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People, Ex rel. Attorney General v. Newer

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PEOPLE, *EX REL.* ATTORNEY GENERAL v. NEWER, ... Colo. ....., (March 24, 1952).

The defendant, a real estate broker in Denver, in December, 1951, prepared a will [1] for an elderly couple, charged them $10.00 and gave them a receipt which read "for drawing legal document." In February, 1952, the matter came to the attention of the Committee on Unauthorized Practices of the Denver Bar Association which referred it to the Attorney General with its recommendation that the defendant be prosecuted for contempt of the Supreme Court.

An original proceeding in contempt was initiated promptly and a citation issued. The defendant appeared by his attorneys and filed an answer alleging that the $10.00 which he received was a gift and not a fee; that he had acted only as a scrivener in the transaction and that this was the only instance in which he had ever so acted.

On March 24, 1952, the Court found the defendant guilty of the unauthorized practice of law and assessed a fine against him in the amount of $100.00, or 30 days in the Denver County jail.

This case is of tremendous significance to every member of the Bar. It is the first time in the history of the Colorado Supreme Court that it has punished a layman for contempt of court for unauthorized practice under circumstances in which (1) the layman did *not* [2] represent himself to be an attorney at law, and (2) the unauthorized practice (so far as revealed by the evidence) consisted of an isolated transaction. These precedent-making conclusions of the Court are so important that they are worthy of comment.

Vol. 2 C.S.A., Ch. 14, Sec. 21, makes it a contempt of the Colorado Supreme Court for any person who does not have a license so to do "to advertise, represent or hold himself out in any manner as an attorney, attorney at law, or counselor at law . . . ." The unsettled question under this statute has always been this: Does a layman who does not call himself an attorney, attorney at law, or counseler at law, but who undertakes to render services of a legal nature, violate the statute? This question was discussed in *Dicta,* Vol. XXIV, No. 12, December, 1947. An affirmative answer may be read into the language of the statute in the words "in any manner as an attorney . . . ." by arguing that when a person holds himself out as being competent to render legal services he necessarily, although by implication and not expressly, holds himself out to be a lawyer. The order in the instant case does not make it clear whether such an interpretation of the Statute is the basis of the Court's ruling. On the other

[1] The will, on a printed form, was a joint will and a classic example of the dangers of this sort of activity by laymen.

[2] Newspaper stories to the contrary notwithstanding.

hand, if the statute be given the more restrictive meaning to the effect that the holding out must be an *express* representation that the person is an attorney at law, etc., there is still ample basis for the Court's ruling in the instant case by virtue of its inherent authority to punish for contempt irrespective of the Statute. However, as to whether the Colorado Supreme Court would do this or not has also been an unsettled question. Such authority has been hinted at in earlier Colorado cases, but has never been invoked by the Court.[3] There is overwhelming authority from other jurisdictions for such a position.[4] The rationale of these decisions is that the court has inherent authority to prevent the unauthorized practice of law, in the public interest, as a necessary corrolary to its authority to govern admissions to the bar. In any event, it must be clear that the Court in the instant case followed one, or perhaps both, of the above theories. Since this is the first time that it has done so, the arsenal of remedies for the punishment of unauthorized practices has been greatly expanded.

The second factor which makes this case so important is that the transaction involved was an isolated occurrence. In earlier cases the Court has indicated that the practice complained of must constitute a course of conduct or a series of acts before it would punish for contempt.[5] It has always been difficult for the writer to believe that the Court really meant what it seemed to say in those cases. In reason it would seem that if an act be prohibited by law, it shouldn't be necessary to wait for a repetition. The commission of a crime does not ordinarily depend for its successful prosecution upon proof of a continuing series of crimes. Further, as a practical matter, such a rule hamstrings the Bar Committees on Unauthorized Practice because they never hear of more than one such violation at a time. Such a rule, in addition, does not properly consider the interest of members of the public who, individually, can be harmed by isolated acts. They are never harmed as a group. It should also be noted that the ruling in the instant case is in harmony with the recent case of *In re Baker, supra,* which is the subject matter of a note in the recent American Bar Association Journal.

It is perhaps unfortunate that the Court, although directing

[3] See People v. Wicks, 101 Colo. 397, 74 Pac. (2d) 665; People v. Jersin, 101 Colo. 406, 74 Pac. (2d) 668; People v. Flanders, 121 Colo. 25, 212 Pac. (2d) 502, where, however, the Court indicates in its statement of facts that Flanders had expressly represented himself to be a lawyer.

[4] See People ex rel. The Illinois State Bar Association v. Peoples Stock Yards Bank, 344 Ill. 462, 176 N.E. 901; State ex rel. Boynton v. Perkins, 138 Kan. 899, 28 Pac. (2d) 765; In re Opinion of the Justices, 289 Mass. 607, 194 N.E. 313; State ex rel. Wright, Attorney-General v. Barlow, 131 Neb. 294, 268 N.W. 95; In re Baker, 85 Atl. (2d) 505, (N. J., December, 1951).

[5] See People v. Denver Clearing House Banks, 99 Colo. 50, 59 Pac. (2d) 1182; where the Court Stated, "We think the drawing of wills, as a practice, is the practicing of law . . ."; People ex rel. Attorney-General v. Jersin, *supra.*

the publication of its order in the Colorado Reports, has not written a clarifying opinion. Regardless of the rationale of the decision, however, it is a landmark in the development of the law of unauthorized practice in Colorado and should be recognized as such. It demonstrates a willingness on the part of the Court, in a clear case, to handle these problems with efficiency and dispatch. Every lawyer in Colorado who recognizes his duty to the public to protect it from the evils of spurious legal advice and his corrolary duty to protect himself and his profession from the constantly increasing encroachments of those who would practice law without a license, may take heart from this decision.

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CASE COMMENTS

MIGRATORY DIVORCE — THE GHOST OF MRS. HADDOCK GETS A SCARE (COOK v. COOK)[1]—Discovering that Mrs. Cook was yet married to a Mr. Mann, Mr. Cook sent her to Florida to clear the whole thing up. Coming back with a Florida divorce, and, no doubt, a lovely tan, Miss Migratory and her lad tried the marriage vow again. Unfortunately, the new Mrs. Cook was not at peace in her heart, so off she went to Hawaii where she just happened to pick up a decree of separation and maintenance. Mr. Cook, on the other hand, wasn't going to take it lying down. Why should he when the Supreme Court of Vermont, with Mrs. Cook appearing, would annul both of their marriages. It looked like Mr. Cook finally cooked Mrs. Cook's goose. But, alas, Mr. Justice Douglas and Mr. Justice Frankfurter have their differences, you know, and Mr. Justice Douglas was not about to let the ghost of *Haddock v. Haddock*[2] enjoy squatters' rights into perpetuity. That is, not without a good old Olson and Johnson scare in parting.

One would suppose that the Supreme Court through Mr. Justice Douglas would not place a stumbling block in the path of the victorious *Williams v. North Carolina,*[3] the Second, even if Mr. Justice Frankfurter did dig up a ghost there. He could have emphasized so many things such as estoppel, condonation and collusion; such as collateral attack, void and voidable; such as domicile and presumptions in favor of competency of the members of

[1] Cook v. Cook, 72 S. Ct. 157.

[2] Haddock v. Haddock, 201 U. S. 562 (1906). For some comments see Beale, "Haddock Revisited," 39 Harv. L. Rev. 417 (1926); Vreeland, "Mr. and Mrs. Haddock," 20 A. B. A. J. 568 (1934).

[3] Williams v. State of North Carolina, 325 U. S. 226 (1945).