

12-1953

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Recommended Citation

Frank C. Ingraham, Heir Hunting – A Profession or a Racket?, 7 *Vanderbilt Law Review* 104 (1953)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol7/iss1/6>

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NOTES

HEIR HUNTING — A PROFESSION OR A RACKET?

The business or profession known as "heir-hunting" or "heir-chasing"¹ has a checkered and interesting history, having long been established on an international² and local³ basis as a lucrative means of livelihood.⁴ "Probate searchers" usually operate by investigating probate or surrogate court records to uncover estates of substantial wealth whose probate or administration has been delayed because of inability to contact one or more of the missing heirs. An investigator, usually unknown to the estate, locates the missing heir through court records and genealogical information collected by his staff, and at times through cooperation with foreign agents in the same business. The missing person is hastily informed that he has a valid claim as an heir against an unsettled estate. He is promised genealogical charts and other information with which he can establish his heirship if he will assign a portion of his inheritance to the probate searcher. As a result of their frequent legal blunders, these investigators have constantly changed their pattern of procedure in order to come formally within the law.⁵

In dealing with the problem of heir-hunting, this note will be limited to a discussion of the agreement — written,⁶ oral,⁷ implied⁸ or a

1. Note the distinction drawn between "chasers" and "hunters" in *Carey v. Thieme*, 2 N.J. Super. 458, 64 A.2d 394, 398 (Ch. 1949).

2. *Merlaud v. National Metropolitan Bank*, 84 F.2d 238 (D.C. Cir. 1936) (citizen of Paris, France, in practice of international probate research). Both *In re Tuthill*, 256 App. Div. 539, 10 N.Y.S.2d 643 (1st Dep't 1939), and *In re Wellington's Estate*, 154 Misc. 271, 276 N.Y. Supp. 946 (Surr. Ct. 1935), concerned contracts of the Trans-Atlantic Estates & Credit Company.

3. *Wedgerfield v. De Bernardy*, 24 T.L.R. 497, *aff'd*, 25 T.L.R. 21 (1908).

4. *Rees v. De Bernardy*, [1896] 2 Ch. 437; *Sprye v. Porter*, 7 El. & Bl. 58, 119 Eng. Rep. 1169 (1856); *Reynell v. Sprye*, 1 De G.M. & G. 660, 42 Eng. Rep. 710 (Ch. 1852).

5. See *Rees v. De Bernardy*, [1896] 2 Ch. 437. The first agreement used by De Bernardy, the heir-hunter, was not merely to furnish information but also to recover the property; this was void as a champertous contract. Subsequently, De Bernardy avoided this trap by agreeing only to furnish the information in return for a share in the property and this practice was upheld in *Wedgerfield v. De Bernardy*, 24 T.L.R. 497 (1908). Joseph Woerndle, the non-lawyer owner of Trans-Atlantic Estates & Credit Company, began by soliciting from beneficiaries their power of attorney; but this was held to be illegal practice of law. *In re Lynch's Estate*, 154 Misc. 260, 276 N.Y. Supp. 939 (Surr. Ct. 1935); *In re Wellington's Estate*, 154 Misc. 271, 276 N.Y. Supp. 946 (Surr. Ct. 1935). Next the court held that a power of attorney authorizing the Trans-Atlantic Estates & Credit Company to appoint attorneys in connection with the settlement of an estate was void, as the illegal practice of law by a corporation. *In re Vogelsang's Estate*, 162 Misc. 257, 293 N.Y. Supp. 346 (Surr. Ct. 1937). Thereupon Woerndle hired for the corporation a lawyer who subsequently was disbarred for his connection with a soliciting corporation. *In re Tuthill*, 256 App. Div. 539, 10 N.Y.S.2d 643 (1st Dep't 1939).

6. The heir may be liable under a written contract which contains the entire agreement. See, e.g., *In re Cohen's Estate*, 66 Cal. App.2d 450, 152 P.2d

combination of these⁹—under which the heir-hunter seeks to recover¹⁰ or from which the heir seeks to be relieved;¹¹ this agreement is the pivotal point of controversy, complicated by many factual distinctions.

Jurisdiction of Equity to Rescind:

The protection of testamentary beneficiaries and expectant heirs from the imposition of unnecessary expenses has traditionally been considered within the jurisdiction of equity.¹² It is a protection which the courts have rigidly exercised in the public interest. In fact, "equity extended to such persons a degree of protection approaching nearly to rendering them incapable of binding themselves by any contract; relief was granted . . . without requiring any particular evidence of imposition, a burden of proof being cast upon the purchaser to show that he paid a fair and just price."¹³

In seeking to bridle this activity, the courts have equated their heir-hunter's contract to contracts for the sale of a contingent interest by an expectant heir. Each fact situation is carefully analyzed to ascertain any possible inequity resulting from inequality of the bargaining positions;¹⁴ sharp practice of over-reaching,¹⁵ especially where one

485 (1944); Kaplan v. Suher, 254 Mass. 180, 150 N.E. 9 (1926) (sealed instrument); Sparne v. Altshuler, 90 A.2d 919 (R.I. 1952) (printed form); Sprye v. Porter, 7 El. & Bl. 58, 119 Eng. Rep. 1169 (1856).

7. Note the judges' discussion of possible methods of making such agreements in Reynell v. Sprye, 1 De G.M. & G. 660, 42 Eng. Rep. 710 (Ch. 1852).

8. Where the services of the heir-hunter actually confer a benefit, a contract will be implied in law. See, e.g., *In re Guardianship of O'Donnell's Estate*, 85 Cal. App.2d 1, 192 P.2d 94, rehearing denied, 85 Cal. App.2d 816, 193 P.2d 143 (1948); Rees v. De Bernardy, [1896] 2 Ch. 437 (oral agreement).

9. In Rees v. De Bernardy, [1896] 2 Ch. 437, the heir-chaser made a written agreement which in itself provided only for the sale of information on a contingent fee basis. However, the court found that he also orally arranged to recover the heirs' property for them. This represents the usual method in which the formal contract is carefully drawn to avoid any champertous element, but a collateral oral agreement is entered into whereby the chaser champertously promises to bear expenses and perfect the claim for the heir. See, Transcript of Record, p. 15, Downs v. Altshuler, Eq. No. 21801, R.I. Super. Ct., 1953, to the effect that while the contract itself was not champertous the acts of the heir-hunters were evidence of a champertous, implied or oral, agreement. See Miller v. Anderson, 183 Wis. 163, 196 N.W. 869, 871, 34 A.L.R. 1529 (1924) (parol evidence competent to show that a writing valid on its face is mere cover for champertous oral agreement).

10. See, e.g., Merlaud v. National Metropolitan Bank, 84 F.2d 238 (D.C. Cir. 1936); Spraye v. Porter, 7 El. & Bl. 58, 119 Eng. Rep. 1169 (1856).

11. See, e.g., *In re Guardianship of O'Donnell's Estate*, 85 Cal. App.2d 1, 192 P.2d 94 (1948) (suit by guardian of incompetent for relief from heir-hunter's contract); Carey v. Thieme, 2 N.J. Super. 458, 64 A.2d 394 (Ch. 1949); McIlwain's Estate, 27 Pa. D. & C. 619 (1936); Sparne v. Altshuler, 90 A.2d 919 (R.I. 1952); Rees v. De Bernardy, [1896] 2 Ch. 437.

12. See 3 POMEROY, EQUITY JURISPRUDENCE § 953 (5th ed. 1941); 9 AM. JUR., *Cancellation of Instruments* § 27 (1937).

13. 9 AM. JUR., *Cancellation of Instruments* § 27 (1937).

14. See Kaplan v. Suher, 254 Mass. 180, 150 N.E. 9, 11 (1926); BISPHAM, PRINCIPLES OF EQUITY 373 (10th ed. 1924).

15. Stone v. Moody, 41 Wash. 680, 84 Pac. 617, 619 (1906). Equity will set aside a contract when it plainly appears that one party overreached the other.

party is in financial distress and subject to a "catching bargain";¹⁶ inadequacy of consideration;¹⁷ any advantage taken of a fiduciary relationship;¹⁸ misrepresentation or surprise;¹⁹ fraud or unconscionable acts which may be inferred from the nature and subject of the agreement;²⁰ any speedy solicitation or unduly urgent pressure to sign without independent advice. Relief from the contract is granted whether the party-litigant is an expectant heir or a missing heir.

Illegal and Unethical Practice of Law:

Compensation under these contracts has ordinarily been contingent upon actual recovery by the missing heir. Therefore, the contracts often include a power of attorney or right to bring suit, at the genealogist's expense, in behalf of the heir.²¹ The courts probe the entire agreement to ascertain whether the heir-chaser (lawyer, corporation or layman), secured control of litigation in this manner either by agreeing to employ²² or by serving²³ as the heir's attorney; such activity

See 5 L.R.A. (N.S.) 799 (1907), citing cases that show the effect of ignorance on equitable relief from an overreaching contract.

16. See 30 C.J.S., *Equity* § 50b (1942).

17. *In re Larson's Estate*, 92 Cal. App.2d 267, 206 P.2d 852, 856 (1949) (burden on heir-hunter to prove adequacy of consideration). On the inference of fraud from mere inadequacy of consideration, see 3 POMEROY, *EQUITY JURISPRUDENCE* § 953 (5th ed. 1941).

18. The tendency of modern decisions is to uphold the transfer of expectant interests unless there is a confidential relationship or actual bad faith. BISHAM, *PRINCIPLES OF EQUITY* 374 (10th ed. 1924). See also 30 C.J.S., *Equity* § 50b (1942).

19. These are common grounds upon which equity will void a contract. 3 POMEROY, *EQUITY JURISPRUDENCE* § 953(a) (5th ed. 1941).

20. Equity will seize upon imposition or artifice as sufficient to constitute fraud where the circumstances are such that public policy requires that they should be treated in the same manner as fraudulent acts. *Gargano v. Pope*, 184 Mass. 571, 69 N.E. 343, 100 Am. St. Rep. 575 (1904) (champertous contract held void on ground of constructive fraud). See also 3 POMEROY, *EQUITY JURISPRUDENCE* §§ 924, 943 (5th ed. 1941).

21. For cases containing this champertous element, see *Merlaud v. National Metropolitan Bank*, 84 F.2d 238 (D.C. Cir. 1936), *cert. denied*, 299 U.S. 584 (1936) (probate searcher was to pay all expenses incidental to prosecuting legatee's claim); *Casserleigh v. Wood*, 119 Fed. 308 (8th Cir. 1902) (complete control of litigation); *In re Butler's Estate*, 29 Cal.2d 644, 177 P.2d 16, 171 A.L.R. 343 (1947); *In re Reilly's Estate*, 81 Cal. App. 2d 564, 184 P.2d 922 (1947).

22. *In re Butler's Estate*, 29 Cal.2d 644, 177 P.2d 16, 171 A.L.R. 343 (1947); *In re Larson's Estate*, 92 Cal. App.2d 267, 206 P.2d 852 (1949) (agreement to employ counsel and not to act himself); *In re Reilly's Estate*, 81 Cal. App.2d 564, 184 P.2d 922 (1947) (attorney in fact, to hire counsel for heir); *Carey v. Thieme*, 2 N.J. Super 458, 64 A.2d 394 (Ch. 1949) (retain attorney for the beneficiary); *In re Vogelsang's Estate*, 162 Misc. 257, 293 N.Y. Supp. 346 (Surr. Ct. 1937) (appointment of attorney by research organization; practice of law by a corporation); *In re Lynch's Estate*, 154 Misc. 260, 276 N.Y. Supp. 939 (Surr. Ct. 1935).

23. See, e.g., *Merlaud v. National Metropolitan Bank*, 84 F.2d 238, 240 (D.C. Cir. 1936), *cert. denied*, 299 U.S. 584 (1936) (contract for attorney to prosecute at his own expense held champertous); *In re Tuthill*, 256 App. Div. 539, 10 N.Y.S.2d 643 (1st Dep't 1939), *appeal denied*, 256 App. Div. 1059, 11 N.Y.S.2d 842 (1st Dep't 1939) (attorney assisted corporation which solicited heirs; corporation then employed attorney; attorney disbarred).

constitutes unethical or illegal practice of law.²⁴ Where he acts as middle-man between the attorney and his client, agreeing to hire the attorneys or bear the expense of necessary litigation, his activity is held to be "commercial exploitation of the legal profession."²⁵ The professional heir-hunters have learned to conceal these illegal practices by omitting in the formal written contract any reference to their control of the heir's claim. The courts have not been misled very often by this subterfuge, but have also looked to other facts, such as oral agreements and superior knowledge, to find any intended control of litigation.²⁶ Wherever a non-lawyer has solicited and obtained authority from a testamentary beneficiary to represent him in legal proceedings concerning his share of the estate, the courts have held that to be the illegal practice of law.²⁷ Participation by an attorney in the solicitation of a missing heir to establish his claim in an estate in consideration of a portion of his inheritance has been held to be a breach of the 35th Canon of Professional Ethics and sufficient grounds for disbarment.²⁸ This practice is analogous to the illegal solicitation known as "ambulance chasing."²⁹

Adequacy of Consideration and Reasonableness of Compensation:

The heir-hunter has the burden of proving valuable consideration.³⁰ He must show the court that the heir was in truth missing and that

24. See Note, 17 A.L.R. 351 (1947). While a contract merely to furnish information for a share in the recovery is not valid, yet the same may be made void by a further provision which is illegal, i.e., an agreement to secure such additional evidence and information, as may be necessary to establish heir's claim. See Note, 34 A.L.R. 1537, 1539 (1925).

25. *In re Butler's Estate*, 29 Cal.2d 644, 177 P.2d 16, 18, 171 A.L.R. 343 (1947). See also *In re Larson's Estate*, 92 Cal. App.2d 267, 206 P.2d 852, 856 (1949); *In re Reilly's Estate*, 81 Cal. App.2d 564, 184 P.2d 922, 924 (1947).

26. *In Sprye v. Porter*, 7 El. & Bl. 58, 119, Eng. Rep. 1169, 1179 (1856), the proposed agreement for sale of evidence was valid, but facts were admitted which tended to prove that the stranger illegally agreed to promote the litigation. Evidence is admissible to show that an agreement legal on its face was in fact an illegal transaction. *Miller v. Anderson*, 183 Wis. 163, 196 N.W. 869 (1924). See also *Sherman v. Burton*, 165 Mich. 293, 130 N.W. 667, 33 L.R.A. (N.S.) 87 (1911) (a contract must be measured by its tendency, and not alone by what was done to carry it out). It is not the agreement which is champertous but the "manner in which it was interpreted and carried out by the Altshulers." Transcript of Record, p. 8, *Downs v. Altshuler*, Eq. No. 21801, R.I. Super. Ct., 1953. But see *Sparne v. Altshuler*, 90 A.2d 919 (R.I. 1952) (the court overlooked the significant evidence that Altshuler orally and impliedly contracted champertously to recover the property for the heir).

27. See *Pacific Employers Ins. Co. v. Carpenter*, 10 Cal. App.2d 592, 52 P.2d 992, 994 (1935); *Hightower v. Detroit Edison Co.*, 262 Mich. 1, 247 N.W. 97, 99, 86 A.L.R. 509 (1933).

28. See *In re Tuthill*, 256 App. Div. 539, 10 N.Y.S.2d 643, 649 (1st Dep't 1939). The New York court held in disbaring Tuthill that such acts violated the 35th Canon of Professional Ethics which provides: "The professional services of a lawyer should not be controlled . . . by any lay agency, personal or corporate, which intervenes between client and lawyer."

29. See *Howe v. State Bar of California*, 212 Cal. 222, 298 Pac. 25, 28 (1931); *Hightower v. Detroit Edison Co.*, 262 Mich. 1, 247 N.W. 97, 99 (1933).

30. See *Kaplan v. Suher*, 254 Mass. 180, 150 N.E. 9, 11, 42 A.L.R. 1142, 1145

the administrator has not or most likely would not have been able to locate the heir through "the ordinary and natural processes of law."³¹ A reasonable lapse of time between the issuance of the letters of administration and the execution of the contract is said to be evidence that the administrator was unable to locate the heir.³² Actually, the courts have consistently refused to find valuable consideration where there has not been a reasonable lapse of time.³³

Even where valuable consideration has been demonstrated, the heir-hunter's compensation must be shown to be reasonable. The genealogists' fees have varied from one-fifth³⁴ to two-thirds³⁵ with the usual

(1926) (undisclosed assets), which points out an analogy to the "reward cases," in which the offeror of a reward is liable for accepted information. *Besse v. Dyer*, 8 Allen 151, 85 Am. Dec. 747 (Mass. 1864); *Jenkins v. Kelren*, 12 Gray 330, 74 Am. Dec. 596 (Mass. 1859); *Furman v. Parke*, 21 N.J.L. 310 (Sup. Ct. 1898). See 1 WILLISTON, CONTRACTS § 33 (3d ed. 1936); Notes, 10 MINN. L. REV. 433, 434 (1926), 1 NOTRE DAME LAW. 126 (1926). *But cf.*, *Pool v. City of Boston*, 59 Mass. 219 (1849) (duty to reveal information; no consideration for reward).

31. *In re Larson's Estate*, 92 Cal. App.2d 267, 206 P.2d 852, 856 (1949) (heir was not in fact a "missing" heir); *In re Reilly's Estate*, 81 Cal. App.2d 564, 184 P.2d 922, 924 (1947) (record failed to show that heir was "missing"). See also *Sprye v. Porter*, 7 El. & Bl. 58, 78, 119 Eng. Rep. 1169, 1177 (1856) (beneficiary not aware of property). See *In re Butler's Estate*, 29 Cal.2d 644, 177 P.2d 16, 20 (1947) (beneficiaries were "known heirs").

"The speedy solicitation of powers of attorney from 'known legatees' who would receive . . . their bequests in the usual course of the administration of the estate . . . is an exploitation unfavorable and adverse to public policy." *Carey v. Thieme*, 2 N.J. Super. 458, 64 A.2d 394, 399 (Ch. 1949). It is the administrator's duty to search for a decedent's next of kin. *McIlwain's Estate*, 27 Pa. D. & C. 619, 624 (1936). In *In re Wellington's Estate*, 154 Misc. 271, 276 N.Y. Supp. 946, 947 (Surr. Ct. 1935), it was established that the status and relationship of the heir, as next of kin, would have been proven without the intervention of the heir-chaser. *But see*, *Sparne v. Altshuler*, 90 A.2d 919 (R.I. 1952) where the court upheld the heir-chaser's contract that the heir was contacted in due course of law.

32. *In re Cohen's Estate*, 66 Cal. App.2d 450, 152 P.2d 485, 487 (1944) (two years a reasonable lapse of time). The facts in *Kaplan v. Suher*, 254 Mass. 180, 150 N.E. 9, 10 (1926), indicate that the estate was accounted for and settled except for the unknown portion; the contract for the sale of information was held valid. *Compare* *Sparne v. Altshuler*, 90 A.2d 919 (R.I. 1952) (court ignored fact that heir was later contacted by administrator), *with* Transcript of Record, p. 9, *Downs v. Altshuler*, Eq. No. 21801, R.I. Super. Ct., 1953 (court recognized that heir would have been found by the estate). Both cases arose out of the same contract and estate and decided by the same court.

33. See, e.g., *In re Butler's Estate*, 29 Cal.2d 644, 177 P.2d 16, 20 (1947); *In re Reilly's Estate*, 81 Cal. App.2d 564, 184 P.2d 922 (1947) (agreements procured only 18 days after death of decedent); *McIlwain's Estate*, 27 Pa. D. & C. 619 (1936) (14 days after issuance of letters). *But see* *Sparne v. Altshuler*, 90 A.2d 919, 920 (R.I. 1952) (three months after issuance).

34. See *Sprye v. Porter*, 7 El. & Bl. 58, 119 Eng. Rep. 1169 (1856) (twenty percent held reasonable); *Stanley v. Jones*, 7 Bing. 369, 131 Eng. Rep. 143, 146 (C.P. 1831) (one-eighth).

35. *In re Guardianship of O'Donnell's Estate*, 85 Cal. App.2d 1, 192 P.2d 94 (1948) (forty percent); see *Wood v. Casserleigh*, 30 Colo. 287, 71 Pac. 360, 362 (1902); *Kaplan v. Suher*, 254 Mass. 180, 150 N.E. 9, 10 (1926) (fifty percent); *Rees v. De Bernardy*, [1896] 2 Ch. 437, 444 (fifty percent); cf. *Miller v. Anderson*, 183 Wis. 163, 196 N.W. 869, 870 (1924) (fifty percent for information on lost shipments).

rate being about thirty percent.³⁶ *In re Guardianship of O'Donnell's Estate*³⁷ points out that the courts "will follow the rule applying to the fixing of attorney's fees, and therefore the court must be advised to the extent and nature of the services rendered before using its own judgment of the reasonable value of these services."³⁸ The question of reasonableness of compensation is properly one for the court to determine.³⁹

Elements of Champerty:

Heir-hunting often contains the earmarks of champerty and maintenance. Champerty has been defined as "the unlawful maintenance of a suit in consideration of some bargain to have a part of the thing in dispute or some profit out of it."⁴⁰ Maintenance is the "officious intermeddling in a suit that in no way belongs to one, by maintaining or assisting . . . with money or otherwise, to prosecute or defend it."⁴¹ Where "there is no agreement to divide the thing in suit, the party intermeddling is guilty of maintenance only; but where he stipulates to receive part of the thing in suit, he is guilty of champerty."⁴² At common law these doctrines would void any contract under which a genealogist attempted to recover a missing heir's claim. Where these doctrines are not recognized, some statutes regulate assignments of this type as being against public policy.⁴³

36. See *Merlaud v. National Metropolitan Bank*, 84 F.2d 238, 240 (D.C. Cir. 1936) (one-third); *In re Larson's Estate*, 92 Cal. App.2d 267, 206 P.2d 852, 856 (1949) (thirty percent); *In re Cohen's Estate*, 66 Cal. App.2d 450, 152 P.2d 485, 488 (1944) (thirty percent); *Sparne v. Altshuler*, 90 A.2d 919, 920 (R.I. 1952) (one-third).

37. 85 Cal. App.2d 1, 192 P.2d 94, *rehearing denied*, 85 Cal. App.2d 816, 193 P.2d 143 (1948).

38. *Id.* at 100.

39. *In re Cohen's Estate*, 66 Cal. App.2d 450, 152 P.2d 485, 488 (1944).

40. *McIlwain's Estate*, 27 Pa. D. & C. 619, 623 (1936); see *Merrell v. Stuart*, 220 N.C. 326, 17 S.E.2d 458, 462 (1941), and cases cited therein.

41. 14 C.J.S., *Champerty and Maintenance* § 1 b (1939).

42. 14 C.J.S., *Champerty and Maintenance* § 5 (1939). "The champertor has in view a profit to himself in a share of the spoils of the litigation. The maintainer is more of a voluntary intermeddler and stirrer up of strife for the love of it. He is described as an 'officious' intermeddler." *Breeden v. Brankford Marine, Acc. & Plate Glass Ins. Co.*, 110 Mo. App. 312, 315, 85 S.W. 930, 931 (1905).

43. "The court before making distribution . . . to any assignee or . . . any attorney-in-fact of any heir . . . may . . . inquire into the consideration for such assignment . . . amount of fees . . . paid by the heir . . . and into the circumstances surrounding the execution of such assignment . . . and if it finds that the fees . . . paid by any such heir . . . is grossly unreasonable . . . it may refuse to make distribution pursuant thereto. . . ." See CAL. PROB. CODE ANNOTATIONS § 1020.1 (1944). For interpretation of this statute, see *In re Butler's Estate*, 29 Cal.2d 644, 177 P.2d 16 (1947) (public policy limits the rights of assignees of any heir); *In re Larson's Estate*, 92 Cal. App.2d 267, 206 P.2d 852 (1949) (heir-hunter's services must be of value and the compensation reasonable); *In re Lund's Estate*, 65 Cal. App.2d 151, 150 P.2d 211 (1944) (this section grants jurisdiction under certain circumstances to ignore an assignment to heir-hunters). This statute with its regulation of distribution is illustrative of one of the several types of statutes. Another general type of

While a contract merely to furnish information upon consideration of a share in the recovery is not invalid,⁴⁴ the courts have held champertous similar contracts in which the heir-hunter, expressly⁴⁵ or impliedly,⁴⁶ agrees to furnish such evidence as should be sufficient to win a lawsuit;⁴⁷ to exert influence to procure such additional evidence as may be requisite to establish a claim;⁴⁸ to testify in the beneficiary's behalf;⁴⁹ or to assist actively in recovery of the property for the beneficiary.⁵⁰ Where these contracts contravene public policy tending to the perversion of justice,⁵¹ they are invalid.

To ascertain the presence of any of these elements of champerty the courts must remain keenly aware not only of the written contract, but of the entire transaction as shown by the respective positions of the parties,⁵² the services actually contemplated⁵³ and other circumstances tending to show assistance in contemplated litigation,⁵⁴ the

legislation which has been invoked is that declaring the heir-hunter's contract and activities to be the illegal practice of law: (1) by the nonlawyer, *Carey v. Thieme*, 2 N.J. Super. 458, 64 A.2d 394 (Ch. 1949); *In re Lynch's Estate*, 154 Misc. 260, 276 N.Y. Supp. 939 (Surr. Ct. 1935); (2) by the lawyer, *In re Tuthill*, 256 App. Div. 539, 10 N.Y.S.2d 643 (1st Dep't 1939) (violation of the Canons of Professional Ethics); (3) by a corporation, *In re Vogelsang's Estate*, 162 Misc. 257, 293 N.Y. Supp. 346 (Surr. Ct. 1937); *In re Lynch's Estate*, 154 Misc. 260, 276 N.Y. Supp. 939 (Surr. Ct. 1935); *In re Wellington's Estate*, 154 Misc. 271, 276 N.Y. Supp. 946 (Surr. Ct. 1935).

44. See *Wedgerfield v. De Bernardy*, 24 T.L.R. 497 (1908); *Sprye v. Porter*, 7 El. & Bl. 58, 119 Eng. Rep. 1169, 1177 (1856); Note, 34 A.L.R. 1534, 1539 (1925); see *Sparne v. Altshuler*, 90 A.2d 919, 924 (R.I. 1952) (dissenting opinion).

45. *In re Butler's Estate*, 29 Cal.2d 644, 177 P.2d 16, 17, 171 A.L.R. 343 (1947); *Merrell v. Stuart*, 220 N.C. 326, 17 S.E.2d 458 (1941).

46. "[T]he defendant . . . took care that the document . . . should on the face of them not shew anything beyond a promise on his part to give information. But I am satisfied that he represented . . . that he would recover the property. . . ." *Rees v. De Bernardy*, [1896] 2 Ch. 437, 447. See note 26 *supra*.

47. Note, 34 A.L.R. 1529, 1540 (1925).

48. *Stanley v. Jones*, 7 Bing. 369, 131 Eng. Rep. 143, 146 (1831).

49. *Miller v. Anderson*, 183 Wis. 163, 196 N.W. 869, 871 (1924).

50. *Rees v. De Bernardy*, [1896] 2 Ch. 437, 444-46.

51. See *Miller v. Anderson*, 183 Wis. 163, 196 N.W. 869, 871 (1924) (hiring witness on contingent fee basis held contrary to public policy). Cf. *Worlton v. Davis*, 249 P.2d 810, 813 (Idaho 1952). "[I]t is the evil tendency of the contract and not its actual injury to the public that is determinative." *Stearns v. Williams*, 72 Idaho 276, 240 P.2d 833, 837 (1952).

52. Compare *Kaplan v. Suher*, 254 Mass. 180, 150 N.E. 9, 11 (1926) (competent persons on equal footing), with *Downs v. Altshuler*, Eq. No. 21801, R.I. Super. Ct., 1953 (not on equal footing). "It becomes the duty of the courts to see that no improper advantage is taken either of the ignorance or necessities of those who enter into such contracts." *Perry v. Dickens*, 105 Pa. 83, 89 (1884). See also *McIlwain's Estate*, 27 Pa. D. & C. 619, 623 (1936).

53. Cf. *Bristol v. Equitable Life Assur. Soc'y*, 132 N.Y. 264, 30 N.E. 506, 507, 28 Am. St. Rep. 568 (1892) (no implied contract arises from communicating of valuable information). Compare *Casserleigh v. Wood*, 119 Fed. 308 (8th Cir. 1902) (a contract for the purpose of gambling in litigation), with *Wood v. Casserleigh*, 30 Colo. 287, 71 Pac. 360 (1902) (a valid contract for the sale of evidence).

54. "It is not what [the heir-chaser] told [the heir] but what he failed to tell her . . . [While] the contract itself is not champertous . . . the evidence shows that the [heir-chasers] carried on the case as if it were their own. . . ." Transcript of Record, p. 15, *Downs v. Altshuler*, Eq. No. 21801, R.I. Super. Ct., 1953. "A resort to extrinsic circumstances, [is] proper to consider in con-

common element of champertous contracts.⁵⁵ The contingent nature of the heir-hunter's compensation suggests that the genealogist intended to take all steps necessary to the heir's recovery. The professional heir-hunters have on occasion successfully avoided this inference of champerty by only agreeing to furnish information to establish the claim,⁵⁶ rather than to win the suit, or by expressly refusing to participate in any litigation concerning the property.⁵⁷ The obvious disadvantage to the heir-hunter of such a limited contract is that if the beneficiary refuses to sue the estate to enforce his claim, the genealogist can not force him to do so.⁵⁸

Conclusion:

Although the cases clearly define the law and public policy applicable to the genealogist's contract, the important variable is the individual factual situation and its implications. The courts have upheld the heir-hunter's contract when the following factors were predominant in the suit: where the services of the genealogist amounted to valuable consideration;⁵⁹ where the parties were competent and on equal footing;⁶⁰ where there was no implied or express agreement to participate in existing or contemplated litigation;⁶¹ where the beneficiary accepted the evidence which established his claim and received the benefit of the claim;⁶² where there was no duty on the party producing the evidence to so act.⁶³

nection with the language of the contract, [for it] manifests this intention of the parties still more clearly." *Wood v. Casserleigh*, 30 Colo. 287, 71 Pac. 360, 362 (1902).

55. Existing or contemplated litigation is the foundation of common law champerty. See *Stotsenburg v. Marks*, 79 Ind. 193, 197 (1881); *F. B. Vandergrift & Co. v. Langan Zinc Co.*, 87 Kan. 376, 378, 124 Pac. 534, 535 (1912); *Waller's Adm'x v. Marks*, 100 Ky. 541, 38 S.W. 894, 896-97 (1897); *Scott v. Harmon*, 109 Mass. 237, 238 (1872).

56. *In re Cohen's Estate*, 66 Cal. App.2d 450, 152 P.2d 485 (1944); *Wedgerfield v. De Bernardy*, 24 T.L.R. 497 (1908).

57. *Sprye v. Porter*, 7 El. & Bl. 58, 119 Eng. Rep. 1169, 1177 (1856).

58. *Grass v. Campbell*, 26 Ohio App. 460, 160 N.E. 511 (1927), *aff'd*, 118 Ohio St. 285, 160 N.E. 852 (1928).

59. *Sprye v. Porter*, 7 El. & Bl. 58, 119 Eng. Rep. 1169 (1856) (abundant consideration for the contract and advantage derived by the beneficiary). Also see, *Stroemer v. Van Orsdel*, 74 Neb. 132, 107 N.W. 125, 4 L.R.A. (N.S.) 212 (1906).

60. *Kaplan v. Suher*, 254 Mass. 180, 150 N.E. 9, 42 A.L.R. 1142 (1924); see *Sparne v. Altshuler*, 90 A.2d 919, 924 (R.I. 1952) (dissenting opinion agrees with majority on three points). Cf. 9 AM. JUR., *Cancelation of Instruments* § 25 at 372 (1937).

61. See *In re Cohen's Estate*, 66 Cal. App.2d 450, 152, P.2d 485, 487 (1944) (services consisted solely in proving the heir's relationship); *Kaplan v. Suher*, *supra* note 64 (agreement for the sale of information only); *Wedgerfield v. De Bernardy*, 24 T.L.R. 497, *aff'd*, 25 T.L.R. 21 (1908) (merely information); *Sprye v. Porter*, 7 El. & Bl. 58, 119 Eng. Rep. 1169, 1177 (1856) (express agreement not to enter into any litigation).

62. See *Wood v. Casserleigh*, 30 Colo. 287, 71 Pac. 360, 363, 97 Am. St. Rep. 138, 144 (1902) (defense of unreasonableness of compensation unavailable).

63. *Kaplan v. Suher*, 254 Mass. 180, 150 N.E. 9, 10-11 (1926) (the duty to inform); *Casserleigh v. Wood*, 14 Colo. App. 265, 59 Pac. 1024, 1030 (1900) (no dereliction of duty).

Only when none of the illegal elements has been adequately impressed upon the court will the contract be held valid. The conclusion is obvious, however, that the professional heir-hunters seek only to operate within the bare periphery of legality. With few exceptions, heir-hunting, though possibly a legitimate profession when properly pursued, will be hounded by the bar and frowned upon by the bench.

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