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A DISCUSSION OF GARNISHMENT AND ITS EXEMPTIONS

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The problems arising from garnishment exemptions stem from the fact that a statutory provision is highly unsuitable and inflexible since the framers cannot anticipate the circumstances of each and every individual. The statutory use of exemptions to protect property owners and wage earners is antedated. Modern legislation should be enacted in keeping with the present times and to remedy the inequities presently existing and accruing under today's statutes. Ever since states have used the method of statutory exemptions and garnishment to protect property owners and wage earners, the legislatures have been forced by necessity and pressure groups to change the exemptions from time to time. As a result, the statutory exemptions in each state vary tremendously.

Exemptions apply generally to only two classes of rights: namely, property (both personal and real) and income. The exemptions [1] concerning property generally center around protecting the homestead and chattels such as wearing apparel, family pictures, one cow and calf, ten sheep, tools and implements, bicycles, and sewing machines. Some states exempt automobiles from garnishment; Kansas, for instance, has an exemption from garnishment of one wagon. The supreme court of that state held in one case that an automobile was a wagon.[2] The exemptions concerning income generally center around totally exempting from garnishment insurance claims,[3] pension benefits,[4] and veterans' bonuses.[5]

There is a total absence of uniformity in the method which states adopted to exempt income. Each state varies from the other in either the exact amount or method of exemption. Connecticut, for instance, exempts $15 per week for general debts and $25 a week if the debt is for room and board.[6] New York, on the other hand, allows attachment of only 10 per cent of an individual's salary and permits only one execution at a time.[7] Some states, such as North Carolina [8] and Montana,[9] exempt wages from garnishment for a certain number of days before levy of judgment. Although some states, such as New Jersey, Louisiana, Missouri, and oddly enough, Nevada, have no provision at all for exemption, there seems to be a trend toward increasing the amount of ex-

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[1] COLO. STAT. ANN., c. 93 § 13, 14, 15, 23 (1935).

[2] See also for general discussion on attachment of automobile in Colorado, Trout, *Exemption of Automobiles from Levy under Execution or Attachment*, 10 DICTA 143 (1933). Also People v. Corder, 91 Colo. 383, 15 P. 2d 621, cited in note 94 A.L.R. 301.

[3] CODE OF ALA., Title 7, § 624 (1940).

[4] COLO. STAT. ANN., c. 93, § 17 (1935).

[5] SMITH-HURD ILL. STAT. ANN., c. 52, § 13 (1935).

[6] CUM. SUPP. TO CONN. GEN. STAT., c. 299 § 1673c (1935).

[7] THOM. LAWS N. Y., *Part* II, Civ. Prac.—Justice Ct. Act. § 300 (1939).

[8] N. C. GEN. STAT., c. 1, § 362 (1943).

[9] REVISED CODE MONTANA, Title 93 § 5816 (1947).

emptions. The Colorado statute was amended in 1903, changing the exemption from 50 to 60 per cent.[10] Alabama in 1949 rewrote its statute, making 60 per cent of "wages due or to become due" exempt.[11] Alabama's change was from a former allowance of only $25 a month which was a step in the right direction even though imperfect in its remedy.

DIVERSITY OF INTERESTS MUST BE RECOGNIZED

How far should a legislature go in adopting statutory exemptions in garnishment? There is no answer in the state statutes with their total lack of uniformity. In approaching garnishment and exemption, the viewpoints of the creditor, debtor, and employer should be analyzed.[12]

The creditor feels that an unduly high garnishment exemption heightens the "credit risk". The credit extended to a debtor must be more carefully watched as the means of collecting the debt becomes more limited, and, of course, sales are thereby restricted.

Garnishment for the creditor is merely an attempt to salvage himself from monetary loss on what might have been a profitable deal. With a high exemption the possibility of salvage becomes remote. The realization from garnishment is frequently lost since time spent, clerical work, and collection agencies each take their share. In addition to this a customer is lost. The high exemption "seriously impairs" the collection of just debts by garnishment of wages.

Even if it were possible to collect the total debt, the return is always extremely slow. The amount realized is always uncertain because of the necessity of a number of executions. New York has obviated this last unfavorable aspect by allowing only one execution, which remains effective until the debt is paid.[13] Conversely, a low exemption statute affords the wage earner less limited credit, but in turn reduces the effect of the exemption statute to a nullity by offering the creditor little or no protection in case of the necessity for garnishment. The wage earner welcomes high exemptions, and would obviously prefer to have his salary free from attachment. The statutes often divide wage earners into two groups—those who are heads of families, and those who are not.

Generally the statutes, and Colorado's exemption statute specifically,[14] make no provision for the exemption of the wages of single persons. Thus, the single individual may lose his entire weekly, monthly, or yearly wage as a result of garnishment. There is a good reason for the obvious omission of single persons from

[10] COLO. STAT. ANN., c. 93, § 16 (1935).
[11] CODE OF ALA., Title 7, § 624 (1940).
[12] For general and more exacting discussion see *Wage-Exemption Statutes-Garnishment Assignment of Wages*, 11 NEBR. L. B. 343 (1933).
[13] THOM. LAWS N. Y., Part II, Civ. Prac.-Justice Ct. Act. § 300 (1939); New York allows only 10 per cent of a salary to be attached, thus being one state with a high wage exemption.
[14] COLO. STAT. ANN., c. 93 § 16 (1935).

the exemption statutes, in that a single, unattached person has greater freedom of movement and can easily move from job to job and from town to town. By virtue of the fact that the single person is excluded from exemption, the creditor is given greater protection of his claim. This rationalization, however, does not console a hungry debtor.

As for the heads of families, the statutes which have a set percentage of the salary exempt, such as Colorado's 60 per cent, are only effective and fairly applicable to the middle and the high-income group. However, it is obvious that persons belonging to these latter groups would not ordinarily be garnished. Moreover it is equally obvious that persons of the low-income group are more likely to create debts which they cannot meet. It then follows that the low-income group is the one which is most often affected by garnishment proceedings against their wages. A 40 per cent reduction in the take-home pay of a low-income individual with a large family is more often than not disastrous.

EXEMPTING AMOUNT OF MONEY

On the other hand, a statutory exemption of a specific amount of money, such as Maryland's $100 wage exemption,[15] protects the low-income group but discriminates against a person of high income. During an inflationary period the $100 exemption will scarcely protect a debtor, while in a deflationary period the protection to the creditor is practically nil at the time it is needed most. In this light the flexibility of the percentage wage exemption seems to make it more effective for all parties than the frozen, monetary exemption.

With respect then to the creditors' and the wage earners' viewpoints, it may be said that a low exemption reduces the general purpose of exemptions to a nullity, whereas a high exemption reduces the return to the extent that garnishment is practically useless. As a result of high exemptions the creditor requires other collateral for the issuance of credit, thereby breaking down the credit foundation of business. Under the present statutes it is a question of who should be hurt, the creditor or the debtor.

The employer feels the effects of garnishment almost as greatly as the debtor. The employer, as garnishee, is responsible to the court "for any goods, chattels, choses in action, credits, money, or effects of the defendant."[16] He will have added expenses of book keeping and often legal expenses in filing his answer in court.[17] No employer appreciates having the onus placed upon him by a third party (creditor and court) for the debt of another individual; the employer might prefer to discharge summarily the employee who is a repeated debtor.

[15] ANN. CODE MD., Art 9 § 33 (1949).
[16] COLO. RULES CIV. PROC., Rule 103 (h).
[17] *Id* Rule 103 (f).

It is evident that garnishment, though not a pleasant device, still is needed as a means of protecting the creditor and of keeping the channels of business open and flowing. Nevertheless, it would seem that there is a need for some other device to be used either as an alternative or in conjunction with garnishment.

An attempted solution to the problem of garnishment of wages is the Wage Earner's Plan of the Chandler Act,[18] which became effective in June, 1938. In brief, this is a plan available for a debtor who desires to compromise or extend his obligations out of his future earnings. He files a petition with the court for this purpose with his proposed plan for payment. The plan must be approved in writing by the majority in number and amount of all unsecured claims and the consent of all secured creditors whose claims are to be materially affected by plan. A trustee is appointed by the court to receive and distribute, subject to the control of the court, all moneys to be paid under the plan. After the debtor has made all payments called for by the plan, the debtor receives a discharge from all debts covered by the plan. If, after three years have elapsed, all payments have not been made, the court may grant a discharge if it is convinced that failure to make the payments was not occasioned by the fault of the debtor but was the result of causes beyond his control.

A Possible Solution For High Wage-Earners

The plan works well for persons who have enough assignable wages to satisfy the creditors, but it will not reach the majority of debtors. First, the wage earner who finds himself in debt to the extent that his creditors must resort to garnishment probably does not have enough income left after payment for the bare necessities to offer his creditors a very satisfactory plan of amortization. If any such plan is rejected by the creditors, it must of necessity fail, and the wages are still left open to garnishment as the only remedy of the creditors. Furthermore, the cost to the debtor of the protection afforded under the plan of the Chandler Act may seem prohibitive since it involves a filing fee of $15 in addition to an attorney's fee of probably not less than $25.

Several states have similar plans for personal receivorship which are less complicated than that of the Chandler Act.[19] All these plans embody essentially the same purpose, namely aid to hard-pressed debtors in paying their debts.

Such a purpose is noble but unfortunately the plans appeal to only one class of debtor as does the Chandler Act plan. The low-wage earner must abandon the personal receivorship plan for one of several reasons: (1) The exemptions, though as fair as

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[18] 52 Stat. 930 *et seq.*, 11 U.S.C. Ch. 13 (1940).

[19] Mich. Comp. Laws § 15364-1 (1929), Mich. Stat. Ann. § 27.2441 (1937); Ohio General Code § 11728-1; Wis. Rev. Stat. § 128.21 (1937).

the referee can make them, are still insufficient to support his large family of dependents. (2) Sporadic employment may cause the court to dismiss the proceedings for failure to meet the obligations of the plan. (3) The debtors may throw in the towel and declare bankruptcy, which is the very result the exemption statute in garnishment and the personal receivorship plans try to avoid.

What remedy then is there available to the low-wage earner which protects him from poverty or the stigma of bankruptcy, and yet affords payment of his just debts to the creditor?

This enigma appears to be unanswerable as long as the wage-earner's expense for necessities approaches his take-home pay and as long as the dollar-down, dollar-a-week financing continues. A workable solution to the problem is very earnestly sought by the Legal Aid Clinics all over the nation.

JUDICIAL ADMINISTRATION IN COLORADO

In cooperation with Supreme Court and District Court judges, the Judiciary and Legislative committees of the Colorado and Denver bar associations are presently working intensively on the development of a legislative program for improvement of the state courts, which, it is hoped, will be acceptable to the 38th General Assembly.

The January issue of DICTA will contain an explicit statement as to just what these legislative recommendations will be. It is expected that they will follow pretty much along the familiar lines of prior proposals to remove the constitutional prohibition against increasing the salaries of judges while in office, enhance the power of the Chief Justice in order that he may have real superintending control over the state's judiciary, and create an organization as a permanent part of the state government to study and make recommendations as to necessary improvements in the courts. This issue will also report any action by the Denver Bar Association on the proposal to increase the number and the salaries of the judges in the Second Judicial District.

Be on the lookout for your January issue of DICTA for an interesting and informative discussion on *Judicial Administration in Colorado!* Urge your legislators to support the bar association program to improve the state's judicial machinery!