

1930

## Corporation: Taxation

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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

little stock of the Wisconsin Company that there was yet outstanding. Thus the parent company owned all property out of Wisconsin and the plaintiff owned all that in Wisconsin, except for the inventory and the Wisconsin accounts receivable which the Wisconsin company owned. These companies had the same officers and directors. The parent company had its main office in Chicago. The plaintiff had no full time employees, no office, and few transactions. The plaintiff then leased the plant to the Wisconsin company for \$120,000 and later for \$230,000 a year. Parent company then contracted to buy all the product at cost plus 3%, and later 6%. The parent company purchased all material for the Wisconsin company, and supervised all its activities. For the years in question the Wisconsin company reported incomes of approximately \$300,000 a year. Formerly it averaged \$19,500,000 a year with a profit of \$10,300,000. Plaintiff reported a net income of 18,000 in 1924 and a deficit of \$100,000 each of the next two years. The tax commission allocated certain profits of the parent company and fixed the taxable income of the other two companies at approximately \$1,275,000 a year. It is assessments on this alleged additional income that the plaintiff sought to enjoin. Defendants acted under Wisconsin Statutes section 71.01, directing that "There shall be assessed \* \* \* upon such income as is derived from property located or business transacted with the state \* \* \*"; section 71.02, providing that "Income from manufacturing business, \* \* \* shall follow the situs of the property or business from which derived;" and under section 71.25 providing that where a corporation sold its product for less than a fair price in such manner as to cause a loss or improper net income the commission may determine the amount of taxable income having due regard for reasonable profits. The question presented is whether the court can go behind the contracts in finding they were made for the express purpose of evading taxation.

The Wisconsin company shipped direct to the customers of the parent company. The plaintiff had no business other than to lease the plant and to pay interest to the parent company. The Wisconsin company by so selling its product reduced its profits on its products from \$10,300,000 to \$936,000, or about 91%. So of course its sales total dropped to \$11,700,000. Obviously this reduction of over 90% in gross profit and almost 50% in total sales was due to the contract it made with the parent which sold the product at the price the Wisconsin company had formerly done so, making a gross profit of 50% which formerly had been realized by the Wisconsin company.

The court on these undisputed facts decided that the contract of manufacture and sale constituted a fraud upon the income tax laws of Wisconsin. The court said. "Though a corporation, like a natural

person, may freely change its residence at will for no other purpose than to escape taxation in Wisconsin (190 Wis. 97; 197 Wis. 163), though corporations may be interrelated by means of common directors or common ownership of stock and yet make valid contracts (197 F.466) and the tax commissions are ordinarily concerned with the question as to the wisdom of such contracts, and may not generally obtrude their judgments as to the wisdom of such contracts upon such corporations (34 F (2nd) 533,538; 262 U.S. 276,289; 278 U.S. 300), yet commissions as well as courts may legitimately look beyond the corporate entities and determine the facts as they are." In such cases "the courts will not permit themselves to be blinded or deceived by mere forms of law, but regardless of fictions, will deal with a substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require." 247 U.S. 490.

It is but elementary that the state which created the Wisconsin corporation and then allowed the plaintiff to come in has a right to look into their affairs and insist on the payment of a tax to the state through whom it has been given the power to come into being, or come into the state, and to act.

No sane or sensible person would merely give away a profit of ten or eleven million dollars and be content with a profit of one million for no consideration at all. The consideration here is fraud on the state income tax laws on corporations. Courts will not, and should not, be deceived by mere forms of law, but deal as in this case with the facts as though the corporate agency did not exist.

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