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Civil Practice Act Cases

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nal prosecution under the Sherman Act regardless of the effect of their acts upon the interstate market, and if the sole penalty for such conduct is to be the mere imposition of damages, then Congress ought certainly to take steps to require labor unions to become responsible bodies. An excellent working model for any such legislation may be found in the British "Trade Disputes and Trade Unions Act of 1927."[42] Its provisions would bear careful study and the enactment of its main features would help fill a gap which will be created by the expiration of the War Labor Disputes Act.

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CIVIL PRACTICE ACT CASES

GARNISHMENT—PERSONS AND PROPERTY SUBJECT TO GARNISHMENT—WHETHER OR NOT CONTENTS OF SAFETY DEPOSIT BOXES MAY BE REACHED BY GARNISHMENT PROCEEDINGS—In the recent case of *Morris* v. *Beatty*,[1] after judgment against the principal debtor and return of execution unsatisfied, plaintiff commenced garnishment proceedings against a bank. The latter answered by stating that, at the time of service of summons upon it, it had a small balance in an account which it had set-off against a note owed to it by the principal debtor and that it had also rented a safe deposit box in its vaults to such judgment debtor although it claimed to have no control over the contents thereof. Before hearing on the answer was possible, an order in bankruptcy restrained the plaintiff from prosecuting his garnishment action. Subsequent thereto, the garnishee permitted the principal defendant to have access to the safety deposit box on several occasions. When the injunction order was eventually vacated, the plaintiff caused the garnishment proceeding to be set for hearing[2] but the trial court discharged the garnishee. On appeal, such decision was reversed by the Appellate Court for the First District on the ground that the safety deposit box and its contents were subject to garnishment as property in the hands of a bailee and the conduct of the garnishee in permitting the principal defendant to have access to the same placed upon it the burden of proving that none of the contents had been removed therefrom or else to suffer judgment for the amount of the plaintiff's claim.[3]

Although the principal question involved in the instant case has never been passed upon before in the reviewing courts of this state, the holding could be said to be foreshadowed by the decision in *National Safe Deposit Company* v. *Stead*,[4] which had held the provi-

[42] 17 Geo. V, c. 22.

[1] 323 Ill. App. 390, 55 N. E. (2d) 830 (1944).

[2] The garnishee had, in the meantime, moved for discharge on the ground that, by failure to traverse the answer, the same stood as admitted to be true. Such point was deemed waived, by reason of the fact that the garnishee had introduced evidence to sustain the answer, on the authority of Pink v. Chinskey, 303 Ill. App. 55, 24 N. E. (2d) 585 (1939), abst. opin.

[3] Framheim v. Miller, 241 Ill. App. 328 (1926), was distinguished on the ground that the attempt there had been to punish the garnishee for contempt for refusal to comply with an order to open a safety deposit box.

[4] 250 Ill. 584, 95 N. E. 973 (1911).

sions of the Inheritance Tax Act constitutional as applied to proprietors of safety deposit vaults on the theory that the relationship between the proprietor and customer was intrinsically that of bailor and bailee rather than landlord and tenant, as well as by subsequent cases in which the degree of duty owed by the proprietor for the care of the customer's valuables had been enunciated.[5] If such persons are bailees, there can be no question but what they are subject to the provisions of the Garnishment Act for the same applies not only to money but also to "goods, chattels, choses in action or effects other than money" belonging to the judgment debtor.[6] Proprietors of similar vaults in other states have been held to be subject to garnishment process under somewhat similar statutes,[7] so the application of the statute in the instant case seems warranted.

More momentous, however, is the matter of the action which should be taken after the service of garnishment process. The garnishee is required, by Section 5 of the statute, to file a "full, direct and true" answer to all interrogatories submitted by the judgment creditor,[8] and is also obliged to deliver up possession of any goods, chattels, etc., to the proper officer.[9] From the very nature of the garnishee's business, it is impossible to give an accurate list of the contents of a locked safety deposit box to which the garnishee has no unaided power of access, or to surrender the possession thereof. For that reason it was argued that because no independent control could be exercised over the contents of the box, the same were not in the "possession, custody or charge" of the garnishee.[10] The fact remains, however, that the judgment debtor could have no access to the property either, unless with the consent of the garnishee, so it is obvious that the latter is in a position to exert some control over the same.

It has been held that upon service of garnishment process, a lien is impressed upon any goods, chattels or possessions in the hands of the garnishee.[11] It would, perhaps, be more nearly the case to say that, if the garnishee fails or neglects to surrender such goods or to preserve the same for subsequent delivery upon order of court, he subjects him-

[5] See, for example, Hauck v. First Nat. Bank of Highland Park, 323 Ill. App. 300, 55 N. E. (2d) 565 (1944).

[6] Ill. Rev. Stat. 1943, Ch. 62, § 20.

[7] Washington Loan & Trust Co. v. Susquehanna Coal Co., 26 App. D. C. 149 (1905); Lockwood v. Manhattan Storage & Warehouse Co., 50 N. Y. S. 974, 50 App. Div. 68 (1898); Tillinghast v. Johnson, 34 R. I. 136, 82 A. 788, 41 L. R. A. (N.S.) 764 (1912); West Cache Sugar Co. v. Hendrickson, 56 Utah 327, 190 P. 946, 11 A. L. R. 216 (1920); Trowbridge v. Spinning, 23 Wash. 48, 62 P. 125, 54 L. R. A. 204 (1900).

[8] Ill. Rev. Stat. 1943, Ch. 62, § 5.

[9] Ibid., Ch. 62, § 20.

[10] Ibid., Ch. 62, § 5.

[11] Fornoff v. Smith, 281 Ill. App. 232 (1935); Buckingham v. Shoyer, 86 Ill. App. 364 (1900); Ham v. Peery, 39 Ill. App. 341 (1891); Smith v. Clinton Bridge Co., 13 Ill. App. 572 (1883).

self to possible contempt proceedings[12] and may suffer personal judgment for the amount of the plaintiff's original judgment.[13] In the light thereof, it clearly becomes incumbent on the garnishee in a case like the instant one, for his own protection, to prevent the judgment debtor from having access to the safety deposit box or at least to insure that none of the contents are removed from the same. By reason of failure to observe that duty, he would come within the penalty provisions of the statute.[14]

Had the garnishee performed its duty and denied access to the box in the instant case, the property would have been preserved intact but it would still not have been available for the satisfaction of the creditor's judgment as the garnishee, alone, was in no position to surrender the same. The court intimated, in the instant case, that under the equitable powers conferred on it by the Garnishment Act[15] it had the power to compel the opening of the box in question upon application for an order to that end. Any such statement was purely dictum for no request of that nature was ever made, but support for that view may be found in the case of *West Cache Sugar Company* v. *Hendrickson*[16] where the proper procedure to be taken is outlined and follows closely the procedure taken when an inventory for inheritance tax purposes is taken of the contents of a box owned by a deceased person where the key is lost or mislaid. Any expense attendant thereon was treated as a proper item of costs to be charged against the plaintiff. If property possibly belonging to others than the judgment debtor be found therein, the potential owners thereof can be summoned to make known their interest.[17] For the protection of the garnishee, a complete inventory of the contents should be made in the presence of its officials, and final judgment should be obtained to absolve it from any liability to the judgment debtor.[18] In that fashion, the vault proprietor may avoid such liability as was imposed in the instant case.

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[12] See Framheim v. Miller, 241 Ill. App. 328 (1926).

[13] Ill. Rev. Stat. 1943, Ch. 62, § 25. See also in re Marsters, 101 F. (2d) 365 (1939); London Guarantee & Accident Co. v. Mossness, 108 Ill. App. 440 (1903); McElwee v. Wilce, 80 Ill. App. 338 (1899); Gregg v. Savage, 51 Ill. App. 281 (1894); McCoy v. Williams, 6 Ill. (1 Gil.) 584 (1844).

[14] The argument that the burden of proof was on the judgment creditor to show that the garnishee had possession of property belonging to the judgment debtor was dismissed when the court said that the conduct of the garnishee in granting access to the box to the judgment debtor required the garnishee to assume the burden of proving the opposite: 323 Ill. App. 390 at 402, 55 N. E. (2d) 830 at 835.

[15] Ill. Rev. Stat. 1943, Ch. 62, § 24.

[16] 56 Utah 327, 190 P. 946, 11 A. L. R. 216 (1920). Accord: Trainer v. Saunders, 270 Pa. 451, 113 A. 681, 19 A. L. R. 861 (1921); Carples v. Cumberland Coal & Iron Co., 240 N. Y. 187, 148 N. E. 185, 39 A. L. R. 1211 (1925). Contra: Tow v. Evans, 194 Ga. 160, 20 S. E. (2d) 922 (1942); Medlyn v. Ananieff, 126 Conn. 169, 10 A. (2d) 367 (1939); Williams v. Ricca, 324 Pa. 33, 187 A. 722 (1936).

[17] Ill. Rev. Stat. 1943, Ch. 62, §§ 11-2.

[18] Ill. Rev. Stat. 1943, Ch. 62, § 16. See also Pomeroy v. Rand, McNally & Co., 157 Ill. 176, 41 N. E. 636 (1895); Ippoliti v. Puglisi, 241 Ill. App. 494 (1926).