ESTATE WRECKERS DISBARRED

(Continued from page 1.

that the non-allowance of an appeal did not take away the right where it existed.

"I appeal further," Mr. Davis then said in a loud tone, "on the ground that you, Chief Justice Frear, are disqualified because you are a trustee of the bondholders of the Oahu Railway & Land Co., one of the parties in interest in these proceedings, and as such had no right to hear my case under the Organic Act. This is in addition to my appeal on the ground that the court's judgment is contrary to the evidence and the law—and the law," he repeated with emphasis.

Mr. Humphreys arose in the meantime and, with set features, went forward to the desk and procured the original copy of the decision in his case from Clerk George Lucas. He took the document back to his seat and began reading it, which occupied him until some time after the court rose.

Chief Justice Frear announced that the court stood adjourned sine die.

HUMPHREYS AND THOMPSON.

In the matter of A. S. Humphreys and Frank E. Thompson, the opinion is written by Chief Justice Frear. The syllabus reads as follows, the first paragraph referring to Thompson nad the second to Humphreys:

An attorney is not permitted to serve a new client against a former client in the same matter in which he represented his former client. If he does, the penalty will depend upon the circumstances. Ordinarily, it will be disbarment, but in this case it is made suspension for one year, in view of the

HUMPHREYS.

circumstances—especially the looseness of the attorney's relations to his former client.

It is gross misconduct—meriting disbarment—for an attorney to attempt, by appeals to friendship and by threats and otherwise, to induce an opposing attorney to betray his, the latter's, client, an aged weak-minded man, by advising him to consent to an unfair proposal of compromise and the taking of extortionate fees.

INVESTIGATION SELF-INVITED.

The opinion begins with a statement of the origin of the case, thus:

OPINION OF THE COURT BY FREAR, C. J.

(Galbraith, J., Dissenting.)

"This proceeding is an episode of the Sumner litigation, long since become notorious, and more particularly of what is known as the Ropert case in that litigation, recently decided by this court, ante. In that case the court was requested by Messrs. Humphreys, Thompson and Watson, attorneys in the case, to investigate the conduct of counsel on both sides, such conduct having been much questioned. The court thereupon with the acquiescence of opposing counsel, Mr. J. A. Magoon and Mr. G. A. Davis, took the usual course of referring the matter to the Attorney-General for investigation and such further action as to him should seem advisable. The result was the institution by him of these proceedings for the disbarment or suspension of the respondents or other dealing with them."

HISTORICAL.

The first and second periods of the Sumner litigaton are traced bv the court, the second ending with the consummation of sale of harbor property by Sumner to the O. R. & L. Co. for $110,000, followed by the suit of Bishop Ropert for his discharge as Sumner's guardian, in which the substantial issue was between Sumner on one side and the Ellises and Mrs. Buffandeau on the other, as to whether the trust had terminated or not, that is, whether Sumner was entitled to the $48,025 or not. The sum mentioned is identified in the following statement of the distribution of the $110,000, viz:

"$10,000 each to Sumner's grand nephews and grand niece, W. S. Ellis, J. S. Ellis and Mrs. Buffandeau, to Maria S. Davis and the Bishop, $10,500 to the various attorneys (one of the attorneys having previously received a retainer of $500) $1,000 to one Cathcart, a friend of Sumner, and $475 for stamps on the deed, leaving $48,025, which Sumner shortly after withdrew for himself."

"The charges against each of these respondents are in general of 'professional improprieties, malpractice, deceit and infidelity to his client, and gross misconduct,' and more particularly (in substance, without setting forth the details of the complaint) that they acted as attorneys for Sumner in the railroad and guardianship cases, and knew that all claims of the Ellises (including Mrs. Buffandeau, nee Ellis) to the proceeds of the sale had been disposed of in the settlement referred to, but that nevertheless soon after such settlement and especially in the Ropert case they acted as attorneys for the Ellises in opposition to the interests of their former client, Sumner. A further charge is made against the respondent Humphreys, to the effect that, while acting as such attorney for the Ellises, he proposed to J. A. Magoon, as attorney for Sumner, that he, Magoon, should betray the interests of his client, Sumner, and induce him to submit to a further and extortionate demand on the said funds by the Ellises and that said Humphreys and Magoon should each demand and take an unreasonably large fee therefor, and threatened that unless his proposal was accepted he would prevent by the use of legal process said Sumner from exercising any control over said funds during the rest of his, Sumner's, life."

GRAVITY OF CHARGES.

"These are grave charges," the court says and, considering the nature of proceedings of this kind and the possible results to practitioners and their families, it is held to go without saying "that the court should act in all cases of this kind with unusual caution both in weighing the evidence and in determining the penalty, and such is the course laid down in the books. And yet, however disagreeable the function of passing upon the alleged wrongful conduct of a member of a noble profession, the court, as likewise laid down in the books, has a responsibility in the matter and cannot shirk its duty. The nobler the profession the greater the care that should be observed in keeping its practice unsullied. In United States v. Costen, 38 Fed. 24, Mr. Justice Brewer, of the United States Supreme Court, then Circuit Judge, in disbarring an attorney for merely seeking employment on one side after his employment had ceased on the other and suggesting that he had in his possession important facts, said: 'Now, it is the glory of our profession that its fidelity to its client can be depended on; that a man may safely go to a lawyer and converse with him upon his rights or supposed rights in any litigation with the absolute assurance that that lawyer's tongue is tied from ever disclosing it; and any lawyer who proves false to such an obligation, and betrays or seeks to betray any information or any facts that he has attained while employed on the one side, is guilty of the grossest breach of trust. I can tolerate a great many things that a lawyer may do,—things that in and of themselves may perhaps be criticised or condemned when done in obedience to the interest or supposed interest of his own client, and when he is seeking simply to protect and uphold those interests. If he goes beyond, perhaps, the limits of propriety, I can tolerate and pass that by; but I cannot tolerate for a moment, neither can the profession, neither can the community, any disloyalty on the part of a lawyer to his client. In all things he must be true to that trust, or, failing it, he must leave the profession.'"

GUILTY IN PART.

After quoting other authority, the court proceeds to say:

"Realizing our duty to the respondents on the one hand and to the profession and the public on the other we have, after hearing the evidence at the trial and observing the witnesses, read over all of the 573 pages of testimony and numerous documents introduced and considered them with the utmost care, but after making all due allowances on the side of caution and leniency we are constrained by the force of facts to find the respondents guilty of the charges in part at least.

"The first question naturally is, what were the relations between the respondents and Sumner in the litigation up to the time of the settlement and what in the subsequent proceedings. There is no question as to the latter. The respondents, especially Mr. Humphreys, acting for the Ellises took active steps the very day after Sumner withdrew the $48,025, to prevent his keeping it, and in consequence of their action the Bishop brought the suit, out of abundant caution, as we believe, to obtain the opinion of the court as to the propriety of this payment of the money to Sumner, and throughout that case the respondents, especially Mr. Humphreys, representing the Ellises, fought against Sumner's interests not only with all their strength but with marked acrimony. There was nothing improper in itself in their ardent struggle for the Ellises in that suit. * * *

"The conduct of the respondents, though subject to criticism in several other respects, was improper, if at all, in that case, so far as the charge now under consideration is concerned, because of their relations to Sumner in the prior litigation."

TELLING THE PRESIDENT ABOUT IT.

RELATIONS TO SUMNER.

With regard to the contention of respondents that in the prior litigation they represented the Ellises alone and not Sumner at all, the court is of opinion their relations to Sumner were closer than that and, besides, that they were not true to the clients whom they peculiarly claimed as their own—in fact, were guilty of great recklessness in assisting and participating in the distribution of the trust fund without so much as looking at the trust deed or the will to ascertain whether their terms permitted such distribution.

"The gravamen of the charge is that they acted first for Sumner and then against him in respect of the same matter, even if their actions in either capacity alone would be above criticism," the court observes and then proceeds, "there being no dispute as to their appearance against Sumner in the later proceedings," to examine their relations to him in the earlier.

The testimony as to the retaining of Humphreys, Thompson & Watson is reviewed. Mr. Humphreys said he was retained by the three Ellises, but that he expected his fee to come out of the fund. That the testimony of the Ellises that they themselves were to pay the fee was false was apparent, the court says, even without Mr. Humphreys's repudiation. On this point the opinion concludes:

"There is no doubt as to Mr. Highton's understanding, and that was that the firm of Humphreys, Thompson & Watson were then engaged by the Ellises and Sumner together, although particularly at the request or desire of the Ellises. This arrangement

DAVIS.

is just what might be expected in the light of the circumstances and the relations of the parties and harmonizes with the subsequent acts of all parties."

Through several pages evidence is summed up showing the active appearance of Humphreys, Thompson & Watson as attorneys for Sumner and the receipt by that firm of a fee of $2500 out of the payments made by Sumner's trustee from the $110,000 fund.

WORSE STILL.

The court says it may concede that the respondents did not consider that their relations with Sumner were fully all that are usually supposed to exist between attorney and client, adding:

"There are all degrees of closeness in the relationship of attorney and client. It is clear that in this case the relationship of the respondents to Sumner were such as to make it improper for them to take sides against him in immediately subsequent proceedings respecting the same matter. If their relationship were that of attorney and client to its fullest extent, there could be but one conclusion, as stated by Mr. Humphreys at the hearing—that of disbarment. Under the circumstances, something short of that would be sufficient. What the penalty should be will depend to some extent upon the nature of the settlement. In our opinion it is an aggravating circumstance that the respondents knew or ought to have known that the settlement was understood to be in full and that Sumner was to have the remaining $48,025 absolutely. For the respondents to take a position against Sumner afterwards in opposition to that understanding shows greater disregard of the requirements of professional ethics."

NOT GUILTY HERE.

The court goes over the evidence about the omission of the respondents to obtain a release from the Ellises after Mr. Humphreys had insisted on a release from the Davises. It says while it would have been a wise course to pursue, the court does not find the respondents guilty as to that. "No such releases were contemplated. The distribution was made on the theory that the money was Sumner's and that no releases were needed."

PROFFERED RESTITUTION.

The testimony of the Ellises all through is that Sumner wished to give them $10,000 apiece, the court remarks and thus comments:

"Mr. Highton regarded these payments to the Ellises as purely voluntary gifts by Sumner to his relatives, arranged between themselves as a family matter, and that they had no legal connection with the settlement. Mr. Humphreys now goes so far as to say that, in his opinion his firm should return the $2,500 received by them at the settlement and the $1,000 afterwards received as their fee from the Ellises in the Ropert case, because they were unfaithful to their clients, the Ellises, in not securing the balance of the money for them by a new trust deed, but, although he contends that he was employed by the Ellises chiefly in the matter of a proposed new trust deed, neither he nor Thompson suggested such a deed at the time of the settlement, although Thompson consulted with Humphreys on the Thursday and Friday before and told him what it was proposed to do and Humphreys suggested getting a release from the Davises. It may be added in passing that Mr. Humphreys says that he had intended to return the fees but had not intimated that intention to any one before because he did not have the money, though he also says that his firm was doing a business of $45,000 a year. Mr. Thompson on the other hand contends that his firm earned its fees because it was through their efforts that the Ellises secured $30,000 from Sumner, but all the evidence on both sides shows that Sumner proposed himself to give them that sum and insisted on doing so. The respondents may have been entitled to their fee under their contract, but not because they secured $30,000 for the Ellises."

HIGHTON VINDICATED.

After dealing at further length with the settlement, quoting Attorney Highton's letter to the Ellises, etc., the court says:

"In closing the discussion on this branch of the case, already protracted far more than intended, reference must be made to the question of Mr. Highton's credibility. To judge from their arguments one would suppose that the respondents' chief defense was abuse of the other side, particularly the Attorney-General who is prosecuting at the request of the court and as a result of investigations set in motion by the respondents themselves, and more particularly Mr. Highton and Mr. Magoon. The principal ground for attacking the credibility of these two witnesses seems to be in general that they must both have been moved to perjure themselves by way of revenge against the respondents because of shameful abuse heaped upon them by the respondents. They also endeavor to show that these witnesses falsified in certain particulars. Referring to Mr. Highton alone in connection with this branch of the case, we may remark in general that, in our opinion, the calumnies, for they are nothing short of that, hurled against Mr. Highton, are entirely without foundation, so far as has been made to appear. Unfortunately for the respondents there is in this case a vast amount of evidence against them in addition to Mr. Highton's testimony. Unfortunately also for them, when there was indisputable corroborating evidence, it corroborated Mr. Highton as against the respondents."

Testimony on the foregoing general vindication of Mr. Highton is quoted amply, including the opprobrious language Mr. Humphreys said he applied to his brother attorney.

THOMPSON'S PENALTY.

"What should the penalty be?" the court asks and thus proceeds to answer:

"As stated above, if the relation of attorney and client existed between the respondents and Sumner to its fullest extent, the penalty, by all the authorities, should be disbarment. Where there are mitigating circumstances, it may well be only suspension. How far the courts go will be illustrated by a few cases." * * *

"In the case of Mr. Thompson, after making all due allowances for the looseness of the relationship of attorney and client between him and Mr. Sumner, and giving him all the benefit of doubt that reasonably can be given as to the extent of his knowledge as to the understanding of the parties, especially Mr. Sumner, at the settlement, and taking into consideration his comparative youthfulness (though he disclaims any desire for allowances on this account), the fact that, as appears from the evidence, he acted to a large extent under Mr. Humphreys' directions, and the good reputation that he has borne in the community, we do not see how, consistently with our duty under the circumstances, the penalty can be less than suspension for one year. In the case of Mr. Humphreys the penalty on the charges thus far considered should be no less than in the case of Mr. Thompson, but a graver charge is made against Mr. Humphreys individually, that of attempting to persuade Mr. Magoon to betray his client, Mr. Sumner, which will now be considered."

MAGOON VINDICATED.

After long citations of testimony the opinion has this of Mr. Magoon's:

"It is hardly likely that Mr. Magoon would deliberately and premeditatedly concoct a story of this sort for the purpose of inflicting such dire results upon one in Mr. Humphreys' position. There was nothing in Mr. Magoon's attitude or testimony to indicate that he was falsifying. And, as for feelings of animosity or ill-will, none were manifested on the part of Mr. Magoon, while scarcely more could be shown on the part of Mr. Humphreys. Mr. Magoon no doubt felt deeply grieved at Mr. Humphreys' unjust abuse of him in the Ropert case. If he had not he would scarcely have been human. But throughout the Ropert case, so far as we can see, he refrained as far as he could from introducing questions of differences between counsel. When he reflected on opposing counsel it was only in so far as he had to adduce facts and argue from them in the interest of his client. He did not go out of his way as did Mr. Humphreys to attack counsel. He restrained himself as well as could be expected, considering the provocation. But we are not obliged to rely solely on the appearance and attitude of the witnesses on the stand, nor on their respective personal interests. There is much that tends to support Mr. Magoon as against Mr. Humphreys."

Page after page is occupied in discussing the question of veracity between Magoon and Humphreys, the decision being in favor of the former, and Humphreys is found guilty of the worst charge in the following terms:

"Mr. Humphreys, on the evidence, is guilty of having attempted to induce Mr. Magoon to betray his client—an aged credulous man easily imposed upon and of whom others, as Mr. Humphreys knew, had previously taken advantage. In order to accomplish this he urged considerations of personal friendship, resorted to threats, and suggested large booty. 'What do we care for Sumner, let him go, all we care for is our fees.' There is but one conclusion—disbarment. As Mr. Justice Brewer said in the passage quoted in the first part of this opinion

(Continued on page 3.)

Money Saving Attractions at Our Store This Week

For One Week Only, Commencing Monday, August 10.

READY-MADE WHITE DAMASK TABLE COVERS, 2 yards long, 65c.
READY-MADE WHITE DAMASK TABLE COVERS, 2 1-2 yards long, 85c.
UNBLEACHED LINEN TABLE DAMASK, per yard, 25c., 35c., 40c., 50c.
WHITE LINEN TABLE DAMASK, Sterling value, 65c., 75c.

Bedspreads! Bedspreads!

The excellent value we offer at all times in this line is known to almost every Lady. For a week only the following quotations are 25 per cent. off regular prices.

SEE OUR BEDSPREADS at 90c., $1.10, $1.50, $1.75, $2.00.

White Madras Shirtings

Excellent line for Shirts or Shirt Waists. Choice assortment of patterns; worth 20c. This week, 10c.

Pineapple Silks

All Colors. This week at 45c. yard.

Ladies' Wash Skirts

WHITE AND NAVY DUCK SKIRTS, polka dots, 95c.
BROWN CRASH SKIRTS, fashionably cut, $1.00.
BROWN LINEN SKIRTS, nicely trimmed, $2.50.
WHITE PIQUE SKIRTS, insertion trimmed, $2.00, $3.00, $4.00.

White Shirt Waists

New and up-to-date styles. The whole line should go at the prices we are offering them this week: 75c., $1.00, $1.25, $1.75, $2.00, $2.25, $2.75.

Shoe Department

We have been as busy as bees in our Shoe Department this week. We believe every customer has been more than satisfied, and well they might be. The prices are lower than we can buy the goods for, but the sale will be CONUTINUED UNTIL ALL BROKEN LOTS ARE CLOSED OUT.

Save Money: Come to Our Temporary Premises.

L. B. KERR & CO., LTD.

TEMPORARY PREMISES

FORT AND QUEEN STREETS