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Garnishment of Wages in Pennsylvania: Its History and Rationale

J.M. Boddington

COMMENT

GARNISHMENT OF WAGES IN PENNSYLVANIA: ITS HISTORY AND RATIONALE*

Unlike the majority of jurisdictions, Pennsylvania has persistently exempted a debtor's wages or salary from attachment and execution by process against his employer as garnishee. This Comment will trace the history and application of this limitation upon the rights of creditors, compare the Pennsylvania position with that of several other states, and attempt to reevaluate its rationale in the context of contemporary commercial practice and policy.

By definition, garnishment is a "statutory proceeding whereby [a] person's property, money, or credits in possession or under control of, or owing by, another are applied to payment of [the] former's debt to [a] third person . . . ."[1] The term is also said to describe a warning to the person in whose hands the debtor's effects are attached not to pay or deliver to the debtor, but to appear and answer the claiming creditor's suit.[2] As applied to wages and salaries, the process requires an employer to withhold all or part of an employee's compensation and pay it over directly to, or to the account of, the employee's creditor.

General acceptability, indeed necessity, of garnishment as a creditor's remedy is readily understandable. A highly complex, industrialized economy is dependent upon credit financing at all levels. Credit financing would be most difficult to obtain if debtors could evade their liability to pay by isolating their assets in the hands of third persons. Credit consumers represent the largest number of potential collection problems. It is not surprising, then, that their most common asset, earning power, should be the object of substantial collection effort. The same applies to judgment debtors, who are often "judgment-proof" in the sense that they have few if any tangible assets to be reached for satisfaction.

However, the Pennsylvania legislature more than a century ago exempted from attachment unpaid wages and salaries in the hands of employers by passage of the Act of 1845[3] which provides:

> If the garnishee . . . admit[s] that there is in his possession or control property of the defendant liable . . . to attachment, then said magistrate may enter judgment specially,

* The assistance of computer research conducted by the Health Law Center, University of Pittsburgh, is gratefully acknowledged.

1. BLACK, LAW DICTIONARY 810 (4th ed. 1951).
2. *Ibid.*
3. Act of April 15, 1845, P.L. 459.

> to be levied out of the effects in the hands of the garnishee . . .: Provided, however, That the wages of any laborers, or the salary of any person in public or private employment, shall not be liable to attachment in the hands of the employer.[4]

Although the act related specifically to the jurisdiction and authority of magistrates, it has been extended to all judgments, in whatever court entered.[5] It is clear, however, that the protection is afforded only so long as wages due remain in the hands of the employer; once paid to the employee, the funds may be reached.[6]

Firmstone v. Mack[7] attributed dual policy considerations to the exemption provisions:

> Doubtless [the legislature] meant it should operate as an exemption law for the benefit of families of laborers and salaried officers, and quite likely they had in view . . . the . . . inconvenience . . . of manufacturers and other large employers being harassed with attachment execution . . . complicating accounts, accumulating costs, and depriving them of the laborers on whom they depended, by diverting wages from the current support of the laborer's family to the paying of former debts.[8]

Since then little has been heard of the concern for the inconvenience to employers. The basic object of the protection is emphasized in the court's holding that an employee cannot waive the exemption:

> We have never decided that a debtor may repeal the proviso of the Act of 1845, and public policy pleads strongly against such a decision. If we make it, we bring on . . . the temptation to weak debtors to beggar their families in behalf of sharp and grasping creditors. The legislature having said that justices shall not attach wages, we will say they shall not, though a particular debtor has said they may.[9]

The purported waiver in *Firmstone* was by express language in a note. Reinforcing the strength of the wage shield is the decision in *Morris Box Board Co. v. Rossiter*[10] that even when the debtor enters a general appearance in a foreign attachment proceeding under circumstances otherwise constituting waiver of a jurisdictional attack, he may nonetheless invoke the wage exemption thereafter.

There are exceptions to the exemption of wages and salaries in Pennsylvania. The Act of 1921 provides for attachment of wages by a wife to enforce a support order.[11] Subsequently, in conform-

4. PA. STAT. ANN. tit. 42, § 886 (1930).
5. See Catlin v. Ensign, 29 Pa. 244 (1857); Hollander v. Kressman, 143 Pa. Super. 32, 17 A.2d 669 (1941).
6. Bell v. Roberts, 150 Pa. Super. 468, 28 A.2d 715 (1943).
7. 49 Pa. 387 (1865) (waiver clause in a note held to be ineffective).
8. *Id.* at 392-93.
9. *Id.* at 393-94.
10. 30 Pa. Super. 23 (1906).
11. Act of May 10, 1921, P.L. 434.

ity with the Uniform Reciprocal Enforcement of Support Law,[12] the provision was substantially reenacted. In addition, the Act of 1907[13] permits attachment of wages to satisfy judgments for fornication and bastardy in support of illegitimate children. These exceptions would seem to do no violence to the family protection rationale since assured support for the wage earner's family is its very object. In *Deutsch v. Deutsch*[14] garnishment by the wife was held proper when judgment was had on a support order. The court reasoned that the obligation of a husband to support his wife does not depend upon contract and the relationship is not that of debtor to creditor. *Deutsch* was carefully and significantly distinguished, however, in *Marble v. Marble*,[15] which *denied* the remedy of wage attachment to satisfy judgment on a private support *agreement*, since liability arose on a contract rather than a court order. A non-resident wife qualifies to attach wages so long as judgment is entered pursuant to a Pennsylvania support order.[16]

Further exception is found in the Act of 1913[17] which allows keepers of hotels, inns, boarding houses and lodging houses to garnish for up to four weeks' unpaid board or lodging provided the claim has been reduced to judgment. Such attachment is limited, however, to future earnings. While such an exception appears to have limited application and it is unknown how often it may have been invoked, there is a hint of the special esteem in which landlords have traditionally been held, coupled with the reduced possibility of effective distraint in the hotel or boarding house situation. Finally, the Local Tax Collection Law of 1945[18] provides for attachment of wages in satisfaction of certain per capita, poll, or occupation tax levies. This exception may have been thought justified because the amounts were generally small, other security was lacking, collection by other than direct means was impractical and, perhaps, because taxes have generally not been considered debts.

It was inevitable that the concept of tax withholding by employers should be tested against the prohibition of the Act of 1845. That federal income tax may be withheld has not been specifically questioned. *United States v. Miller*[19] held that the federal government could attach wages in Pennsylvania for an ordinary debt arising out of a Department of Agriculture loan; therefore, any

12. PA. STAT. ANN. tit. 62, § 2043.39 (1959).
13. PA. STAT. ANN. tit. 12, § 1005 (1953).
14. 347 Pa. 66, 31 A.2d 526 (1943).
15. 379 Pa. 238, 109 A.2d 145 (1954) (per curiam).
16. Commonwealth *ex rel.* Bolen v. Bolen, 167 Pa. Super. 168, 74 A.2d 542 (1950).
17. PA. STAT. ANN. tit. 42, § 621 (1930).
18. PA. STAT. ANN. tit. 72, § 5511.20(a) (Supp. 1964).
19. 134 F. Supp. 276 (E.D. Pa. 1955), *aff'd*, 229 F.2d 839 (3d Cir. 1955). The court said that notwithstanding Federal Rule of Civil Procedure 69(a) on application of state law, the federal government was entitled to be treated as the sovereign state treats itself, and could attach wages then due.

issue with respect to federal taxes appears foreclosed. The validity of a city wage tax was challenged in *Dole v. Philadelphia*,[20] partly on the ground that a withholding provision violated the exemption statute. In ruling the ordinance valid, the court said that the obligation to pay taxes does not arise on any contract, express or implied, and that the Act of 1845 applies only to garnishment of wages for debts.[21]

Types of Compensation Exempted

The Act of 1845 exempted "wages of any laborers, or the salary of any person in public or private employment."[22] The courts have construed the act with considerable liberality toward employees. The major guideline, distinguishing compensation for *personal services* from proprietary profit, was drawn by the Pennsylvania Supreme Court in *Heebner v. Chave*.[23] Exemption was sought for an amount owing under a contract for the use of horses, carts and the services of a number of hired hands. Although the debtor had himself labored on the project exemption was denied. The court said:

> We believe that by confining the exemption from attachment to the actual reward or wages earned by the hands and labor of the individual himself, and his family, under his direction, we best accomplish the benificent design of the legislature without too largely entrenching on the right of creditors.[24]

This view was affirmed in *Commonwealth v. Gibson*[25] where protection was stripped from amounts owing to the debtor for work performed by his team and a teamster in his employ. On the other hand, in *Smith v. Brooke*[26] the debtor contributed substantial personal effort to an enterprise. The court said a jury might apportion what was due him personally, separating it from that due on account of his helpers, and accord it exempt status. The opinion in that case highlighted the importance of disallowing exemption of payment due for the work of others:

> The statute secures . . . earnings of his own hands; but this is its full intent and scope. If it were carried further . . . the profits of every enterprise might be called the wages of labor . . . and thus the collection of debts be abolished in many instances where ample means of payment existed.[27]

This rule gave way when the enterprise engaged fewer people and was of a more personal nature. *Heebner* was doubted and qualified by the court in *Pennsylvania Coal Co. v. Costello*.[28] There

20. 337 Pa. 375, 11 A.2d 163 (1940).
21. *Id.* at 384, 11 A.2d at 168.
22. See text accompanying note 4, *supra*.
23. 5 Pa. 115 (1846).
24. *Id.* at 118.
25. 67 Pa. Super. 372 (1917).
26. 49 Pa. 147 (1865).
27. *Ibid.*
28. 33 Pa. 241 (1859).

the amount due a coal miner was held exempt despite the fact that it represented in part money due a helper under a unique sub-employment arrangement with the company. And, in *Diamont T Motor Car Co. v. Patterson*,[29] the court allowed exemption in full for amounts owing under an agreement whereby the debtor was to be paid a certain rate for hauling gravel with his own truck. The creditor's contention that the compensation for use of the truck was serverable and constituted profit was rejected. The court reasoned that certain tools and equipment were but "extensions of the workman's hands" and that their use produced wages rather than profit.

Even the "labor of the hands" approach has been substantially modified. The court in *Bell v. Roberts*[30] cast the cloak of immunity over fees due a lawyer and said:

> On first impression the language used, 'wages' and 'salaries,' would seem to involve the idea of periodic payments. Wages usually mean daily compensation, salary, payment at longer intervals, monthly or annually, etc. But such a narrow view should yield to the main purpose of the Act, that is to protect compensation for labor, and intellectual labor is quite as worthy of protection as manual labor . . . . We think the work of the lawyer is within the protection of the statute[31].

The same consideration has been accorded fees due an architect.[32] Moreover, the inclusion of "fees" within the scope of "wages" and "salaries" had been long since settled when the fees of a county oil cask gauger were held exempt.[33]

While profits themselves are not exempt from attachment, compensation in the form of bonuses *measured* by profits are. In *Right Lumber Co., Inc. v. Kretchmar*,[34] the debtor-employee was to receive a weekly salary plus 25 per cent of the profits. The attaching creditor claimed that the right to profit made the debtor a partner, precluding exemption of the profit bonus. The court rejected this contention and distinguished "gross" profits from "net" profits, the latter being that which owners divide or which increase the net worth of the business and are not exempt. The debtor averred that he was entitled to a share of the "gross" under an oral contract.[35] Similarly, though compensation received for the labor of others is generally not exempt, *H. F. Watson Co., Inc. v. Christ*[36]

29. 96 Pa. Super. 305 (1929).
30. Bell v. Roberts, 150 Pa. Super. 469, 28 A.2d 715 (1942).
31. *Id.* at 474, 28 A.2d at 717.
32. Union Trust Co. v. Altman, 41 Pa. D.&C. 454 (C.P. 1941).
33. Hutchinson & Co. v. Gormley, 48 Pa. 270 (1865).
34. 200 Pa. Super. 335, 189 A.2d 300 (1963).
35. The debtor had obtained judgment against the garnishee for an amount claimed as an exempt bonus; the creditor contended that the judgment could not have been for a bonus based on profits since there had been no profits, only losses; and, that judgment on a spurious claim should not be exempt. The court also rejected this contention.
36. 62 Pa. Super. 604 (1916).

held that basing a construction superintendent's pay in part upon a percentage of total job payroll did not constitute payment *for* the labor of others. Rather, it was a measure of the supervisory effort he was required to expend. Commissions of a salesman likewise may not be attached in the hands of his employer to the extent that he does not buy and resell as a broker or share in the compensation for sales made by sub-salesmen or directly by the garnishee.[37]

Money set aside in either a contributory or non-contributory employee pension fund is secure from garnishment. *Lowe v. Jones*[38] held that a pensioner's interest in a non-contributory trust fund could not be reached on the dual grounds that attachment was prohibited by spendthrift provisions of the trust indenture and that pension payments were in fact deferred compensation for services already rendered. In *Francis v. Corleto*[39] a municipal employee discharged for misconduct sought recovery of amounts paid into a retirement fund and amounts alleged due for unused vacation time. The municipality resisted on the strength of an ordinance provision purporting to allow setoff against such funds for losses incurred by employee dishonesty. Denying any right to setoff, the court granted mandamus for return of the pension contributions and indicated assumpsit would lie for recovery of compensation due for unused vacation time.

Status of Wage Debt or Debtor

Apart from the exceptions, the status of a particular wage debt, wage debtor or the strength of an attaching creditor's claim is largely immaterial. Deferred payment of otherwise qualifying compensation by means of a pension plan does not impair the protection. Likewise, amounts not paid when due and allowed to accumulate with the employer are secure;[40] and, a bonus conditioned upon the employee being alive at the time his employment is terminated will be protected at least until the term is ended.[41]

Compensation need not necessarily be due from or in the hands of a current employer to command exemption under the act. Sums payable under contract for mere *availability* of personal services fall within its ambit, even though the services have never been demanded and the "employer" has sought to terminate the contract.[42] So, too, wages due from guarantor stockholders of an insolvent corporate employer may not be garnished.[43] The language

37. McCloskey v. Northdale Woolen Mills, 296 Pa. 265, 145 Atl. 846 (1929); Hamberger v. Marcus, 157 Pa. 133, 27 Atl. 681 (1893).
38. 414 Pa. 466, 200 A.2d 880 (1964).
39. 204 Pa. Super. 280, 203 A.2d 520 (1964).
40. Danziger v. Ferber, 272 Pa. 193, 116 Atl. 516 (1922).
41. *Ibid.*
42. Integrity Trust Co. v. Taylor, 312 Pa. 2, 167 Atl. 363 (1933).
43. Wagner-Taylor Co. v. McDowell, 137 Pa. Super. 425, 9 A.2d 144 (1939).

of the court in *Eastern Lithographing Corp. v. Silk*[44] suggests that whether an intended garnishee is *technically* an employer is immaterial. A doctor had performed services for a patient who subscribed to a surgical insurance plan in which the doctor participated. A creditor of the doctor failed in his effort to attach the fee due from the insurer. Without deciding whether a participating doctor is an employee of a health insurer, the court noted that mere nonreceipt of compensation by one employed satisfies the "in the hands of the employer" requirement of the statute.[45]

Despite the high priority given claims *for* wages, it appears that even such a claim will not justify garnishment of wages of another. In *Frutchey v. Lutz*,[46] A hired B to do certain carpentry work but did not pay him. Thereafter, A was employed by C as a streetcar conductor. B unsuccessfully sought to attach A's earnings in the hands of C to satisfy his own judgment for wages. The exemption was upheld.

Scott v. Watson[47] indicates that a right to compensation for services may not be converted to another kind of recovery right by agreement between employer and employee. There, A agreed by parol to sell a plot of land to B who was to pay the price in labor. When services valued at 58 dollars had been performed toward payment of the 75 dollar price, A repudiated and conveyed to a third party. B's creditor sought to garnishee A for the 58 dollars on the theory that the amount was owing not as wages but as damages for breach of contract. The court disagreed holding that the sum retained its character as compensation due for labor. It should be noted, however, that the case involved an oral agreement for the sale of land and was probably not enforceable. A written agreement under similar circumstances might produce a contrary result.

Finally, even where a father had an absolute claim upon the earnings of his unemancipated minor child, he could not garnishee a person who employed the child as a domestic for wages due.[48]

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44. 203 Pa. Super. 21, 198 A.2d 391 (1964).

45. On the matter of testing the exemption of wages by the "receipt" theory advanced in this case, it is interesting to consider the status of wages or salaries under the "transfer of credits" method of payment used by many school districts. Under this method, the employer directs his bank to transfer the amount of an employee's net take-home pay from its account to a free checking account established at the same bank for the employee. That the amount is "paid" by the employer and at least constructively received by the employee is technically almost unarguable. But, would an attachment of the account at the instant of the transfer and before it could be drawn upon violate the wage protection policy? Is the employee's consent to this system an attempted waiver? Would a waiver under these circumstances be valid whereas waiver is generally void? The problem has yet to be litigated.

46. 167 Pa. 337, 31 Atl. 638 (1895).

47. 36 Pa. 342 (1859).

48. Darlington v. Watson, 49 Pa. Super. 611 (1912).

EXTRA-TERRITORIAL EFFECT

Since the Act of 1845 imposed so strict a limitation upon availability of accrued earnings for satisfaction of debt obligations, it was natural that creditors would attempt to circumvent its application. Obtaining jurisdiction outside the boundaries of the Commonwealth appeared as the most obvious device. As long as an employer and his wage debt to an employee remained within Pennsylvania, the subject matter of potential attachment remained under the jurisdiction of the Pennsylvania courts and subject to the act. A foreign creditor, therefore, was powerless to reach the debt.[49] When the employer left the state, maintained offices in another state, or otherwise subjected himself to a foreign jurisdiction which permitted garnishment of wages, however, another rule obtained. *Bolton v. Pennsylvania Co.*[50] held that the Commonwealth's exemption law did not become part of an employment contract by implication. Since a debt follows the debtor wherever he may be, his obligation to pay wages could be attached in a jurisdiction which allowed such process and in which he could be served. In this case, wages due a debtor-employee of a railroad in Pennsylvania were successfully attached at the companys' office in Ohio. The *Bolton* decision followed the reasoning in *Morgan v. Neville*[51] which allowed garnishment. There the employer-garnishee, employee-debtor and creditor all lived in Pennsylvania. Personal service, however, was obtained on the employer-garnishee in Maryland. Since there was no showing of collusion between the creditor and the employer, payment by the garnishee pursuant to a Maryland execution was a good defense against the employee's later claim.

With the growth of multi-state business operations and expansion of interstate travel, the device of proceeding in a foreign jurisdiction threatened to seriously weaken if not destroy the wage exemption. As a consequence, the Act of 1887[52] was passed, making it unlawful to institute a foreign garnishment action or to assign a claim for that purpose, with intent to deprive a debtor of his Pennsylvania wage exemption. An amendment to that act[53] gave the debtor a cause of action against the offending creditor to recover the wages lost, and denied the creditor his own wage exemption from execution on a judgment thereby obtained. In addition, the mere institution of attachment proceedings or assignment followed by proceedings, is prima facie evidence of an intent to defeat the exemption.[54] The statutory prohibition was tested early in *Steel v.*

49. Little v. Balliette, 9 Pa. Super. 411 (1899).
50. 88 Pa. 261 (1879).
51. 74 Pa. 52 (1873).
52. Act of May 23, 1887, P.L. 164, § 1, upheld and construed in Sweeney v. Hunter, 145 Pa. 363, 22 Atl. 653 (1891).
53. As amended, Act of May 29, 1955, P.L. 1852, § 1; PA. STAT. ANN. tit. 12, § 2175 (Supp. 1965).
54. PA. STAT. ANN. tit. 12, § 2176 (1951).

McKerrhan.[55] A attached unpaid wages of B out of state in violation of the act. B then recovered judgment against A to recover the wages lost. A assigned to his wife a judgment note of B's; she, in turn, sought to execute on the note by process against the value of B's own unpaid judgment in the hands of her husband as garnishee. The court held this to be a shallow device to circumvent both the Acts of 1845 and 1887 and quashed the attachment.

That the prima facie evidence statute is a powerful weapon for enforcement of the wage exemption is suggested indirectly by *Urey v. Horchler*.[56] A, the employee of multi-state corporation W, purchased an auto from B on a bailment-lease contract. B assigned the contract to finance company F which maintained offices in Pennsylvania and elsewhere. Such assignment appeared to be standard practice in the auto sales field. A defaulted on the contract, whereupon F attached A's wages by service through its Ohio office upon an Ohio sales branch of W. The principal decision affirmed only local venue for A's action against B and F jointly to recover the wages lost. No decision on the merits is found reported and the matter may have been settled. In any event, the case points out the difficulty of overcoming the fact of assignment and subsequent garnishment action as prima facie evidence of intent to defeat the exemption, even when such assignment is standard trade practice and the action contingent on later default.

Although a wage earner has no standing to enjoin his employer from appropriating his wages in satisfaction of a foreign attachment, he may have an action at law in Pennsylvania against the employer to recover the wages if the appropriation was improper. He does, however, have standing to enjoin the local creditor who assigns a claim from proceeding further in a foreign attachment action.[57] If two parties have knowingly combined for the purpose of violating the Act of 1887, they are guilty of conspiracy in addition to being civilly liable.[58]

The Pennsylvania View Compared

No attempt is made here to provide an exhaustive all-states survey of wage exemption from garnishment. Some examples of the various approaches, however, will be useful to place the Pennsylvania view in perspective and assess its comparative value.

Some states provide for court orders garnishing wages prospectively, that is, require the employer-garnishee to withhold specified amounts from the debtor-employee's future earnings. New York, for example, allows up to ten per cent of a public or private employee's wages to be deducted in this manner while limiting the procedure to cases where execution on a judgment is otherwise re-

55. 172 Pa. 280, 33 Atl. 570 (1896).
56. 180 Pa. Super. 482, 119 A.2d 859 (1956).
57. Galbraith v. Rutter, 20 Pa. Super. 554 (1902).
58. Commonwealth v. Stambaugh, 22 Pa. Super. 386 (1903).

turned not wholly satisfied.[59] Other states will limit attachment to wages presently due and payable and exempt certain dollar amounts. Illinois protects the first 20 dollars of wages *due* the head of a family,[60] but exempts all wages earned after a service of garnishment process.[61] Colorado exempts the first 60 dollars due the head of a family.[62] Ohio protects wages due for the 30 days prior to service with a minimum of 150 dollars.[63] Failure to claim this exemption, however, constitutes a valid waiver.[64]

Where only wages due are liable to attachment, subject to a dollar exemption, two special problems arise. In Maryland, for example, the exemption for wages due is 100 dollars.[65] The employee who earns 100 dollars per week, payable weekly, will have his earnings totally exempt; whereas, the employee working at the same rate but payable biweekly will be regularly exposed to attachment of half his earnings. Corresponding difficulty faces the employee paid monthly, quarterly or annually.[66] Moreover, there is always the possibility that a debtor might arrange with his employer to be paid partly or wholly in advance and thus avoid ever having any attachable wages outstanding. Such arrangements have been both upheld[67] and invalidated.[68]

Another variation on the wage garnishment theme is the California statute which exempts one half of an employee's wages for the 30 days prior to service, or all of such wages necessary for use of a family supported in that state by the debtor, unless the debt pursued is for furnishing necessaries to such family.[69] "Necessary" has been held to mean "for necessaries,"[70] and "necessaries" construed to be those things "commonly required for sustenance of life regardless of status."[71] This scheme seems unduly cluttered with conditions which probably discourage attachment proceedings; indeed, that may be their object. Virginia has attempted to devise a system which deals liberally with creditors while making allowance for the necessities of life. The statute provides for attachment of wages "owing or to be owed," and sets up a schedule of exemptions based upon whether or not the wage earner is a householder

59. N.Y. JUDICIARY LAW § 300.
60. ILL. ANN. STAT. ch. 62, § 14 (Smith-Hurd 1951).
61. 228 Ill. App. 1 (1923), *aff'd*, 312 Ill. 359, 144 N.E. 6 (1923).
62. COLO. REV. STAT. ANN. § 77-2-4 (1954).
63. OHIO REV. CODE ANN. § 2329.66 (F) (Baldwin 1964).
64. Pennsylvania Ry. v. Bell, 22 App. 67, 153 N.E. 293 (Ohio 1925).
65. MD. ANN. CODE art. 9, § 33 (1957).
66. For a discussion of this problem and Maryland wage garnishment generally, See Note, 16 MD. L. REV. 227 (1956).
67. Campagna v. Automatic Elec. Co., 293 Ill. App. 437, 12 N.E. 2d 695 (1938).
68. Kruckemeyer v. Burckhauser, 4 App. 369, 25 C.D. 504 (Ohio 1915).
69. 17 CAL. CODE ANN. C.P. § 690.11 (Supp. 1965).
70. Sanker v. Humborg, 48 Cal. App. 2d 205, 119 P.2d 443 (1942).
71. Los Angeles Finance Co. v. Flores, 110 Cal. App. 2d 850, 243 P.2d 139 (1952).

and the frequency of his paydays. For example, a householder paid weekly may claim as exempt the first 23 dollars of his earnings plus 75 per cent of the balance, with a maximum exemption of 35 dollars.[72] The schedule may underestimate the current cost of basic living, but at least it is direct and conclusive. Tennessee potentially reduces the standard of living for a wage-earning debtor even further, limiting the exemption to a flat 17 dollars.[73]

Nebraska exempts the wages of a family head, before or after due, up to 90 per cent.[74] The state has also made it unlawful to prosecute an attachment out of state, or assign a claim for that purpose, against wages earned within 60 days;[75] and, makes violators liable to the injured debtor.[76] It was Nebraska's policy on wage exemptions which provided the background for *Chicago, Burlington & Quincy R.R. Co. v. Hall*[77] in 1913. That decision held that an Iowa judgment against a Nebraska worker's employer as garnishee for wages could be set aside by the Referee under a petition in voluntary bankruptcy filed within four months of the judgment, and the amount of wages due set off to the bankrupt as exempt property under Nebraska law. Other cases[78] have limited *Hall*; nonetheless, the opinion is noteworthy for its recognition of the wage exemption as requiring special attention. Moreover, the *Hall* court attributed dual responsibility to referees and trustees in bankruptcy:

> . . . not only to secure equality among creditors, but for the benefit of the debtor in discharging him from his liabilities and enabling him to start afresh with the property set apart to him as exempt. Both of these objects would be defeated if judgment like the present were not annulled, for the two Iowa plaintiffs would not only obtain a preference . . . but would take property which it was the purpose of the Bankruptcy Act to secure to the debtor.[79]

This problem is not likely to arise in Pennsylvania in view of the cited statute prohibiting foreign attachment proceedings against locally exempt wages.

New Jersey has yet another approach. The statute[80] exempts the first 18 dollars of wages due or thereafter becoming due, and

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72. VA. CODE ANN. § 34-29 (Supp. 1964).
73. TENN CODE ANN. § 26.207 (Supp. 1965).
74. NEB. REV. STAT. § 25-1558 (1965).
75. NEB. REV. STAT. § 25-1560 (1965).
76. NEB. REV. STAT. § 25-1563 (1965).
77. 299 U.S. 511 (1913).
78. Preferential transfers of exempt property have been held *not* voidable by the trustee. See, *e.g.*, Rutledge v. Johansen, 270 F.2d 881 (10th Cir. 1959); Kilgo v. United Distrib., 223 F.2d 167 (5th Cir. 1955). The fact that the "transfer" in the Hall case was involuntary and contrary to the bankrupt's own state's policy probably limits the decision.
79. 299 U.S. 511 (1913).
80. N.J. REV. STAT. § 2A.17-50 (1952).

further exempts 90 per cent of the excess over 18 dollars payable per week. When the total exceeds the sum of 2,500 dollars per annum, however, the court may reduce the percentage exempted. One New Jersey court has said that statutory wage exemptions are remedial and should be construed liberally in favor of *creditors*.[81]

Security of the "wage packet" has been a concern in England for many years. Only recently has provision been made to reach wages in satisfaction of maintenance orders.[82] Unlike Pennsylvania and other United States jurisdictions, protection in England has never been expanded beyond the ranks of the "lower classes of wage earners" with certain favorable exceptions made for seamen, policemen, and members of the "royal forces."[83] It has been said that wider use of attachment in England is probably forestalled by poorly founded hostility on the part of both labor and management.[84]

Protection of Welfare Benefits

The foregoing consideration makes it clear that there is wide variation in the extent to which compensation for labor or other personal service is protected in this country from the reach of creditors. Since a man's earnings are the basic source of his economic and social wellbeing, the status of those earnings with respect to creditors invites comparison with the treatment accorded public and quasi-public welfare funds.

Some form of unemployment compensation is universally provided within the several jurisdictions. Although generally financed wholly through a tax on employers, the programs must be considered as dispensing public funds. As public funds, the benefits paid out deserve and get maximum protection consistent with their purpose of providing for the daily needs of families lacking current earnings. Pennsylvania's protective provision flatly exempts unemployment benefit payments, while unmingled with other funds of the recipient, from the operation of *any* creditors' remedy;[85] and, it is fairly typical.[86] Similar protection is afforded veterans' benefits[87] and less publicly oriented security proceeds from certain insurance policies and annuities,[88] pensions[89] and workman's compensation awards.[90]

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81. Harcum v. Greene, 111 N.J.L. 129, 166 Atl. 717 (1933).
82. Wood, *Attachment of Wages*, 26 Modern L. Rev. 51 (1963).
83. *Id.* at 54.
84. *Id.* at 57.
85. Pa. Stat. Ann. tit. 43, § 863 (1964).
86. See, *e.g.*, Tenn. Code Ann. § 50.1349 (c) (1963); 65 Cal. Unemp. Ins. Code § 988.
87. Pa. Stat. Ann. tit. 51, § 443-12 (1954).
88. Pa. Stat. Ann. tit. 40, §517 (1954).
89. Pa. Stat. Ann. tit. 53, §§ 13445, 23572, 39351 (1957).
90. Pa. Stat. Ann. tit. 77, § 621 (Supp. 1964).

While these safeguards are both necessary and desireable, those applicable to unemployment compensation and public assistance run the risk of conflict with full economic productivity in jurisdictions which permit liberal garnishment of wages. It is conceivable that a wage earner with heavy obligations and little or no exemption of wages from attachment might be encouraged to seek welfare funds rather than gainful employment. For example, 50 dollars a week in tax-free and process-exempt unemployment compensation could provide a better standard of living than what remains of a 100-dollar salary after deduction for withholding and payroll taxes and a substantial garnishment award. The argument might be made that what a man is able to earn in the interest of his own welfare lessens his reliance on public programs and should be given more than passing protection, at least until actually received.

CONCLUSION

Pennsylvania was one of the first states to impose strict and effective limitations upon the capacity of creditors to attach a debtor's wages in the hands of his employer. Despite criticism of the exemption policy and efforts to liberalize it in favor of creditors, the Commonwealth's position was sound originally and continues to be sound. Of course, credit is essential to the vitality of our economic system and will be available only so long as the prospects for collection are good. The growth of the economy, however, with its extraordinary credit demands, has been attended by a parallel development in the field of credit management and security. Article 9 of the Uniform Commercial Code[91] provides for retention and perfection of security interests in nearly every kind of personal property, tangible or intangible, involved in sales or other transactions.[92] The expansion of public, private, company and group health insurance coverage offers an increasing assurance of payment for services in the medical field. Similarly, insurance protection against personal, family and many types of specialized liability has become the rule rather than the exception. For the small merchant extending credit on transactions which do not merit formal security measures, and for the purveyor of services, credit reporting and collection agencies employing advanced techniques abound. In short, the need to appropriate a debtor's current earnings before he receives and can apply them in the best interest of his family and *all* his creditors has abated.

Furthermore, the effect of wage garnishment upon the employer-employee relationship cannot be wholly discounted. The cost to other than large employers, in terms of both money and inconvenience, can be considerable; and, although the imposition of

91. PA. STAT. ANN. tit. 12A, §§ 1-101 to 10-104 (1954, Supp. 1964). The UCC has been adopted in forty-six states.

92. PA. STAT. ANN. tit. 12A, §§ 9-109, 9-104 (1954).

this burden has been declared constitutional,[93] it is nonetheless selective and the employee who occasions it may receive less than equal consideration when promotions or layoffs are in order.

In view of the protection accorded other sources of family economic security and the importance of personal earning power as the foundation of such security, the Pennsylvania limitation on garnishment of wages should not only be continued but might well be emulated by other states.

J. M. BODDINGTON

93. Endicott-Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285 (1924). There, the court said:

> [T]he suggestion that a substantial constitutional right of the garnishee is impaired because he may be put to some additional expense of bookkeeping in keeping his account with the judgment debtor, is plainly without merit.