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Supreme Court of the United States

In the Matter of:

CHRISTINE SNIADACH, Petitioner, vs. FAMILY FINANCE CORPORATION OF BAY VIEW AND MILLER HARRIS INSTRUMENT COMPANY Respondents.	Docket No. 130

Place Washington, D. C.

Date April 21, 1969

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

CHRISTINE SNIADACH,

Petitioner;

vs. No. 130

FAMILY FINANCE CORPORATION OF BAY VIEW and MILLER HARRIS INSTRUMENT COMPANY,

Respondents.

Washington, D. C.
Monday, April 21, 1969

The above-entitled matter came on for argument at 1:30 p.m.

BEFORE:

EARL WARREN, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
ABE FORTAS, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

JACK GREENBERG, Esq.
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P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: No. 130, Christine Sniadach, petitioner; versus Family Finance Corporation of Bay View.

Mr. Greenberg.

ARGUMENT OF JACK GREENBERG, ESQ.

ON BEHALF OF PETITIONER

MR. GREENBERG: Mr. Chief Justice, and may it please the Court:

This case is here on certiorari to review a judgment of the Supreme Court of Wisconsin, two Justices dissenting, upholding that State's prejudgment garnishment statutory scheme.

The case involves, we would like to emphasize at the outset, prejudgment garnishment; that is, the seizure of wages owed by an employer to petitioner, who is his employee, at the outset of legal action without a ruling by a judge or a jury, not after judgment, when judge and jury have ruled upon this, to collect monies adjudged to be owed, the validity of which prediction will ultimately be determined in an action to follow in which the merits of the claim will be tried.

Petitioner was a $65-a-week wage earner and the amount garnished under the statute was $31.59, or half of $63.18, which was one week's pay check, the money owed to her for the period in question.

Q And that is a one-shot garnishment under Wisconsin law?

A One pay period. In her case the pay period was a week. It might be a month, if the pay period is a month, but the pay period is a week.

Q But that is all. It can't be done again, is that right, under the same underlying claim?

A That is right. It cannot be done again in this action. It could be done again in another action after the determination of this claim.

Q So the sum total is this $31 or $32.

A That is correct.

Q You mean the employer is perfectly free to pay them for the next pay period?

A That is correct; and, indeed, the employer pays her a subsistence allowance, which in this case was also $31.59.

Q But if the employee goes on working the next pay period --

A She gets all $65.

Q She gets the whole, and the creditor may not attach that also.

A May not. So the remaining $31.59, as I indicated, was paid to her as a subsistence allowance in accordance with Wisconsin law. The wages were withheld merely upon the filing of a complaint in garnishment on petitioner's employer which alleged only three things, as required by statute. These are mere allegations that petitioner was indebted to respondent by

virtue of an alleged contract; that the amount due was $420; and that petitioner's employer owed her wages.

On pages 3 and 7 of the record, all that had to be alleged is set forth. I will just read an extract. The complaint of garnishment was served on the employer and said -- summons, rather:

> "You are hereby ordered to retain such property pending the further order of the Court, and in case of your failure to do so, judgment will be rendered against you for the amount of plaintiff's judgment against said defendant" -- which would be the whole $420 -- "and costs, of which the said defendant will take notice."

The employer responded in the answer of the garnishee saying he did, indeed, have money in his control, in his possession or control, belonging to Christine Sniadach in the sum of $63.18, and further that garnishee will pay from that amount $31.59 as a subsistence allowance and will hold the balance of $31.59 for the further order of the Court.

Q Does the Act of Congress last year affect in any way future cases of this kind?

A Not on this issue, Mr. Justice Douglas. First, the Act is not yet operative; and secondly, the Act merely says you may not be discharged for one garnishment, and it limits the amount of pay that can be garnished to 25 percent. It doesn't affect the notice in here. It doesn't address itself

to that issue.

Q But they wouldn't be able to, in the future, garnishee as much as they did here.

A That is correct. It is limited to 25 percent. Then there are some rulings by the Secretary of Labor which may be pertinent which have not yet been made, but it would not address itself to those in hearing.

Q You said that the new Federal law is limited to 25 percent of what?

A Twenty-five percent of --

Q Weekly wage, isn't it?

A Twenty-five percent of disposable income.

Q Well, that would be a great deal more than was garnisheed here, wouldn't it? This was a total of $32.

A Yes, but they can only take 25 percent of the $65, assuming all $65 --

Q But they can keep taking it so far as the new Federal law goes.

A I think up to the amount of the debt.

Q So it would be a great deal more.

A Yes.

Petitioner had no notice of hearing before the wages were garnisheed, as I mentioned, because the garnishment action and the principal action were commenced simultaneously by service upon her of the complaint and principal action at her place

of employment at the same time the complaint in the garnishment action was served upon her employer. In fact, while it did not occur under the statute, it would have been entirely possible to serve her 10 days later, and the first notice she might have received would have been after some of her pay had indeed been garnished.

This case is, therefore, unlike a post-judgment garnishment case in which there has been an adjudication of the existence of the debt. It is unlike a foreign attachment case that some of the cases relied on below, in which funds are attached to effect jurisdiction, or to assure payment by someone who is not in the jurisdiction.

Funds owing to petitioner here have been withheld by her employer by order of the Court, and those funds will not be paid either to her or to her employer until the termination of the principal action, which has, in this particular case, been stayed and has not yet been heard, and indeed, in any case, will be heard some considerable time after the wages have been attached.

In the Trial Court, petitioner made a motion to dismiss the garnishment proceeding on the grounds of unconstitutionality under the due process clause of the Constitution, asserting that there was neither notice nor hearing as required by the Constitution. This claim was denied by all of the Wisconsin courts.

In relating what occurred to the Court, I have outlined essentially the statutory scheme, but I would like to set it forth somewhat more fully.

The way actions like this start is that in an action upon contract, an action in tort, an action upon a judgment, upon payment of a $3 fee to the Clerk of the Court, a Summons of Complaint in Garnishment may be obtained by a creditor. The garnishment complaint need allege merely that the cause is one of the three specified in the statute -- contract, tort, or judgment -- the amount of the plaintiff's claim against the defendant, and that the garnishee has property owing to the defendant. That is all.

The Garnishment Complaint in Summons must be served upon the principal defendant no more than 10 days after service on the garnishee, and the garnishee may then either hold the money or may pay it into court.

Under statute, the garnishment action is not permitted to be tried until after judgment in the principal action, and as I said, depending on the outcome of the principal action, the monies are then distributed.

Our principal claim here is based upon the due process clause of the Constitution, which we assert and which we submit needs no elaboration in this Court, requires notice and hearing before adverse judicial action may be taken against one to deprive that person of property.

But to demonstrate that in this case we are hardly speaking of empty ritual or formalism, and that we are not addressing the Constitution to some procedural quirk, our brief contains a considerable quantity of material filling the well recognized social and economic evils that this type of statute brings about. Indeed, the opinion below acknowledges this and the respondent acknowledges it. The Kerner Commission report takes special notice of it as a particularly unjust and abrasive factor in dealings between merchants and loan companies and the poor.

Prejudgment garnishment often cause the paying of debts which may not be owed and which may be disputed. It often encourages an employer to discharge someone rather than go through the bookkeeping and the trouble of going through the garnishment proceeding.

Q Has your case reached getting jurisdiction by attachment or garnishment, quasi in rem? I suppose your position would have to, wouldn't it?

A Our position would go that far as to an entirely domestic situation. As to a foreign attachment, we think that involves other considerations, and, indeed, in our brief we take the position that if it were necessary to obtain jurisdiction over a foreign resident, that might be a different situation.

Q Even though it is done without notice, he is

deprived of his property.

A Well, I think he would have some considerable -- Ownbey against Morgan never left me feeling very comfortable, Mr. Justice White, but in any event, it is so different a situation from here, and rested upon such other and different considerations that I --

Q But in terms of the due process argument you make, it would be difficult to distinguish it.

A I would say so, but the justification given in Ownbey, that of the great antiquity of foreign attachment as giving some substance that it is valid under the due process laws, I think some weight has to be given to that. There is no great antiquity to prejudgment wage garnishment. It is around the turn of the century and, as I said, Ownbey does not leave me feeling very good, but I don't think that has to be reached in this particular case.

Q How many States have these kinds of statutes?

A Approximately 20.

Q Of the same tenor?

A They vary somewhat as to amount and as to procedure, but approximately 20 States have prejudgment garnishment in one form or another.

Q Without notice.

A Without notice; yes, sir.

Q Does your case here -- I know it does not involve

postjudgment garnishment -- but I suppose the priniciple that you establish may have some consequence on postjudgment garnishment. Where you get a judgment, would you say that you have to go through another proceeding to be subjected to garnishment after judgment?

A I wouldn't think so. The essence of our case is that there has not been any notice and hearing on the principal claim. Postjudgment, by definition, is another case where, indeed, there has been notice and hearing and it is merely a method of collection in a fully adjudicated claim. I find it difficult to think of raising this kind of claim in a postjudgment case.

Q Unless it is a default judgment without notice, and then you would have the same problem.

A Well, then you would have other types of due process.

Q They are basically the same.

A If it were a default judgment, but you would have that as to perhaps any default judgment, even without regard to --

Q Do I understand you to say there are 20 States that have the same kind of a statute as this one?

A There are, I think, precisely 17 and Wisconsin is limited to one pay period by a recent amendment. The other States have a continuous garnishment until the debt is paid up.

Q Because this particular statute seems to me to

be subject to the argument you are making, that it is highly unfair to the debtor, but also subject to the argument that it is highly inadequate to protect the creditor, this fraction of one pay period.

A Well, the one pay period was put in by amendment. A number of years ago after, I think, the injustice of the law became so manifest, it was put in as some sort of ameliorative measure.

I might say that our opponent makes, and the court below makes some reference to pending legislation. However, that legislation has been defeated in the last five sessions of the Legislature, and as far as I can tell, there is no reason to believe it is going to pass.

Q You are not suggesting, then, that as a matter of fact, the other 16 or 17 States, whatever they are, have the same feature that the Wisconsin statute has in limiting it to one pay period.

A On the contrary, they do not limit it.

Q That is what is rather peculiar about this statute, is it, if not unique?

A That is, but as I said, that was put in by an amendment a few years ago.

Q I suppose we are also involved here with any kind of attachment before judgment --

A Yes, that is possible.

Q -- not only garnishing wages, or something like that, but attaching physical property prior to judgment.

A Prejudgment; yes.

Q Is this procedure available to attach bank accounts?

A I believe that it is. The garnishment statute is in a general section of the law called "Attachment" for a variety of attachments and it is not merely limited to wage garnishment. Wage garnishment is a species of garnishment.

Q So really we are talking about all prejudgment attachments without notice.

A Absent special circumstances, such as outstanding debtors, foreign residents, and perhaps some special circumstances that one might not think of at the moment, but some good reason. This seems to have no basis in reason and also denies notice and hearing.

This was justified by the court below on two grounds, as far as we can tell. The first ground is that, indeed, the property was not taken. The $31.59 was taken only temporarily. The second is a reliance upon authority, essentially the Ownbey line of cases and cases cited in the opinion which are also discussed in our brief.

Our position on the assertion that this is, indeed, not a deprivation of property, and not a taking, is that we just have to say that is just a manipulation of words. That is

not the case. The taking of property is, indeed, a taking of property in some sense. It is measurable by the interest on $31.59, but I don't think a $65-a-week wage earner really cares about the interest. It is a question of what someone of those means, what $31.59 means in terms of food budget, rent, or whatever. It is a substantial deprivation to someone who is earning that kind of money to be placed under the hammer of that kind of a threat and the possibility of the loss of employment, the possibility of impairment of means of livelihood for self and family, and it is, indeed, a very substantial taking if looked at in proportion to the circumstances of the individual.

So far as the cases are concerned, I believe I have implicitly covered our position with regard to those cases in response to questions. Those cases involve special circumstances such as foreign attachment, the obtaining of jurisdiction, the commencement of an in rem proceeding, or something of the sort.

Q Is there any means whereby the alleged debtor can relieve herself or himself from the garnishment?

A No, Mr. Justice Harlan, except that it has been suggested in the opinion below that a collateral proceeding of some sort might be started. I might say first of all I think that is rather illusory for someone in this kind of an income bracket. But as the dissenting opinion of Justice Heffernan points out, and as a reading of those two cases point out, that

collateral proceeding is, for all practical purposes, limited to the face of the Complaint in Garnishment as, for example, the Complaint in Garnishment did not say the case was in contract, tort, or on a judgment, but it does not become an examination of the validity of the underlying debt, which would be the real issue, and indeed the entire statutory scheme is focused in the other direction.

The entire statutory scheme says you may not try the principal action, the garnishment action, until after the principal action is concluded. So there is neither a practical nor a legal way that that can be gone into.

Q Is it your position that until judgment there could be no garnishment?

A Absent special circumstances that we are talking about, I would say yes.

Q So the entire case has to be tried and judgment entered before there is --

A Yes, that would be our position.

Q There wouldn't be any preliminary hearing about good faith or willful cause, or anything like that, would there?

A Well, if there were a preliminary hearing procedure, and I don't know the existence of any such procedure anywhere, it would have to be a procedure which would indeed accord due process rights, and it would have to be a procedure in which the defendant, the principal defendant, would have

some opportunity, some substantial opportunity both in law and practically, of adequate time and so forth, to contest the validity of the underlying cause. I would say that should be so substantial it really ought to amount to the action in chief.

Q Well, what would you say, then, that a suit starts, there is an answer, and then there is discovery, interrogatories, "Did you sign this promissory note?" The answer in 10 days is yes. Now, something like that wouldn't be enough then to base a garnishment on, or an attachment?

A I would say not, because in this particular case, while it is not a matter of record, there has been some talk about it in the briefs, she would have a defense that she signed the note induced by representations made to her which were not true.

Now, I don't really know what the legal validity of her position on that would be, and that would not be anything to be contested here, but I would say that a due process hearing ought to give her sufficiently substantial opportunity to take whatever position she has with regard to the validity of the underlying claim, so much so that it would be duplicative of the principal. At least it ought to be pretty close to it, at least something of the dignity of summary judgment proceedings, which we have in the Federal Courts, for example.

Q It happens not infrequently that in an action involving a substantial sum of money against someone that the

plaintiff asks for an order preventing the person from transferring the property and it is based on some evidence that is given, some threat of transfer, or something like that.

A If there were some substantial evidence of special circumstances, such as absconding, which I believe is suggested by the form of your question, I would say yes, but there is nothing like that in this case and the garnishment laws are not addressed to that. Some of the foreign garnishment laws are and I imagine there are proceedings which can impound money or funds if someone is threatening to get on the plane to Brazil.

But that is not what we have here. I certainly feel it would be justifiable.

Q What about a bank account, a substantial bank account?

A I would say in any type of property owned by an alleged debtor concerning which there is a threat of leaving the jurisdiction, running away with the money, or something like that, is a different kind of case than the one we are talking about here.

Q Well, we are talking about this garnishment statute and I suppose we are talking about you. You would say that it would be -- until judgment you could not enter any orders about a bank account?

A Absent special circumstances.

Q Even a large one?

A Yes, absent special circumstances. I don't see how you could distinguish the large one from the small one except that there are special circumstances if someone is threatening to take the money away from the jurisdiction of the court. But that is not here, and I think we make rather clear in our brief that we would think that would be another kind of case.

Q Does Wisconsin have a wage assignment statute?

A I am not sure whether it does or not, Mr. Justice Fortas. Our position would be the same with regard to wage assignments if they occurred pursuant to a statute.

Q Well, that might present some different problems.

A That would be different; yes. But if it occurred pursuant to a statute, our position would be the same. If it occurred pursuant to a common law scheme, that would then involve other questions.

Q Does this statute, or any of the others that you referred to here, require the man who garnishes the funds to make a bond?

A The man who garnishes the funds? No, it does not. You mean the plaintiff in the case?

Q Yes.

A No, it does not.

Q Some of the others do, do they not?

A This one does not.

Q Some do.

A This one does not.

In sum, our position, I think, has been stated as to the due process claim. A prejudgment garnishment claim surely cannot be called a principal problem of the poor and the disaffected in the country, but it is indeed a sufficient injustice that works considerable harm. Indeed, it is astonishing how widely recognized this is by the court below and by our opponents, and it is perhaps no accident that such a galling procedure flies squarely in the face of one of our most fundamental constitutional guarantees.

Those portions of our Constitution designed to assure fair procedure and equality, I think, evidence a genius for expressing some of the basic sense of justice of man and to strike down prejudgment garnishment is unconstitutional will hardly solve all the problems of the poor and the disadvantaged, but it would be the right and constitutional thing to do and we submit it would make a difference.

MR. CHIEF JUSTICE WARREN: Mr. Frank?

ARGUMENT OF SHELDON D. FRANK, ESQ.

ON BEHALF OF RESPONDENTS

MR. FRANK: Mr. Chief Justice, and may it please the Court:

The matter of prejudgment garnishment has been discussed at length in the State of Wisconsin, especially since the

institution of the original suit herein. I would like to straighten the facts out, as Mr. Greenberg didn't fully cover them.

The situation here did not involve the amount of $420 as such. The petitioner here, Mrs. Sniadach, actually borrowed the sum of $1800 and, in fact, although the record does not show it, she was a co-maker with her husband. This was taken out on September 2, 1964, and I stress the amount $1800 because this is cash on the line. This is not the case, as most people are familiar with, where you walk into, say, a credit clothing store, or a credit furniture store, you buy a suit, you buy a piece of furniture where the actual cost is $20 and the mark-up can be up to $100 or $150. In other words, whatever the traffic will bear, they charge. This is cash on the line.

Q What are the interest charges? She signed a note for how much?

A For $1800, Mr. Justice.

Q And how much cash did she get?

A Her actual cash was in the neighborhood of $1560.

Q So you had an immediate discount of $240.

A That is right, over a three-year period.

Q What were the interest terms?

A Interest is set by statute.

Q What is that?

A It averages out, over the entire length, around

12 to 14 percent.

Q What was it, precisely? What does the statute say -- 2 percent per month on the unpaid balance?

A No. In Wisconsin, under the statute, your monthly interest is what we term on a small loan, under $300, it is based on 2-1/2 percent on the first $100, 2 percent on the second $100, 1 percent on the balance. Over $300 you come under a different statute where the interest is predetermined and the companies, either a finance company or a bank, follow a chart. I do not have that chart with me.

Q There was a discount, or whatever you want to call it, immediately of $240?

A Around $240 or $250.

Q And then on what you say was 12 percent, over what period of time?

A I believe this was a three-year loan.

Q You mean 12 percent per annum?

A For the entire length of the contract.

Q And that was figured on the $1800 principal.

A That is correct.

Q How much did it amount to when you figure it on what she actually got?

A She got somewhere around $1500, $1550.

Q How much was the interest rate, figured on what she actually got?

A Her interest rate was figured on the $1500.

Q I know that -- on that what?

A On the amount that she actually got.

Q When you said 12 percent, was that 12 percent on the $1560 or on the $1800?

A On the $1560.

Q I see. Now, that is 12 percent on the principal amount. Didn't she have to pay back monthly, or whatever?

A Paid back on monthly installments.

Q Is there any recalculation of the interest depending on the unpaid balances?

A If she pre-pays, she is given a rebate on the unearned interest. This is also by statute.

Q This is not prepayment I am talking about. She paid back principal month by month. Does the record show anywhere what the true effective interest rate, what the true effective cost of this loan to this woman was?

A The record does not show that, Your Honor.

I would like to state this: This loan was taken out in September 2nd of 1964. Now, of course, we come to a very interesting question, and this is the question of notice. Mr. Greenberg indicated that no notice was necessary, but I have dealt with these matters over a number of years and it is a question in my mind, what would one consider as notice?

True, the statute does not specifically say that you

have to give notice prior to a garnishment. But in this situation, this principal action and garnishment was not instituted until November 16th of 1966, a little better than two years after the original loan was made. At that time she owed a balance -- that is, when I say "she" I am talking of the petitioner and her husband -- of $1500, so that I know the general practice of my client and other companies, she not only received notice of what was going to happen once, but she received notice over a period of months.

Unlike the brief of the petitioner, where they allege that it is normal practice within 10 days after an account is in default, a garnishment is issued, this, in fact, is not the case. In fact, if a check could be made -- and I know of no check made of these cases -- in my own experience, normally a garnishment is not instituted for a period of anywhere from six months to two years after it is in default, with numerous notices being sent out.

I will agree with Mr. Greenberg that the collection method is highly systematized, but I do not see where this can be criticized, because I think the best system for collection of debts is that set up by the Internal Revenue Department to collect unpaid taxes. This, I will state, is set up to the nth degree. You have the same situation here.

Q Did I understand you to say it is common practice for a small loan company in Wisconsin to let somebody go two

years without paying and not being bothered?

A Well, Justice Marshall, I said it was normally somewhere between six months and two years, and in this particular case --

Q Oh, you say it is usually six months?

A On the average, six months to two years before a garnishment is put in. In rare circumstances, where they have heard -- and I have had this occasion -- that the man is --

Q When this investigation was going on in Congress last year, did anybody from Wisconsin testify to that?

A I don't believe anybody from the finance industry.

Q They should have, because it is different from the other testimony.

A I realize that. I am quite aware of that, Mr. Justice, but in this case it was two years.

Q I would like to ask a question just to get this straight in my mind.

You said at the outset that this lady got $1800 on the line.

A That is correct.

Q Then you told us that the actual amount of money that she got was $1500-something.

A $1500 and some odd cents.

Q Yes, and she was paying interest only on $1500-something.

A That is right.

Q Tell me, what is the significance of the $1800 if she got $1500 and she is paying on $1500?

A The interest is added onto the amount that she got. The interest is computed in advance. She is not paying the interest as you would normally figure it, if you borrow $1000, the interest is figured at, say, to expedite matters, 10 percent per annum and as you go along you would be computing the interest on her monthly payments. The interest is computed in advance for the total term of the loan, so that when she is paying it back, she is paying back the principal plus the predetermined interest.

Q For the whole period.

A For the whole period. In the event she pays the loan up, say, within 12 months instead of 24 or 36, she would be given a refund of the interest that has not been used up.

Q Well, according to what you have said, she pays 12 percent on $1500-something, plus the repayment of the total $1800, that is to say, $300 additional to the interest.

A No, no.

Q It is bound to be. She signs a note for $1800.

A And the note itself, which is not in the record, would show the principal amount $1500, interest $300, her payments would be set up on the $1800, say 24 months at X dollars per month. She does not pay any additional interest.

Q The payments are set up on the $1800 basis.

A On the $1800; the principal amount that she received, plus the precomputed interest for the entire length of the loan. But there is one thing I would like to --

Q When was it due? How long again?

A The loan was due, I believe it was in three years.

The loan was made on September 2nd of 1964, the first installment was due on October 2nd of 1964.

Q How much installment was that?

A The installment payments were -- this loan in question was 30 months at $60 a month.

Q That is principal and interest.

A Principal and interest.

Let me correct myself, Justice Fortas. The full amount of the loan was $1800, and I am looking at a copy of the note in question. Discount was $322.50, which is computed at 15.89 per annum simple interest. There was a service fee of $9.45. She received $1468.05. That was the net amount of the loan.

Justice White, in answer to your query where you mentioned attachment and replevin, I would like to state this: that attachment and replevin are set up separately in the State of Wisconsin. They are not considered in the same nature as a garnishment, although to a certain extent they act in the same manner, so that we are not too concerned with attachment

or replevin here. In fact, as --

Q Well, you can't just put them aside.

A You don't put them aside except for this.

Q If they go on without notice, why, I would suppose that --

A May I clarify this for you, Mr. Justice White. In the matter of a replevin, this can be started in one of two ways. First of all, you can start the replevin by the issuance of your summons, take it to the Sheriff without any seizure, and the matter is then returnable within 8 to 15 days after issuance and it can be heard by the court. At that time the court can enter a judgment in replevin, as I term it, in the alternative; either you get the cash or the merchandise back.

This is used where you have a conditional sales contract, or today, under the Uniform Code, a security device. The other alternative on a replevin is that you can issue the same papers, but at the time of issuance to the Sheriff, you post a bond with the Sheriff double the value of the merchandise which you seek to repossess. The Sheriff then serves a copy upon the debtor or defendant and leaves a copy of the bond with him, takes the furniture in his possession -- and I am saying the Sheriff's possession -- where it is held pending determination by the court.

The same type of a remedy is true in the attachment. In these two cases you post a bond. This you do not have to do

in a garnishment. A garnishment issues forthwith and a levy is made upon the employer, who answers.

Q Garnishment normally just foreshows as an action, I suppose, intangible.

A Garnishment would be on wages.

Q Bank account?

A Bank accounts --

Q For debts due?

A Debts due you could, but normally you would attach -- that is, my procedure has been to attach on a debt due.

Q Do you usually attach a bank account?

A Garnishee on a bank account.

Q Well, that is just a debt due.

A That is a debt due, but I prefer an attachment on a debt due; of course, depending on the amount.

Q Well, of all of these, which is the easiest for you -- garnishment?

A Well, the easiest --

Q You don't have to put up a bond.

A You don't have to put up a bond, but --

Q You don't have to give notice. You just pay $3.50 and get your secretary to fill out a piece of paper.

A It isn't $3.50. This is a misconception that the Court has been advised, and this I assume is because Mr. Greenberg does not practice in Wisconson. This is also why it

is a fallacy to say that for only $3 a creditor can go and get his money. The actual cost, out-of-pocket disbursement under garnishment of under $500, which is the small claim limit in the State of Wisconsin, is $15.20. So in other words, my client --

Q You mean you spent $15.20 to get this $30?

A That is correct, Mr. Justice.

Q Why did you do that?

A Well, after over two years of attempting to get the money through numerous letters, my client instructed me to proceed with a garnishment because voluntarily Mrs. Sniadach wouldn't even bother to call or come in.

Q But if she just decided that she could put up with losing $30, why, you haven't been very effective, have you?

A That is correct.

Q Except that her employer might be upset?

A No, we are not too concerned with the employer, quite frankly. As a practical situation, certain companies -- and I will name them, A. O. Smith Corporation, Allis-Chalmers Corporation, American Motors, and others -- have a policy of discharge after so many garnishments, of which we are well aware. We are well aware of it because the individual plants have set up special personnel departments to work with these employees so that before a garnishment is issued, I know as a factual situation, and as an actuality, that this matter has been discussed in 99 out of 100 garnishments with the Personnel Manager

or the party who is charge, whether they call him a labor relations expert, or an expediter, and normally he has said, "Look, I can't do anything. I had the man in here. You will have to garnishee if you want to get your money."

Q Doesn't the new Federal Act ban discharge?

A Yes. It bans discharge. Now how effective that will be, I don't know.

Q It is just for one debt, discharging him for one debt.

A Discharge for one debt. But the problem here is that when normally you have to resort to a garnishment, you have beaten a path to the door, either personally, telephone calls or letters, in an attempt to get a payment, or something on the account, rather than garnishee. It has been my experience that if you have been doing this, God only knows how many other creditors are attempting to obtain the money, too, because practically, these people don't only owe you; they owe others.

Q I suppose the cost of garnishing is added to the indebtedness.

A The actual outlay of cost is chargeable to the debtor or defendant. As a practical situation, if you can get your principal amount back, most of the banks and finance companies, unlike your credit clothing or furniture companies, will be more than glad to take their principal and waive interest and all other charges.

Q How long would it take you, in Wisconsin, as a practical matter, to get a judgment for the amount due you?

A Taking this situation here, I can state this: that although there is nothing in the statutes specifically calling for an immediate trial, that as a practical situation in this matter, had it not been for the fact that this was to be a test case, that this matter could have been tried within 24 to 48 hours after the court had been notified that her check had been tied up.

Q No, no. I don't mean that. I mean how long would it take you to get a judgment on the indebtedness?

A On this indebtedness?

Q Yes. As a practical matter. Let's suppose you decided to go to court and get a judgment. How long would it take you?

A This action was instituted on November 16th of 1966. Assuming that I follow the minimum, service within eight days of the date of issuance, which would mean that this action, both the principal and garnishment, would be returnable in the County Court or a Small Claims Court, on the 24th day of November. Now, the statute does provide for an immediate trial on the return date, and if the situationis so urgent, as has been indicated here, the matter could have been tried on the return date and the court would have handed down a decision on that date.

Q In theory, then, as your courts work out there, if you had decided to proceed to judgment before garnishment, before attachment, before trying to collect through the employer, you could have gotten a judgment in anywhere from eight to 24 days; is that what you are telling me?

A Normally, if you are saying just to start the principal action and forget the garnishment --

Q That is right.

A Normally, around 30 days.

Q Thirty days.

A Yes, sir. There are exceptions because of illness of one of the presiding judges, where you have to transfer calendars, but normally 30 days, generally 60 days is the longest, barring any unforeseen emergency.

Q Does your note provide for attorney fees for collection?

A Mr. Chief Justice, they do not. The notes provide that an attorney fee can be added on. There is no provision for any percentage. The attorney fees are taxed by the court normally around $5, depending on the amount. Assuming I have recovered a judgment for $1800 -- and I would like to state this to the Court -- being over $500, if I had sued for the entire amount, at the time this suit was instituted there would have been two filing fees, so that over $500, in addition to the cost that I mentioned, there would be a $15 filing fee for

each of the actions, the principal and the garnishment.

In order to hold the court cost down, I chose to bring an action for back payments to hold it under $500. Today the court has only one filing fee for both actions. Instead of $30, it would be a $15 filing fee. But assuming that I had instituted suit for the entire $1800, this is over the small claim limit, the maximum limit of which is $500, this probably would have not reached trial before anywhere between six months and a year.

On a large claim we have a different waiting period than we do on a small claim matter.

I think the crux of the question before the Court, as Mr. Greenberg has indicated, this is a deprivation of the monies of the wage earner, and I will agree that there is some deprivation. However, this is a sword that is two-bladed. You have a party here that had this money out for over two years and they have been deprived of the use of that money.

I think we are well aware that today in business, companies and banks borrow from other sources on which they pay interest. Your finance companies and your other institutions also borrow, and they pay interest on this money. We were deprived of our money. The creditor sits back and waits.

Under the suggestion of Mr. Greenberg, then the creditor would be the one sitting back holding the bag and the debtor is the one who is taking advantage of the situationand

has the use of this scot-free.

Quite frankly, with the new Consumer Code coming in and the Truth-in-Lending, I don't know who is going to be better off -- the credit or the debtor. My own way of thinking, and this is contrary to some of the articles that I have just read in the past few weeks, they are now coming out saying that even under the new Credit Consumer Code which goes into effect in July of '70, I believe, that the creditor is still coming out ahead, instead of the debtor.

I have heard comments relative to this on the Truth-in-Lending bill. I have gone over the bills. I haven't gone into them thoroughly, but to my way of thinking, I feel that today, under the present passage of these two bills, we are better off to be a debtor than we are a creditor.

Q Does Wisconsin have procedures available to a judgment creditor similar to garnishment or attachment, if you had gone and gotten your judgment for the underlying debt? Then what remedies would Wisconsin give you?

A I could have proceeded with a garnishment.

Q With the same limitation as this garnishment, just a fraction of one pay period?

A Yes. In fact, let me put it to you this way: The amount held was $31. There was, say, $60 that was actually being held. Under the Wisconsin statute, a single person is given an exemption of $25. In other words, this is a subsistence

allowance, so that assuming that Mrs. Sniadach -- and she was single at that time; or she was divorced, let me put it, as I recall -- if she had been single she would have been given the $25, the employer properly should have held $41 and not $31. If she was with dependents, her amount that would have to be given to her first is $40, so that the employer should have held $26.

I didn't check this. I didn't argue this. This is the amount in the answer that came in and we let it go at that.

Q But my question is, after you are a judgment creditor, what are your remedies, given by Wisconsin?

A One garnishment.

Q Yes, but can't you keep serving garnishments every pay period after judgment?

A Only if you have disposed of the previous garnishment. In other words, until about three years ago, when they changed the statute, it was possible, and there were companies doing it -- some of these credit clothing outfits were doing it -- were garnishing every week and tying up that pay check before they had even disposed of the previous garnishment.

You can no longer do this. If you put in a garnishment, you must dispose of that matter. There must be a release. There must be an official or judicial determination.

Q This is so even after judgment, after you have a judgment for the amount of your promissory note, and you are trying to collect it?

A That is right. You can garnishee.

Q Well, you can garnishee, but you still have those limitations?

A Still have those limitations. The question was brought up relative to wage assignments. We do have a wage assignment law in Wisconsin, but the wage assignment is limited to a period of 60 days and then normally the amount is, by agreement, and in the case of these manufacturing companies, the employment man who is responsible for it, or is in charge of working with the employees, will normally suggest the amount to take off. He reviews the situation.

I have found, personally, that they are more than considerate of the needs of the creditor as well as the needs of the employee.

Q The garnishment procedure is really a procedure by which creditors insure the cooperation of the employer and see to it that the employee pays his debts. Is that a fair definition?

A No, I don't believe it is, Mr. Justice Fortas. I believe that a garnishment is a remedy which is afforded to the creditor. It is strictly a creature of the Legislature. There is no question of it. But it was given to the creditor because he had no other remedy. I think it is more important today than it was 15 years ago, or 20 years ago.

Q Let's pursue Mr. Justice Stewart's question. I

am not clear about it. Let's suppose you get a judgment. You have a procedure by which you levy execution there, don't you? Can you go to the employer and, in effect, levy execution on wages that are due and will it also reach wages as they come due?

A No. It only affects the wages due as of the date of service of the garnishment papers. Anything earned after that cannot be touched. It is strictly a one-shot proposition.

Q What if you get a judgment for $1000 against some man who is an employee and who is making $100 a week. What are your legal rights as a judgment creditor against that judgment debtor?

A I can institute a garnishment either with an execution or without an execution. In the case of a judgment of $1000, where your garnishment costs are not $15.20, but every time you issue a garnishment you would have $30 involved, because you have a filing fee, in such a case you would normally issue an execution and then bring Court Commissioner proceedings to ascertain if the man has any assets that can be reached.

Q And then there would be an examination of the judgment debtor?

A An examination of the judgment debtor. If he has assets, under our statute --

Q Under my question, he has wages of $100 a week. Would there be a compulsory assignment of a fraction of his wages?

A No. There is no such thing as a compulsory wage assignment in Wisconsin. It has to be entirely voluntary and it must be joined in by the wife if the man is married and has a family, so that there is adequate protection.

One further statement relative to the garnishment: that although we are not required in Wisconsin to post a bond at the time of a garnishment, there is on the statute a provision that if there is a wrongful garnishment, the creditor can be sued for wrongful garnishment and there are actions which are now pending and have been tried and there can be substantial damages for a wrongful garnishment.

So I feel the protection is well afforded and that, as Mr. Greenberg had indicated, there have been five attempts, or five bills introduced into the Legislature, to change it. The last change was several years ago limiting the garnishment to strictly one action.. Before he can start another one there must be a judgment at that time.

Q In getting a judgment in Wisconsin, can you file it as a lien on the property of the man?

A If you have a judgment over $200, the judgment can be "docketed", as we term it, and that automatically becomes a lien against property, which is only good if the equity in the property exceeds the $10,000 maximum. There is a $10,000 homestead exemption.

Q Real estate?

A On real estate.

Q Real estate. How much personal property?

A Personal property, there is, outside of his household goods and furnishings and the wages on his exemption, the exemption statute in Wisconsin follows pretty close to the Chandler Act as to exemptions.

MR. CHIEF JUSTICE WARREN: Mr. Greenberg?

REBUTTAL ARGUMENT OF JACK GREENBERG, ESQ.

ON BEHALF OF PETITIONER

MR. GREENBERG: If I may, I would like to add just a word or two. There has been some bit of going outside the record on the nature of this debt, and I don't know that it is important that it be asserted that these are the facts, it may be considered as a hypothetical situation if the Court likes, indeed, it would be asserted that she had a defense here, that the defense was inducement of her signature by fraud, that her husband was in jail, that she subsequently was divorced from him, and it was a defense of a sort which would take perhaps some considerable development of evidence and discovery in order to present it properly to the Court, adequately to the Court.

This leads me to Mr. Justice White's inquiry about what would be a proper standard for a prejudgment garnishment if some sort of hearing or procedure were to be established. It should certainly be a standard, if one were adopted, which would adequately enable development of whatever defense the

party, the defendant in the principal action, might have, which would involve, in cases of this sort, sometimes considerable discovery, because many of the facts are principally within the possession of the creditor; usually the note is, the documents and so forth, particularly for people who deal with small loan companies of this sort.

There was a mention of the Uniform Consumer Credit Code. That has not been adopted in Wisconsin. My information is that it has been adopted only in the State of Utah.

We submit that the judgment below should be reversed for the reasons given.

(Whereupon, at 2:30 p.m. the argument in the above-entitled matter was concluded.)