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Attorney and Client – Unauthorized Practice of Law – Contempt

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limitation is that of common sense and general tort law that "[f]or a right of contribution to accrue between tort-feasors, they must be joint wrongdoers in the sense that their tort or torts have imposed a common liability upon them to the party injured,"⁷ and that for the wrongdoers to be considered joint tort-feasors they must contribute simultaneously to the injury; there cannot be two or more independent acts.⁸ In the only case involving contribution in a non-collision situation considered by the United States Supreme Court prior to the instant case, contribution was denied solely because of a contract between the parties limiting the liability.⁹ The language of the decision makes it clear that, had there been no such contract, the usual rules of contribution in admiralty would have been applied.¹⁰ At least one federal court has held that this case is one upholding the right to contribution in non-collision cases.¹¹

The rationale of the instant case is that the court should not "fashion new judicial rules of contribution,"¹² but await legislative action. The reason ascribed by the Court for its position is the presence of the various conflicting interests of ship owners, dry dock, stevedoring and insurance companies.

The fear of fashioning new rules would appear to be a little tardy since it has been the practice of the lower courts, at least since 1924, to allow contribution in this type of case.¹³ Indeed, the Supreme Court overlooks its own admission in the *Porello* case, albeit in the dictum, of the existence of this right. In effect, what the Court has done, then, is to fashion a new judicial rule through its denial of a remedy which has been available in admiralty for the past twenty-eight years; "the well established rule of contribution between joint tort-feasors."¹⁴ It has overruled and reversed both the lower courts and itself, substituting confusion for what was, until now, considered a settled point of maritime law.

ATTORNEY AND CLIENT — UNAUTHORIZED PRACTICE OF LAW — CONTEMPT

A presentment to the Supreme Court of New Jersey by a county bar association committee on the unauthorized practice of law asked that de-

7. *Porello v. United States*, 153 F.2d 605, 607 (2d Cir. 1946), *rev'd on other grounds, sub nom. American Stevedores, Inc. v. Porello*, 330 U.S. 446 (1947). RESTATEMENT, RESTITUTION § 86 (1937).

8. *United States v. Rothschild International Stevedoring Co.*, 183 F.2d 181 (9th Cir. 1950); *The Mars*, 9 F.2d 183 (S.D.N.Y. 1914).

9. *American Stevedores, Inc. v. Porello*, 330 U.S. 446 (1947).

10. *Id.* at 458 (" . . . the usual rule in admiralty, in the absence of contract, is for each joint tortfeasor to pay the injured party a moiety of the damages . . .").

11. *Coal Operators Cas. Co. v. United States*, 76 F. Supp. 681 (E.D. Pa. 1947).

12. *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, 72 Sup. Ct. 277, 280 (1952).

13. *The Jethou*, 2 F.2d 287 (D. Ore. 1924).

14. *Portel v. United States*, 85 F. Supp. 458, 462 (S.D.N.Y. 1949).

fendants, laymen who had drawn a will for another, be cited for contempt, although the unauthorized practice is punishable by statute as a misdemeanor.¹ *Held*, that a state supreme court has the power to punish, as contempt, the unauthorized practice of law. *In re Baker*, 85 A.2d 505 (N.J. 1951).

The judiciary has inherent power to regulate the practice of law,² and because it controls the admission to practice, it likewise has the corollary power to punish, as contempt, the unlicensed practice of law.³ Moreover, the New Jersey Constitution expressly confers upon the instant court power to control admissions to the bar and to discipline its members.⁴ Such power also carries with it the power to prevent laymen from practicing law.⁵ In *Paul v. Stanley*⁶ it was recognized that a member of the bar possesses a franchise which entitles him to bring a complaint against one practicing law without authority.

The practice of law includes not only court work,⁷ but any work requiring legal knowledge or skill.⁸ However, a single instance of drawing a legal instrument, in the absence of statute, does not usually constitute "unlawful practice," as the substance of the offense is the habitual practice by those unauthorized.⁹ Also controlling is the character of the act done.¹⁰

The fact that unauthorized practice of law may also be punishable under a statute does not prevent a court from using its contempt power.¹¹ Such statutes are merely in aid of, and do not supersede or detract from, the inherent powers of the judiciary to control the practice of law.¹² Ordinarily, however, the court will not exercise this drastic power.¹³ In the

1. N.J. REV. STAT. §§ 2:111 1, 3 (1937) ("practice" includes preparation of wills and deeds).

2. *Clark v. Austin*, 340 Mo. 467, 101 S.W.2d 977 (1937); *In re Richards*, 33 Mo. 907, 63 S.W.2d 672 (1933); *In re Morse*, 98 Vt. 85, 126 Atl. 550 (1924).

3. *People ex rel. Ill. State Bar Ass'n v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931); *State ex rel. Wright v. Barlow*, 131 Neb. 294, 268 N.W. 95 (1936); *Rhode Island Bar Ass'n v. Automobile Service Ass'n*, 55 R.I. 122, 179 Atl. 139 (1935); *In re Morse*, 98 Vt. 85, 126 Atl. 550 (1924).

4. N.J. CONST. Art VI, § 2, par. 3.

5. See note 2 *supra*.

6. 168 Wash. 371, 12 P.2d 401 (1932) (in a proper case the court can enjoin the unauthorized practice).

7. See *People ex rel. Ill. State Bar Ass'n v. People's Stock Yards State Bank*, 344 Ill. 462, 473, 176 N.E. 901, 906.

8. *Grand Rapids Bar Ass'n v. Denkema*, 290 Mich. 56, 287 N.W. 377 (1939) (the preparation of wills for others is the practice of law and may not be carried on by one not a licensed attorney).

9. *People ex rel. Att'y Gen. v. Jersin*, 101 Colo. 406, 74 P.2d 668 (1938) (drawing of a will by one not an attorney, who did not make a practice of doing so, and did not hold himself out as willing and competent to do so, did not constitute practice of law).

10. See *People ex rel. Chicago Bar Ass'n v. Goodman*, 366 Ill. 346, 357, 8 N.E.2d 941, 947, *cert. denied*, 302 U.S. 728, *rehearing denied*, 302 U.S. 777 (1937) (amount of money and number of transactions involved was also considered).

11. *State ex rel. Wright v. Barlow*, 131 Neb. 294, 628 N.W. 95 (1936). See *In re Bugasch*, 12 N.J. Misc. 788, 790, 175 Atl. 110, 111 (1934).

12. *In re Day*, 181 Ill. 73, 54 N.E. 646 (1899); *Rhode Island Bar Ass'n v. Automobile Service Ass'n*, 55 R.I. 122, 179 Atl. 139 (1935).

13. *In re McCallum*, 186 Wash. 312, 57 P.2d 1259 (1936); *In re Estes*, 186 Wash. 690, 57 P.2d 1262 (1936).

Rhode Island Bar Ass'n v. Automobile Service Ass'n case,¹⁴ the court determined that contempt should be invoked only when there is an evident need for summary action to protect the public and the jurisdiction of the court. It is not to be encouraged for punishing trivial or unimportant instances of illegal practice of the law.¹⁵

In the absence of a regulatory statute the contempt citation of the court is substantially the only method for punishing unauthorized practice, but where other remedies are available and efficient, they should first be invoked.¹⁶ Criminal contempt is a summary proceeding and, as such, dangerous. Where a statute makes the unauthorized practice of law a crime, as in the instant case, summary action is merely an alternative method, the results of which might be unjust when compared with the ordinary protection afforded in the processes of the criminal courts.¹⁷

CONFLICT OF LAWS — DOMESTIC RELATIONS — CONFLICTING DECREES IN SISTER STATES

Petitioner divorced respondent in Illinois in 1939, and was awarded alimony in installments for as long as she should remain unmarried. In 1944, in Nevada, petitioner married one Henzel who had obtained a Nevada divorce from a resident of New York. After this Nevada decree had been declared void¹ by a New York court, petitioner obtained a New York decree of annulment of her marriage to Henzel,² and then married a third man. Petitioner then filed suit, asserting diversity jurisdiction, in district court in Illinois, for unpaid installments of alimony from respondent for the period from the Nevada marriage to her third presumably valid marriage in New York. *Held*, on certiorari, that the New York decree of annulment was entitled to full faith and credit and the Nevada decree of divorce was not, but that the effect of the annulment on respondent's obligation to pay alimony should be determined in the district court under Illinois law. *Sutton v. Leib*, 72 Sup. Ct. 398 (1952).

The problem suggested in the instant case is one whose growth may be traced from the second *Williams*⁴ case, which affirmed that it was not a denial of full faith and credit⁵ for a sister state to make separate inquiry

14. 255 R.I. 122, 179 Atl. 139 (1935).

15. *Id.* at 129, 179 Atl. at 142.

16. *Rhode Island Bar Ass'n v. Automobile Service Ass'n*, 55 R.I. 122, 179 Atl. 139 (1935); *In re Bugasch*, 12 N.J. Misc. 788, 175 Atl. 110 (1934).

17. *People ex rel. Chicago Bar Ass'n v. Goodman*, 366 Ill. 346, 366, 8 N.E.2d 941, 951, *cert. denied*, 302 U.S. 728, *rehearing denied*, 302 U.S. 777 (1937) (dissent); *In re Baker*, 85 A.2d 505, 515 (N.J. 1951) (dissent).

1. By means of a separate maintenance proceeding instituted by Henzel's first wife.

2. This judgment declared that petitioner's marriage to Henzel was "null and void" for the reason that he "had another wife living at the time of said marriage."

3. 188 F.2d 766 (5th Cir. 1951).

4. *Williams v. North Carolina*, 325 U.S. 226 (1945).

5. U. S. CONST. Art. IV, § 1.