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Dower—Creditors' Rights Before It is Assigned

der to make an affidavit there must be present the officer, the affiant, and the paper, and there must be something done which amounts to the administration of an oath. There must be some solemnity, not mere telephone talk. Telephonic affidavits are unknown to the law. A moment's thought will show a sound reason for this. An officer hears a voice coming thru the receiver of a telephone. For identification he must rely on recognition of the voice (if he knows it) and the statement of the person as to who he or she is. How does the notary know that the paper presented later is the identical paper sworn to? If this is an oath, when is it taken—when the telephone message is sent, or when the paper is later presented by the third person? Where is it taken—at the place where the affiant is, or that where the officer is? It will be seen that great confusion might arise from such a system."

ATTORNEY AND CLIENT—CONTINGENT FEE—DISMISSAL OF SUIT BY CLIENT.

Kellogg v. Winchell, 273 Fed. 745 (D. C.) The plaintiff directed his attorney, who was engaged upon a contingent fee, to dismiss an appeal from a judgment against him in the lower court.

It is well established that a client may dismiss his attorney at any time and without cause, although this attorney be employed on a contingent fee. Ronald v. Mutual Reserve Fund Life Assoc. 30 Fed. 228; Roake v. Palmer, 103 N. Y. S. 862; Joseph v. Lopp 78 S. W. 1119 (Ky.). But the courts will not permit such act of dismissal to deprive the attorney of renumeration for services rendered. There are three ways in case of contingent fees in which attorney may recover for services. (1) The Attorney may sue his client in contract. Kersey v. Gorton, 77 Mo, 645; Reynolds v. Clark 162 Mo. 680. The objectionable feature to this remedy is that it seems impossible to determine damages if this suit is not concluded.

(2) The agreement may be treated as a mere promise to pay a part of a claim when collected. Story v. Hull, 143 Ill., 506.

(3) This remedy is to allow the attorney a quantum meruit for the reasonable value of his services. Ibert v. Aetna Life Ins. Co., 213 Fed. 996 (D. C.). Jordan v. Davis 172 Mo. 599; Moore v. Robinson 92 Ill. 491; Philbrook v. Moxey 191 Mass. 33. And this appears to be the most reasonable and just course to follow.

DOWER—CREDITORS' RIGHTS BEFORE IT IS ASSIGNED.

The recent case of Clelland v. Clelland, 235 S. W. (Mo.) 816, was an action to have a widow's dower assigned in her husband's real estate, brought by a judgment creditor of the widow to satisfy his claim out of the portion so assigned. Sec. 347, R. S. Missouri 1919, provides that if dower has not

been assigned to a widow, her judgment creditor may institute proceedings to have it assigned, so that her share of the real estate may be set apart and levied upon by him. This statute recognizes the common law rule that a widow's dower, which becomes consummate upon the death of her husband, is a mere chose in action until it is assigned; Waller v. Mardus, 29 Mo. 25; Young v. Thrasher, 61 Mo. App. 413; Carey v. West, 139 Mo. 177; 30 L. R. A. (N. S.) loc. cit. 117, note; and so cannot be levied upon as real estate by a judgment creditor of the widow. This statute affords the creditor an adequate remedy if dower has not been assigned.

However, it seems in this case that the plaintiff had previously caused execution to be issued upon the judgment and the land to be levied upon and sold by the sheriff at judicial sale, and also had received the proceeds of the sale. The court held that the sale of the widow's interest under execution, before dower had been assigned, was void. But it was held that the plaintiff was estopped to deny the validity of the sale which was in fact void because he had accepted the purchase money of said sale and had not offered to put the purchaser in statu quo.

The common law rule with regard to the transfer by the widow of her unassigned dower has been changed in Missouri by sec. 316, Rev. Stat. 1919, which authorizes her to convey the dower interest before assignment.

NEGLIGENCE—LAST CLEAR CHANCE DOCTRINE—PECULIAR APPLICATION.

The facts in the case of Hammack v. Payne, Agent, et al, 235 S. W. 467 (Mo.), show that while plaintiff was passing over the railroad tracks at a highway crossing between stations of Wyeth and Rea in Andrew County, Missouri, he was struck by a Chicago Great Western Railroad train. His automobile was destroyed and he was seriously injured. He brought action for $10,000 damages for his injuries. In the lower court judgment was given for the plaintiff but in the Kansas City Court of Appeals the judgment was reversed on the ground that plaintiff was guilty of contributory negligence in not looking both up and down the railroad tracks before driving thereon. As bearing upon this case a part of the opinion of Kelsay v. Railroad, 129 Mo. loc. cit. 372, is set out:—"This duty requires him (traveler upon the highway) to look carefully in both directions at a convenient distance from the crossing before venturing upon it, if by looking a train could be seen. He cannot close his eyes and thereby relieve himself of the consequence of his own neglect." Upon this point there seems to be some contrariety of opinion based on the doctrine of the "last clear chance." In the case of Nicol v. Oregon-Washington Railroad & Nav. Co. 71 Wash. 409, plaintiff attempted to go over a railroad crossing in an automobile but while upon the track the machine became stalled. Shortly after, said machine was struck by a rail-