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APPEAL AND ERROR-APPEALS IN FORMA PAUPERIS-NECESSITY FOR ATTORNEY HIRED ON CONTINGENT FEE TO FILE AFFIDAVIT OF HIS POVERTY

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RECENT DECISIONS

APPEAL AND ERROR—APPEALS IN FORMA PAUPERIS—NECESSITY FOR ATTORNEY HIRED ON CONTINGENT FEE TO FILE AFFIDAVIT OF HIS POVERTY—Relying upon the applicable statute,[1] petitioner filed a motion for appeal *in forma pauperis* in a federal district court. The motion was denied on the ground, *inter alia,* that petitioner's attorney had filed an insufficient affidavit of poverty. The court assumed that the attorney was employed on contingent fee. The denial of the motion was affirmed by the circuit court of appeals. On further appeal, *held,* reversed. An attorney is not required to file an affidavit of his poverty as a condition to proceedings *in forma pauperis,* even though he is employed on contingent fee. *Adkins v. E. I. DuPont de Nemours & Co., Inc.,* 335 U.S. 331, 69 S.Ct. 85 (1948).

The instant case settles a marked conflict in the decisions of lower federal courts. Several lower courts have required an attorney's affidavit of his poverty on the ground that, if hired on a contingent fee, he was an interested party in the action.[2] Placing great emphasis on an interpretation of the statute consistent with its beneficent purpose,[3] the Court concludes that to require such an affidavit would defeat that purpose by limiting indigents to counsel who were themselves impoverished or willing to secure costs.[4] The Court further notes that some states by statute forbid an attorney to secure his client's costs,[5] and that such action approaches common law champerty.[6] It is submitted that the principal case adopts the sounder view. The language of the statutes confers its benefits upon any citizen of the United States "entitled to commence any suit or action in any court of the United States," upon the filing of his affidavit of poverty. Such language seems clearly to mean actions in which the citizen has a claim of right, or in which he is a party. Since the attorney has an interest only in the result of the action, and not in the

[1] "[A]ny citizen of the United States entitled to commence any suit . . . in any court of the United States, may, upon the order of the court, commence and prosecute or defend to conclusion any suit or action . . . or an appeal . . . without being required to prepay fees or costs . . . or give security therefor . . . upon filing in said court a statement under oath in writing, that because of his poverty he is unable to pay the costs of said suit or action . . . or appeal, or to give security for the same. . . ." 42 Stat. L. 666, c. 246 (1922); 28 U.S.C. §832 (1946). This provision is now incorporated in P.L. 773, 80th Cong., 2d sess., c. 646 (1948); U.S.C. §1915 (1948).

[2] Boyle v. Great Northern R. Co., (C.C. Wash. 1894) 63 F. 539; Phillips v. Louisville & N. R. Co., (C.C. Ala. 1907) 153 F. 795; Feil v. Wabash R. Co., (C.C. Mo. 1902) 119 F. 490; United States ex. rel Randolph v. Ross, (C.C.A. 6th, 1924) 298 F. 64.

[3] See 20 C.J.S., Costs, §146 (1940).

[4] Clark v. United States, (D.C. Mo. 1932) 57 F. (2d) 214; Quittner v. Motion Picture Producers & Distributors of America, (C.C.A. 2d, 1934) 70 F. (2d) 331.

[5] For example, Oklahoma, where this action was tried. See Okla. Stat. (1941) tit. 5, §11.

[6] United States ex rel. Payne v. Call, (C.C.A. 5th, 1923) 287 F. 520; Jacobs v. North Louisiana & Gulf R. Co., (D.C. La. 1946) 69 F. Supp. 5; Stevens v. Sheriff, 76 Kan. 124, 90 P. 799 (1907).

right of action itself,[7] he does not appear to come within the statutory language, and his affidavit of poverty should not be essential to his client's prosecution of the suit *in forma pauperis*.[8]

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[7] Clark v. United States, (D.C. Mo. 1932) 57 F. (2d) 214; Richfield Oil Corp. v. La-Prade, 56 Ariz. 100, 105 P. (2d) 1115 (1940); State ex rel. Malouf v. Merrill, 165 Wis. 138, 161 N.W. 375 (1917).

[8] Cf. Boggan v. Provident L. & Acc. Ins. Co., (C.C.A. 5th, 1935) 79 F. (2d) 721, a suit by an administrator on behalf of an estate, where the court dismissed the action *in forma pauperis* for failure to allege insolvency of the estate.