

counsel can sue for fees. HARRISON, C. J., dissenting. See *McDougall v. Campbell*, Easter Term, 1877, (U. C. 41 Q. B. 332.) The chief justice vigorously combats the progressive views asserted by the majority, "as tending to lessen the standard of professional rectitude at the bar." I shall accept this decision of the court as settling the case upon the point controverted, and hold that, in the province of Ontario, a counsel can maintain a suit for his fees, and that the common-law rule is modified. It may be stated here that in England, where seven-eighths of the barristers reside in the city of London, a change in the organization of the legal profession is mooted<sup>1</sup> to unite the functions of the attorney and barrister in one person, which, if adopted, (as is not unlikely,) will extend to a complete revolution of the common-law doctrine.

But there is another reason for giving the plaintiff judgment which is satisfactory to my mind. The suit is upon a bill of exchange accepted by the defendant. The fact that the common-law doctrine prevails in the province of Ontario, should we admit it, cannot be urged to defeat a recovery in this case. There is nothing in the doctrine of an *honorarium*, or a gratuity, which forbids the client, or attorney, who engages counsel, to give, for the services rendered, his note or similar obligation. An action will lie for its non-payment, as the consideration is not illegal. This is a different thing from suing for fees. See *Mooney v. Lloyd*, 5 Serg. & R. 412.

Upon full consideration, I think judgment must be rendered for the amount of the bill of exchange, with interest and costs, and it is so ordered.

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### *In re* JAY COOKE & Co.<sup>2</sup>

(District Court, E. D. Pennsylvania. December 22, 1883.)

**BANKRUPTCY—EQUITABLE ASSIGNMENT—SUBROGATION—CONSTRUCTIONS OF STATUTES—ACTS JUNE 22, 1874, (18 ST. AT LARGE, 142,) AUGUST 8, 1882, (ST. 1882, P. 376.)**

The Soldiers' & Sailors' Orphans' Home proved a claim against the bankrupts, and subsequently, by act of congress, an appropriation was made to the home of the amount of the claim, and the attorney general was directed "to inquire into the necessity for and to take any measures that may be most effectual to enforce any right or claim which the United States have to this money, or any part of the same, now involved in the bankruptcy of Jay Cooke & Co." In pursuance of a subsequent act, the home by deed transferred all its property, real and personal, to the Garfield Memorial Hospital. *Held*, that the United States had not acquired any title to the claim, either by subrogation or equitable assignment, and that the hospital was entitled to receive the claim against the bankrupts.

**In Bankruptcy. Exceptions to examiner's report.**

<sup>1</sup>See article by "English Lawyer" in the *Nation*, December 20, 1883

<sup>2</sup>Reported by Albert Guilbert, Esq., of the Philadelphia bar.

The examiner (Joseph Mason) reported that on the twenty-fifth day of May, 1874, a claim for \$11,350.97 had been duly proved against the bankrupts by the Soldiers' & Sailors' Orphans' Home.

By an act of congress approved June 22, 1874, it was provided, *inter alia*,—

"That the following sums be and they are hereby appropriated out of any moneys in the treasury not otherwise appropriated, to supply deficiencies in the appropriations for the services of the government for the fiscal year ending June 30, 1874, and for former years, and for other purposes, namely:

"For the Soldiers' & Sailors' Orphans' Home, Washington city, District of Columbia, to be expended under the direction of the secretary of the interior, eleven thousand three hundred and fifty dollars and ninety-seven cents: provided, that hereafter no child or children shall be admitted into said home except the destitute orphans of soldiers and sailors who have died in the late war on behalf of the union of these states, as provided for in section 3 of the act entitled 'An act to incorporate the National Soldiers' & Sailors' Orphans' home,' approved July 25, 1866: and provided, further, that no child, not an invalid, shall remain in said home after having attained the age of sixteen years.

"And the attorney general is hereby directed to inquire into the necessity for and to take any measures that may be most effectual to enforce any right or claim which the United States have to this money, or any part of the same, now involved in the bankruptcy of Henry D. Cooke, or of Jay Cooke & Co." 18 St. 142.

The act of July 25, 1866, referred to, provided, *inter alia*,—

"That said corporation shall have power to provide a home for, and to support and educate, the destitute orphans of soldiers and sailors who have died in the late war in behalf of the union of these states, from whatever state or territory they may have entered the national service, or their orphans may apply to enter the home, and which is hereby declared to be the objects and purposes of said corporation."

But there appears to be no provision in said act for any aid, assistance, or appropriation from or the exercise of any control over the management of the affairs of the corporation by the United States, except the provision that congress may at any time thereafter repeal, alter, or amend the act.

On December 15, 1879, the attorney general of the United States gave an official opinion to the secretary of the treasury, in answer to a letter from him as to an offer made to him to purchase the claim in question, from which opinion are taken the following extracts:

"On examining the statutes, it seems to me quite clear that an appropriation was made for the purpose of reimbursing the Soldiers' & Sailors' Orphans' Home for the moneys lost by the failure of Jay Cooke & Co., and that the United States treated the claim against that firm as one which was thereafter its own. This reappropriation was accepted upon these terms by the home when it received the money.

"The present legislation seems to me ample to enable the secretary of the treasury to demand and receive the amount of dividend from the bankrupt estate. In case there should be a refusal by that estate, it would also seem that the attorney general had, under the act, ample power to enforce the claim, and to collect, in the name of the United States, or that of the home,