law. Such unlawful practice constitutes a contempt of the Supreme Court as well as of the trial court. However, this problem will never be entirely solved by the institution of legal proceeding merely against the corporations and the laymen. For such unlawful activities of a lay agency are only possible where it finds lawyers willing to accept employment from it for the specific purpose of participating in the unauthorized practice. It is unethical for a lawyer to accept such employment,[9] and as such activities are now declared by judicial decision to be not only unlawful but in contempt of court, it follows that lawyers should not only be subject to the same punishment as their employers, but should also be subject to discipline by the courts which have licensed them to practice. The Rhode Island Bar Association has taken the initial step through the present case to bring into existence a new precedent for cases involving the unauthorized practice of law by lay agencies and their lawyers. The Bar Association by naming the lawyer, retained by the Automobile Service Association, a respondent in the case recognized the fact that just having the lay agency cited for contempt would not be a safeguard to prevent similar recurrences in the future. It realized that it is necessary in all such cases to get at the root of the evil, the unscrupulous lawyer. By following the Rhode Island Bar, Bar Associations in other states will, it is hoped, be able to strike at the principal cause of unlawful lay encroachments on the functions of the legal profession.

O. J. G. '37.

BANKRUPTCY—REFEREES—OFFICE EXPENSE AS COSTS.—A recent decision[1] declared null and void an order by a predecessor judge authorizing a referee in bankruptcy to buy from himself, as an individual, on a conditional sales arrangement, office furniture, fixtures, equipment and a law library, payment for the same to be made out of an account accumulated by the referee from the taxation of each bankrupt estate, and to maintain the property as that of the district court for that district.

The holding is clearly consistent with the manifest spirit and general purposes of the bankruptcy laws. It is repeatedly stated in the cases that the policy of the courts should be to reduce the cost of administration to a minimum.[2] While in addition to the regular compensation allowed a referee[3] the statute itself provides for an allowance of "actual and necessary" ex-

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[9] (1925) 50 A. B. A. Rep. 518.

[1] In re King (D. C. Tenn. 1935) 11 Fed. Supp. 351.

[2] In re Harrison Mercantile Co. (D. C. Mo. 1899) 95 Fed. 124; In re Fullick (D. C. Pa. 1912) 201 Fed. 463; In re Metallic Specialty Mfg. Co. (D. C. Pa. 1914) 215 Fed. 937; In re Consolidated Distributors (C. C. A. 2 1924) 298 Fed. 859; In re Weisman (D. C. Conn. 1920) 267 Fed. 588.

[3] 11 U. S. C. A. sec. 68. "Referees shall receive as full compensation for their services, payable after they are rendered, a fee of $15 deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and twenty-five cents for every proof of claim filed for allowance, to be paid from the estate, if any, as part of the cost of administration, and from estates which have been administered

penses incurred in administering the estate,[4] it nevertheless falls to the court to decide in each case whether the expenses incurred were "actual and necessary." Expenses of publishing or mailing notices, of perpetuating testimony, and of traveling, are generally approved when deemed necessary to the proper discharge of the referee's duties.[5] In special cases, allowances for the hiring of a stenographer,[6] and for the rental of office space during the period of winding up the bankrupt's affairs,[7] have been awarded.

The Act contemplates the payment of these expenses out of the particular estate in which they are incurred.[8] There is no authority, either in the statutory provisions or in the cases reported, to authorize the creation of a running account in which the funds of the various estates are intermingled.

Were it possible to have such an account, the order under consideration would nevertheless be void in that it contemplated the acquisition of property to be owned and maintained by the district court. Since the district court is a branch of the federal judiciary, any contract made in behalf of that department must be entered into by persons with authority to bind the federal government.[9] The issue therefore is whether the predecessor judge had such authority. The funds for the Department of Justice are provided by appropriation of Congress. The Attorney-General is to exercise his discretion in purchasing supplies for the U. S. courts and for judicial business.[10] In the absence of an express power in the statute which provides for the relevant necessities, there is no authority for a judge acting for his court to acquire additional property under the guise of administrative necessities when the statutory appropriation is insufficient to meet the needs of the department. The fact that the arrangement of sale was conditional, title in the property not to be released by the referee until the purchase price had been paid in full, seems to indicate the uncertainty of the predecessor judge concerning his own power to bind the court by such a contract.

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before them 1% commissions on all moneys disbursed to creditors by the trustee, or ½ of 1% on the amount to be paid to creditors upon the confirmation of a composition."

[4] 11 U. S. C. A. sec. 102. "The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved they shall be paid or allowed out of the estate in which they were incurred."

[5] Under General Order in Bankruptcy No. 35. In Re Dixon (D. C. Cal. 1902) 114 Fed. 675; In re Elk Valley Coal Mining Co. (D. C. Ky. 1914) 213 Fed. 383.

[6] In re Capitol Security Co. (D. C. Tenn. 1918) 251 Fed. 927.

[7] In re McNeill Corp. (D. C. Mass. 1918) 249 Fed. 765.

[8] Supra, note 4.

[9] 41 U. S. C. A. sec. 11 provides that no contract in behalf of the U. S. can be made unless authorized by law. Executive officers have no power to contract unless given such power by statute. Pan-American Petroleum Co. v. U. S., 9 Fed. (2nd) 761.

[10] 31 U. S. C. A. sec. 663. "Money appropriated for supplies for U. S. courts and judicial affairs, shall be expended in payment for such supplies only, as shall be purchased, in the discretion of the attorney general, for delivery at the department of justice for distribution."

The order clearly being void, the authorities are sufficient to warrant the action of a succeeding judge in setting aside an order of his predecessor.[11]

M. R. M. '36.

BANKS AND BANKING—SHAREHOLDERS' DOUBLE LIABILITY—LIABILITY OF STOCKHOLDERS IN HOLDING COMPANY.—The federal bank examiner's investigation of a national bank disclosed a substantial quantity of unsound loans. These, with bond depreciation and other losses, entirely eliminated the surplus and undivided profit and impaired the capital. To restore the capital the defendants (a group of the directors of the bank), acting as individuals, decided to form a Missouri business corporation to carry through the following plan: buy 1315 shares of the bank's outstanding stock which were offered at a price of $80 a share, simultaneously make a contribution to the bank of an amount representing $30 a share on the newly acquired stock, and then subsequently try to resell those shares for $110 so that the defendants would not be out of pocket on the transaction. The corporation was formed and the 1315 shares acquired by it, the directors paying into its treasury about half the necessary capital and individually guaranteeing the corporation's note for a loan of the rest. However, the Comptroller of the Currency took charge of the bank before the defendants could cause all the shares to be resold, and, the holding company being unable to pay the assessment on the shares still held by it, the receiver brought a bill in equity against the defendants individually. On appeal from an unreported opinion handed down in the Eastern District of Missouri, the Circuit Court of Appeals affirmed the District Court's judgment against the individuals in proportion to the amount of their holdings of the holding company's stock.[1]

Courts have on several occasions pierced a corporate entity or trust relationship to assess the "beneficial owners" of bank stock. But heretofore the situations have always been such as to clearly support a theory of intentional evasion, fraud, agency, or trustee-beneficiary,[2] or else the holding company stockholders have expressly assumed liability in their stock certificates.[3] This latter element was present and was not ignored by the court in the recent Michigan case of *Fors v. Farrell*,[4] which is similar to

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[11] In Re Insull Utility Investment Co., (C. C. A. 7 1935) 74 Fed. (2nd) 510. Stenbom v. Brown-Corliss Engine Co., (1909) 137 Wis. 564, 119 N. W. 308. Killian v. State, (1904) 72 Ark. 137, 78 S. W. 766.

[1] Metropolitan Holding Company, Inc. v. Snyder (1935) 79 Fed. (2d) 263.

[2] Corker v. Soper (1931) 53 Fed. (2d) 190; Barbour v. Thomas (1933) 7 Fed. Supp. 271; Simons v. Groesbeck (1934) 268 Mich. 495, 256 N. W. 496; Laurent v. Anderson (1934) 70 Fed. (2d) 819; O'Keefe v. Pearson (1934) 73 Fed. (2d) 673; cf. 33 Mich. L. Rev. 273; 48 Harv. L. Rev. 659, l. c. 670-672; 10 N. Carolina L. Rev. 288.

[3] Barbour v. Thomas, Simons v. Groesbeck, Laurent v. Anderson, O'Keefe v. Pearson, supra, note 2.

[4] (1935) 271 Mich. 358, 260 N. W. 886; cf. (1935) 49 Harv. L. Rev. 149.