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Comment on Recent Decisions

ATTORNEY AND CLIENT—CONTRACT TO DIVIDE FEES WITH LAYMEN.—A recent decision attests the ever increasing emphasis upon the professional ethics of the bar. Two laymen sued in equity for an injunction against their partner, an attorney, to prevent his further handling the assets of their partnership. The court found as a natural inference from the contract and surrounding circumstances that the plaintiffs had collected and submitted veterans' war claims to the defendant in consideration of a share in the latter's fees. *Held*—such an agreement between an attorney and laymen is champertous and utterly void as against public policy. *Waychoff et al. v. Waychoff* (Pa. Super. Ct. 1932) 163 Atl. 670.

Similar treatment of "ambulance chasing" contracts prevails in federal and state courts. *Meguire v. Corwine* (1880) 101 U. S. 108; *Alpers v. Hunt* (1890) 86 Cal. 78, 24 Pac. 846; *Langdon v. Conlin* (1903) 67 Neb. 243, 93 N. W. 389; *Holland v. Sheehan* (1909) 108 Minn. 362, 122 N. W. 1; *Chreste v. Louisville R. Co.* (1917) 173 Ky. 486, 191 S. W. 265. In some jurisdictions the rule applies to such a contract between two lawyers. *Ellis v. Frawley* (1917) 165 Wis. 301, 161 N. W. 364. Disbarment may result. *In Re Clark* (1906) 184 N. Y. 222, 77 N. E. 1; *Chreste v. Commonwealth* (1916) 171 Ky. 77, 186 S. W. 919. See, for the "ethical" attitude the Canons of the American Bar Association adopted by the American Law Institute. 33 Reports Amer. Bar Assoc. (1908) p. 582; Restatement of Contracts, sec. 546.

This rule, however, in the past has not been uniformly applied. The courts at times have in positive terms rejected it. *Voche v. Peters* (1895) 58 Ill. App. 338; *Kelerher & Little v. Henderson* (1907) 203 Mo. 498, 101 S. W. 1083. An interesting New York case, which has never been overruled, held such a contract voidable only. A broker contracted with an attorney to collect customs claims and submit them to the latter for litigation; he was allowed recovery on the contract, the court ruling that champerty as at common law did not exist in the state; hence the matter was controlled only by a statute forbidding an attorney's entering into such a contract, and as against the attorney the contract was valid, although unenforcible against the layman. *Irwin v. Curie* (1902) 171 N. Y. 409, 64 N. E. 161. A similar result was reached in *Dunne v. Herrick* (1890) 37 Ill. App. 180. In view of the principal case and the increasing demand for a more stringently enforced code of legal ethics, such decisions as these probably will become rarer in the future. The work is being aided by statutes. See for example G. L. Mass (1932) ch. 221 sec. 43; C. S. N. Y. (Cahill 1930) ch. 41 sec. 274; Wis. Laws (1931) sec. 256.45; G. L. Cal. (1931) Act. 5401.

The laxity of the Missouri rule in the *Kelerher* case above cited was corrected by the Practice Act of 1915: "It shall be unlawful for any licensed attorney in the State of Missouri to divide any fees or compensation received by him in the 'practice of law' or in 'doing law business' with any person not

a licensed attorney or any firm not wholly composed of licensed attorneys . . ." R. S. Mo. (1929) sec. 11694. See also secs. 11692 and 11693. For a case under the statute see *Carey v. Gossom* (1920) 204 Mo. App. 695, 218 S. W. 917. Contracts to solicit business are apparently unaffected by the statute where both parties are lawyers.

Assuming that the "chaser" contract is declared void for champerty the interesting question arises as to whether the lawyer can recover under a quantum meruit for the reasonable value of his services. The precise question has not been much litigated; but where it has the courts have answered in the negative. *Gammans v. Johnson* (1899) 76 Minn. 76, 78 N. W. 1035; *Gammans v. Gulbrauson* (1899) 78 Minn. 21, 80 N. W. 779; *Ellis v. Frawley*, supra. C. B. P. '35.

BANKS AND BANKING—POWER OF BANK TO GIVE SECURITY FOR DEPOSITS.— To secure the waiver of a requirement that the repayment of a deposit by the receiver of a railroad company with the defendant national bank should be secured by a surety bond, the bank agreed to post as collateral security for the deposit Liberty Bonds with a face value equal to the amount of the deposit. The motive for this arrangement was a desire to save the expense of premiums charged by the surety company for the bond. Subsequently the bank failed. The receiver of the railroad company attempted to force the liquidator of the bank to turn over the Liberty Bonds. *Held*: The national bank had no power under the national banking laws to pledge its assets as collateral security for private deposits. Since the contract was ultra vires the bank, the liquidator of the bank could hold the bonds free of any claim by the receiver of the railroad. *Texas & Pacific Ry. Co. v. Pottorff* (C. C. A. 5, 1933) 63 F. (2d) 1.

There are relatively few cases which have passed upon the power of national banks to pledge their assets to secure private deposits. Two early cases dealing with state banks assert that this power exists even though not expressly conferred by statute since the power given to receive deposits implies the power to make the agreements considered necessary to secure these deposits. *Ward v. Johnson* (1880) 95 Ill. 215; *Ahl v. Rhoads* (1877) 84 Pa. 319. With reference to national banks the power was denied in *Smith v. Baltimore & Ohio R. R. Co.* (C. C. A. 3, 1932) 56 F. (2d) 799. The discussion in this latter case is very interesting as showing the respect paid by the courts to the decisions of administrative officers even as to questions of law. The majority of the court pointed out that the Comptroller of the Currency had repeatedly advised the national banks that they had no such power. The decision glosses over the fact that the same official had ruled that there was such power as to public deposits. Judge Dickinson dissented in the *Smith* case on the ground that it was a common practice to give such collateral security and that there was no distinction between deposits of political subdivisions of states and private deposits when national banks were concerned. The first reason for this dissent is especially interesting in view of the fact