

Attorney and Client - Unauthorized Practice - Practice of Law by Corporations

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in the end would retain the amount received by them and the residuary legatee would not be relieved in the slightest. The result would be effected only if costs consumed the corpus of the residuary legatee's portion or if such legatee was bankrupt. The banking commission seems to have been fully satisfied on this score and hence its resolve to bring the action only against the residuary legatee is perfectly intelligible. Just why the court should not be satisfied with this arrangement which would do complete justice between the parties and save expense and trouble is difficult to understand in view of the two other cases above mentioned in which the liability was enforced against distributees. In all three cases all that really happened was that property of the deceased stockholder came to the legatee subject to a lien for the superadded liability. In none of them was it material that the legatee be technically a stockholder. The vice of the court's reasoning seems to be a fundamental confusion between the lien resting on the estate coming to the residuary legatee and the contract liability assumed by an original subscriber or transferee of the stock. If the complaint was drafted on the wrong theory it would seem that an amendment was in order rather than forcing the plaintiff to start over with added parties and greater expense, not to speak of the possibility of a lapsed cause of action.

Of course the effect of the decision except on the original parties is very small. Cases of residuary legatees situated like the defendant in this case are few and far between. If such a case should arise again the commission of course would join all the legatees and would thus increase the expense of the lawsuit and would by the decision be protected against a demurrer which otherwise would seem to be appropriate. The question of course would always remain: Why should the supreme court require such a useless expense of time and money?

CARL ZOLLMANN

RECENT DECISIONS

ATTORNEY AND CLIENT—UNAUTHORIZED PRACTICE—PRACTICE OF LAW BY CORPORATIONS.—The defendant trust company, in pamphlets distributed to the public, explained the desirability and utility of wills and trust agreements, and solicited the selection of the defendant as executor or trustee. The defendant had drawn various instruments pertaining to real estate transactions, consisting of deeds, mortgages and extensions, satisfactions, assignments of rents, and had drawn chattel mortgages. An officer of the corporation, a licensed attorney, had drawn several wills for clients, for two of which he had charged a fee which he had personally retained. It is claimed that by these actions the corporation is engaging in the practice of law, and an injunction is sought restraining the defendant from giving legal advice or rendering legal services. The trial judge refused to grant the relief requested. On appeal, *held*, judgment affirmed. The evidence of actions on the part of the corporation was not sufficient to support an injunction restraining the corporation from similar actions on the ground of illegally practicing law. *Cain v. Merchants National Bank and Trust Co. of Fargo*, (N.D. 1936) 268 N.W. 719.

Corporations are not permitted to practice law because the privilege to practice law is a franchise conferred by the state upon qualified individuals. *In Re Co-operative Law Co.*, 198 N.Y. 479, 92 N.E. 15, 32 L.R.A. (n.s.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879 (1910). The privilege to practice law attaches to the individual and dies with him. It cannot be brought within the purpose clause of any articles of incorporation. *State ex rel. Lundin v. Merchants Protective Corp.*, 105 Wash. 12, 177 Pac. 694 (1919).

Admission to practice as an attorney is generally held to be a judicial function, and the judicial department has inherent power to determine the qualifications of those to be admitted to practice in its courts. *In Re Opinion of the Justices*, 279 Mass. 607, 180 N.E. 725, 81 A.L.R. 1029 (1932). The practice of law embraces much more than the conduct of litigation. *Boykin v. Hopkins*, 174 Ga. 511, 162 S.E. 796 (1932). It includes the preparation of legal instruments of all kinds, and in general the giving of advice to clients. *Land Title Abstract and Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650 (1934). A corporation cannot hire an attorney to conduct a general law practice for others with fees to be received as income by the corporation. *In re Otterness*, 181 Minn. 254, 232 N.W. 318, 73 A.L.R. 1319 (1930). If all of the directors and officers of the corporation be duly licensed attorneys, they cannot be permitted to practice law for fees to be taken as corporation assets. *People v. California Protective Corp.*, 76 Cal. App. 244, 244 Pac. 1089 (1926). The filling in or drawing of simple documents is the privilege of any layman, but the shaping of an instrument from a mass of facts and conditions, the legal effect of which must be carefully determined by a mind trained in the existing laws, is definitely practice of law. Employees of a corporation may do for compensation only that which any layman could do. *In re Eastern Idaho Loan and Trust Co.*, 49 Idaho 280, 288 Pac. 157, 73 A.L.R. 1323 (1930). The drafting and supervising of wills is practicing law. *People v. People's Trust Company*, 167 N.Y. Supp. 767 (1917). The drawing, preparing, or advising in relation to preparation of deeds, mortgages, contracts, and other documents pertaining to real estate conveyances or transactions for the benefit of others, where the trust company has no direct or primary interest, is the practice of law. *Land Title Abstract and Trust Company v. Dworken, supra*. The agreement of a corporation to prepare, file, prosecute, and adjust all claims on certain freight bills for another corporation, by contract, is practice. *Public Service Traffic Bureau, Inc. v. Haworth Marble Co.*, 40 Ohio App. 255, 178 N.E. 703 (1931). However, the preparation by a trust company of bills of sale and a chattel mortgage, for a fee, was held not to be practice of the law, where the corporation gave no advice leading to and consummated in the document. *People v. Title Guarantee and Trust Company*, 227 N.Y. 366, 125 N.E. 666 (1919). It has been held that the advertisement of a trust company to consult it in the making of a will, and offering to give advice as to trusteeships, and as to reflecting present interests of the testator is not practice of the law. *In re Umble's Estate*, 117 Pa. Sup. Ct. 15, 177 Atl. 340 (1935). In the instant case, although it was found that the corporation had rendered legal services in isolated instances, widely separated in point of time, the defendant asserted that it never intended to practice law, and disavowed any intention to practice law in the future. The court found no illegal actions on the part of the defendant warranting the issuance of an injunction.

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