

The courts of the United States seem to protect attorneys in their fees as well as in their taxed costs. In *Wylie v. Coxe*, 15 How. 415, the courts protected an attorney by securing him the percentage contracted to be paid him on recovery. In *Cowdrey v. Railroad Co.*, 93 U. S. 354, an attorney was secured the fee he had expressly contracted for."

In *Frink v. McComb*, 60 Fed. 486, it was called a lien, and was enforced against a fund in court, not affected by an assignment on the part of the client. And in *Mahone v. Telegraph Co.*, 33 Fed. 702, it followed the dividends on bonds, although the bondholders who had made the contract with the attorney had parted with them long before the dividend was declared. It is clear that the intervention is proper. Let proper provision be made for the petitioner when the funds are all realized.

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DOOLEY v. PEASE.

(Circuit Court, N. D. Illinois, N. D. March 1, 1897.)

CORPORATIONS—AUTHORITY OF PRESIDENT AND GENERAL MANAGER—CREATION OF PREFERENCES.

The president and general manager of a business corporation, which is in a failing condition, has no power, without special authorization, to give preferences to certain creditors.

Duncan & Gilbert, for plaintiff.

Green, Robbins & Honore, for defendant.

GROSSCUP, District Judge (orally). I have prepared a long finding of facts, which I will not attempt to recapitulate. My conclusion in this case is due to my holding a simple proposition of law, and I can probably state it by a very short résumé of the facts. The complainant is the receiver of a national bank that had a large claim of over \$200,000 against a silk company in Connecticut. The silk company itself was in financial difficulties, and was about to fail. The president of the company, who was also its acting general manager, having been elected to that place some two or three years before and not having been re-elected, but continuing to act, came to Baltimore, Chicago, and New York, and executed a bill of sale of their stock of goods in these cities, respectively, to the receiver of the bank. He knew at the time that his silk company was on the point of failing, that an application would soon be made for the appointment of a receiver, and that it would go into the hands of a receiver. The circumstances are such that this discloses a clear case of an attempt upon the part of the president and acting general manager of a company that is no longer to be a going concern, but is already an insolvent concern, and is to become a defunct concern, to execute a preference in favor of one of its creditors. I hold that, in the absence of special authority conferred upon the president or general manager for that purpose, by the directors, he has no power to make any such preference. The president and general manager has power to conduct the affairs of the company as a going concern, and do everything consistent with its affairs as a going concern; but, when it comes to preferring creditors of a concern

to be wound up, the owners of the property are the stockholders, through their board of directors; and they have not, by the mere election of a man to the presidency of the company, authorized him to discriminate between their creditors. There will therefore be, in addition to this special finding of facts, a general finding in favor of the defendant, the sheriff who seized the goods under attachment writs.

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McGORRAY v. O'CONNOR et al.

(Circuit Court, N. D. California. April 12, 1897.)

**PARTNERSHIP—DEATH OF PARTNER—RIGHTS OF HEIRS AND SURVIVING PARTNER.**

Under the law of California, which gives to a surviving partner the absolute power of control and disposition of the assets of a partnership (Code Civ. Proc. § 1585), the heirs of a deceased partner have no such right or interest in the partnership property, prior to settlement and distribution by the surviving partner, as entitles them or their judgment creditors to redeem partnership property from a sale under a mortgage.

This was a suit in equity to obtain a decree canceling and declaring void a certain sheriff's deed to land sold upon foreclosure of a mortgage, to allow the complainant to redeem as a judgment creditor, and to direct the sheriff to execute and deliver a deed of the property to the complainant, etc.

L. W. Elliott and A. H. Carpenter, for complainant.  
Olney & Olney and Dudley & Buck, for respondents.

MORROW, District Judge. In this action the complainant seeks to obtain the decree of this court canceling and declaring null and void a certain deed executed and delivered by the respondent Thomas Cunningham, as sheriff of San Joaquin county, to the respondent Myles P. O'Connor, on the 16th of November, 1894, conveying to O'Connor the lands and premises described as the E.  $\frac{1}{2}$  and N. W.  $\frac{1}{4}$  of the N. E.  $\frac{1}{4}$  of section 5, T. 2 N., R. 8 E., and the S. E.  $\frac{1}{4}$  and the E.  $\frac{1}{2}$  of the S. W.  $\frac{1}{4}$  of section 32, T. 3 N., R. 8 E., Mt. Diablo base and meridian, which land and premises were sold by the sheriff under and by virtue of a decree of foreclosure of a mortgage and order of sale made by the superior court of San Joaquin county on the 15th of May, 1894. The complainant also seeks the further decree of the court that he be allowed to redeem the land and premises from such sale, in the character of a judgment creditor of one Clinton H. Carpenter, and that the sheriff make a deed of the property and deliver it to the complainant. The case has been submitted upon the motion of both parties for a judgment upon the pleadings. It appears from the complaint that on the 30th day of October, 1882, C. K. Bailey and C. W. Carpenter, doing business as co-partners in San Joaquin county, as farmers and stock raisers, under the name of Bailey & Carpenter, gave a mortgage on the premises above described to the defendant Myles P. O'Connor as security for the payment of \$10,000. On January 22, 1884, C. W. Carpenter died, leaving an