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Comments and Casenotes

Attachment Of Wages In Maryland

By Robert Lee Karwacki*

Wages earned by an employee constitute a debt owed him by his employer and may be considered as much a part of his assets as any other property which he may own. However, as to his judgment creditor's right to garnish this asset in satisfaction of his claim against such employee, every state in the United States, except South Dakota, has interposed an exemption to some extent in favor of the employee. This legislation basically is an attempt at a compromise between the entrenched principle of the common law that a judgment debtor should not be allowed to own property while his judgment creditor goes unpaid, and the realization that if a judgment debtor is deprived of every means of acquiring the necessities of life, he and his family will become wards of the state. Maryland's attempt at this compromise appears as Article 9, Section 33, of the Annotated Code:

> "No attachment of the wages or hire of any laborer or employee, in the hands of the employer, whether private individuals or bodies corporate, shall affect any salary or wages of the debtor which are not actually due at the date of the attachment; and the sum of one hundred dollars of such wages or hire due to any laborer or employee by any employer or corporation shall always be exempt from attachment by any process whatever. Every contract or agreement of any character whatsoever of such laborer or employee, the purpose of which is to waive this right of exemption, shall be absolutely void, provided, however, that the salary or wages of any laborer or employee shall not be exempt from attachment, levy or lieu (*sic*) at the instance of the State for income tax due the State by any such laborer or employee."[1]

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[1] Md. Code (1951). This has been the form of the statute since 1943 (Ch. 635). The word "lien" was evidently intended. The first wage exemption statute was enacted in 1852 (Ch. 340), providing that:

> ". . . the wages or hire of any laborer or other employee in the hands of the employer, when such wages or hire shall not exceed the sum of ten dollars, and when the amount of such wages or hire shall exceed the

This comment's purpose is to review the construction given the various phases of this statute by the Maryland courts. Cases used for the support of propositions which were decided prior to the present enactment of the statute will be referred to where they were decided under a phrase of the then current statute which appears substantially in

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said sum, then ten dollars of the amount of such wages or hire shall be exempted from attachment, whether on warrant or on judgment."

This statute was amended in 1854 (Ch. 23), when it was further enacted that:

> ". . . no attachment of the wages or hire of a laborer or other employee, in the hands of the employers, whether private individuals or bodies corporate, shall affect any salary or wages of the debtor, which are not actually due at the date of the attachment."

In 1874, the whole statute was repealed and a new one enacted (Ch. 45). It read:

> "No attachments upon warrant, judgment upon two non-ests, or upon original process, shall issue against, be levied on or affect the wages or hire of any laborer, or employee, not actually due at the date of such attachment in the hands of the employers, whether such employers be individuals or corporations, unless the debt or judgment upon which such attachment is issued shall, exclusive of costs, exceed the sum of $100; and the sum of $100 of such wages, or hire due to any laborer or employee, by any employer, or corporation shall always be exempt from attachment by any process whatever; *provided*, that this act and nothing herein contained shall apply or in any manner effect any existing debt, contract, note, or judgment, nor prevent any person or body corporate from issuing an attachment on any judgment, now obtained or which may hereafter be obtained on any note, debt or contract existing at the time of the passage of this act; and provided that nothing in this act shall apply to non-resident defendants."

In 1886 (Ch. 65), the statute was again repealed and re-enacted to provide:

> "No attachments of the wages or hire of any laborer or employee in the hands of the employer, whether private individuals or bodies corporate, shall affect any salary or wages of the debtor which are not actually due at the date of the attachment; and the sum of one hundred dollars of such wages or hire due to any laborer or employee by any employer or corporation shall always be exempt from attachment by any process whatever."

In 1929 (Ch. 265), the Legislature excepted from the provisions of the wage attachment statute, judgments entered for "foodstuffs, meats, provisions, and other food supplies". This statute was declared unconstitutional by the Maryland Court in Kelman v. Ryan, 163 Md. 519, 163 A. 593 (1933), as a denial of equal protection of the laws under the Fourteenth Amendment to the U. S. Constitution.

In 1933, the statute was again repealed and re-enacted (Ch. 104, Special Session); however the only purpose was to add the following sentence to the Act of 1886, Ch. 65:

> "Every contract or agreement of any character whatsoever of such laborer or employee, the purpose of which is to waive this right of exemption, shall be absolutely void."

The purpose of the re-enactment of the statute, as expressed by the Preamble to the Act, was to overrule the decision of the Court of Appeals in the case of Lawrence v. Commercial Booking Corp., 165 Md. 559, 169 A. 69 (1933), where it was held that a debtor could validly waive the benefits of the statute when signing a promissory note.

In 1943, the privileges of the statute were taken away from debtors of the State for income taxes and it was re-enacted in its present form.

the same form in the present statute. Other problems which become apparent, but which have not been answered by the Court of Appeals, will be viewed in light of the apparent intent expressed by the Maryland Legislature and of decisions in other jurisdictions that were faced with similar problems.

Who Is Entitled To The Exemption?

The statute grants the $100 exemption to "any laborer or employee". This broad designation has received an equally broad interpretation by the Maryland Court of Appeals. In *Moore v. Heaney*,[2] which was decided just eight years after the exemption's origin, the judgment debtor had contracted to build the garnishee a home and was to receive a compensation based on 5% of the cost of the building. The Court held that the judgment debtor was an "employee" within the meaning of the Act. This early interpretation of "employee" set the tenor for the meaning of the designation in the cases which were to follow. In *Wilmer v. Mann*[3] a judgment debtor employed as a piano salesman for a weekly salary of $30.00 per week was considered an employee under the wage exemption statute. Furthermore, a judgment debtor who was employed as a sales manager and salesman and received a salary of $250 and $50.00 for expenses per month was said to be an employee notwithstanding the fact that he was also a stockholder, director and vice-president of the garnishee.[4] The Court of Appeals reasoned:

> ". . . the Legislature must have used the word 'employee' to cover such persons in that class as would not be described by the term 'laborer' and that construction appears to be reasonable and logical, since the reason for the exemption is the same in both cases, to wit, the fact that the employee whether laborer or not depends largely upon his wages for support, for there is no apparent reason to distinguish between the necessities of one engaged in manual or physical toil and one engaged in a clerical capacity, and to give to one an immunity denied to the other, when both alike are wage earners depending upon their wages for support."[5]

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[2] 14 Md. 558 (1860).
[3] 121 Md. 239, 88 A. 222 (1913).
[4] Shriver v. Carlin & Fulton Co., 155 Md. 51, 141 A. 434, 58 A. L. R. 767 (1928).
[5] *Ibid*, 56, 58.

In reference to the fact that the judgment debtor was also a stockholder, director and vice-president of his employer-garnishee, the Court concluded:

> ". . . there seems to be no valid reason why his occupancy of such office should disqualify him from serving the corporation in some other and different capacity, or from becoming its employee, where the duties and incidents of his employment are separate and distinct from those pertaining to his office."

Because of the above decisions and the broad definition therein of those who may claim an exemption, it is hard to venture an opinion as to where the Maryland Court will see fit to draw the line in excluding persons with an earned income from the benefits of the statute. The Court to date has shown no inclination to limit the class of the statute's beneficiaries for as was pointed out in the *Wilmer* case:

> "The statute creating an exemption in favor of a class of persons least able to protect themselves and largely dependent on their wages for support of themselves and others dependent upon them, should be given a liberal and not a technical construction."[6]

In accordance with the general postulate that exemption laws should be construed liberally in favor of the debtor, most courts in this country have given the word, "employee", in their wage exemption statutes, the broad interpretation evidenced in the Maryland decisions. Thus, an auditor,[7] chorister,[8] president and general manager[9] salesman paid on commission,[10] attorney,[11] theatre manager,[12] independent contractor,[13] a corporation executive perform-

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[6] *Supra*, n. 3, 248. *Cf.* Casualty Ins. Company case, 82 Md. 535, 34 A. 778 (1896), where the Court of Appeals gave a stricter interpretation of the word, "employee", in construing the preference section of the insolvency laws. The Court pointed out the different legislative intent in enacting the two statutes.

[7] Bovard v. Ford, 83 Mo. App. 498 (1900).

[8] Catlin v. Ensign, 29 Pa. S. 264 (1857).

[9] Koppen v. Union Iron & Foundry Co., 181 Mo. App. 72, 163 S. W. 560 (1914); Danziger v. Ferber, 272 Pa. 193, 116 A. 516 (1922); *contra*, South and N. A. R. Co. v. Falkner, 49 Ala. 115 (1873).

[10] Hamberger v. Corr, 157 Pa. 133, 27 A. 681 (1893); Barnes v. William Waltke & Co., 135 Mo. App. 488, 116 S. W. 7 (1909).

[11] Bell v. Roberts, 150 Pa. 469, 28 A. 2d 715 (1942).

[12] Integrity Trust Co. v. Taylor, 312 Pa. S. 3, 167 A. 363 (1933).

[13] H. F. Watson Co. v. Christ, 62 Pa. Super. 604 (1916); Huck-Gerhardt Co. v. Davies, 134 Pa. S. 430, 3 A. 2d 963 (1939); *contra*, Shahan v. Biggs & Co., 123 S. W. 2d 686 (Tex. Civ. App., 1938); Brasker v. Carnation Co. of Texas, 92 S. W. 2d 573 (Tex. Civ. App., 1936).

ing purely managerial duties[14] and a member of a state legislature[15] have been held to be employees and consequently entitled to the benefits of the wage exemption statutes.

In the case of state and municipal employees, wages are not attachable in Maryland. In *Baltimore v. Root*,[16] it was held that the salary of a police officer was not subject to garnishment. The court in this early case concluded that to allow such attachments would seriously hinder and delay the business of the public officers who must depend on a steady supply of funds to carry out their business.[17] The qualification to this principle is that the garnishee must prove that the funds attached are public funds and are not being held by him in some other capacity.[18]

What Is Considered Wages, Hire Or Salary Within The Meaning Of The Exemption Statute?

Webster's definition of "wages", "hire" and "salary" when read together, encompass virtually every possible form of monetary compensation for energy expended for another.[19] The Court of Appeals' construction of their definition in the exemption statute is not quite as broad. However, the Maryland Court has considered, as within the meaning of wages, hire and salary a commission paid to a builder of house,[20] the severance pay of employee,[21] and the traveling expenses of a salesmanager and salesman.[22] While deciding that traveling expenses were salary within the meaning of the statute, the Court said:

[14] White v. Johnson, 59 So. 2d 532 (Fla., 1952).

[15] Georges v. Wegrocki, 122 N. J. L. 109, 4 A. 2d 274 (1939).

[16] 8 Md. 95 (1855).

[17] *Ibid*, 100.

[18] Wilson v. Ridgely, 46 Md. 235 (1877); Robertson v. Beall, 10 Md. 125 (1856).

[19] WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1942) 2203, salary—

"The recompense or consideration paid . . . to a person at regular intervals for services, esp. to holders of official, executive, or clerical positions; fixed compensation regularly paid, as by the year, quarter month, or week; . . ."

2863, wages—

"Pay given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salaries or fees."

1182, hire—

"The price, reward, or compensation paid, or contracted to be paid, for the temporary use of a thing or a place, for personal service, or for labor; pay; reward; . . ."

[20] Moore v. Heaney, 14 Md. 558 (1860).

[21] Bendix Radio Corp. v. Hoy, 207 Md. 225, 114 A. 2d 45 (1955).

[22] Shriver v. Carlin & Fulton Co., 155 Md. 51, 141 A. 434, 58 A.L.R. 767 (1928).

"The three words 'wages', 'salary' and 'hire', although varying perhaps in their scope, nevertheless express one idea common to them all — compensation for personal services of some kind. . . . It (the traveling expenses) certainly was not a gift, nor was it made to satisfy any obligation due Fulton by the corporation other than for services rendered by him to it. The nature of his services was such as to require certain expenditures for transportation and subsistence, without which the services could not have been rendered."[23]

In *First National Bank v. Jaggers*,[24] the judgment debtor was an agent of the Aetna Life Insurance Company and made deposits and withdrawals from its account at the defendant bank under a power of attorney. The plaintiff, believing that the bank account was in the name of the judgment debtor laid an attachment in the bank's hands. The cashier of the bank withheld $2,000 from a demand of the Insurance Company to withdraw all its funds. It later appeared that the $2,000 was an amount owed the judgment debtor. The Court held that the $2,000 debt could not be considered as wages, hire or salary under the exemption statute. Assuming that the $2,000 was a debt owed the judgment debtor which was not owing him as compensation for his services, this case presents a distinction drawn by the Court between a debt owed the judgment debtor on a transaction out of the scope of his employment and one arising as compensation for his services.

The above cases seem to indicate that the Maryland Court would probably consider any compensation for work or services performed under a contract of employment as wages, hire and salary as used in the statute. This statement of the rule would necessarily exclude any money received on an investment or as a gift.

The Court of Appeals has not been faced with the further problem, which has arisen in other jurisdictions, of how long the wages or salary once paid retain the exempt character. It has been held that the deposit of earnings in a bank did not change their exempt character, and therefore they were not subject to attachment.[25] On the other hand, war bonds purchased with money the debtor had authorized his employer to deduct from his wages,[26]

[23] *Ibid*, 59. Parenthetical material added.

[24] 31 Md. 38 (1869).

[25] Staton v. Vernon, 209 Ia. 1123, 229 N. W. 763, 67 A. L. R. 1200 (1930); Rutter v. Shumway, 16 Colo. 95, 26 P. 321 (1891).

[26] Iowa Methodist Hosp. v. Long, 234 Ia. 843, 12 N. W. 2d 171, 150 A. L. R. 440 (1943).

U. S. Bonds purchased with attachment-exempt veterans' benefits,[27] and land purchased with exempt veterans' benefits[28] were held to be attachable by the employee's creditors since the funds had lost their exempt character. Where the garnishee acting as an attorney for the debtor, collected wages due the debtor from his employer and these wages were attached while in the attorney's hands, the Delaware Court concluded that the money lost its nature as wages when paid to the attorney, and the debtor was not entitled to the exemption which was accorded to wages in the state.[29] The cases holding that the wages lose their exempt character when deposited in bank or when converted into other forms of property seem to be the better reasoned ones. The opposite result would present the problem of what degree of conversion of the wages may be made without impairing the fund's protection from creditors.

What Wages, Hire Or Salary Earned Are Attachable?

"No attachment of the wages or hire of any laborer or employee . . . shall affect any salary or wages of the debtor which are not actually due at the date of the attachment" according to the statute. It is apparent under the statute, therefore, that a wage-earner who is paid once or twice a month has less of an exemption than one paid more frequently. For example, an employee who earns $100 per week and is paid every week has his complete salary protected from his creditors by the exemption statute which exempts $100 of the amount due. But if the same employee were paid twice a month, his creditor would be in a position to attach approximately half of his salary since the accumulation of income would then amount to over $200 from which only $100 would be exempt. However, the Legislature has made no attempt in the one hundred year history of the exemption to resolve this inconsistency.

This part of the statute was construed in the recent case of *Bendix Radio Corp. v. Hoy*,[30] where the plaintiff laid an attachment in the hands of the garnishee on June 1, 1954, and on June 6, 1954, the judgment debtor was paid $4,305.67 as severance pay. The Court of Appeals decided that the severance pay was not attachable since it was not "due when the attachment was laid". However, the decision is confusing in that the Court also decided the money was

[27] Carrier v. Bryant, 306 U. S. 545 (1939).
[28] In re Gardner, 220 Wis. 493, 264 N. W. 643 (1936).
[29] Tressler v. Lunt, 158 A. 709 (Del. 1932).
[30] *Supra*, n. 21.

payable as wages because the judgment debtor received it for services rendered, but that there was not such an agreement between the garnishee and judgment debtor for the payment of the severance pay which the judgment debtor could enforce; in effect, that the severance pay was wages gratuitously paid. The Court's conclusion gives a new breadth to the definition of "wages".

The result in the *Hoy* case can be analogized to several decisions of lower courts in Maryland appearing previous to it. In *The Second National Bank v. Sharer*[31] the judgment debtor was employed by the garnishee whose policy was to pay its employees twice a month, on the 13th and 28th of each month. Because of a lag caused by the necessary bookkeeping, on the 13th of the month the employees would be paid the wages earned during the last part of the previous month, and on the 28th the money earned during the first part of the current month. The attachment was laid on May 9, 1949. The previous pay period had ended April 31, 1949, during which time the judgment debtor had earned $192.32. Between May 1st and May 8th the judgment debtor had earned $54.02, however this was not to become payable until May 28th. The Circuit Court for Allegany County, Henderson, J., held that only the $192.32 was subject to attachment and of this amount $100 was exempt. This Court reasoned that only the wages "due and payable" to the judgment debtor under the terms of his employment were attachable. This implied limitation thereby read into the statute, *i.e.*, that the wages in addition to being due must also be payable under the terms of the judgment debtor's employment, was followed by Chief Judge Rhynhart of the Peoples' Court of Baltimore City in a subsequent case.[32] In this case the judgment debtor was employed by the garnishee whose custom of employment was to withhold two weeks wages of his employee at all times so that on each pay day the employee would receive wages he had earned during the pay period which had ended two weeks before. The judgment debtor began his employment on June 6th and worked until June 23rd when the plaintiff laid his attachment. At this time the wages earned during the week of June 6-12, which amounted to $70.20, were payable. However, the judgment debtor had earned $191.09 during his whole term of employment which was unpaid

[31] (Unreported) #19 Originals, July Term 1949, Circuit Court for Allegany Co. May 18, 1949. In Seaboard Finance Company v. James, Balto. City Court, Cullen, J., Aug. 10, 1955, the Court adopted the due and payable construction in a case with a factual situation similar to the above.

[32] Regal Shop v. Bethlehem Steel Co., Daily Record, Aug. 10, 1955.

at the time the attachment was laid. The Court held that only the $70.20 which was payable at the time of the attachment was subject to garnishment, and consequently, since the judgment debtor was entitled to a $100 exemption, nothing was attachable.

The Maryland Court has repeatedly stated that the attaching creditor merely steps into the shoes of the debtor and can only recover to the same extent as the debtor could.[33] Thus, in view of the wage exemption's purpose, *i.e.*, the protection of the judgment debtor and his dependents, it would seem that the legislative intent would not be served by forcing the judgment debtor to violate his employment contract in order to collect all wages which he had earned in order to allow his judgment creditor to attach that sum, rather then the sum then payable to him.

The *Hoy* case may be useful as a precedent in another respect. It has become a common practice in recent years for employers to give bonuses at the end of the year for services rendered by their employees. Under the *Hoy* case these bonuses would seem to qualify as wages, hire or salary, and therefore could only be garnished when payable, *i.e.*, as a practical matter on the day they were handed out. It should be noted that this requirement of attaching on the day the bonus is paid would not seem to be necessary in all cases where wages are being attached. Although the requirement laid down by the lower Court cases *supra*, that wages must be "due and payable" before they are attachable would lead one to this conclusion, the attachment in the Allegany County case, where the requirement appears to have originated, was not laid on a pay day. Rather, it was laid between the end of the period in which the wages were earned and the day on which the wages for that period were payable. As was pointed out in the above discussion of that case, the Court held attachable the wages due for the period which had ended. Thus, the better distinction to be drawn from this case would be that only wages earned during a pay period which has ended are attachable. This view would allow an attachment at any time between the end of such pay period and the handing of the wages to the employee. If this view is adopted, only when the pay day coincides with the end of the pay period will it be necessary to lay the attachment on that day in order to attach the wages earned during that pay period.

[33] Myer v. L. L. & Globe Ins. Co., 40 Md. 595 (1874); Manton v. Hoyt, 43 Md. 254 (1875); Wilmer v. Epstein, 116 Md. 140, 81 A. 379 (1911); Cole v. Randall Park Holding Co., 201 Md. 616, 95 A. 2d 273, 41 A. L. R. 2d 1084 (1953).

From What Amount Is The $100 Wage Exemption Deducted?

With the advent of social security and income tax deductions from wages, the question of whether these deductions should be made before the $100 exemption is allowed the employee — judgment debtor becomes important. The wage-exemption statute provides no answer to the problem. The Federal[34] and State[35] income tax withholding provisions, as well as the Federal Insurance Contribution Act,[36] require most employers to withhold a stipulated amount from the wages of their employees at the source of the employment. The wage-earner has no right to demand that no deductions be made. Thus as a practical matter the money withheld should not be considered part of the wages with which the judgment debtor is to provide the necessaries of life for himself and his dependents. For this reason it would seem the better view would be to allow the judgment debtor-employee to deduct $100 of his take-home pay, leaving for his creditors the excess of $100 less the required deductions. This conclusion would appear to find some support in the decisions of the Court of Appeals recognizing that the plaintiff in wage attachment merely steps into the shoes of the judgment debtor-employee and can only recover to the extent that the latter could recover from his employer.[37] For, as the Court said in a recent case:

> "The test of the garnishee's liability is that he has funds, property or credits in his hands, the property of the debtor, *for which the debtor would have the right to sue.* The plaintiff can recover from the garnishee only by the same rights and to the same extent as the debtor could recover if he were suing the garnishee."[38]

A clear deduction from the above statement of the rule announced by the Court would be that since the judgment debtor has no right to sue his employer for money withheld from his wages as income tax and social security contributions, his attaching creditor would also have no right to do so. Therefore, since the withheld fund is not subject to suit and since the employee receives no direct benefit from the

[34] 26 U. S. C. A. (I. R. C., 1954), 3402(a) (1955 Supp.).
[35] Md. Code Supp. (1955), Art. 81, Sec. 308(a).
[36] 26 U. S. C. A. (1955 ed.) (I. R. C., 1954), 3102(a).
[37] *Supra*, n. 33.
[38] Bendix Radio Corp. v. Hoy, 207 Md. 225, 229, 114 A. 2d 45 (1955). Italics supplied.

money so withheld, it could be logically argued that the $100 exemption should be applied to the balance due the employee after the deductions rather than to the gross amount of wages earned by the employee.

Although the Maryland Court has not been called upon to rule on this problem, some cases from other American jurisdictions would seem to support the line of reasoning above set out. Where a statute exempted wages "used to provide the necessaries of life for the wage earner's family", and the garnishee in an attachment of the judgment debtor's wages confessed assets of $148.66, and the jury found that $143.06 of that amount was used to provide "necessaries", the California Court held that $8.00 deducted for social security, unemployment insurance, etc., should be considered as a necessary expense, and therefore none of the wages was attachable.[39] In a Georgia case,[40] the debtor had contracted to paint the garnishee's store, and the garnishee under the terms of the contract was to pay for all labor and materials. In the course of the work the garnishee paid a certain sum to laborers whom the debtor had hired. Later an attachment was laid and the Court held that the sum previously paid to the laborers should not be considered a part of the debtor's compensation for the work and was not subject to attachment under the wage exemption statute in force which exempted from garnishment $1.25 per day and half of the excess above that of the daily, weekly, or monthly wages of all persons, whether in the hands of their employers or not. In a recent case the United States Court of Appeals for the Fifth Circuit held that although the amount withheld under the Internal Revenue Code from salaries and wages of employees for Federal Insurance Contribution taxes and income and withholding taxes is measured by the amount of wages earned, money due the United States by an employer for the amount so withheld was owing as taxes, not as wages, and therefore was not within the coverage of a bond for wages required of contractor engaged in the construction of public buildings by a Texas statute.[41] In all of the above cases the amounts deducted from the wages so as to divert them from the hands of the em-

[39] Sanker v. Humborg, 48 Cal. App. 2d 205, 119 P. 2d 433 (1941).

[40] J. Austin Dillon Co. v. Edwards Shoe Stores, 53 Ga. App. 437, 186 S. E. 470 (1936).

[41] General Casualty Co. of America v. U. S., 205 F. 2d 753 (5th Cir., 1953). See also U. S. F. & G. Co. v. U. S., 201 F. 2d 118 (10th Cir., 1952); U. S. v. Zschach Const. Co., 110 F. Supp. 551 (E. D. Okla., 1953); Rivard v. Bijou Furniture Co., 67 R. I. 251, 21 A. 2d 563 (1941); *aff'd.* on rehearing, 68 R. I. 358, 27 A. 2d 853 (1942).

ployee were no longer treated as wages in the respective situations.[42]

If the problem is viewed from the standpoint of the apparent intent of the Maryland Legislature another worthy argument is possible. The amount of wages protected from the employee's creditors has been set at $100 since 1874 when no deductions for taxes, etc., were demanded by the State and Federal governments. This sum was in 1874 and is apparently presently considered an amount necessary for a wage-earner to provide "bread and board" for himself and his family. If the wage-earner's salary is subject to a deduction for the attachment first and then subject to a further deduction for his taxes, etc., due the government, it would seem that the legislative intent would be defeated in that his "take-home" pay would not meet the legislative standard required for providing the necessaries of life for himself and his family.

In contrast to the deductions which must be made by the employer at the insistence of the State and Federal governments, those types of deductions which are made by the employer at the request of the employee possibly should be considered in a different light. Deductions made for premiums in a group insurance plan, as contributions to various charities, and as deposits in a company "thrift" plan would be of this type. In the later type of deductions, the employee receives a more direct benefit from the money than in the case of the money withheld for taxes, etc. For this reason, the legislative intent commented on above would not seem to be violated if the deductions of this type would be made from the $100 exempted from attachment by the statute.

Possible Exceptions.

As pointed out in the preceding sections, the Maryland Court and most other Courts have construed their respective States' wage exemption statutes liberally in favor of the debtor since the purpose of the statutes was to protect "a class of persons who are largely dependent on their wages for support".[43] However, it should be observed that

[42] But see Harris v. Atlantic Coast Line R. Co., 42 Ga. App. 260, 155 S. E. 497 (1930), where the debtor had earned $58.80 in 28 days prior to the time the attachment was laid, and $35.40 of that amount was paid to a creditor of the debtor by the garnishee under an agreement with the debtor. Under the exemption statute the debtor was entitled to a $35.00 exemption. The Court held that wages earned, not the balance due after payment to the employee's creditor, determined the wages exempt from garnishment.

[43] 22 Am. Jur. 56, Exemptions, Sec. 64, *et seq.*

some courts in this country have made exceptions to the exemptions of these statutes in cases where the attaching creditor is the wife or other dependent of the debtor whose attachment is on a claim for alimony or support.[44] In a recent New Jersey case,[45] where the defaulting alimony payor was receiving a pension which by statute was "exempt from execution, garnishment, attachment, or other legal process" and the pension was attached by his divorced wife for the alimony in arrears, the Supreme Court of New Jersey held that the fund could be reached to satisfy the alimony arrearage. The reason given by most Courts in disregarding the statutory exemptions in cases involving alimony or support of dependents was probably best stated by the United States Court of Appeals for the District of Columbia:

> ". . . the usual purpose of exemption is to relieve the person exempted from the pressure of claims hostile to his dependents' essential needs as well as his own personal ones, not to relieve him of familial obligations and destroy what may be the family's last and only security, short of public relief."[46]

Thus, this reasoning of the courts gives the legislative intent present in all exemption statutes precedence over the literal interpretation of the statute.[47]

Another interesting decision has recently been handed down by the United States District Court for the Eastern District of Pennsylvania.[48] It was there held that a state wage exemption statute could not bar the collection of a judgment in favor of the United States. The court reasoned that since at common law creditors could attach wages of their debtor, and since there was no federal statute barring such garnishment, the only possible bar to the collection of the judgment was the action of the Pennsylvania legislature, and therefore "the United States, as a sovereign seeking to

[44] Jackson v. Jackson, 194 Misc. 134, 86 N. Y. S. 2d 516 (1948); Huling v. Huling, 194 Ga. 819, 22 S. E. 2d 832 (1942); Davis v. Davis, 67 N. W. 2d 566 (Iowa, 1954); Felder v. Felder's Estate, 195 Miss. 326, 13 So. 2d 823 (1943).

[45] Fischer v. Fischer, 13 N. J. 162, 98 A. 2d 568 (1953).

[46] Schlaefer v. Schlaefer, 71 App. D. C. 350, 112 F. 2d 177, 185, 130 A. L. R. 1014 (1940).

[47] It is well to note that Maryland has allowed a spendthrift trust to be invaded for debt arising from alimony, Safe Deposit & Tr. Co. v. Robertson, 192 Md. 653, 65 A. 2d 292 (1949), noted 10 Md. L. Rev. 359 (1949); Hitchins v. Safe Deposit & Trust Co., 193 Md. 53, 66 A. 2d 93 (1949), noted 11 Md. L. Rev. 71 (1950); and on separation agreement, see Zouck v. Zouck, 204 Md. 285, 104 A. 2d 573 (1954).

[48] U. S. v. Miller, 134 F. Supp. 276 (E. D. Pa., 1955).

collect its debts, cannot be bound by either legislative or judicial acts of a member state".[49] The constitutional questions raised by this decision are beyond the scope of this comment. It is well to note, however, that the Maryland wage-exemption statute expressly does not apply to collection by the State of its income tax.

In conclusion, it may justifiably be said that the Maryland Court has been ready at all times to reach an equitable result and has been aided in that purpose somewhat by the broad language of the wage exemption statute which it was considering. Furthermore, the Court has struck down any subterfuge set up to defeat the statute's protection of the wage-earner.[50] Much can be said, therefore, for a broad statute in an area, such as here, where the solution to the situations which arise is best reached many times by broad discretionary powers in the Court.

[49] *Ibid*, 278.

[50] See Keyser v. Rice, 47 Md. 203 (1877), where the Court enjoined a judgment creditor from attaching a debtor's salary out of state with intent to avoid the Maryland wage exemption statute.

The Legislature has been equally harsh in deterring the assignment of claims out of state with the purpose of avoiding the wage exemption granted in the statute. Md. Code (1951) Art. 83, Secs. 15, 16, 17 and 18, provides civil remedies for the debtor and criminal penalties for the assignor.