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# Nature of Right Conferred by Occupational License

The City contended that A had retained only the naked legal title and was therefore not entitled to homestead exemption, the other parties being obviously not qualified. It would appear that the court reasoned as the City did; that legal title alone would not suffice.

If the court did so decide, then it would appear that the court overlooked the obvious fact that even though A had held both the legal and the equitable title on January 1, on that date A was a mere tenant, if not in fact, at least as far as his intention was concerned. That intention was clearly in conflict with the Constitutional provisions.[7] Assuming that A held both titles, can it be said that he had the requisite "good faith"?

Another question arising from the Simpson case is whether or not the delivery of a deed to the grantee authorizes the completion of blank spaces as in the Law Merchant and Negotiable Instrument Law. According to some authorities, when the grantor receives the consideration and delivers the deed fully executed in other respects, unless a contrary intention appears, authority to a grantee to fill a blank for his name is implied.[8]

## NATURE OF RIGHT CONFERRED BY OCCUPATIONAL LICENSE*

The recent reversal upon rehearing in the Paoli Case demonstrates confusion as to the nature of licenses, prevalent in Florida as elsewhere. In this case an administrative board arbitrarily revoked the license of a horse trainer.[1] Originally, the court took the position that a mere

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7 As will be seen, Note 5, *supra,* the Constitution declares that the claimant to exemption must "in good faith" make the premises on which he resides "his or her permanent home". Would that not exclude A in the principal case?

8 In *Fisher v. Paup,* 191 Iowa 296, 180 N. W. 167 (1920), the court determined that where the seller of property executed a deed with the grantee's name blank, and the buyer exchanged the property with another by delivering to him the blank deed, authority in such other to insert his name as grantee in the blank deed was to be implied, and when that was done, the conveyance, including covenants, related back to the date of its execution by the grantor.

Other courts have spoken of this implied authority: *Handelman v. Mandel,* 70 Colo. 136, 197 P. 1021 (1921); *Gilbert v. Plowman,* 218 Iowa 1345, 256 N. W. 746 (1934); *Holliday v. Clark,* Mo., 110 S. W. 2d 1110, 1111 (1937).

*State ex rel. Paoli v. Baldwin et al. Fla. ···, 31 So. 2d 627 (1947).

1 Paoli, a trainer, had been licensed under rules promulgated by the State Racing Commission requiring that, "The trainer shall be the absolute insurer of, and responsible for, the conditions of the horse entered in the race, regardless of the acts of third parties, . . ." Benzedrine was found to have been administered to Jane Acker, a horse trained by Paoli. The substance of the evidence was that at the time of the race a groomsman, only recently employed, was in charge of

privilege was conferred by the trainer's license, and there was no interest sufficient to raise the question of due process. Upon rehearing, the court changed its position saying, "The possession of the license by relator, (Paoli) to pursue the profession of a race horse trainer in Florida was a valuable property right in the relator."

A line of Florida decisions holds that occupational licenses confer mere privileges.[2] Nevertheless, a licensee who has acted in reliance upon his license has been protected,[3] and the courts have sometimes recognized the interest conferred as in the nature of a private or property right.[4]

It may be that the origin of this "privilege-property" concept of licenses has its roots in the sources of power under which licenses are issued. The power to require and issue licenses is derived from: (1) the police power[5] and (2) the power to tax.[6]

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Jane Acker, that the horse came in first, and that the groomsman had placed some bets and went to collect immediately after the race. Paoli was suspended three days later and the groosman left his employment immediately thereafter. No participation, negligence, or carelessness was charged against Paoli but his suspension was based upon the rule requiring him to be an absolute insurer.

2 In State ex rel Biscayne Kennel Club, Inc. v. Stein et al. 130 Fla. 517, 178 So. 133 (1938), the court cites from Corpus Juris, " 'A license is a mere permit or privilege to do what otherwise would be unlawful, and it is not a contract . . ., neither is it property, or a property right, nor does it create a vested right', 37CJ 168. 37 CJ 246."
The issuance of an occupational license does not create any contract right. Bishoff v. State ex rel Tampa Waterworks Co., 43 Fla. 67, 30 So. 808, (1901); Harry E. Prettyman, Inc. v. Florida Real Estate Commission ex rel Branhorn, 92 Fla. 515, 109 So. 442. (1926).

3 In State ex rel Biscayne Kennel Club, Inc. v. Stein et al. 130 Fla. 517, 178 So. 133 (1938), after referring to interests acquired by licensee as mere privileges the court qualifies this by saying. "However, the right to profitably enjoy benefits of a license after it is already granted without undue prejudice to the licensee or undue discrimination in favor of other licensees similarly situated is implied."

4 In protecting the interest of a licensee against an unreasonable municipal ordinance the court said that an ordinance interfering with the personal rights of a citizen to conduct a skating rink as a lawful means of enjoying his constitutional right to acquire and possess money and property by legal means, was void on the grounds of unreasonableness. Inglis v. Ryner, 113 Fla. 732, 152 So. 4 (1934).

5 An act requiring citrus dealers to be licensed was held constitutional as an exercise of the police power. Mayo v. Polk Co., 124 Fla. 534, 169 So. 41 (1936).

6 An ordinance requiring license for wholesale bakery is not an exercise of the police power, but purely a revenue measure. Hamilton v. Collins, 114 Fla. 276, 154 So. 201, (1934); "an excise tax is a tax laid upon . . . and upon licenses to pursue certain occupations." City of Pensacola v. Lawrence, 126 Fla. 830, 171 So. 793, (1937); an act licens-

Where a state in the exercise of its police power has granted the permission to some individual or group to do some act contrary to a broad general law or policy—as where gambling is illegal, and a license to conduct a lottery is given—a mere privilege should result. With the increasing demand for revenue, the issuance of licenses may become a revenue measure under the tax power. Here there is no grant of special authority to breach general laws, but rather a law making the doing of an act or acts, heretofore lawful, illegal without a license. The only law which makes the pursuit of such an occupation illegal is the revenue law that requires the issuance of a license. Since there is more than a mere privilege here, the interest of the licensee should be a constitutionally protected interest: an interest in the nature of a property right. No distinction as to the power under which a given license was issued is made in many cases and licenses granted essentially under the tax power were often cloaked as a police measure. With this intermingling of licenses as to their source and nature, the courts, sensing the difference in the nature of the rights conferred, but uncertain as to the reason, have tended to lump occupations bearing somewhat less social prestige, such as hawkers, peddlers, pool rooms, race tracks, liquor dealers, etc., into one group and say that these licenses confer mere privileges,[7] whereas other occupational licenses are often protected as a property interest.

Under this "privilege-property" concept it results that some licenses confer a mere privilege revocable at will, while other licenses confer a protected property interest. The danger in this concept is that the line between the two is uncertain and that one acting under a license may be financially ruined by capricious, arbitrary, morally prudish, or corrupt administrative agencies.

The Federal Government with respect to its varied administrative agencies has abandoned the dual "privilege-property" concept of occupational licenses and has guaranteed the licensee against the danger of arbitrary suspension or revocation by the new Administrative Procedure Act.[8]

Administrative law is in a period of rapid growth. An increasing number of occupational licenses are issued and supervised by the various municipal and administrative boards of Florida. Consideration should be given by the Legislature to the advisability of state legislation following the pattern laid down by the new Administrative Procedure Act, and guaranteeing to the citizen the following rights:

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ing coin operated machines was a revenue measure, Kavanaugh v. Saxon Amusement Co., 130 Fla. 5, 176 So. 855, (1937).

7 See supra note 2. In the original hearing of the Paoli Case, when considering Paoli's contention that the regulation was capriciously arbitrary, the court said: "When the regulation is considered in reference to the subject matter—horse races and wagering—it is our conclusion that the complaint is without merit." See supra note 1; see State ex rel James v. Gerrell, 137 Fla 324, 188 So. 812 (1938).

8 Administrative Procedure Act of June 11, 1946; 60 Stat. 237, 5 U. S. C. §1001.

(1) that prompt action will be taken on all applications for occupational licenses;
(2) that only in cases where there is a real and immediate danger to public health or welfare, will any administrative agency revoke or suspend any license except after hearing;
(3) to insure a right of judicial review in proper cases;
(4) to require that a different section of the administrative agency rule on the evidence, than that section which secures information against the licensee in any revocation or suspension proceeding;
(5) to provide that no license issued to businesses of a continuing nature shall expire until determination has been made of any timely application for renewal;
(6) to require the various administrative commissions to establish uniform procedures and make and publish their rules.

## WILLS—DIVORCE AS AFFECTING A PREVIOUSLY EXECUTED WILL

The average person gaining freedom from matrimonial difficulties gives too little thought to certain lingering effects of the dissolved marital relationship. Considerable difficulty has arisen in the Courts as to whether or not divorce revokes the provisions of a pre-existing will as concerns the ex spouse.

This question to date has not been authoritatively settled in Florida. The Florida Supreme Court in a recent case[1] had an opportunity to pass upon that point but declined affirmatively to do so, ruling instead upon another ground. However, it is believed that by necessary implication Florida now holds that divorce standing alone will not revoke a pre-existing will.

On appeal by the divorced wife for construction of the will, the Court determined that it was the intent of the testator, as gleaned from the four corners of the instrument, that the bequest to the wife was conditioned upon her surviving him as wife. The portion of the will which strongly influenced the Court in determining the testator's intention was; "Unto my beloved wife, Pauline Iles, in case she survives me, and not otherwise, I give, devise, and bequeath, etc." In addition the Court emphasized the fact that should the first bequest lapse, the gift would go to his lawful issue, and if this too failed, then to the testator's brother. From the above the Court concluded it was clearly the testator's intention to provide for only those who had a legal or moral claim to his estate, and since at his death the testator had neither wife nor bodily issue, the estate therefore passed to the testator's brother.

In this interpretation of the testator's intent, the Court ruled contrary to the weight of authority.[2] The majority rule is that when the words,

1 Iles v. Iles, .....Fla....., 29 So. (2d) 21 (1946).

2 Lavender v. Roseheim, 110 Md. 150, 72 Atl. 669 (1909); In re Jones, 211 Pa. St. 364, 60 Atl. 915 (1905); Bell v. Smelly, 45 N. J. Eq. 478, 18 Atl. 70 (1889); 27 Ohio St. 299, 22 Am. Rep. 387 (1875); Murphy v. Markie, 98 N. J. Eq. 153, 130 Atl. 840 (1920). In re Simpson's Will, 280 N. Y. S. 705, 155 Misc. 866 (1935).