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Unlawful Practice of Law

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UNLAWFUL PRACTICE OF LAW

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THIS year has been one of notable accomplishments in eliminating unlawful practice of the law. The results achieved have been due to the very favorable action of both lower courts and supreme courts; and to the increasing close coordination of the activities of the American Bar Association's Committee on Unauthorized Practice of the Law and the state and local bar association committees.

Since July 1, 1934, the year has seen the publication and distribution at a nominal cost by the American Bar Association of the Handbook on Unauthorized Practice of Law, edited by Frederick C. Hicks, Professor of Law, Yale Law School, and Elliot R. Katz, member of the Connecticut Bar. This excellently prepared handbook is still in great demand. Its wide distribution has very adequately satisfied a great need.

Later in the year the American Bar Association's committee on the subject inaugurated the publication of the Unauthorized Practice News, a contemporary review of bar activities in this field. This publication serves to currently supplement the handbook just above referred to, and to bring the news of what is transpiring in the courts and on the part of bar committees. Spontaneous commendation from all quarters indicate that the News is serving a thoroughly useful purpose. It now has a circulation in excess of 1,700; and is being sent to anyone desiring it free of charge.

The work of state and local bar association committees since July 1, 1934, has been most notable. Early in this period came the decision of the Supreme Court of Missouri in State v. St. Louis Union Trust Company, 74 S. W. (2nd) 348, which in the most sweeping manner upheld the contentions of the Missouri State Bar Association respecting the activities of corporate fiduciaries. It is also serving as the basis for curbing many other unlawful practice activities. Also the Supreme Court of Missouri contributed materially to the movement for eliminating unlawful practice by a startlingly simple act when on July 10, 1934, it adopted, as part of the Additional Rules of the Supreme Court to become

effective November 1, 1934, Rule 36, sub-division (11) of which reads:

"11. In addition to the duties above imposed, the Committee in each Circuit shall be constituted as representatives of the Bar of this Court, with full powers to do all things which the Bar, as a class, may do to advance the standards and prestige of the Bar, and 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 actions as may be appropriate to suppress such unlawful practice."

The direct effectiveness and boldness of this stroke is apparent to all; and the Bar of the state hastened to translate their opportunities into action. The Committee on Unauthorized Practice of the Law of the St. Louis Bar Association has dealt most energetically and effectively during the past year with realtors and the Real Estate Exchange; with accountants, automobile clubs, undertakers, insurance adjusters, service bureaus, and other agencies engaged wholly or partly in unlawful practice of the law.

In Illinois the committee of the Chicago Bar Association continues its activities throughout the year. It has just instituted a proceeding to curb the activities of a particularly active layman practicing before the Illinois Industrial Commission. In People ex rel. Chicago Bar Association v. Securities Discount Corporation, 279 Ill. App. 70 (Feb., 1935), the defendant corporation which had solicited collection claims, alleged it had purchased the claims, taken assignments thereof, and filed between 600 and 700 suits to collect the claims, was held to be illegally practicing law, and fined for contempt.

The Supreme Court of Oklahoma in an opinion filed Nov. 27, 1934, State Bar of Oklahoma v. Retail Credit Association, 37 Pac. (2nd), 954 held that under the provisions of the Oklahoma State Bar Act, the State Bar may maintain an action to enjoin the unauthorized practice of the law by a corporation and to enjoin acts which are unauthorized and illegal and which tend to bring into disrepute the practice of law and the administration of justice.

The Michican committees have been successful in obtaining well-considered decisions from their lower courts. In

December, 1934, Circuit Judge Frank A. Bell, in Michigan State Bar Association v. McGregor, held that McGregor was guilty of contempt in that he practiced law before the Department of Labor in connection with the administration of the Workmen's Compensation Law. At about the same time Circuit Judge Allan Campbell decided the cases of the Detroit Bar Association against the Detroit Trust Company and two other trust companies. This latter decision fully upheld the contentions of the Bar with respect to wills and trusts but held against their contentions with respect to probate practice. Both parties are appealing. In February, 1935, Circuit Judge John Vanderwerp held one Bourassa in contempt of court for unlawfully practicing law in that he "obtained assignments of accounts, for the purpose of collection * * * and then as the purported real party in interest, has brought and carried on suits in his own name as party plaintiff. While the assignment is legal in form, the substance and purpose of it is admittedly to carry on the practice of attending to the litigation for another, it being shown that the assignment is not a bona fide purchase by him."

The Tampa Bar Association has been among the most active in Florida. It has instituted a number of suits to enjoin the illegal practice of the law by the Clerk of the County Court, by the collector of a furniture company who handled its replevin actions, by an automobile association which maintained a "legal department," by notaries public, by landlords' agents who maintained rent-collection departments under the delinquent-tenant laws, by real estate concerns offering to "service" estates, and by banks and trust companies.

Massachusetts made a most notable contribution toward the suppression of illegal practice in In re Opinion of the Justices, 194 N. E. 313, Jan. 30, 1935. At the request of its legislature (called the General Court in that State) the Supreme Judicial Court cleared away the doubt and uncertainty heretofore existing regarding the respective provinces of the legislature and the judiciary. The court said: "It would not be within the competency of the General Court (the legislature) to enact legislation designed to permit such practice of the law by corporations or associations or by individuals other than members of the bar of the Common-

wealth. *'Permission to practice law is within the exclusive cognizance of the judicial department.'* " Not only was this opinion an inspiration to all those interested in eliminating the illegal practice of the law, but it spurred to action the committees in Massachusetts. Thus, on March 27, 1935, the Bar Association of the First District Eastern Middlesex filed in its Superior Court the first bill in equity in the history of the Commonwealth seeking to restrain the unauthorized practice of law. By the bill it is sought to restrain further practice of law by a layman who for twenty years has practiced as attorney in fact before all the courts of the Commonwealth under a law giving any person of good moral character permission to appear in court for another if he is given a written power of attorney to do so.

North Dakota, the first state to integrate its bar, has prosecuted two cases during the year. One of these cases, that against a bank and trust company, has been tried, briefed, argued and submitted to a judge of the District Court. A decision is momentarily expected. Another case has been decided by the District Court and a layman, who for many years practiced law almost as fully as might a lawyer, has been enjoined from continuing his practice.

In Virginia, the Richmond Bar Association has been effectively active. Its report rendered Oct. 25, 1934, dealt with the customary problems and activities which confront all committees dealing with the unauthorized practice of the law, and in addition reported that it had caused a title company to eliminate a sign displaying to the public the words, "Titles Examined," had inaugurated an investigation of adjustment bureaus and of ambulance chasing generally, and had instituted and prosecuted a case seeking a declaratory judgment restraining the practice of law by the Richmond Association of Creditmen, Incorporated. Later in March, 1935, this action was decided favorably to the contentions of the bar association by Judge Frank T. Sutton.

By an opinion filed March 9, 1935, the Supreme Court of Kansas in Depew et al. v. The Wichita Retail Credit Association, Incorporated, held that injunction is a proper remedy to restrain a corporation from the unlawful practice of law and that attorneys at law as officers of the court are proper

parties plaintiff in such an action. A somewhat similar action against the Wichita Association of Creditmen, Incorporated, resulted on Dec. 8, 1934, in an injunction sweeping in its scope and terms.

Scant justice can be done to the activities in New York. Two regional conferences of the bar have been held, one in New York City in January, 1935 and in Syracuse in March, 1935, at both of which the curbing of unauthorized practice of law was considered. Courts have held that a judgment obtained by the efforts of one not authorized to practice law is nugatory, that laymen who practice in probate matters are subject to the penal laws of the state, and have made other equally interesting holdings. By acts of its legislature, obstacles have been eliminated to the effective prosecution of those practicing without a license.

The last annual report of the committee on the Unauthorized Practice of the Law of the Washington State Bar Association discloses an unprecedented amount of activity. It has dealt with collection agencies and has actions pending against them in both its lower and in its Supreme Courts. After the institution of actions, it entered into amicable, cooperative arrangements with or obtained decrees against accountants, automobile associations, and lay adjusters of personal injury claims. It has also considered the problems presented by banks and trust companies, business chance organizations, finance companies, lawyers from other states, Mexican divorces, realtors, public stenographers, title and abstract companies, and worked out an effective organization for effective state-wide action.

Minnesota has translated the decision of its Supreme Court in Fitchette v. Taylor, 191 Minn. 582, 254 N. W. 910, into action by obtaining injunctions against lay personal injury adjusters, lay adjusters of insurance claims, a layman operating a scheme by which legal services were rendered his customers with respect to civil and criminal liabilities arising out of the operation of automobiles. An action against two of its title insurance companies has resulted in the entry of decrees by stipulation.

It is useless to attempt to outline in short space the work that is being done by these committees of associations co-

operating with the American Bar Association committee. In closing, however, recognition must be given to the work that has been done and is being done in Ohio, because of the pioneering activities of bar groups and the "leading" cases these activities have given to the profession. But the committees of the state bar and the local bar associations are not resting on their laurels. Two vastly important decisions have been secured and continuous local activity has been demonstrated. On November 27, 1934, the Supreme Court of Ohio decided The Land Title Abstract and Trust Co. v. Dworken, et al., 193 N. E. 650, and sustained every contention of the bar with respect to the activities of title companies. More recently it granted a writ of prohibition against the State Industrial Commission and the individual members thereof which restrained them from permitting laymen to practice law before them.

NOTICE TO ATTORNEYS

In pursuance of an Act of the General Assembly, Chapter 139, Session Laws 1935, Approved March 5, 1935, (without Emergency or Safety Clause) effective ninety days from date of adjournment of Legislature on April 6, 1935, to-wit: on July 6, 1935, the following Rule of the District Court, in and for the Second Judicial District, is hereby adopted by the Judges thereof, sitting *en banc:*

RULE XVIII, SEC. 3

The Clerk of this Court shall tax as costs in any cause or proceeding pending herein the expense of any advertisement in any legal newspaper, as provided by law. To enable such costs to be so taxed, every publisher of a legal newspaper shall file with the Clerk of this Court the affidavit of publication of any such advertisement, accompanied by a statement of the expense of publication thereof, which expense shall be taxed as costs in such cause or proceeding. No final order or decree shall be signed by a Judge of this Court in any such case until there shall be presented to him evidence of payment of the expense of such advertisement or a certificate from the Clerk that there are sufficient funds available to pay all such costs, as in cases of dismissal.