

case as to the existence of an attorney's special lien. In some states the lien exists by virtue of judicial decision, in others by virtue of statute. *Thayer v. Daniels* (1873), 113 Mass. 129 and *Central Railroad and Banking Co. of Georgia v. Pettus* (1884), 113 U. S. 116 exemplify the former type; the Judiciary Law of New York, Secs. 474 and 475, typifies the statutory lien. But as to the method of procedure there seems, however, to be some confusion. The case of *Prichard v. Fulmer* (1916), 22 N. M. 134, 159 P. 39, 2 A. L. R. 474, in accord with the principal case on the method of procedure, held that an attorney could not assert his lien in an independent suit, since the court would afford ample remedy in the original suit. This seems to be the better rule, and is illustrative of the trend of modern authority. See *Vaughan v. Hill* (1922), 154 Ark. 528, 242 S. W. 826, and *Epp v. Hinton* (1918), 102 Kan. 435, 170 P. 987, wherein the courts held that an application to enforce an attorney's lien for services upon proceeds of a judgment may be made in the case wherein judgment was rendered without formal pleadings. The reasons for this rule, as pointed out in the cases, are sound. Obviously, it prevents circuity of action since the attorney is not required to bring another suit. The plaintiff's client cannot be deprived of his right of trial by jury in view of the fact that the issue is equitable in its nature. Further, the plaintiff's client in every event has notice of the proceedings against him, so as to enable him to prepare a defense.

But the case of *Weitzel v. Schmidt* (1919), 178 N. Y. S. 429, held that the amount of a lien is to be determined in a later appropriate proceeding, rather than upon a motion filed by the attorney during the action in which the judgment was given. This case is decided upon a strict interpretation of the New York statutes providing for an attorney's lien and fails to either recognize or account for the forceful and logical reasons supporting the recognition of a summary proceeding for the enforcement of the attorney's lien.

S. H., '30.

BILLS AND NOTES—PRESENTMENT—SUFFICIENCY.—In presenting a promissory note, a notary public, who was assistant teller of the bank holding the note, called at the office of the maker to demand payment, took up the matter with the party in charge of the office and stated to such party "I have note here." Payment was refused. *Held*, there was a sufficient exhibition of the note to comply with the Kansas Statutes. *Toll v. Monitor Binding and Printing Co.* (C. C. A. 8, 1928), 26 F. (2d) 51.

There seems to be little doubt that the old rule of the common law was that nothing short of actual exhibition would constitute sufficient presentment, in the absence of circumstances and conduct which would operate as a waiver. *Musson v. Lake* (1846), 4 How. 262; *Bank of Vergennes v. Cameron* (1849), 7 Barb. 143; *Farmers' Bank v. Duvall* (1835), 7 Gill, & J. 78; *Shaw v. Reed* (1831), 12 Pick. 132; *Waring v. Botts* (1893), 90 Va. 46, 17 S. E. 739. Decisions which have excused actual presentment where circumstances indicate a clear waiver on the part of the maker, are justified

on logical and reasonable grounds. In the Virginia case *supra*, the Court said: "This [actual exhibition] is requisite in order that the drawer or acceptor may be able to judge (1) of the genuineness of the instrument; (2) of the right of the holder to receive payment; (3) that he may immediately reclaim possession of it, upon paying the amount. If, on demand, the exhibition of the instrument is not asked for, and the party of whom demand is made decline on other grounds, a formal presentment by actual exhibition of the paper is considered as waived."

It is not very clear in the principal case whether the decision rests on waiver or whether the court held that under the circumstances there was a substantial exhibition. The court says the presentment was "sufficient as an exhibition" and then cites the following cases based on waiver: *Legg et al v. Vinal et al.* (1895), 165 Mass. 555, 43 N. E. 518; *King v. Crowell* (1873), 61 Me. 244. The court also cites *Gilpin v. Savage* (1908), 60 Misc. Rep. 605, 112 N. Y. S. 802, another waiver case where demand made over the telephone was held sufficient. But this decision was reversed, 201 N. Y. 169, 94 N. E. 656, even though the position of the lower court in holding that for every purpose of demand and refusal, the telephone conversation was just as effective as in case of actual presence, is not without merit. The facts of that case, however, may be distinguished from those of the principal case.

Though the decision in the instant case can be justified on the basis of waiver, it would seem that the court kept well within the bounds of reason in holding, if such was the case, that there was a substantial exhibition of the note when the notary went to the maker with the note and said it was in his possession. The court in *King v. Crowell, supra*, classifies actual exhibition when the maker expresses no desire to see the note and refuses to pay, as an "idle ceremony," and quotes from Shaw, C. J., who spoke for the court in *Gilbert v. Dennis* (1842), 3 Met. 497: "Even under the law of tender, which is extremely strict, it is held that where a party to whom a tender is made declares that he will not accept it, an actual production and offer of money is not necessary."

W. V. W., '30.

CONSTITUTIONAL LAW—POLICE POWER—REGULATION OF BUILDING AND LOAN ASSOCIATIONS.—On account of abuses which have arisen out of building and loan associations and their practises, they are controlled today by special legislation designed to protect the investors and shareholders.

An act approved at the 1927 session of the Missouri Legislature created a Bureau of Building and Loan Supervision, declaring its jurisdiction, assigning to it the powers theretofore exercised by the State Department of Finance over building and loan associations, providing for the administrative officers and personnel of such bureau, fixing their compensation, and expressly repealing all previous inconsistent acts. Laws of Missouri, 1927, p. 123.

R. S. Mo. 1919, Sec. 10229 provided for a building and loan bureau under the management of a building and loan supervisor. This statute which