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NOTES AND COMMENT

Corporate Practice of Law.

An interesting question, and one of practical importance, is that of corporate practice of law. It is well settled, at least outside of Wisconsin, (no case having thus far been decided in Wisconsin) that a corporation may not practice law; and almost, if not equally well settled what constitutes such practice. *In re Otterness* (---- Minn. ----, 232 N.W. 318) clearly shows the attitude of the courts toward corporations that attempt to practice law. In this recent case the defendant, a licensed attorney, was employed by a banking corporation as vice president, at a certain salary; and by the terms of the employment contract, the defendant was to practice law as he had before, in addition to performing his other duties at the bank. It was further agreed that all attorney's fees earned by him should be turned over to the bank, as income of the bank, and to become its property. Pursuant to this contract, as the referee found, defendant foreclosed a number of mortgages, some owned by the bank, and some owned by other parties. Defendant also conducted probate proceedings, in addition to performing other legal services. This participation in foreclosure and probate proceedings was held, by the court, to be practice of law.

In all cases handled by him, the defendant collected regular attorney's fees which he turned over to the bank. This, the court held, was practice of law by a corporation, since the banking corporation hired defendant to practice law, for its own profit. Thus the test of improper practice of law as laid down by this court is whether the employer (corporation or layman) hires an attorney for the employer's profit. It is obvious, of course, that it is not improper to hire an attorney to handle the employer's cases so long as the fees charged by the attorney do not exceed the salary paid to him, thus resulting in a profit for the employer. Any such profit earning arrangement between corporation and attorney constitutes misconduct, and is generally punished by disbarment or suspension. However, in the instant case, since the employment contract had terminated, and since defendant had a good reputation as an attorney, the court merely censured him for participating in the practice of law by a corporation.

Other cases are in harmony with this Minnesota case: *In re Eastern Idaho Loan and Trust Co.*, et al. (---- Idaho ----, 288 Pac. 157) holds that an advertisement by defendant corporation that it was a specialist in the drawing of trust agreements, wills, and the like, was holding out as qualified to practice law, thus coming within the statutory prohibition. This case draws the distinction, however, between

the mere clerical filling in of a skeleton form, and the drawing of an instrument which is to be formed from a body of facts and which involves the determination of the legal effect of the instrument. The result of the distinction is clear: the corporation may perform the clerical work of filling in forms; but may not do that which requires special legal skill, as, e. g., the drawing of trust agreements and wills.

An early case *Eley v. Miller*; 7 Ind. App. 529) lays down the general principal that practice law, in its larger sense, includes legal advice and counsel, as, e. g., the preparation of legal instruments by which legal rights are secured, as well as the performance of services in a court of justice. The same result was reached in a later case, where it was held that practice of law is not only services in a court of justice, but includes drafting and supervising execution of wills. (*People v. People's Trust Co.*; 180 N.Y. App. Div. 494).

The cases, though not numerous, are unanimous on the principle that a corporation cannot practice law, because "the practice of law is not a business that is open to a commercial corporation." (*State v. Merchants Protective Corp.*; 105 Wash. 12).

WESLEY KUSWA.

Taxation: Corporations.

Judgment for the defendants in *Palmolive Co. v. Conway*, 43 Fed. (2nd) 226, was handed down August 6, 1930. The plaintiff sought to enjoin the state tax commission and the county treasurer from collecting certain state income taxes assessed for the years 1924, 1925, and 1926, on the ground that such assessments are illegal under the Wisconsin law and that collection thereof would violate the rights of the plaintiff under the due process clause of the United States Constitution. Palmolive Company of Wisconsin had existed in Milwaukee for 30 years. In 1923 the officers of that company organized as a Delaware corporation later known as Palmolive-Peet-Colgate Co. This corporation is hereinafter designated as the parent company. The same interests during the same year, also in Delaware, caused to be incorporated the Western Operating Company. This company is the plaintiff. The parent company acquired all of the capital stock of the Wisconsin Company, then purchased from it all of its assets located out of the state, consisting of real estate, warehouses, offices, merchandise, accounts receivable, goodwill, trade marks, and trade secrets, paying to the Wisconsin company a part of its own stock. Then the parent company sold to the plaintiff the remainder of the stock in exchange for all the capital stock of the plaintiff. The plaintiff then bought from the Wisconsin company the Milwaukee plant in exchange for part of the stock it received from the parent company. Plaintiff then held what