Comment on Recent Decisions

ATTORNEYS—UNAUTHORIZED PRACTICE—CONTEMPT PROCEEDINGS.—A contempt proceeding was brought by the Rhode Island Bar Association against a licensed attorney associated with an automobile service association, which was engaged in unauthorized practice of law. The Court found the attorney guilty of contempt for illegal practice, at the same time citing the association for contempt for unauthorized practice.[1]

The ethics of the bar have been maintained in many previous cases by citations for contempt. Most of these cases, however, come under the practice of law, both in and out of court, without a license.[2] The courts have held that notwithstanding criminal actions penalizing such acts, the acts may constitute a violation of a person's equitable duties toward others so as to justify the use of the courts' equity powers.[3] Attorneys have been cited for contempt for not upholding the dignity of the court.[4] In recent cases[5] members of the bar have been held in contempt of court for interfering with a "fair and speedy trial." It has been stated, "the government in behalf of society is entitled to fair jury trials, even as persons are. But in criminal cases, although it be deprived of a fair trial by conduct like respondents', the law forbids it to have a new trial. It has no remedy, and can only discipline the offender and discourage imitators, by proceedings for contempt, as here."[6]

The present case is the latest development in contempt proceedings as a method of upholding the ethics of the bar. Previously it had been the policy of the bar associations in instigating actions for unauthorized practice to be satisfied with merely bringing an action against the lay agency.[7] The *People's Stock Yards State Bank* case[8] is the leading case on this subject. It was established therein that a State Supreme Court has the power to punish any corporation or unauthorized person who presumes to practice

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[1] Rhode Island Bar Association v. Automobile Service Association (Supreme Court of R. I. 1935) 179 Atl. 139.

[2] In re Morse (1924) 98 Vt. 85, 126 Atl. 550; In re White (1918) 54 Mont. 476, 171 Pac. 759; In re Phillips (1922) 64 Mont. 492, 210 Pac. 89; People v. Alfani (1919) 227 N. Y. 334, 125 N. E. 671; Paul v. Stanley (1932) 168 Wash. 371, 12 Pac. (2d) 401.

[3] New Jersey Photo Engraving Co. v. Carl Schonert & Sons (1923) 95 N. J. Eq. 12, 122 Atl. 307; Paul v. Stanley, supra, note 2.

[4] In re Hanson (1916) 99 Kan. 23, 160 Pac. 1141; In re Troy (1920) 43 R. I. 279, 111 Atl. 723; In re Hilton (1916) 48 Utah 172, 158 Pac. 691.

[5] U. S. v. Frank (D. C. D. N. J. 1931) 53 Fed. (2d) 128; U. S. v. Ford (D. C. D. Mont. 1925) 9 Fed. (2d) 990; In re Kelley (D. C. D. Mont. 1917) 243 Fed. 696.

[6] In re Kelley, supra, note 5, l. c. 705.

[7] State of Tennessee v. Retail Credit Men's Association of Chattanooga (1931) 163 Tenn. 450, 43 S. W. (2d) 918. People ex rel. Courtney v. Association of Real Estate Taxpayers of Illinois (1933) 354 Ill. 102, 187 N. E. 823.

[8] People ex rel. Ill. State Bar Assoc. & Chicago Bar Assoc. v. People Stock Yards State Bank (1931) 344 Ill. 46, 176 N. E. 901.

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