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Practice of Law by Dead Men

North Dakota Law Review Associate Editors

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there were no organization devoted to solving his problems; no organization to protect him against lowering the standards of admission, against unethical and corrupt practices; no organization to represent him at the bar of public opinion? Is it too strong to say that destruction of the legal profession might be the result? Even as it is, the lawyer, in our opinion, is paying a heavy penalty because of the unwillingness of so many of the profession to ally themselves with any bar association. The public demands of bar associations more than they can give, because our organizations are not supported by a majority of the bar. Whether as a result of the depression or of some other cause, it is a fact that bar associations from coast to coast have recently taken on new life. The bar undoubtedly senses danger to its existence, and is striving to protect itself from perils arising on every side."

To which we add, simply, that lawyers sense the danger to the public much more quickly than they sense the danger to themselves, and emphasize it by the following from the lips of the Hon. R. H. Jackson, of the Alabama Bar:

"It takes no delirious vision to see that increasing numbers and decreasing income may produce such competition as will overrule all ethical restraints as it has in some lines and in some localities already. To prevent such a condition transcends the mere right of self-defense, it becomes a duty of public service. A collectively impotent and individually predatory bar would be a collapse of our professional tradition that would stamp our generation as unworthy of its heritage. We are summoned to trial by ordeal. We dare not fail."

PRACTICE OF LAW BY DEAD MEN

The California State Bar Journal has carried some interesting discussions of late concerning the practice of law by dead men. In those discussions we have read nothing that has caused us to change our view, namely: that dead men can not and should not practice law.

The practice of law is not a business. It is a profession. Lawyers do not sell goods or merchandise. They render personal, professional service. Lawyers are not tradesmen. They are officers of the Court.

Even laymen know that a partnership is dissolved by the death of one of the partners. Even laymen have discovered that it is unethical to advertise or to solicit legal business. And laymen have obtained that information from lawyers—and sometimes paid for the information as advice.

Yet, though lawyers admit that it is neither ethical nor honest to advertise or to solicit legal business, though they acknowledge that it is unethical and dishonest whether the advertising or the solicitation be directly or indirectly done, lawyers continue to permit the names of deceased lawyers to appear on office doors, in telephone lists, and on printed cards and letterheads. In fact, the names of dead men have been known to re-appear on such printed matter after actual dissolution of a partnership, and after the death of one of the partners.

How can we, as lawyers, then, expect to gain the confidence and respect of laymen so long as we fail to practice what we preach, and condone—by silence, at least—what we know to be wrong?