LAW AND THE FAMILY

## "Attorney's Liens"

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**TO MANY, the brouhaha is about stereotyping lawyers as capitalistic bloodsuckers, but the crux of the problem is survival -- the hush-hush whisperings of lawyers engaged in the widely practiced mechanisms used to collect their hard-earned money. When it comes to getting paid, the legal world has become perhaps the most vulnerable, exposed sector of American business exploitation. Lawyers, bent on righting the wronged while proving themselves to be the best, must make rational choices in a world of irrational disputes. Requests for payment are shouted down as uncaring demands; lawsuits seeking recovery of earned fees are branded as selfish, coercive acts of money-grubbing professionals.**

**To clients looking to avoid paying their bill, no one is safe. Even that highly acclaimed model graduate we have all known at one time or another has fallen victim. Admitted to the American Academy at an early age, where his lvy League background, courtly manner and mischievous wit, combined to give him a reputation as a sort of Maimonides of divorce law, not even he is safe.**

**The lingering recession and a lackluster economy has made the crackdown on collection of fees more important than ever. Worse yet, the recession continues to show signs of staying power. Auto sales are a catastrophe, companies continue to cut payrolls, and corporate profits remain bleak. Lawyers must now battle with clients for their earned dollars. Declining collections could jeopardize clients as well. Fewer collections lead to bad lawyering, which leads to loss of clients, which leads to fewer collections. When will the cycle end?**

**Not Always a Right**

**The issue of recovering legal fees was confronted long before the decline of the economy and the rise of inflation and was quite different when it began. As far back as 1903, the Court of Appeals observed that the counsellors of the original estate of the legal fraternity in England were so elevated that they possessed no right to demand compensation for their services. Counsel fees were merely an honorarium dependant upon the generosity of the client. "A counsel can maintain no action for his fees; which are given, not as locatio vel conductio, but as quiddam honorium; not as salary or hire, but as mere gratuity, which a counsellor cannot demand without doing wrong to his reputation: \* \* \*." [FN1] The Court earnestly suggested "... the legal fraternity was classified with the physicians, concerning whom Lord Kenyon said: "It has been understood in this country that the fees of a physician are honorary, and not demandable of right. [FN2] It did indeed recognize, however, "that north of the River Tweed no such custom ever existed, the thrifty inhabitants of those moors and highlands having by statute provided that "honoraries may be pursued." [FN3] The underlying message is even broader. Lawyers have a right to be paid. The question one might muse is not whether one should seek payment, but what rights the lawyer has in seeking recovery.**

**In Adams v. Stevens & Cagger, [FN4] the issue was whether counsel, who had been engaged to argue two cases in the Court of Errors, could recover the amount agreed upon as compensation for his services or whether he was limited by the terms of the "fee-bill," [FN5] to a fee of $3.75 in each case. The court concluded that the doctrine that counsel fees are merely an honorarium dependent upon the client's generosity was "not consistent with our utilitarian policy and practical notions" [FN6] and affirmed a judgment in favor of Plaintiffs. The court, however, was careful to limit the right of recovery to a cause of action based upon an express contract. It expressed no opinion as to whether an action would lie on an implied contract.**

**Before the Code of Procedure was adopted in 1848, an attorney had a lien upon the judgment for his services, but the legal measure of these services was the taxable costs, and the extent of the attorney's lien was always held to be equal to the costs recovered in the action. [FN7] The Code of Procedure repealed all restrictions on the right of a party to agree with an attorney for his compensation, and the measure of an attorney's compensation was left to the express or implied agreement of the parties. [FN8] A lien for the attorney's services was first enforced because of the enactment of s303 of the Code of Procedure in 1849. [FN9] Thereafter, an attorney was allowed a lien after judgment for any compensation that his client had agreed to pay him. [FN10] Because the attorney's lien only accrued after judgment, in 1879, s66 of the Code of Civil Procedure was amended to give the attorney a lien on the cause of action before judgment. [FN11] In 1899, the section was further amended to provide a remedy to determine and enforce the lien on the petition of either attorney or client. [FN12] In this form it has been carried to ss474 and 475 of the Judiciary Law, enacted originally in 1909. [FN13]**

**Remedies for an Attorney**

**At common law an attorney had two kinds of liens: (1) a retaining lien, which the attorney had on all papers in his possession until his claim for services was discharged; (2) a charging lien, which was a lien on a specific fund or judgment recovered through the efforts of the attorney for his compensation in that individual action or proceeding. [FN14] While both kinds of liens were of common law origin, the charging lien has been enlarged by statute, which is now s475 of the Judiciary Law. [FN15]**

**The remedies of an attorney to obtain payment from his clients are: (1) a plenary action to recover for his services; (2) the retaining lien; (3) the charging lien; (4) ascertainment and foreclosure of the lien in a separate equitable suit; and (5) ascertainment and fixation of the lien in the action. All of these are not exclusive but cumulative remedies. [FN16] Although a client may discharge his attorney, with or without cause, a discharge of an attorney, without cause, does not in itself discharge the client from any obligation to pay the attorney for past services. In order to secure such payment, the attorney has a general lien for the entire balance on account of all papers, securities, or monies belonging to his client that came into his possession and a charging lien for services rendered in a particular action or proceeding upon his client's cause of action. [FN17] If the discharge is for cause or misconduct, the attorney [FN18] has no right to a fee or to a retaining lien.**

**An attorney does not forfeit his retaining lien where the attorney voluntarily withdraws from a case for just cause. [FN19]**

**A retaining lien is a valuable right given by law to secure the payment of the reasonable value of the services rendered as an attorney in an action, and upon discharge without cause, an attorney is entitled to be paid the fair and reasonable value of services rendered. [FN20]**

**The lien attaches to all of the papers, securities and**

**money of his client that are connected with the litigation that come into the attorney's possession in the course of his professional employment. [FN21] It gives the attorney the right to retain such property until all his reasonable charges are paid. [FN22] It is a common law lien that is founded upon and depending upon possesion. [FN23] It exists separate from and is not affected by Judiciary Law s475, which relates to the attorney's charging lien. [FN24]**

**The extent of the retaining lien is measured by the reasonable value of the attorney's services. If the amount of the retaining lien cannot be agreed upon by the parties, it must be fixed by the court. [FN25]**

**An attorney has no retaining lien on an executed but unfiled divorce judgment. It is thus improper for an attorney to refuse to file a final divorce judgment, until he is paid in full by his client. One must first obtain permission of the court to withdraw as attorney, since an attorney has no retaining lien on an executed but unfiled court order. [FN26]**

**Extent of Lien**

**The retaining lien is usually held to extend to money collected by the attorney for his client in the course of his employment, whether or not upon a judgment or an award. [FN27] The retaining lien does not extend beyond the interest of the client in the particular property concerned and is confined to property in the possession of the attorney. [FN28] Alimony or maintenance is not subject to a retaining lien. [FN29] A distributive award or equitable distribution, being in the nature of a property settlement, rather than support, would be subject to a retaining lien. Where a spouse owns real property that he retains as a result of the settlement, no lien attaches to this property since no proceeds were created. [FN30]**

**Generally, a client cannot compel his attorney to surrender papers on which he has a retaining lien without payment of the attorney's compensation or without furnishing adequate security for payment. [FN31] This rule applies where the client desires a substitution of the attorney. [FN32] A court may, in a proper case, order the attorney to surrender papers and documents in his possession to the client, upon the client posting security for payment of the attorney's claim. [FN33]**

**Special Term is without power to order the turnover of the papers in a case to the client or a substituted attorney prior to the determination of that attorneys claim for compensation. [FN34] The lien must be fixed on a quantum meruit basis. [FN35]**

**Where the court orders an attorney to turn over a litigation file, upon which an attorney has a retaining lien, that attorney is entitled to a summary determination fixing the value of his services, and the amount so fixed must be paid or otherwise secured to the attorney before such turnover may be enforced. [FN36] Where there are "exigent" circumstances the Appellate Division, Second Department, has carved out an exception to the rule and relegated the attorney to his charging lien. But even in such a case, the lien must be fixed before the attorney can be directed to turn over his file. [FN37] Uncontroverted allegations of indigency are considered to be exigent circumstances. [FN38] However, it is error to award a charging lien on a finding that a party is indigent, without holding a hearing on the issue of indigency, where that party does not submit an affidavit alleging that he was indigent and the outgoing attorney raises the issue sufficiently by alleging the payment of a retainer to the new attorney. [FN39]**

**It would appear that in the absence of a request by the client for an order directing the outgoing attorney to turn over the file, the outgoing attorney with a claim for compensation for services rendered is not entitled to a summary determination fixing his or her retaining lien and the reasonable value of his or her services, [FN40] although he or she is entitled to a confirmation that he or she has a charging lien.**

**The retaining lien, however, may not be actively enforced through foreclosure, but is merely the passive right of an attorney to hold the subject of the lien until his or her fees are paid or adequate security given. [FN41]**

**In addition to the common law retaining lien, an attorney has a charging lien for his services rendered in obtaining a judgment or award for his client, which attaches to the client's cause of action, verdict and judgment, and the proceeds thereof. This lien is not dependent upon possession.**

**Charging Lien**

**It is defined by s475 of the Judiciary Law which provides:**

**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 answer containing a counterupon his client's cause of action, claim or counterclaim, which attaches to a verdict report, determination, 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.**

**The charging lien covers disbursements made on behalf of the client included in the taxable costs and compensation for the services of the attorney in the action or proceeding. [FN42] An attorney's charging lien is to be measured by the value of his services. [FN43] The lien, however, is limited by the amount fixed in the retainer agreement or contract. [FN44]**

**An attorney's charging lien attaches at the commencement of an action or proceeding. [FN45] An attorney may acquire a lien prior to the com Judiciary Law. [FN46]**

**There is no requirement of docketing or filing in order to perfect a charging lien. Nor is it necessary for the attorney to give notice of his claim to the adverse party to protect his lien. [FN47] An attorney can, however, be held to have waived the lien by his failure to assert it within a reasonable period of time. [FN48]**

**By virtue of s475 of the Judiciary Law, the attorney's charging lien attaches to the proceeds of a judgment or settlement in "whatever hands they may come." An attorney's lien does not attach to alimony or maintenance paid to a spouse under an order or judgment because such alimony is intended for the support of the party to whom it is awarded. [FN49]**

**Distributive Awards**

**Although an attorney's charging lien does not attach to an award of alimony or maintenance, nothing in the Judiciary Law precludes enforcement of a charging lien upon a distributive award or an award of counsel fees to a subsequent counsel. [FN50] Cunning clients have been known to defeat charging liens. In Re Beckett, [FN51] the parties reconciled and discontinued the action. The clients, apparently conspiring to avoid the imposition of the charging lien, agreed to payment of alimony and maintenance, thus beating the attorney out of his lien. Where the parties settle during the pendency of an action for divorce and resume marital relations, and thereby settle the action, there is nothing to which the attorney's charging lien can attach. [FN52] A fine imposed upon a husband in contempt proceedings for failure to pay alimony is a substitute for the alimony and, therefore, is not subject to an attorney's lien. Further, an attorney has no charging lien upon any surplus money from a foreclosure action that he had impounded for the purpose of paying alimony. [FN53]**

**An award for counsel fees is subject to a charging lien, against both the client and subsequent counsel. [FN54]**

**An attorney may enforce a charging lien by a summary proceeding, commenced upon a petition. [FN55] The summary remedy provided by s475 of the Judiciary Law is not exclusive. The charging lien may also be enforced by the commencement of a plenary action.**

**The determination adjudging the amount of the lien is conclusive upon the parties in a subsequent proceeding brought by the attorney. [FN56] Such determination is in the form of a final order stating that the attorney has a lien for a certain amount, the collection of which may be enforced in the manner provided for the collection of a sum of money directed to be paid by an order. [FN57] Although, generally, the court, in determining the lien, cannot order the entry of a money judgment, the order fixing the fee may, in some cases, be treated as a judgment for certain purposes. [FN58]**

**An attorney may also bring an action in equity to enforce his lien. [FN59] The attorney may also seek to have the lien fixed and enforced by motion in the matrimonial action. [FN60]**

**A charging lien asserted as against counsel fees only must be timely imposed. Outgoing counsel is not entitled to a summary determination of amount of his or her lien where there has been an award of temporary counsel fees prior to discharge or withdrawal. The proper time to seek the imposition of the lien against any further counsel fee awarded is at the conclusion of the litigation. The existence of a charging lien as a first lien upon any award of counsel fees to a spouse does not preclude the outgoing attorney from commencement of a plenary action against either or both spouses. [FN61]**

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**FN1 Fischer-Hansen v. Brooklyn Heights R. Co., 173 NY 492, 66 NE 395. Citing Chase's Blackstone, 3d Ed., P. 630.**

**FN2 Id. Chorley v. Bolcot, 4 T.R. 317, 318.**

**FN3 Id. Citing Adams v. Stevens & Cagger, 26 Wend 451, 465.**

**FN4 26 Wend 451, 465.**

**FN5 2 Rev. Stat. of NY, 517 2d Ed. Part III, Ch.X, Tit. III.**

**FN6 26 Wend at Page 461.**

**FN7 Rooney v. Avenue Railroad Co., 18 NY 368.**

**FN8 Laws 1848, Ch. 379, 258.**

**FN9 Laws 1849, Ch. 438.**

**FN10 Wright v. Wright, 70 NY 98.**

**FN11 Laws 1979, Ch. 542.**

**FN12 Laws 1899, Ch. 61.**

**FN13 Laws 1909, Ch.35. Citizens Bank of White Plains v. Oglsby, 270 AD 136, 58 NYS2d 596.**

**FN14 Goodrich v. McDonald, 112 NY 1578, 19 NE 649; Robinson v. Rogers, 237 NY 467, 143 NE 647, 33 ALR 1291.**

**FN15 Citizens Bank of White Plains v. Ogelsby, supra.**

**FN16 Fischer-Hansen v. Brooklyn Heights R. Co., 173 NY 492, 66 NE 395.**

**FN17 Robinson v. Rogers (1924), 237 NY 467, 143 NE 647, 33 ALR 1291.**

**FN18 Kyle v. Kyle (1983, 3d Dept.), 94 AD2d 866, 463 NYS2d 584, later proceed. Leviten v. Sandbank (1943), 291 NY 352, 52 NE2d 898; Robinson v. Rogers, supra.**

**FN19 Rosen v. Rosen (1983, 2d Dept), 97 AD2d 827, 468 NYS2d 723.**

**FN20 Re Weitling (1935), 266 NY 184, 194 NE 401.**

**FN21 Leviten v. Sandbank (1943), 291 NY 352, 52 NE2d 898; Robinson v. Rogers, supra.**

**FN22 Re H (1882), 87 NY 521; Re Weitling, supra.**

**FN23 Lerner v. Seigel (1964, 2d Dept.), 22 AD2d 816, 254 NYS2d 802.**

**FN24 Lerner v. Seigel, supra.**

**FN25 Leviten v. Sandbank, supra; Robinson v. Rogers, supra.**

**FN26 Kennedy v. Macaluso (1982, 4th Dept.), 86 AD2d 775, 448 NYS2d 276, affd 56 NY2d 630, 450 NYS2d 479, 435 NE2d 1094.**

**FN27 Robinson v. Rogers (1924), 237 NY 467, 143 NE 647, 33 ALR 1291.**

**FN28 Levine v. Levine (1954). 206 Misc 884, 135 NYS2d 304.**

**FN29 Ibid.**

**FN30 Golden v. Whittemore (1986, 4th Dept.), 125 AD2d 942, 510 NYS2d 340.**

**FN31 Re Weitling (1935), 266 NY 184, 194 NE 401; Re H (1882), 87 NY521.**

**FN32 Yaron v. Yaron (1977, 1st Dept.), 58 AD2d 752, 396 NYS2d 225; Braverman v. Braverman (1975, 2d Dept.), 47 AD2d 916, 367 NYS2d 39; Shatzkin v. Shahmoon (1963, 2d Dept.), 19 AD2d 658, 242 NYS2d 72; Levitas v. Levitas (1978), 96 Misc 2d 929, 410 NYS2d 41).**

**FN33 Leviten v. Sandbank (1943), 291 NY 352, 52 NE2d 898; Robinson v. Rogers supra.**

**FN34 McNally v. Youngs (1932), 237 AD 787, 262 NYS 828, app dismd 262 NY 526, 188 NE 49.**

**FN35 Cuestas v. Cuestas (1985, 2d Dept.), 112 AD2d 341, 491 NYS2d 994.**

**FN36 Ventola v. Ventola (1985, 2d Dept.), 112 AD2d 291, 491 NYS2d 736; Yaron v. Yaron (1977, 1st Dept.), 58 AD2d 752, 396 NYS2d 225; Mongitore v. Murphy (1973, 2d Dept.), 42 AD2d 800, 346 NYS2d 420; Levitas v. Levitas (1978), 96 Misc2d 929, 410 NYS2d 41. But see M.E. v. S.G.(1984), 124 Misc2d 851, 478 NYS2d 539, a paternity proceeding where the Court directed in the best interest of the child that the outgoing attorney turn over his file without having his lien and fee fixed. Gamble v. Gamble (1980, 2d Dept.), 78 AD2d 673, 432 NYS2d 405; Ryan v. Ryan (1965, 2d Dept.), 24 AD2d 1010, 265 NYS2d 977.**

**FN37 Rosen v. Rosen (1983, 2d Dept.), 97 AD2d 837, 468 NYS2d 723; Walter v. Walter, NYLJ, 4-13-89, P.27, Col.1 Sup. Ct., (Winick,J.), in denying the outgoing attorneys motion for a retaining lien and payment thereof or security therefore, the Court found, based upon the client's affidavit, that she was indigent. As the case was ready for trial without the use of her file, as she elected to appear pro se, the court granted the outgoing attorneys a charging lien against any award to the Plaintiff other than maintenance and support and held they were entitled to a summary determination as to the amount of the lien. In Katsaros v. Katsaros (1989, AD 2d Dept.), 543 NYS2d 478, the Appellate Division held that the outgoing attorney for the wife in this divorce action was not entitled to a retaining lien because the wife's unrefuted allegations of indigency constitute such exigent circumquitable for the appellant to retain the file. It directed that a hearing be expeditiously to determine if the attorney withdrew or was discharged with or without cause, and, if without cause, the value of his charging lien.**

**FN38 Rosen v. Rosen, supra; Pekoe v. Pekoe (1984, 2d Dept.), 101 AD2d 813, 475 NYS2d 144.**

**FN39 Pileggi v. Pileggi (1987, AD 2d Dept.), 512 NYS2d 142; Petrillo v. Petrillo (1982, 2d Dept.), 87 AD2d 607, 448 NYS2d 44, held that Plaintiff's former attorneys had a common law retaining lien on the papers in their posses Artim v. Artim (1985, 2d Dept.), 109 AD2d 811, 486 NYS2d 328, held that in the absence of "exigent circumstances," the outgoing attorney's retaining lien must be respected and that he was entitled to a summary hearing, fixing his lien and conditioning turnover of the file on the payment of the sum due or posting of security.**

**FN40 Shatzkin v. Shahmoon (1963, 2d Dept.), 19 AD2d 658, 242 NYS2d 72; Schwartz v. Schwartz (1960), 25 Misc 2d 225, 205 NYS2d 34; but see Rosen v. Rosen (1983, 2d Dept.), 97 AD2d 837, 468 NYS2d 723.**

**FN41 Goldman v. Rafel Estates, Inc. (1945) 269 AD 647, 58 NYS2d 168; Application of Fox (1960), 22 Misc 2d 177, 198 NYS2d 789.**

**FN42 Re Regan (1901), 167 NY 338, 60 NE 658; Coughlin v. New York C. & H. R. R. Co. (1877), 71 NY 443; Marshall v. Meech (1872), 51 NY 140.**

**FN43 Re Shaad (1977, 4th Dept.), 49 AD2d 1061, 399 NYS2d 822, held that it was not necessary to determine the unreasonable value of an attorney's services at the time of granting of his charging lien since such determination was to be made following any recovery in the underlying action because the amount of the recovery is one of the elements to be considered in fixing the the reasonable value of services. Goldstein v. Goldstein (1967, 1st Dept.), 28 AD 962, 283 NYS2d 167.**

**FN44 Myers v. Brooklyn H.R. Co. (1918), 224 NY 556, 120 NE 869. reasonable value of services. Goldstein v. Goldstein (1967, 1st Dept.), 28 AD 962, 283 NYS2d 167.**

**FN45 Jud. Law 475.**

**FN46 Jud. Law 475(a).**

**FN47 Re Washington Square Slum Clearance (1959), 5 NY2d 300, 184 NYS2d 585, 157 NE2d, cert den 363 US 841, 4 L Ed 2d 1726, 80 S.Ct 1606.**

**FN48 Kaplan v. Reuss (1985, 2d Dept.), 113 AD2d 184, 495 NYS2d 404, affd 68 NY2d 693, 506 NYS2d 304, 497 NE2d 671.**

**FN49 Turner v. Woolworth (1917), 221 NY 425, 117 NE 814; Re Bolles (1903), 78 AD 180, 79 NYS 530; Spinello v. Spinello (1972), 70 Misc 2d 521, 334 NYS2d 70; Owen v. Forchelli (1964), 42 Misc 2d 1064, 249 NYS2d 913; Schwartz v. Schwartz (1960), 25 Misc2d 225, 205 NYS2d 34; Kalish v. Kalish (1957), 7 Misc2d 612, 166 NYS2d 362; Moony v. Mooney (1899), 29 Misc 707, 62 NYS 769.**

**FN50 Levitas v. Levitas (1978), 96 Misc2d 929, 410 NYS2d 41. In Lane v. Lane, NYLJ, Oct. 19, 1984, P.16, Col.3, Sup Ct. Rockland Co. (Ruskin, J.), the wife's motion for substitution was granted and the court directed an immediate hearing as to the charging lien under 475 of the Judiciary Law of the outgoing attorneys. The court directed that the lien so fixed shall attach to the settlement and shall be paid by wife from any distributive award. Counsel was directed to turn over their file. The court noted that the attorneys did not ask to have their retaining lien fixed.**

**In Theroux v. Theroux (1988, 2d Dept.), 145 AD2d 625, 536 NYS2d 151, the Appellate Division affirmed an order of the Supreme Court that denied the motion of the wife's former attorneys to enforce a charging lien or retaining lien and directed Plaintiff to pay them a further counsel fee of $3,500. The court noted that at the time of the motion, the parties stipulated that the reasonable value of the legal services rendered would be decided on the papers submitted rather than have a hearing. The court did not abuse its discretion in declining to enforce the retaining lien since there was no request for a turnover of the papers and thus, a plenary action was necessary. A charging lien does not attach to an award of alimony or maintenance. Where the attorney's services do not create any proceeds, but consist solely of defending a title or interest already held by the client, there is no lien on that title or interest, as in this case.**

**FN51 Re Brackett (1906), 114 AD 257, 99 NYS 802, affd. 189 NY 502, 81 NE 1160.**

**FN52 Conklin v. Conklin (1922), 201 AD 170, 194 NYS 685, affd 234 NY 546, 138 NE 441.**

**FN53 Mooney v. Mooney (1899), 29 Misc. 707,62 NYS 769.**

**FN54 White v. White (1981), 107 Misc2d 551, 435 NYS2d 535, where a charging lien on the client's files was not defeated by the contention of the subtitued attorney. A charging lien is based upon the equitable doctrine that an attorney should be paid out of the proceeds of the judgment procured by the attorney and the lien exists independently of the possession of any client's papers, security or moneys. ME v. SG (1984), 124 Misc2d 851, 478 NYS2d 539; Levitas v. Levitas (1978), 96 Misc2d 929, 410 NYS2d 41.**

**FN55 Judiciary Law Section 475; Maier v. Maza Realty Co. (1919) 189 AD 339, 178 NYS 502; Jackson v. New York (1943), 182 Misc 686, 45 NYS2d 505; Chorosh v. Woodbury (1930), 135 Misc. 910, 240 NYS 157. In Marshall v. Katsaros (1989), AD2d Dept.), 543 NYS2d 479, the Appellate Division held, in a proceeding pursuant to Judiciary Law 475 to determine and enforce an attorney's lien against his client, the wife, that one who is not a client is not a proper party, and that it was proper to grant the husband's motion to dismiss the attorney's petition against him for necessaries. An attorney may elect to assert a cause of action against a spouse in a plenary, common law action on the theory that legal services rendered to the other spouse were necessaries. The attorney cannot pursue a common law action and a special proceeding at the same time. "Having elected to enforce a lien in a special proceeding, a common law action against the husband is precluded." It held that the Supreme Court should not allow discovery to impede the expeditious disposition of the attorney's claim and that he was entitled to an expedited hearing to determine and enforce the lien.**

**FN56 Re Winkler (1913), 154 AD 532, 139 NYS 755; Roulstone v. Oesterreicher (1946), 188 Misc 741, 66 NYS2d 244.**

**FN57 Application of Finklestein (1941), 76 Misc 402, 27 NYS2d 266; Manusse v. Mattia (1939, Sup), 10 NYS2d 495.**

**FN58 Perkins v. Guaranty Trust Co. (1939) 256 AD 251, 9 NYS2d 529, holding that such order may be treated as a judgment for the purpose of allowing another judgment to be set off it.**

**FN59 Fenwick v. Metropolitan S R Co. (1903), 173 NY 633, 66 NE 1108; Fisher Hansen v. Brooklyn H R Co. (1903), 173 NY 492, 66 NE 395; Citizen's Bank of White Plains v. Oglesby (1945), 270 AD 136, 58 NYS2d 591; Ransom v. Cutting (1906), 112 AD 150,98 NYS 282, affd 188 NY 447, 81 NE 324; Re Pieris (1903), 82 AD 466, 81 NYS 927, affd. 176 NY 577, 68 NE 1123.**

**FN60 See Lane v. Lane, N 49, supra.**

**FN61 Levitas v. Levitas (1978), 96 Misc2d 929, 410 NYS2d 41. In an equitable proceeding by an attorney to enforce his lien for compensation against the Plaintiff in a divorce action, it cannot be set up as a defense that the attorney has an adequate remedy at law. Skinner v. Busse (1902), 38 Misc 265, 77 NYS 560.**

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