

serious hardship in its wake. Society has a major stake in the garnishment process, which is not only a creature of law but an activity of government. Society has a legitimate concern that legal debts be paid; society also has a legitimate concern that the collection tools it fashions and whose use it sanctions do not cause undue distress and hardship. How well garnishment serves these various competing interests is the question underlying this study.

The study first considers the operation of wage garnishment in California. Next it reviews the equivalent laws of other states, especially with respect to the amount of earnings exempt from garnishment. Then it discusses major factors pertinent to a garnishment policy, among them the relation of garnishment to employment, bankruptcy, and consumer credit. The final section includes several recommendations.

I

GARNISHMENT STATUTES

A. California

The words "attachment," "execution," and "garnishment" have a formidable ring. Their meaning is simple enough. Both attachment and execution refer to the seizure of a defendant's property by legal process; attachment takes place before judgment "as security for the satisfaction of any judgment that may be recovered";⁴ execution may be had after judgment for its enforcement.⁵ The term "garnishment" is little used in California statutes, but in common legal parlance refers to the use of either attachment or execution to reach property of the debtor which is in the possession of a third person.⁶ Among such items of property may be wages payable to a debtor by his employer—hence the term "wage garnishment."

The key California provision that limits garnishment of wages is Code of Civil Procedure section 690.11:⁷

⁴ CAL. CODE CIV. PROC. § 537.

⁵ CAL. CODE CIV. PROC. § 681.

⁶ See *Kimball v. Richardson-Kimball Co.*, 111 Cal. 386, 393, 43 Pac. 1111 (1896). See also *RESTATEMENT, JUDGMENTS* §§ 35, 36 (1942). A "special note" to § 36 states: "A proceeding by which the plaintiff is enabled to reach and to apply to the satisfaction of his claim a debt owing to the principal defendant is ordinarily called garnishment, and the principal defendant's debtor is called the garnishee. The word 'garnish' means 'warn': the garnishee is warned that he is not to pay his debt to the defendant, his creditor, but to the plaintiff. In some of the New England States the proceeding is called 'trustee process,' and the defendant's debtor is called the 'trustee.'"

⁷ California Code of Civil Procedure § 690.10 provides a special exemption for the earnings of "seamen, seagoing fishermen and sealers" in the amount of \$150 or \$300 depending on conditions specified in the section.