the bankruptcy court did not authorize the trustee, a bank, to deposit the fund with itself as a bank, a constructive trust has been imposed. *Hillsdale Grocery Co. v. National Bank*, 6 F. Supp. 773 (D.C. Mich. 1934). The refusal of the court in the principal case to follow this trend of authority rested upon *Hancock County v. Hancock National Bank*, 67 F. (2d) 421 (C.C.A. 5th 1933), where a deposit of county funds was accepted by a bank which had not given bond and upon which no constructive trust was raised. In the *Hancock* case, however, the deposit was not in violation of a statute since, as the court found, the passing of a bond was not a condition precedent to the establishment of a proper depository.

A further ground for the decision was the distinction found between cases "where the bank by mandate of law is prevented from receiving deposits, and those where a trustee is merely required to make his deposits in a certain bank." This distinction is more apparent than real since in both situations the bank, having notice of the character of the funds and the requirements of the statute, is an active participant in the breach of the fiduciary's duty by accepting the deposit. It is immaterial that in the latter case the beneficial owners of the fund have a cause of action against the trustee or his surety. *American Surety Co. v. Jackson*, 24 F. (2d) 768 (C.C.A. 9th 1928); *In re Bank of Nampa*, 29 Idaho 166, 157 Pac. 1117 (1916). The equitable relief should still be available to them, and should remain available even though the claim is prosecuted on their behalf by the errant fiduciary and may indirectly redound to his benefit. Rights of the general creditors of the bank, under R.S. § 5236, 12 U.S.C.A. § 194 (1927), do not suffer as the bank has paid no value for the deposit and no preference is permitted when the deposit cannot be traced. *Spokane County v. Clark*, 61 Fed. 538 (C.C.A. Wash. 1894).

Constitutional Law—Taxation—General Income Tax as Reduction of Judges' Salaries during Term of Office—[Montana].—The plaintiff, administratrix, sought to enjoin the collection of a state income tax on the salary paid to a deceased judge, contending that the general income tax, as applied to judges' salaries, was unconstitutional. *Held*, the tax did not violate § 29, art. 8 of the Montana constitution which prohibits the diminution of an official's salary during his term of office. *Poorman v. State Board of Equalization*, 45 P. (2d) 307 (Mont. 1935).

To preclude the possibility that the legislative branch of the government might seek to exercise influence over the judicial department by control over tenure and payment of salaries, it was unanimously agreed in the constitutional convention that the salaries of Federal judges should not "be diminished during their continuance in office." Documents Illustrative of the Formation of the Union of American States, 155, 403 (1927); U.S. Const. art. 3, § 1. State constitutions have incorporated provisions excluding increases, as well as decreases, in compensation. Ill. Const. art. 5, § 23. Some states have not restricted the protective provisions against diminution in salaries to judges but have extended them to all public officers of the state. Mont. Const. § 29, art. 8; Ky. Const. § 235. Where the latter provisions are in force, it has been generally held that judges are public officers within the meaning of the constitution. *Henderson v. Board of Comm'rs of Boulder County*, 51 Col. 364, 117 Pac. 997 (1911); *State v. Moores*, 61 Neb. 9, 84 N.W. 399 (1900); *McCracken County v. Reed*, 125 Ky. 420, 101 S.W. 348. (1907). Some jurisdictions have held that even a general income tax, subjecting all citizens to its provisions and not including judges, violates the constitutional safeguard

against decreases in judges' salaries. *Evans v. Gore*, 253 U.S. 245 (1920); *Long v. Watts*, 183 N.C. 99, 110 S.E. 765 (1922). While this result was anticipated as early as 1863 (letter of Taney, C. J., 157 U.S. 701 (1863)) there has been a strong feeling that such tax should be constitutional. *Krause v. Comm'r Inland Revenue*, [1929] So. Afr. App. Div. 286; *Taylor v. Gehner*, 329 Mo. 511, 45 S.W. (2d) 59 (1931); 18 Mich. L. Rev. 697 (1920); 30 Yale L. J. 75 (1920). Courts which accepted the view of *Evans v. Gore* seem influenced by the general rule that a legislature cannot do indirectly what it cannot do directly and that an income tax necessarily, although only indirectly, reduces salaries. But the rule thus relied upon has its exceptions. Powell, Constitutional Law in 1919–1920, 19 Mich. L. Rev. 117 (1920); Hubbard, From Whatever Source Derived, 6 A.B.-A.J. (Part 2) 202 (1920). Although under the Fourteenth Amendment a state may not tax property which is located beyond its boundaries, it may tax the income derived therefrom, notwithstanding that property outside the state is thus indirectly reached. *Lawrence v. State Tax Comm'n of Miss.*, 286 U.S. 276 (1932); *cf. Senior v. Braden*, 55 Sup. Ct. 800 (1935); Rottschaefer, State Jurisdiction of Income for Tax Purposes, 44 Harv. L. Rev. 1075 (1931). While a state may not impose a franchise tax upon the gross receipts of a company engaged in interstate commerce, it may assess a tax based in part on net income, some of which was obtained in business outside the state and in interstate commerce. *Bass, Ratcliff & Gretton, Ltd., v. State Tax Comm'n*, 266 U.S. 271 (1924). A state may place a franchise tax on the basis of a corporation's issued capital stock although some of it represents property situated outside the state. *Western Cartridge Co. v. Emmerson*, 281 U.S. 511 (1930). A tax upon the net income of a corporation, including therein income derived from foreign commerce does not violate Art. 1, § 9 (5) of the United States Constitution which prohibits taxes on exports. *Peck & Co. v. Lowe*, 247 U.S. 165 (1918); *Evans v. Gore*, 253 U.S. 245 (1920) (dissent; *arguendo*). While a state may not tax the privilege of obtaining patents or copyrights, it may tax the royalties gained thereby although the obtaining of patents and copyrights is rendered less advantageous. *Fox Film Corp. v. Doyal*, 286 U.S. 123 (1932). A license tax imposed upon a foreign peddler in the same amount as that on a domestic peddler does not violate a constitutional provision that immigration shall be encouraged, notwithstanding the fact that the imposition of the tax may indirectly deter such immigration. *Kendrick v. State*, 142 Ala. 43, 39 So. 203 (1904). And a tax on hawkers of books does not impinge the free exercise of religion even though the tax impedes the sale of such literature. *Cook v. City of Harrison*, 180 Ark. 546, 21 S.W. (2d) 966 (1929). The freedom of the press is not circumscribed by a tax imposed on the capital stock in, or conduct of, a newspaper business. *Prestor v. Finley*, 72 Fed. 850 (C.C.D. Tex. 1896).

If the argument that what cannot be done directly cannot be done indirectly fails to support the holdings of the majority of courts, it must be the fear of encroachments on their independence that has induced judges to "resist the beginnings," to declare unconstitutional taxes imposed on judges as citizens rather than as officials. See 7 Va. L. Rev. 69 (1920). Yet it is highly doubtful whether the income tax, or any other form of general taxation, so endangers judicial independence that the decisions holding the tax unconstitutional are justified. 18 Mich. L. Rev. 697 (1920). While it is quite obvious that the general tax does reduce the income of judges, it seems likely that this is not the sort of decrease from which the framers of the Constitution sought to protect judges of the Federal court. Only a tax aimed at judges as judges gives rise to the danger against which precautions were taken by incapacitating the legislature from punishing

or influencing the judiciary. If the argument of *Evans v. Gore* is inexorably pursued, the judiciary may demand protection from every form of legislation which decreases their salaries, no matter how indirectly, as, for instance, from the nullification of gold clauses in obligations.

Corporations—Professions—Practice of Dentistry by Corporate Bodies—[Illinois]. —A dental corporation sought to enjoin the defendant from violating his agreement not to practice dentistry for three years within a certain distance from the corporate location. *Held*, since the plaintiff's corporate charter could not authorize it to practice dentistry (Smith-Hurd Ill. Rev. St. 1933, c. 91, § 72a), it was not entitled to equitable relief. *Dr. Allison, Dentist, Inc., v. Allison*, 360 Ill. 638, 196 N.E. 799 (1935).

Corporations are forbidden, either by express statutes or judicial construction of licensing statutes, to practice the professions. *Painless Parker v. Board of Dental Examiners*, 216 Cal. 285, 14 P. (2d) 67 (1932) (dentistry); *In re Co-operative Law Co.*, 198 N.Y. 479, 92 N.E. 15 (1910) (law); *People v. Woodbury Dermatological Institute*, 192 N.Y. 454, 85 N.E. 697 (1908) (medicine); 1 Fletcher, Corporations § 97 (1931). Apparently because of the public interest, statutes have excepted hospitals and charitable corporations from this prohibition. See *People v. Woodbury Dermatological Institute*, 192 N.Y. 454, 85 N.E. 697 (1908).

The general prohibition against corporate practice is designed to protect the public by making it impossible for corporations formed by laymen and presumably guided by motives of profit to practice in the professions, where economic interest should not overshadow social obligations and public duties. See *In re Co-operative Law Co.*, 198 N.Y. 479, 484, 92 N.E. 15, 16 (1910); Weihofen "Practice of Law" by Non-Pecuniary Corporations: A Social Utility, 2 Univ. Chi. L. Rev. 119 (1934). But the social reasons for preventing corporations controlled by laymen from practicing the professions do not apply to corporations organized and conducted by licensed members of the professions. See *State v. Bailey Dental Co.*, 211 Ia. 781, 786, 234 N.W. 260, 263 (1931). *Cf. State Electro-Medical Institute v. Platner*, 74 Neb. 23, 103 N.W. 1079 (1905). Against all corporations, it is urged that they make impossible the personal relation that should obtain in the professions. See *Parker v. Dental Board of Examiners of Cal.*, 216 Cal. 285, 297, 14 P. (2d) 67, 72 (1932); *N.J. Photo Engraving Co. v. Schonert & Sons*, 95 N.J. Eq. 12, 13, 122 Atl. 307, 308 (1923); 1 Fletcher, Corporations § 97 (1931). But it is hard to see just what personal elements are lost when a group of professional men incorporate themselves to offer services they had previously offered individually. While it is true that the corporation itself would not possess these personal qualifications, its members would. The real basis of the decisions denying the corporate right to practice law or medicine seems to be the fear of commercial exploitation of the profession. See *Parker v. Dental Board of Examiners of Cal.*, 216 Cal. 285, 297, 14 P. (2d) 67, 72 (1932); Weihofen, "Practice of Law" by Non-Pecuniary Corporations, 2 Univ. Chi. L. Rev. 119 (1934). Since, according to the suggested distinction, only professional men will direct the corporation, and since the licenses of individual members of the profession and of the corporation can be revoked, the dangers of commercial exploitation and corporate irresponsibility appear to be overemphasized.

The principal case does not reveal whether the dental corporation was organized solely by licensed dentists. Emphatic denials by the Illinois courts of the right to practice law even by non-profit corporations (*People v. Assn. of Real Estate Taxpayers of*