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Auto Insurance Again

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In People v. Merchants Protective Corp., 189 Cal. 531 at 538. The Court after citing the cases of Eley v. Miller, and People v. Alfani, (supra) and many other cases said:

"The essential element underlying the relation of attorney and client is that of trust and confidence of the highest degree growing out of the employment and entering into the performance of every duty which the attorney owes to his client in the course of such employment. . . . .

"The essential relation of trust and confidence between attorney and client cannot be said to arise where the attorney is employed, not by the client, but by some corporation which has undertaken to furnish its members with legal advice, counsel and professional services. *The attorney in such a case owes his first allegiance to his immediate employer, the corporation, and owes, at most, but an incidental, secondary and divided loyalty to the clientele of the corporation.*" (Italics ours.)

In People v. California Protective Corporation, 76 Cal. App. 354, at 364, the Court said:

"It is argued that under its articles of incorporation, a franchise to practice law was 'granted' appellant by the state, and that, the franchise having thus been 'granted,' appellant should be allowed to exercise it 'without being subjected to fine for doing so'. While it is true that appellant usurped, or unlawfully exercised, the privilege or franchise of practicing law, it is not true that such privilege or franchise was 'granted' to it. *The practice of law by a corporation is, as we have seen, unlawful.* The statute did not authorize appellant's incorporators to call it into being for an unlawful purpose." (Italics ours.)

AUTO INSURANCE AGAIN

Notwithstanding the action of the State Bar Association expressing the view that licensing, rather than insurance, would best serve our needs so far as motor vehicle accidents are concerned, there is considerable amount of discussion elsewhere in favor of insurance.

Mr. J. Philip Bird, President of the New Jersey Manufacturers' Association, is quite active along this line. We quote from a recent statement:

"The insurance policy should insure everyone riding the particular automobile which is covered, be he riding as owner, as chauffeur, as business associate or as guest. The policy should insure also any other person upon the public street, or highway, except the owner, chauffeur, business associate or guest, riding in the other automobile.

"Those in the other automobile are protected by the insurance which the owner of that automobile has furnished, and, therefore, should not receive protection from the policy procured by the owner of the first automobile. . . . The law making these changes should provide a schedule similar to the schedule contained in the Workmen's Compensation Laws which would fix a definite amount to be paid for certain injuries. This schedule . . . would not depend upon the income or earnings of the person injured. It would be a minimum schedule in this sense that there would be nothing in the law to prevent an automobile owner from procuring a policy containing a higher schedule than the law requires.

"However, if the owner procures a schedule higher than the law requires, reading in favor of himself, or his chauffeur, or the guests in his car, it should be unlawful for the insurance company to give that

higher schedule in regard to any of the persons whom I have last named, without at the same time increasing the schedules by like amounts to every person covered by the policy.

"No man should be allowed to use the public highway and provide high protection for himself and his friends, or for himself alone, unless he is willing to provide the same degree of protection for strangers who may be injured by his automobile. Furthermore, he should not be allowed to take his automobile on the highway unless he furnishes a minimum protection for every one whom it may injure except, perhaps, himself."

Under Mr. Bird's proposal all automobiles with foreign license plates would be subject to the law of his state, New Jersey.

REVIEW OF DECISIONS

Pearce vs. Hanlon et als: Plaintiff, a messenger, using motorcycle side car, while in performance of regular duties, was struck by truck of defendants, while such truck was passing another car on the street. The evidence was rather conflicting, hence, the most important part of the final decision deals with the examination of witnesses by the trial Court. HELD: The practice of trial Judges in asking questions "fairly calculated to elicit the facts and to make the testimony more definite" is not to be condemned, following *State vs. Hazlett,* 14 *N. D.* 490,105 *N. W.* 617.

Baird, Receiver vs. Keitzman et als: Note given by K. to M. Bank was transferred to B. Bank, which became insolvent. Defense was that note was without consideration, given to M. Bank as a temporary replacement and held as security while other notes were being collected, collection to be made by one of the defendants. The offer of proof was rejected, and judgment entered. HELD: Sufficient consideration is shown in the detriment suffered by M. Bank in the release of notes for collection. The Court quotes 5 *Wigmore on Evidence,* 2445, "An extrinsic agreement not to transfer an instrument payable 'to order' cannot be effective; for the term 'to order' imports negotiability, and there is no purpose which the term could serve if that element were discarded." Re the contention that this was a conditional delivery: If a delivery is a conditional delivery at all when it is to become effectual upon successful efforts to collect the amount from others, "such a condition cannot be shown for the same reason that no other agreement not embraced in the writing and qualifying that which is embraced therein can be shown. Obviously, if it were possible for one party to a contract, delivered for the purpose of taking effect, to establish an agreement outside the writing that upon the happening of a contingency the written terms of an obligation, absolute in form, were to be of no effect, the so-called parol evidence rule would lose much of its value. There is as much reason why such a condition subsequent, to be effective, should be contained in the writing as there is for requiring to be incorporated therein agreements or understandings qualifying the written obligations in other respects."

SUPREME COURT WRITES "FINIS" IN HANSON CASE

The most controversial embranglement ever to exercise a disturbing influence over the North Dakota Workmen's Compensation Bureau has been disposed of for the second time by the Supreme Court, and, every one ever connected with it hopes, "finally".