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ATTORNEYS AT LAW-SUBSTITUTION OF ATTORNEYS-PROTECTION OF THE ATTORNEY'S RIGHT TO COMPENSATION

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ATTORNEYS AT LAW—SUBSTITUTION OF ATTORNEYS—PROTECTION OF THE ATTORNEY'S RIGHT TO COMPENSATION—Plaintiff employed an attorney on a contingent fee basis. After the suit had been begun, but before trial, plaintiff moved to dismiss and to substitute attorneys so that he might bring the action in another state. The attorney objected, claiming that the court should secure him in his right to one-third of the recovery. Plaintiff contended that the attorney was only entitled to the reasonable value of his services. On argument to the court, *held,* for plaintiff. When the employment is upon a contingent fee basis the attorney discharged without cause has a right only to the reasonable value of his services. The opinion did not discuss means for protecting this right. *Casebolt v. Mid-Continent Airlines, Inc.,* (D.C. Minn. 1949) 85 F. Supp. 915.

There is no doubt that, because of the personal relationship involved, a client may discharge an attorney with or without cause at any stage in the proceedings unless the attorney holds a power coupled with an interest.[1] There is also no doubt of the attorney's right to recover compensation for the services rendered before the discharge.[2] When a retainer fee is specified the recovery is generally the contract price,[3] but there is much dispute as to the measure of recovery when a contingent fee is involved.[4] The principal case states the law of Minnesota which limits the attorney to the reasonable value of his services already rendered,[5] but leaves untouched the interesting question of how this right will be

[1] MacPherson v. Rorison, 1 Doug. 217, 99 Eng. Rep. 142 (1779); The Flush, (C.C.A. 2d, 1921) 277 F. (2d) 25; 1 THORNTON, ATTORNEYS AT LAW §143 (1914). See also 124 A.L.R. 719 (1940). This right is now in many cases statutory. For example see Cal. Code Civ. Proc. (Deering, 1949) §284. For consideration of power coupled with an interest see De Garmo v. Shenberg, (Cal. 1940) 102 P. (2d) 522. See also 97 A.L.R. 923 (1935). Generally, substitution is allowed only by court order. United States v. McMultry, (D.C. N.Y. 1927) 24 F. (2d) 145.

[2] United States v. McMultry, supra note 1; Doggett v. Deauville Corp., (C.C.A. 5th, 1945) 148 F. (2d) 881.

[3] Carey v. Town of Gulfport, 140 Fla. 40, 191 S. 45 (1939).

[4] 30 YALE L. J. 514 (1921); 136 A.L.R. 231 (1942) and cases cited therein; Matter of Lydig's Will, 262 N.Y. 408, 187 N.E. 298 (1933).

[5] Lawler v. Dunn, 145 Minn. 281, 176 N.W. 989 (1920); Krippner v. Matz, 205 Minn. 497, 287 N.W. 19 (1939).

protected. The ordinary case of substitution leaves the court, granting the substitution, in control of future proceedings so that conditions of security can be enforced with ease.[6] In the principal case, however, plaintiff is about to leave the jurisdiction taking his cause of action with him. Certainly the charging lien of the attorney which has been held to attach to the proceeds of the action even after substitution will be of little value when a judgment is secured in the second state, Texas.[7] The retaining lien is equally worthless for it is generally held that the papers held by the attorney must be surrendered if needed by the client for further litigation.[8] Two rather obvious possibilities remain. The order of dismissal and substitution can be conditioned upon present payment for the services.[9] This would represent the most effective protection for the attorney, and, though this procedure is generally unavailable,[10] in special circumstances such as these it would seem natural to allow it. Equally available should be a condition requiring the plaintiff to give bond securing the substitution.[11] Either device should give the desired protection in these unusual circumstances.

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[6] See cases cited supra notes 1, 2, 3, 4 and 5.

[7] The attorney, of course, could go to Texas and sue on the Minnesota judgment establishing the amount of the lien. CONFLICT OF LAWS RESTATEMENT §§ 433, 434 (1934). Unless the amount owing was quite large, this would be an impractical procedure. The charging lien has been held to attach to the proceeds of suit after substitution. Bloom v. Irving Trust Co., 152 Misc. 50, 272 N.Y.S. 637 (1934).

[8] A retaining lien was preserved in Matter of Weitling, 266 N.Y. 184, 194 N.E. 401 (1935). See also Matter of Dunn, 205 N.Y. 398, 98 N.E. 914 (1912). In Robinson v. Rogers, 237 N.Y. 467, 143 N.E. 647 (1924) the court made the attorney surrender the papers upon being secured by a bond. But see The Flush, supra note 1.

[9] This was allowed in special circumstances in Carey v. Town of Gulfport, supra note 3, and Kellogg v. Wayne Circuit Judge, 229 Mich. 150, 200 N.W. 976 (1924).

[10] Bernstein v. Suchoff, 242 App. Div. 784, 274 N.Y.S. 586 (1934). But see John Griffiths & Son Co. v. United States, (C.C.A. 7th, 1934) 72 F. (2d) 466.

[11] As in Robinson v. Rodgers, supra note 8.