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Comment on Recent Decisions

ATTORNEY AND CLIENT—LIEN FOR SERVICES—PROCEEDINGS.—Judgment having been given for the plaintiff's client, the defendant in the action paid the amount of the judgment into court, because the plaintiff (who was the successful party's attorney) had not released his lien thereon. The plaintiff then filed a motion in which he asked the court to ascertain and determine the amount of the fee due him for his services, and to declare in his favor a lien to the extent thereof upon the moneys paid into court in satisfaction of the judgment. The plaintiff's client objected on the grounds that this would deprive him (the client) of his right of trial by jury, and would be a deprivation of his property without due process of law, contrary to Sec. 30, Art. 2 of the Constitution of Missouri. *Held*, it was proper for the attorney to enforce his lien in this manner. *State ex rel. Anderson v. Roehrig* (Mo. 1928), 8 S. W. (2d) 998.

The client could not have been deprived of a right to trial by jury. Sec. 690, R. S. Mo. 1919, which provides for an attorney's lien, prescribes that the "Compensation of an attorney or counsellor for his services is governed by an agreement expressed or implied, which is not restrained by law." The attorney, then, could have enforced his lien by original suit in equity, because Sec. 30, Art. 2 of the state constitution provides that "No person shall be deprived of life, liberty, or property without due process of law." But it is not essential that proceedings should be according to the course of the common law. *Henning v. Stald* (1897), 138 Mo. 430, 40 S. W. 95. The summary proceeding by the plaintiff in the principal suit was sufficient, since the relator of necessity had due notice of the proceeding.

Specific attorney's liens did not, strictly speaking, exist at common law, because the element of possession necessary to ordinary liens was lacking. *Wright v. Cobleigh* (1850), 21 N. H. 339, 341; *Young v. Renshaw* (1903), 102 Mo. A. 173, 76 S. W. 701, 706. In the latter case the court said that since the judgment obtained for the plaintiff's client was obtained before the enactment of the law creating attorney's liens, "the plaintiff has no lien. . . . His only remedy is on the contract against his client." The attorney always has had an equitable right to have his fees for services in a particular suit secured to him out of the judgment in that particular suit. *Filmore v. Wells* (1887), 10 Colo. 228, 15 P. 343. The existence of the lien was, however, recognized in several early English cases. *Welsh v. Hoyle* (1779), 1 Dougl. 238, 99 Reprint 155; *Wilkins v. Carmichael* (1779), 1 Dougl. 101, 99 Reprint 70. In the latter case Lord Mansfield said that "Courts both of law and equity have now carried it so far that an attorney may obtain an order to stop his client from receiving money recovered in a suit in which he has been employed until his bill has been paid." But nothing was said as to the proceeding necessary by the attorney to obtain this order.

The modern rule is strictly in accord with the holding of the principal

case as to the existence of an attorney's special lien. In some states the lien exists by virtue of judicial decision, in others by virtue of statute. *Thayer v. Daniels* (1873), 113 Mass. 129 and *Central Railroad and Banking Co. of Georgia v. Pettus* (1884), 113 U. S. 116 exemplify the former type; the Judiciary Law of New York, Secs. 474 and 475, typifies the statutory lien. But as to the method of procedure there seems, however, to be some confusion. The case of *Prichard v. Fulmer* (1916), 22 N. M. 134, 159 P. 39, 2 A. L. R. 474, in accord with the principal case on the method of procedure, held that an attorney could not assert his lien in an independent suit, since the court would afford ample remedy in the original suit. This seems to be the better rule, and is illustrative of the trend of modern authority. See *Vaughan v. Hill* (1922), 154 Ark. 528, 242 S. W. 826, and *Epp v. Hinton* (1918), 102 Kan. 435, 170 P. 987, wherein the courts held that an application to enforce an attorney's lien for services upon proceeds of a judgment may be made in the case wherein judgment was rendered without formal pleadings. The reasons for this rule, as pointed out in the cases, are sound. Obviously, it prevents circuity of action since the attorney is not required to bring another suit. The plaintiff's client cannot be deprived of his right of trial by jury in view of the fact that the issue is equitable in its nature. Further, the plaintiff's client in every event has notice of the proceedings against him, so as to enable him to prepare a defense.

But the case of *Weitzel v. Schmidt* (1919), 178 N. Y. S. 429, held that the amount of a lien is to be determined in a later appropriate proceeding, rather than upon a motion filed by the attorney during the action in which the judgment was given. This case is decided upon a strict interpretation of the New York statutes providing for an attorney's lien and fails to either recognize or account for the forceful and logical reasons supporting the recognition of a summary proceeding for the enforcement of the attorney's lien.

S. H., '30.

BILLS AND NOTES—PRESENTMENT—SUFFICIENCY.—In presenting a promissory note, a notary public, who was assistant teller of the bank holding the note, called at the office of the maker to demand payment, took up the matter with the party in charge of the office and stated to such party "I have note here." Payment was refused. *Held*, there was a sufficient exhibition of the note to comply with the Kansas Statutes. *Toll v. Monitor Binding and Printing Co.* (C. C. A. 8, 1928), 26 F. (2d) 51.

There seems to be little doubt that the old rule of the common law was that nothing short of actual exhibition would constitute sufficient presentment, in the absence of circumstances and conduct which would operate as a waiver. *Musson v. Lake* (1846), 4 How. 262; *Bank of Vergennes v. Cameron* (1849), 7 Barb. 143; *Farmers' Bank v. Duvall* (1835), 7 Gill, & J. 78; *Shaw v. Reed* (1831), 12 Pick. 132; *Waring v. Botts* (1893), 90 Va. 46, 17 S. E. 739. Decisions which have excused actual presentment where circumstances indicate a clear waiver on the part of the maker, are justified