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Courts--Contempt--Attorney Not an "Officer" of the Court Within the Meaning of the Federal Contempt Statute

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A corporation can not sue to avoid an ultra vires transaction that is fully executed. *Memphis Lumber Co. v. Security Bank and Trust Co.*, 143 Tenn. 136, 226 S.W. 182 (1920). In *National Bank of Commerce v. Francis*, 296 Mo. 169, 246 S.W. 326 (1922), the court said, "Under the great weight of authority, state and federal, the plea of ultra vires cannot be used as a sword to recover back money paid under an executed ultra vires contract, although it may be used, under certain circumstances as a shield to defend against the enforcement of such a contract." And, in *Erb v. Yoerg*, 64 Minn. 463, 67 N.W. 355 (1896), the court said, "This plea of illegality [ultra vires] is a shield, not a sword; a defense, not a ground for affirmative relief. If the transaction was illegal, the law simply leaves the parties where it finds them."

Assuming that *P* corporation was insolvent or rendered insolvent by the ultra vires act, then the proceeds of the life insurance policy should find their way into *P*'s treasury for the benefit of creditors, but only to the extent necessary for the protection of creditors. This could be accomplished only in a suit brought by creditors. Had the corporation been solvent, even though its capital was impaired, then under the facts here the act would be valid as there was no one who could complain.

G. H. W.

COURTS—CONTEMPT—ATTORNEY NOT AN "OFFICER" OF THE COURT WITHIN THE MEANING OF THE FEDERAL CONTEMPT STATUTE.—Petitioner, an attorney was found guilty of contempt by an inferior federal court, under the Federal Contempt Statute, 18 U.S.C. § 401 (2) (1952), for mailing questionnaires to members of a grand jury. The statute provides a federal court with power to punish as contempt "[m]isbehavior of any of its officers in their official transactions." The court of appeals stated that petitioner was an "officer" of the court involved in an "official transaction," whose actions constituted "misbehavior." *Cammer v. United States*, 223 F.2d 322 (D.C. Cir. 1954). This decision was criticized at 58 W. VA. L. REV. 88 (1955), on the ground that the congressional purpose behind this statute was to restrict the federal courts' contempt power; so that if the statute were construed strictly, as contemplated by the framers, petitioner's activities would not be considered such as to be included in those of "officers" of the court involved in "official transactions" when only mailing letters.

We are pleased to report that on certiorari the United States Supreme Court, reversing the court of appeals, *held*, an attorney is not an "officer" of the court within the meaning of § 401 (2). The court found it unnecessary to decide whether petitioner was engaged in an "official transaction," thereby going even further than was suggested at 58 W. VA. L. REV. 88. Mr. Justice Black, writing for the majority explained that the statute applies only to conventional court officers such as marshalls, bailiffs, court clerks or judges. The congressional intent in framing this statute was to curtail the power of the court to punish for contempt, so that it should be strictly construed. *Cammer v. United States*, 76 Sup. Ct. 456 (1956).

M. J. P.

EJECTMENT—"COMMON GRANTOR" AND "COMMON SOURCE" DISTINGUISHED.—In 1900, A conveyed Whiteacre to O, and in 1909 B conveyed Blackacre, an adjoining tract, to O. O deeded Blackacre to P in 1924, without setting forth the courses and distances of the boundary between Blackacre and Whiteacre. Whiteacre was devised by O in 1935, and the devisees conveyed to D in 1949, describing the boundary by courses and distances. A discrepancy existed as to the boundary, based on the description in D's deed and the field notes of A, said notes being on record. Apparently O transferred both tracts by the same descriptions as she had received them. D entered the tract as described by the notes of A, and P brought ejectment, proving his title back to O. Verdict for P reversed, case remanded and new trial awarded. *Held*, that while a plaintiff in an ejectment action need only prove his title back to a common source, the terms "common source" and "common grantor" are not synonymous and interchangeable, and the rule does not apply when it affirmatively appears that the real dispute between the parties involves the location of a boundary between two distinct tracts of land, one of which the common grantor derived from one source and conveyed to P or his predecessor in title and the other of which the common grantor derived from another source and conveyed to D or his predecessor in title. *Toppins v. Oshel*, 89 S.E.2d 359 (W. Va. 1955).

As a general rule, plaintiff in an ejectment action must trace an unbroken chain of title to the state, or establish title by adverse possession. *Furbee v. Underwood*, 107 W. Va. 85, 147 S.E. 472