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IN MEMORIAM.

JAMES PARSONS.

James Parsons died on March 21, 1900, after a short illness. He was for many years Professor of Commercial Law, Contracts and Decedents' Estates in the Law Department of the University. Upon his retirement from the active duties of his chair he had been elected by the Trustees emeritus professor.

Of Professor Parsons it may be said with truth that he was a student from whom the common law kept no secrets. As a

lecturer he was difficult to follow. As a writer he was obscure. A certain eccentricity of style discouraged readers and prevented the importance of his researches from being generally recognized. To those, however, who were willing to expend the effort necessary to an understanding of his writings, and to those who had the rare good fortune to meet him in the intimacy of the study, he revealed himself as a lawyer of profound scholarship and of powerful mental grasp. There never was a lawyer who was more thoroughly dissatisfied than he with conventional explanations of legal phenomena and with glib but superficial statements of legal doctrine. He never investigated any portion of the field of law without in the end removing much of the rubbish with which it had been overlaid—clearing the ground for the work of those who, coming after him, should be endowed with the capacity to popularize his discoveries. To his work of research he brought a mind well trained by patient and persistent study. His knowledge of languages, ancient and modern, was truly remarkable. He was a student of the civil law and an attentive reader of the writings of all the continental jurists. There was nothing narrow or provincial in his treatment of legal problems. He was not afraid, in their solution, to summon to his aid the best that foreign scholarship had to offer.

His favorite field of investigation was the law of partnership. He published his work on that subject in 1889. A second edition appeared ten years later. No one who will take the time and trouble thoroughly to understand this remarkable book will hesitate to pronounce it an invaluable contribution to the literature of the common law. Here at least is a book which recognizes that the law of partnership must have as the basis of its development some single scientific conception susceptible of application in the solution of all problems. The author refuses to be satisfied with the current analyses of the partnership relation—no one of which is found adequate to explain that relation in all its bearings. He discards the entity theory of the firm's existence as fundamentally unsound. He points out the insufficiency of any theory which seeks to resolve the relation into a mere contract or a bundle of contracts. He builds up his system upon the foundation of a common property of which the partners are the co-owners. He emphasizes the distinction between mere co-ownership, where the *holding* of property is the object in view, and the embarkation of the common property in a business of which the partners are the co-proprietors. Co-proprietorship thus becomes the test of partnership and a rational basis is afforded the student for determining, in a given case, whether a partnership exists, what are the rights and liabilities of the asso-

ciates during the continuance of the relation, and what rules should be invoked to settle the account between them upon dissolution. The prediction is hazarded that within fifty years from the time of his death the law of association in all its branches will be recognized as being in fact but the application of the principles which Professor Parsons was the first clearly to apprehend.

Of the man himself nothing need be said in public print, except to record the fact that successive classes of students found in him an instructor who was always ready to spend himself in the personal service of those who came to him for advice and help; that his brethren at the Bar recognized him as the embodiment of high principle and professional courtesy; and that his colleagues in the faculty of the Law School share with his many friends that sense of personal loss which comes only when death claims those who have faithfully served their generation. *G. W. P.*

THE EFFECT OF DIVORCE AND REMARRIAGE ON DOWER RIGHTS.—In the appeals of Brown and McDonald, argued as one and decided on identical grounds, the Supreme Court of Errors of Connecticut has recently passed upon an interesting question under Connecticut statutes. The opinion (which will be found in 44 Atl. Rep., 23–25), leaves much to be desired. It suggests, however (more by omission than inclusion), a number of questions concerning dower as affected by divorce and remarriage, a brief examination of which may be of interest.

Considering the two cases as one, the extraordinary state of facts presented was as follows: The husband, A., was divorced from his wife, B., the latter being the innocent party. A. subsequently married C., from whom he was also divorced, C. being the innocent party. A. then married D., who survived him as his lawful wife. Both B. and C. claimed dower in his land, under a Connecticut general statute (1877.), which provides: "Every woman married prior to April twentieth, eighteen hundred and seventy-seven, and living with her husband at the time of his death, or absent by his consent or by his default, or by accident, or who has been divorced without alimony, where she is the innocent party, shall have right of dower, during her life, in one-third part of the real estate of which her husband died possessed in his own right, unless a suitable provision for her support was made before the marriage by way of jointure," etc.

A. was married to his first wife, B., in 1858, and divorced from her in 1863. In 1864 B. married another man, with whom she was living at the time of A.'s death and by whom she had six children. In 1864 A. also remarried, taking C. to wife, and in 1866 was divorced from her. In 1882 C. remarried. In 1867 A. married D., who survived him. Prior to his marriage with D., A. had not

been the owner of any property of value. All of his real estate was acquired after March, 1875, and the greater part of it after March, 1882.

The decision of the court, stripped of its verbiage, is briefly as follows: The Act providing for dower should be read in connection with the act of 1849, permitting both parties to a divorce to marry again. As the latter statute permits both parties to a divorce to remarry, it qualifies the former by making the right of the innocent wife to dower dependent on the husbands not remarrying and leaving a lawful wife surviving.

Going even further, the court strongly intimates that even where the husband has remarried, but his second wife has predeceased him, the surviving divorced wife should be held barred of all dower interest under the statute, by reason of the fact that, by remarriage of the husband, the link which attaches the divorced wife to the ex-husband and supports her claim of dower, is finally severed.

This is contrary to Stilson v. Stilson, 46 Conn., 15, (1878.) in which it was held that the second wife not surviving, the innocent divorced wife was entitled to dower; but it is a *tour de force* which will prevent "troublesome questions" from arising.

The real gist of the opinion is as follows: "The person entitled to dower is the wife living with the deceased at the time of his death, unless her separation at that time is due to his fault, or accident, or a divorce that leaves her free and the man so far her husband that he has no other conjugal ties. It is certain that a woman divorced is admitted to dower only because she represents, and no other is, the wife living with her husband, or separate through his fault. . . . . When a woman lives with her husband at the time of his death, she possesses the right (to dower), and the same right can then belong to no other. When the act of 1849 expressly authorized the remarriage of a man divorced for his fault, it did not enact a different law for such marriages. It gave to the wife the full rights of a wife, and among them the right to share the husband's estate by way of dower as well as of distribution in the same manner as every other wife. The present statute enables a woman divorced for her husband's fault to be treated as so far his wife that she may share his estate by way of dower, so long as she represents the wife living with him or separated by his fault; but the act of 1849 modifies the practical effect of this by enabling the divorced husband to lawfully take a wife, who, living with him at the time of his death, is by the express terms of the statute the one entitled to dower. The words 'or who has been divorced where she is the innocent party,' still mean the wife separated by his fault from a man who has no other conjugal tie. If, however, he acquires such tie, and leaves a lawful wife surviving, she is the 'married woman living with her husband at his death,' and the contingency of separation provided for by the qualifying words does not exist."

With due respect to the learned court, it must be said that the case under discussion presents an almost perfect example of *judicial legislation*, for it forcibly demonstrates how the supposed exigencies of an appeal may result in an interpretation of statutes in a manner

that does violence to legislative intent. The court expressly concedes that after divorce the innocent wife has the right of dower; that the statute relied on was first enacted in 1872 substantially as it now is, and asserts that it was so enacted "mainly" to meet the emergency of a case where the husband by will diverts his whole property, that "there may be suitable provision made for the maintenance and comfortable support of widows after the decease of their husbands." Undoubtedly this was one of the objects the law-making power had in mind in passing the act, though the act does not say so. But the act does say, and that expressly, that one of its objects is to provide that a divorced wife, who is the innocent party, shall have right of dower in the estate of him that was her husband. It is evident that it was intended to make the guilty husband, either through alimony, or, where that was not granted, then through dower in his estate, contribute toward the injured wife's support. Justice and the public welfare required that he should. The wife during marriage was dependent upon him for support, and the obligation to support her whom he had taken to wife remained when, by his fault, they were divorced. This the law in question recognizes. She, notwithstanding the divorce, was still to some extent dependent upon him for support, in the present or future or both. Though divorced from him, the tie that bound him to her was not wholly severed. She remained interested in his property, through the alimony he paid out of it, or the expectation of an interest in it at his death.

In view of the above, it is both unreasonable and inequitable to hold that the guilty husband is in a position to cut off, at pleasure, the innocent divorced wife's claim upon his estate. He cannot by the solemn execution of the instrument whereby he disposes of his property to take effect after his death, deprive a woman entitled to dower in his estate of that right; but he may, statute or no statute, by the simple, natural and pleasurable act of remarriage, shut out her to whom he is still bound both in law and in morals. Such is the sum and substance of the decision before us. It holds that the right of the innocent divorced wife to receive dower in her guilty husband's estate, is terminable at will *by the husband*, and that his remarriage cuts the last thread by which he is bound to her whom he has grossly maltreated. It records against the legislature the enactment of a law purporting to protect and provide for the victim, enforceable only at the option of the guilty party. Or was it intended as an inducement to remarriage by reduction of the "inextricable intertwinement" of property rights that might otherwise result, and as a premium on injustice? Surely this would be a serious reflection on the moral responsibility of even our modern Solons, and naturally recalls Cicero's comment: "*Nihil tam absurdum quod non dictum sit ab aliquo philosophorum.*"

But it is to be observed that the act permitting divorced parties to marry again was passed in 1849, while the old law of 1672, giving dower to innocent divorced wives, was reenacted in 1877. Why should the former control the latter? If there is any inconsistency, the law of 1849 must give way. However, the law of 1877 in no

way conflicts with the remarriage permitted by the statute of 1849. It is only when we read into the latter the rights that spring from marriage at common law, and construe it *as securing those rights from molestation at the hands of future legislatures*, that a clash results.

There has been said to be a "Golden Rule" by which judges should be guided in the construction of statutes; that they ought "to look at the precise words of the statute and construe them in their ordinary sense only, if such construction would not lead to any absurdity or manifest injustice; but if it would, then they ought so to vary and modify the words used as to avoid that which it certainly could not have been the intention of the Legislature should be done." (Per Jervis, C. J., in Abley v. Dale, 11 C. B. 390, E. C. L. R. 73, (1851.); in Castrique v. Page, 13 C. B. 463, E. C. L. R. 76, (1853.); and in Mattison v. Hart, 14 C. B. 385, E. C. L. R. 78, (1854.) "But," remarked the formulator of the rule, "if the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning." Jervis, 11 C. B. 391, (1851.); per Pollock, C. B. 9 Exch. 465, (1854.).

The construction put upon the act of 1877 is based on the assumption that, "where a woman lives with her husband at his death she possesses the right (to dower), and the same right can then belong to no other." Inasmuch as the language of the statute makes no exception in favor of a second wife, and its avowed object is defeated if such exception is made against the innocent first wife, the observation loses all force if put forward as something that was in the legislative mind at the time of the enactment of the section. If it is a common law principle thus stated, and not deducible from the language employed by the law makers, the reply is that the common law as to dower was never the law of Connecticut, and that, in any case, the Legislature may modify or repeal that law at pleasure. But is there any manifest injustice or absurdity in allowing several women, a widow and innocent divorced wives, dower in the same property, and would such a proceeding contravene any rule of law or equity?

In the first place, when a woman marries she does so (in legal estimation, at least) with her eyes open, and cannot plead ignorance if an innocent divorcee and a statute combine to postpone, curtail or defeat her supposed rights in her husband's property. She is bound to know both the law and the fact (*e. g.*, in strict law she is guilty of adultery, if she innocently marries a married man, in states where the marriage of either party makes sexual intercourse adultery). If, without investigation, she enters into the contract she does so at her risk. The rights of the divorced wife under the statute have been previously acquired, and whether such rights are

vested or contingent they are superior to those of the second wife, and can no more be displaced or superceded than can the lien of a prior mortgage be postponed to that of a subsequent encumbrancer. It is difficult, therefore, to see just where the injustice to the widow, in allowing dower to the innocent divorced wife, comes in.

But, further, why is there any insuperable obstacle to holding that property may be charged with distinct dower rights in favor of several persons? The heirs-at-law or devisees are entitled to the decedent's realty, but subject to liens and encumbrances, to dower interests and to all rights attaching prior to the death of the owner. A dower right is something in the nature of an encumbrance, created by marriage as a result of positive law. It is so, at least, in the United States. The right is ended at common law by divorce *a vinculo*, but the common law right of dower no longer exists in this country, the rights of the surviving wife in the real estate of her husband being created by statute alone. In the main, the estate conferred upon the widow conforms to that of the common law, but in the very opinion before us the court admits that "our land law (Connecticut) was, from the beginning, different from that of England. . . . The tenancy by dower was unknown to our early law. The widow's interest in the land, as well as the personal property of her husband, was through distribution. As our law gave her one-third of all her husband's estate, subject to the discretion of the court in distribution, there was no dower except to meet a case where a husband by will should divert his whole property."

Why, then, should the court construe a statute, plain on its face, so as really to apply the old doctrines of coverture? Because a woman is found in circumstances unknown to the common law is no reason for creating rights by construction. But here she is found in circumstances *expressly provided for* by the law-making power, unless it is to be supposed that upon a subject in which the common law had never been followed a further departure was intended as conformance. Surely it is competent for the Legislature to create an estate, vested or contingent, in the wife, divorced wife or widow, as it sees fit. It is not bound by old notions of coverture and can protect and provide for helpless woman whenever and wherever her relations to a man who is or has been her husband warrant. As a free agent, untrammeled by inapplicable common law views and methods, it may enact such laws affecting dower as it deems expedient; it may prescribe any measure, either as to quantity or quality, and may determine the relationship and status of the parties necessary to bring the statute into operation. It alone is the judge of the wisdom and policy of its enactments, and no court has the right to overrule that judgment unless the Legislature has clearly exceeded its functions: Adler v. Whitbeck, 44 Ohio St. 539, (1886.) "It has never been doubted that this entire body and system of law, regulating in general the relative rights and duties of persons within the territorial jurisdiction of the State, without regard to their pursuits, is subject to change at the will of the Legislature of each State, except as that will may be restrained by the Constitution of the United States": Smith v. Alabama, 124 U. S. 475, (1887.).

Upon the death of the husband, the widow and innocent divorced wives should be entitled to have their shares assigned, or dower admeasured and set off, in order of seniority. If the divorced wives have faithfully performed their marital duties, why, as a matter of equity, are their rights inferior to those of the wife living with her husband at the time of his death (the wife of a month, perhaps), the heir-at-law or the object of his testamentary bounty?

If the widow and divorced wives are not entitled to admeasurement in order of their marriage immediately upon the husband's death, that is, if all cannot enjoy the right immediately, then the decision in the case of Stahl v. Stahl, 114 Ill. 375, (1885.), points the way to a proper disposition. It was there held that a wife, who had obtained a divorce from her husband for extreme and repeated cruelty, was entitled to dower in all her divorced husband's lands for her lifetime, the second wife being "entitled to dower in the whole of the premises, subject to the encumbrance of the first wife's prior right of dower, during the continuance of that right."

The idea of several dower rights in the same land is as easily entertained in legal theory as that of the existence of superposed liens. The right of the first wife under the statute is that of a senior encumbrancer, and the rights successively acquired by innocent divorced wives *ad infinitum* are superior to those of the widow, the "junior encumbrancer."

The writer believes the decision of the court in these appeals was proper, but that it should have been put upon another ground. Is not the real reason why B. and C. should not have dower in the lands of A. not that A. left a wife surviving, but that B. and C. had themselves remarried? If that is firm ground, then it could make no difference whether or not D. died before B. and C. This line of reasoning will, of course, prevent "troublesome questions" from arising only where the innocent divorced wives have remarried; but it is sufficient for the determination of the present case and certainly seems more consonant with justice and fairer to the Legislature.

When B. and C. remarried, they voluntarily relinquished all claim to an interest in A.'s estate. Such would appear an equitable construction to put upon their acts, and should satisfy such a statute as that of 1877, unless, indeed (which is contrary to the plain intimation), the statute was intended simply as punishment of the erring husband. Of course, under the Connecticut law, which gives the wife no dower interest during coverture, but only a distributive share, or its equivalent, upon the death of the husband, B. and C. upon remarriage acquire no inchoate right in the realty of their second husbands; but then, they had had no such right in the realty of their first. If the second husbands should die, B. and C. would at once acquire vested interests in the property of which the second husbands died seized, and would be entitled to have their dower set off and assigned. They thus put themselves in exactly the same position with relation to their second husbands that existed between them and their first husbands.

Both the first and second husbands dying at the same time, would B. and C. be entitled to dower in the estate of both? It would seem

that this is a position more repugnant to principle than that of a widow and one or more divorced wives claiming dower in the same lands under different statutes. Under the common law a widow could not have dower both out of lands given in exchange and those taken in exchange. And, to-day, she may take under the will or under the statute. The law does not allow her a double portion, and if she claims in one way her claim in the other is inconsistent. She must make her election. An election not to take under the Connecticut statute, a waiver and voluntary relinquishment of rights thereunder, should be conclusively presumed in case of remarriage. It amounts to a choice of chances, which she is free to make. Nor should this election be allowed to be made after the death of either the divorced husband, or the second husband, or both, for upon remarriage her condition is completely altered and the status that is contemplated by the statute as existing is lost.

It was the fact that the relation between the first husband and B. and C. after their divorces, no longer existed, and that by the termination of this relation, the wives were cast upon a cold world, that undoubtedly led the Legislature to adopt the paternal statute of 1877. That act takes the injured wife by the hand, and says: "You have been wronged and deprived of the support on which you relied, not through any fault of your own, but by reason of your husband's evil ways. You are no longer his wife, and under the common law are not entitled to dower after his death, but after that event you shall have dower in his estate as a reward for your fidelity, a provision toward your support and a punishment to him." The wife is left in an unprotected condition. When she remarries she is no longer in the position contemplated by the Legislature, and, in justice, after the assumption of this new tie, she is no more entitled to dower than is the pensioned widow entitled to assistance after remarriage. Express provision bars in the latter case, and reasonable interpretation in the former. In both, the one bound is freed by the act of the beneficiary.

Such remarriage is not taken into account, as an exception, in the Act of 1877; if in mind, there is nothing to indicate it. But a thing within the letter is not within the statute if contrary to its intention: People v. Utica Ins. Co., 15 Johns* 381, (1818.); approved in Ins. Co. v. Gridley, 100 U. S. 615, (1879.).

It seems reasonable, too, to hold that while under such a statute the husband cannot by remarriage deprive his innocent divorced wife of her quality as such, that she, by remarriage, may destroy her right and absolutely sever the last link between them. In the case of Rice v. Lumley, 10 Ohio St. 596, (1857.), it was held that a woman who has obtained a divorce *a vinculo* for the fault of her husband, and afterward married another man, is not after the death of the person who was her first husband entitled to dower in his estate. "In such case," it was said, "the dower is not lost by way of forfeiture, but a woman divorced *a vinculo matrimonii* from her first husband, and by subsequent marriage the wife of another man at the time of the death of the person who had been her first husband, is not the *widow* of the latter within the terms of the statute relating to dower." The

Connecticut statute in question clearly contemplates the existence of the divorced wife *as a divorced wife*, if she is to benefit by its provisions. But after remarriage is she the divorced wife of her first husband? In common parlance (as it should be in legal estimation) she is not, she is *another man's wife*.

It seems to the writer that there can be little question of the divorced wife's capacity to waive the benefits of the statute, to relinquish her rights under it and bar her claim. It is true generally that during coverture the wife's inchoate right of dower is incapable of being transferred or released except to one who has already had, or by the same instrument acquires, an independent interest in the land; that the right cannot be leased or mortgaged, nor can a married woman bind herself personally by a covenant or contract affecting her right of dower during the marriage. But in Connecticut, it seems, no such thing as inchoate right of dower exists. Only upon the death of the husband does the right attach, and it is then a vested right, whether the claimant be the widow or innocent divorced wife. The remarriage of the divorced wife, if considered as a waiver or relinquishment of rights under the statute, affects no interest existing at the time, its operation being by *quasi* estoppel (for want of a better term) when, after the husband's or ex-husband's death, the claim is made. When the innocent divorced woman acquires the contingent estate she is certainly a *femme sole* and under no disability. The general incapabilities, spoken of in the preceding paragraph, arise from coverture and the principle applies to the wife's inchoate interest. There would be no reason, therefore, in holding her incapable of barring her contingent right by remarriage. She is free to act and, having acted, the reason of the law as applied to her has ceased. She has put herself outside the spirit of its provisions.

In conclusion, the writer is conscious that the ideas advanced above partake largely of the nature of personal opinion, but there does seem to be a foundation in justice and equity for principles such as have been suggested, and for an application of the law in accordance therewith. It certainly appears a violent construction to hold that a statutory obligation, imposed without qualification, was intended to or should operate only where the person absolutely bound, so far as language can go, sees fit; that he may submit or ignore *ad libitum*, leaving the person for whose benefit the statute was passed deprived of a valuable right and without redress. Such escape can only be through the loophole of a spurious intent, foisted upon the law, or a denial of the sovereign power of the Legislature to create rights and impose duties in its discretion. On the other hand, it is an elementary proposition that he who has a right may waive it or preclude himself from asserting it. In few cases is compulsory acceptance of benefits conferred by statute intended. Public policy may sometimes demand that a right bestowed shall not be sacrificed, but it equally demands that privileges granted shall not be abused and perverted.

Lancaster, Wis. *George B. Clementson.*

MUNICIPAL CORPORATIONS; POWER OVER PUBLIC HIGHWAYS; HACK-STANDS; CONTRACTS BY RAILROADS FOR THE PRIVATE USE OF STATION GROUNDS. *Pennsylvania Co. et al.*, v. *City of Chicago et al.*, Supreme Court of Illinois, October 16, 1899, 54 N. E. 825.

The Pennsylvania Company controls one of the largest and busiest stations in the City of Chicago. By an ordinance of December 31, 1885, the City established a hack-stand which was thereby permitted to occupy the street for a distance of three hundred feet in front of this station. Thus the waiting carriages stand directly in the way of passengers going to and from the depot. It is not disputed that some twenty hacks and express wagons occupy this stand for the entire business day, and that some twenty-five horses are fed there daily. On February 24, 1896, the Pennsylvania Company filed a bill for an injunction restraining the City from continuing the hack-stand, alleging that it prevented access to their station, thus interfering with their private rights, and placing an unjust burden upon their property. It appeared that the Company had leased certain parts of the station grounds to the Eighme Carriage Company, granting to it the right to solicit patronage in the station. The injunction was denied in an opinion by Phillips, J., on the ground that the municipality might permit a private hack-stand to be established upon its streets in front of public buildings, and that this applied to buildings occupied by quasi-public corporations. Cartwright, C. J., dissented on the ground that the legitimate uses of a public street could not be altered by the public character of the buildings thereon. He says: "It seems to me absurd that because property is owned by the State for a State house, . . . or by a school district for a school-house, the city may obstruct the street in front of it and turn it into a market place or a stable yard." But the authorities he cites relate to carriage stands in front of private houses. He further held that complainants had no adequate remedy at law, because there actions would lie not against the city, but against the individual and irresponsible hackmen.

The vital point of difference then between the majority opinion (excluding dicta) and the opinion of Cartwright, C. J., is as to the rights of a city to establish a hack-stand in front of a public building on the ground that the public nature of the edifice renders the street in front peculiarly susceptible to public control.

The cases as to this exact point are very few, but a brief examination of some of the decisions where the facts are similar to those in the principal case will suggest some points of interest. It seems to be generally admitted that the grant of a street for a hack-stand is a mere private use. *Branahan* v. *Hotel Co.*, 39 Ohio St. 333 (1883.); *McCaffrey* v. *Smith et al.*, 41 Hun. 117 (1886.). The rule is laid down in "Elliott on Roads and Streets" (p. 331) as follows: "But a city cannot authorize such stands where they will interfere with the access to the premises or otherwise deprive him (the abutting owner) of his rights as owner of the fee." If this rule be strictly followed the City of Chicago had no right to authorize a cab-stand in front of a station where it would necessarily interfere with the daily traffic. In the leading case of *Rex* v. *Cross*, 3 Camp.

224 (1812.), Lord Ellenborough held it unlawful for the public stages to stop in front of Charing Cross for three quarters of an hour while waiting for passengers between trips. In *Montgomerry* v. *Parker*, 114 Ala. 118, 21 So. 452 (1896.), it was decided that the proprietor of a hotel has no more right than any other person to block an adjacent street with a hack-stand. The only Pennsylvania case in point in the present discussion is *City of Lancaster* v. *Reisner*, 14 Lancaster Law Review, 193 (1897.), where it was held that a city had no power to sell any part of its streets, even in front of a railroad station, for use as a private cab-stand.

Except the above cases no authorities have been found on this question of the power of a municipality to authorize a cab-stand in front of a building against the wishes of the owner. From an examination of these cases and the few others which have reached the appellate courts we may conclude that the general rule is that a municipal corporation may make any reasonable regulations as to hacks and hack-stands it desires without regard to abutting owners. The following recent cases will serve to illustrate this rule: *Montgomery* v. *Parker*, 114 Ala. 118 (1896.); *Emporia* v. *Shaw*, 51 Pacific, 237, 6 Kan. App. 208 (1897.); *Lucas* v. *Herbert*, 148 Ind. 64, 47 N. E. 146 (1897.). From this rule the principal case of *Chicago* v. the *R. R. Co.* marks no departure in theory. The majority of the Court evidently considered the establishment of this hack-stand a reasonable regulation.

DEPRIVATION OF ATTORNEY'S LIEN.—*Burpee* v. *Townsend* (Dec., 1899), 61 N. Y. Supple. 467. The question raised in this case involved some points of law upon which the courts have not been unanimous. The questions are of frequent occurrence at the present day and of much importance. The action was brought by Edward B. Burpee against Gerard B. Townsend, and was settled later by the parties, nothing being paid in settlement. A motion was made by the attorney for the plaintiff for leave to prosecute the action in aid of his lien for costs, but it was denied. The Court said: "The parties had the right to settle the action and the attorney's lien was subject to such right. The law encourages such settlements and does not permit attorneys' liens to stand in the way of them. It is said, in some decisions, that where the parties collusively settle the action so as to defraud the attorney he will, on showing that fact and that the client is worthless, be permitted to prosecute the action to judgment, in order to establish his right against the opposite party under his lien. This is rather fanciful at best, but no such case is here presented."

The authorities on the question of attorney's lien are more or less confused and unsettled. "The lien of an attorney upon property of his client in his possession has been recognized from the earliest times and never questioned. It is the right of the attorney to retain possession of such property until his claim for compensation for professional services has been satisfied, and while some question has been made as to the correctness of the term 'lien,' as so applied,

the right to it has never been denied." (3 Amer. and Eng. Ency. of Law, 447.) The term "lien," as has just been intimated, is inaccurately used in respect to an attorney's claim for professional services. His claim bears some of the earmarks of a lien, but it is in reality only a claim or right to ask the intervention of the court in his behalf when, having obtained judgment for his client, he finds there is a probability of being deprived of his costs. The so-called attorney's lien differs from other liens in so far as there is no right of sale vested in the attorney; he merely has the right to hold the client's property until professional charges are paid, or to deduct the amount when money of the client is in his possession and pay over the balance to the owner.

There are two distinct kinds of attorney's lien, viz.: a lien on judgment and one on money, papers or other similar property of the client. The distinction between the two has given rise to the terms "charging lien" and "retaining lien." While there is nothing in the names, a failure to distinguish between the two classes has caused much of the apparent confusion in the authorities on this subject.

In the case under discussion it appears that the attorney had no property of the client in his hands, and he had not obtained judgment in the cause. He had, however, incurred costs and rendered professional services to the plaintiff, and his contention was that he had an inchoate lien on the judgment which he hoped to gain against the defendant in the case. He wished to prosecute the action to judgment notwithstanding the amicable settlement by the parties. The court properly decided against his claim.

The policy of our law is to avoid litigation as much as possible, and the fact that an attorney loses his costs should not be allowed to interfere nor stand in the way of public policy. Moreover, much injustice might be done if the courts allowed the attorney's contention. Suppose a plaintiff in an action decides, after action brought, that his claim is worthless and settles with the defendant, each agreeing to defray half the costs of court. Here the defendant would be obliged to pay the plaintiff's attorney if he wished to avoid a useless suit. Such a doctrine would undoubtedly lead to useless litigation: 65 Howard Pr. [N. Y.] 307, (1883.), 88 Kentucky 105,(1889.).

It has been held that a settlement between the parties to an action, even after judgment has been signed, will not be set aside, even though the effect of such settlement be to deprive the attorney of his costs, provided there be no fraud or collusion on the part of the litigants. 11 Jur. 455, (1847.).

Where there are cross actions and the plaintiff in each has obtained judgment, it has been held competent for the parties to make a *bona fide* settlement of the matter between themselves, although the consequence of such settlement may be that the attorney for one party will lose his lien for services. 2 El. and El. 17, (1865.), 10 M. & W. 18, (1855.).

In so far as this case decides that an attorney can have no such interest in a case as will enable him to prevent the parties from reaching an amicable settlement, in the absence of fraud or collusion, it is certainly in accord with the better authorities.