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EXEMPTION OF WAGES FROM EXECUTION UNDER
INDIANA STATUTE

The recent decision of the Appellate Court in the case of *Lauer Auto Co. v. Moody*, 154 N. E. 501, has been of particular interest to the bar as constituting the first judicial construction of Chapter 61, Acts of 1925,¹ which provides for the levying of execution against indebtedness owed to the judgment debtor, and against salaries, wages and other income received by him. The case involved an application for such an execution, resisted by the judgment debtor on the ground that his total property, including the wages then due to him from his employer, was less than six hundred dollars. He therefore claimed exemption under the general exemption law of the state.² A demurrer interposed by the judgment creditor was sustained, the court holding that the debtor was entitled to no exemption from execution against his wages.

The nature of the statute involved has already been indicated. It applies only if execution has previously been returned unsatisfied, which fact must be shown by affidavit of the judgment creditor. When satisfied of the proper jurisdictional facts, the court issues an order to be served on the employer or other person indebted to the judgment debtor, and the judgment thereby becomes a lien on all debts, salaries and other income then and thereafter owed to the judgment debtor by any person upon whom such order is served. Such person is required to pay over to the officer serving the execution the amount specified in the order, which however is not to be an excess of ten per cent of the amount payable to the judgment debtor. It is further provided that no more than one such execution may be enforced at the same time, although a new debtor to the judgment debtor may be brought in—a provision chiefly applicable when the latter changes his job. It should also be noted that all fees and costs in excess of three dollars are to be paid by the creditor.

Under this statute the most important question is the one presented in the principal case—that is, whether such an execution is subject to the general exemption laws of the state, or is to be treated as applicable regardless of such exemption. The particular provisions of the statute bearing on this point will be considered hereafter. It is clear, however, that the present attitude of the court that this statutory execution is not subject to the general exemption laws of the state is contrary to its previous attitude respecting exemptions.

¹ Burns' Annotated Statutes 1926, Secs. 889-897, inc.

² Burns' Annotated Statutes 1926, Secs. 769-778, inc.

Article I, Section 22, of the Constitution provides:

"The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted."

While this constitutional provision has been uniformly held not to be self-executing,³ yet all of the exemption statutes passed by the Legislature have been given a most liberal construction in favor of the debtor.⁴ The principal case seems to involve a departure from this rule, and it is certainly a departure from the rule of *Pomeroy v. Beach*⁵ which holds that a resident of the state is exempt from having his wages garnished if his property is less than six hundred dollars, the amount then and now specified in the general exemption statute. In the principal case the court refers to the Pomeroy case but distinguishes it on the ground that the present statute indicates a contrary policy on the part of the Legislature.

On the other hand, there have always been some statutory or judicial limitations as to exemptions, indicating that such rights have been treated as conditional rather than absolute. A state statute provides that there are no exemptions as against holders of mechanics' liens, purchase money obligations or taxes.⁶ It must be conceded that this statute is merely declaratory of the common law in practically every jurisdiction but it does restrict the "privilege of the debtor to enjoy the necessary comforts of life".⁷ Furthermore the courts have decided that there is no exemption as against claims for alimony⁸ and against claims for funeral expenses and medical expenses in the last illness.⁹

It seems clear therefore that the Legislature, at least, is not bound by any rigid rules as to the enactment or retention of exemptions. The question is solely one of what the Legislature meant and this question is to be solved not only by an examina-

³ *Green v. Aker*, 11 Ind. 223; *Coppage v. Gregg*, 1 Ind. App. 112, 27 N. E. 570.

⁴ *Kelly v. McFadden*, 80 Ind. 536; *Astley v. Capron*, 89 Ind. 167; *Cleveland, etc., Ry. Co. v. Marshall*, 182 Ind. 280, 105 N. E. 570. This principle has been carried so far that a defendant has not been allowed to set off a just claim against the plaintiff when the latter has not have the statutory minimum of property so that the claim could not have been collected directly. *Butner v. Bowser*, 104 Ind. 255, 3 N. E. 889; *Junker v. Hustes*, 113 Ind. 524, 16 N. E. 197.

⁵ 149 Ind. 511, 49 N. E. 370.

⁶ Burns' Annotated Statutes 1926, sec. 782.

⁷ Constitution, Art. I, sec. 22, supra.

⁸ *Menzie v. Anderson*, 65 Ind. 239.

⁹ *Fleming v. Henderson*, 123 Ind. 234, 24 N. E. 236.

tion of the statute itself, but in the light of other relevant statutes and by a consideration of the past policy of the state as exemplified by its legislative and judicial authorities. This last consideration would indicate that the Legislature is not to be expected to have thus limited the general six hundred dollar exemption, but this argument is obviously indecisive. It might further be urged that wages and other income are technically and substantially in the category of "property" and therefore within the general exemption law, especially in view of the first section of the Execution Act of 1881,¹⁰ specifying three kinds of execution but not differentiating income from other personal property. There are comparatively few authorities on this point and they are somewhat conflicting.¹¹ It is submitted that salary, wages, etc., belong generically within the category of property but that the court is nevertheless correct in considering the question from the standpoint of the intent of the Legislature, which may not have thus regarded the situation. The authorities are likewise conflicting as to whether a general waiver of exemptions covers wages and salaries¹²—again showing that there is considerable tendency in this connection to distinguish such items from tangible property. No decisive results can therefore be obtained from such general considerations. The only recourse is to examine the statute itself and to consider the construction of any similar statutes in other states. Judicial construction of a statute from which the Indiana statute was borrowed is of course of great weight—indeed practically binding—upon the courts of this state.¹³

Examining the statute itself, the first striking provision is that of Section 2¹⁴ providing that the judgment becomes a lien upon salaries, wages, income, etc., "notwithstanding any exemption law now in force." If this were all, the result of the principal case it would be inevitable. The only possible question

¹⁰ Burns' Annotated Statutes 1926, sec. 739.

¹¹ See e. g. *Gregory v. Evans*, 19 Mo. 262, holding that wages are not "property" within the state exemption law, and *McKelvey v. South Carolina R. R. Co.*, 6 S. C. 446, holding that wages are property subject to attachment.

¹² *Smith v. Johnson*, 71 Ga. 748 holds that waiver of all exemption rights does not include exemption of wages; *McCormick Harvesting Machine Co. v. Vaughan*, 130 Ala. 314, 30 So. 363 reaches precisely the opposite result. It will be understood, of course, that these apparently conflicting decisions may not actually be contradictory, because of the possible differences in the state statutes.

¹³ *Robertson v. Ford*, 164 Ind. 538, 74 N. E. 1.

¹⁴ Burns' Annotated Statutes 1926, sec. 890.

would be the power of the Legislature to enact such a provision but the affirmative answer to this question can hardly be doubtful. But the legislative intent that the general exemption law should not affect this statute is not quite so clear, in view of Section 6¹⁵ providing:

"The provisions of this act shall not apply to any account or judgment which has been assigned or in any manner transferred by the original holder or owner, nor shall the provisions of this act apply to any income, claim or demand which is by law now specifically exempted from claims of creditors."

It can be forcibly argued that this latter provision brings the general exemption law into the purview of the new statute.

The court however, reaches the opposite conclusion particularly on account of the word "specifically." It is argued that this word indicates that the Legislature did not intend to refer to the general exemption statute but to various state and Federal statutes specifically exempting certain kinds of income from execution. The court mentions as examples of this, police pensions,¹⁶ firemen's pensions,¹⁷ municipal utility employees' pensions,¹⁸ claims paid under the Workmen's Compensation Act,¹⁹ and United States pensions.²⁰ To these may be added teachers' pensions,²¹ exempt under the state law, and compensation to United States employees,²² compensation to representatives of postal employees killed on duty,²³ seamen's wages²⁴ and allotments, allowances and compensation payable under the Federal War Risk Insurance Act,²⁵ all of which are exempt from execution under the Federal laws. It can hardly be denied that the position of the court has considerable force although it might perhaps be doubted if the Legislature, by this somewhat ambiguous language, intended to change so definitely the settled policy of the state with respect to exemptions.

The court also points out that the Indiana statute was largely copied from a New York statute originally constituting Section 1391 of the Code of Civil Procedure of that state but now embod-

¹⁵ Burns' Annotated Statutes 1926, sec. 894.

¹⁶ See Burns' Annotated Statutes 1926, sec. 10921.

¹⁷ See Burns' Annotated Statutes 1926, sec. 10934.

¹⁸ See Burns' Annotated Statutes 1926, sec. 10945.

¹⁹ See Burns' Annotated Statutes 1926, sec. 9462.

²⁰ See U. S. Comp. Stat., sec. 9080.

²¹ See Burns' Annotated Statutes 1926, sec. 7033.

²² See U. S. Comp. Stat., sec. 8932m.

²³ See U. S. Comp. Stat., sec. 7246b.

²⁴ See U. S. Comp. Stat., sec. 8325a.

²⁵ See U. S. Comp. Stat., sec 514nnn $\frac{1}{2}$.

ied in Section 648 of the Civil Practice Act. Any New York decisions upon the point at issue would of course be of great weight²⁶ but there are none which are very decisive. The opinion in the principal case cites *Smith v. Endicott-Johnson Corp.*,²⁷ which, however, is not very closely in point since it merely holds that a claim under the section is a property right and therefore assignable. However the previous case of *Brearley School v. Ward*,²⁸ which upholds the New York statute and gives a very detailed analysis of its application, has considerable language which supports the position of the Indiana court in the principal case.

It is submitted that, purely from the standpoint of statutory construction and judicial authorities, the result reached by the court is defensible but not clearly right, especially as it involves a very considerable departure from the previous legislative and judicial policy of the state. The question still remains whether the result reached by the court is desirable. Such considerations of policy may have well-nigh decisive force in view of the uncertainty of the application of more mechanical tests. On this point it is submitted that the case may clearly be supported. The result is not in any way a violation of the spirit of the constitutional provision with respect to exemptions,²⁹ in view of the fact that the execution is effective only to the extent of ten per cent of the judgment debtor's income and that only one such execution is permitted at the same time. No matter however heavily indebted he is, he can still enjoy ninety per cent of his income free from the claims of his creditors and this is all that he can reasonably ask, even though he has no other property. The judgment debtor is further protected by compelling his creditor to pay the fees incident to this sort of execution in excess of the nominal amount of three dollars. It seems, therefore that by no possibility will this construction of the statute result in any real hardship upon debtors. If the wages of the debtor are so small as to be insufficient for his bare living expenses it is improbable that a ten per cent interest in them would be sufficient to induce a general creditor to go to the trouble of levying this form of execution, which can only be done after execution against tangible property has been issued and returned unsatisfied. It is submitted therefore that the result reached by the court is sound and that the case should be followed.

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²⁶ *Robertson v. Ford*, supra.

²⁷ 199 App. Div. 194, 192 N. Y. Supp. 121.

²⁸ 201 N. Y. 358, 94 N. E. 1001.

²⁹ Constitution, Art. I, sec. 22, supra.