

1990

Lynda C. Baldwin and Paul H. Richins v. Willard D. Wood, Tonya Glazier Wood, Max D. Burton Sr., Emily A. Burton, Max D. Burton Jr., N.D. "Pete" Hayward, and Keith L. Buckner : Petition for Rehearing

Utah Supreme Court

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Paul H. Richins; Pro Se.

David H. Schwobe; Perkins, Schwobe, and McLachlan; Attorney for Appellants.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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LYNDA C. BALDWIN,

Plaintiff/Appellee,

PAUL H. RICHINS,

Substitute Appellee,

vs.

WILLARD D. WOOD; TONYA GLAZIER
WOOD; MAX D. BURTON, SR.; EMILY
A. BURTON; MAX D. BURTON, JR.;
N.D. "PETE HAYWARD, Sheriff
of Salt Lake County, Utah; and
KEITH L. BUCKNER, Deputy Sheriff
of Salt Lake County, Utah,

Defendants/Appellants,

Case No. 900339

Priority No. 16

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SUBSTITUTE APPELLEE'S PETITION FOR REHEARING

Petition for Reherring from the Corrected Decision of the
Utah Supreme Court, dated April 7, 1993

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UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

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LYNDA C. BALDWIN,

Plaintiff/Appellee,

PAUL H. RICHINS,

Substitute Appellee,

vs.

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WOOD; MAX D. BURTON, SR.; EMILY
A. BURTON; MAX D. BURTON, JR.;
N.D. "PETE HAYWARD, Sheriff
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Defendants/Appellants,

PETITION FOR REHEARING

Case No. 900339

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Substitute Appellee, Paul H. Richins ("Richins"), petitions this Court for a rehearing concerning the corrected decision filed on in this case on April 7, 1993. The specific issue sought for review is the statement contained under the dictum entitled "Unauthorized Practice Of Law", which states:

"While Richins is free to take assignment of the judgment, it would appear that he is statutorily precluded from appearing on his own behalf to represent his interest in the matter." (Emphasis added.)

The Court's original decision in this appeal, dated February 19, 1993, also contains a dictum entitled "Unauthorized Practice Of Law". That dictum also addresses the involvement of Richins in this appeal as an assignee of a money judgment and pro se litigant representing his own interests. On April 7, 1993, the Court, however, filed a corrected opinion which changed certain wording found in the original dictum to that described above. Pursuant to Rule 35, Utah Rules of

Appellant Procedure, Richins has 14 days after entry of the corrected decision to file this Petition For Rehearing.

Richins requests that the wording of the dictum be deleted or at minimum changed so as to eliminate any inuedo, finding or conclusion in absence of evidence that Richins was "statutorily precluded from appearing on his own behalf to represent his interest in the matter" pursuant to UCA 78-51-25. Richins has a constitutional right under Article I, Sec. 11, of the Utah Constitution to appear in this appeal on "his own behalf" to represent "his interest" in the subject judgment, and this guarantee cannot be abrogated by UCA 78-51-25. Richins has appeared pro se in this matter on his own behalf, and never at any time has he performed legal services or appeared on behalf of the original appellee, Lynda Baldwin ("Baldwin"). Richins only argued the position of Baldwin to the extent that an affirmation of the judgment she retained was necessary for an affirmation of the judgment for attorney's fees she sold to Richins. The wording of the corrected dictum clearly states "it would appear" otherwise. Moreover, the statement in either dictum is completely outside the issues and facts of the case and this appeal, and serves no purpose except to "indirectly" charge Richins with violating UCA 78-51-25.

Moreover, the Court changed the wording of the original dictum after receiving a letter from attorney Ronald C. Barker of the Unlawful Practice Of Law Committee of the Utah Bar. This letter was allegedly written by Mr. Barker in response to a complaint filed with the Utah Bar Association by Appellants' attorney, David H. Schwobe. In the complaint, Mr. Schwobe alleged that Richins' purchase of the subject judgment and his pro se appearance to defend it was a violation of UCA 78-51-25. The Court then changed the wording of the

dictum to its present form. This Court should not make such a sweeping conclusion as it did in the dictum in absence of evidence.

Richins hereby certifies that this petition is presented in good faith and not for delay. Richins also requests an answer to this petition for rehearing.

BACKGROUND OF THE CASE

In its 1989 Order and 1989 Partial Summary Judgment ("Property Judgment"), the trial court held that Appellant's ("Burtons") execution upon Baldwin's property was wrongful and void, and that Lynda Baldwin's damages resulting from wrongful execution against her property. In its later 1990 Judgment ("Money Judgment"), the trial court awarded damages to Lynda Baldwin of \$7,872.66, representing her attorney's fees in the matter.

After Burtons appealed the Money Judgment, Richins purchased such judgment from Baldwin, and was substituted as appellee in Baldwin's place with the consent of Burtons and this Court.

STATEMENT OF FACTS

1. In the trial court, two judgments were entered in favor of Baldwin against Burtons, a "Partial Summary Judgment" ("Property Judgment"), dated June 21, 1989, which effectively voided a sheriff's sale of Baldwin's real property and quieted her title, and a money "Judgment" ("Money Judgment"), entered June 4, 1990, which awarded attorney's fees of \$7,872.77 to Baldwin in the matter.

2. On July 3, 1990, Appellants filed a "Notice of Appeal" in the trial court. The Notice stated that only the Money Judgment was being appealed.

3. On July 13, 1990, Baldwin sold to Richins all of her right, title and interest in the Money Judgment, pursuant to an "Assignment

of Judgment" ("Assignment"). The Assignment was an unconditional, absolute sale of the Judgment to Richins, with no duty of Richins to defend it in the appeal.

4. On August 3, 1990, Burtons filed their "Docketing Statement" wherein they claimed that the only judgment sought for review was the Money Judgment. (See No. 3, page 2; and No. 8, page 14.)

5. On June 27, 1991, about one year later, Richins filed a "Motion To Substitute Appellee" in this Court in order to substitute himself in place of Baldwin for the purpose of defending the appeal of the Money Judgment that Baldwin had sold to him. Of significant importance is the fact that the Motion was filed pro se, and was supported the "Affidavit Of Paul Richins" ("Richins Affidavit"), in which he detailed his unconditional and absolute purchase of the Money Judgment from Baldwin. (See No. 5, page 2.)

6. Also on June 27, 1991, Richins filed a "Motion To Dismiss Appeal" with this Court on the ground inter alia that Burtons' Notice of Appeal and Docketing Statement designated only the Money Judgment for appeal.

7. On July 10, 1991, Burtons filed a response to Richins' Motion To Substitute Appellee, wherein they stipulated on page 1 that they did not oppose the substitution:

APPELLANTS DO NOT OPPOSE THE
PROPOSED SUBSTITUTION OF APPELLEE

"Based upon the facts represented within paragraph 5 of the Affidavit of Paul Richins, dated June 27, 1991 ("Richins Affidavit"), and upon the apparent lack of an objection to the proposed substitution by Appellee, Lynda C. Baldwin, Appellants make no objection to the proposed substitution of Appellee in this action."

5. On July 15, 1991, this Court granted Richins' "Motion To Substitute Appellee", notwithstanding the Motion was made pro se.

6. On July 15, 1991, Richins filed an "Amended Motion To Dismiss Appeal", wherein he stated on page 3 that he would be prejudiced if an appeal of the Property Judgment were allowed and he were required to defend the issues thereunder in order to affirm the Money Judgment he had bought:

Substitute Appellee Would Be Prejudiced If An Appeal Of
The Partial Summary Judgment And Order Were Allowed

If an appeal of the [Property Judgment] and Order is allowed to proceed, Substitute Appellee would be prejudiced by:

(a) Having to defend against substantial facts and issues completely outside the limited facts and issues under the [Money Judgment], i.e., prejudiced by having to research the law, file a brief, argue, and otherwise defend against a judgment and order not designated for review in the Notice of Appeal;

* * * * *

(c) Being misled by the contents of the Notice of Appeal and the irregular and contradictory Docketing Statement filed by Appellants, and specifically not knowing what judgment or order and what facts and issues Substitute Appellee is required to argue, brief, or otherwise respond to."

5. Therefore, when he purchased the Money Judgment from Baldwin in July 1990, Richins had no intention whatsoever of representing her interests in the appeal, only his own interests and in collecting the Money Judgment for exclusively for himself. In his mind, the Property Judgment was not even part of the appeal. He only argued the issues under the Property Judgment to the extent necessary to affirm his own Money Judgment.

ARGUMENT I

Richins Never Intended To Represent Baldwin,
And Had No Agreement To Do So

There is nothing in the record to show that Richins ever intended to represent Baldwin in the case or appeal, nor anything to show that Richins had any duty or made any agreement to do so. His

intentions from the beginning were to represent his own interests pro se under the Money Judgment he unconditionally acquired. The Court should not charge otherwise, absent evidence to the contrary, and particularly after the Court permitted Richins to be substituted in place of Baldwin and maintain the appeal pro se.

ARGUMENT II

UCA 78-51-25 Does Not Prohibit Richins From Representing His Own Interests In Defense Of Money Judgment

Article I, Sec. 11, of the Utah Constitution states:

"All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party." (Emphasis added.)

Richins became a "party" to the appeal when the Court granted his motion to substitute himself as appellee in place of Baldwin. He had the right to appear for "himself" if he desired.

Notwithstanding this constitutional right, UCA 78-51-25 somewhat contradicts the constitutional right, by stating in pertinent part:

"No person who is not duly admitted and licensed to practice law within this state ... shall practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer within the state.

* * * * *

"Nothing in this section shall prohibit a person who is unlicensed as an attorney from personally representing his own interests in a cause to which he is a party in his own right and not as assignee." (Emphasis added.)

The second paragraph in the above statute is very ambiguous and leaves all sorts of conclusions to the imagination. The statute is unconstitutional if it is construed as barring an assignee, the real party in interest, from appearing in court to prosecute or defend a cause in "his own right" and "on his own behalf." Nelson v. Smith,

107 Utah 382, 154 P.2d 623 (Utah 1944). However, it is constitutional to the extent that a layman appears in court as an assignee for the purpose of prosecuting or defending a cause on behalf of a third-party who retains a beneficial interest in the cause. A copy of the Nelson case is attached hereto.

The fundamental test under the second paragraph of UCA 78-51-25 is whether or not the assignee of a cause is prosecuting or defending the cause on "his own behalf" or "on behalf of a third-party" who may retain a beneficial interest in the cause. Under the former, he clearly has a constitutional right to appear, but under the latter he does not. See also Nelson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983); Heathman v. Hatch, 372 P.2d 990, 991 (Utah 1962); and Lynch v. MacDonald, 367 P.2d 464, 468 (Utah 1962). In the appeal, Richins was clearly defending the Money Judgment on his own behalf and not for Baldwin who held no interest whatsoever in it, and there is no evidence otherwise.

Moreover, the second paragraph of UCA 78-51-25, if interpreted literally, is not only in direct conflict with the above constitutional right but in direct conflict with Rule 17(a), Utah Rules of Civil Procedure, which states:

"(a) **Real Party In Interest.** Every action shall be prosecuted in the name of the real party in interest. ... [S]ubstitution shall have the same effect as if the action had been commenced in the name of the real party in interest."


An assignee is the real party in interest and entitled to maintain the action. Lynch v. MacDonald, 12 Utah 2d 427, 367 P.2d 464, 468 (Utah 1962). If he is the real party in interest and entitled to maintain the action, Article I, Sec. 11, of the Utah Constitution entitles him to prosecute it or defend it "himself".

ARGUMENT III

The Court Permitted Richins To Defend The Appeal Pro Se

Of significant importance is the fact that Richins entered an appearance in this appeal pro se when he filed the "Motion To Substitute" requesting this Court's permission to substitute himself as appellee. Included with the Motion To Substitute Appellee was the Richins Affidavit which spelled out in detail that Richins had unconditionally purchased the Money Judgment from Baldwin and desired to be substituted in her place to defend his interest. If this Court believes that "he is statutorily precluded from appearing on his own behalf to represent his interest in the matter", the Court could have easily stopped him then or allowed the "law practice" issue to be argued. But the Court didn't. It not only permitted him to be substituted as a pro se litigate, but to defend every aspect of the appeal thereafter. The Court correctly did so under the unusual facts of this case notwithstanding.

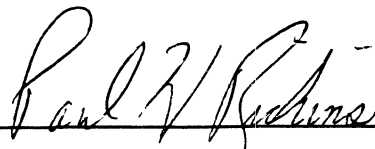
DATED this 20th day of April, 1993.



Paul H. Richins
Substitute Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April, 1993, I personally hand-delivered a true copy of the foregoing instrument to the law offices of David H. Schwobe, Esq., attorney for Appellants, at PERKINS, SCHWOBE & MCLACHLAN, 343 South 400 East, Salt Lake City, Utah 84111.



knowledge of the plaintiff. It also showed that the fraud of which plaintiff complained was primarily the fraud of plaintiff's agent rather than the fraud of defendant. After pleading such facts, plaintiff sought to avoid the bar of limitations by merely pleading that it had not discovered the fraud earlier. This court held that where one admits he was in possession of all the facts upon which he seeks to predicate fraud (and he is charged with knowledge of the law) he cannot avoid the bar of the statute unless he pleads facts to show why he was unaware of the facts which he now claims constituted a fraud. I find nothing in the investment company case which even implies a holding that in a case such as this it is necessary to plead more fully than here done to avoid the bar of the limitations statute.

MOFFAT, J., deceased.



W. B. BENNION et al., Plaintiffs, Franklin R. Brough et al., Appellants, v. FIRST FEDERAL SAVINGS & LOAN ASSOCIATION et al., Respondents.
No. 6668.

Supreme Court of Utah.

Dec. 27, 1944.

Appeal from District Court, Third Judicial District, Salt Lake County; B. P. Leverich, Judge.

E. A. Walton and Parnell Black, both of Salt Lake City, for appellants.

Farnsworth & Van Cott and Senior & Senior, all of Salt Lake City, for respondents.

WOLFE, Chief Justice.

This case is controlled by our decision in the case of Nunnally et al. v. Ogden First Federal Savings & Loan Association, 154 P.2d 620. The facts are substan-

plaintiffs and defendants. The judgment of dismissal is vacated and the cause is remanded to the district court, for the reasons set forth in the Nunnally case, and the plaintiffs are granted leave to amend the complaint and to proceed in accordance with said decision of this court. Each party shall pay his or its own costs.

LARSON, McDONOUGH, WADE, and TURNER, JJ., concur.



NELSON et al., Com'rs of State Bar, et al. v. SMITH et al.
No. 6700.

Supreme Court of Utah.

Dec. 18, 1944.

1. Attorney and client ⇨32

The state has right and duty to regulate practice of law in order to promote the public welfare. Utah Code 1943, 6-0-24.¹

2. Attorney and client ⇨1

The Legislature has power, in order to enforce regulations to practice law, to declare acts of unauthorized practice of law to be illegal and punish violation thereof. Utah Code 1943, 6-0-24.

3. Attorney and client ⇨62

The right to appear in person and prosecute or defend a cause to which he is a party cannot be abrogated either by Legislature or court. Const. art. 1, § 11.

4. Attorney and client ⇨62

The statute penalizing the unauthorized practice of law if construed as prohibiting an assignee from appearing in court to prosecute or defend a cause of action would be unconstitutional and void, since an assignee is a real party in interest even though the assignment be only for the purpose of a suit. Utah Code 1943, 6-0-24; Const. art. 1, § 11.²

Min. Co., 54 Utah 572, 184 P. 190; Moss v. Taylor, 73 Utah 277, 273 P. 515; Perkes v. Utah-Idaho Milk Co., 85 Utah 217, 39 P.2d 308.

The "practice of law", within statute penalizing the unauthorized practice of law, involves the carrying on of the calling of an attorney usually for gain and consists of giving advice, as such, acting in a representative capacity and rendering services to others, and does not include one acting for himself. Utah Code 1943, 6-0-24.

See Words and Phrases, Permanent Edition, for all other definitions of "Practice of Law".

6. Attorney and client ⇨62

The statute penalizing the unauthorized practice of law, one of the elements of which is the rendering of legal services or giving of legal advice to another usually for gain, is not violative of the constitutional provision which permits an individual to appear for himself in a prosecution or defense of a cause. Utah Code 1943, 6-0-24; Const. art. 1, § 11.

7. Injunction ⇨118(3)

Suit to enjoin defendants from illegally practicing law, alleging that defendants as laymen conducted their business for purpose of bringing legal actions on claims owned by third parties and consisting of payment of all costs and furnishing of all legal services incident thereto whereby third parties agreed that defendants might retain certain per cent. of sum recovered for their own use, stated cause of action. Utah Code 1943, 6-0-24.

8. Attorney and client ⇨11

A layman cannot circumvent statute prohibiting practice of law by party not properly licensed as attorney by device of taking assignment of the claim and proceeding in his own name. Utah Code 1943, 6-0-24; Const. art. 1, § 11.

9. Attorney and client ⇨11

Casual assignment of claim to person not licensed as attorney to bring suit in his own name, made for procedural and administrative convenience, is not within prohibition of statute forbidding laymen to practice law. Utah Code 1943, 6-0-24.

10. Attorney and client ⇨62

The constitutional provision designed to insure right of party to appear in his own behalf in court would not protect collection agency's practice of rendering legal services to others in violation of statute prohibiting one unlicensed as attorney to

ment of claim. Utah Code 1943, 6-0-24, Const. art. 1, § 11.

11. Attorney and client ⇨11

The fact that collection agency in some instances employed a regularly licensed attorney to prepare legal papers and conduct trial of a suit would not legalize agency's conduct which would otherwise constitute illegal practice of law. Utah Code 1943, 6-0-24.

12. Injunction ⇨89

Under pleading that defendants were illegally practicing law, injunction was proper remedy, notwithstanding such conduct would constitute a criminal offense. Utah Code 1943, 6-0-24.

Appeal from District Court, Second District, Weber County; A. H. Ellett, Judge.

Suit by Joseph E. Nelson and others, Commissioners of the Utah State Bar, in behalf of themselves and all licensed attorneys at law of the State of Utah, against D. D. Smith and another, doing business as the Service Collection Company, to enjoin defendants from allegedly unlawful practice of law. From an order sustaining a demurrer to the complaint and dismissing it, plaintiffs appeal.

Reversed.

Brigham E. Roberts and L. O. Thomas, both of Salt Lake City, for appellants.

Howell, Stine & Olmstead, of Ogden, for respondents.

WOLFE, Chief Justice.

Suit for an injunction. The defendants demurred to the complaint and the demurrer was sustained. Upon plaintiffs' failure to plead over the complaint was dismissed. The correctness of the ruling on demurrer is questioned by this appeal.

From the complaint it appears that the plaintiffs are the duly elected Commissioners of the Utah State Bar. It is alleged that the defendants, doing business under the assumed name and style of Service Collection Company, are unlawfully practicing law in violation of Section 6-0-24, U.C.A.1943. The suit is brought to enjoin further unlawful practice of law.

The manner in which the alleged unlawful practice of law is carried on by the defendants is set forth in the complaint

¹ Ruckebrod v. Mullins, 102 Utah 548, 133 P.2d 325, 144 A.L.R. 839.

² Wines v. Railway Co., 9 Utah 228, 33 P. 1042; Rutan v. Huck, 30 Utah 217, 83 P. 833; Baglin v. Earl-Eagle

the defendants are by personal contact and by advertising and writing, soliciting from the general public the placement with them (defendants) of various commercial accounts and claims for the payment of money for collection. The defendants agree to proceed to collect the same, to bring suit if necessary, to pay all court costs and furnish all legal services incident thereto in consideration of the agreement by the owners to permit the defendants to deduct and retain for their own use a fixed percentage of any sum recovered. It is alleged that the accepting and engaging in the collection of such claims is conducted as a business, that claims for collection are accepted both as agent for said persons and as assignee of the claims.

In the process of collecting such claims it is alleged that the defendants have furnished and are furnishing all costs and all legal services incident thereto and "have prepared and filed in various courts of this State, complaints, affidavits, praecipes and other legal documents, and have prepared summons and caused them to be issued and served, and sued out garnishments, attachments and orders to show cause, and have prepared judgments and procured them to be signed and entered by the said Courts, and sued out executions and procured the institution of and have conducted supplementary proceedings and they still continue to do and are now doing all of said acts." The defendants also allegedly hold themselves out to the public as being competent to give and do give legal advice.

The complaint alleges that over 22% of all civil actions brought in the City Court of Ogden, Weber County, during a period of about one year were suits instituted by the defendants in their own names as assignees of the real owner of the claims; that the purported assignments were and are "sham and a fraud upon the court" and have been and are being made purely for the purpose of enabling the defendants to evade and circumvent the provisions of the statutes of the State of Utah relating to the practice of law by persons not licensed to do so.

The prayer is for an injunction to restrain the defendants from soliciting or receiving assignments of claims or accounts for the purpose of suit thereon; furnishing legal service or advice with respect to any such account or otherwise or to rep-

to do so, instituting, prosecuting, managing or trying any suit upon an assigned account, note or other chose in action of which defendants are not the sole owners of all interest therein, both legal and equitable, instituting, prosecuting, managing or trying any suit or legal proceeding for any person, firm or corporation other than themselves, agreeing or promising to pay court costs, furnish legal services incident to the bringing of a legal action upon claims assigned for collection, or preparing or filing either by themselves or by an attorney any complaint, process, writ or other legal papers or causing any legal writ or process to be issued or served in any suit or proceeding placed with them for collection or in which any other firm or corporation has any beneficial interest.

Section 6—0—24, UCA 1943 provides:

"Any person not duly admitted and licensed to practice law within this state, or whose right or license to practice therein shall have terminated either by disbarment, suspension, failure to pay his license fee or otherwise, who practices or assumes to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer within this state, is guilty of an offense, and shall be fined not to exceed \$500, or be imprisoned for a period of not to exceed six months, or both, and, if he shall have been admitted to practice law, he shall in addition be subject to suspension under the proceedings provided by this title.

"Nothing in this section shall prohibit one unlicensed as an attorney from personally representing his own interests in a cause to which he is a party in his own right and not as assignee, nor shall anything herein contained prevent an unlicensed person, duly elected to the office of county attorney, from performing the duties of such office."

The respondents contend that the statute quoted above is unconstitutional in that it is in conflict with Article I, Section 11 of the Constitution of Utah, which provides:

"All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay, and no person shall be barred from prosecuting or defending before any

sel, any civil cause to which he is a party."

[1,2] In *Ruckenbrod v Mullins*, 102 Utah 548, 133 P2d 325, 144 ALR 839, the relationship of the attorney to the court was discussed in detail. We recognized that the legislature may in the proper exercise of its police powers make reasonable regulations governing the admission and disbarment of attorneys. The practice of law is so affected with the public interest that the state has both a right and a duty to control and regulate it in order to promote the public welfare. To enforce the regulations the legislature has the power to declare acts of unauthorized practice of law to be illegal and to punish violations thereof by fine and imprisonment. In *re Opinion of the Justices*, 289 Mass 607, 194 NE 313. But aside from any legislative enactment the courts inherently have the power to control and prescribe the conditions upon which one may be admitted as a member of the bar. As we noted in the *Ruckenbrod* case, supra, courts have retained the ultimate right to control admission to practice and disbarment. By so doing, the courts "have undertaken to protect the honor and high standing of the legal profession by refusing to admit those applicants who lack the necessary educational qualifications or who are morally incompetent, and dropping from the rolls those guilty of misconduct" [102 Utah 548, 133 P2d 331]. It was further noted that the attorney has become an indispensable part of our judicial machinery. Persons unlearned in the law can neither aid a litigant nor the court and both the court and the public have an interest in seeing that those who lack the necessary educational and moral standards do not hold themselves out as being competent and qualified to give legal advice and perform legal services preparatory to commencing an action in the court. It is the attorney who first sits as judge of the merits of every case, who decides whether or not suit should be commenced. The court and the public are interested in having that decision rendered by those qualified so to do to avoid, as much as possible, needless litigation and to have those cases upon which suits are deemed advisable properly prepared so that they will move through the process of trial with as few snarls as possible. The public is

the machinery set up for the purpose of handling judicial work. In the matter of *In re Opinion of the Justices*, supra, 289 Mass 607, 194 NE 313, 317, the court noted that

"No valid distinction, so far as concerns the questions set forth in the order, can be drawn between that part of the work of the lawyer which involves appearance in court and that part which involves advice and drafting of instruments in his office. The work of the office lawyer is the groundwork for future possible contests in courts. It has profound effect on the whole scheme of the administration of justice. It is performed with that possibility in mind, and otherwise would hardly be needed. In this country the practice of law includes both forms of legal service, there is no separation, as in England, into barristers and solicitors. It is of importance to the welfare of the public that these manifold customary functions be performed by persons possessed of adequate learning and skill, of sound moral character, and acting at all times under the heavy trust obligation to clients which rests upon all attorneys. The underlying reasons which prevent corporations, associations and individuals other than members of the bar from appearing before the courts apply with equal force to the performance of these customary functions of attorneys and counsellors at law outside of courts. Decisions of the courts, some of which deal with statutes, are unanimous on these points, so far as we are aware [Citing cases in footnotes]. If these established principles as to the practice of law are ever to be changed, the judicial department of the government must act to that end."

[3,4] In view of Article I, Section 11 (quoted above) of the State Constitution, no person may be barred from prosecuting or defending before any state tribunal by himself or counsel, any civil cause to which he is a party. While this does not give a person appearing in his own behalf any special privileges not accorded to other litigants appearing by counsel, and he is amenable to the administrative powers of the court, the right to appear in person and prosecute or defend a cause to which he is a party cannot be abrogated either by the legislature or the courts. In numerous cases we have held that an

though the assignment be only for the purpose of suit See *Wines v Railway Co*, 9 Utah 228, 33 P 1042, *Rutan v Huck*, 30 Utah 217, 83 P 833, *Baglin v Earl Eagle Mining Co*, 54 Utah 572 184 P 190, *Moss v Taylor*, 73 Utah 277, 273 P 515, *Perkes v Utah Idaho Milk Co*, 85 Utah 217 39 P2d 308. An assignee, being a party is given the right by the Constitution to appear in court to prosecute or defend the cause. If Section 6-0-24 must be construed as providing contrary, it is unconstitutional and void.

The first paragraph of Section 6-0-24 (quoted above) prohibits any person not duly licensed to practice law in this state, from practicing law or from holding himself out to the public as a person qualified to practice or carry on the calling of a lawyer. The second paragraph was probably added because of an apprehension that the courts would construe the first paragraph as prohibiting one from appearing in a cause to which he was a party, which construction would have rendered the statute unconstitutional. This second paragraph contains no restrictions. If there are any restrictions in Section 6-0-24 which are in conflict with the constitutional provision discussed above, such restrictions must be spelled out of the language of the first paragraph.

[5] The prohibition against the practice of law contained in Section 6-0-24 is not in conflict with the constitutional provision guaranteeing the right of an individual to appear and defend or prosecute a cause to which he is a party. Individuals have long been permitted to manage, prosecute and defend their own actions, but this is not considered to be the practice of law. See *In re Opinion of the Judges*, 289 Mass 607, 194 NE 313. One does not practice law by acting for himself any more than he practices medicine by rendering first aid to himself. The practice of law, though impossible of exact definition, involves the carrying on of the calling of an attorney usually for gain and consists of giving advice, as such, acting in a representative capacity and rendering services to others. See *Liberty Mut Ins Co v Jones*, 344 Mo 932, 130 SW2d 945, 125 ALR 1149, *In re Opinion of the Judges*, supra, *Fink v Peden*, 214 Ind 584, 17 NE2d 95, *State v C S Dudley & Co*, 340 Mo 852, 102 SW2d 895.

seen that there is no conflict between the quoted constitutional provision and Section 6-0-24. The former relates to the right of an individual to appear for himself in the prosecution or defense of a cause. The latter is a prohibition against practicing law, one of the elements of which is the rendering of legal service or the giving of legal advice to another usually for gain.

[7] Under the adjudicated cases the complaint alleges facts which show that the respondents are practicing law. Reference to the complaint discloses that the respondents are allegedly holding themselves out as qualified to give and are giving advice to others, that they are preparing and filing pleadings, suing out garnishments, attachments, etc., preparing judgments and procuring them to be signed and entered by the courts, procuring the institution of supplementary proceedings and conducting the same, etc. The performance of these acts for others constitutes the practice of law. See *In re Duncan*, 83 SC 186, 65 SE 210, 24 LRA, NS, 750, 18 Ann Cas 657, *In re Ripley*, 109 Vt 83, 191 A 918, *People v People's Stockyards State Bank*, 344 Ill 462, 176 NE 901, *Yount v Zarbell*, 17 Wash2d 278, 135 P2d 309, *In re Shoe Mfrs Protective Assn, Inc*, 295 Mass 369, 3 NE2d 746, *Liberty Mut Ins Co v Jones*, 344 Mo 932, 130 SW2d 945, 955, 125 ALR 1149, and annotation at 1173. In the *Liberty Mutual Ins Co* case, the court noted that

"While a layman may represent himself in court, he cannot even on a single occasion represent another, whether for a consideration or not. And a corporation cannot represent itself in court at any time but must appear by attorney. On the other hand the doing of any single act out of court in a representative capacity that a lawyer might do will not necessarily convict a layman of engaging in the law business. * * * The holding out may be evidenced by repeated acts indicating a course of conduct, or by the exaction of a consideration."

The complaint insofar as it alleges that the defendants are doing these various things for others states a cause of action and it must be held that the demurrer was improperly sustained.

The question as to whether the defendants are illegally engaging in the practice

claims in their hands for collection, having an assignment of the claim made to them, and then proceeding in their own names as assignees to prepare legal papers, institute law suits, manage and conduct supplemental proceedings, employ counsel, etc., really presents two problems. First, can they proceed in their own names as assignees to do the work themselves, and second, can they institute, manage and control proceedings and preparation of legal papers by employing a licensed attorney to do the work for them?

[8] We believe that both of these questions must be answered in the negative. The authorities almost uniformly hold that laymen cannot evade and circumvent a statute such as our Section 6-0-24 by the device of taking an assignment of the claim and proceedings in their own names. See *State v James Sanford Agency*, 167 Tenn 339, 69 SW2d 895, *People v Securities Discount Corp*, 279 Ill App 70, affirmed 361 Ill 551, 198 NE 681, *Graustein v Barry*, 315 Mass 518, 53 NE2d 568, *Bump v Dist Ct*, 232 Iowa 623, 5 NW2d 914, *Gill v Richmond Co op Ass'n*, 309 Mass 73, 34 NE2d 509.

The defendants take the position that the constitutional provision, Art I, Sec 11, discussed above gives them the right to proceed as assignees to do the various things of which the plaintiffs complain. We have already noted that an assignee is a party within the meaning of the Constitutional provision even though the assignment be only for purpose of bringing suit. But this holding is not determinative of this point. Before one may proceed in the courts to prosecute a claim in which another has a beneficial interest it must be determined whether or not the assignment was made to accomplish an illegal purpose. Section 6-0-24 prohibits the practice of law by laymen. The courts themselves will not permit laymen to appear in court in a representative capacity. The policy of the courts and the legislature in this regard may not be circumvented by the subterfuge of a layman taking an assignment to permit him to carry on the business of practicing law.

[9] The casual assignment for procedural convenience falls in an entirely different class. See comment in *Graustein v Barry*, 315 Mass 518, 53 NE2d 568. The

business of collecting claims for others. Rather such assignments are made for procedural and administrative convenience and permit groups of persons collectively to pursue a similar or common right. There may well be legitimate purposes for the taking of an assignment by one engaged in the business of collecting claims for others. But collection agencies as a part of their business of serving others, clearly should not be permitted to prepare legal papers, commence suits, appear in court, prepare judgments and generally manage law suits for its various customers. See cases last cited. It does not matter what particular form or name they give their procedure the practice of furnishing or performing legal services for another is essentially the same.

When the defendants solicit the placement of claims with them for collection, they are asking third parties to allow them to render the service of collecting the claim. At that time the collection agency has absolutely no interest, either legal or beneficial, in the claim. The only interest they ever get comes by virtue of a promise to prosecute the claim. Courts cannot remain blind to the fact that the assignment of the claim to the defendants for collection is not made as a gratuity. The percentage of the amount collected which is allowed to the defendants is given to them for one purpose only, to compensate them for services rendered in the collection thereof. Where the collection practice involves the preparing of legal papers, furnishing legal advice and other legal services the compensation allowed must be assumed to be in part allowed to pay for the legal services so rendered. No matter how one looks at it, this constitutes the rendering of legal services for others as a regular part of a business carried on for financial gain. This essential fact cannot be hidden by the subterfuge of an assignment. The assignment itself if used to permit this practice, is for an illegal purpose and one proceeding under such an assignment is not protected by the constitutional provision giving one the right to appear for the purpose of prosecuting or defending a cause to which he is a party. See comment in *Rae v Cameron* 112 Mont 159 114 P2d 1060 (modifying *State ex rel Freebourn v Merchants Credit Service* 104 Mont 76 66 P2d 337) in

for an illegal purpose.

[10] The taking of an assignment under circumstances such as those detailed above cannot possibly change the essential fact that the defendants are rendering legal services for another for gain. The constitutional provision designed to insure the right of a party to appear in his own behalf neither authorizes nor protects the practice of the defendants of rendering legal services to others by adopting the form of an assignment. Though the state will not interfere if an individual desires to conduct his own legal affairs without the aid of counsel, the public interest demands that no person hold himself out to the public as qualified to render legal services for others unless he in fact is so qualified. Bump v. Dist Ct., 232 Iowa 623, 5 N.W.2d 914

The legislature, in the proper exercise of its police powers, has restricted the practice of the law to those meeting specified standards. Those who meet the required standards and who follow the prescribed procedure may be licensed to practice law. All those not licensed according to the prescribed procedure are conclusively presumed to be incompetent to carry on the calling of an attorney.

[11] The fact that the defendants in some instances employ a regularly licensed attorney to prepare necessary legal papers and conduct the trial of a suit does not make their conduct legal. One cannot do through an employee or an agent that which he cannot do by himself. If the attorney is in fact the agent or employee of the lay agency, his acts are the acts of his principal or master. When an attorney represents an individual or corporation, he acts as a servant or agent. Since he acts for others in a representative capacity, doing those things which are customarily done by an attorney, he practices law within the meaning of Section 6-0-24. The same conduct on the part of laymen would likewise be the practice of law, and since said layman would be unlicensed, such practice would be illegal. The prohibition against the practice of law by a layman contained in Section 6-0-24 applies alike to the practice by a layman directly and in person and to the indirect practice through an agent or employee. It is immaterial that said layman may se-

law if the attorney be in fact the agent or employee of a layman, his act is that of the layman (his principal). Such principal would be engaging in the illegal practice of law if he through such an agent rendered legal services to a third party for compensation and as a regular and customary business practice.

Thus, In re G. H. Ottermess, 181 Minn. 254, 232 N.W. 318, 320, 73 A.L.R. 1319, the defendant was held to be illegally practicing law under the following circumstances: The defendant, a duly licensed member of the bar, was employed by a bank as vice president on a fixed annual salary. In addition to his duties with the bank he was permitted to engage in the law practice performing acts both for the bank and for various third parties. All fees collected from said third parties were turned over to the bank and were to be treated as income of the bank. Disciplinary action was brought against the defendant vice president. In holding that the defendant should be "severely censured * * * for participating in the practice of law by a banking corporation" the court noted:

"There can be no objection to the hiring of an attorney on an annual salary basis by banks, other corporations, firms, or individuals, to attend to and conduct its or their legal business. An attorney so employed may, as attorney for his employer, foreclose mortgages owned by such employer, and may include the proper attorney's fees therefor in the foreclosure charges, so long as such fees are covered by and paid to him out of his salary and do not exceed what is actually paid to him or result in any profit to the employer. See Swift v. Board of County Commissioners, 76 Minn. 194, 78 N.W. 1107. But neither a corporation nor a layman, not admitted to practice, can practice law, nor indirectly practice law by hiring a licensed attorney to practice law for others for the benefit and profit of such hirer. For this bank to employ defendant to conduct law business generally for others, for the benefit and profit of the bank, amounted to the unlawful practice of law by the bank, and was misconduct both on the part of the bank and this defendant, who was a participant therein."

held

"A corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it * * * Though all the directors and officers of the corporation be duly licensed members of the legal profession, the practice of law by the corporation would be illegal nevertheless."

In an annotation in 73 A.L.R. 1328, the annotator notes that "As will appear from the subsequent discussion of the cases, there is no judicial dissent from the proposition that a corporation cannot practice law" (citing a number of cases). Then follows a statement of the theory of the rule. A quotation from the case of Re Co-operative Law Co., 198 N.Y. 479, 92 N.E. 15, 16, 32 L.R.A. N.S. 55, 139 Am.St.Rep. 839, 19 Ann.Cas. 879, shows that the rule is based upon the considerations of the essential nature of the practice of the law and the desire to make the attorney directly amenable to the client rather than to some intervening master or principal. The court noted that:

"The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation, and not to the directions of the client. There would be neither contract nor privity between him and the client, and he would not owe even the duty of counsel to the actual litigant. The corporation would control the litigation, the money earned would belong to the corporation, and the attorney would be responsible to the corporation only. His master would not be the client but the corporation, conducted it may be wholly by laymen, organized simply to make money and not to aid in the administration of justice which is the highest function of an attorney and counselor at law."

Then at page 1331 of the annotation there is a discussion of attempts by corporations to shield themselves behind a duly authorized attorney. One statement from Re Co-operative Law Co., supra, may be of interest here:

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employing competent lawyers to practice for it, as that would be an evasion which the law would not tolerate."

The annotation then contains a number of illustrations applying the rule against corporate practice of law to various fact situations.

In *Rosenthal v. Shepard Broadcasting Service, Inc.*, 299 Mass. 286, 12 N.E.2d 819, 114 A.L.R. 1502, the court held that a radio station broadcasting a program consisting of the giving of legal advice to selected persons who wrote in for legal advice was practicing law. This case like those cited next above involved the attempt of the lay agency to practice law through employees or agents, who were licensed attorneys. These cases stand clearly for the proposition that a layman or lay agency cannot directly or indirectly practice law and the prohibition reaches those situations where the lay agency or layman seeks shelter behind an employee or agent who is a licensed attorney.

The complaint alleges that the defendants in the instant case solicited the placement of claims with them for collection, that they promised the owners of the claims that they would bring legal actions thereon in the appropriate courts in the State of Utah, that they promised and agreed at their own expense to pay all costs and to furnish all legal services incident thereto, all in consideration of the agreement of the owners of said claims to permit the defendants to deduct and retain for their own use a fixed percentage of all sums of money actually collected on said claims and accounts as a result of the defendants' said services.

Under these allegations it is clear that any attorney furnished to perform the legal services which the defendants agree, as a usual business practice, to perform or cause to be performed would be the employee of the defendants. There would, under these circumstances, be no contract or privity between the owners of the various claims and the attorneys furnished by the defendants. The fee allowed by the owners of the claims to compensate defendants for the services rendered are deducted by the defendants for their own use and benefit. The services so rendered are such as are usually and customarily

rendered by an attorney in the practice of his profession. Under the allegations any attorney retained to perform such services in the enforcement of such claims would be the defendants' employee or agent. Such a business conducted for the purpose of bringing legal actions on claims owned by third parties and consisting of the payment of all costs and the furnishing of all legal services incident to the bringing of the actions is the practice of law. Where, as here, the agency rendering the service is a lay agency, it is the illegal practice of law. Such is the almost uniform holding of the authorities as applied to collection agencies operating along similar lines. See *In re Tuthill*, 256 App.Div. 539, 10 N.Y.S.2d 643; *Richmond Ass'n of Credit Men v. Bar Ass'n*, 167 Va. 327, 189 S.E. 153; *Midland Credit Adj. Co. v. Donnelly*, 219 Ill.App. 271; *In re Shoe Mfrs. Protective Ass'n., Inc.*, 295 Mass. 369, 3 N.E.2d 746; *State v. C. S. Dudley & Co.*, 340 Mo. 852, 102 S.W.2d 895; *In the Matter of Co-Operative Co.*, 198 N.Y. 479, 92 N.E. 15, 32 L.R.A.,N. S., 55, 139 Am.St.Rep. 839, 19 Ann.Cas. 879; *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 66 P.2d 337 as modified by *Rae v. Cameron*, 112 Mont. 159, 114 P.2d 1060.

The public has long been interested in the protection of the trust relationship between an attorney and his client. Numerous restrictions have been placed upon the office of an attorney to insure to the client that the attorney will hold his client's best interest to be paramount to any other consideration except his duty as an officer of the court. Thus while a layman may have an agent select an attorney for him and even deal with the attorney through the agent, the attorney must in fact represent the purported principal rather than the purported agent. The interjection of the collection agency between the client and the attorney so that the attorney would be answerable to the collection agency as principal would come within this objection. See cases last cited above. The collection agencies perhaps perform functions which are both convenient and necessary in the field of business today and they are no doubt equipped to perform such functions. But when a collection agency undertakes to bring lawsuits on the claims of third parties and perform the necessary legal services incident thereto (even though they function through li-

censed attorneys), they are practicing law within the meaning of Section 6-0-24. They being lay agencies, such practice of law is illegal and prohibited.

[12] The pleadings disclose that the defendants are illegally practicing law and therefore states a cause of action for injunctive relief. If the facts alleged can be proved the defendants should be enjoined from directly or indirectly rendering legal services for others and from soliciting claims under an agreement that they will bring and prosecute actions thereon in the courts. As to injunction being the proper remedy, see *Depew v. Wichita Ass'n of Credit Men*, 142 Kan. 403, 49 P. 2d 1041, certiorari denied, 297 U.S. 710, 56 S.Ct. 574, 80 L.Ed. 997; *State Bar of Oklahoma v. Retail Credit Ass'n*, 170 Okl. 246, 37 P.2d 954; *Paul v. Stanley*, 168 Wash. 371, 12 P.2d 401.

Judgment reversed. Costs to appellants.

LARSON and TURNER, JJ., and M. J. BRONSON, District Judge, concur.

McDONOUGH, J., concurs in the result.

WADE, J., being disqualified, did not participate herein.



GLENN v. KEYES et ux.
No. 6753.

Supreme Court of Utah.
Dec. 18, 1944.

1. War ☞4

The purpose of rules of Office of Price Administration relating to housing accommodations in defense rental areas is to restrain unnecessary evictions, but not to hamper alienation of property.

2. Landlord and tenant ☞278½
War ☞4

Under rule of Office of Price Administration, the unreasonable refusal by tenant to allow landlord access to housing accommodations for inspection or of showing them to prospective purchaser is ground for removal unless such right is contrary to lease.

3. Landlord and tenant ☞291(8)

Unlawful detainer action for possession of premises in defense rental area, properly brought under statute on ground that tenants refused landlord access to premises for inspection and refused to show premises to prospective purchasers, without alleging that landlord had right thereto under lease, stated cause of action, since lack of such right would be matter of defense. Utah Code 1943, 104—60—3.

Appeal from District Court, First District, Box Elder County; M. M. Morrison, Judge.

Action by Lee Glenn against John E. I. Keyes and wife in unlawful detainer to recover possession of leased premises. From a judgment sustaining a demurrer to the complaint, plaintiff appeals.

Reversed and remanded.

Thatcher & Young, of Ogden, for appellant.

No appearance for respondent.

WADE, Justice.

Plaintiff below and appellant herein had filed a complaint in unlawful detainer alleging ownership of the premises; the existence of the relationship of landlord and tenant between himself and defendants on a month to month basis under an oral agreement; the service of written notice to quit the premises more than fifteen days prior to the termination of the monthly period; the refusal of the defendants to quit the premises; the amount of rent due and the amount of damages allegedly due for the unlawful detainer. There can be no doubt that the foregoing allegations were sufficient to state a cause of action under Sec. 104—60—3, U.C.A. 1943, which section deals with the subject of unlawful detainer. However, plaintiff not only alleged the foregoing but also alleged as a right to institute these proceedings that defendants had unreasonably refused plaintiff entry to the premises for the purpose of inspection and had also unreasonably refused to allow prospective purchasers to view said premises and that this was a violation of Sec. 6, Subdivision 2 of the rent regulation for housing accommodations, as promulgated by the Office of Price Administration, Washington, D. C., as revised under date of April 12, 1943.

Defendants entered a general demurrer to the complaint. The court sustained this demurrer on the ground that plaintiff had failed to plead a right to enter the premises for the purpose of inspection or to show to prospective purchasers and therefore the complaint failed to state a cause of action. Upon plaintiff's refusal to plead further a judgment of dismissal was entered.

Appellant assigns as error the court's finding that the complaint did not state a cause of action and entering a judgment of dismissal.

Box Elder County, within which the property sought to be repossessed is situated, has been designated a defense rental area by the Office of Price Administration and residential properties therein are subject to the rules and regulations of that office. Sec. 1388.5056 of the rules and regulations of that office provides:

"Restrictions on Removal of Tenant. So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodation by an action to evict or to recover possession by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired, or otherwise terminated, unless * * *

"(2) The tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein, *provided, however, that such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement.*" [Italics ours.]

The lower court reached its conclusion that the complaint failed to state a cause of action because plaintiff failed to affirmatively allege that the rental agreement reserved the right of inspection to the landlord and therefore did not show that subsection 2 quoted above was violated.

It is plaintiff's contention the court erred in interpreting that portion of subsection 2 which we have italicized, to mean that