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Civil Practice—Future Wages Held Attachable Under C.P.A. § 916

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CIVIL PRACTICE—FUTURE WAGES HELD ATTACHABLE UNDER C.P.A. § 916

Plaintiff obtained a warrant of attachment against defendant, a non-resident. The warrant was directed against defendant's wages and served on his employer. Defendant moved to limit the attachment to earnings unconditionally due him at the time thereof. *Held:* Motion denied. The continuing levy feature of C. P. A. § 684 must be read into C. P. A. § 916 to allow attachment of future wages. *Rehill v. Rehill,* ___ Misc. ___, 118 N. Y. S. 2d 251 (Sup. Ct. 1952).

The Civil Practice Act provides that attachment may be had upon a debt, "whether past due or yet to become due." C. P. A. § 916. But the New York courts have held that an indebtedness is not attachable unless it is absolutely payable, whether at present or in the future, and not dependent upon any contingency. *Herrmann & Grace v. City of New York,* 130 App. Div. 531, 114 N. Y. S. 1107 (1st Dep't 1909), *aff'd,* 199 N. Y. 600, 93 N. E. 376 (1909); *Sheehy v. Madison Square Garden Corp.,* 266 N. Y. 44, 193 N. E. 633 (1934). The obligation to pay wages to be earned in the future has been held to be an indebtedness dependent upon a contingency, *viz.,* performance of required services. *Baumgold Bros. v. Schwarzschild Bros.,* 276 App. Div. 158, 93 N. Y. S. 2d 658 (1st Dep't 1949); *Herrmann & Grace v. City of New York, supra; Sheehy v. Madison Square Garden Corp., supra.* On the other hand, execution against the judgment debtor's wages, limited to ten per cent. thereof, constitutes a continuing levy against all future wages until the judgment is satisfied. C. P. A. § 684.

The ten per cent. limitation upon execution against wages also applies to attachment proceedings under § 916. *Morris Plan Industrial Bank of New York v. Gunning,* 295 N. Y. 324, 67 N. E. 2d 510 (1946). In that case the court stated that to "carry out the total statutory policy, the attachment and garnishment statutes must be read together." *Supra* at 331, 67 N. E. 2d 510, 513. The court in the principal case interpreted the language of the *Morris* case broadly and greatly extended its logic. The *Morris* decision considered §§ 684 and 916 together to limit the application of the latter section. The instant case holds, however, that § 684 may be used to extend the application of § 916. In so holding, the court goes contrary to decisions of the Court of Appeals clearly holding future wages unattachable. *Herrmann & Grace v. City of New York, supra; Sheehy v. Madison Square Garden Corp., supra.*

It is submitted that the reasoning of the court in the principal case is basically unsound. The fundamental reason for applying

the ten per cent. limitation to both attachment and execution is that defendant not be impoverished. But there is no reason why the continuing levy feature should be applied to both remedies. The purpose of attachment is to acquire jurisdiction, which presupposes a present res within the state. On the other hand, there is no compelling reason why a levy invoked to enforce the judgment should not be continuous, so as to reach wages subsequently earned by defendant in the state.

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CONSTITUTIONAL LAW—PROOF OF INTOXICATION OBTAINED FROM BLOOD TEST HELD VIOLATIVE OF DUE PROCESS

While defendant was unconscious after an automobile accident, a sample of her blood was taken for the purpose of typing for a transfusion, which was later given. A portion of this blood was then tested for alcoholic content without defendant's knowledge. *Held:* Conviction of drunken driving reversed. The use of such evidence violates the due process provisions of the federal and state constitutions. *People v. Haeussler,* ___ Cal. App. ___, 248 P. 2d 434 (2d Dist. 1952).

The reversal in the instant case was expressly based on the authority of *Rochin v. California,* 342 U. S. 165 (1952), noted, 1 BFLO. L. REV. 318. In that case, the United States Supreme Court reversed a conviction for illegal possession of narcotics, holding that the conduct of the police in forcibly extracting morphine capsules from the defendant's stomach by means of a stomach pump and emetics violated the due process clause of the Fourteenth Amendment. In the instant case, the court found "no difference in principle" between the facts in the *Rochin* case, *supra,* and the situation in the instant case. *Supra* at 437.

The court, however, did not indicate what that controlling principle is. Clearly the privilege against self-incrimination found in the Fifth Amendment is inapplicable. *Twining v. New Jersey,* 211 U. S. 78 (1908). The privilege is not a restraint on state action through the Fourteenth Amendment. *Adamson v. California,* 332 U. S. 46 (1947). Moreover, it applies only to testimonial compulsion, and not to compulsory exhibition of the body. *State v. Sturtevant,* 96 N. H. 99, 70 A. 2d 909 (1950); *State v. Cram,* 176 Ore. 577, 160 P. 2d 283 (1945); *Holt v. U. S.,* 218 U. S. 245 (1910); and see cases collected in 8 WIGMORE, EVIDENCE §§2263-2266 (3d ed. 1940).