

Attorney's Lien Upon Client's Judgment

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Recommended Citation

van Steenburgh, Richard (1946) "Attorney's Lien Upon Client's Judgment," *St. John's Law Review*: Vol. 20 : No. 2 , Article 13.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol20/iss2/13>

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deprived of any benefit which he might expect to derive under the will.

The bill further restates the principal that a special guardian of an infant or incompetent may take such steps for the protection of his ward's interest as he deems necessary, even to opposing affirmatively the probate of the instrument, without forfeiture of his ward's legacy.

Whether or not the legislation should have gone farther and dealt with other injustices which may grow out of *in terrorem* clauses is a moot subject. Those who oppose *in terrorem* clauses *in toto* do so on the ground that they are against public policy and tend to oust the courts of their proper jurisdiction. Those who favor such conditional bequests do so on the ground that the testator is dealing with his own property and that he has the right to deal with it as he wishes. It is sufficient to say that the passage of Section 126 leaves the general subject of *in terrorem* clauses as it was heretofore, *i.e.*, that a condition against contest of a will is a condition *in terrorem* and is invalid where there is no gift over on breach of the condition, but where a will expressly directs that the share of a person violating the condition against contest shall pass to another, the condition will be upheld.

MARY K. BLAIR.

ATTORNEY'S LIEN UPON CLIENT'S JUDGMENT.—During the last session, the Legislature of the State of New York amended Section 475 of the Judiciary Law of New York to include the attachment of an attorney's lien on his client's claim in any proceeding before a Municipal Department. The text of the law, including the amendment, is as follows: ¹

Section 1. Section four hundred seventy-five of chapter thirty-five of the laws of nineteen hundred nine, entitled "An act in relation to the administration of justice, constituting chapter thirty of the consolidated laws," as last amended by chapter thirty-four of the laws of nineteen hundred thirty-eight, is hereby amended to read as follows:

Sec. 475. Attorney's lien in action, special or other proceeding. From the commencement of an action, special or other proceeding in any court or before any state, *municipal*, or federal department, except a department of labor, or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien.

Section 2. This act shall take effect September first, nineteen hundred forty-six.

Prior to this amendment, an attorney who was retained by a client to act in a special proceeding or to negotiate a claim before a

¹ N. Y. Laws 1946, c. 105, effective September 1, 1946.

municipal department or board was depending entirely upon his client's honesty for receiving compensation for the services he had performed.

A search of the law on the subject of attorney's liens reveals that many attorneys were required to go without compensation for the services they had rendered for and on behalf of their clients because of the judicial construction of Section 475 of the Judiciary Law.²

In *Flanagan v. Conners*,³ a motion was made by the defendant Conners under Rule 106 of the Rules of Civil Practice to dismiss the complaint on the ground that the complaint failed to state facts sufficient to constitute a cause of action. The plaintiff was an attorney who had entered into an agreement with his client, the defendant, whereby the plaintiff attorney was to receive \$1,500 for his services in appearing before the Board of Aldermen and the Board of Estimate and Apportionment for the purpose of claiming \$6,500, which had been forfeited to the city on the defendant's failure to perform a contract entered into between the city and defendant. It was not denied by the defendant that the plaintiff had performed the required services, and that the Board of Aldermen had voted to return the forfeited sum to the defendant. Upon the failure of Conners, the defendant, to pay the \$1,500 to the plaintiff, the attorney brought this action to impress his equitable lien on the money so returned by the Board of Aldermen, and held at the time of this action by the Comptroller of the City of New York. The court granted the motion to dismiss the complaint on the ground that it failed to set forth facts sufficient to constitute a cause of action.

Judge Levy, in writing the opinion of the court in this case, stated:⁴

The record discloses no assignment in fact, no application of the fund *pro tanto*, no direction to pay, and under these circumstances, the comptroller of the city of New York would not be warranted in paying over \$1,500 of the fund which he now holds to the plaintiff. By plaintiff's very allegation, we find a mere agreement by the defendant to pay \$1,500 to the plaintiff out of the \$6,500 if and when returned. This is not enough to constitute an equitable assignment. More is needed. Manifestly an injustice has been done an attorney who confessedly secured results for his client. This move on the defendant Conners' part is clearly an act of ill-grace, and unfortunately this Court is bound by the controlling authorities. Defendant's motion must, therefore, be granted but without costs.

In the case of *Matter of Albrecht*,⁵ Judge Edgecomb recognized the defect in Section 475 of the Judiciary Law and stated:

² *Flanagan v. Conners*, 123 Misc. 236, 204 N. Y. Supp. 823 (1924); *Petition of Albrecht*, 225 App. Div. 423, 233 N. Y. Supp. 383 (1929); *Petition of Nathan*, 178 Misc. 226, 33 N. Y. S. (2d) 612 (1942).

³ *Flanagan v. Conners*, 123 Misc. 236, 204 N. Y. Supp. 823 (1924).

⁴ *Id.* at 238, 204 N. Y. Supp. at 824 (1924).

⁵ *Matter of Albrecht*, 225 App. Div. 423, 426.

If an attorney's charging lien should be extended, so as to include services performed in procuring awards or refunds in the ever-increasing proceedings which are now being brought before various officials, commissions, and boards, that remedy must come from the legislature. The courts can not extend the clear limitation imposed by the statute.

Although the *Petition of Nathan*⁶ is sometimes cited as being demonstrative of an attorney's lien failing to attach because the attorney has failed to begin an action, thus not being entitled to compensation, nevertheless, the attorney by his effort had caused a settlement in the case.⁷ It is true there was no action started in any court, but the City of New York had settled after the attorney had filed a notice of claim for personal injuries. The petitioner, the attorney, alleged that this was a special proceeding within the meaning of Section 475 of the Judiciary Law, and that his attorney's lien should attach to the proceeds of the settlement in his client's favor. In writing the opinion of the court, Judge Elder stated:⁸

... Assuming that there is included in this phrase, a proceeding comprising a notice of claim and notice of intention to sue, and a subsequent settlement, nonetheless, this provision would still be ineffectual to vest this court with jurisdiction to act in the case at bar, for the statute, it will be noted, limits the proceeding to any State or Federal Department; the filing of a claim pursuant to the mentioned section of the Administrative Code of the City of New York is not such a proceeding as comes within the purview of Section 475 of the Judiciary Law.

From the foregoing cases, it can readily be seen what the conditions were which prompted the amending of Section 475 of the Judiciary Law. Effective September 1, 1946, an attorney who agrees to carry on any action or proceeding before a municipal board will not be required to rely solely upon his client's integrity in collecting his fee. Such attorney will have his remedy through the attachment of the lien pursuant to the express provisions of the Judiciary Law.

RICHARD VAN STEENBURGH.

ENTRY OF ORDER AND FINAL JUDGMENT IN ACTION TO ANNUL A MARRIAGE OR FOR DIVORCE.—Chapter 203 of the New York Laws of 1946 to become effective September 1, 1946, was enacted primarily amending Civil Practice Act, Section 1176. The new Section 1176 states, in substance, that an interlocutory decree in an action brought for an annulment or a divorce shall become a final judgment as of course three months after entry of such decree unless for sufficient cause the court in the meantime shall have otherwise ordered. The section ends here as to the judgment and thus after September 1, 1946, no divorce or annulment shall ever fail of its effect through possible neglect to file an application with a court for entry of final judgment.

⁶ *Petition of Nathan*, 178 Misc. 226, 33 N. Y. S. (2d) 612 (1942).

⁷ *United States v. Guarantee Trust Co.*, 60 F. Supp. 103, 105.

⁸ *Petition of Nathan*, 178 Misc. 226, 227.