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Contempt-Unauthorized Practice of Law

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CONTEMPT—UNAUTHORIZED PRACTICE OF LAW.—The State on the relation of the Indianapolis Bar Association in an original action charged the Fletcher Trust Company with constructive criminal contempt of the Supreme Court. The contempt alleged was the unauthorized practice of law. Relator's theory was that since the Supreme Court had the right to say who shall be admitted to the bar, it had also the right to prevent the unauthorized practice of law by corporations. The trust company filed a verified response which denied that

²¹ *Kidd v. Alabama* (1903), 188 U. S. 730, 25 S. Ct. 401, 47 L. Ed. 669; *In re Dorrance's Estate* (1934), 115 N. J. Eq. 268, 170 A. 601.

²² R. S. § 5219, 12 U. S. C. A. § 548.

²³ (1932), 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313, 77 A. L. R. 1401. Held, that the state of incorporation may not impose an inheritance tax on the transfer of shares from a non-resident decedent. The case did not involve bank stock since the bank was the executor of the estate.

²⁴ *Corry v. Baltimore* (1905), 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556; *Tappan v. Merchants' National Bank* (1873), 19 Wall. 490, 22 L. Ed. 189.

²⁵ *Tappan v. Merchants' National Bank*, supra note 24; *Whitman v. Oxford National Bank* (1900), 176 U. S. 559, 20 S. Ct. 477, 44 L. Ed. 587; *Hancock National Bank v. Farnum* (1900), 176 U. S. 640, 20 S. Ct. 506, 44 L. Ed. 619; *First National Bank of Louisville v. Commonwealth of Kentucky* (1869), 9 Wall. 353, 19 L. Ed. 701.

it was practicing law, admitted that it had no authority to practice law, and said that it did not intend to practice law in the future. Moreover, it denied any intention to violate any order or rule of the Supreme Court, or to show it any disrespect in any manner. Held, such an answer was conclusive and a good defense.¹

The unauthorized practice of law by trust companies has assumed proportions which are alarming to the organized bar.² The bar associations object to trust companies' practicing law because: (1) A corporation cannot comply with the moral and intellectual qualifications required of natural persons seeking admission to the bar.³ (2) A lawyer cannot serve two masters. He may not divide his professional allegiance. When he is a member of the legal staff of the trust company he is tempted to serve primarily the master who hires him and secondarily the patron.⁴ (3) When a trust company draws an agreement with itself as trustee, its interests are in conflict with the interests of the cestui.⁵ (4) Trust companies solicit and advertise for business. This is against the lawyer's code.⁶ (5) Bar associations have no method of disciplining a trust company, and so controlling its ethical practices.⁷ (6) This practice hits the individual attorney's pocketbook. Trust companies are taking a considerable amount of legal business away from independent practitioners. Lawyers look at the practice of law as a franchise, a property right, which should be pro-

¹ State ex rel. Indianapolis Bar Association v. Fletcher Trust Co. (Ind. 1937), 5 N. E. (2d) 538.

Acts charged were as follows: Advertising and soliciting through salaried employes the business of writing wills, drafting wills, giving legal advice about execution of wills, the legal effect of different clauses, the powers and duties of trustees, preparing living trust agreements, performing legal services incident to probating wills, administering and settling estates, filing petitions for investments and petitions to sell property in estates and guardianships, instituting suits to foreclose mortgages, preparing and drafting contracts, leases, deeds, mortgages, and trust agreements for a valuable consideration. State v. Earl (1872), 41 Ind. 464; Denny v. State (1932), 203 Ind. 682, 18 2 N. E. (2d) 313.

² Corporate Fiduciaries and Legal Ethics, 17 Amer. Bar Ass'n Journal (July, 1931), page 441; Fiduciaries—Corporate and Lawyer, 7 Indiana Law Journal 295, 306-312; Bootleggers in Law, 7 Indiana Law Journal 46; Underwriters Trust Co. of New York, 67 United States Law Review 114; An Independent Bar, Trust Companies, Vol. 58, pages 469-460; The Unauthorized Practice of Law," 19 Amer. Bar Ass'n Journal 652-656; The Practice of Law by Trust Companies and Other Lay Interests, Georgia Bar Ass'n Reports (1929) 222-239; Trust Companies and Lawyers, 7 California State Bar Journal 54-57; The Relationship of the Bar to Corporate Fiduciaries, 1 Brooklyn Law Review 37-43; Banks and Trust Companies Practicing Law, Alabama State Bar Ass'n Proceedings (1931), pages 17-42.

³ People v. Merchant's Protective Corp. (1922), 189 Cal. 531, 209 P. 363; People v. California Protective Corp. (1926), 76 Cal. App. 354, 244 P. 1089; People v. Peoples' Stock Yards Bank (1931), 344 Ill. 462, 176 N. E. 901, 906-907.

⁴ People v. Merchant's Protective Corp. (1922), 189 Cal. 531, 209 P. 363; In re Coöperative Law Co. (1910), 198 N. Y. 479, 92 N. E. 15.

⁵ People v. People's Trust Co. (1917), 180 App. Div. 494, 497, 167 N. Y. Supp. 767; State v. St. Louis Union Trust Co. (1934), 335 Mo. 845, 74 S. W. (2d) 348; People v. People's Stock Yards State Bank (1931), 344 Ill. 462, 176 N. E. 901, 908.

⁶ Canon 27, Canons of American Bar Association.

⁷ In re Co-operative Law Co. (1910), 198 N. Y. 479, 92 N. E. 15, 16.

tected.⁸ (7) All of the above reasons have as their basis the general welfare of the public. The bar associations feel that the interests of the public will be better served by the personal service and unbiased counsel of an independent attorney than by the advice of a member of the regular legal staff of a corporation which has an interest in what the client does.

Methods of dealing with this menace to the independent bar are not uniform. Ohio⁹ and Minnesota¹⁰ courts have granted injunctions against corporations attempting to practice law, on the theory that on admission to the bar lawyers are granted a franchise which is entitled to protection. Illinois¹¹ and California¹² courts have fined corporations for contempt on the theory that the Supreme Court can determine who shall practice law. Illinois,¹³ Minnesota,¹⁴ New York,¹⁵ and Washington¹⁶ courts have enjoined employes who aid corporations in practicing law and punished them for contempt of court. Bar associations in some cities have come to agreements with the local bankers' associations as to the proper limits of bank and trust company activities.¹⁷ Negotiations for such an agreement were tried in Indianapolis, but the two groups failed to reach any agreement.

In the instant case the court refused to follow the Illinois¹⁸ and Ohio¹⁹ decisions urged upon it by the relator, because, it said, Indiana law and procedure in contempt cases was settled otherwise. Instead of deciding whether the acts alleged amounted to the practice of law, the court said that they were open to more than one construction, and that in cases of constructive criminal contempt where two constructions are possible, one of which would amount to contempt and the other not, intent becomes the material question, and if the contemnor denies under oath that he intended to violate an order or rule of court he is entitled to be discharged.²⁰

⁸ *Fitchette v. Taylor* (1934), 191 Minn. 582, 254 N. W. 910; *Dworken v. Apartment House Owners' Ass'n* (1931), 38 Ohio App. 265, 176 N. E. 577; *Land Title Company v. Dworken* (1934), 129 Ohio St. 23, 193 N. E. 627, 650.

⁹ *Land Title Co. v. Dworken* (1934), 129 Ohio St. 23, 193 N. E. 627; *Dworken v. Apartment House Owners' Ass'n* (1931), 38 Ohio App. 265, 176 N. E. 577.

¹⁰ *Fitchette v. Taylor* (1934), 191 Minn. 582, 254 N. W. 910.

¹¹ *People v. Assn. of Real Estate Taxpayers* (1933), 354 Ill. 102, 187 N. E. 823; *People v. People's Stock Yards State Bank* (1931), 344 Ill. 462, 176 N. E. 901; *People v. Motorists' Association of Illinois* (1933), 354 Ill. 595, 188 N. E. 827.

¹² *People v. California Protective Corporation* (1926), 76 Cal. App. 354, 244 P. 1089.

¹³ *People v. Macauley* (1907), 230 Ill. 208, 82 N. E. 612; *Midland Co. v. Donnelley* (1920), 219 Ill. App. 271.

¹⁴ *In re Otterness* (1930), 181 Minn. 254, 232 N. W. 318.

¹⁵ *In re Rothschild* (1910), 140 App. Div. 583, 125 N. Y. S. 629; *In re Pace* (1915), 170 App. Div. 818, 156 N. Y. S. 641.

¹⁶ *In re Gill* (1918), 104 Wash. 160, 176 P. 11.

¹⁷ *Indiana Law Journal* 54.

¹⁸ *Dworken v. Apartment House Owners' Ass'n* (1931), 38 Ohio App. 265, 176 N. E. 577; *Land Title Company v. Dworken* (1934), 129 Ohio St. 23, 193 N. E. 627, 650.

¹⁹ *People v. People's Stock Yards State Bank* (1931), 344 Ill. 462, 176 N. E. 901.

²⁰ *Denny v. State* (1932), 203 Ind. 682, 182 N. E. 313; *State v. Earl* (1872), 41 Ind. 464; *Stewart v. State* (1894), 140 Ind. 7, 39 N. E. 508; *Fishback v. State* (1891), 131 Ind. 304, 30 N. E. 1088.