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WHAT THE COURTS ARE DOING TO STAMP OUT UNAUTHORIZED PRACTICE

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WITHIN recent months, with respect to the acts and activities, legal in nature and character, of those not licensed to practice law:

(1) The substantive law, while applied somewhat more frequently than heretofore, has been applied without particularly startling or novel results to the situations presented to the courts as they have normally developed.

(2) The irregular, not to say unprofessional, conduct of attorneys advising, facilitating, or participating in such acts, has been vigorously condemned by the courts, and the gross impropriety of such conduct has been emphasized and, in some cases, punished.

(3) The technique of procedure in proceedings to present such acts to the courts for appropriate action had been made more direct and much more simple, logical and sensible.

(4) The nature of the judicial function, in respect to all such matters and conditions, has been, for the first time, accurately and clearly expressed and determined; and the significance and effect thereof upon the suitable administration of justice and upon the broad public interest has been more truly recognized and more effectively translated into effective action.

Otherwise expressed, the judicial function and its agents, the judiciary, have been noticeably invigorated, spurred and inspired to action, and caused to recognize an affirmative instead of a merely negative duty toward the whole problem.

In the decided cases, there has been reflected and expressed the gradually gathering ultimate effect and significance of limited applications of substantive principles, and an accumulative recognition that more simple and direct procedural methods are necessary and wholly appropriate.

The Supreme Judicial Court of Massachusetts, January 30, 1935, in response to questions propounded by an order of the General Court (the legislature) of Massachusetts, said:

"It is inherent in the judicial department of government under the constitution to control the practice of the law * * * The judicial department can not be circumscribed or restricted in the performance of these duties. * * * Permission to practice law is within the exclusive cognizance of the judicial department."

More elaborately expressed in general outline, the Supreme Court of Rhode Island has summarized the nature of the judicial function as follows:

"Under our system of law the most effective guaranty of equal justice to all in the commonwealth is a competent and learned bar composed of men of high personal character who govern their professional conduct at all times by the well known and generally accepted canons of legal ethics. The lack of such a bar, or *the co-existence with it of an array of individuals or groups operating under deceptive devices and catch-names to mislead the public into the belief that they are entrusting their causes to those learned in the law and competent to serve them, would inevitably result in a deprivation of justice to many in the state.* In such an atmosphere, there would be a strong tendency for the bar to sink to the level of its unauthorized and unqualified competitors."

In this article it will not be possible to detail all that the courts have done recently. Only the more striking—perhaps not even the more important—things will be referred to.

The activities of automobile associations have been thoroughly considered and the restraint imposed upon their activities has been most sweeping and far-reaching. The most recent case, which in nowise recedes from the earlier cases, was decided March 18, 1936 by the Supreme Court of North Carolina, in State, ex rel. Attorney General v. Carolina Motor Club Incorporated and American Automobile Association. Antedating this case were: Goodman v. The Motorists' Alliance, 29 O. N. P. 31; Rhode Island Bar Association v. Automobile Service Association (R. I.), 179 A. 139, decided May 9, 1935, and People ex rel. Chicago Bar Association v. Chicago Motor Club (Ill.), 199 N. E. 1, decided October 14, 1935.

These cases, in effect, forbid such associations to render any legal service whatsoever or to furnish attorneys for their members, including such services in criminal prosecutions for negligence or manslaughter while in the operation of a motor

vehicle, or for a violation of state law, town or city ordinance concerning the operation of such vehicles, the furnishing of counsel to bring suit free of charge to collect damages or to defend the member against such suits and the furnishing of consultation and free legal advice to the members of his family, his agent, servant or employe, in matters relating to the use, operation, ownership, licensing and transfer of motor vehicles.

Practice of law by laymen in workmen's compensation and industrial commission cases has been broadly enjoined and completely restricted by lower court decisions in Michigan and Oklahoma. An undecided case raising every phase of the question is pending before the Supreme Court of Illinois. February 26, 1936, the Supreme Court of Ohio, in Goodman v. Industrial Commission of Ohio, 130 Ohio State 427, rendered a partially unsatisfactory opinion when it permitted laymen, such as representatives of the employer or representatives of an organization to which a claimant may belong, "to assist an injured or deceased workman, or his dependents, in the submission of a claim." The court stated: "Such usually simple services are, for the most part, performed in an expeditious and satisfactory manner. In our judgment, this is not the practice of law; but in so holding it is neither our intention nor purpose to modify the definition of the practice of law announced in the first paragraph of the syllabus of Land Title Abstract and Trust Company v. Dworken, 129 Ohio State 23, 193 N. E. 650. Of course, exceptional cases may arise from time to time where legal problems are involved in the presentation of claims, but it is the ordinary claim and not the exceptional one which now engages our attention." The court concludes: "Our conclusion is that appearances and practice before the Industrial Commission do not ordinarily or properly constitute the practice of law up to the time when a claimant first receives notice of the disallowance of his claim under Section 1465-90, G. C., and are subject to the regulation and control of the Industrial Commission as granted by statute. Thereafter, rehearing proceedings before the Commission do constitute the practice of law and must be conducted exclusively and personally by an attorney or attorneys at law, duly admitted to practice, and the defendants are

therefore prohibited from recognizing or entertaining representation, in the particular noted, by those failing to meet such qualification."

Cases against banks and trust companies have recently been almost missing from the dockets. The last decision of a Supreme Court upon this subject is the Missouri case, State v. St. Louis Union Trust Company (Mo.), 74 S. W. (2d) 348. Since that decision, however, a lower court in Michigan has reached substantially the same conclusion which has been appealed and is now pending before the Supreme Court of Michigan; and, on January 29, 1936, the District Court of Ellis County, Oklahoma, granted a sweeping injunction against all unauthorized activities by Oklahoma banks.

As has been the case for some time, recently the activities of collection agencies have held the center of the stage so far as volume of litigation is concerned. The recent cases have been: State Bar of Oklahoma v. Retail Credit Association (Okla.), 37 P. (2d) 954; Depew v. Wichita Retail Credit Association, 42 P. (2d) 214; Depew v. Wichita Association of Credit Men, 142 Kan. 403, 49 P. (2d) 1041; People, ex rel. Chicago Bar Association v. The Securities Discount Corporation, 279 Ill. App. 70; Washington State Bar Association v. Merchant's Rating and Adjustment Company (Wash.), 49 P. (2d) 26, and a number of lower court cases, most of which resulted in injunctions without the rendering of an opinion. Probably the most valuable of these lower court cases is the memorandum of Judge Frank G. Sutton, Jr., of Richmond, Virginia, in the Bar Association of the City of Richmond v. The Richmond Association of Credit Men, Incorporated.

These cases have covered almost every conceivable activity of collection and similar agencies. The action extends from complete prohibition, as in the case of innumerable injunctions issued in Massachusetts, to a more tolerant attitude such as is reflected in the Washington case referred to.

Perhaps the most interesting advance was made in the last decided Kansas case. The Supreme Court of Kansas held that it was the practice of law for the Wichita Association of Credit Men and its principal officer, for himself and the association, to use blanks and send solicitations of proofs of claim

and powers of attorney in bankruptcy proceedings and, holding such powers of attorney, to vote for and elect himself as trustee in cases pending in the bankruptcy division of the Federal court; and, as trustee, to turn accounts for collection over to the collection department of the association and pay collection fees to it for such collections, and to generally vote such claims in the bankruptcy court and do such other things as a holder of a power of attorney is accustomed to do. February 17, 1936, the United States Supreme Court denied certiorari in this case.

Two New York Federal district courts have adopted very broad and sweeping rules regulating the conduct of laymen in bankruptcy proceedings. These rules particularly have reference to solicitation of claims by laymen. It should be said in this connection that the United States District Court at Toledo, January 13, 1936, reached the opposite conclusion.

Lower courts in Florida, North Dakota, and Oklahoma have held that the preparation of a long list of legal instruments constitutes the practice of law and has forbidden specifically such activity. In North Dakota the instruments specified were: warranty deeds, real estate mortgages, chattel mortgages, satisfactions of real estate mortgages, releases of chattel mortgages, satisfactions of judgments, conditional sales contracts, affidavits of various kinds and dealing with various subjects, contracts for deed, sheep contracts, house leases, labor liens, threshers' liens, mechanics' liens for material, mechanics' liens for labor, satisfactions of mechanics' liens, partial waivers and releases of notices of intention to file mechanics' liens, notices of intentions and demands before filing mechanics' liens, abandonment and cancellation of notices to file mechanics' liens. In Florida the instruments mentioned were: any kind of deed or conveyance of real or personal property, or any mortgage, lease, contract or other such like instrument or paper relative to such property; will, codicil, option, power of attorney, property agreement, lien, notice of lien, bond, assignment of mortgage or contract or claim or chose in action, creditors' claims in probate, notice to vacate premises or notice to quit or pay rent, vendor's statement of creditors under the bulk sales law, articles of incorporation or charter.

In Oklahoma the inhibited documents were: chattel mortgages, contracts of real estate mortgage, deeds, wills, trust agreements, escrow agreements; and the prohibition included the acts whether "for or without pay or any promised remuneration," and specified "that the filling in of printed blanks of a legal nature is of the same effect as if writing the instruments in full."

Since the decision of the Ohio Supreme Court in Land Title Abstract and Trust Company v. Dworken, 129 Ohio State 23, 193 N. E. 650, there have been consent decrees against title companies in California and in Minnesota; and, in addition, on December 17, 1935, the Circuit Court of Dade County, Florida, rendered an opinion and held local title companies to be in contempt of court for issuing "commercial letters expressing opinions as to the validity or invalidity of the title to real estate * * * where the letters are not based upon a bona fide application for title insurance."

Late in February the United States Court of Appeals for the District of Columbia held that it was the practice of law for a real estate agent not a member of the bar of any court to secure clients by solicitation and advertisement, to take leases showing himself as lessor, landlord, and then to conduct litigation relating to the lease in his own name "merely for the purpose of collecting money in which he has no interest until collection thereof."

In a number of recent opinions, the courts have scored in measured terms the misconduct of attorneys who participate in, or facilitate, the unauthorized practice of law by laymen. The most recent, as well as the harshest, comment of this character is found in Rhode Island Bar Association v. Automobile Service Association (R. I.), 179 A. 139:

"When this arrangement between these lay respondents and the respondent * * * began to function, not only were they engaged in the unauthorized practice of law, but * * *, notwithstanding his license from this court, were practicing law in an illegal manner. It seems to us this conclusion is inescapable. The conduct of the respondent * * * was inconsistent with the ethics of his profession, though presumably he did not realize this. He seems to have given little thought to the nature of his association with these lay respondents, though he was really permitting them to use his authority as an officer of this court to furnish the foundation of an enterprise that degraded

his calling to the level of a common huckstering business. This was certainly not the standard of conduct to be expected of a member of the bar of this court. Rather, it was the contrary. As an agent and an aide of the court in the administration of justice, the true lawyer, conscious of the dignity of his calling, will instinctively avoid such associations, notwithstanding that it may mean the foregoing of a more or less lucrative source of business. Chief Justice Cardozo, in People v. Culkin, 248 N. Y. 465, 162 N. E. 487, had this idea in mind when he expressed himself in the following words: ' "Membership in the bar is a privilege burdened with conditions." Matter of Rouss, 221 N. Y. 84, 116 N. E. 783. The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice. His cooperation with the court was due, whenever justice would be imperiled if cooperation was withheld. He might be assigned as counsel for the needy, in causes criminal or civil, serving without pay.' These are not idle words, nor mere rhetoric."

In its decree, later entered in the case, the court said further as to the conduct of the attorney:

"That while the conduct of said respondent * * * in his association with said other respondents was inconsistent with the ethics of his profession, tending to bring it and himself into degradation and public contempt, this Court nevertheless feels that his dereliction in the premises is largely attributable to the inexperience of youth and ignorance of the fundamental relation which should exist between attorney and client, rather than to any intentional wrongdoing, and that for the present the unsavory publicity to which he has been subjected as a result of this proceeding is sufficient punishment, provided, however, he conducts himself blamelessly in the future with respect to said matters and in a manner becoming a member of the bar of this State."

The procedural methods recently recognized by the courts will probably do more to eliminate unauthorized practice of law than anything else of recent occurrence.

The first intimation of a more direct method of approaching the problem appeared in Morton v. Beery, decided November 27, 1933, 39 Ohio L. R. 272. In that case attorneys within its jurisdiction petitioned the court of Common Pleas of Summit County, Ohio, to order an investigation of the unauthorized practice of law. The court appointed one of its own judges to make the investigation. After this judge had completed his inquiry, appropriate proceedings were brought against those found to be guilty of unauthorized practices. Only recently, the Dade County Florida Circuit Court appointed the members of the Dade County Bar Asso-

ciation's Committee on the Unauthorized Practice of the Law a committee of the court on the unauthorized practice of the law and authorized and empowered it to make inquiry into and to investigate all unauthorized practices; to subpoena witnesses to appear before it; to administer oaths to such witnesses; to compel the production of books, records, documents and data necessary to its security and investigation; and to suppress all instances of the unlawful practice of law and to report to the court all violators who refuse to desist, to the end that the court may administer appropriate discipline.

One of the most sound agencies for the elimination of unauthorized practice anywhere is the committee established by rule No. 36 of the Supreme Court of Missouri, which appointed in each judicial circuit of that state a bar committee to be composed of four lawyers. The court also provided that "upon application of the chairman of the committee, the clerk of this court shall issue writs of subpoena, including subpoena duces tecum and dedimus to take depositions. The committees are empowered to take and transcribe the evidence of witnesses who shall be sworn by any person authorized by law to administer oaths, and the committee shall report to this court the failure of any person to attend and testify in response to any subpoena issued as herein provided."

These committees were charged with duties both with respect to professional conduct of attorneys, and, also, "shall make inquiry from time to time as to the unlawful practice of law by persons not licensed to do so, and where, in the opinion of the majority of the committee, the facts justify it, to instigate and prosecute, as representatives of the bar, such action as may be appropriate to suppress such unlawful practice."

The direct and immediate responsibility of the Supreme Court of the state to see to it that all practice of law by unlicensed persons, corporations and associations is eliminated has been better expressed by the Rhode Island Supreme Court in the Automobile Service Company case, already referred to, than elsewhere. As to the matter, the court said:

"It is our duty to prevent this unfortunate and evil event whenever it threatens. This court is the agent of the people in the administration of justice in this state and has been vested with ample powers to

vindicate its authority in this department of the people's government. It would be recreant to the great trust reposed in it if it did not guard every agency by which justice is administered. To safeguard the practice of the law, which touches so intimately the administration of justice, and to promote the welfare of the people, whose ministers we are, this court has ordained certain standards of character and education as a prerequisite to admission to the bar. These standards are high, as indeed they ought to be, and there is constant pressure to elevate them still higher, all to the end that the people may be assured the best possible service in the dispatch of their legal business. None must be permitted to evade these requirements by doing indirectly what they cannot do directly."

COLORADO BAR ASSOCIATION ANNUAL MEETING

The 39th annual meeting of The Colorado Bar Association will be held in the Casino of the Stanley Hotel at Estes Park on September 18 and 19, 1936, the session convening at 1 p. m. on the 18th and ending with the annual dinner at the hotel at 7:45 p. m. on the 19th.

U. S. Senator David I. Walsh, of Massachusetts, delivers the annual address on Friday evening at 8:30. President Vidal's address will be on "A Lawyer's Principal Duty." Other papers will be given by Philip Hornbein, Hudson Moore, Malcolm Lindsey, Fred Farrar and Erskine R. Myer.

The Association will receive the final report of its Committee on Integration of the Bar and act thereon.

The Stanley Hotel is conducted on the American plan. Special convention rates are offered its registered guests, to whom the annual dinner will be presented without additional charge. To others the cost will be $2 per plate. Bus service from Denver to Estes Park and return will supply requisite transportation at P. U. C. rates.

A heavy attendance is anticipated.