

June 2014

Exemption of Compensation Awards from Execution

St. John's Law Review

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Recommended Citation

St. John's Law Review (1928) "Exemption of Compensation Awards from Execution," *St. John's Law Review*. Vol. 3 : No. 1 , Article 10.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol3/iss1/10>

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Statute against Perpetuities aims to remedy, and they are not included under it.²⁷ But the grantors of these fees have been practically subject to penalties for so fettering estates. Their rights of re-entry have been held extinguished by a conveyance thereof by deed to a third person before entry for breach of condition, even though such conveyance be to a son of the grantor who, upon his death becomes his heir.²⁸ Such holding was on the ground that the father thereafter could make no entry or claim as he had no interest; neither could the son as he was a stranger to the condition.

It is not socially expedient that property be fettered. Besides, the prayer of the grantee is appealing. The Trustees in the instant case may be unable, for example, to carry on financially the burden of church work. They may sell their property,²⁹ but its title is not unembarrassed nor unhampered as long as it can be used only for a particular purpose. No one would say that it is. This is disadvantageous and until, by legislative enactment, estates which tie up property in this manner are abolished, the rights of the parties, when they are to a degree difficult to determine, may probably in the last analysis be best determined by what is socially beneficial, making for certainty of title, unhampered use of property, quieting of estates and greater marketability. This has been the evident policy of the law.

“After all, the question whether a given opinion is a danger to society is a question of the times, and is a question of fact.” The truth is that a changing sense of the exactions of utility and justice has evoked a changing law.”³⁰

G. M. B.

EXEMPTION OF COMPENSATION AWARDS FROM EXECUTION.—

The recent decision of the Court of Appeals in the case of *Surace v. Danna*,¹ is an interesting example of the liberal construction the courts are disposed to give to the provisions of the Workmen's Compensation Law. The precise point involved presents a question vitally affecting the value of the award; and one which follows the granting of every award in such logical sequence, that it is surprising that it has not been presented for judicial determination before now. The defendant had an award of \$3,500. made in a lump sum, under the Workmen's Compensation Law,² for injuries sustained in the

²⁷ 30 Cyc. 1474.

²⁸ *Rice v. Boston & Worcester R. R.*, 12 Allen (Mass.) 141 (1866); *Hooper v. Cummings*, 45 Me. 359 (1858).

²⁹ *Pettit v. Stuttgart*, *supra*.

³⁰ Cardozo, "Paradoxes of Legal Science," at p. 24, citing *Bowman v. The Secular Society*.

¹ 248 N. Y. 18, 161 N. E. 315 (1928).

² N. Y. Cons. Laws, Ch. 67.

course of his employment. He deposited this money in a bank. Subsequently the plaintiff obtained a judgment against him and execution was returned unsatisfied. Supplementary proceedings followed, and upon the disclosure that there was a balance of the award in the sum of \$2,600. still on deposit in the bank to the credit of the defendant, the County Court issued an order directing the bank to pay to the sheriff a sum sufficient to satisfy the judgment. The defendant appealed, and the Appellate Division affirmed the order, with permission to proceed to the Court of Appeals. The defense interposed, is that the money being compensation comes within the immunity granted by the provisions of the Workmen's Compensation Law.³ The plaintiff argued that the word "due" as used in that section limits the exemption to compensation owing and unpaid.⁴ It was held that the money paid to the injured workman under the Workmen's Compensation Law represented a fund for his maintenance during the continuance of disability and as such, a balance thereof, on deposit to his credit is exempt from execution. A dissenting opinion, written by Judge O'Brien, advocates strict construction of the statute upon the theory that it is the duty of the courts to interpret the law as they find it and as the question whether one shall receive the privilege of escaping payment of a debt is one of policy, it is essentially one for the Legislature.

Unquestionably statutes are to be given the construction that will effectuate the legislative intention but adherence to the letter will not be suffered to "defeat the general purpose and manifest policy intended to be promoted" by their adoption.⁵ The Workmen's Compensation Law was enacted to provide for the injured workman at a time when through misfortune he is unable to support himself.⁶ He is to receive the benefits provided even if his injury is the result of his contributory negligence, and in spite of the fact that he may have assumed the risk. The payment he receives is designed to support him during disability, and thus prevent him from becoming a derelict.⁷ The cost of his maintenance becomes a charge upon the industry without regard to fault. He is expressly prohibited from waiving the benefits conferred upon him by this act, by a provision of the section in question. The legislative intention is apparent. It

³ Workmen's Compensation Law, Sec. 33. "Compensation or benefits due under this chapter shall not be assigned, released or commuted except as provided by this chapter and shall be exempt from all claims of creditors, and from levy, execution and attachment or other remedy for the recovery or collection of a debt, which exemption may not be waived."

⁴ Bull v. Case, 165 N. Y. 578, 59 N. E. 301 (1901); Baker v. Buntball, 52 Barb. (N. Y.) 188 (1868).

⁵ Spencer v. Myers, 150 N. Y. 269, 44 N. E. 942 (1891); The People v. Ballard, 134 N. Y. 269, 32 N. E. 54 (1892); People ex. rel. Wood v. Lacombe, 99 N. Y. 43, 1 N. E. 599 (1885); Matter of Folsom, 56 N. Y. 60 (1874).

⁶ Matter of Post v. Burger & Gahlke, 216 N. Y. 544, 111 N. E. 351 (1916); N. Y. C. R. R. v. White, 243 U. S. 188, 197 (1916).

⁷ Post v. Burgher, 216 N. Y. 544, 111 N. E. 351 (1916).

does not merely give him a right to these benefits, but goes farther, and protects him against his own folly and the demands of unscrupulous employers that he sacrifice this right as a condition precedent to obtaining employment. The conclusion that the Legislature recognized the fact that the injured workman was in a much more trying position than his brother in a trade possessed of sound health and ability to work at a small salary, or even if he be unemployed, is inescapable.

It should be noted that defendant's case is not one of the class expressly exempt from attachment by the terms of the Civil Practice Act. Section 777 provides that the *earnings of a judgment debtor for his personal services rendered* are exempt from seizure when it is made to appear by his oath or otherwise that the earnings are necessary for the use of a family wholly or partly supported by his labor.⁸ Another section permits execution for 10% of *accruing wages*, but even then, if the wages are less than \$12. per week they are exempt.⁹ As compensation under the law is neither *accruing wages* nor *earnings for personal services*, it does not come within the immunity granted by the foregoing sections.

To sustain the contention of the plaintiff in the present case, would be to hold that it was the intention of the Legislature to secure the payment of compensation to the injured workman, because of his great need of protection and support, and then to deny him the protection afforded to workmen in good health, and actually employed. "The thought behind the phrase proclaims itself misread, when the outcome is injustice or absurdity."¹⁰ To hold with the plaintiff would be to utterly defeat the purpose of the act in cases where the injured workman was not only penniless but in debt, and therefore in greatest need, being unable to purchase necessities on credit. For a debtor need only secure an order in supplementary proceedings containing the usual restraining clause (forbidding transfer, assignment, etc.) and this will tie up the payments as they become due, and the entire amount may be appropriated in payment of the debt.

In the case of *Yates County National Bank v. Carpenter*¹¹ in construing a similar statute,¹² the Court of Appeals said: "It is quite

⁸ C. P. A., Sec. 777: "This article does not authorize the seizure of * * * the earnings of the judgment debtor for his personal services * * * when it is made to appear by his oath * * * that those earnings are necessary for the use of a family * * * supported by his labor."

⁹ C. P. A., Sec. 684: "Where * * * judgment recovered * * * and execution * * * returned * * * unsatisfied, and where * * * wages * * * are due * * * judgment debtor * * * to amount of twelve dollars or more per week, * * * the court * * * must issue * * * execution * * * against the wages * * *"

¹⁰ *Matter of Meyer*, 209 N. Y. 386, 103 N. E. 713 (1913); *Smith v. People*, 47 N. Y. 330 (1872).

¹¹ 119 N. Y. 550, 23 N. E. 1108 (1890).

¹² C. P. A., Sec. 667: "The pay of a non-commissioned officer * * * or private in the military or naval service of the United States or the State of New York, * * * a pension or other reward * * * are also exempt from levy and sale * * *."

obvious, that such an exception can produce no beneficial result unless it is extended beyond the letter of the act and given life and force according to its evident spirit and meaning."¹³ In that case, the defendant was the recipient of a military service pension, which was exempt from execution.¹⁴ The plaintiff there, as in the case at bar contended that the exemption extended only to the pension moneys before payment by the government, but the Court held that the pension moneys received by the defendant were exempt, and that such exemption extended to a house and lot in which the pension money was invested.

In another case,¹⁵ defendant, a civil war veteran, upon receipt of his pension money from the United States Government, deposited it in a Savings Bank. A representative action was brought by a receiver to recover the fund and hold it for the benefit of creditors. The Court of Appeals in denying the claim said¹⁶ that "it would be clearly unreasonable to hold that the quality of exemption was lost by what was only a careful mode of preserving the money."

Adherence to the rule of strict construction is not without its support in the authorities,¹⁷ and the evils of too liberal interpretation and so-called judicial legislation cannot be overstressed, but to destroy the efforts of the Legislature which, prompted by a sound public policy, has attempted to correct a great evil, because of their unhappy choice of a word or phrase, should not be tolerated, unless any other course would require too wide a departure from the apparent meaning.

While Section 33 standing alone would seem to express a more limited immunity, a reading of the entire statute, with regard to the purpose for which it was enacted, justifies the construction the Court has placed upon it. The word "*due*" though commonly used to mean owing and unpaid, may also mean, paid, but paid because due, *i. e.*, required: demanded. Words have a meaning that can vary according to the manner in which they are used.¹⁸ The rule of construction governing these statutes, as expressed in the words of Chief Judge Cardozo writing the majority opinion in this case, is, "The end to be served, and the mischief to be averted supply the clues and the keys by which construction is to be governed."¹⁹ The decision is further evidence of the desire to continue the liberal attitude adopted by the Court of Appeals of this State in the first case involving the Workmen's Compensation Law to come before it.¹⁹

S. J. T.

¹³ *Supra*, note 11.

¹⁴ *Supra*, note 12.

¹⁵ *Stockwell v. National Bank of Malone*, 36 Hun. 583 (3rd Dept. 1885).

¹⁶ *Ibid.*, 585.

¹⁷ *Supra*, note 4 and *McIntosh v. Aubrey*, 185 U. S. 122 (1901); *Smith v. Blood*, 106 App. Div. 317, 324, 94 N. Y. S. 667 (3rd Dept. 1905).

¹⁸ *Towne v. Eisner*, 245 U. S. 418 (1917); *Int. Stevedoring Co. v. Haverty*, 272 U. S. 50 (1926).

¹⁹ *Matter of Petrie*, 215 N. Y. 335, 109 N. E. 549 (1915).