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Attorneys--Laborers' Liens for Abstracting Services

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RECENT CASE COMMENTS

ATTORNEYS — LABORERS' LIENS FOR ABSTRACTING SERVICES. — In a recent suit to enforce a laborers' lien under our statute,¹ two attorneys filed a petition, claiming a lien under the same statute for making abstracts, obtaining franchises, and procuring rights of way for the defendant corporation. The court held that the petitioners had a lien but said that whether or not the statute gave an attorney a lien for purely professional services was left for future consideration. *Raleigh County Const. Co. v. Amere Gas Utilities Co.*²

The situation presented some difficulties. The exact point appears never to have been the subject of prior litigation. On the one hand, the court was faced with the rather firmly established rule that statutes for the protection of laborers do not extend to the protection of professional men, such as attorneys at law, unless express provision is made therefor.³ But on the other hand, under the broad interpretation given our statute, if some one other than a licensed attorney had done this same work, he would pretty clearly have had a lien.⁴ To obviate an apparently unfair discrimination against attorneys and at the same time make a semblance of following the rule above referred to, the court said that the services performed here were not really professional services; therefore the fact that the petitioners were attorneys was immaterial. This would obviously tend to limit an attorney's professional services largely to matters of litigation, but such a

¹ W. VA. CODE ANN. (Barnes, 1923) c. 75, § 19. "Every workman, laborer, or other person who shall do or perform any work or labor for any incorporated company doing business in this state . . . shall have a lien for the value of such work or labor upon all the real estate and personal property of the said company . . ."

² 158 S. E. 161 (W. Va. 1931).

³ *Bristor v. Smith*, 158 N. Y. 157, 53 N. E. 42 (1899). "An attorney regularly employed at a fixed salary is not an employee in the meaning of the statute." *Lewis v. Fisher*, 80 Md. 139, 30 Atl. 608 (1894). The phrase "wages or salaries to clerks, servants, or employees" was held not to apply to attorneys at law. But cf. *Gurnsey v. Atlantic and Great Western Ry. Co.*, 58 N. Y. 358 (1874). *Contra*: *Boyd v. Gorman*, 157 N. Y. 365, 52 N. E. 113 (1898).

⁴ *Shore v. United Auto Supply Co.*, 107 W. Va. 66, 146 S. E. 890 (1929); *Kimball v. Sunderstrom & Stratton Co.*, 80 W. Va. 522, 74 S. E. 953 (1917); *Grant v. Cumberland Valley Cement Co.*, 58 W. Va. 162, 52 S. E. 36 (1905); *Wetzel & Tyler Ry. Co. v. Tennis Bros. Co.*, 145 Fed. 458 (C. C. A. 4th 1906). See *Richardson v. Norfolk & Western Ry. Co.*, 37 W. Va. 641, 644, 17 S. E. 195, 196 (1893) for dictum to the effect that by this section every employee of an incorporated company from the track hand and coal heaver to the superintendent of the railroad or mines is secured a lien on all the company's property for the price of his hire.

⁵ *Case v. Ranney*, 174 Mich. 673, 140 N. W. 943 (1913). ("Professional services are not limited to litigation alone.") See further: *In re H—*,

limitation is hard to justify.⁵ Whether or not an attorney is professionally employed depends upon the nature and circumstances of his employment as well as upon what he does.⁶ The fact that the work might be done by some one else does not necessarily detract from the professional character of the employment.

The court further stated that the objection to a lien for purely professional services is based largely upon the opportunity for unfair advantage it might give to the attorney and upon the difficulty of placing a reasonable value on such services. Why a lien for abstracting would be less objectionable from the viewpoint of undue advantage to the attorney than would be one for any other legal service is not quite clear. At any rate, the reasonableness of the fee would depend largely upon the capacity to do the work and the quality of the work done;⁷ consequently the ease of determining what is a proper fee for making an individual abstract is not greatly facilitated by the fact that persons with various qualifications are permitted to do such work. Courts are, however, frequently called upon to ascertain what would be a reasonable charge for an attorney's services in a particular instance; and, so far, they have experienced no great difficulty in handling the problem.⁸

The result reached is probably desirable. At least, it pretty clearly effected justice between the parties to the controversy. But notwithstanding the court's express denial that it was adjudicating the question of whether or not our statute gives an attorney a lien for professional services, the fact remains that by the decision of this case, two attorneys were actually allowed to enforce a lien under that statute for services ordinarily recognized as falling within the category of professional services.

—GEORGE W. MCQUAIN.

87 N. Y. 521 (1882); *In re Knapp*, 85 N. Y. 284 (1881); *Klass v. Iowa Mutual Liability Ins. Co.*, 230 N. W. 314 (Iowa 1930); *Yates v. Robertson*, 80 Va. 475 (1885); *Trist v. Child*, 21 Wall. 441, 22 L. ed. 623 (1875).

⁵ In *Case v. Ranney*, *supra* n. 5, it was said: "Whether in any case an attorney is professionally employed depends on the relations and mutual understandings of the parties, on what was done, and on all the facts and circumstances of the particular undertaking."

⁷ *Stafford v. Bishop*, 98 W. Va. 625, 127 S. E. 501 (1925); *Campbell v. Howard*, 133 Va. 19, 112 S. E. 876 (1922).

⁸ See generally *Watts v. West Va. S. R. Co.*, 48 W. Va. 265, 37 S. E. 700 (1900); *Belmont v. McAllister*, 116 Va. 285, 81 S. E. 81 (1914); *Turnbull v. Buford*, 119 Va. 304, 89 S. E. 233 (1916); *Bruce v. Bibb*, 129 Va. 45, 105 S. E. 570 (1921); W. VA. REV. CODE (1931) c. 30, art. 2, § 1. "An attorney shall be entitled for his services as such to such sums as he may contract for with the party for whom the service is rendered, and in the absence of such contract, he may recover from such party what his services are reasonably worth."