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ATTORNEY AND CLIENT—THE OFFICE OF ATTORNEY—WHETHER OR NOT ACTIVITIES ENGAGED IN BY PERSONS NOT ADMITTED NOR LICENSED CONSTITUTE THE PRACTICE OF LAW—Although no exact definition of what constitutes the practice of law has ever been spelled out by the Supreme Court of Illinois, or by any other high court for that matter, the two recent decisions in *Peoples* v. *Schafer*[1] and in *Chicago Bar Association* v. *Kellogg*[2] tend to throw more light on the subject. In the first, a licensed real estate broker was charged with contempt on an information before the Supreme Court[3] for having practiced law without a license in that he had customarily engaged in the preparation of deeds, contracts and mortgages in real estate transactions in which he was the procuring agent and also advised a customer, for a fee, on matters concerning the disposition of her estate. The court conceded that the mere act of filling out blanks in prepared forms might not amount to practicing law but that, as legal practice involves more than appearance in court in connection with litigation,[4] a person who elicits information and advises thereon in conjunction with the process of completing such forms could well be guilty of contempt for performing the functions of an attorney at law.

In the second, a licensed practitioner before the United States Patent Office was named as defendant in a suit to enjoin him from engaging in the general practice of law[5] albeit such practice was related to patent matters. It appeared that he had rendered legal opinions relating to the infringement and enforcement of patents and trademarks, had prepared and filed pleadings and other legal documents, had construed contracts, had prepared and served notice of and had asserted an attorney's lien under an appropriate statute relating to attorneys,[6] and in general had engaged in quite diversified business transactions of the type customarily handled by general attorneys. On appeal from a decree granting an injunction, transferred to the Appellate Court because no constitutional

1 404 Ill. 45, 87 N. E. (2d) 773 (1949).

2 338 Ill. App. 618, 88 N. E. (2d) 519 (1949).

3 Original jurisdiction to punish one for practicing law without a license exists in the Supreme Court which has inherent power to regulate the practice of law: People v. Peoples' Stock Yards Bank, 344 Ill. 462, 176 N. E. 901 (1931).

4 People v. Tinkoff, 399 Ill. 282, 77 N. E. (2d) 693 (1948).

5 For the right to seek an injunction rather than to punish for contempt, see Smith v. Illinois Adjustment Finance Co., 326 Ill. App. 654, 63 N. E. (2d) 264 (1945).

6 Ill. Rev. Stat. 1949, Vol. 1, Ch. 13, § 14.

question was involved,[7] that court enlarged the decree on all points, except as to advising and assisting applicants for patents in the presentation and prosecution of their applications before the Patent Office, on the ground the acts enumerated constituted a type of legal practice forbidden to all except duly admitted attorneys at law.

While a precise definition of what constitutes the practice of law may be lacking because of the practical impossibility of making one definition sufficiently broad to encompass the entire field, the details of that definition begin to take shape through the medium of a series of cases in which isolated acts have been held to amount to the practice of law. To those cases already decided,[8] must now be added the two here noted.

MASTER AND SERVANT—SERVICES AND COMPENSATION—WHETHER OR NOT EMPLOYEE IS ENTITLED TO UNEMPLOYMENT COMPENSATION BENEFITS FOR PERIOD BETWEEN TERMINATION OF STRIKE AND TIME WHEN RECALLED TO WORK—By a per curiam opinion in the case of *American Steel Foundries* v. *Gordon*,[1] the Illinois Supreme Court has held that employees are not eligible to draw unemployment compensation benefits for the period, following the termination of a strike, during which they are prevented from returning to work by the necessity of bringing the plant into operating condition and the making of repairs occasioned by the strike. The facts were such in the case in question that it was physically impossible to put the plant into normal operating condition for at least fifteen days after the strike had been settled. Claims for unemployment compensation benefits made by the employees who were unable to work during this period had been allowed by the Director of Labor and had been affirmed by the circuit court, but the holding therein was reversed by the Supreme Court on further review.[2] The court was called upon to interpret that section of the statute which provides that workmen shall be ineligible for benefits for any week with respect to which it is found that their "unemployment is due to a stoppage of work which exists because of a labor dispute."[3] It reasoned that, while the act required that the stoppage of

[7] See Chicago Bar Association v. Kellog, 401 Ill. 375, 82 N. E. (2d) 639 (1948).

[8] People v. Tinkoff, 399 Ill. 282, 77 N. E. (2d) 693 (1948); People v. Goodman, 366 Ill. 346, 8 N. E. (2d) 941 (1937); People v. Securities Discount Corp., 361 Ill. 551, 198 N. E. 681 (1935); People v. Real Estate Tax Payers Ass'n, 354 Ill. 102, 187 N. E. 823 (1933); People v. Peoples' Stock Yards Bank, 344 Ill. 462, 176 N. E. 901 (1931); People v. Munson, 319 Ill. 596, 150 N. E. 280 (1925); People v. Hubbard, 313 Ill. 346, 145 N. E. 93 (1924); People v. Schreiber, 250 Ill. 345, 95 N. E. 189 (1911); People v. Barasch, 338 Ill. App. 169, 86 N. E. (2d) 868 (1949); Smith v. Illinois Adjustment Finance Co., 326 Ill. App. 654, 63 N. E. (2d) 264 (1945).

[1] 404 Ill. 174, 88 N. E. (2d) 465 (1949).

[2] Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 230, authorizes direct appeal to the Supreme Court.

[3] Ibid., Ch. 48, § 223(d).

work exist because of a labor dispute, it did not require that the labor dispute should still exist or be in active progress and it was sufficient that the unemployment in question stemmed therefrom. Neither the stoppage of work nor the resulting ineligibility is, therefore, limited in its duration by the period of duration of the labor dispute itself. The court appears to have followed what would seem to be a slender majority rule on the subject, the existence of which has heretofore been noted.[4]

MUNICIPAL CORPORATIONS—GOVERNMENTAL POWERS AND FUNCTIONS IN GENERAL—WHETHER OR NOT A MUNICIPAL CORPORATION MAY EXERCISE EXTRA-TERRITORIAL JURISDICTION WHEN REGULATING THE SALE AND DISTRIBUTION OF MILK WITHIN THE MUNICIPALITY—Two decisions by the Illinois Supreme Court, in *Dean Milk Company* v. *City of Waukegan*[1] and in *Dean Milk Company* v. *City of Aurora,*[2] form the most recent enunciation in this state of a limitation which has been recognized to exist and which binds municipal corporations in the exercise of their delegated powers. In each case, the company filed a complaint seeking a declaration of invalidity of such portions of the milk ordinances of the two cities concerned as purported to regulate the production and pasteurization of milk outside the corporate boundaries. In the first case, the milk ordinance provided that no milk or milk product could be sold within the city unless produced and pasteurized in Lake County, wherein the city was located. In the second, the ordinance operated to exclude from sale or distribution within the city, unless labelled "not graded and not inspected" by the health officer of the municipality, of all milk produced and pasteurized in plant areas not located within a twenty-five mile radius of the city limits. Decisions in both cases favoring the plaintiff were certified to the Supreme Court because of the public interest involved.[3] In the disposition of both cases, the Supreme Court stated that municipal corporations do not possess any extra-territorial jurisdiction beyond that which is expressly or impliedly granted to them by statute.[4]

[4] See Ablondi v. Board of Review, — N. J. —, 73 A. (2d) 262 (1950); Carnegie Ill. Steel Corp. v. The Review Board, 117 Ind. App. 379, 72 N. E. (2d) 662 (1947); Saunders v. Maryland Unemp. Comp. Board, 188 Md. 677, 53 A. (2d) 579 (1947), noted in 26 CHICAGO-KENT LAW REVIEW 180. Contra: Amer. Steel & Wire Co. of N. J. v. Unemp. Comp. Bd. of Review, 161 Pa. Super. 622, 56 A. (2d) 288 (1948).

[1] 403 Ill. 597, 87 N. E. (2d) 751 (1949).

[2] 404 Ill. 331, 88 N. E. (2d) 827 (1949).

[3] Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 199(1).

[4] The one-half mile limit on extra-territorial jurisdiction, conferred by Ill. Rev. Stat. 1949, Vol. 1, Ch. 24, § 8—1, had been held insufficient to support the milk ordinance involved in Higgins v. City of Galesburg, 401 Ill. 87, 81 N. E. (2d) 520 (1948).

While the court expressed the belief that the ordinance provisions might well facilitate and economize the procedure for exercising regulatory power over the sale and distribution of milk, it felt constrained to hold that the ordinance provisions were predicated upon an unlawful assumption of power.

The legal basis for implied limitation upon municipal exercise of extra-territorial jurisdiction may be found in two early cases[5] which cases received amplification in the foundational case of *City of Rockford* v. *Hey*.[6] The doctrine therein became more firmly entrenched by the addition of the decisions in *Dean Milk Company* v. *City of Chicago*[7] and in *Higgins* v. *City of Galesburg*,[8] which added support to the limitation by sporadic decisions construing and applying it to differing instances. The present cases add still more evidence that municipalities possess only a local right of regulation which cannot traverse the fixed boundaries of municipal areas. It is evident, however, that there is need for a more extended jurisdiction if the number of such milk ordinances, as well as the attacks being made thereon, are any indication on the subject. The matter rapidly approaches the point where legislative attention to the question seems desirable.

TAXATION—LEGACY, INHERITANCE, AND TRANSFER TAXES—WHETHER A DEVISEE ADOPTED AFTER REACHING MAJORITY IS ENTITLED TO BENEFIT OF HIGHEST EXEMPTION AND LOWEST RATE OF INHERITANCE TAX—In the case of *McLaughlin* v. *People*,[1] the Illinois Supreme Court was asked to construe a provision of the Illinois Inheritance Tax Act which declares that the class of persons to whom the highest exemption and the lowest tax rate shall apply comprises "any child or children legally adopted."[2] The county court had there entered a final order and judgment assessing the inheritance tax on the basis that the devisee was a stranger, unrelated to the decedent, thus making applicable the lowest possible exemption and the highest possible rate of tax. It appeared that the decedent had, some six months prior to death, legally adopted the devisee, then forty-eight years old, by a valid decree of a Connecticut court. On appeal from that

5 Straus v. Town of Pontiac, 40 Ill. 301 (1866); Kiel v. City of Chicago, 176 Ill. 137, 52 N. E. 29 (1898).

6 366 Ill. 526, 9 N. E. (2d) 317 (1937). See also City of Chicago v. Brent, 356 Ill. 40, 190 N. E. 97 (1934), and City of Des Plaines v. Boeckenhaur, 383 Ill. 475, 50 N. E. (2d) 483 (1943).

7 385 Ill. 565, 53 N. E. (2d) 612 (1944).

8 401 Ill. 87, 81 N. E. (2d) 520 (1948).

1 403 Ill. 493, 87 N. E. (2d) 637 (1949).

2 Ill. Rev. Stat. 1949, Vol. 2, Ch. 120, § 375(5).

decision, the legal question presented was one as to whether or not a person adopted by a valid decree of a state other than Illinois was to be deemed a "child . . . legally adopted" within the purview of the Illinois statute even though such person could not have been validly adopted in this state because he had attained his majority at the time of the adoption.[3] It was held that the action of the state legislature, when it had amended the language of the Inheritance Tax Act by striking from it the words "any child or children adopted as such in conformity with the laws of the State of Illinois" and substituting the present phrase,[4] had evidenced a deliberate design to bring about a change in the law so as to make available to all persons legally adopted under the laws of any jurisdiction, whether such laws were similar to those of Illinois or not, the benefits of the lowest tax rate and the highest exemption. The decision clearly conforms to the mandate of the case of *People* v. *Snyder*,[5] wherein it was stated that, if there is doubt as to the meaning of statutory language used in delineating classes of persons and applicable tax rates, the construction should be in favor of the taxpayer. It should be noted, however, that a mere colorable compliance with the adoption laws of another state will probably prove insufficient to secure the benefits of the tax reduction.

WILLS—CONSTRUCTION—WHETHER OR NOT BEQUEST OF MONEY ON DEPOSIT INCLUDES MONEY CONTAINED IN TESTATOR'S SAFETY DEPOSIT BOX LOCATED IN THE VAULT OF A BANKING INSTITUTION—The facts in the case of *Lavin* v. *Banks*[1] disclose that the testator bequeathed to his wife, among other things, all "monies on deposit in my name in any bank or banking institution." Testator had deposit accounts in two banks but also had a safety deposit box, containing a substantial sum in cash, located in a vault operated by a safe deposit company which was a wholly-owned subsidiary of still another banking institution. The widow's claim that such cash in the safety deposit box passed to her by reason of the bequest aforesaid was contested by the testator's heirs at law who filed a suit to construe the will. A trial court decree against the widow was reversed by the Appellate Court for the First District when that court concluded that a

[3] Ibid., Vol. 1, Ch. 4, § 1—1. The present statute makes reference to a petition for leave to adopt a "minor" child but does not specifically forbid the adoption of adults. In Bartholow v. Davies, 276 Ill. 505, 114 N. E. 1017 (1917), the court, construing an earlier statute, held that the legislature intended the words "child" and "children" as used therein, to mean "minor child" and "minor children" respectively.

[4] Laws 1919, p. 757.

[5] 353 Ill. 184, 187 N. E. 158, 88 A. L. R. 1012 (1933).

[1] 338 Ill. App. 612, 88 N. E. (2d) 512 (1949). Leave to appeal has been granted.

liberal construction of the will, made necessary because the legatee was the testator's widow,[2] led to the belief that it was the testator's intention to pass all money to the legatee since the average testator would not discriminate between a banking institution and a wholly-owned subsidiary operating a vault in the basement of the banking premises.[3]

Ordinarily, a testator's reasonable conclusion as to the meaning of the words he has used in his will would not serve to influence a court called on to construe such will. Even if the testator has made a mistake, so long as he knows and approves the contents of his will, such mistake will be immaterial as would also be the case if he mistook the legal effect of the language used or had acted upon mistaken advice of counsel.[4] In the absence of any controlling special statute, the safe deposit business is deemed to be governed by statutes relating to warehousing rather than those relating to banking operations, for the operators thereof are regarded as warehousemen and not as bankers.[5] The typical arrangement between the proprietor of the safety deposit vault and the box renter is that of bailee and bailor.[6] If such is the case, the contents of the box could not be said to be "on deposit" in the ordinary sense of the term, unless the court herein is willing to grant that there is a difference in the relationship which arises between the customer and a non-banking safety deposit vault, on the one hand, and that which exists between the customer and his bank ,or its wholly-owned subsidiary, on the other, when he utilizes vault facilities for the protection of his cash or other valuables. It is doubted that there is any such difference, hence the construction placed on the words used in the will in question does not appear to be warranted.

2 See 69 C. J., Wills, § 1151.

3 As further evidence for that belief, the court pointed out that Ill. Rev. Stat. 1949, Vol. 2, Ch. 114, § 334 et seq., which regulates the keeping and letting of safety deposit vaults, is expressly declared inapplicable to state and national banks, whose vaults are deemed to be an integral part of the business of banking.

4 Elam v. Phariss, 289 Mo. 209, 232 S. W. 693 (1921); Leonard v. Stanton, 93 N. H. 112, 36 A. (2d) 271 (1944); In re Gluckman's Will, 87 N. J. Eq. 638, 101 A. 295 (1917). In McKee v. Collinson, 292 Ill. 458 at 461, 127 N. E. 92 at 93 (1920), the court quoted from the decision in Decker v. Decker, 121 Ill. 341, 12 N. E. 750 (1887), to the effect that, as the statute requires a will to be in writing, courts of chancery have no power to add to or reform a will on grounds of mistake.

5 State v. Kelsey, 53 N. J. L. 590, 22 A. 342 (1891); Guarantee & Trust Co. v. Rector, 76 N. J. L. 87, 75 A. 931 (1910). See also National Safe Deposit Co. v. Stead, 250 Ill. 584, 95 N. E. 973 (1911).

6 Shoeman v. Temple Safety Deposit Vaults, 189 Ill. App. 316 (1914). Such is also the case where the box is in a bank, the latter being a bailee for hire, according to Framheim v. Miller, 241 Ill. App. 328 (1926).

WILLS—PROBATE, ESTABLISHMENT, AND ANNULMENT—WHETHER A PERSONAL REPRESENTATIVE, SUBSEQUENTLY APPOINTED, MAY INSTITUTE A WILL CONTEST PROCEEDING IN PLACE OF THE DECEASED HEIR AFTER THE PERIOD OF LIMITATION FIXED BY STATUTE FOR SUCH ACTIONS HAS PASSED—In *Kessler* v. *Martinson*,[1] the administratrix of an heir at law attempted to contest the will of the testatrix some fourteen months after that will had been admitted to probate. It appeared that the heir had died approximately seven months after probate had been granted but administration on the heir's estate had not been authorized until shortly before the will contest action was filed. The defendant moved to dismiss the complaint because it had not been filed within the nine-month period after probate fixed by statute.[2] That motion having been sustained, the plaintiff appealed contending that the limitation period of said statute had to be construed with Section 20 of the Limitations Act[3] which allows the legal representative an additional year in which to bring an action belonging to a person who dies before the expiration of the time within which he might have brought suit. The Appellate Court, however, affirmed the order of dismissal.

As the power of a court of equity to set aside a will is purely statutory, being unknown to the common law, it has been said that such power can be exercised only in the manner and within the limitations prescribed by the statute which creates the right.[4] There being no vested right to bring a will contest,[5] the time limit set by the statute becomes an element of jurisdiction,[6] which cannot be waived[7] for it forms an inherent part of the substantive right and is not merely a period of limitation.[8] Such being the case, the statute cannot be enlarged by a saving clause in a general limitation statute. In the somewhat analogous case of *Masin* v. *Bassford*,[9] the Illinois Supreme Court had held that a conservator of an incompetent heir was barred from maintaining a will contest proceeding on behalf of the incompetent after the expiration of the nine-month

1 339 Ill. App. 207, 89 N. E. (2d) 735 (1949).

2 Ill. Rev. Stat. 1949, Vol. 1, Ch. 3, § 242.

3 Ibid., Vol. 2, Ch. 83, § 20. The additional one-year period is measured from the date of death and not from the date of the appointment of the legal representative.

4 McQueen v. Connor, 385 Ill. 455, 53 N. E. (2d) 435 (1944).

5 Sharp v. Sharp, 213 Ill. 332, 72 N. E. 1058 (1905).

6 Clowry v. Nolan, 221 Ill. 458, 77 N. E. 906 (1906); Storrs v. St. Luke's Hospital, 180 Ill. 368, 54 N. E. 185 (1899); Harvey v. Wilson, 198 Ill. App. 477 (1916).

7 Waters v. Waters, 225 Ill. 559, 80 N. E. 337 (1907).

8 For a discussion of statutes which create rights not existing at common law in which time has been made an inherent element to the exercise of the right, see Smith v. Toman, 368 Ill. 414, 14 N. E. (2d) 478, 118 A. L. R. 924 (1938).

9 381 Ill. 569, 46 N. E. (2d) 366 (1943).

period.[10] The present case goes one step farther in this strict construction for the administratrix in the instant case had no power to act until some months after the right of contest had been lost whereas the conservator in the case mentioned had had ample time in which to sue. Despite this, it seems safe to conclude that will contests constitute one area in which no delay will be tolerated.[11]

WORKMEN'S COMPENSATION—PAYMENT OF COMPENSATION AND COMPLIANCE WITH AWARD—WHETHER OR NOT VOLUNTARY PAYMENTS MADE BY EMPLOYER TO EMPLOYEE MAY BE TREATED AS PAYMENT OF COMPENSATION DUE EMPLOYEE UNDER WORKMEN'S COMPENSATION ACT—In the case of *Olney Seed Company, Inc.* v. *Industrial Commission*,[1] the Illinois Supreme Court had to decide whether voluntary payments made by an employer to an employee, under a general policy of paying all help for time lost due to illness or accident, could be considered as compensation payments so as to allow the employer to deduct the amount thereof from a subsequent award of workmen's compensation. The employee had strained himself while lifting some bulky machinery, had been referred to the company doctor, and had been given treatment for a hernia over a period of weeks. During this time, the employee was absent from work but was paid his full weekly salary. Upon his return to work, the employee was obliged to perform lighter duties but continued to draw the same salary. He subsequently filed an application for adjustment of his claim, maintaining that the payment of wages during his absence was a voluntary and a gratuitous act on the part of the employer, performed without reference to any liability arising under the workmen's compensation statute. The employer contended that, as the wages were paid with knowledge of the accident and without denial of liability, they constituted payment on account of the compensation. An award of compensation made by the arbitrator and sustained by the commission was confirmed by the circuit court.

On proceedings in error, the Supreme Court, relying on *Marshall Field & Co.* v. *Industrial Commission*,[2] ruled that where payments are

[10] Prior to the present statute, incompetents and infants had until one year after the removal of their respective disabilities in which to contest a will: Ill. Rev. Stat. 1935, Ch. 148, § 7. See also James, Ill. Probate Act. Anno., § 90, p. 93 et seq.

[11] Horner, Probate Practice and Estates, § 90, p. 109 et seq.

[1] 403 Ill. 587, 88 N. E. (2d) 24 (1949).

[2] 305 Ill. 134, 137 N. E. 121 (1922). The claim for compensation there involved was filed within six months after the last payment of wages but beyond the ordinary period allowed for the filing of claims. Inasmuch as the wage payments had been made with knowledge of the injury and without denial of liability, the court held

made by an employer to his employee with full knowledge of the employee's accidental injury and without denial of liability under the act, such wage payments are to be considered as payments upon any compensation which may subsequently be awarded. While the Marshall Field case had merely decided that voluntary wage payments made by the employer could serve to toll the limitation period prescribed by Section 24 of the act,[3] the court in the instant case stated that the act of the employer in paying wages should be uniformly construed for all purposes.[4] As a consequence, the order for the award was reversed. This extension of the doctrine of the Marshall Field case, which had served to aid the employee, now operates to accord equal treatment to the employer. If, by making payments, he is to be held to have waived the limitation period, he should, by the same token, receive credit for the payments so made.

that the claim was filed in apt time. It was said, in United Air Lines, Inc. v. Industrial Commission, 364 Ill. 346 at 349, 4 N. E. (2d) 487 at 488 (1936), by way of further explanation, that the "rule is based upon the doctrine that when the employer has knowledge of the injury and does not deny liability, the employee has a right to regard the payments as having been made under the act and is not bound to make demand for further compensation as long as the payments are continued." See also Tyler v. Industrial Commission, 364 Ill. 381, 4 N. E. (2d) 637 (1936).

[3] Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, § 161.

[4] The voluntary character of the payment was evidenced by the testimony of the employer's manager who, when asked why the wages had been paid, answered: "We have a policy down there . . . that we pay everybody, no matter if they are sick they get straight time. If they are hurt they get straight time . . . and we take what the insurance company pays them. They don't lose a cent." See 403 Ill. 587 at 592, 88 N. E. (2d) 24 at 26.