

# Proposed Change in Personal Property Law: Re Wage Assignments

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If the duties of the office of superintendent of banks are wisely carried on in the future as in the past, we are sure that the trend will be toward fewer liquidations and greater conservation of banks, with increasing resumption on a sound financial basis.

LAWRENCE T. GRESSER, JR.

PROPOSED CHANGE IN PERSONAL PROPERTY LAW: RE WAGE ASSIGNMENTS.—The wage assignment has been condemned by economists and social workers for many years; courts have admitted the evils but have been constrained from acting until the legislature should take the proper steps. It has brought poverty to many homes; workers have been deprived of their positions. The disastrous results of such assignments and their viciousness have been the subject of much discussion. The seizure of an employee's entire wage is a condition that must be remedied.<sup>1</sup> The question is as to the best method of accomplishing that ideal.

Because of such appalling conditions employers have attempted to prevent their employees from making wage assignments by means of a contract between themselves. In an Illinois case the highest court of that state held such a contract to be of no effect as being against public policy.<sup>2</sup> The New York courts have followed the same theory. Still, in a recent case, Mr. Justice Untermyer stated that an employer or any contracting party should not be denied the right to protect an interest so manifest, by means so reasonable, unless some principle of public policy or some statute inexorably requires it.<sup>3</sup> He could not see that such a contract offended on either ground. But one judge held that an agreement of that type would be invalid under the Personal Property Law,<sup>4</sup> and that it would be nugatory and against public policy.<sup>5</sup> The Court of Appeals has not, as yet, decided the point. It is doubtful that they would hold *contra* to the Illinois court.

As the necessity is clear for some action on the question the legislature has proposed to add a new section to the Personal Property Law.<sup>6</sup> The bill as introduced into the legislature provides that wage assignments securing indebtedness aggregating less than one thousand dollars must be contained in separate written instrument identifying the transaction, that no other assignment or order exists in connection therewith and that wages amount to at least twelve

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<sup>1</sup> Legal Aid Society Annual Report (1932) Report of the President, p. 12.

<sup>2</sup> State St. Furniture Co. v. Armour & Co., 345 Ill. 160, 177 N. E. 702 (1931).

<sup>3</sup> Sacks v. Neptune Meter Co., 144 Misc. 70, 255 N. Y. Supp. 254 (1932).

<sup>4</sup> PERSONAL PROPERTY LAW §41.

<sup>5</sup> *Supra* note 3.

<sup>6</sup> N. Y. LEGIS. INDEX (1933) Int. No. S381, A. 444—Pr. No. S385, A. 451.

dollars a week, and not more than ten per cent thereof to be collectible at time of each payment of wages.<sup>7</sup>

The percentage restriction as in the case of garnishment appears most desirable.<sup>8</sup> Supplemental maximum and minimum exemptions may remove possible objections.<sup>9</sup> The bill has been endorsed in principle by the New York Bar Association but that organization points out that the measure is so framed that one might make ten different assignments to ten different companies. The objection seems to be well taken and the bill should be reframed to remove such a contingency.

As to such a statute being constitutional it appears that the greater weight of authority is on the affirmative side. The Massachusetts court has held such a law to be constitutional on the ground that it was a proper exercise of the police power.<sup>10</sup> The Supreme Court of the United States agreed with the Massachusetts court that such restrictive measures, akin to the proposed measures in the New York statute, were valid.<sup>11</sup> It prescribes conditions to the validity of such assignments, and in this it has many examples in legislation. Legal restrictions have been and must be put upon freedom of contracting in adapting human laws to human conduct and necessities.<sup>12</sup> A restriction as to filing has been held valid by the Court of Appeals of New York.<sup>13</sup> It is almost certain that the proposed restrictions would be upheld by our courts.

But there is much doubt as to a statute that would forbid absolutely the making of such assignments. In Massachusetts the court has inferred that such a broad measure would be unconstitutional.<sup>14</sup> The Indiana court held contra.<sup>15</sup> The proposed statute can not be attacked on this ground.

It is manifest that this new section of the Personal Property Law should be passed and made law as quickly as possible. The one fault can be easily remedied. Other states have laws of like purport on their statute books. Why should the state of New York with its great record of social legislation fail in this instance?

JOHN BENNETT.

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<sup>7</sup> *Ibid.*

<sup>8</sup> Note (1932) 45 HARV. L. REV. 1102.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Mutual Loan Co. v. Martell*, 200 Mass. 482, 86 N. E. 916 (1909), *aff'd*, 222 U. S. 225, 32 Sup. Ct. 74 (1911).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Thompson v. Erie Railroad*, 207 N. Y. 171, 100 N. E. 791 (1912); *Thompson v. Gimbel*, 145 App. Div. 436, 129 N. Y. Supp. 1025 (1st Dept. 1911), *aff'd*, 207 N. Y. 569, 100 N. E. 794 (1913).

<sup>14</sup> *Supra* note 10.

<sup>15</sup> *International Text Book Co. v. Weissinger*, 160 Ind. 349, 65 N. E. 521 (1902).