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Notes from the Secretary

Dicta Editorial Board

a receiver. The complaint averred that the managers had diverted the corporation from its true object and carried on their business to their own enrichment and to the injury of other stockholders, and were guilty of acts *ultra vires.*

The Court said in this case:

> It is also the rule in this state, as generally in this country, that in the absence of a permissive statute, courts of equity have no power to dissolve a going business corporation and to that end appoint a receiver for the sequestration of the corporate property.

The Court also indicated, in the opinion, that even if a receiver had been asked to manage the business, and fraud and *ultra vires* acts had been alleged, it would not be disposed to grant the relief.

In summary, it would appear from the three Colorado cases that the Colorado Court would follow the theory that they have no power to dissolve a solvent corporation, but if sufficient facts are shown as to fraud, mismanagement, etc., then the Court will appoint a receiver to run the corporation and under such facts this may be the relief granted even though this is not the relief specifically prayed for.

A. ROBERT MCMULLEN

Editor's Note: For a recent decision involving this issue see Savageau v. Savageau, Inc., 1954-55 C.B.A. Adv. Sh. No 12.

Notes From The Secretary

On the following pages you will find once again a reprinting of some of the Canons of Ethics and a few headnotes from pertinent opinions of the American Bar Association Committee, interpreting these Canons. Also included is an editorial reprinted from the Journal of the American Judicature Society, and that I am sure you will find interesting reading, and a list of the new committees of the Denver Bar Association, as recently appointed by President Richard Tull.

President Tull was extremely elated when he received over 150 requests from members of the Denver Bar Association to serve on committees. He was very sorry that he could not satisfy every request, but to do so would have made some committees too large and ineffective. He hopes that those appointed to the committees will take their appointments seriously and endeavor to meet and work when the occasion demands it. He also hopes that the local members will continue to exemplify their interest in Bar Association activities by attending the monthly luncheon meetings, that will begin again this Fall; attending Institute meetings and any other special meetings the Bar Association may sponsor. In addition, he welcomes any suggestions or criticisms of Bar functions

and publications or any matters that may concern the office staff, the Officers, or any committee.

Included in the notes of the next issue will be a summary of opinions from the Attorney-General, reports from the Committee Chairmen of the Denver Bar Association on the activities of their Committees, and other items of interest. Do not hesitate to write us if you have any questions or suggestions concerning these "Notes".

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CANON 4. WHEN COUNSEL FOR AN INDIGENT PRISONER

A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

CANON 5. THE DEFENSE OR PROSECUTION OF THOSE ACCUSED OF CRIME

It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

Opinion 155—A lawyer should disclose the whereabouts of a client who has jumped his bail and fled the jurisdiction.

CANON 6. ADVERSE INFLUENCES AND CONFLICTING INTERESTS

It is the duty of a lawyer at the time of retainer to diclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

Opinion 10—The salaried officer of a trust company may not represent it as the lawyer for an estate of which it is trustee.

Opinion 39—A prosecutor may not accept private employment in connection with any matter which he investigated in his official capacity.

Opinion 40—It is improper for a lawyer to represent both a bankrupt and his creditors.

Opinion 70—A lawyer for a payee of a note authorizing a confession of judgment may enter the maker's appearance and confess judgment without consulting him.

Opinion 75—It is improper for a lawyer to advise his client to do things in connection with a litigated case which the lawyer himself cannot do.

Opinion 83—A lawyer may not accept employment to handle a case on appeal when he had discussed and considered the case with a friend who was the lawyer handling the case for the other side in the trial court.

Opinion 86—The general counsel for a corporation may not solicit proxies or act as proxy for one of the contesting groups of stockholders.

Opinion 103—Neither the lawyer who has been appointed receiver for a corporation, nor his partner, may accept employment from a creditor of the corporation.

Opinion 125—A lawyer cannot ethically do what he cannot legally do as between clients whose interests conflict.

Opinion 132—A lawyer may not continue to represent a client in a suit after he brings suit in his own behalf against the same defendant if it is doubtful whether the defendant will be able to satisfy both judgments.

Opinion 134—On retirement from a state's attorney's staff a lawyer may not appear as counsel for a defendant whose case originated while he was a member of the staff.

Opinion 142—A judge should not practice in a court over which he occasionally presides. It is not proper for a partner of a judge to practice before a court over which his partner occasionally presides.

Opinion 167—A lawyer who has represented an administratrix may not accept employment to bring action against such administratrix in connection with her duties as such.

Opinion 192—A law firm should not represent interests adverse to those of the employer of any member of the firm. After leaving public employ, neither the lawyer nor his firm should represent interests adverse to the former employer, except in subsequent matters.

Opinion 220—It is not always improper for a lawyer to appear in a case in which his partner is a material witness.

Opinion 224—While a lawyer may, with the consent of both parties, draw a settlement agreement for both, each must fully understand that he is doing so.

Opinion 245—A lawyer for plaintiff in a divorce case may not, on request, recommend local counsel to represent the defendant.

Opinion 247—One who has investigated an accident as lawyer for an insurance company may not thereafter represent the injured person in an action by another against the insured and another insurance company.

Opinion 273—A lawyer may not practice accounting as an independent profession.

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(The following article is reproduced from a reprint of an editorial appearing in the Journal of the American Judicature Society.)

Winters, Glenn R. "A Little Learning," *Journal of The American Judicature Society*, February-April, 1955.

> A little learning is a dang'rous thing;
> Drink deep, or taste not the Pierian Spring;
> There shallow draughts intoxicate the brain,
> And drinking largely sobers us again.

Alexander Pope probably was not thinking about the unauthorized practice of law when he penned these lines, but he might have been. What lawyer has not encountered the layman who has had frequent occasion to come in contact with a certain branch of the law, who has learned to look up case and statute citations, and who is so sure that he knows more about it than any lawyer of his acquaintance that he is eager to argue and to demonstrate his proficiency?

The main reason why a non-lawyer may not safely be trusted with another person's problems, even in the one field which is his specialty, is that no way has ever been found to departmentalize the law so that the various fields do not overlap. Real estate law is inextricably bound up with the law of wills and estates, with trust law, and with many other branches of the law. Legal scholars express this concept by speaking of the law as a "seamless web." Only a person equipped to survey and deal with the law in its entirety is safe to be trusted with any legal problem.

This is not to say, of course, that some good legal advice has not been given by non-lawyers in the course of what the profession speaks of as the unauthorized practice of law. But only a physician or surgeon fully equipped by education and training is safe to be trusted with the health of our children, and that is true in spite of the fact that wonderful cures have been wrought by others.

A very similar case may be made for a broad general education for the lawyer. Not only is the law a seamless web—so also is all human knowledge and experience. When a client walks into a lawyer's office, the lawyer is entitled to suppose that there is some legal problem to be solved, but he never knows but what he will also have to draw upon his knowledge of economics, phychology, anatomy, history, chemistry or astronomy. That is why a person

ignorant of all but the three R's might possibly absorb enough Blackstone to pass a bar examination, but would still be ill-fitted to practice law.

We have been led to ponder these things as we have contemplated with disquietude the proposals now before Congress and the Treasury Department to give official sanction to the doing by non-lawyers of certain things that are the very essence of practicing law.

One proposal is to modify Section 10.2(f) of Treasury Circular 230 to eliminate the provision that "nothing in the regulations shall be construed as authorizing persons not members of the bar to practice law." The other is a bill first introduced as H.R. 9922 last year and re-introduced this year as H.R. 1601 and H.R. 2461, providing that "the Secretary of the Treasury shall by regulations prescribe, to the extent that he considers practicable and desirable, qualifications, rules of practice and standards of ethical conduct, applicable to persons who assist taxpayers in determination of their federal tax liabilities, in preparation of their federal tax returns, and in settlement of their federal tax liabilities with the Internal Revenue Service: Provided, that no person shall be denied the right to engage in such activities solely because he is not a member of any particular profession or calling."

The danger is three-fold. In the first place, although in many instances the services would be performed adequately, there would be many instances to the contrary, for unauthorized practice is not a mere bogey invented by lawyers to forestall competition, but a very real menace to the public. Secondly, it would set a precedent that would, if followed, all but destroy the boundaries of law practice. If lay specialist A is to be permitted to do the equivalent of practicing law in his particular field, then why not B, C, D, E, F, X, Y and Z? What branch of law will be safe from the encroachment of *some* lay specialist? If the accountant today, then why not the trust officer tomorrow, and the real estate broker and the social worker the next day?

Finally, we are concerned about the implications of the proposed rules and laws with respect to future regulation of unauthorized practice and bar admission. We do not for a minute accept the idea that a bill which merely says that membership in a particular profession is not to be a prerequisite to the rendering of certain services in connection with the federal income tax is a strong enough peg upon which to hang the proposition that Congress is thereby completely preempting the field of regulating the practice of law. But it is surely a peg of some sort, and we may be certain that if it is passed, as much will be hung on it as it will hold, and that it will be the forerunner of others. Every lawyer who is truly interested, not only in his profession but also in the public which his profession exists to serve, will do what he can to oppose enactment of this legislation.

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