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In the

Supreme Court of the United States

DOROTHY LYNCH, et al.,

Appellants,

vs

HOUSEHOLD FINANCE CORPORATION, et al.,

Appellees.

No. 70-7058

Washington, D. C.
December 7, 1971

Pages 1 thru 46

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IN THE SUPREME COURT OF THE UNITED STATES

DOROTHY LYNCH, et al., Appellants, v. HOUSEHOLD FINANCE CORPORATION, et al., Appellees.	No. 70-5058

Washington, D. C.,

Tuesday, December 7, 1971.

The above-entitled matter came on for argument at 11:46 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

DAVID M. LESSER, ESQ., 185 Church Street, New Haven, Connecticut 06510, for the Appellants.

RICHARD G. BELL, ESQ., 205 Church Street, New Haven, Connecticut 06510, for the Appellees.

C O N T E N T S

(Afternoon Session - pg. 13)

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 5058, Lynch against Household Finance.

Mr. Lesser, you may proceed whenever you're ready.

ORAL ARGUMENT OF DAVID M. LESSER, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. LESSER: Thank you, Mr. Chief Justice.

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

This is an appeal under Title 28, Section 1253, from the judgment of a three-judge District Court in the District of Connecticut, which denied injunctive and declaratory relief.

The issue is whether the Federal Courts are powerless to award any redress to low-income wage-earners whose earnings on deposit are summarily garnished by Connecticut deputy sheriffs without any notice, hearing, or order of the State Court.

Q Now, in Connecticut, will you clear this up for me? Must there be an action pending against the defendant at the time?

MR. LESSER: I would like, Mr. Chief Justice, to begin answering that question, and then explain --

Q All right.

MR. LESSER: -- the Connecticut practice of summary prejudgment in some detail, because it is quite unusual.

Q Yes. You do it your own way, then.

MR. LESSER: In Connecticut, an alleged creditor and his attorney have absolute discretion, prior to instituting suit against the debtor, to summarily garnish earnings in his account, without any involvement of the court. The garnishment occurs before process is served upon the debtor.

The attorney for the alleged creditor instructs deputy sheriffs to levy the garnishment by serving a writ of garnishment on the garnisheed bank.

Q Then when do you get the judgment?

MR. LESSER: Judgment is obtained perhaps several years after civil action is commenced, by service of process on the debtor, Mr. Justice Brennan.

Q Well, what's -- but you garnish, as here, I gather, a savings account?

MR. LESSER: And a checking account, Mr. Justice --

Q And a checking account. Now, then, the garnishor has immediately to file a civil action in that?

MR. LESSER: He does not immediately need to file.

Q How much time does he have?

MR. LESSER: Under the applicable statute, Section 329 of Title 52, and Section 48a of Title 52, it would be possible for the garnishment to be levied, for example, on day one, for the alleged debtor to be served with process, let us say, on day 45 or 50; and for process to be docketed in the State Court, let us say, on day 55.

Q And you don't get into the State Court until day 55?

MR. LESSER: One never gets into the State Court on a garnishment, Mr. Justice Brennan, to raise any questions with respect to that garnishment.

Now, --

Q You mean after the proceeding -- even after you get into the State Court on day 55?

MR. LESSER: That is correct, Mr. Justice, and I would like to explain that.

Connecticut appears to be the only State in which an alleged creditor and his attorney are permitted, in their absolute discretion, to levy and maintain a garnishment until final disposition of the creditor suit, without any involvement of the State Court.

Most other States require the creditor to get some sort of court approval before garnishment, either in the form of posting of bonds, filing an affidavit, and, so far as we know, in all other States the writ of garnishment must be signed or issued by a judge or clerk of court; none of that obtains here.

Now, once the creditor's civil suit for damages is docketed, no questions relating to the garnishment can be considered in the context of the creditor's pending suit. If the debtor claims that the garnishment was levied without any

probable validity, that the creditor's claim has no merit, or that there was no necessity for a garnishment, as in Mrs. Lynch's -- Mrs. Toro's cases, for example, where we allege that they were Connecticut wage-earners, raising a family in Connecticut, steadily employed, no grounds as in Minnesota, for example, where garnishment is permitted only where there may be some danger that a debtor may escape from the jurisdiction to evade service of process or fraudulently conceals his assets.

Q Well, there must be an action pending first against the defendant, shouldn't there?

MR. LESSER: There need not be an action pending first, Mr. Chief Justice.

Q You were addressing yourself to Minnesota.

MR. LESSER: Oh, yes, that is correct.

Q Which is fairly common of many other States, is it not?

MR. LESSER: That is correct, Mr. Chief Justice. In most other States, the garnishment is not permitted to be levied unless the court has issued the writ, and there is a civil action pending.

Q Of course, in most other States, at least those with which I am familiar, the very word "garnishment" means going after somebody's wages, going after his employer for his wages. Here what we're talking about is what's generally

known in other States as an attachment, isn't it?

MR. LESSER: In Connecticut the term "garnishment" --

Q Doesn't this -- well, excuse me; go ahead.

MR. LESSER: In Connecticut the term "garnishment" is used, Mr. Justice Stewart, as a term permitting a creditor to reach debts owing to a debtor, which are in the hands of a third person.

Q But not -- but explicitly not wages, as I understand it?

MR. LESSER: We have alleged in these cases that the constitutional deprivation that Mrs. Lynch and Mrs. Toro have suffered is indistinguishable from that suffered by Christine Sniadach. The only difference --

Q I understand here, I understand your legal argument. I am asking a question that --

MR. LESSER: Wages in the hands of an employer, Mr. Justice, are exempt from garnishment until after judgment, and then it's called an execution.

Q Right.

MR. LESSER: But wages deposited in accounts --

Q In a bank account; yes.

MR. LESSER: In a bank account. And in the Lynch case I think the parallel with Christine Sniadach is most clearly appreciated; her employer deducted ten dollars of her $69 pay check each week.

Q And deposited it in a bank account -- in a savings account.

MR. LESSER: And automatically deposited it in a credit union savings account at her place of employment.

Q Right.

MR. LESSER: Now, once the creditor -- as I was saying --

Q Do you have any amount exempt from garnishment in Connecticut?

MR. LESSER: Mr. Justice Blackmun, there is a statute, Section 352, I believe, of Title 52, which sets out what the exemptions are. That is a very old statute, and the relevant portions for exemptions are necessary tools for the debtor's trade; and necessary household goods.

Q But no cash amount, no monetary amount?

MR. LESSER: Only after judgment, when wages in the hands of the employer are executed upon, is there any exemption. I believe it's either the first $65 of the wage-earner's net income that is exempt, or 25 percent of his disposable income, whichever is greater.

But as to garnishments on wages deposited in accounts, there is no exemption.

Now, if the creditor -- excuse me; if the debtor attempts to raise any issues with respect to the garnishment, in the creditor's suit there is no authority of the court to

entertain those issues, and there is no appeal from the denial of relief, because Connecticut does not permit interlocutory appeals, and such appeals are deemed to be interlocutory.

There are only two questions in Connecticut which a debtor can raise with any hope of getting either a dissolution or a reduction of the garnishment.

We have discussed those on pages 14 through 16 of our brief.

A debtor, in order to raise these issues, must institute separate proceedings pursuant to specific statutes by serving process upon the creditor or his attorney.

Now, he can complain that the garnishment unreasonably exceeds the amount that the creditor himself claims as damages, but the court, the State Court has no ability, no power to inquire into the probable validity of the creditor's claim.

The only inquiry is directed to what the amount of the creditor's claim is.

In Mrs. Lynch's case, in the suit on a note, it's very clear what the creditor's claim is. The garnishment does not exceed the amount which the creditor claims is damages; therefore, Mrs. Lynch cannot make use of that statute. Neither could Mrs. Toro, for the same reason, before her garnishment was released.

The debtor may also move to substitute a bond, but --

Q Incidentally, Mrs. Toro's particular garnishment has been released?

MR. LESSER: Mrs. Toro's particular garnishment has been released, Mr. Justice, and the District Court stated that this raised some question of mootness, which it did not decide.

But, as our prayers for relief demonstrate, pages 10 of the Appendix and 37 and 38, we were also looking for injunction against garnishments to be levied by deputy sheriffs in the future on behalf of other creditors of Mrs. Lynch and Mrs. Toro.

Now, aside from posting a bond, which the wage-earners in this appeal are too poor to afford, and aside from the reduction of the garnishment, where it unreasonably exceeds the amount that the creditor claims, the State Court has no power to release a garnishment.

That is why we are saying that the District Court was in error in these cases. I think that the procedure in Connecticut highlights that the garnishments in these cases are not proceedings in a State Court. No court involvement is necessary from the date of levy until final disposition. Any questions relating to the garnishment must be raised in a context separate from the creditor's suit. The Connecticut --

Q Would your case be any different if your client were General Motors?

MR. LESSER: I think that this case would be different

with respect to the jurisdictional point, Mr. Justice Blackmun, if our client were General Motors; not with respect to the 2283 point.

If I may just --

Q Because it's rather effective to garnish large corporation's bank accounts once in a while.

MR.LESSER: In Connecticut there is a statute, Section 337a of Title 52, which requires a court order for garnishment of checking accounts to the extent that they exceed $5,000.

The grounds upon which an order can issue are set out in that statute, and parallel, curiously very closely, the procedure in a number of other States. The alleged creditor must make some showing that the debtor is about to abscond, avoid service of process, or conceal his property. But those protections are not available to low-income wage-earners.

The three-judge court in this case dismissed the complaints on motion to dismiss on two grounds: first, relying on the Second Circuit decision in Eisen v. Eastman, the three-judge court held that it lacked subject matter jurisdiction under Section 1343, Subsection (3), of Title 28, on the ground that at most the wage-earner could allege an unconstitutional deprivation, a substantial question of an unconstitutional deprivation of their property, valued at less than $10,000.

Its second ground, despite its recognition that

summary garnishments are levied without any court involvement, was that Title 28, Section 2283, the anti-injunction statute, barred all relief.

Now, the rule that we are contending for with respect to the jurisdiction point, and we think that this rule follows directly from this Court's decision in Monroe vs. Pape ten years ago, is that whenever a natural person alleges a not insubstantial deprivation of his Fourteenth Amendment rights under color of State law, Sections 1983 and 1343 are satisfied.

Now, I say natural person, Mr. Justice Blackmun, I don't think that this case needs to go so far as to hold that General Motors, or a corporation, has the right of action.

MR. CHIEF JUSTICE BURGER: We'll suspend for lunch at this time, counsel.

(Whereupon, at 12:00 noon, the Court was recessed, to reconvene at 1:00 p.m., the same day.)

AFTERNOON SESSION

(1:00 p.m.)

MR. CHIEF JUSTICE BURGER: Mr. Lesser, you have about 17 minutes of your time left now.

MR. LESSER: Thank you, Mr. Chief Justice.

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

I would like to resume my discussion of the denial of subject matter jurisdiction by the three-judge District Court, which was the first ground upon which it denied the injunctive relief that our complaint requested.

The rule which we are proposing that this Court hold in this case is that Sections 1983 and 1343 be satisfied by allegation of the Fourteenth Amendment deprivations, by persons acting under color of State law.

We believe that this rule is fully supported. The only reasonable conclusion is by examination of the legislative history and the decisions as discussed in our brief and our reply brief.

We think that a clear enunciation of this rule would have the very great advantage of ending the great confusion which now exists in the different circuits as to the scope of Section 1343, and that it would also end or curtail the needless litigation which has resulted from that confusion.

We discuss the differing circuits' interpretations and how inconsistent they are with one another, on pages 22

through 27 of our brief, and in our reply brief at page 15 -- no, 13.

As to the second ground upon which the District Court denied injunctive relief and declaratory relief, the ground that Title 28, Section 2283, barred all relief, we would say that this Court need not adopt a broad rule, because the garnishments in these cases are not proceedings panding in the Connecticut courts.

The Connecticut Supreme Court said, more than 50 years ago, in the case of Sachs v. Nussenbaum, which we have cited in our brief and reply brief, that the release of a garnishment has no effect upon the pending creditor's civil suit. No State Court interest in adjudication would be affected by holding that the garnishments in these cases are not proceedings in the State Court, because they are not under the control of the State Court.

We do not believe that in this case this Court need reach the question of whether Section 1983 is an expressly authorized exception to Section 2283, even though we feel that in these cases we have shown through our brief that the wage-earners have no redress in the State Courts.

And I would refer the Court to the case of Michael's Jewelers v. Handy, cited in our brief, in which, after the Sniadach decision, a low-income debtor challenged the very statute, Title 52, Section 329, under which the garnishments

in these cases were levied, on the ground that they deprived her of notice and hearing, procedural due process.

Q Let me see if I can get a little better light on your constitutional argument by a hypothetical, with reference to the other States. If a garnishment were permitted by notice, by process served on the garnishee and on the defendant, after an action had been commenced in the State Court, do you think that meets constitutional standards?

MR. LESSER: Mr. Chief Justice, if garnishments were levied after notice and hearing were given to the debtor, we would say that that would be constitutional safeguards; but that issue is not before this Court. The reason --

Q I'm trying to test some of your other arguments by that process here.

MR. LESSER: Yes, sir.

Q By notice, you mean a notice -- that the notice must allow a period to respond before the garnishment would take effect?

MR. LESSER: Yes, Mr. Chief Justice.

Q And then, of course, there wouldn't usually be any property remaining.

MR. LESSER: Exactly the same --

Q Unless the property were impounded pending the disposition of the process.

MR. LESSER: We would be asking for exactly the same

protections accorded to Christine Sniadach. Several State Courts have held prejudgment attachment and garnishment unconstitutional.

The resolution of the constitutional issue is not before this Court, however. I've raised -- I've explained the practice of prejudgment garnishment in order to give context to our claims that garnishment is not a proceeding in a State Court, and the severe deprivations that result from excluding Mrs. Lynch and Mrs. Toro from a federal forum. If this case is remanded, then the District Court will reach the constitutional issues, and we will be able to litigate them there; but the three-judge court itself recognized, although it did not reach the constitutional issue, and decided, Mr. Chief Justice, that the wage-earners had raised substantial constitutional issues in light of this Court's decision in the Sniadach case.

But that, whether the constitutional principle ultimately at issue here would involve an extension of Sniadach, is not before the Court here.

Q Well, in your challenge here, you say they were in error in denying that it had jurisdiction over this action?

MR. LESSER: Yes.

Q And if we agree with you on that, we don't reach the merits?

Q That's right.

MR. LESSER: That's right, Mr. Justice Brennan. Also that the three-judge court was in error in holding that Section 2283 barred relief.

And although the opinion of the three-judge court is not entirely clear, it seems to us that a reading of it will indicate that the three-judge court did not hold summary garnishments to be proceedings in a State Court. The way we read the opinion, Mr. Justice, is that the three-judge court felt it enjoined -- that releasing garnishments would probably interfere with the existing creditor's suit. This is on motion to dismiss, and, additionally, the Connecticut Supreme Court itself has held, in the Sachs case, that release does not affect the creditor.

So that it's an entirely different matter.

Finally, as to our 2283 point, we do not believe, under any circumstances, that Section 2283 would bar an injunction against Connecticut deputy sheriffs from filing future summary garnishments in proceedings of existing creditor suits, not yet instituted, by other creditors of Mrs. Lynch and Mrs. Toro.

In conclusion, the only question before this Court is whether Congress intended Mrs. Lynch's and Mrs. Toro's complaints to be heard in a Federal forum.

We submit that since they have alleged substantial Fourteenth Amendment violations, and that they have no redress

in the courts of Connecticut, their claims must be heard in the Federal Court.

We therefore ask this Court to reverse the judgment of the three-judge court below, and to remand it for resolution of the merits.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Lesser.

Mr. Bell.

ORAL ARGUMENT OF RICHARD G. BELL, ESQ.,

ON BEHALF OF THE APPELLEES

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

I would like to pick up, if I may, precisely the point where my brother, Mr. Lesser, left off; and that is posing the question as to whether Congress intended these claims to have been heard by the three-judge District Court below.

The basic holding of the lower court was that it did not have subject matter jurisdiction under Section 1343, and that was the basis of its dismissal.

Now, the appellees' position on the 1342 jurisdictional question rests squarely upon the doctrine enunciated in the Eisen case, which in turn goes back to the postulation by Mr. Justice Stone in the Hague decision as to the relation between 1343 and 1331.

And I'd like to review that, because that's the basis of our position and the basis of the lower court's dismissal below.

Now, the appellants have a direct argument and an appealing argument as to why this is not so, and they say, basically, that the Fourteenth Amendment was enacted with the purpose in mind to protect precisely the kind of right that is involved in this case.

Further, that Section 1343 and Section 1983, the statute creating cause of action, were designed to pick up that -- those constitutional rights and to provide a cause of action and jurisdiction to secure them.

Finally, the appellants say that Section 1331, the $10,000 jurisdictional statute, is to be looked upon as separate and apart from and distinct from the 1343 and 1983 propositions.

Now, if the matter were as clear as this from the legislative history, the wonder is, really, that Mr. Justice Stone had to go through his process of reasoning in the Hague decision at all. And the answer must be, simply, that a selective choice of the legislative history is simply not as clear and not as precise and not as symmetrical as the appellants would have it.

I believe that the reason for this, really, is that what you overlook in establishing that kind of precise intent

to a portion of the civil rights legislation is the nature of the process that went on in Congress for the period following the Civil War. In Mr. Justice Frankfurter's words, these were years of struggle and of compromise. And to reduce a portion of the legislative result to clarity and directness and simplicity overlooks the nature of that struggle, and it overlooks the triumphs and the defeats of that compromising process, and it overlooks the intensity of the passions that were involved as the post-Civil War Congresses tried to hammer out, in lasting terms, what it was that had torn the country apart for five years during the Civil War.

Now, I think it's instructive to review the period that's in question, while this legislative history accumulates.

We begin in 1865 with the Thirteenth Amendment itself, which is, of course, Emancipation.

In 1866, we have the first of the Civil Rights Acts. That was the Act which, among other things, included what is today Section 1983, that statute dealing with equal rights as to ownership and as to disposition of property, and there is evidence from the history, as suggested in our brief, that 1983 was the keystone of the reconstruction Congress' effort to preserve that kind of property right.

In 1868, the Fourteenth Amendment itself.

In 1870, there's another Civil Rights Act, and the Fifteenth Amendment, dealing with voting rights, comes into

being.

In 1871, there are two Civil Rights Acts that come on the books, and one of them is the so-called Ku Klux Klan Act of 1871, from whence the present-day 1983 statute, creating the cause of action, and the 1343 jurisdictional statute derive.

Now, there is evidence in the history that what was of paramount concern in this Ku Klux Klan Act of 1871 was the unequal treatment of people, evidenced by the Klan activity in the South, from whence the Act took its name; the discrimination on the basis of race; its denial of equal opportunities; and the denial of the equal application of the laws in the years following the Civil War.

Finally, the last stage in this legislative history, in 1875, is the first emergence of Section 1331, the jurisdictional statute, which now deals in terms of $10,000; but, at the time of its original passage, I believe it was a $500 statute.

There's a pause in 1875, and there's a recodification that takes place in that year, and some adjustments are made to the statutes that had preceded it.

For instance, I believe it's at that time that the statement in 1983, dealing with a cause of action based on federal laws, as well as the Constitution, first comes into being, in 1875.

The jurisdictional statute, 1343, includes at that time a statement with respect to causes of action based on federal laws denying equal rights, and express reference to the kind of equality concern that was at the heart of the Civil Rights legislation.

Now, what Mr. Justice Stone's formulation in the Hague case does is take the year 1875 as the point of departure, from whence both 1343 and 1331 have existed on the books side by side, down to the time of the Hague decision, which is 1939.

Excuse me, there was one legislative activity during that period, but not of tremendous significance; that was the 1911 recodification, when the jurisdiction of the Circuit Courts and the District Courts became merged in the District Courts, and 1343, the jurisdictional statute, preserved the phrase that it has today dealing with jurisdiction of causes under those federal laws providing for equal rights.

Now, what Mr. Justice Stone saw from the history that he looked at in its entirety, and as a whole, were these two parallel statutes, one providing a cause of action under Section 1343, with no monetary allocation, no monetary requirement whatsoever, and the parallel statute, 1331, which did in fact have a monetary requirement, which, as I said before, has been changed during the course of the years.

Now, his analysis led him to believe that 1343, that jurisdictional statute which is at issue in this case, was the

one intended to be directed at those causes of action which were essentially denials of personal right, and those causes of action based essentially on denial of the equal protection of the law; the discriminatory evils which the Reconstruction Congress had noted in the Ku Klux Klan Act and others.

1331, on the other hand, according to Mr. Justice Stone's formulation, was that statute designed to pick up those actions where were essentially of a property nature capable of being measured in monetary amounts.

Now, in looking back at this history, his field of vision was not entirely uncluttered, or unclear, because he had precedents before him, in such cases as the Pleasants case, Greenhow, and Holt v. Indiana, which were cases giving some attention to the 1343 question. And those cases had started the attack consistent with Mr. Justice Stone's formulation, to the effect that 1343 was the statute dealing with civil rights; 1331 the statute dealing with property allegations, which were purely property, and did not involve those rights susceptible of being measured in monetary or pecuniary terms.

Now, that's the rationale that Mr. Justice Stone in Hague relies, and that's the one that comes to rest in the Second Circuit case involving Eisen, which was Judge Friendly's opinion some 30 years later, I believe in 1969.

Now, in the Eisen decision, Judge Friendly is candid

and frank to note the difficulties with the Hague formulation, because it was 30 years previous, and also because there was no majority opinion in the case, and Judge Friendly pointed that out in the course of his opinion.

However, notwithstanding what he termed to be difficulties with it, and notwithstanding some self-confessed uncertainty as he explains quite explicitly in his opinion, he filed that the formulation had three specific virtues.

He saw it, as the counting point, the prior decisions of this Court that, as far as the time of the Eisen case, both as to where jurisdiction had been granted and those as to where it had not, with one exception: He saw it, as harmonizing, the parallel relation of 1343 and 1331 during the long history stemming from the recodification in 1875.

And finally, he felt convinced, in the Eisen opinion, that this rationale of Mr. Justice Stone preserved in 1343 the kind of case that was at the heart of the Civil Rights enactment immediately following the Civil War; that is, it preserved those causes of action based on discrimination, based on unequal treatment, based on denial of equal opportunity, which could not be measured in money, and which would not lend themselves to any kind of property analysis.

And thus, the Eisen decision in the Second Circuit effectively repeats the Stone analysis and gives rise to the separation between 1343 and 1331, on the basis of whether or not

the right alleged or asserted is or is not capable of monetary valuation, or whether it's one of those intangible rights of personal liberty which is not so capable, and therefore for which no monetary requirement lies within the statute.

Now, it was the application of this analysis, that is of the Eisen rationale based on Mr. Justice Stone's rationale, that was at the heart of the lower court's dismissal, on the basis of lack of subject matter jurisdiction in this case.

Now, the garnishment process in Connecticut -- and may I just explain that the garnishment process is a kind of attachment, and Mr. Justice Stewart raised this question, I believe the statute itself is Title 104 on attachment, and garnishment is used with respect to that statute with the understanding that it's part of the over-all attachment pattern in the State of Connecticut.

Q But in Connecticut, as I understand it, one thing that cannot be reached prior to judgment is wages owing from an employer to an employee.

MR. BELL: That's correct, Your Honor. If we look at the attachment statutes as a whole, there are several things which, as a matter of fact, are proscribed, all of them having kind of a common thread of interest, which reflects a legislative concern in Connecticut for those kinds of property which come closest to enabling one to exist and to enable one to operate in a free society.

You cannot attach or reach or garnish wages in advance of an action. You cannot deal with household or personal effects. You cannot reach the tools of one's trade. You cannot reach an automobile without a court order. There are certain kinds of action wherein attachment of any nature, garnishment or otherwise, is prohibited before a suit.

There are classes of plaintiffs as to whom the process is denied in advance of suit.

Q Is there any time limit, counsel, that the garnishment may remain in effect for trial on the merits? Some States put a time limit, six months, three months --

MR. BELL: No. If the garnishment is properly effected at the outset of the suit, it will remain pending throughout the duration of the suit, so its time limit is co-extensive with the pendency of the lawsuit itself.

Q So if a lawsuit -- if, in a particular district, there were three years in reaching cases for trial, the money would be impounded all that time?

MR. BELL: That's correct. The garnishment would continue to apply during the pendency of that action, and until the -- within a certain period following judgment, as a matter of fact, allowing for execution on that garnishment. That is correct.

The point I'm trying to make there is that the process from the beginning is circumscribed with respect to certain

classes of assets and certain classes of suits and certain classes of plaintiffs for whom or as to whom the process is simply not available.

Now, these two plaintiffs in the basic cases below had money claims against the defendants, one suit on a note, the other back rent. They were prohibited by Connecticut statutes from attaching the kinds of assets or seeking to garnish the kinds of assets that I've described; that is, wages at the source, automobiles without a court order, necessary household or personal effects, or tools of one's trade.

They were permitted to garnish, to reach the assets not in the hands of the debtor but in the hands of a third party. In this case, in one hand a savings account, in the other a checking account. Essentially a debt due, which is the key word in our garnishment statute, from those banking institutions to the defendants in question.

Now, the effect of doing so is to put, place a conditional lien on that asset during the pendency of that lawsuit. Once that is done, that is once the garnishment process is effected, there are provisions under the statute whereby the defendant can come in directly to the court for reduction or bill of particulars for verification of the claim or a substitution of bond. And that does not rely on the pendency of the cuit, that can be done as soon as the garnishment process

has been reached.

But it was under these circumstances, that is, in looking at a debt due the defendants from a third party, that the court below attempted to analyze the nature of the interest involved and found it to be essentially a property interest. That is, one measurable by money, since the accounts in question were in fixed amounts.

Being a property interest, it found it not to lie within the 1343 formulation, under the Eisen and Hague rationales, and being merely a property interest, the decision of the lower court based -- finding itself without jurisdiction, was based on the implicit assumption that it would be subject to the 1331 jurisdictional statute.

Now, there was an alternative holding in the court below, and that was the one predicated on 2283. 2283 being the anti-injunction statute, which proscribes the application of injunction during the pendency of the wtate Court proceedings.

And this was relied upon by the lower court as an alternative holding, having addressed itself to the jurisdictional issue first.

Now, the purpose and the policy of 2283, I believe, are familiar. The statute dates from 1793, and it reflects the kind of sensitive concern for State proceedings that ought to be had by the federal judicial system, once the State proceeding or once the State system has been set in motion. It was a

matter of first business for the Congress of the United States to establish that relation between the two judicial processes.

Now, the Carnegie garnishment statute, or the attachment statute with which we are dealing with dates of almost equal vintage, as a matter of fact; it goes back to the beginning of the State of Connecticut and represents a scheme that has been in effect in the State of Connecticut during its judicial history. We thus have this old State policy, and a venerable federal policy now in focus within the confines of Section 2283, the anti-injunction statute.

Now, the question becomes whether, for the purposes of Section 2283, the garnishment arrangement in Connecticut, the garnishment machinery constitutes proceedings within the meaning of Section 2283 as to which the federal action should be stayed during the pendency of the State case and the State procedure.

Q It's not a court proceeding, is it?

MR. BELL: Excuse me?

Q It's not a court proceeding, is it?

MR. BELL: Well, it involves court procedure, Your Honor. It is effective as to --

Q In this particular case, how does it involve a court procedure?

MR. BELL: Well, in that it invokes the utilization of statutory procedures in court or attacking the garnishment,

if that is desired by the defendant.

Q Well, what did these people do in the Connecticut court?

MR. BELL: They did nothing, Your Honor, I believe.

Q Well, then, how is this a court proceeding in the State of Connecticut?

MR. BELL: Well, that bears on the question of what is a proceeding under 2283. It is true that the garnishment --

Q It's a court proceeding; that's what it is. Isn't it?

MR. BELL: Yes, sir. But our position --

Q Well, this --

MR. BELL: It is our position that it is a proceeding, and that it is a proceeding here.

Q Yes, but is it a court proceeding? My emphasis on the word "court" or legal.

MR. BELL: Well, the concept of proceedings in 2283, Your Honor, I believe takes in all phases of a lawsuit, and it takes them in from beginning to end. There is a Hill v. Martin decision, which is cited in --

Q Well, suppose -- I'm sure you're familiar, because of your client; suppose your client repossesses a car, would that be a court proceeding?

MR. BELL: Well, he needs to proceed with an order of the court, Your Honor, at the outset, and that --

Q Does he? In Connecticut?

MR. BELL: Yes, sir.

Q That's because of the Connecticut statute, isn't it?

MR. BELL: That's correct, Your Honor.

Q That's not normally so, is it?

MR. BELL: Well, for automobiles, it is, under the statute at the present time.

Q Well, as I understand, Mrs. Lynch made this note and didn't pay the money; you go to the sheriff or deputy sheriff and he garnishees the bank account?

MR. BELL: That's correct.

Q None of that, up to that point, has ever happened anywhere near a courthouse?

MR. BELL: That's correct, Your Honor.

That's correct. The proposition --

Q And that's where this case was when it came into Federal Court, wasn't it?

MR. BELL: Well, this was -- this case was pending at the time the federal action was instituted. That is, the basic --

Q That's the case that you filed. And, as I understand, they are not trying to get an injunction against that case. Am I right?

MR. BELL: Well, they are seeking to enjoin the

application of the utilization of the Connecticut statute.

Q They are seeking to get their money back!

MR. BELL: That's correct. And they are seeking to enjoin the application --

Q And they don't need the Connecticut court to get that money back.

MR. BELL: Well, I think that's the question. And one of the allegations is that, they make, the Connecticut courts don't have the machinery to do just that.

Q Well, all I'm trying to do is test you a little. I admit I'm being over-technical about this; but I just don't see where -- I don't think the sheriff is the court.

MR. BELL: All right.

Q The deputy sheriff.

MR. BELL: Maybe I could explain it this way: --

Q Good!

MR. BELL: The question zeroes in on exactly what proceedings are within the concept of 2283. I would suggest this: If the -- given the policy of 2283, which is a concern for the relation of these judicial systems, given the fact that the question, as a matter of fact, as to constitutionality is an open question in the Connecticut court, and given the language of prior Court decisions here, in Hill v. Martin, I would suggest it is proceedings. The Hill language of Mr. Justice Frankfurter suggested that the concept of proceeding

for 2283 purposes should include all steps and all phases of a lawsuit or actions by ministerial officers of the court, including those which are directed, either ancillary or supplementary, towards making the suit or the judgment effective.

And I would say that that concept of proceedings, dealing with the whole workings of the judicial processes of a State, does include the process of garnishment, and does include the process of attachment.

Q Is the sheriff in Connecticut elected or appointed by the court? If you know.

MR. BELL: I believe the deputy sheriff, who served this, was appointed. He is appointed, I believe, by a sheriff who is an elected official, if I'm not mistaken. I believe that is right.

Q Well, is he responsible to the court?

MR. BELL: Well, he's an officer, a ministerial officer who must at least have enough color of State law to fit in under the original statute appointing him.

Q I apologize for being even more technical. (Laughing.)

MR. BELL: Well, I would suggest that he is a ministerial officer in serving the writs or the papers involved in the garnishment process. The lawyer is the one who initiates the action, who, in Connecticut, is termed the

commissioner of the superior court, an officer of the court. He must work through a statutorily designated officer to serve process, who, in so doing, is the ministerial officer of the court, I would submit, for the purposes of Section 2283 and its concept of proceedings.

Now, I think the express language of that Hill case is significant because it emphasizes it is not just the question of liability or not in the lawsuit itself, it embraces those activities triggered by the lawsuit which bear upon making a judgment secure or effective ancillary proceedings instituted by ministerial officers. And I believe that concept of proceeding, when we have a pending State action, is the one that should apply under Section 2283.

Now, one of the things that was raised by --

Q May I ask, Mr. Bell: I'm looking at the opinion of the court below, page 26. What they have said is: "although garnishment may be separated, the underlying in personam action," just what do you say to that?

MR. BELL: I believe what it was saying, Your Honor, is that the question, for instance, of liability or not, the basic rationale of any judgment that might be rendered by the court is separate from the garnishment proceeding. I believe that's the context, Mr. Justice Brennan, in which the three-judge court was using it there.

Q I don't find anywhere in this opinion, I gather

that under the statute the question is whether this garnishment, whatever it is, is a proceeding in a State Court; is that it? That's the question.

MR. BELL: That's correct.

Q I don't see that this opinion addresses itself directly to that question, does it?

MR. BELL: I think the language is not as direct as I would have liked to have seen it, but the holding under 2283 must necessarily involve the conclusion that it constitutes proceedings; there is reference made by the --

Q Well, it's more than proceedings. Does it constitute proceedings in a State Court?

MR. BELL: That's correct.

Q That's what the statute says.

MR. BELL: That's correct.

While there isn't any question that the basic garnishment that were affected in both Lynch and Torc were in connection with, and preceding to, pending State Court actions. That is both cases were pending at that time in the Sixth Circuit Court of Connecticut as to which these garnishments had in fact been affected.

And I think what the --

Q Incidentally, when was the complaint, the creditor's complaints filed here, in relation to the time of the Federal Court complaints?

MR. BELL: Well, I think with the -- oh, in relation to the Federal Court?

Q Yes.

MR. BELL: Well, the creditors' complaints were filed in Lynch on July 1 of 1970, Toro in February, and the complaints in the Federal Court were, I believe, in March or April 1971.

Q In any event, after the creditors' complaints were filed in the State Court?

MR. BELL: Yes, sir.

Those actions were --

Q But I gather that -- in this case in the Federal Court, the complaint did not ask for any restraint against the prosecution of the creditors' complaints in the State Court?

MR. BELL: Well, it asked for -- not prosecution, it asked for injunction against the utilization of these Connecticut garnishment statutes as to these points.

Q No, but my question was, it did not ask any restraint against the creditors going on with their creditor suits, did it?

MR. BELL: I have to answer you're correct, Mr. Justice Brennan, as far as the suit is concerned, but they did seek the application --

Q Well, what they wanted to do was take away from you the security you now held under the garnishment --

MR. BELL: That is correct.

Q -- process, for the recovery of a judgment if you have to do this.

MR. BELL: That's correct.

Q Isn't that it?

MR. BELL: That's precisely correct.

Now, that --

Q Now, how should we approach interpreting proceedings in the State Court, strictly or --

MR. BELL: I believe that Hill v. Martin suggests that, given the policy of 2283, that it needs to be a generous construction, that the concern expressed in the statute is for the operation of the State judicial system.

Q You mean generous against jurisdiction?

MR. BELL: Well, I think it requires a broad interpretation, because of this --

Q A broad interpretation against jurisdiction?

MR. BELL: I believe so. Because I think the concern --

Q I don't mean jurisdiction, I mean against --

MR. BELL: Yes. I believe the concern is to permit, if it's appropriate to permit, the State proceedings to go on.

Now, one of the points made by the appellants is that it is not incumbent to do so here, because there isn't any way to raise the question they want to raise in the State Court, and I think that bears on this issue.

What they have said is that even if 2283 applies at

the outset, you have a situation in Connecticut where you cannot raise the constitutional claims that they sought to raise in the Federal Court. Where there is no relief in the State process, then, 2283 notwithstanding, the Federal Court should have taken jurisdiction and should have proceeded.

We would dispute the availability of claims in the -- of remedies available in the State Court.

Q Incidentally, Mr. Bell, is the question before us whether 1983 is an express exception?

MR. BELL: I believe -- I believe it is --

Q I notice it was decided, apparently the Second Circuit holds that it is not. It does not recognize 1983 as an express exception of 2283. But is that issue before us here?

MR. BELL: I believe that it is with the total 2283 issue, Your Honor.

Q Yes.

MR. BELL: But to dwell just a moment on State remedies, if I may, because I believe that's an important point. If there were no remedies, nor procedures, nor processes in Connecticut for raising the kinds of issues, then we might have a different kind of situation.

I would like to observe that you could raise exactly the kind of issues in the pending State proceedings that were in fact raised in the District Court.

I am not dealing now with the preliminary relief --

Q As to which, with the creditors' action?

MR. BELL: That's correct, Mr. Justice Brennan.

Q How do you do that?

MR. BELL: I believe if you sought an injunction in the State Court proceeding, that is available by way of a counterclaim --

Q Well, the creditor brings a suit for recovery on a note, isn't that what it was?

MR. BELL: Yes, sir.

Q And in that proceeding you are suggesting that the defendant seek an injunction against the garnishment?

MR. BELL: I am. I am suggesting that the defendant can raise, either by independent action or by counterclaim in the State suit, an injunction based on the claimed deprivation under the Fourteenth Amendment.

Connecticut also has a declaratory judgment process, which is available to a defendant.

Q That would be independent -- that would be an independent suit, wouldn't it?

MR. BELL: It could either be by independent suit, Mr. Justice Brennan, or by way of counterclaim.

Now, the declaratory judgment is a little different in this particular court. The Circuit Court, in which these actions lay, the Sixth Circuit Court, does not have declaratory judgment jurisdiction. You could raise it in a counterclaim,

as we've noted in our brief, and then transfer it to another court of appropriate jurisdiction.

Q The whole suit then, or just the counterclaim?

MR. BELL: Well, the whole action would follow.

Q All right.

MR. BELL: But the point is that under Connecticut practice, both the injunctive relief is available, and that is within the jurisdiction of this precise Court, and the declaratory relief is also available; and I believe that the law of the State of Connecticut assures it.

Reference has been made to Michael's Jewelers v. Handy, which was a Sixth Circuit Court case, involving the same kinds of set of facts; that is, a garnishment response by a defendant.

A motion for injunction was presented to the court there, and that court addressed itself substantively to the constitutionality of the garnishment process in the light of Sniadach. It held, on the merits, that it was constitutional; and I suppose that settles, for the time being, the law of the Sixth Judicial Circuit.

But the point is that the case illustrates it can't come up by motion. A better way, I submit, would have been to have done so by counterclaim, or by the declaratory judgment proceeding.

An even more effective device, I also suggest, comes

from 1983, the federal statute itself, which provides for a civil cause of action for damages in the event of deprivation. That lies, by way of counterclaim, in the same Sixth Circuit Court, which has the unique advantage of avoiding any mootness problem that we had in Toro, for instance. You will recall the companion to Lynch here involved a situation where the garnishment was in fact released.

A civil cause of action by way of 1983, for which the State Courts have concurrent jurisdiction to handle, avoids very nicely the problem of mootness; and, combined with injunctive request and combined with declaratory judgment, permits the raising in exactly the same court below, the Sixth Circuit Court in New Haven, Connecticut, of precisely the issues that were sought to be presented to the Federal Court in the claims that were brought to the three-judge court.

So I would say that the availability of State remedies in the State Courts makes it all the more incumbent for, under the 2283 policy, to have consideration for the breadth of proceedings which are then pending and to permit them to continue.

The constitutional issue has never been presented to the Connecticut Supreme Court throughout the long history of the garnishment process. The constitutional issue, both as to the U. S. Constitution and even under the State of Connecticut's Constitution, which is a brand new Constitution,

since 1965 when it adopted a new one. Those are open issues as far as the State is concerned, and the State Supreme Court has never, in the light of Sniadach, examined this process.

I believe all the more reason to construe the concept of proceedings as it is construed in Hill v. Martin will bear the federal intervention and permit the State Court process to continue.

The question of express exception to 2283 is discussed at length in our brief, and all I would say in conclusion is that it is not just an exception, it is an express exception, which is required to 2283. At least some reference in the statute which takes cognizance of the problem of two pending actions going on simultaneously, and tells one or the other to stay or to proceed. There is no express reference in 1983 to that problem.

There is no mention of the difficulties posed by two pending actions, and no requirement that one or the other goes forward, as is the case with virtually every one of those express exceptions which have been historically noted to the 2283 statute.

I have not had occasion to discuss further the request for declaratory relief, which was embodied here; the denial of the injunctive remedy below we believe takes care of that request, as well, which was made. Our position on that, as stated in the brief, is that request for declaratory judgment

is essentially of the same effect as the request for injunctive relief, and we believe that the prior decisions in cases so hold.

Thank Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Bell.

Mr. Lesser, you have about ten minutes left.

REBUTTAL ARGUMENT OF DAVID M. LESSER, ESQ.,

ON BEHALF OF THE APPELLANTS

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

As to the question of whether relief lies in the Connecticut courts, I would first like to make the point that any such affirmative actions would of course be entirely separate proceedings, against which no injunction is being sought.

Now, as to the Michael's Jewelers case, there the appellate court, the appellate division of the Circuit Court held that no appeal would lie from the refusal of the lower court to dissolve the garnishment on the ground that it was levied without notice or hearing.

The appellate court held that the Circuit Court, the lower court, had no authority to entertain any relief; and then it said: But at any rate Connecticut statutes providing for prejudgment garnishment of accounts is constitutional, distinguishing Sniadach.

Q Do you agree with your friend that your client can assert counterclaim --

MR. LESSER: No, I don't --

Q -- under 1983 grounds?

MR. LESSER: I don't believe that a counterclaim would lie in the Sixth Circuit Court action, where the creditor suit is pending against Mrs. Lynch, Mr. Chief Justice. A counterclaim must be related to the matter in demand is the way the practice book reads.

I believe that Section 124 of the Connecticut practice book --

Q You say it does not relate to the matter in demand when the counterclaim would be against the unlawful act of garnishment --

MR. LESSER: The garnishment would be unrelated to the complaint that's alleged, that is, the claim of Household Finance Corporation that money is due and owing from a note.

The only case I've been able to find was the case called the Bank v. Riley?, reported in 12 Conn. Supp., in which it was held that a counterclaim in those circumstances would not lie.

But, at any rate, it would seem that the issues in the Circuit Court have been settled by Michael's Jewelers one way or another: either the court cannot entertain the complaint, the motion to dissolve the garnishment, or if it can, if it

can entertain it, nevertheless garnishment is still constitutional.

And let me simply refer the Court to our Reply Brief, at pages 23 and 24, in which we set out the substantial cost of litigating in the Connecticut courts, in order to bring a suit for declaratory judgment. For example, it is necessary, as a jurisdictional requirement, to notify all interested parties, which carries a substantial cost.

Now, the Connecticut Supreme Court has, during all the years of this century, affirmed the constitutionality of summary prejudgment garnishment; not since Sniadach, that's true, but in the Michael's Jewelers case the appellate court opinion, the appellate court did not certify that a substantial question of law was involved, thereby making an appeal to the Connecticut Supreme Court impossible.

What occurred in that case was, I suppose, an equivalent of certiorari. The debtor filed a petition for certification to the Connecticut Supreme Court, but that was never acted upon, because then the creditor withdrew his underlying damage suit.

I would finally like to state that a lawyer is not a ministerial officer of the court, and I would refer the -- and neither is the sheriff. The sheriff is acting under the instructions of the lawyer, who, under decisions of the Connecticut Supreme Court, has full absolute discretion in

levying the writ of garnishment. I refer the Court to the Sachs case again, Vol. 92 Conn., page 16 of our brief, and a case which is not in any of our briefs, Scharkowitz v. Smith?, in Vol. 143 of Connecticut Reports.

We also state in our brief that even if the garnishment represents an abuse of process, the State Court is barred from releasing that garnishment.

Thus, under Hill v. Martin, we would say that there is no action by the court or any of its ministerial officers, and therefore garnishment is not a proceeding in a State Court.

As to the remarks on jurisdiction, we will rest on our argument and our brief, unless there are further questions.

Thank you very much for the opportunity to be here.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Lesser.

Thank you, Mr. Bell.

The case is submitted.

(Whereupon, at 1:43 p.m., the case was submitted.)