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Contributors to the Noember Issue/Hazards of the Legal Profession

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EDITORIAL

HAZARDS OF THE LEGAL PROFESSION

The field which originally belonged solely to the attorney has been narrowed down, especially of late years, by certain causes and conditions which make it increasingly difficult for lawyers to earn reasonable livings.

A few of these instances will suffice to give probative force to the point just made. As witness, we see nearly every state in the Union passing workmen's compensation laws which serve to take away from the attorney a large proportion of negligence cases which formerly a

lawyer was required to handle and which resulted in the earning of legitimate fees; care has been taken in the passage of compensation laws to limit the fees of attorneys so that it is most difficult at this time to procure attorneys to represent workmen in compensation cases because of the meagre emolument allowed; the net result of this limiting law has been to create a condition where the insurance company which is the carrier of the compensation insurance is usually represented by able counsel, while the workman presents his case without the benefit of legal advice causing severe handicaps to unlettered workmen with no knowledge of the law or rules of evidence.

This works a hardship not only on the attorney who may not earn a proper fee in matters of this kind, but also upon the workman who cannot secure able or proper counsel. Formerly, a large part of the lawyer's business was real estate work and conveyancing from which a lawyer was enabled to derive a substantial professional income. Today, in every large city, we have witnessed the growth of title companies, as invading the lawyer's field in matters of title searching and title abstracts who have such influence or connections as to be enabled by the weight of their wealth to have the legislatures of various States pass laws permitting them to draw deeds, mortgages, subordination agreements, leases, estoppel agreements, extension agreements and all necessary legal papers sufficient to convey titles and interests in real property from one person to another; although the statutes of several states expressly prohibit persons who have not been regularly licensed and admitted to practice from making it a business to practice as attorneys-at-law or from holding themselves out to the public as being entitled to practice law, these conflicting statutes giving special privileges to title companies remain upon the statute books to the increasing detriment of the practice of ethical members of the bar.

The drawing of wills has been, from time immemorial, solely the function of the lawyer, and yet we find trust companies and banks all over the land advertising in the newspapers (a medium forbidden to ethical practitioners) for the purpose of asking the general public to appoint the trust company or bank in the capacity of executor or trustee under the wills of real and personal property. Some trust companies in the past have gone so far as to advertise that they will cause the will of any person appointing the bank or trust company soliciting the business as trustee or executor, to be drawn free of charge; when the bar in various states instituted protests and prosecutions against the banks for practicing law, the advertising, in most instances, was discontinued insofar as the offer to draw wills free of charge was concerned and there was substituted an invitation to the general public to discuss the matter of drawing a will with a trust officer or other official of the bank. Any person answering the advertisement was then

informed that the bank's attorney would draw his will without charge. In a recent case in Illinois,[1] a state of facts was discovered where the bank's attorney drew all kinds of legal complaints, wills and other legal instruments charging clients for his services and in every instance where the bank referred the client to the lawyer, turning back the fee to the bank itself.

We further have the spectacle, in this day and age of specialization, of insurance companies, through their counsel, practically exercising a monopoly of the defense of negligence actions. In some states it is compulsory to carry negligence insurance for all taxicabs and omnibuses and in some instances by private owners of motor vehicles. These companies, who write the bulk of this kind of insurance therefore maintain a large staff who habitually defend, as a business and not as a profession; that is to say, the insurance companies pay the lawyers a specified salary regardless of the amount of work done, and with reference to the fee, there is no relation between attorney and client. This situation could be readily corrected without any revision of the insurance laws, by giving the assured the right to select his own counsel and compelling the insurance company to pay a legitimate fee to such lawyer as their assured selects.

In large states we find a situation where certain departments of the Municipal government, who have the right or power under certain ordinances or laws to grant licenses or to waive various restrictions, such as zoning laws, allowing other than members of the bar to appear before such Municipal departments for the purpose of pleading the cause of those interested in securing licenses of various kinds or of procuring the waiving of restrictions. Hearings are held which are equivalent to the trial of cases for the applicant. This abuse has been notably exposed by Judge Seabury in his recent investigation of the Board of Standards and Appeals in the City of New York which governs the zoning restrictions, when proof was offered that a horse doctor had practiced before the Board in presenting cases and applications with such success that he earned upwards of two million dollars in fees within a short space of time.

All over the United States, and especially in localities where a dense foreign population is gathered, notaries public make a practice of soliciting those dwelling in the neighborhood for legal business such as the drawing of wills, bills of sale, chattel mortgages and deeds. Due to the fact that a notary public, in many foreign countries, is an officer of the court and accredited member, foreigners have difficulty in distinguishing that the function of our notaries public has been limited to the taking of oaths, acknowledgments, protests of notes and other

[1] People v. People's Stock Yards State Bank, 176 N. E. 901 (1931).

minor duties of ministerial character and they firmly believe that when they go to a notary public, that he is qualified by education and experience to perform the services of a lawyer.

There are innumerable instances where clerks of various courts in our country, when approached by persons uncertain how to proceed in matters of law and having a matter in the court where the clerk is stationed, will give legal advice and have been known to draw papers for a consideration for the persons approaching them although, as a general rule, the clerks of the said courts are not lawyers.

In many cities where summary proceedings for the possession of real property may be instituted under the law, we find City Marshals, Bailiffs, Sheriffs, Deputy Sheriffs and Under Sheriffs, charged with the duty of serving various papers incidental to such proceedings, taking it upon themselves to draw the necessary legal documents which precede the application for possession of such real property. This drawing of legal documents is done by such City officers, for compensation paid by the landlord of the property involved in the summary proceeding.

Innumerable instances may be cited of the encroachment by various unauthorized persons and agencies upon the field of the law, but it is believed that these few instances should be sufficient to make out a case for the licensed practicing attorney. "An attorney and counsellor at law is a public officer appointed by the court to perform duties of a public character and is vested with certain power and authority incidental to the office." [2]

Attorneys and counsellors at law are subject at all times to the power and control of the courts, may be disciplined for any infraction of the law, the rules of ethics, or for improper or unprofessional conduct. No such check exists under the law for those who seek to invade the domain of the lawyer and no compelling threat of disbarment hovers in the background for those who fail to live up to the standards of the noble profession.

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[2] In Re Spencer, 122 N. Y. Supp. 190, 137 App. Div. 330. (1910).