

of the fact that to the great majority of persons supporting a family the earnings of the past 30 days are required for such basic things as food, heat, shelter, etc. (*common* to all) desired to make sure that these earnings shall not be taken to pay for something less basic.²⁰

Los Angeles Finance Co. v. Flores has been of little help to debtors. The half of the wages that is not automatically exempt can be attached by a routine allegation in the affidavit for attachment that the action is brought to collect a debt incurred for the common necessities of life;²¹ for a writ of execution not even an affidavit is needed. If the debtor wants to get that half of his earnings exempted, his road begins by his filing an exemption affidavit. He first has to obtain the forms from the sheriff; they are not given to him at the time his wages are garnished.²² He completes them in duplicate, "specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim . . ." and returns the affidavit to the levying officer.²³ Does he then get his wages? No. Then he waits at least five days. During that time the creditor may file a counter-affidavit.²⁴ If the creditor doesn't, the wages are released.²⁵ But if he does, they remain tied up for at least

²⁰ *Id.* at 856, 243 P.2d at 143-44 (1952). This is the latest word on the subject. The court could find only three earlier cases dealing with this clause. *White v. Gobey*, 130 Cal. App. 789, 19 P.2d 876 (1933), held that clothing bought by the defendant's wife before marriage did not come within the "common necessary" limitation because, having been bought before she became his wife, the articles were not "necessities . . . used for the very maintenance of the debtor's family, for food, clothing and the like . . ." *Id.* at 792. In *Evans v. Noonan*, 20 Cal. App. 288, 293, 128 P. 794, 795 (1912), the court said common necessities of life include "besides food, clothing and shelter such medical attentions in cases of illness as are absolutely requisite to relieve physical suffering and pain and to overcome and conquer disease, if by such attentions it can be done." The third case was an unreported decision, also involving a watch purchase, which *Flores*, in effect, overruled.

It should also be noted that the exemption provisions of California Code of Civil Procedure, § 690.11, do not apply to alimony, child support, and attorney's fees in divorce actions. *McIntosh v. McIntosh*, 209 Cal. App. 2d 374, 26 Cal. Rptr. 28 (1962); *Henry v. Henry*, 182 Cal. App. 2d 707, 6 Cal. Rptr. 418 (1960).

²¹ CAL. CODE CIV. PROC. § 538. This section also provides that no attachment may be issued where the principal claimed is below \$75. Assembly Bill 1127, passed in the 1965 session, Cal. Stat. 1965, ch. 668, § 1, raises this to \$125. Attachment in California is available in (1) actions on unsecured contracts, express or implied, (2) support actions, (3) contract and tort actions against nonresidents or persons absent from the state or who conceal themselves to avoid service, (4) unlawful detainer actions, (5) tax collection suits, and (6) suits by the state or any political subdivision to recover funds expended in certain narcotics investigations. CAL. CODE CIV. PROC. § 537. None of the limitations applicable to attachment apply to executions.

²² The San Francisco Sheriff's Office advised the author that at one time it supplied debtors with affidavit forms at the time of the wage levy, but discontinued this practice following objections from collection agencies.

²³ CAL. CODE CIV. PROC. § 690.26(1).

²⁴ CAL. CODE CIV. PROC. § 690.26(3).

²⁵ CAL. CODE CIV. PROC. § 690.26(4).