power" to discipline its officers and to regulate and preserve the efficiency and integrity of its procedures. "Inherent power" is not something derived by a logical analysis of the judicial process, but by an investigation of the historic and traditional scope of the Court's activities. Chief Judge Cardozo was acutely alive to the proposition that the structure and the functioning of our Courts is in a large measure a reflection of their long and versatile historical tradition. To demonstrate the existence of the powers called in question, he turned back to recorded proceedings over four hundred years old in which the English courts had shown their capacity to clean their own house.

In the important case of *In re Branch*[23] the question arose whether the legislature could compel the New Jersey Supreme Court to certify without examination certain persons to the Governor for admission to the Bar. By the Constitution of 1844 it is provided:

> "The several courts of law and equity, except as herein otherwise provided, shall continue with the like powers and jurisdiction as if this constitution had not been adopted."[24]

The Court found that from 1776 to 1844 the Courts of New Jersey had exercised the power of certifying on examination:

> "Constitutionally speaking, a custom having this history and no other antecedents, exhibiting these qualities and this course of administration, constituted, at the time of the adoption of the Constitution of 1844, a

[23] In the matter of the application of Branch, *et. al.* for Recommendation to the Governor for Licenses to Practice as Attorneys-at-Law and Solicitors in Chancery in the State of New Jersey, 70 N.J.L. 537, 57 Atl. 431 (1904).

[24] CONST. 1844, Art. 10 (1).

> distinctive attribute of the Supreme Court, having no existence apart from it, essential to the Government, and yet unclaimed and unchallenged by any other body within the State."[25]

The Court therefore held that the power to certify was reserved to it under the Constitution and could not be abridged by the legislature.[26] Thus, history and custom were drawn upon to fill in the content of constitutional power and jurisdiction. It appears from this case that the Courts of New Jersey in matters touching their own administration are peculiarly independent of legislative regulation, and in consequence must have wide powers of control over their own affairs.

What is the bearing of these precedents on the New Jersey receivership investigation? The scope of the investigation may require the summoning of four classes of persons: counselors, masters in chancery, attorneys and solicitors; receivers; vice-chancellors; and outside individuals. Does the power of the court extend to all these classes of persons?

The system of licensing legal practitioners in New Jersey is unique in that the Supreme Court does not license attorneys or admit them to practice. This is done by letters patent issued by the governor of the state on the recommendation of the Supreme Court. The applicant is admitted as attorney-at-law and solicitor in chancery. But such admission does not make him an officer of the state removable by the governor. The power of removal and control lies in the Supreme Court.[27] Further, it has been held that the Court of Chancery may also discipline a solicitor since that office is distinct from the office of attorney, though both may be held by the same person.[28] In the words of Vice-Chancellor Stevenson, "under general principles apart from legislation controlling the matter, each court, the law court and the court of equity, has full power over its own officers, not perhaps to admit them except *pro hac vice,* under our anomalous system of admission to the bar, but to govern them, to discipline them, and for just cause, to remove them. The power of every court to discipline its attorneys or solicitors, or

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[25] *Supra* note 23, 70 N.J.L. at 574, 51 Atl. at 437.
[26] See (1925) 13 CAL. L. REV. 271.
[27] In the matter of Raisch, 83 N.J.Eq. 82, 90 Atl. 12 (1914).
[28] *Id.*

proctors, its subordinate officers whose work so vitally affects the administration of justice, is universally recognized. That all courts have this power in the absence of express statutory limitations is a general principle of English and American jurisprudence."[29] The power to order general investigations has in all the cases cited been coupled with the power to discipline and control officers of the court. Given the power of the Supreme Court and the Court of Chancery to discipline attorneys and solicitor, the power to investigate their conduct inevitably follows.

This consideration applies with even stronger force to the investigation of receivers. Not only are receivers appointed and removed by the court, but the control of their accounts by the appointing court has been one of the oldest features of equity practice.[30] The effective exercise of such control implies, of necessity, some power of investigation beyond the mere inspection of accounts submitted.

The right of investigating the conduct of judges might, perhaps, be considered as doubtful. Judges are ordinarily officers of the state, appointed by the executive or elected by the people. Vice-chancellors, however, are appointed by the chancellor and are merely commissioned by the governor.[31] Whatever doubts might be felt as to the power of the chancellor to investigate judges in his capacity as head of the judicial system of the state, it seems clear that he can examine the professional conduct of vice-chancellors who are, in effect, his delegates.[32]

The summoning of individuals who are not officers of the court, stands on a somewhat different footing. The investigation of officers of the court may be placed on the comparatively narrow ground of the necessity of control by the court over its own administration. This indeed, is the historic basis of disbarment proceedings and investigations. But the control of officers would be almost impossible without the fullest investi-

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[29] *Id.* 83 N.J.Eq. at 97, 90 Atl. at 19. The process of the Court over the attorney is very broad. Summary remedies may be had by a client against an attorney to compel the performance of duty. See Note (1930) 43 HARV. L. REV. 1126.

[30] Chancery Rule 251. *Cf.* Chancery Rules of 1841, Sec. XXI, POTTS, PRECEDENTS AND NOTES OF PRACTICE IN THE COURTS OF CHANCERY OF NEW JERSEY (1841) 23.

[31] Chancery Act of 1902 § 95.

[32] *Cf.* In re Vice Chancellors 105 N.J.Eq. 758 (1930).

gatorial powers. The extent of a legitimately exercised power must be as wide as is necessary to attain the object of the power.[33] As the New York Court of Appeals has put it in somewhat broader terms: "Presumptively . . . whatever judicial procedure is essential to enable courts to exercise their function is authorized."[34] Or to take another formulation: "Every court has inherent power to do all things reasonably necessary for the administration of justice within its jurisdiction."[35] Such broad formulations need not be resorted to. The power asserted in this case is a consequence of the specific power to control officers of the court. Following out these principles it would seem evident that where the investigatorial power may be exercised by the court, it can employ all the usual means of summons, subpoena and questioning against all persons. The terms of the orders in the New York, Ohio and Wisconsin ambulance chasing investigations are striking applications of this view.

In other states the power of courts to investigate finds support in the analogy of legislative investigations.[36] In New Jersey, however, the scope of legislative investigations has been greatly restricted by the decision of the Court of Errors and Appeals in *Ex parte Hague*.[37] That decision in no wise limits the investigatory powers of courts, since its basis is that investigation is a judicial rather than a legislative function. It is true that the Court of Errors and Appeals mentions only investiga-

[33] *Cf.* statement of Chief Judge Cardozo in Karlin v. Culkin, *supra* note 12, 248 N.Y. at 478, 162 N.E. at 492: (Referring to testimonial compulsion of an attorney) "The power to inquire imports by fair construction the power to inquire by methods appropriate and adequate, and so by compulsory process if search would otherwise fail." The logic of this statement applies to lay witnesses as well.

But *Cf.* note (1928) 42 HARV. L. REV. 104, 107: "The public interest to be subserved by the investigation, the right of the individual to privacy, the danger of abuse shown by history to exist in court inquisitions, and the possibility of creating jury prejudice against certain kinds of litigation, are all factors to be considered. Thus, the same court that sustained the power to compel an attorney to testify in an investigation of abuses among its officers, might well reach a different result if the witness were an outsider, or the investigation one into practices of persons not connected with the court."

[34] McQuigan v. Delaware L. & W. R. Co., 129 N.Y. 50, 52, 29 N.E. 235 (1891).

[35] 7 R.C.L. 1033.

[36] See Briggs v. MacKellar, 2 Abb. Pr. 30 (N.Y. 1855); McGrain v. Daugherty, 273 U.S. 135 (1927); Landis, *Constitutional Limitations on the Congressional Power of Investigation* (1926) 40 HARV. L. REV. 153.

[37] 9 N.J. Misc. 89, 150 Atl. 322 (1930). But *Cf.* the earlier case of State v. Brewster, 89 N.J.L. 658, 99 Atl. 338 (1916) which was not cited in the opinion in *Ex parte Hague*.

tion by courts through the medium of the grand jury, but it is apparent that the court has in mind only the usual case of investigation of a single individual or group of individuals for the purpose of instituting criminal proceedings. Since the situation of a general judicial investigation had never arisen in New Jersey there was no need to mention it. Furthermore, the Court in *Ex parte Hague* remarks that the legislature would have authority to inquire into the conduct of its own members, which, of course, is the same type of power here being claimed by the Courts.

The question still remains as to the manner in which the expenses of such an investigation may be provided. No information is available to us in regard to the payment of expenses in the ambulance chasing investigations. All were conducted by judges who presumably were compensated by their regular salaries. The New Jersey receivership investigation is being conducted by a master. Section 107 of the New Jersey Chancery Act empowers the Chancellor to fix the compensation to be paid to masters for their services, "which compensation shall be proportional, as near as may be, to the actual value of such services, and shall be paid them from the state treasury on the certificate of the Chancellor, and the Chancellor may make all such general rules for the effective execution of this act, as he shall deem necessary and proper." In view of Section 104 of the Act which permits the chancellor to refer to any master in chancery "any cause *or matter* which, at any time, may be pending in the court of chancery," it seems that the compensation for the master conducting the investigation could be paid from the state treasury on the certificate of the chancellor. Similarly the compensation of a stenographer could be provided for under Section 108 of the Act. Chancellor Walker, by providing that the investigation (except the cost of the stenographer allowed by statute) shall be at the cost of the petitioner unless the legislature makes special appropriation therefor, seems to have reached an entirely satisfactory solution.[38]

It seems that the order of the chancellor is fully in accord with fundamental ideas of the functions and powers of courts.

[38] See *supra* note 1. The New York law permits the Court to allow expenses out of the county treasury in the prosecution of disbarment proceedings. JUDICIARY LAW 1909, c. 35 § 88 (5) as amended by Laws 1921, c. 295 § 1.

That this power has long lain dormant in no wise effects its existence. In the words of Vice-Chancellor Stevenson: "An inherent power of one of our courts is not lost by mere disuse, during a period however long, in which there was practically no occasion for its exercise."[39] Opponents of such investigations in other jurisdictions have relied upon the objection that the matter is legislative and not judicial. But that is a statement not an argument, and a statement which cannot stand the light of the precedents illustrating the repeated exercise of such powers by courts. The chief argument relied upon has been that of exposing the reputation of members of the bar to injury. The importance of this is beyond question. The answer to it lies in careful administration of the proceedings. "No doubt the power can be abused, but that is true of power generally. In discharging a function so responsible and so delicate, the courts will refrain, we may be sure, from a surveillance of the profession that would be merely odious or abitrary. They will act considerately and cautiously, mindful at all times of the dignity of the bar and of the resentment certain to be engendered by any tyrannous intervention."[40]

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[39] In re Raisch, *supra* note 6, 83 N.J.Eq. at 110, 90 Atl. at 24.
[40] Karlin v. Culkin, *supra* note 12, 248 N.Y. at 479, 162 N.E. at 493. See also *supra* note 16.