

## THE EVOLUTION OF GARNISHMENT AND WAGE ASSIGNMENT LAW IN ILLINOIS

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*Recent research shows that, despite high interest rates, wage earners in the early twentieth century frequently obtained credit from retail shops, from loan sharks, and from the emerging formal consumer credit market. When wage earners defaulted, the options for collection available to their creditors were governed by state laws on garnishment and wage assignment. These important laws varied widely from state to state, and little is known about their origins or evolution. In Illinois, the law put significant restrictions on creditors in the late nineteenth century, but the restrictions were removed in the first quarter of the twentieth century. This article shows how this dramatic shift resulted from the interaction of legislative and judicial activity and was driven by both interest group politics and judicial action.*

Wage earner debt collection was one of the primary activities of Chicago's courts in the early twentieth century.<sup>1</sup> A 1933-1934 survey of industrial establishments in Chicago found, for example, that garnishment and wage assignment occurred at a rate of 75 per 1,000 employees.<sup>2</sup> More recent studies suggest that garnishment remains one of the most prevalent forms of civil litigation in the United States.<sup>3</sup> Historical studies of debtors and creditors have proliferated in recent

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years, and many of these studies have highlighted the role that business played in shaping the institutions that govern credit transactions.<sup>4</sup> The evolution of institutions governing garnishment and wage assignment has, however, remained largely unexplored. Garnishment and wage assignment are only occasionally referenced in the studies that document the practices of loan sharks in the late nineteenth and early twentieth centuries.<sup>5</sup>

Prior to the Consumer Credit Protection Act of 1968 the restrictions that states imposed upon creditors varied widely. The differences in restrictions placed upon creditors are illustrated in Figure 1. There is little pattern to the extent of restrictions: for example, Illinois, which had few restrictions on creditors by that date, is bordered by Indiana, which had many restrictions, and Missouri, which had moderate restrictions. Illinois, Pennsylvania and New York all had large urban populations but different restrictions. These differences in state laws were likely to have been important determinants of the supply of credit to wage earners, with the largest supply offered to wage earners in states with the fewest restrictions. Though direct evidence on the relationship between state laws and the supply of credit is scant, there is indirect evidence: in states

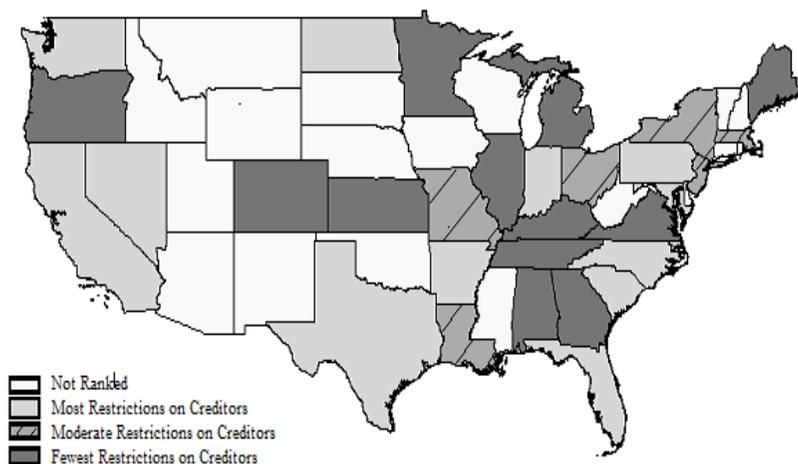


Figure 1. Restrictions on Creditors by State, 1934

*Source:* Nugent and Jones, 1936.

where creditors found it easy to claim a debtor's wages, many debtors filed for bankruptcy; in states where creditors found collection hard, few debtors turned to bankruptcy.<sup>6</sup>

This article examines the evolution of garnishment and wage assignment laws in Illinois from the 1870s through the 1930s. Illinois provides a particularly interesting case. In the 1870s and 1880s, legislation and court rulings combined to prevent creditors from seizing almost all of the wages of a head of household. Yet, as noted above, by the 1930s Illinois was one of the states where it was easiest for a creditor to claim a large share of a debtor's wages. This dramatic shift arose from the interaction of legislative and judicial activity and was driven by both interest group politics and judicial action.

As illustrated by the timeline in Figure 2, the evolution of laws governing garnishment and wage assignment in Illinois took place in two phases. In the last quarter of the nineteenth century, two groups of business people—large employers and businesses that supplied credit to wage earners—came into conflict over garnishment. Large employers regarded garnishment as a costly nuisance and sought to restrict its use. Businesses that provided credit to wage earners regarded garnishment as an important tool and sought to minimize the restrictions on its use. Each group pursued change through the legislature and through the courts. Throughout most of the late nineteenth century, the proponents of restrictions were successful in both venues. In the final years of the century, organizations of retailers succeeded in reducing restrictions upon the amount of wages that were exempt from garnishment, but their success prompted a response from organized labor, and legislation raising the exemption was quickly enacted, although exemptions never returned to their nineteenth century highs.

In the first decades of the twentieth century, small loan lenders—popularly referred to as loan sharks—came into conflict with Progressive reformers over the restrictions on the use of wage assignments. The reformers were successful in the legislature but not in the courts. In 1909, the Illinois Supreme Court ruled that the restrictions on wage assignments violated the due process clause of the State's constitution. Later the Court ruled that even private attempts to prevent employees

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Events Affecting Wage Garnishment	Date	Events Affecting Wage Assignment
General Assembly passes \$25 exemption	1872	
General Assembly passes \$50 exemption	1879	
General Assembly passes "Grocers' Bill" with \$8 exemption	1897	
	1899	Dunne's ruling in <i>Mallin v. Wenham</i>
General Assembly passes \$15 exemption	1901	
	1904	IL Supreme Court overturns Dunne's ruling
	1905	General Assembly restricts assignments
	1909	IL Supreme Court rules restrictions unconstitutional in <i>Massie v. Cessna</i>
	1914	IL Supreme Court blocks employer renegotiation of assignment in <i>Staehtl v. Postal Telegraph Cable Co.</i>
	1931	IL Supreme Court blocks employer attempt to pre-empt wage assignments in <i>State Street Furniture Co. v. Armour</i>

Figure 2. Timeline

from assigning their wages were invalid. Not surprisingly, by the eve of the Great Depression, wage earners and their creditors in Illinois used wage assignment regularly and garnishment rarely.

The choices that businesses make are influenced by the institutional environment, the laws and regulations, which they operate within. But the direction of influence runs both ways; businesses play an active role in shaping the institutional environment. The history of garnishment and

wage assignment in Illinois highlights the complex nature of the relationship between interest group action and institutional change. Business and economic historians who have examined the role of business in shaping laws and regulations have frequently emphasized the conflicts between different groups of businesses, and that was certainly the case with garnishment and wage assignment in Illinois. But a distinctive feature of this story is the extent to which the outcome of these conflicts was determined by judicial action. Garnishment and wage assignment provide alternative methods of collecting debts from wage earners. Legislators placed considerable restrictions on both approaches, but many of the restrictions on wage assignment were overturned by the courts. Judicial action sent the two creditors' remedies on divergent paths, raising questions about the extent to which Progressive legislation actually benefited wage earners.

### **Business Interests and Garnishment Law**

When a person borrows to purchase a durable asset such as a home or car, the asset can provide security for the loan, enhancing the incentive for the borrower to repay and reassuring the creditor that at least some of the value of the loan can be recovered if the borrower defaults. But when a person borrows to pay for rent, groceries, or medical expenses there is no corresponding asset that the creditor can claim in the event of default. Moreover, in many cases, debtors lack *any* physical asset that could serve as security for a loan.<sup>7</sup> Often, working class people in need of a loan have had only their future wages to offer as security for the debt. In these cases, creditors have relied upon garnishment and wage assignment if the debtor defaulted. Garnishment and wage assignment are the legal institutions that enable a wage earner with no assets to borrow against future wages. A wage assignment is a contract between a borrower and his creditor that authorizes the creditor to claim payment on the loan directly from the borrower's employer if the borrower defaults. Garnishment is the legal remedy by which a creditor can petition the court to order an employer to turn over wages if the borrower defaults.

Illinois first enacted a wage exemption for garnishment in 1872. The law provided a \$25 exemption for a wage earner who was the head of a household; that is, a creditor could only garnish if more than \$25 in

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wages was owed to the employee. An exemption of \$25 was relatively generous in 1872.<sup>8</sup> Despite the generosity of the \$25 exemption, a bill was introduced the next year to double the exemption to \$50.<sup>9</sup> That bill failed in 1874, but a similar one succeeded in 1879. The efforts to increase exemptions were supported by large employers, who found garnishment of their employees to be a nuisance.<sup>10</sup>

Subsequent decisions of the Illinois Supreme Court ensured that wage earners received the maximum benefit from the wage exemption. In the 1875 case of *Bliss v. Smith*, the Court ruled that an employee could take up his wages as fast as they became available—thus as long as the amount owed to the employee at any one time did not exceed \$25 garnishment was never possible. Although it was unclear whether the legislators had intended to effectively make garnishment impossible, the members of the Court seemed certain that the purpose of the law was protection of working people. In the view of Chief Justice Scott, “the statute was enacted for a humane purpose: for the benefit of the debtor's family as well as himself, and should receive a fair and liberal construction, that it may effectuate the beneficent object the legislature had in view.”<sup>11</sup> The following year the court reiterated its position in *Frank J. Hoffman v. Fitzwilliam and Sons*.<sup>12</sup> As long as the employer never allowed owed wages of more than \$25 to accumulate, there would never be any funds for a creditor to garnish. In effect, the Court had made it possible for employers and employees to thwart most attempts to garnish wages by agreeing that wages would be paid in installments of \$25. The Court also tried to ensure that all eligible wage earners would receive the exemption. In 1877, it ruled that employers had a duty to ascertain whether their employee was eligible for the exemption and to assert the exemption for eligible employees. Employers who failed to assert a valid exemption could be held liable to the employee for any loss due to that failure.<sup>13</sup>

Although the law created an obligation for employers to assert an employee's exemptions, creditors tried to deter employees from asserting exemptions by raising the cost of attending court. Employers in Chicago—particularly large employer such as railroads and manufacturers—increasingly argued that garnishment was a nuisance. Indeed, creating a nuisance appears to have been the objective of

creditors in at least some cases. A frequent complaint by large employers was that creditors intentionally forced them to travel to garnishment proceedings that were far from their businesses. Creditors were accused of forcing employers from Chicago to attend Cook County courts outside the City in towns such as Blue Island or Dolton.<sup>14</sup> In February 1881, for instance, W.C. Runyon, Secretary of the Union Iron and Steel Company, told the *Chicago Daily Tribune* that “over and over again representatives of the Company had been obliged to obey the summons to appear at the offices of county Justices.”<sup>15</sup> The president of the Union Brass company, J. Ball Dow, declared that “the outrage is getting to be intolerable.”<sup>16</sup> And a representative of the North Side Rolling Mills claimed that dealing with garnishment cases occupied the majority of the time of one of their employees.<sup>17</sup> Representatives of railroads expressed similar complaints.<sup>18</sup> To the extent that creditors were able to increase the costs of attending court, forcing employers to travel to court may have been a successful strategy for creditors. More employers would choose not to travel to oppose the garnishment.

These stories in the *Chicago Daily Tribune* coincided with the legislative session and appear to have been part of a campaign in support of legislation to prevent the use of garnishment to harass employers. Specifically, large employers supported a bill limiting the ability to file garnishment in another city in Cook County when the employer was located in Chicago and requiring that all defendants in garnishment cases be reimbursed for time and travel expenses.<sup>19</sup> The legislation was enacted in 1881 and soon challenged in court. Large employers were much less successful in the courts than they had been in the legislature. Within the year, the Illinois Supreme Court struck down the provision that applied specifically to Cook County on the grounds that state laws could not provide special treatment to any one jurisdiction within the state.<sup>20</sup> The 1881 Act’s requirement that creditors pay \$1 plus five cents for every mile the garnishee had to travel remained in effect, but problems in enforcing the provision emerged.<sup>21</sup> One employer obtained an injunction to prevent the collection of the employee’s wages when the required compensation was not paid. The appeals court overturned the injunction, declaring that the compensation was a small sum and that it was within the authority of the Justice of the Peace to determine whether it was

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necessary.<sup>22</sup> The employer appealed to the Illinois Supreme Court, but because the sum involved was less than \$1,000 the Court did not review the case.<sup>23</sup> In another case the Court ruled that the law required the employer to appear in person and that he could not, therefore, be compensated for the travel expenses of his agent.<sup>24</sup>

Although the Supreme Court appeared to have little sympathy for large employers, it continued to interpret garnishment law in favor of wage earners. In 1889, for example, the Court concluded that a scheme to advance an employee his wages before they were due could not be regarded as an attempt to subvert the law. An employer could agree to pay an employee \$60 a month at the end of each month, but give the employee advances on his wages throughout the month, so that at the end of the month less than the exempted amount was actually owed to the employee.<sup>25</sup>

By 1890, the combination of legislation and court decisions had created a system of garnishment in Illinois that greatly restricted the ability of a creditor to collect a debtor's wages through garnishment but protected the opportunity to use garnishment as a tool to harass the debtor and his employer. In the 1890s, this system of garnishment was challenged by newly organized business associations of retailers.

Many retailers provided credit to their customers and relied upon garnishment, or at least the threat of garnishment, for repayment. While large employers were capable of gaining attention and seeking legislation in the 1870s and 1880s, most individual retailers were too small to promote legal change independently. In the second half of the nineteenth century, however, commercial associations formed at a rapid pace.<sup>26</sup> Associations served multiple functions, but prominent among them was the pursuit of beneficial legislation.<sup>27</sup> On a national scale, commercial associations pursued bankruptcy legislation throughout the 1880s and 1890s.<sup>28</sup> In Illinois, small retailers sought legislation to protect them from department stores and chain stores. The Chicago Retail Grocers Association was established in 1881 with an eye toward recent legislative success of the state's druggists.<sup>29</sup> In the 1890s, the Illinois Retail Grocers and Merchants Association lobbied for changes to the garnishment law.

In 1893, the grocers began to push for legislation that would allow them to garnish up to 25 percent of a person's wages. In 1896, George

Sherer, the president of the Illinois Grocers and Merchants Association, exhorted the members of the Illinois Pharmaceutical Association to join the grocers in pursuing revision of the garnishment law. "Now is the time," he told them, "for every active retail merchant in the state to make his personal influence felt in the matter of personal interest to himself."<sup>30</sup> He encouraged them to "make this a personal matter with legislative candidates, and after the election, with those who are elected, so that when the legislature meets, the work of educating legislators as to our particular wants may have been done: and that we may have pledges and promises upon which to base our hopes."<sup>31</sup> The problem with the current law was that, "Not more than one in one hundred of [the debtors] has more than 50 dollars due at one time." His association sought a revision of the law that would leave in place the \$50 exemption unless the claim was for the expenses of the family, in which case no more than 75 percent of wages would be exempted.<sup>32</sup>

During the 1897 legislative session, the Merchants and Grocers Association shifted its support to a more stringent bill which was referred to as the "Grocers' Bill."<sup>33</sup> The Grocers' Bill specified that "the wages of a defendant who is the head of a family and residing with the same to the amount of \$8 per week shall be exempt from garnishment. All above the sum of \$8 per week shall be liable to garnishment."<sup>34</sup> *The Chicago Eagle* declared that if passed the law would "work hardship to all small wage earners. It will enable pettifogging lawyers to tie up week after week the wages of laborers, mechanics, clerks, bookkeepers and other employees of like class, who are unfortunate enough to be debtors." The article noted the potential use of garnishment to harass debtors: "the man of a family of five or six members earning \$10 a week can ill afford to have his earnings held back waiting for the suit against him to be finally ended."<sup>35</sup> While *The Eagle* emphasized the hardship on the man making \$10 a week, the bill had a much more adverse effect on better paid workers, relative to the scheme to exempt 75 percent of wages. Under the 75 percent rule, \$7.50 would be exempt for the \$10-a-week man; in contrast, someone making \$20 a week, who would have had \$15 exempt under the 25 percent rule, would now have the same \$8 exemption as the \$10-a-week man. *The Chicago Daily Tribune* reported that, "The bill got

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through the last night of the session, while fifty representatives of the State Grocers' Association were on the floor working for it."<sup>36</sup>

The Chicago Federation of Labor immediately denounced the passage of the bill and sent a resolution to the governor asking that he veto it.<sup>37</sup> The reaction was even stronger when the governor signed the bill into law. In Chicago, the presidents of the Carpenters District Council and the Building Trades Council denounced the law. George W. Day, vice president of the Typographical Union No. 16, called the governor's action a disgrace, and Carl Hansen, Secretary of the Painters' District Council said, "I can't find words strong enough to express my indignation toward Governor Tanner."<sup>38</sup> In November 1897, the *New York Times* noted the political controversy arising from the enactment of the Grocers' Bill; it reported that "Republican politicians feel that the passage of this law was a political blunder, and unless it is remedied there is danger of many votes being lost to the party at the next election."<sup>39</sup>

Although the Republican Party retained the governorship of Illinois, the Grocer's Law did not last long. In May 1901, the legislature raised the exemption to \$15.<sup>40</sup> That summer, Chicago trade unionists presented the President of the Illinois Federation of Labor with the pen used by Governor Yates to sign the new exemption into law.<sup>41</sup> Illinois merchants appear to have acknowledged that any garnishment law that raised the opposition of labor organizations was unlikely to succeed. In 1905, George Green, Secretary of the Illinois Retail Dealers Association, spoke before a meeting of the Chicago Federation of Labor offering "an olive branch to the workers in the morning session of the convention."<sup>42</sup>

### **Loan Sharks and Wage Assignments**

Around the turn of the century, attention increasingly turned from garnishment to wage assignment. The shift paralleled increasing concerns about small loan lending, particularly salary lending. Small loan lenders typically asked for security in the form of personal property or a wage assignment. In Chicago most small loan agencies used wage assignments.<sup>43</sup> Although often referred to as loan sharks, small loan agencies typically operated in the open, advertising their services in local newspapers. Some had offices in multiple cities and generated

considerable wealth for their owners. Nevertheless, they operated on the border between legal and illegal. In particular, most violated state usury laws. In Illinois, however, the only penalty for conviction of usury was the loss of all interest on the loan. Small loan agencies typically required wage assignments. Although retailers also used wage assignments, the movement to restrict wage assignments appears to have been part of a broader movement against loan sharks.<sup>44</sup> The rise of small loan agencies and concern about their effects was not unique to Illinois: small loan agencies eventually became the target of a national campaign by the Russell Sage Foundation to enact the Uniform Small Loan Law.<sup>45</sup>

Like garnishment law, the evolution of laws governing wage assignment involved the interaction of courts and the legislature. The starting point was the case of *Mallin v. Wenham*. On several occasions in 1897 and 1898 James Mallin borrowed money from Charles Wenham. Mallin was employed month to month by Armour Company at the rate of \$100 a month. On June 3, 1898, he signed an assignment of his wages, for up to 10 years, to secure his indebtedness to Wenham. On May 3, 1899, Mallin filed for bankruptcy under the recently-enacted federal Bankruptcy Act, and in October of that year he was granted a discharge of his debts, including the debt he owed Wenham. After the discharge had been granted, Wenham tried to enforce the assignment and collect Mallin's wages from Armour. Mallin went to the Circuit Court in Cook County to obtain an injunction to prevent the enforcement of the assignment. Judge Edward F. Dunne ruled that the discharge in bankruptcy applied to the debt owed to Wenham; therefore, Wenham no longer had a claim on Mallin's wages.

Moreover, Dunne ruled that the original assignment, and every other assignment of unearned wages, was invalid. Specifically, he argued that the assignment of unearned wages violated the provisions of the Thirteenth Amendment prohibiting slavery and involuntary servitude, and that it conflicted with the policies of the State of Illinois. The judge reasoned that if someone could assign his wages for ten years, he could also assign them for life. If he could assign his wages for life, the Thirteenth Amendment would be rendered meaningless.<sup>46</sup> He also argued that assignment of unearned wages was clearly against the public policy of the state, as reflected in its recent legislative history, including

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garnishment legislation. He declared that numerous acts all indicated that “the policy of this State is to secure to a laborer and employee the fruit of his labor in cash.”<sup>47</sup> Dunne’s decision essentially outlawed the use of wage assignments in Illinois.

Dunne’s decision did not stand for long. He was overturned at the appellate level in 1902 and by the Supreme Court of Illinois in 1904. Both courts held that a long line of decisions supported the right of a man to assign his wages, and that a discharge in bankruptcy did not apply to wage assignments. The Supreme Court declared: “We cannot see that there is anything intrinsically vicious in an assignment of wages. The assignor, in such case, simply draws upon his future prospects to supply present needs, which may be of the most urgent and pressing character.”<sup>48</sup> The Court noted that the 1898 Bankruptcy Act did not allow for the discharge of secured debt. For instance, a mortgage could not be discharged in bankruptcy. A wage assignment, they said, created a lien upon the future wages. Consequently, a wage assignment was analogous to a mortgage and not dischargeable in bankruptcy.

The decisions rendered by the Appeals Court and the Supreme Court in the case of *Mallin v. Wenham* had two consequences. First, overturning Dunne’s decision set Illinois apart from most states in its interpretation of a discharge in bankruptcy. In most states bankruptcy discharge did apply to wage assignments.<sup>49</sup> Second, overturning Dunne sent Judge Dunne in search of a legislative solution to the problem of wage assignments.

In a 1904 essay on “Wage Assignment Slavery,” Dunne declared: “The only remedy now lies in the legislature.”<sup>50</sup> He found ready allies in the Bureau of Justice, the precursor to the Legal Aid Society, and the Iroquois Club, a club for Chicago Democrats. Their first effort continued to aim at nothing less than the abolition of wage assignment. Judge Dunne drafted a bill that would have prohibited any assignment of unearned wages and provided stiff penalties for anyone who accepted such an assignment. The first offense was punishable by a fine of \$100 to \$500; subsequent offenses were punishable by imprisonment for 30 to 100 days.<sup>51</sup> This attempt to prohibit wage assignment did not obtain legislative support, but efforts to severely restrict wage assignment proved more productive.

In 1905, Illinois enacted legislation that placed numerous restrictions on wage assignments. The law required that the assignment be in writing, be acknowledged before a Justice of the Peace, entered by the Justice on his docket, and presented to the employer. Furthermore, if the borrower was married, the spouse had to agree to the assignment. Finally, the assignment was void if the transaction was usurious.<sup>52</sup> Numerous states had placed restrictions on the use of wage assignments, but few placed as many restrictions as Illinois. In combination with its garnishment law, the restriction on wage assignments should have placed Illinois among states that most restricted how creditors could collect. The wage assignment law, however, did not stand.

Again the Illinois Supreme Court turned back the attempt to limit wage assignment. The law came before the Court in the case of *Massie v. Cessna*. In 1908, Perry J. Massie, an employee of the *Inter Ocean Newspaper*, borrowed \$25 from Charles E. Cessna. Cessna was a small loan lender from whom Massie had borrowed on numerous previous occasions. Massie had given an assignment of his wages when he took the loan, but sought an injunction to prevent Cessna from claiming his wages. Massie claimed that the assignments were usurious and had not been acknowledged before a Justice of the Peace. Counsel for Cessna claimed the law restricting wage assignments was unconstitutional, violating Section 2 Article 2 of the Illinois Constitution: “no person shall be deprived of life, liberty, or property without due process of law.”<sup>53</sup> Ironically, the Plaintiff’s argument was that the Defendant—Massie—was being deprived of his liberty without due process.

Like other due process cases, *Massie v. Cessna* turned on the balance between individual liberty and the exercise of the police powers. Proponents of the law acknowledged that it restricted liberty but argued that it did not violate the constitution because it was a legitimate use of the State’s police powers: “The laws which the legislature may enact in the exercise of that power are laws which have a tendency to promote the public comfort, health, safety, morals or welfare or which have a tendency to prevent some recognized evil or wrong.”<sup>54</sup> In this case, they claimed, the recognized evil was the exploitation of laboring people by unscrupulous loan sharks. Opponents argued that protecting adult workingmen from doing what they wanted with their wages was not a

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legitimate public purpose. The majority opinion, written by Justice Frank K. Dunn, found that the law violated due process. The restrictions on wage assignment were not within the police powers because they did not protect the public health, safety, or morals. It was simply class legislation.<sup>55</sup> Class legislation referred to laws that arbitrarily singled out a particular group. Courts overturned laws that were deemed to be class legislation as violations of both due process and equal protection.<sup>56</sup>

Massie asked for a rehearing, which was granted. The second opinion, written by Justice Scott, acknowledged that there were cases where a group might need state protection from “loan sharks” and that such a law might then be a legitimate use of the police powers. However, because the law covered all wages and salaries, it would apply as well to a bank president as a laboring man, and that one could not reasonably argue that the bank president needed such protection. Furthermore, Scott stated that the restriction voiding wage assignments due to usury was unconstitutional because it did not apply to other types of loans as well. Two other justices, including Dunn, concurred but noted that they disagreed with the implication that the law might be constitutional if it applied only to wage earners.<sup>57</sup>

It may not seem surprising that Progressive Era legislation intended to protect the well-being of laborers was overturned on the grounds that it violated the rights of those laborers. After all, the decision came just a few years after the United States Supreme Court’s ruling in *Lochner v. New York*, which declared that a New York maximum hours law for bakers violated the due process clause. *Lochner* has often been portrayed as symbolic of an era in which courts overturned Progressive legislation. Charles Warren, however, argued that the Court upheld the vast majority of Progressive legislation during the early twentieth century.<sup>58</sup>

Other state courts did uphold laws restricting wage assignments. In 1902, the Supreme Court of Indiana had upheld a law forbidding any assignment of future wages; the Court noted that many people were dependent on their daily or weekly wages and that even delay in obtaining them could deprive their families of the necessities of life. Consequently, the Court declared that “the situation of these persons renders them peculiarly liable to imposition and injustice at the hands of employers, unscrupulous tradesmen, and others who are willing to take

advantage of their condition.”<sup>59</sup> In *Mutual Loan Company v. Martell* the Supreme Court of Massachusetts followed the Indiana Court in upholding a 1908 law that voided any assignment of wages that was not accepted by the employer, filed with the town clerk, and consented to by a spouse (if there was one).<sup>60</sup> Courts in Missouri, Texas, Ohio, and California upheld similar laws restricting wage assignments.<sup>61</sup> The central question in each case was whether restrictions on wage assignments were valid use of the police powers: did they serve a legitimate public purpose that would justify the infringement of liberty of contract? And the answer to this question depended on whether the Court believed that workingmen as a group required special protection from salary lenders.

When the attempts to legislate against wage assignments in Illinois were turned back by the courts, large employers developed internal policy responses. The Postal Telegraph Cable Company tried to make arrangements with Robert Staehle. Staehle had made loans to a number of the telegraph company’s employees, taking wage assignments to secure these loans. The telegraph company complained that some employees quit when the wage assignments were enforced, and it attempted to re-negotiate to arrange payments that would be acceptable to both the employees and Staehle. When Staehle tried to enforce the terms of the original assignments, Postal Telegraph sought an injunction. A lower court granted the injunction, but in 1914 the Illinois Supreme Court overturned it, ruling that there was no evidence that the assignments had been obtained fraudulently.<sup>62</sup>

Salary lenders did not win every battle. In 1917, the State enacted what was generally referred to as the Loan Shark Law. The law was based on the Small Loan Law drafted by the Russell Sage Foundation, and adapted for Illinois by members of the Legal Aid Society. The law required lenders making loans for \$300 or less and charging more than seven percent interest to obtain a license. The licensed lenders could not charge interest rates of more than three and one half percent per month. In addition, the law reintroduced some restrictions on wage assignment:

No assignment of any salary or wages earned or to be earned, given to secure any loan, shall be valid unless in writing, signed

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by the borrower, nor unless it shall be given to secure an existing debt or one contracted simultaneously with its execution, and that under such assignment or order for payment of such future salary or wages, given as security for a loan under the act, fifty per cent of the borrower's salary or wages may be collectible by the licensee from the time a copy of such assignment, verified by the oath of the licensee or his agent, together with a verified statement of the amount unpaid on such loan, has been served on the employer.<sup>63</sup>

In contrast to earlier attempts to restrict small loan lenders, the Illinois Supreme Court upheld the constitutionality of the Loan Shark Law. Advocates of reform hailed the law as a great victory, and by 1922 supporters of the law claimed that the loan sharks of Chicago were out of business.<sup>64</sup> The Loan Shark Law, however, did not bring an end to wage assignments or concerns about loan sharks. Later cases continued to emphasize the workers right to assign their wages. In 1928, for instance, Armour and Co. began requiring its employees to sign the following agreement:

For and in consideration of my employment by Armour & Co. or any of its subsidiaries, I do hereby covenant and agree, as a part of my contract of employment, that I will not sell, transfer, set over or assign in any manner to any person or persons, co-partnership or corporation, any right to or claim for wages or salary, in whole or in part, due me or to become due me from Armour & Co., or any of its subsidiaries, under the said contract of employment without the consent in writing of Armour & Co.; that any right or claim I now have or may have to salary or wages, as aforesaid, shall not be assignable without the written consent of Armour & Co., and that any attempted sale, transfer or assignment without such written consent shall be null and void.<sup>65</sup>

Instead of taking action against the employee, Armour attempted to void any wage assignments given by its employees. The difficulty arose

when an employee actually signed a wage assignment after signing this agreement. In the view of the court the legal question was, “by reason of the employment contract was the assignment of wages void, since the written consent of the defendant was not obtained thereto?” It also noted that, “The determination of this question is of great importance to all mercantile firms which sell goods on the installment plan.”<sup>66</sup> The court decided that, although an employee could sign away their future wages, they could not sign away their right to sign away their wages: “The right of an employee to make an assignment of his wages has long been recognized in this State, and the privilege of using and contracting for the disposal of wages is both a liberty and a property right.”<sup>67</sup> Because employers could not refuse to abide by the wage assignment, the only method they had for enforcing the agreement was to terminate the employment contract.

For many years, some employers had policies to terminate employees whose wages were garnished or assigned. Critics of small loan agencies suggested that this strategy actually played into the hands of the loan sharks.<sup>68</sup> Threatening to enforce a wage assignment was the same as threatening to terminate the debtor’s employment.

Primarily because they were matters adjudicated in local courts, there is no comprehensive count of garnishments or wage assignments. Nevertheless, the available evidence suggests that by the start of the Great Depression, wage assignment was a significant economic phenomenon in Chicago. Garnishment, in contrast, was rarely used.

In 1932, as part of a larger project on bankruptcy, Abe Fortas, a Yale law student and later an associate justice of the United States Supreme Court, collected information on wage assignments from several large employers in Chicago.<sup>69</sup> Most remained anonymous in his report, though Armour was identified by name. The company records, summarized in Table 1, indicated that the prevalence of wage assignment varied from one establishment to another, but was everywhere the most common way for a creditor to obtain payment from a debtor in default. Though railroads were paying one assignee for approximately every 20 workers, Armour was paying one assignee for every two production workers.

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**Table 1**  
Wage Assignment and Garnishment among Selected Large  
Employers in Chicago

Business	Wage Assignments	Garnishments	Employees
Armour (1932)	2,715	69	5,380
Newspaper (10/1929- 2/1931)	203	49	N/A
Street Railway (1930)	3,631	481	17,450
Railroad (1930)	1,472	N/A	30,000-35,000
Telephone (1931)	1,727	N/A	26,000

*Source:* Fortas, 1933, pp. 539-544.

In 1934, Rolf Nugent of the Russell Sage Foundation conducted an investigation into garnishment and wage assignment in cities across the United States; his data are the basis for Figure 1. His classification of Illinois as a state where there were few restrictions on creditors was due primarily to the extensive use of wage assignment. In a survey of large employers in Chicago, Nugent found a rate of wage execution (both garnishment and wage assignment) of 159 per 1,000 employees. This was the third highest rate in the country, behind only Birmingham, Alabama, and Memphis, Tennessee (343 and 522 per 1,000 respectively). One Chicago meat packing house had a rate of 484 per 1,000. A more detailed study conducted from February to April 1934 examined 487 wage executions in Chicago. Of these 487, only ten were garnishments. Thus, wage assignments accounted for over 97 percent of all wage executions in Chicago. In contrast, 67.8 percent of wage executions in Birmingham were garnishments, and 100 percent of wage executions in Memphis were garnishments.<sup>70</sup>

Although both Fortas and Nugent found high rates of wage assignment, it should be noted that these numbers understate—perhaps greatly—the prevalence of wage assignments among wage earners in Chicago because they only count the wage assignments that creditors tried to enforce. As long as borrowers made their payments, an employer would have no record of their wage assignment. Consequently, the numbers do not reflect the full extent of indebtedness or financial stress among wage earners. They do, however, illustrate the willingness of creditors to enforce wage execution.

### **Conclusion**

Large employers in Illinois regarded garnishment and wage assignment as a nuisance and supported legislation to make it more difficult to seize an employee's wages. In the 1870s and 1880s, both the legislature and the courts of Illinois supported restrictions on what creditors could collect. In the 1890s, retailers who provided credit to their customers banded together in opposition to the large employers and lobbied for a garnishment law that was more favorable to creditors. In 1897, they obtained legislation that lowered the exemption from \$50, which had stood since 1879, to \$8.

Organized labor reacted vehemently. At the same time, Progressives sought to curb loan sharking. In the first decade of the twentieth century, the Illinois legislature passed acts restricting both garnishment and wage assignment. Before the decade was over, however, the Supreme Court of Illinois overturned the restrictions on wage assignment as a violation of due process. Over the next two decades, the court also overturned attempts by large employers to use private employment contracts to prevent employees from assigning their wages. By the 1930s, Illinois was among the states that placed the fewest restrictions on an employee's ability to assign his wages, and creditors regularly used assignments to collect.

Like previous studies of the evolution of debtor-creditor law, the story of garnishment and wage assignment in Illinois illustrates that efforts to shape the institutional environment are an important and ongoing part of business activity. But, unlike straightforward stories in which business interests push institutions in a common direction, this

## Garnishment and Wage Assignment Law in Illinois

case study shows how the institutional environment can be made uncertain by conflicts between opposing business interests in the process of institutional change. Consider the story from the creditor's perspective: in the span of four years from 1897 to 1901, wage exemptions swung from \$50, to \$8, to \$15. Now consider it from the debtor's perspective: in the span of less than 20 years from 1897 to 1914, wage earners went from being nearly fully protected from collection to being subject to some of the strictest collection laws in the country.

Finally, the story of the evolution of garnishment and wage assignment laws in Illinois demonstrates the importance of judicial action in limiting the influence of the legislature. Progressives in the legislature of Illinois, as in other states, placed strict limits on wage assignments as part of a wider campaign to protect workingmen and prevent usury. The Illinois Supreme Court, unlike their peers in other states, interpreted the due process clause in a way that favored the use of wage assignments. Wage earners in Illinois therefore gained little protection from statutes passed by the Progressive legislators. And, again unlike their peers, the Illinois Supreme Court ruled that a bankruptcy discharge did not apply to wage assignments so that wage earners in Illinois gained little from the protections of the federal Bankruptcy Act of 1898 until 1934 when the United States Supreme Court overruled the Illinois Supreme Court. Researchers measuring the extent of Progressive influence across the economy may wish to consider how completely the state statutes capture the legal environment actually faced by workingmen.<sup>71</sup>

NOTES

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<sup>1</sup> Michael Willrich, 2003.

<sup>2</sup> Rolf Nugent and Frances Jones, 1936.

<sup>3</sup> Richard Hynes, 2008; Amanda Dawsey, Richard Hynes and Lawrence Ausubel, 2009.

<sup>4</sup> For recent studies on bankruptcy see Edward Balleisen, 2001; Bruce Mann, 2002; David Skeel, 2003; Elizabeth Thompson, 2004; Bradley Hansen, 1998 and 2000; and Hansen and Mary Hansen, 2007. On the history of exemption laws see, Paul Goodman, 1993; Richard Hynes, Anup Malani and Eric A. Posner, 2004; Joseph McKnight, 1983; and Alison Morantz, 2006.

<sup>5</sup> Peter Shergold, 1978; Michael Easterly, 2008; Anne Fleming, 2012; and Louis Hyman, 2011 and 2012.

<sup>6</sup> Hansen and Hansen, 2012.

<sup>7</sup> In 1930, for instance, 84 percent of wage earner bankruptcies were classified as no-asset cases, and more than 97 percent of wage earner cases had assets of less than \$100. See Hansen and Hansen, 2012, p. 455.

<sup>8</sup> Simply adjusting for inflation \$25 in 1872 would be the equivalent of \$475 in 2011 (calculated using Lawrence Officer and Samuel Williamson, 2013a). Because real incomes were lower the relative worth of \$25 would have been even greater.

<sup>9</sup> *Chicago Daily Tribune (CDT)*, April 30, 1873, p. 5.

<sup>10</sup> *CDT*, June 7, 1879, p. 9.

<sup>11</sup> *Albert Bliss v. John R. Smith*, 78 Ill. 359 (1875).

<sup>12</sup> *Frank J. Hoffman v. Fitzwilliam and Sons*, 81 Ill 521 (1876).

<sup>13</sup> *Chicago and Alton Railroad Company v. Richard Ragland*, 84 Ill 375 (1877).

<sup>14</sup> *CDT*, February 6, 1881, p. 7.

<sup>15</sup> *CDT*, February 2, 1881, p. 8.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *CDT*, January 26, 1881. Shergold (1978) finds a similar pattern of harassment in Pittsburgh, where small loan agencies sometimes used

wage assignments despite the fact that they were not legal in Pennsylvania. See also *Payne v. Donegan* 9 Ill App. 566 (1881).

<sup>19</sup> *CDT*, February 2, 1881, p. 8.

<sup>20</sup> *People ex rel. Francis P. Gleeson v. George A. Meech* 101 Ill. 200 (1882).

<sup>21</sup> See *CDT*, December 17, 1881, p. 7.

<sup>22</sup> *Eberhardt v. Pennsylvania Co.* 15 Ill. App. 541 (1885).

<sup>23</sup> *Pennsylvania Co. v. Eberhardt* 115 Ill. 294 (1885)

<sup>24</sup> *Cornell v. Payne* 115 Ill. 63 (1885).

<sup>25</sup> *Chicago and Eastern Railroad Company v. Blagden* 33 Ill. App. 254 (1889).

<sup>26</sup> Robert Wiebe (1966) regarded the growth of associations as one of the defining characteristics of the period.

<sup>27</sup> Mancur Olson (1965) argued that the other benefits of membership were necessary in order to induce people to contribute to the production of legislation, which was essentially a public good.

<sup>28</sup> Hansen, 1998. The Illinois Retail Grocers and Merchants association is one of the associations that lobbied for a federal bankruptcy law

<sup>29</sup> *CDT*, August 24, 1881, p. 5.

<sup>30</sup> Illinois Pharmaceutical Association, *Report of the Proceedings of the Seventeenth Annual Meeting* , 1896.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.* The bill was also called the “Case Bill” after Solon Case, its author.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Chicago Eagle*, May 29, 1897, p. 4. For comparison, the average wage for manufacturing production workers in 1897 was \$0.13 per hour, or \$6.50 per 50 hour week (Officer and Williamson, 2013b).

<sup>36</sup> *CDT*, June 15, 1897, p. 1.

<sup>37</sup> *CDT*, June 7, 1897, p. 5.

<sup>38</sup> *CDT*, June 16, 1897, p. 9.

<sup>39</sup> *New York Times*, November 28, 1897, p. 24.

<sup>40</sup> *CDT*, Jun 28, 1901, p. 7; May 5, 1901, p. 7.

- <sup>41</sup> *CDT*, June 28, 1901, p. 7.
- <sup>42</sup> *CDT*, October 19, 1905, p. 7.
- <sup>43</sup> Earle Eubank, 1916, p. 12.
- <sup>44</sup> Mark Haller and Jaohjn Alviti, 1977.
- <sup>45</sup> See Timothy Guinnane, Bruce Carruthers and Yoonseok Lee (2011) for a description of the Russell Sage Foundation's activities. Illinois passed a small loan law in 1917.
- <sup>46</sup> William Sullivan, 1916.
- <sup>47</sup> *CDT*, April 27, 1901, p. 6.
- <sup>48</sup> *Mallin v. Wenham* 209 Ill. 252.
- <sup>49</sup> Not until 1934 was Dunne's decision overturned by the United States Supreme Court. In *Local Loan Co. vs. Hunt* (292 U.S. 234) the Court explained that because establishing uniform laws on bankruptcy was one of the powers explicitly conferred on Congress by the Constitution that there was no question that it had jurisdiction over the question. Furthermore, the Court concluded that the Illinois rule on wage assignments was contrary to the intent of the Bankruptcy Act.
- <sup>50</sup> *CDT*, June 26, 1904, p. B5.
- <sup>51</sup> *CDT*, October 29, 1904, p. 15.
- <sup>52</sup> *Massie v. Cessna*, Supreme Court of Illinois, 239 Ill. 352 (1909).
- <sup>53</sup> *Ibid.*
- <sup>54</sup> *Ibid.*
- <sup>55</sup> Guy Blake, 1911.
- <sup>56</sup> David Bernstein, 2011, p. 15.
- <sup>57</sup> *Massie v. Cessna*, Supreme Court of Illinois, 239 Ill. 352 (1909).
- <sup>58</sup> Charles Warren, 1913. See Paul Kens (1998) and Bernstein (2011) for more recent analysis of *Lochner*.
- <sup>59</sup> *International Textbook Company v. Weissinger*, 160 Ind. 349 (1902).
- <sup>60</sup> *Mutual Loan Co. v. George Martell*, 200 Mass. 482 (1909).
- <sup>61</sup> *Heller v. Lutz*, 245 Mo. 704 (1914); *C.O. Juhan v. The State*, 86 Tex. Crim. 63 (1918); *Dunn v. The State of Ohio*, 122 Ohio St. 431 (1930); and *In re Fuller* 15 Cal. 2d 425 (1940).
- <sup>62</sup> *Postal Telegraph-Cable Co. v Staehle* 188 Ill. App. 464.
- <sup>63</sup> *People v. Stokes* 281 Ill. 159. (1917)

<sup>64</sup> *CDT*, February 15, 1922, p. 11.

<sup>65</sup> *State Street Furniture Company v. Armour & Co.*, 345 Ill. 160 (1931).

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> Eubank, 1916.

<sup>69</sup> Abe Fortas, 1933.

<sup>70</sup> Nugent and Frances Jones, 1936.

<sup>71</sup> Rebecca Holmes, Price Fishback and Samuel Allen, 2008.

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