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Wage Garnishment in Kentucky

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WAGE GARNISHMENT IN KENTUCKY

In the modern consumer economy the future income of the consumer has become both the source of his ability to pay and the security for the credit extended to him. The transition in consumer wealth from property to income remains very much in progress. At the present time, however, the considerable wealth of the younger middle class—the backbone of the consumer economy—lies in future income. The poor man trails behind. He not only has a smaller quantity of future income with which to acquire present enjoyment of goods and service, but he also has a lower quality of income as security for credit. His job is less secure, and he is less adequately assured against the unemployment of illness, disability, old age and technological displacement. . . . Nevertheless, we all regard our future income as the security for present credit, and most of us are content to work continuously to pay our debts.1

The general public does not realize the extent to which it is responsible for enforcing hundreds of credit agreements made daily between consumer buyers and consumer merchants and lenders. The public’s participation arises when it acquiesces in and approves of various processes designed to aid the creditor in collecting from defaulting debtors. One of the most important of these processes is wage garnishment. This article examines wage garnishment from a historical standpoint; discusses the relevant policy considerations; and considers the statutory provisions and use of garnishment in Kentucky.

I. ORIGIN, NATURE AND PURPOSE OF WAGE GARNISHMENT

To understand the modern use of wage garnishment, it is necessary to consider the processes of attachment and execution because they serve as an historical basis for garnishment. In early England, relief for an aggrieved plaintiff in a civil action generally took the form of a money judgment. To enforce judgments, two writs of execution were developed.2 The first, fieri facias, allowed the judgment creditor to levy upon and sell the defendant's chattels. The second, elegit, permitted the judgment creditor to collect the amount due him by renting or using the debtor's real property for a term of years. These writs

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1 Viles, Consumer Debtor-Creditor Rights: The Law in Non-Transition, 20 VA. L.W. (Charlottesville), Mar. 7, 1968, at 1, col. 6; 3, col. 5; 4, col. 5. (This is an article written by Robert M. Viles, Associate Professor of Law at the University of Kentucky, describing certain aspects of consumer-debtor relationships). The authors are indebted to Mr. Viles for his assistance.

2 S. Riesenfeld, CASES AND MATERIALS ON CREDITORS' REMEDIES AND DEBTORS' PROTECTION 3 (1967).
were the forerunners of the modern writ of execution which creates a lien against all of the judgment debtor's property.3

Neither of the early English writs could be used to levy upon any personal right or asset of the debtor which was not reduced to his possession, e.g., property held in bailment, a debt owed to the debtor but uncollected, or other chose in action. To overcome this obstacle to debt collection, the English equity courts introduced the creditor's bill, with which the creditor could satisfy his judgment by confiscating assets belonging to the judgment debtor, but held by another.

Building on the English practice, American courts and legislatures condensed the various writs of execution into a single writ in the nature of *fieri facias*.4 In some jurisdictions the writ was extended to reach choses in action. In other states, however, a combination of execution and foreign attachment was authorized.5

The order of attachment apparently antedates the beginnings of English law. Some scholars trace it back to an old Roman practice which allowed appropriation of the personal effects of a debtor who was evading prosecution.6 This practice called for sending three summons to the debtor; if he did not then appear, his goods could be seized and applied against his obligations. When attachment first appeared in England it was not used as a collection device but as a jurisdictional weapon with which a plaintiff could force his debtor into court. Because default judgments were not recognized in England until 1725,7 attachment of the debtor's goods served only to persuade him to appear personally; they could not be used to satisfy the claim against him upon his default. However, at this time the plaintiff could institute attachment without earlier summons or notice of suit. It was considered advantageous to surprise the defendant by suddenly confiscating a large part of his property, thereby guaranteeing his hasty presence in court to free it.8 When the defendant appeared, the attached property was released, and it could not be held to satisfy a money award which might issue from the trial.9 But the judgment itself

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3 This paragraph is admittedly a sweeping oversimplification of an historical process to which many learned authors have devoted treatises. For more comprehensive treatment, see Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 Iowa L. Rev. 155 (1957).
4 S. Riesenfeld, supra note 2, at 177.
5 Id.
7 S. Riesenfeld, supra note 2, at 177.
8 R. Shinn, supra note 6, at 2.
could be enforced by utilizing the execution writs previously discussed and by imprisoning the judgment debtor until he paid the debt.

Attachment soon ceased to be viewed solely as a means of bringing the debtor personally within the court's jurisdiction when the writ became recognized as an effective tool for reaching the debtor's assets and forcing their application to the debt. Initially, the courts were reluctant to so extend the use of attachment, and they limited its use to instances where the debtor was beyond the court's jurisdiction but his assets were not. However, a number of English cities during the Middle Ages developed the custom of foreign attachment, allowing seizure of goods or, more frequently, debts owed to a nonresident debtor by a third party within the court's jurisdiction. Foreign attachment occurred at the outset of the suit, but, unlike the attachment process generally available at that time, its effectiveness was not limited to securing the defendant's presence; if the debtor failed to appear, the creditor was allowed to apply the attached goods to the debt owed. In effect the creditor could satisfy a default judgment against the defendant-debtor by transferring liability from the person of the absent defendant to his assets within the court's jurisdiction.

Thus, attachment became important to the creditor as a way of satisfying the debt and somewhat less important as a means of reaching the person of the debtor. The practical merchant well recognized that a term in debtors' prison would seldom satisfy a delinquent account. The American colonies, which had adopted the English merchant law concerning third-party attachment, quickly moved beyond the English practice and allowed a successful plaintiff to satisfy his judgment from the sale of attached goods even when the defendant appeared personally in the action. In 1850, a Tennessee judge explained this development:

> Now, when it is remembered that the right to imprison the debtor, had been abolished by the Act of 1842, ch. 3, only one year before the passage of the attachment law under consideration, [broadening the grounds of attachment] the object of the legislature in changing the attachment law, will plainly appear.

> Whilst the law permitted a party, who had obtained a judgment, to take the body of the judgment debtor in execution, he was permitted to dispose of his property, and to remove it at pleasure; because it was sup-

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10 S. Riesenfeld, supra note 2, at 177.
11 If the defendant did appear he could secure release of the attached property by submitting to imprisonment or by posting a "special bail" which guaranteed payment of the judgment or submission to imprisonment. V. Countryman, Cases and Materials on Debtor and Creditor 24 (1964).
12 S. Riesenfeld, supra note 2, at 178.
posed, that if a debtor could command the means to pay off a judgment, he would choose to apply those means, rather than render his body to prison, in execution of it. But when the law authorizing imprisonment for debt was repealed, the debtor would be under a temptation to remove, or conceal his property, to prevent the payment of his debt; himself remaining within the jurisdiction of the court, exempt from arrest, and putting his creditor at defiance. To prevent such a state of things, the legislature enacted the attachment law of 1843. The whole tenor of that act shows, that the object was to give the creditor the means of getting security for his debt.\(^{13}\)

Apparently, the use of third-party attachment to levy upon wages due the debtor has never been questioned. Once the plaintiffs' rights against the chose in action became enforceable, uncollected wages were treated no differently than any other debt. However, from very early days it has also been recognized that certain assets of the debtor merit special protection against levy. In 1285, the Statute of Westminster II declared that a debtor's oxen and beasts of plough were immune from attachment,\(^{14}\) to safeguard his means of earning a livelihood. Statutory exemptions for homesteads, wearing apparel, tools of the trade, and household essentials are common to most jurisdictions. This policy of protecting at least part of the debtor's wages from attachment is recognized in the garnishment statutes of most states and will be discussed infra.

The procedures and scope of attachment vary widely from state to state. Because it is recognized as a statutory remedy available only in derogation of the common law,\(^{15}\) peculiarities and differences have been strictly construed. But the remedy itself is firmly established in all fifty states and is a recognized part of American business practice.

II. Kentucky Wage Garnishment Law

The remedies available to creditors in Kentucky through judicial process are codified in three chapters of the Kentucky Revised Statutes [hereinafter referred to as KRS].\(^{16}\) The captions of the chapters suggest an eminently rational, topical division. It should be apparent by its heading, "Provisional Remedies," that Chapter 425 deals with all devices available to the plaintiff-creditor before judgment. The principal provisional remedy provided is attachment of the defendant's property upon the plaintiff's showing that satisfaction of

\(^{13}\) Boyd v. Buckingham, 29 Tenn. 434, 435 (1850).
\(^{14}\) S. Riesenfeld, supra note 2, at 230.
his potential judgment would be jeopardized by delay in seizing or encumbering the defendant's estate. It would seem that when the interests of the defendant are within the control of a third party against whom process could be directed, these interests could also be attached, i.e., garnisheed. The title of Chapter 426, "Enforcement of Judgments," seems to permit the inference that the Chapter contains all devices available to the plaintiff for enforcing a judgment, primarily execution and sale of the judgment debtor's property, including that in the hands of a third party garnishee. Similarly, Chapter 427, "Exemptions," sets out separately the substantive law which excludes certain kinds and amounts of the defendant-debtor's property from seizure or encumbrance by any kind of judicial process, whether attachment, execution, garnishment, or equitable relief.

However, one who undertakes to draw reasonable inferences from these chapter headings would be misled as to the actual contents of the chapters, except for Chapter 427, which does contain the principal exemption law of Kentucky, including exemptions from wage garnishment. Chapter 425, "Provisional Remedies," contains all of Kentucky's garnishment law, including garnishment before and after

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17 KRS § 425.185 (1962).

Other state exemption provisions are KRS § 181.700 (1962) (teacher's retirement funds); KRS § 205.220 (3) (1962), as amended, (Cum Supp. 1966) (public assistance); KRS § 206.170 (1962) (Confederate pensions); KRS § 304.691 (1) (1962) (proceeds, including cash surrender value, of life insurance policies); KRS § 341.470 (1962) (unemployment compensation rights); KRS § 342.180 (1962) (workmen's compensation claims and payments); and KRS § 426.170 (1962) (growing crops, in certain cases).


judgment. Chapter 426 contains none at all. The explanation for this arrangement lies not in some bizarre streak of irrationality in past generations of Kentucky legislators, but in the historical antecedents of modern garnishment law. As stated previously, the remedy of garnishment developed mainly from early attachment, and the process of garnishment after judgment continued to resemble garnishment before judgment. In fact, the process and remedy of wage garnishment is regulated by the same statute in Kentucky.

However, the grounds or conditions on which the plaintiff-creditor may obtain garnishment vary according to whether it is sought before or after judgment. A parallel may be drawn between the grounds or conditions separating the provisional remedy of ordinary attachment and the post-judgment remedy of execution, levy, and sale. The net result of the awkward statutory framework is considerable semantic confusion for anyone attempting to use the garnishment statutes. This confusion could lead to mistakes in construing and applying the statutes.

The statutes provide that "any person in whose favor a final judgment in personam has been entered in any court of record of this state may . . . obtain an order of garnishment," i.e., post-judgment garnishment. This section sets forth the process for garnishment, incorporating by reference one specified prejudgment attachment provision and most of the remaining ones "as far as applicable." To obtain garnishment, the judgment creditor need only file an affidavit describing the judgment, indicating the amount outstanding, and stating "that one or more persons hold property belonging to, or are indebted to, the judgment debtor...."

Chapter 425 contains no other statutory authority specifically providing for "garnishment." Thus, a strict construction of the statute would seem to prohibit pre-judgment garnishment. However, KRS §

19 KRS § 426.381 (1962) provides that in an ancillary discovery proceeding in equity, the plaintiff "may have an attachment against the property of the defendant in the execution, similar to the general attachments provided for in KRS 425.185 to 425.520. . . ." Garnishment would be authorized under this section.
20 See text at notes 6 to 11 supra.
22 KRS § 425.185 (1962).
23 KRS § 425.010 (1962).
24 KRS § 425.190 (1962).
25 KRS § 425.190(3) (1962) states: "The order of garnishment shall be served on the persons named as garnishees in the manner provided in subsection (3) of KRS 425.225, and in addition a copy thereof shall be served on the judgment debtor."
26 KRS § 425.190(7) (1962) provides: "The provisions of KRS 427.010 to 427.160 and KRS 425.215 to 425.520 shall as far as applicable govern proceedings under the order."
27 KRS § 425.190(1) (1962).
425.185 states that "the plaintiff may, at or after the commencement of an action, have an attachment against the property of the defendant . . . as a security for the satisfaction of such judgment as may be recovered." The courts and attorneys of Kentucky have interpreted this provision to authorize attachment of any property of the defendant, including property held or debts owed by third parties. Such "third party attachment" is the pre-judgment equivalent of post-judgment "garnishment." 28

Because pre-judgment garnishment is statutorily a variety of attachment, one of the several conditions precedent to attachment must be met by a creditor-plaintiff who seeks to attach wages or other property of the defendant-debtor controlled by a third party. 29 However, the conditions seem not to envisage "wages" as property of the debtor. The condition allowed in subsection (2) shows this failure clearly: attachment is available to the plaintiff "in an action for the recovery of money due upon a contract, judgment, or award"—i.e., most consumer debts incurred for purchases and loans—if: 1) "the defendant [has] no property in this state subject to execution, or not enough thereof to satisfy the plaintiff's demand"—likely to be the circumstances under the liberalized property exemption allowances enacted in 1966 30—and 2) "the collection of the demand will be endangered by delay in obtaining judgment"—rarely demonstrable—"or a return of no property found"—again likely because of the liberalized exemption allowances 31 and the prevalent existence of security interests in commercially valuable consumer possessions. (Emphasis added.) Thus it can be realistically concluded that in the ordinary consumer debt action against the typical wage-earning debtor, wage

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28 The construction of KRS § 425.185 (1962) to include provisional garnishment is supported by the strong interlineation of "garnishment" and "attachment" provisions in Chapter 425. E.g., KRS § 425.225 (1962) provides:

The order of attachment shall be executed by the sheriff without delay in the following manner: . . . (3) Upon other personal property, by delivering a copy of the order, with a notice specifying the property attached, to the person holding it; or as to a debt or demand, to the person owing it; or as to stock in a corporation, or property held, or a debt or demand owing by it, to the officer or agent upon whom a summons may be served, and by summoning the person or corporation to answer as a garnishee in the action. The sheriff shall deliver copies to, and summon, such persons as garnishees as the plaintiff may direct. But no notice need be given in any case describing or specifying the debt or demand attached, but only a notice that the persons or corporation to whom the order of attachment is delivered is summoned to answer as a garnishee in the manner and at the time provided for an answer by the Rules of Civil Procedure. (Emphasis added.)

29 KRS § 425.185 (1962).


31 Id.
garnishment may automatically issue. The plaintiff need only submit an affidavit averring that the ground exists and file a bond executed by one or more sufficient sureties (other than himself) who agree to pay the defendant “all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff’s claim.”

While the grounds for pre-judgment and post-judgment garnishment differ, the process of wage garnishment is the same for both. The “order of attachment” must be issued in triplicate to the employer-garnishee, and must contain much more information than the order used to garnishee other types of property and debts. Printed instructions must appear on the order directing that the employer deliver one copy to his employee-defendant, retain one copy for his records, and return the third copy to the court with the non-exempt portion of his employee’s wages attached. By placing upon the employer the responsibility of furnishing his employee with a copy of the wage garnishment order, the legislature abolished the sheriff’s duty to serve a copy of the order upon the defendant, a duty required for the garnishment of other property or debts.

Other information must be printed on the order form to assist the employer in accurately determining the portion of wages which he must remit to the court and the amount he may turn over to his employee. Net wages, upon which all calculations must be made, consist of the total amount due as of the end of the employer’s pay period during which the attachment or levy of execution is served less amounts withheld for taxes and fees due federal, state, and local govern-

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33 KRS § 425.250 (1962).
35 Ch. 84, § 10, [1952] Ky. Acts 218 (codified until 1966 as KRS § 425.210) provided:
   The order of attachment [shall direct the sheriff] to attach and safely keep the property of the defendant in his county not exempt from execution, or so much thereof as will satisfy the plaintiff’s claim specified in his affidavit, which shall be stated in the order, and the probable costs of the action, not exceeding thirty dollars; also to summon the garnishees to answer in the action in the manner and at the time required for an answer by the Rules of Civil Procedure, and to make due return thereof. The order shall be returnable as an order of arrest is directed to be returned.

Forms secured from court clerks at interviews and through return of questionnaires (see notes 58 and 97 infra) indicate that the above language is used as the basis for all forms used to garnishee property and debts other than wages, and is combined with KRS § 425.210 (1962), as amended, (Cum. Supp. 1966) as the basis of content for wage garnishment orders.
39 KRS § 425.190(3) (1962).
ments, union dues, medical insurance and retirement programs.\(^{40}\) Prior to 1966, only wages earned \textit{as of the date of receipt of the order of garnishment} were subject to garnishment,\(^{41}\) and it was not clear whether net wages or gross wages were the basis on which the amount of the wage exemption was to be determined.\(^{42}\)

The court clerk must determine the applicable wage exemption rate and enter it on the order of garnishment.\(^{43}\) Although in other garnishment proceedings a debtor must claim his exemption,\(^{44}\) he enjoys an automatic exemption in wage garnishment.\(^{45}\) Seventy-five percent of his net wages subject to garnishment are exempted,\(^{46}\) unless the debt on which the action arose was for necessities, in which case only fifty percent of the net wages are exempt.\(^{47}\) "Articles of food, clothing (including shoes), medicine, medical services, drugs, rent and public utilities, furniture and household appliances"\(^{48}\) are listed as necessities.

The order of garnishment must direct the employer-garnishee to answer within twenty days after receiving the order.\(^{49}\) This requirement can be met simply by entering the net wages due the employee on the reverse side of the employer's copy of the garnishment order, and returning this copy to the court with a check for the non-exempt portion of the wages.\(^{50}\) If no wages are due, the employer must so state and indicate the reason.\(^{51}\) After sending a completed copy of the garnishment order to the court, with the non-exempt portion of the wages, and giving a second copy of the order to the employee-defendant, the employer is free from further responsibility in the wage garnishment process.\(^{52}\) On the other hand, the employer's failure to
answer or make a satisfactory disclosure may result in punishment for contempt and even in attachment of his property to satisfy the employee’s debt.

No creditor has statutory priority over any other creditor in obtaining an order garnisheeing wages or other property. Priority is determined solely according to date and time of delivery of process to the sheriff for service upon the garnishee. Because an order of wage garnishment is effective only for the pay period in which it is levied, a creditor whose debt is not satisfied by one wage garnishment must seek a new and separate garnishment order, or several successive orders, in order to obtain further satisfaction. There is no statutory limit on the number of times a creditor may seek and obtain wage garnishment, but prior orders of garnishment on the same debt give no priority, and the creditor who is the first to deliver his order to the sheriff during each of the debtor’s pay periods prevails.

III. WAGE GARNISHMENT PRACTICE IN KENTUCKY

At some time, nearly every lender and merchant must decide whether to resort to wage garnishment to collect a delinquent consumer debt. What factors influence the Kentucky creditor’s decision? Which Kentucky consumer creditors resort most often to wage garnishment? How strictly do the Kentucky courts adhere to the governing statutory provisions? This section of the article attempts to answer these and other questions.

It appears that the most frequent users of the wage garnishment process for collecting consumer debts are small loan and finance companies. The installment obligations owed them range from signature loans, with the money spent to satisfy the borrower’s personal desires, to loans and time-purchase agreements to finance purchases of major appliances automobiles, boats, etc., to loans consolidating numerous

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64 KRS § 425.325 (1962).
66 See note 40 supra, and accompanying text.
68 Interviews were conducted with six circuit court clerks, five quarterly court clerks, and three justices of the peace and their records were analyzed. Eleven finance company credit managers, the vice president of a large Central Kentucky collection agency, and two attorneys specializing in debt collection were also interviewed. Questionnaires, in which the court clerks were asked to draw upon their experience and give reasonable estimates on certain requested data, were sent to 120 circuit courts (forty-one returned and completed), 120 quarterly courts (twenty-seven returned and completed), and six justice’s courts (two returned and completed).
debits. Installment sales obligations and small loans for the purchase of consumer goods predominate.

The larger loan and finance companies usually have their own procedures for debt collection and do not turn their delinquent accounts over to independent collection agencies, but most of the smaller companies also make some attempt to collect. In most instances numerous letters are sent to the debtor and efforts are made to personally contact him before consideration is given to judicial process. However, when sixty to eighty days have elapsed after a payment has become due and unpaid, smaller companies will often resort to stronger collection procedures. By then, the financial condition of the debtor is known to the creditor and he has attempted to devise some payment extension plan whereby the debtor agrees to pay regularly at least a nominal amount. If the debtor is unable to make any payments whatsoever, the creditor may simply write the loan off as a loss. However, if the creditor believes that the debtor is only refusing to make a payment, the creditor may resort to judicial process and wage garnishment. Loan and finance companies have found that, because of court costs, only a small portion of a debt is collectible through wage garnishment. Thus, wage garnishment is only one weapon in an arsenal of devices for encouraging or coercing the debtor to pay his debt. After suffering one or two wage garnishments, a debtor usually recognizes that the court costs and the possibility of losing his job dictate that he either make some suitable arrangement with his creditor or seek relief in bankruptcy.\textsuperscript{60}

Collection agencies are a second major user of wage garnishment.\textsuperscript{61} Collection agency accounts include a wide variety of debts, usually placed by creditors whose collection efforts have been minimal. Doctors, hospitals, and small retailers are the most frequent clients of collection agencies. The delinquency of debts turned over for collection range from one day, e.g., when a tenant has vacated without paying his rent, to over six months, e.g., when a physician who has done little to collect his fees suddenly finds himself with more accounts receivable than cash income. However, collection agencies regard wage garnishment in the same light as do finance and loan companies. Although a

\textsuperscript{59} Question 19 on the questionnaire asked: "Who are the greatest users of wage garnishment?" Finance and loan companies were listed by almost all of the clerks completing and returning the questionnaires. Where the clerks attempted to show the ratio of the listed users to the whole, finance and loan companies were given the highest percentage. The interviews and records contained nothing to indicate otherwise.

\textsuperscript{60} Information in this paragraph was obtained from credit managers of finance and loan companies in interviews.

\textsuperscript{61} See note 59 supra. Collection agencies were listed by clerks on the questionnaires as the second most frequent user of garnishment process.
less reputable collection agency may resort to the courts more quickly and more often than a larger, more reputable agency, both consider wage garnishment only as a device to force the debtor to make some arrangement for paying his debt.\textsuperscript{62}

A third major group utilizing wage garnishment are credit jewelry, clothing, and furniture retailers.\textsuperscript{63} Although many of these merchants entrust their delinquent accounts to collection agencies, many do their own collecting. Large department stores tend to resemble finance companies and collection agencies in their use of wage garnishment. Smaller credit retailers who do not resort to collection agencies seem to rely much more heavily upon wage garnishment as a collection device and as a method of forcing the debtor to make payment arrangements.\textsuperscript{64} Ascertaining the frequency with which consumer creditors such as physicians, hospitals, neighborhood grocery stores, and other small creditors resort to the courts for collection of debts is made difficult by their frequent resort to collection agencies, who file suit in their own names.\textsuperscript{65}

Whether the individual creditor or the collection agency makes the ultimate decision to utilize garnishment or other judicial process, the decision of whether to employ an attorney to prosecute the action must be made. If the plaintiff is a corporate entity, an attorney must be employed because corporations are forbidden to practice law.\textsuperscript{66} Even if the unincorporated creditor has the expertise, time, and patience to prosecute his own suit, a locally-imposed court rule requiring all suits to be filed by an attorney may also remove his power of choice. Although anyone may draw up "any instrument to which he is a party,"\textsuperscript{67} most court clerks fear that any assistance they render to a plaintiff who is attempting to file his own suit, will be deemed to be practicing law without a license.\textsuperscript{68} Accordingly most court clerks re-

\begin{itemize}
  \item \textsuperscript{62}Much of this information was obtained in an interview with the vice president of a large collection agency in Central Kentucky.
  \item \textsuperscript{63}See note 59 supra. When these users are grouped together, they comprise a large portion of those who seek wage garnishment.
  \item \textsuperscript{64}No specific question in the sampling would confirm this. However, after analysis of all the data, this appears to be a valid conclusion.
  \item \textsuperscript{65}This information was gained by personal interviews and perusal of records.
  \item \textsuperscript{66}While a corporation is considered a person for many purposes . . . it is recognized that one cannot be licensed to practice a learned profession, which can only be done by an individual who has received a license to do so after proving his qualifications and knowledge of the subject. Thus, there is scarcely any judicial dissent from the proposition that a corporation cannot lawfully engage in the practice of law or of medicine. Kendall v. Beiling, 295 Ky. 782, 789, 175 S.W.2d 489, 493 (1943).
  \item \textsuperscript{67}R. of Ct. of App. 3.020. The Kentucky Court of Appeals rejected the contention that this Rule should not be limited to natural persons in Hobson v. Kentucky Trust Co., 303 Ky. 493, 197 S.W.2d 454 (1946).
  \item \textsuperscript{68}Clerks voiced this fear in interviews.
\end{itemize}
quire all suits to be filed by an attorney.69 If the creditor already employs an attorney on retainer, this requirement presents no obstacle. But other creditors may encounter some hesitancy among attorneys to prosecute claims for fifty dollars or less. Many attorneys feel that the small fees derived from such suits do not justify the time and effort required to prosecute them.70 Some court clerks recognize such reluctance and make an exception to their general rule against pro se representation by allowing anyone to file his own suit if it is for fifty dollars or less.71 At least one attorney who processes many creditors' claims believes that this exception is often abused by corporate creditors whose credit managers file suit as individuals.

A person bringing an action must determine in which of the local courts he will file suit. If the action is for a debt of fifty dollars or less, it must be filed in the quarterly or justice's court,72 and if it is for more than five hundred dollars, the action must be filed in circuit court.73 A suit for an amount between the foregoing minimum and maximum limits may be filed in quarterly, justice's or circuit court. However, heavy caseloads cause a longer delay before final action in most circuit courts,74 and this may convince the creditor to seek another forum. Moreover, many circuit courts even encourage attorneys to file creditors' suits in lower courts. The requirement that most circuit court judges must "ride circuit" through several counties75 means that the quarterly court judge or the magistrate is often more accessible for immediate action upon the plaintiff's suit. An additional consideration is that the fee compensation system present in most counties may encourage a cooperative spirit in lower court judges and clerks for entertaining creditors' suits, thereby indirectly influencing the creditor in his choice of forum.76

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69 Question five on the questionnaire asked: "Who is allowed to file suit for debt actions?" Twenty-six circuit court clerks and 8 quarterly court clerks indicated that only attorneys are allowed to file suit in their courts.
70 Interviews with court clerks and attorneys.
71 See note 69 supra. Nine quarterly court clerks answered that they made special exception to their general rule only in suits for fifty dollars or less.
72 KRS § 25.410 (1962) and KRS § 25.610 (1962) give exclusive and concurrent jurisdiction to quarterly and justice's courts for suits of fifty dollars or less.
73 KRS § 25.410 (1962) limits the jurisdiction of quarterly and justice's courts to suits for no more than five hundred dollars. KRS § 23.010 (1962) gives circuit courts original jurisdiction over all suits not exclusively delegated to some other tribunal.
74 Reviews of circuit court records show that the broader jurisdiction of that court results in a greater number of cases being filed there than in a lower court of the same county. However, there is a longer period of time between filing and final action in those suits.
75 KRS § 23.040 (1962) provides for forty-nine judicial districts. In all but sixteen of these districts, two or more counties (circuit courts) are grouped together to form one judicial district.
76 KRS § 64.535 (Cumm. Supp. 1966) provides:

(Continued on next page)
Upon filing suit, the plaintiff must deposit certain sums with the court clerk as credit toward anticipated court costs, including clerk’s fees, state tax, library fees, and sheriff’s fees. Circuit court clerks collect ten dollars as credit toward clerk’s fees accruing in the action. Most quarterly and justice’s court clerks also require an advance deposit toward clerk’s or judge’s fees. All court clerks must levy a five dollar state tax on all original actions in the circuit court and on all original actions in other courts where the suit exceeds fifty dollars.

Counties containing second, third, or fourth class cities are authorized to tax as court costs a sum not to exceed one dollar for all actions filed in the circuit court, and up to fifty cents for all actions filed in quarterly or justice’s courts, which is to be used for maintenance of the county law library. The clerk may require a deposit of up to five dollars to cover the sheriff’s fees for serving summons and other papers in the action. The counties seem to be split, however, over who actually collects the advance deposit. Where the clerk delivers the summons to the sheriff for service, the clerk usually collects the deposit. But in counties where the attorney delivers the summons directly to the sheriff, a representative from the sheriff’s office usually collects the fees. The deposits enumerated here may not cover the entire costs

(Footnote continued from preceding page)

The county court clerk, circuit clerk, county judge, sheriff, county attorney, and jailer of each county shall receive an annual salary of $9600 to be paid solely out of the statutory fees and salaries received by him during the calendar year. (Emphasis added.)

In many counties the county judge serves as the quarterly court judge (KRS § 25.450 (1962) and thereby also becomes the quarterly court clerk (KRS § 25.025(1) (1962), unless he otherwise designates (KRS § 25.025(2) (1962) or KRS § 25.450(1) (1962), as amended, (Cummul. Supp. 1966). KRS § 64.530(1) (1963), as amended, (Cummul. Supp. 1966) requires the fiscal court to set the maximum compensation of county officers from either salary, fees, or a combination of salary and fees. Justices of the peace are deemed to be county officers or purposes of the statute. KRS § 64.255 (1962) authorizes fiscal courts, at their option, to compensate justices of the peace from the county treasury exclusively for their duties “in so far as they relate to the trial or decision of criminal cases.” The bulk of their total compensation, however, is derived from the fees they collect in civil cases, or from criminal cases in those counties not electing to compensate them by salary.

77 KRS § 64.030 (1962). A few circuit court clerks indicated on questionnaires that they collected as much as twenty dollars. Information obtained through interviews with other court clerks indicates that they probably collect the larger deposit pursuant to an order from the presiding circuit court judge.

78 KRS § 64.250(1) (1962) authorizes justices of the peace in counties with a population of 250,000 to collect a one dollar deposit. There seems to be no other statutory provision for quarterly or justice’s court clerks to collect a deposit for clerk or judge’s fees. Answers to the questionnaires indicate, however, that they usually collect a deposit of up to ten dollars.

79 KRS § 142.011(1) (1962).
81 KRS § 64.030 (1962).
82 This variation in procedure was discovered through interviews with court clerks.
which will accrue in the action, and the creditor may have to pay additional court costs upon entry of judgment if the money received by the court clerk from the defendant debtor has been insufficient to cover them.83

When suit is filed in his court, the clerk must prepare a summons for the sheriff to serve upon the defendant. Although the summons directs the defendant to answer the complaint within twenty days, it does not indicate the nature of the complaint, the amount for which the suit is brought, or even how a copy of the complaint may be obtained.84 Unlike federal procedure,85 Kentucky law does not require a copy of the complaint to be attached to the summons.86 A few courts do so, however, as a courtesy to the defendant.87

If the defendant does not answer the complaint within twenty days, the plaintiff may obtain a default judgment.88 Over seventy-five percent of all actions filed for debt in circuit courts89 and over ninety percent of those filed in quarterly and justice’s courts90 result in entry of default judgments. One factor which may contribute to the high rate of default judgments is the failure to attach a copy of the complaint to the summons. However, because the name of the plaintiff appears on the summons, one finds it difficult to believe that the defendant has no knowledge of the claim if he knows to whom he owes debts. It seems likely that in most instances the defendant knows or believes he has no defense to the suit and therefore sees no reason to defend. Even if he believes he does have a defense, he may realize that he must hire an attorney to effectively present it, and because a defendant sued on a

83 The authorized deposits listed in the text total twenty-one dollars. The appendix shows that even in a simple case, court costs will amount to $21.85 where garnishment is sought. Additional exhibits, an answer by the defendant, the necessity of issuing additional summons, additional garnishments, or any number of other unforeseen (but normal) events, push court costs even higher.
85 See FED. R. Civ. P. 4(d).
86 See CR 4.01. See also 1 W. CLAY, RULES OF CIVIL PROCEDURE ANNOTATED 18 (1963).
87 Question nine on the questionnaire asked: “Do you attach a copy of the complaint to the summons served upon the defendant?” Six circuit court clerks, six quarterly court clerks, and both justices of the peace answered “Yes.” A few others indicated they did if requested to do so by the plaintiff’s attorney.
88 Question fifteen on the questionnaire asked: “What percentage of suits for debt terminate in default judgments?” Of thirty-nine circuit court clerks responding, twenty-six indicated over fifty percent; twenty of these indicated over seventy-five percent. Interviews and reviews of records substantiate the seventy-five percent answer.
89 See note 89 supra. Only twelve of twenty-eight quarterly and justice’s court clerks reported over ninety percent default judgments. Jefferson County was among those counties, however, and the ninety percent rate is otherwise reinforced by the information obtained in the Lexington-Central Kentucky area interviews.
consumer debt is often without liquid assets, he may feel either that it is useless to hire an attorney or that he simply cannot afford one.

A great percentage of defaults may be somewhat distorted by a practice prevalent in some courts of obtaining a confession of judgment from the debtor after suit has been filed. In exchange for more lenient terms, a debtor may confess judgment. This practice does not seem unfair to the debtor if he is fully advised of the implications and consequences of his action. Some magistrates and quarterly court judges encourage the debtor to confess judgment because it, in effect, requires him to answer the complaint and become informed of the nature of the claim against him. On the other hand, a confession of judgment waives all claims of error and other defenses which the debtor might have raised. Whether judgment is entered after default or after confession of judgment, a creditor can usually expect that his claim will be handled entirely within the office of the court clerk, and that it will go before a judge only for signature on the judgment order.

The procedures for obtaining wage garnishment are essentially the same for garnishment before and after judgment, except for the difference in the affidavit and the requirement that bond be posted for garnishment before judgment. The statutory section outlining the new streamlined wage garnishment procedures requires that certain information be printed on the order of garnishment, commonly known as the “garnishee summons.” The Legislature did not prescribe the exact format of the order and the courts have procured their forms from many different suppliers. However, the forms seem to be uniform throughout the state and if completed properly, most comply with the statute. Most court clerks complete the prescribed number of copies, but a few, apparently confused by the conflicting provisions of KRS § 425.190(3) and KRS § 425.210(4), still require that a copy of the

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91 KRS § 372.140 (1962) voids all contract agreements conferring powers of attorney to confess judgment when such power is given before an action has been instituted. KRS § 454.090 (1962) authorizes a defendant to confess judgment after an action has been brought against him. Although court clerks and attorneys indicated that confessed judgments are frequently entered they were unable to give any information concerning the extent of this practice.

92 This was substantiated by interviews.

93 KRS § 454.100 (1962).


95 KRS § 425.205 (1962).


97 Sample forms were obtained during interviews with court clerks. Other clerks attached copies of their forms to the questionnaires.

98 KRS § 425.190(3) (1962) provides that: “The order of garnishment shall be served on the persons named as garnishees . . . and in addition a copy thereof shall be served on the judgment debtor.”

order be served upon the defendant by the sheriff, thereby increasing the costs for service of process. In addition to the information prescribed by KRS §425.210, forms used by the courts also require that the total amount of the plaintiff's claim and an estimate of court costs be entered thereon. Estimates vary widely from court to court and from county to county, ranging from ten to fifty dollars. A few court clerks enter only the exact costs that have accrued in the action prior to and including the current wage garnishment, but most realize that more than one garnishment is often necessary to satisfy the judgment and accordingly enter a figure sufficiently large to cover the total costs of the suit plus several garnishments.

Unless the complaint specifically states that the debtor is entitled to only a fifty percent exemption of his net wages, court clerks automatically enter the seventy-five percent rate. Moreover, most clerks are careful to verify the exemption rate stated in the complaint against the reason stated for the debt, i.e., whether it was actually incurred for a necessity. Unless the defendant appears to contest the exemption rate applied to him, there seems to be no source of information other than the sworn complaint and supporting affidavits upon which the clerk can rely.

Court clerks report that employers are generally cooperative and comply with their statutory duties. This is understandable since any employer failing to return the court copy of the wage garnishment

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100 When interviewed, one court clerk stated that the sheriff serves one copy upon the defendant. Questionnaire answers were inconclusive, but the conclusion that other courts still follow the older practice of KRS §425.190(3) (1962) was possible.

101 KRS §64.090 (1962) appears to authorize the sheriff to charge a two dollar fee for each party served.

102 This requirement is a carryover from former practice which provided that "the probable costs of the action" should be stated in the order of garnishment. See note 35 supra.

103 Question thirty-seven on the questionnaire asked: "What estimated court costs do you put on the garnishment form sent to employers?"

104 The appendix shows that the cost of obtaining subsequent garnishments might account for the variation in estimates of court costs, and it lends validity to the practice referred to in the text. This practice was originally revealed to the authors in interviews with court clerks.

105 The basic information in this paragraph was obtained through interviews with court clerks. Other court clerks seem to verify the information by listing on the questionnaires relatively lower percentages of wage garnishments in which defendant's wages were subject to only fifty percent exemption than the frequency of use by furniture stores, grocers, doctors, druggists, hospitals, and landlords would indicate. In the interviews, several clerks stated that they never enter the fifty percent exemption rate on a wage garnishment order obtained by finance or small loan companies. Since necessities can not be purchased from finance or small loan companies, the clerks did not believe there was any way of determining whether the loan proceeds were actually expended for necessities.
order is subsequently ordered to appear in court.\textsuperscript{106} Clerks report, however, that a substantial number of wage garnishment orders are returned indicating that no wages are due for payment to the defendant because he is no longer employed by the garnishee or owes money to his employer.\textsuperscript{107} The first wage garnishment order frequently recovers a sum that is insufficient to cover the accrued court costs; seldom is a very large amount applied to reduction of the debt.\textsuperscript{108} Thus, few judgments are satisfied by wage garnishment alone.

To obtain wage garnishment before judgment, a plaintiff must file an affidavit outlining the existence of a specified statutory condition,\textsuperscript{109} and post bond to insure the defendant against harm from a wrongful garnishment.\textsuperscript{110} The affidavit usually does not allege any facts tending to show why the plaintiff thinks he would be prejudiced, and these are not required by the clerk. However, reliance by clerks upon the sworn complaint and affidavit of the plaintiff's attorney appears to be both reasonable and necessary. But simple reliance upon the sworn affidavit of a layman filing his own suit may not be enough because he probably has insufficient knowledge of the law, does not fully understand that to which he is swearing and is predominately concerned in collecting his claim. Unless the defendant appears to defend, the plaintiff need not fear revelation that his garnishment is ungrounded and

\textsuperscript{106} This was determined through interviews with court clerks.

\textsuperscript{107} Question twenty-one on the questionnaire asked: "What percentage of wage garnishments result in no money received by the court?" Twenty-eight circuit court clerks, twenty-one quarterly court clerks, and one justice of the peace reported that no money is received from ten percent or more of all wage garnishment orders issued.

\textsuperscript{108} If the debtor has net wages of one hundred dollars, only twenty-five dollars will be received from the first garnishment order issued for a debt for non-necessities. That sum leaves little to be applied towards the debt after court costs are deducted. See the appendix. If the debtor has net wages of only sixty dollars (probably a more typical net wage for a garnisheed Kentucky debtor), only fifteen dollars will be received, a sum not even sufficient to cover the court costs.

\textsuperscript{109} Affidavits usually recite the language of KRS § 425.185(2) (1962):

\[
\text{[The defendant has] no property in this state subject to execution, or not enough thereof to satisfy the plaintiff's demand, and the collection of the demand will be endangered by delay in obtaining judgment or a return of no property found.}
\]

The courts often furnish an affidavit form reciting the statutory language, with a surety bond agreement printed at the bottom. (Question seven on the questionnaire asked: "Have you devised any forms which are used as a combined affidavit for garnishment before judgment and surety bond?" Four circuit court clerks, fourteen quarterly court clerks, and both justices of the peace answered "Yes.") In courts permitting anyone to file suit himself for fifty dollars or less, the form often serves as the complaint as well as affidavit for garnishment and surety bond. (Question eight on the questionnaire asked: "If the answer to the preceding question is yes, does that form also serve as the complaint by the creditor in filing suit?" One circuit court clerk, thirteen quarterly court clerks, and both justices of the peace answered "Yes.")

\textsuperscript{110} KRS § 425.205 (1962).
the consequent forfeiture of his bond. No clerk or attorney interviewed could recall a single instance in which a garnishment bond was forfeited. Even if garnishment can be shown to have been wrongfully obtained, irreparable harm may have already occurred, since the defendant's employer usually receives the order of garnishment at about the same time that the defendant receives his summons to defend the suit. If the employer has a strict policy of dismissing employees whose wages are garnisheed, the defendant is likely to find himself without a job before he has an opportunity to challenge the garnishment, to defend the suit, or to make some other arrangements with his creditor.

Most courts enforce the statutory provision requiring the plaintiff to post bond with someone other than himself as surety.111 Most corporate and some non-corporate plaintiffs furnish bonds executed by an insurance company or professional bonding company. Other plaintiffs often persuade a property owner to act as surety.112 Both types of surety meet the statutory requirements. A few courts indicate, however, that they accept the signature of the plaintiff himself when he is known by the judge to be a responsible property owner in the county. On some occasions they have accepted the plaintiff's personal check as security.113 It seems clear that these latter two practices are in derogation of the statutory requirements.

Creditors finding their collection objectives achieved through garnishment before judgment often fail to request entry of a default judgment. The clerk disburses money received from the garnishee before entry of judgment,114 sometimes without a disbursal order signed by the judge.115 A substantial number of suits remain on the court docket books, to be subsequently filed away without entry of judgment or dismissal order.116

111 Id.
112 This information was gained through questionnaires and interviews with court clerks.
113 This information was gained through interviews with court clerks.
114 Question twenty-eight on the questionnaire asked: "Before judgment is entered do you ever distribute to the creditor money obtained by wage garnishment?" Twenty-one circuit court clerks, nine quarterly court clerks, and one justice of the peace answered "Yes."
115 Question twenty-nine on the questionnaire asked: "If so [see note 114 supra], do you require a court order from the judge for distribution?" Four circuit court clerks, five quarterly court clerks, and one justice of the peace answered "Yes."
116 Question thirty on the questionnaire asked: "What percentage of suits, involving garnishment before judgment and resulting in some money collected by the court, are never terminated by either judgment or formal dismissal by the creditor?" Ten circuit court clerks, six quarterly court clerks, and one justice of the peace reported at least ten percent. Almost all clerks reported that some suits are never terminated.
IV. THE PARTIES IN INTEREST

Previous sections of this article have suggested that, in effect, the process of wage garnishment provides the Kentucky creditor with an officially-authorized and publicly-supported collection device. To weigh the value of wage garnishment and its impact as a collection device, it is necessary to look carefully at the parties involved: the workingman who is overextended financially and falling behind on his installment payments; the creditor whose patience has worn thin and who is convinced that only direct legal action will collect the overdue account; and the employer who would prefer to remain uninvolved in his employee's financial problems.

A. The Creditor

Most creditors are aware of the harsh results of wage garnishment and regard it as a collection device to be used infrequently and only as a last resort. However, the pattern of consumer purchasing today allows many opportunities for abuse of the legal process. Widespread use of consumer credit has been partially responsible for the American economy's great expansion, but consumer credit made easily available always poses the danger of personal over-extension. Federal Reserve Board statistics show a continuing increase in the level of personal indebtedness.117 A 1966 survey of consumer expenditures by the Federal Bureau of Labor Standards determined that the average family having a net income of less than four thousand dollars annually over-spends that income.118

Some businessmen extend credit so that they may profit, not from the sale of the goods financed, but rather from the credit charges themselves. These businessmen are not looking for the responsible credit risk, but for any buyer whose credit is backed by attachable assets, among the best of which is a regular income. It is not that the businessman seeks out buyers he expects to default, but merely that in accepting credit customers, he is concerned only in being assured that they are employed. Thus, he allows and even encourages credit for a person already burdened with debts beyond his ability to pay. The merchant believes that the buyer will struggle to make the payments voluntarily and that if he fails, the payments may be obtained at his

117 U.S. BUREAU OF LABOR STANDARDS, DEPT OF LABOR, SUMMARY OF STATE LAWS PROHIBITING OR REGULATING THE BUSINESS OF DEBT POOLING 1 (Labor Law Series No. 4-E, 1966).
118 U.S. BUREAU OF LABOR STANDARDS, DEPT OF LABOR, DEBT POOLING AND GARNISHMENT IN RELATION TO CONSUMER INDEBTEDNESS 1 (Fact Sheet Series No. 4-F, 1966).
employer’s office. The creditor knows that the debtor’s paycheck can be reached by garnishment and that in procuring garnishment, the race belongs to the most alert creditor, regardless of the age, kind, or security of his debt. Moreover, the creditor is well aware that the threat of garnishment often brings the result he seeks. This kind of reasoning prevails, although the creditor must realize that garnishment occasionally results in loss of the debtor’s job\(^{119}\) and destruction of his capacity to pay any of his creditors.

Unfortunately, it is impossible to separate the “good” creditor from the “bad.” There is no way to restrict the use of garnishment to the businessman who has extended credit wisely for a voluntary installment purchase and to forbid it to the less discreet merchant whose business is built on the oversell of overpriced merchandise\(^{120}\) to overburdened debtors. Of course, the unpaid creditor wishes to obtain payment with the least possible expense and trouble to himself and for the small creditor, permitted to file suit for himself, early garnishment may be the most inexpensive method of collection. He risks only court costs which must be posted to begin the action, and which he may eventually recover from the debtor. Turning the account over to a professional collector would cost him from one fourth to one half the collection.

Moreover, use of the confessed judgment may facilitate collection by wage garnishment. A judgment confessed before an action is instituted is unenforcable in Kentucky.\(^{121}\) However, after an action has been filed and the debtor-defendant has come to the creditor-plaintiff (perhaps as the result of garnishment) to seek more time in which to pay his debt, or some reduction of it, the creditor’s attorney may agree to “work out” the debtor’s problem if the debtor will confess judgment. This procedure is entirely legal.\(^{122}\) A confessed judgment, appropriately docketed, places in the creditor’s hands a sword of Damocles over the debtor, who must now live under the realization that at any time an order to garnishee his wages may issue on the confessed judgment without further legal process.

In filing suit and obtaining garnishment, the creditor always risks losing the costs and other fees which he must advance if the debt proves uncollectible. Successive garnishments incur successive fees; this is a burden which some jurisdictions have attempted to meet by

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\(^{121}\) KRS § 372.140 (1962).

\(^{122}\) KRS § 454.090 (1962).
providing for continuing execution on wages. This procedure usually operates so that after the judgment creditor has served garnishment papers once upon the employer, the levy continues against the debtor's wages until the debt is paid in full. Although the costs of service and process are thereby reduced, continuing execution has the undesirable result of encouraging quick filing since the first in time will keep his priority until his debt is satisfied.

A major worry of the creditor who resorts to garnishment for collection is the possibility that the debtor may be forced into bankruptcy, thereby avoiding or delaying the payment of most of his debts. It can no longer be doubted that there is a strong correlation between garnishment and bankruptcy. Thus, the creditor is torn between recognition that his garnishment action may be all that is needed to push the hard-pressed debtor into insolvency and his legitimate need and desire to collect debts owed to him.

B. The Debtor

The debtor threatened with wage garnishment is in a most untenable position. On the one hand he owes a debt which he must pay. On the other hand, payment of the debt either voluntarily or through garnishment will leave almost nothing for the necessary living expenses of himself and his family. Moreover, he knows that his employer does not look kindly upon service of garnishment papers. Some firms will dismiss an employee when his wages are garnished for the first time, and even the most lenient and sympathetic employers will generally dismiss the worker who is the subject of frequent garnishment.

New York has recently recognized the interest of the debtor in job security by passing a statute which provides: "A New York Employer may not discharge or lay off an employee because of the service of an income execution unless more than one such process has been served

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125 Satter, supra note 119, at 1034-35.
126 A revealing discussion of the considerations involved in terminating employment after garnishment or attachment is to be found in Commerce Clearing House, Handbook on Assignment and Garnishment of Wages § 9, § 935 (1966). Section nine treats labor union policy and Section 935 discusses legal and non-legal considerations.
within any 12-month period after January 1, 1967.127 While this might appear to be minimal protection because most debtors subject to garnishment proceedings may be presumed to be falling behind in obligations to several creditors, this probably provides a satisfactory method for solving New York's problem.128 Statistical surveys of bankrupts indicate that garnishments are relied on by certain creditors more than others, and few bankrupts reported receiving more than one garnishment.129 In addition, New York exempts ninety percent of the workingman's wages from garnishment and as a result the process is little used by creditors in any case.

The Kentucky debtor is at a further disadvantage because Kentucky is one of fifteen states130 which allow garnishment before judgment. Moreover, since pre-judgment attachment is property-oriented and most consumer debtors have little attachable property under KRS § 425.185,131 the creditor can usually obtain garnishment at the same time he institutes the suit by simply asserting that to delay judgment will endanger collection of the debt.132 Thus, the debtor often finds his wages garnisheed on the same day that he learns of the suit. This result is patently inequitable to the debtor who wishes to contest the debt.

Notice to the debtor is a major problem. Obviously he is entitled to a simple, uncomplicated explanation of the action, but frequently his only notice consists of a copy of his employer's garnishment order and a "summons"133 from the sheriff's office, unaccompanied by a

128 The new federal Consumer Credit Protection Act may do even more toward solving the problem throughout the United States. "No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness." Consumer Credit Protection Act § 340(a), 1968 U.S. Code Cong. & Ad. News 1252. Although the employee may be fired if his earnings are garnisheed by more than one creditor, he is given job security through at least one garnishment, and it appears that he will be protected even after multiple garnishments if they are all by the same creditor. Such protection, however, is not effective until July 1, 1970.
130 Alaska, California, Connecticut, Idaho, Kentucky, Maryland, Montana, Nebraska, Nevada, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina and Utah.
131 KRS § 425.185 (1962) states:
   The plaintiff, may, at or after the commencement of an action, have an attachment . . . 1) in an action for the recovery of money against . . . absent or concealed debtors . . . 2) in an action for the recovery of money due upon a contract, judgment or award, if the defendant have no property in this state subject to execution, or not enough thereof to satisfy the plaintiff's demand, and the collection of the demand will be endangered by delay in obtaining judgment or a return of no property found. . .
133 See text at notes 34-39 and 84-87 supra.
complaint. Unless he contacts the court to obtain a copy of the complaint, he will not know exactly how his wages came to be garnisheed. The vagueness of a simple summons combined with general ignorance of the law undoubtedly contributes to the high number of default judgments. Of course it should be recognized that debtors rarely have a valid legal defense since they have usually failed to perform their part of a contract.

During the period between initial garnishment and his next pay check, the debtor has to meet routine living expenses for himself and usually for a family. In recognition of society’s interest in keeping its members productive and providing for their families, most states have some wage exemption provisions which limit the amount which can be taken by a creditor through garnishment. Most commonly, a state will use one of three exemption devices. It may specify a particular amount which is immune from attachment or levy or may set a percentage of total wages which is immune from attachment. Less often it may declare that all wages earned within a stated period of time are exempt.

Until 1966, Kentucky operated under a statute which was, at its inception, liberal in its concern for the laborer. It allowed the worker to keep ninety percent of his salary, limited however to a maximum of $67.50 per month. In 1910, when the legislation was passed, this was a generous exemption, but today it is totally inadequate. In 1966, the General Assembly revised the exemption section to exclude seventy-five percent of net wages earned during a pay period, unless the debt owed was incurred in the purchase of necessities, in which case the limit is fifty percent.

In practice it is apparent that present Kentucky law exempts from garnishment only fifty percent of the worker’s wages. “Necessities” is

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134 In this category are Maine, Massachusetts, Mississippi, New Hampshire, North Dakota, Ohio, Rhode Island, Tennessee, Vermont and Washington.

135 In this category are Alabama, Arizona, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, West Virginia, Wisconsin and Wyoming.

When it becomes effective July 1, 1970, Title III of the Consumer Credit Protection Act will be a combination of this and the preceding device and will effect all states whose own exemption statutes are not more favorable to the debtor. See note 147 infra.

137 In 1910 this mounted to a 100% exemption for most workingmen. Note, Garnishment in Kentucky—Some Defects, 45 Ky. L.J. 322, 329 (1957).


broadly defined to include "articles of food, clothing (including shoes), medicine, medical services, drugs, rent, public utilities, furniture and household appliances," i.e., nearly all consumer expenditures. The Honorable Joe Lee, Referee in Bankruptcy for the Eastern District of Kentucky, suggested in a recent article that:

The amendment adding "furniture and household appliances" to this list of necessities was unfortunate. All the items or services in this category in . . . [the bill as originally introduced to the Kentucky General Assembly] were consumables. Therefore, the seller or person furnishing the services could not bring an action for replevin. However, furniture and household appliances are customarily sold subject to a security interest retained by the seller. He ordinarily has a remedy by contract and at law for recovery of his property. Therefore it is questionable whether he should be permitted to attach fifty per cent of the debtor’s net wages as payments on the contract of sale.141

Whether or not one agrees with this argument, it is apparent that the only consumer creditor unable to easily slip into a low-exemption category is the small loan company. However Judge Lee points out that:

the fifty per cent exemption rate might be held applicable in suits by small loan companies on notes which are secured by security agreements covering furniture and household appliances. These loans, which remain collectable over a fifteen year period should not fall in the same classification as open-account sales of consumable goods and services, the collection of which may be barred by the five year statute of limitations.142

The necessities provision seems likely to have an effect dramatically opposed to the Legislature’s intent. The sponsors of this provision apparently believed that a businessman who has extended credit for basic needs such as food and shelter is entitled to preference in his attempts to recover payment. This belief has a paradoxical effect in practice because the low-income family which lives on a strict budget and buys nothing except “necessities” may find itself trying to meet current expenses out of half a pay check because the other fifty percent has been sequestered by a garnisheeing creditor. His neighbor who borrows money from a small loan company to play at the racetrack is protected under current law to the extent of seventy-five percent of his salary. In any event, the workingman who is having trouble paying last month’s grocery bill is undoubtedly going to need most of his wages to meet this month’s bill.

Additional problems arise for the debtor who owes—as he often does—more than one creditor. A single garnishment leaves little for cur-

140 Id.
142 Id. at 628.
rent expenses, much less anything for payments to his remaining creditors. This could result in a parade of creditors to the sheriff's office, each seeking to be the first to attach the next pay check, winner take fifty or twenty-five percent, while the helpless debtor falls further and further behind in his other debts. Small wonder that so many debtors resort to bankruptcy to escape garnishment.

At the very least, the debtor has an interest in knowing before any communication to his employer, that his wages are about to be garnished. He may desire to work out a private arrangement to pay the debt in a manner which would assure the suing creditor of his good faith and still leave something for other expenses. The law should encourage such conduct, but instead it tends to foster in response to the sudden, unannounced attack of garnishment.

C. The Employer

Of the three direct parties to garnishment, the employer would, at first glance, seem to have the least concern. After all, he is little more than a spectator to the tug of war between debtor and creditor. Yet, in the long run, it is perhaps the employer's interests which are most affected. He must accept significant bookkeeping expense and inconvenience in processing garnishment papers. He may also lose the services of a trained and efficient worker if that worker is unable to perform effectively while burdened by financial problems. Many employers are interested in helping the harassed employee find a way to discharge his debts as painlessly as possible, but they do not know what their duty is, once served with summons.

The employer served with notice of garnishment is actually the defendant in a separate proceeding. If he fails to respond and pay the correct amount into court, he is subject to contempt proceedings and direct suit by the creditor for costs the creditor may have incurred by reason of the garnishee's resistance.

Moreover, the employer is confronted with the possibility that he may make an honest error in calculating the amount. This error might result in personal liability of the employer to either the creditor or the employee for loss or injury. Until 1966 this risk was more significant for the employer whose good intentions led him to deduct the $67.50 exemption from wages submitted to the garnisheeing complainant. KRS § 425.190 (4) stated that a debtor "may" appear on judgment day to claim his exemptions. An early case, Holbrook v.

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143 KRS § 425.190(7) (1962) and KRS § 425.220 (1962) establish a policy of "first in line" where multiple garnishments are required.  
144 KRS §§ 425.315-.325 (1962).
Fyffe,\textsuperscript{145} ruled that a garnishee could not assert the debtor's exemption. Therefore, an employer had to turn over the entire salary unless the debtor appeared in court to request his exemptions. However, the 1966 revision authorized the employer to automatically pay the exempt portion to the employee.\textsuperscript{146}

\textbf{D. The Public}

The public plays a significant role in the process of wage garnishment. Since the right arises solely by statute, the elected representatives of the public must have considered the policy behind the right and found it compelling. However, those representatives have a responsibility to continually examine the structure and the purpose of the remedy, looking squarely at the basic conflict between the creditor's interest in collection and the consumer's need for protection, to decide if revision is needed.

Beyond this basic conflict, the immediate cost to the public is obvious when the employee loses his job. At the very best he loses worktime and income while looking for new employment. At worst he resorts to bankruptcy, thus defaulting on all his debts while he and his family become public charges if he is not readily able to find suitable employment.

The 90th Congress recognized the significant public interest in the realm of garnishment when it enacted the Consumer Credit Protection Act which includes restrictions on garnishment. The Congress found that garnishment frequently burdens interstate commerce and frustrates the bankruptcy laws.\textsuperscript{147}

It may be argued that wage garnishment does not initiate the

\textsuperscript{145} 164 Ky. 435, 175 S.W. 977 (1915).
\textsuperscript{147} The Consumer Credit Protection Act § 301 states:
(a) the Congress finds:
(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.
(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitute a substantial burden on interstate commerce.
(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.
(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this title are necessary and proper for the purpose of carrying into execution the powers of the

\textsuperscript{(Continued on next page)
financial troubles which force a debtor into bankruptcy. Garnishment is the result, not the cause. However, there is striking evidence in several recent studies\(^{148}\) which indicates that garnishment is often the precipitating factor in bankruptcy. When a consumer is overextended and struggling to keep all his creditors contented, garnishment or the threat of garnishment is frequently the final blow. Data to this effect is now widely available,\(^{149}\) but specific reference should be made to a 1965 California study.\(^{150}\) This study shows that states with the lowest bankruptcy filings per capita are mainly those that either prohibit wage garnishments or severely restrict their use.\(^{151}\) One may pointedly contrast the high and rising rate of bankruptcy in California which

(Footnote continued from preceding page)


To remedy the conditions stated above, Congress has exempted from garnishment all but twenty-five percent of a person’s disposable earnings or “the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage . . . in effect at the time the earnings are payable, whichever is less.” \(§\) 303(a). “Disposable earnings” is defined by \(§\) 302(b) as “that part . . . remaining after the deduction from those earnings of any amounts required by law to be withheld.” The exemption does not apply to orders for support, orders by bankruptcy courts under chapter XIII of the Bankruptcy Act, or debts due for state or federal taxes. \(§\) 303(b). Congress also afforded job security to debtors. See note 128 supra.

Title III (Restriction on Garnishment) of the Consumer Credit Protection Act is not effective until July 1, 1970. It will not annul, alter, or affect any law which Kentucky or any other state has enacted whose provisions concerning exemptions and job security are more restrictive upon creditors. \(§\) 307. The only major alteration of present Kentucky law will be the denial of fifty percent wage garnishment to creditors now authorized under KRS \(§\) 427.010(2) (1962), as amended, (Cummm. Supp. 1966), and the creation of limited job security.

A recent comment on the Consumer Credit Protection Act indicated that:

[It may reasonably be anticipated that there will be an immediate decline in the number of filings of wage-earner bankruptcies when the Federal restrictions on wage garnishment become effective two years hence.]

News and Editorial Comment, 49 Ref. J. 66 (1968). Recent experience in the Eastern District of Kentucky, however, indicates that the above comment may be overly optimistic. Kentucky’s present wage exemption statute (with percentage restrictions similar to those of the Consumer Credit Protection Act) was enacted in 1966. In fiscal years 1965 and 1966, 1243 and 1465 bankruptcy petitions, respectively, were filed in the Eastern District of Kentucky by wage earners. Even after a full year of operation under the new statute the upward trend continued as 1661 petitions were filed in fiscal year 1967. At this time no figures are available for the fiscal year 1968, but there is no evidence to indicate a reversal of the trend. The effect of the new federal job security provision upon bankruptcies remains to be seen, but the protection afforded is so limited that no major reduction in filings is anticipated.


\(^{149}\) E.g., Bruner, supra note 129.


\(^{151}\) Id.
exempts only fifty percent of the debtor's wages with that of New York which exempts ninety percent and has only one-fifth the bankruptcy rate of California.\textsuperscript{152}

One might ask what the effect would be if Kentucky creditors were denied the use of garnishment as a collection tool. A survey of Kentucky magistrates and circuit courts tended to corroborate the California study, by indicating that garnishments are mainly attributable to credit purchases by consumers or to hospital and medical service claims.\textsuperscript{153} In particular, a sampling of employers in central Kentucky revealed that specific firms specializing in high-pressure sales of furniture, jewelry, and installment purchases would appear again and again as garnisheeing plaintiffs.\textsuperscript{154} Collection agencies often argue that without wage garnishment or the threat of garnishment they would be unable to collect their bills and that injury to the credit economy would result. It is probably true that wages are the sole attachable asset of many debtors, now that Kentucky law exempts his automobile.\textsuperscript{155} However, experience in other states indicates that the ability to use wage garnishment seems to have no real effect on the extension of credit.\textsuperscript{156} Those states which exempt ninety or one hundred percent of the debtor's salary do not show any constriction of credit. In fact, New York with its high exemption has a slightly higher ratio of credit sales than does California with its low exemption. The same ratio of installment credit to retail sales (approximately 1 to 4) prevails in the examination of Colorado, Texas, Florida, North Carolina, and Alabama, although three of those states have one hundred percent exemption.\textsuperscript{157}

A recent commentator in Pennsylvania, analyzing the total exemption policy of that state, argued that the growth of the credit economy has been accompanied by a parallel development in the field of credit management and security.\textsuperscript{158} He pointed out that Article IX of the Uniform Commercial Code offers the creditor an opportunity to perfect a security interest in almost any kind of property. Moreover, insurance protection has become so widespread that medical practitioners are partially protected, and the small creditor has the advantage of improved credit reporting and private collection systems.

\textsuperscript{152} Id. at 1240.
\textsuperscript{153} Unpublished survey of Lexington area employers, 1967, on file with Associate Professor Robert M. Viles at the University of Kentucky, College of Law.
\textsuperscript{154} Id.
\textsuperscript{156} Bruun, supra note 149, at 1236.
\textsuperscript{157} Id.
Nevertheless, it is true that those states which exempt all wages do show a slightly lower rate of recovery by collection agencies. In balancing the pros and cons of stringent garnishment policy, there is still the likelihood that a few individual creditors would suffer loss if garnishment were abolished.

V. Recommendations

It is not the purpose of this note to offer a “model garnishment law” for Kentucky, but merely to focus attention on the expectations of all the parties in interest and the policies underlying the practice. Inevitably, however, certain reforms suggest themselves for specific discussion.

Any critical analysis of garnishment must recognize that the legal arm of the state is being used in lieu of a professional, private bill collector. Because a great many merchants extend credit for the purpose of making a profit from credit charges themselves, the state has become a party to the development of credit practices which range from unwise to shoddy. Secure in the knowledge that a significant portion of the debtor’s salary can be reached through garnishment, creditors can afford to indulge in irresponsible business judgment concerning the risk.

An increasing number of states have moved to totally exempt wages from garnishment where the debt is one for consumer purchases. This has the effect of forcing the businessman to carefully analyze his credit policy. Yet, as previously noted, such a total exemption does not significantly reduce the volume of consumer business. But if the Kentucky Legislature should decide to revise the wage garnishment laws by raising the exemption, it must consider the creditor’s interests. At present, wage garnishment is the only effective legal process available to collect consumer debts where there is no security interest.

Kentucky does not have a small claims court system which might give the merchant-creditor legal assistance in collecting from a recalcitrant debtor. Thus, unless the public is willing to leave the responsibility for credit collection entirely upon the businessman, it is probably necessary to retain some form of garnishment remedy. Nevertheless, it is apparent that Kentucky attorneys and judges need to take a more direct role in protecting the debtor from inequitable treatment. Since the creditor is often the only visible party, the tendency has been to give him the benefit of the doubt.

Wage attachment is a form of economic warfare between debtor and creditor and can be justified only as a last resort. It should be
limited to the judgment creditor—the man who has proved his case in court. There are occasionally actions in which a plaintiff is well advised to protect his right to a defendant's assets before a judgment, but these are not actions on a debt where the only assets available are the man's wages. It does not jeopardize the creditor's collateral to insist that he allow the debtor his day in court before commencing a direct assault on the debtor's salary.

Insistence on judgment would reduce the likelihood of a debtor being completely unaware of an impending garnishment. Since many debtors are unaware of their legal rights and duties, every effort should be made to protect them. Thus, Kentucky should require notice to the debtor that his wages are to be garnisheed before the garnishment summons is sent to his employer. Five days notice to the debtor would give him further opportunity to devise a suitable payment arrangement.

Kentucky does not presently allow multiple garnishments; only one creditor may levy at a time, and priority goes to the first in line at the courthouse.\(^{163}\) The law should be revised to allow the first creditor who is awarded judgment to attach the wages and to have that attachment continue until the full amount due is paid off. This would mean that the employer, in effect, acts as a withholding agent for the creditor's benefit. But the employer would find this regular deduction far less cumbersome than the paper work and court appearances required when a new garnishment summons appears every pay period. The employee would be benefited because he would not have to bear the extra expense of repeated process costs for each separate garnishment.\(^ {160}\)

A higher degree of protection against loss of earnings should be made available to the debtor through an increase in the exemption rate. Seventy-five percent is hardly adequate for the average man who must meet daily expenses of maintaining himself and his family.

Both debtor and creditor would benefit from the enactment of a strong job security statute. The employee's discharge simply because his wages have been garnisheed only compounds his trouble and makes it almost certain that the creditor will not get the rest of his money.

The above recommendations are conservative and attempt to recognize the valid concerns of the creditor. Some states are experimenting, however, with a law which denies any wage garnishment

\(^{160}\) For a law allowing the employer to deduct installment payments on a continuing lien, see La. Rev. Stat., tit. 12 § 3923 (1964) and N.Y.R. Civ. Prac. § 5231(e).

where the underlying indebtedness arose from installment purchases.\textsuperscript{161} This exemption has the advantage of protecting the small merchant, e.g., grocer, druggist, who extends credit occasionally, but it recognizes the possibility of abuse by the retailer who hopes to profit by the sale of credit as well as by the sale of merchandise. It also protects the special creditor, such as the holder of a court order for support or alimony.

Before any revision is made, however, one hopes that Kentucky citizens will review the facts and make a basic decision concerning garnishment law. Will it continue to be a publicly subsidized, widely available form of debt collection? Or will it be seen as an ultimate weapon, to be wielded most cautiously and only after having given careful attention to all the alternatives?

\textit{Natalie S. Wilson\textsuperscript{162}}
\textit{Kenneth P. Alexander\textsuperscript{163}}

\textsuperscript{161} E.g., DEL. CODE ANN. tit. 10 § 10-4913(b) (1953) and S.C. CODE § 10-1731 (1962).
\textsuperscript{162} Introduction and Parts I, IV and V.
\textsuperscript{163} Parts II, III and the appendix.
APPENDIX

TYPICAL COURT COSTS IN SUIT INVOLVING OVER FIFTY DOLLARS\textsuperscript{164}

Filing Suit and Obtaining Judgment:

<table>
<thead>
<tr>
<th>Cost Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>State tax\textsuperscript{165}</td>
<td>$ 5.00</td>
</tr>
<tr>
<td>County library fee\textsuperscript{166}</td>
<td>1.00</td>
</tr>
<tr>
<td>Clerk's fees:\textsuperscript{167}</td>
<td></td>
</tr>
<tr>
<td>Filing complaint (two copies)\textsuperscript{168}</td>
<td>.80</td>
</tr>
<tr>
<td>Filing each exhibit (two copies)\textsuperscript{169}</td>
<td>.60</td>
</tr>
<tr>
<td>Docking suit\textsuperscript{170}</td>
<td>.25</td>
</tr>
<tr>
<td>Indexing in the general index (two parties)</td>
<td>.60</td>
</tr>
<tr>
<td>Issuing summons (two copies)</td>
<td>1.10</td>
</tr>
<tr>
<td>Entering return of summons</td>
<td>.40</td>
</tr>
<tr>
<td>Filing affidavit for default judgment</td>
<td>.40</td>
</tr>
<tr>
<td>Entering judgment</td>
<td>1.25</td>
</tr>
<tr>
<td>Taxation of costs (one party)\textsuperscript{171}</td>
<td>.75 6.15</td>
</tr>
<tr>
<td>Sheriff's fees:\textsuperscript{172}</td>
<td></td>
</tr>
<tr>
<td>Executing and returning summons\textsuperscript{173}</td>
<td>2.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$14.15</strong></td>
</tr>
</tbody>
</table>

Obtaining Order of Garnishment:

<table>
<thead>
<tr>
<th>Cost Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerk's fees:\textsuperscript{174}</td>
<td></td>
</tr>
<tr>
<td>Filing affidavit for garnishment</td>
<td>.40</td>
</tr>
<tr>
<td>Docking affidavit for garnishment</td>
<td>.25</td>
</tr>
<tr>
<td>Issuing order of garnishment (four copies)</td>
<td>1.90</td>
</tr>
<tr>
<td>Entering return of order of garnishment</td>
<td>.40</td>
</tr>
</tbody>
</table>

\textsuperscript{164} This appendix is based on the practice in one circuit court and is typical of practice in other circuit courts. Practice in quarterly and justice's courts varies so greatly that it is impossible to compile a typical schedule of court costs for these lower tribunals.

\textsuperscript{165} KRS § 142.011(1) (1962).
\textsuperscript{166} KRS § 172.180(3)(b) (1962).
\textsuperscript{167} KRS § 64.010 (1963).
\textsuperscript{168} Because they are not required to attach a copy of the complaint to the summons served upon the defendant, many attorneys leave a second copy of the complaint, with exhibits, with the court clerk to be picked up by the defendant.
\textsuperscript{169} Copies of sales contracts, security agreements, and loan agreements are often attached to the complaint as exhibits.
\textsuperscript{170} The circuit court used as a model assesses a docketing fee for each day in which some entry is made in the docket books (except the day in which suit is filed).
\textsuperscript{171} If the defendant appears in court and incurs expenses to be taxed to him, there will be an additional fee of $.75.
\textsuperscript{172} KRS § 64.090 (1962).
\textsuperscript{173} In addition, KRS § 64.095 (1962) authorizes collection of ten cents per mile as travel allowance for expenses incurred by sheriffs in executing a summons.
\textsuperscript{174} See note 167 supra.
1.50
1.25  5.70
        2.00
$7.70

Total Cost of Judgment Plus One Garnishment  $21.85

175 This fee is applicable only where garnishment is obtained before judgment. Once posted, bond would normally be sufficient to cover all subsequent garnishments obtained in the same suit.
176 See note 172 supra.
177 See note 173 supra.