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THE SHYSTER LAWYER

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The shyter lawyer has existed so long, and has been so generally referred to as "shyster," that it is a matter of some surprise to learn that the word is of comparatively recent origin. Shysters have lived in all ages and countries, yet the word is of United States origin, and even classed by the lexicographers as slang. The word is not found in the older dictionaries, but now has its place in the English language in this country to such an extent that it can no longer be regarded as slang, but must be classed as a legitimate, expressive word. It is interesting to trace the origin of the word "shyster." Its origin is obscure and doubtful. Some authorities state that it is made from the word "shy," meaning sly, sharp, but as that meaning of shy does not obtain in the United States, Webster's suggestion that the word is from the German word meaning excrement, is more likely correct, and certainly more aptly and fully describes the reptile that lives among the lawyers. The shyter is indeed the excrement, the filthiness of the legal profession. Sportsmen are familiar with a long, lanky, crane-like bird, popularly known and named for its nasty habits as "shyspook." It reminds one of a shyter lawyer, and doubtless occupies the same place among birds as does the shyter among lawyers, and the jackall among brutes.

The Century dictionary rather awkwardly defines "shyster" as "one who does business without professional honor, used chiefly of lawyers."

The word appears in the late law dictionaries and is defined in two reported cases, in both of which it was held to be libelous per se. Bailey v. Kalamazoo Pub. Co., 40 Mich., 251, 256, was decided in 1879, when the word was very young in the language, though the vermin was then very old in the human race. A man named Bailey was a candidate for Congress on the Prohibition ticket. A Kalamazoo newspaper, apparently opposed to his candidacy, published an article to the effect that the candidate had been convicted of stealing whiskey fines while a justice of the peace, had lost his position as a minister on the charge of adultery, was "a pettifogging shyster," the article concluding with, "Pshaw, these reformers are pretty much alike." The court held
that to call one a pettifogging shyster was libelous per se, saying:

"We think also that the term 'pettifogging shyster' needed no
definition by witnesses before the jury. The combination of
epithets every lawyer and citizen know belongs to none but
unscrupulous practitioners who disgrace their profession by doing
mean work, and resort to sharp practice to do it. The defendant
successfully justified the charge by proof that such was plaintiff's
general reputation."

In Grubble v. Pioneer Press Co., 34 Minn., 342, a St. Paul news-
paper called one "a half imbecile shyster." The court said:

"The word 'shyster' defined in Webster to mean 'a trickish
knave, one who carries on any business, especially a legal business,
in a dishonest way,' is evidently capable of having reference to the
professional character and standing of a lawyer."

We have already suggested that the word is new, but the thing
itself very old. Dickens portrayed them, but did not call them
shysters. "Pettifogger" is the nearest real English word, but
he is defined to be a lawyer dealing only with petty cases. The
shyster of to-day hunts big game and often scorns the little busi-
ness of the pettifogger.

Thomas Fuller, the attractive English moralist of the seven-
teenth century, thus scolded the shyster of his time, known as the
"common barrator:"

"A barrator is a horse-leech that only sucks the corrupted blood
of the law. He trades in tricks and quirks; his highway is in
by-paths, and he loveth a cavil better than an argument, and
evasion better than an answer. There are two kinds of them;
either such as fight themselves, or are trumpeters in a battle to set
on others. Had he been a scholar, he would have maintained all
paradoxes; if a chirurgeon, he would never have cured a wound,
but always kept it raw; if a soldier, he would have been excellent
at a siege; nothing but ejectio firma would out him. * * * As
for the trumpeter barrator, he falls in with his neighbors that fall
out, and spurs them on to go to law. A gentleman, who, in a
duel, was rather scratched than wounded, sent for a chirurgeon,
who, having opened the wound, charged the man with all speed
to fetch such a salve from such a place in his study. 'Why,' said
the gentleman, 'is the hurt so dangerous?' 'Oh, yes,' answered
the chirurgeon, 'if he return not in post haste the wound will cure
itself, and so I shall lose my fee.' Thus the barrator posts to the
house of his neighbors, lest the sparks of their small discords should
go out before he bring them fuel, and so he be broken by their
making up. Surely, he loves not to have the bells rung in a peal,
but he likes it rather when they are jangled backward, himself
having kindled the fire of dissension amongst his neighbors."
The Shyster Lawyer

And then this great moralist utters a truth that has been proved up to this good day:

"He lives till his clothes have as many rents as himself hath made dissentions. I wonder any should be of this trade when none ever thrived on it."

It is a fact indisputably proved that no shyster, barrator, or ambulance-chaser, by whatever name he be called, ever thrived long. They have made progress for a while, have amassed snug fortunes at times, but in the end they die failures and disgraces, having not only ruined their own lives, but brought reproach and dishonor upon their profession.

It is the shyster who has made the legal profession the butt of so many puns and sallies, such as Ben Jonson's proposed epitaph of,

"God works wonders now and then; Here lies a lawyer—an honest man."

Thought of the shyster prompted Lord Brougham to define a lawyer as "a learned gentleman who rescues your estate from your enemies, and keeps it himself."

It is the shyster who was responsible for the riots of 1780 in England, where siege was laid to the Inns of Court, with the intention of exterminating the whole race of lawyers, that "the skin of an innocent lamb might no longer be converted into an indictment."

It is to the shyster to whom we largely owe the popular prejudice against lawyers of this day that is exhibited in the flings and alleged jokes of the press and stage. The shyster, with his pursuit of "skinning" friend and foe, adversary and client, with his effort to stir up litigation rather than to avoid it, to lengthen it instead of ending it, to hunt it in place of shunning it, is largely responsible for the present ever increasing misguided clamor of the people for the recall of judges.

The shyster of the present day is not always the product of dishonesty and viciousness. He is not confined to the breed of ignoramuses and rascals. He develops frequently with the law student who starts out with good intentions and honest motives, but who is not careful to learn, observe and cultivate the ethics of the profession.

The shyster of to-day appears in many varied forms and phases. We have the stupid, lazy shyster whose chief offense is his lack
of knowledge and industry. He merely ekes out a living in the scums of the law. He is a disgrace, but not nearly so dangerous as the smart, energetic shyster, who is able to hide his true character and keen enough to succeed.

We have the "ambulance chaser," who hangs around the house of the dead and injured, seeking employment as a tinner does trade, who preys upon corporations and succeeds not only in doing great injury to his victim, the defendant, but also his other victim, his client, who so frequently is deprived of any share of the loot. Indeed the most dangerous of that class of shysters is not the man who himself seeks out his own cases, and stirs up his own litigation without fear or concealment, but it is the man who pretends to respectability and secures his business secretively and furtively through the means of runners and hirelings. That man by means of his apparent decency is able to deceive and dupe the people, juries and courts, where the common, open shyster would fail. Every community is infested with this shyster in all its forms and kinds, and every community has been infested with it since the beginning of the profession.

It is an easy matter for a young lawyer who starts out with the pursuit of law as a practice rather than a profession, who has always in mind fees and money as a first consideration, to slip into bad practices and little by little develop into a genuine shyster.

A disbarment proceeding in a local court recently developed a scheme concocted and worked, which showed great ingenuity and cunning.

Several local insurance companies were placed in the hands of receivers, who found as assets several thousand promissory notes for small sums averaging less than ten dollars each. These notes had been given the insurance companies by policy holders in payment of premiums for policies which were never worth the paper on which they were printed. The makers of the notes were farmers of small means living in remote sections of the state. The receivers had been unable to realize anything on the collection of these notes. Some were barred by limitations, the consideration for most of them had failed, and the expense and cost of suing the makers at their domiciles greatly exceeded any sum that could possibly have been realized. In winding up the receiverships, it became necessary to dispose of these notes in some way, so they were offered at public sale by the receivers and were
bought for a song by an individual who held himself out as a lawyer. Under the law prevailing, a man must be sued at his domicile, unless actually served with process elsewhere. The makers of these notes resided in all the nooks and corners of the state, and were rarely found wandering far enough away from their homes or close enough to the domicile of the purchaser of the notes to enable him to get service of process on them. Letters, duns and threats accomplished something in the way of collections, but these thousands of notes aggregating $15,000, although purchased for less than a hundred dollars, looked to an ordinary man like a bad trade after all. But not so to the undaunted, energetic person whom we call lawyer. He was familiar with a statute which permitted summons to be served anywhere in the state on a defendant where a joint defendant was served in the jurisdiction of the court. The shyster then proceeded to create a joint defendant. Each of the notes were transferred to a dummy living in the bailiwick of the shyster by the receivers making the sales under the instructions of the lawyer who represented that he had in reality purchased them for this dummy. The dummy in turn endorsed each note to a corporation, which was the creation and creature of the lawyer, guaranteeing their payment. The lawyer thereupon brought hundreds of suits in a local justice court of his own domicile against his dummy endorser and the makers of the notes, alleging a joint liability to his corporation, and thus had summons sent to the constables of the various townships of the counties of the state by whom they were served on the makers of the notes. These farmers thus found themselves sued in a justice court remote from their residence for a trifling sum, and service on them claimed to be justified on the theory that service had been obtained on their co-defendant, the dummy endorser, in the jurisdiction of the remote court. Many of them paid rather than go to the expense of a defense so far from their homes. The thing looked regular. The dummy confessed judgment, and judgments by default were rendered against the makers of the notes, the real defendants. Some of these sturdy farmers, however, refused to be victimized, and exposed the scheme by which the lawyer had created a sham co-defendant. It developed that the lawyer had a contract with the dummy by which he agreed to share the spoils with him. In this way the dummy was nominally a joint defendant, but in reality a joint plaintiff.
The Circuit Court to which some of these cases were appealed and before which the fraud was exposed, on motion of the local bar association, disbarred the lawyer on the ground that he had been guilty of wilfully and fraudulently perverting the processes of the courts. The lawyer appealed, but we will assume to call him a shyster until his disbarment is set aside by a higher court, without fear of libel.

The shyster is with us in large numbers. In this day of corporations and large monied interests he is perhaps more numerous and prosperous than in any previous period of the history of our profession. He certainly tends more largely than all other things to disgrace and deprave the profession of law. He is far more harmful to the profession itself than to the community in which he practices. He should be eliminated from the profession and banished from the bar. That cannot be accomplished until public opinion condemns; and the public will never condemn until the bar itself does so. The lawyers can never mould public opinion against the shyster until they first get together themselves on the subject. It is a distressing fact that there are many lawyers of good standing who are unfamiliar with professional ethics, and quite a number who care little about observing them after making their acquaintance. The lawyers must first organize themselves, and then as a body make open war on the shyster as a public enemy. The fight is a hard one at best with the lawyers organized and united.

Every attack on the ambulance chaser in legislative halls, the courts, and before the people is met by the shyster with the very plausible defense that the attack is made in the interest of railroads and corporations to prevent the common people from obtaining their just deserts.

Two duties are upon us. The first to decrease the number of shysters by driving them from the ranks of the profession, and the second is by preventing their increase.

Great difficulty is met in disbarring lawyers. What is everybody's business is nobody's. Lawyers shirk from the disagreeable duty of personally initiating a disbarment proceeding. Prosecuting officers are not prone to clean up the profession, when more pecuniary profit can be made in other lines. Under many statutes juries are permitted the offending lawyer, and juries are not familiar with legal ethics, care little about them, and do not
convict as frequently and as promptly as they should. The remedy lies in unity of action among the lawyers through bar associations, which should make it their business as an organization, first to lay down and teach sound professional ethics to those members of the bar that need the instruction, and to enforce those teachings by vigorous endorsements of disbarment statutes.

If the statutes of the state are inadequate, then the lawyer should see to it that they are improved. Failing in that, courts have inherent power to strike offending attorneys from the rolls of practicing attorneys, regardless of the statutes on the subject.

Any member of the bar, or a bar association, can initiate such proceedings, and much can be accomplished without calling upon the usually inadequate statutes in the subject.

No community should be without a local bar association, which acting in accord with its state association, can, if it will, do more to exterminate the shyster pest than any other human agency.

The American Bar Association in 1868 adopted a Code of Professional Ethics. The preamble to that code contains the following ringing sentence:

"The future of our republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and motives of the members of our profession are such as to merit the approval of all just men."

These canons were prepared by a committee of fourteen distinguished lawyers and condemn among other things as unprofessional the representing of conflicting interests, attempts to exert personal interests on the court, acquiring interest in litigation, solicitation of business by circulars and advertisements, or touters, stirring up litigation directly or indirectly through agents.

The Arkansas Bar Association has adopted the same canons and prints them in each annual report of its proceedings.

Any lawyer who pursues the practice of violating the ethics of the profession is a shyster.

Every lawyer who loves his profession will give his aid in upholding the integrity of the bar, and in joining in a crusade against the shyster lawyer.

In Ex parte Ditchburd, 32 Ore., 538, the court said:

"Unprofessional conduct on the part of an attorney involves a breach of the duty which professional ethics enjoin. It has been held that it may consist in betraying confidence, taking advantage of, or acting in bad faith towards his client; in attempting by any means to practice a fraud, impose upon or deceive the court, the
adverse party, or his counsel; in introducing testimony which he knows to be false or forged; tampering with or suborning witnesses; fraudulently inducing them to absent themselves from and avoid attendance upon courts when it is suspected or known that their testimony will or may be prejudicial to him or his client; in applying abusive or insulting language to, or assaulting or threatening to chastise, the judge concerning his judicial action; and in fact any conduct which tends to bring reproach upon the legal profession, or to alienate the favorable opinion which the public should entertain concerning it.

"It is the right and duty of members of the bar to file the necessary information against any attorney who is guilty of any improper conduct in his profession. Attorneys are officers of the court. By virtue of their office great confidence must necessarily be reposed in them, and, if they are unworthy of that confidence, a serious impediment is interposed to the administration of justice. Secrets involving all that makes life worth having are necessarily confided to them by their clients, in implicit reliance upon their professional honor. In the same confidence they have the freest access to all the records of the court, of which they are members. They can, in any action, by their word, irrevocably bind the client that they represent. The bar, more than any other profession, is wholly dependent upon the reputation of its members for honor and integrity; and, after the bench, the members of the bar have the greatest interest in maintaining the honor of the profession, and in purging it of unworthy members."

We call attention to the able opinion of Huston, C. J., in In re Badger (Idaho), 38 C. L. J., 411, which was a proceeding by a bar association to disbar an attorney, where he states that there is no duty imposed upon a court more important than that of preserving, to the best of its power and ability, the professional integrity and purity of its bar. He concludes his magnificent appeal for the honor of the bar, by saying:

"The rule given by Burns to his young friend, Aiken, may well be adopted by every member of the profession as a check upon his zeal either for the acquisition of pecuniary results or the attainment of professional success:

"But where you feel your honor grip,
Let that aye be your border;
Its slightest touches, instant pause—
Debar all side pretenses,
And resolutely keep its laws,
Uncaring consequences."

Ashley Cockrill.

Little Rock, Ark.