

INDEX.

	PAGE
Notice of Appeal	1
Grounds of Appeal	2
Notice of Appeal	3
Specifications of Determinations and Directions Appealed From	4
Transcript of Clerk's Docket	5
Affidavit of Anna Brombacher	8
Order	9
Writ of Attachment	10
Inventory and Appraisement	11
State of Demand	12
Writ of <i>Scire Facias</i> Against Garnishee	14
Plea of Garnishee	16
Stenographer's Minutes	17
Opinion of Supreme Court	32
Rule of Affirmance	33

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Notice of Appeal.

(Filed Aug. 30, 1929.)

NEW JERSEY SUPREME COURT.

ANNA BROMBACHER, Administra-
trix, etc.,
Plaintiff-Appellee,

vs.

JOURNEYMEN BARBERS' INTERNA-
TIONAL UNION OF AMERICA, LOCAL
No. 362,
Garnishee-Appellant.

10

On Appeal.

To IRWIN RUBENSTEIN, Esq.,
Attorney for Plaintiff-Appellee.

20

TAKE NOTICE that Journeymen Barbers' Interna-
tional Union of America Local No. 362, Garnishee
herein, hereby appeals to the New Jersey Court of
Errors and Appeals from the judgment entered in
this cause in the above entitled matter.

O'BRIEN & TARTALSKY,
Attorneys for Garnishee-Appellant.

30

SAMUEL TARTALSKY,
Of Counsel.

40

Grounds of Appeal.

(Filed Aug. 30, 1929.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	ANNA BROMBACHER, Administra- trix, etc., Plaintiff-Appellee,	}	On Appeal.
	vs.		
	JOURNEYMEN BARBERS' INTERNA- TIONAL UNION OF AMERICA, LOCAL No. 362, Garnishee-Appellant.		

20 Journeymen Barbers' International Union of America Local No. 362 states the following grounds of appeal in this cause:

1. That the Supreme Court erred in affirming the judgment of the First Judicial District Court of Hudson County.

30 2. That the Supreme Court erred in not reversing the judgment in favor of the plaintiff entered in the First Judicial District Court of Hudson County.

O'BRIEN & TARTALSKY,
Attorneys for Garnishee-Appellant.

SAMUEL TARTALSKY,
Of Counsel.

Notice of Appeal.DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF HUDSON.

ANNA BROMBACHER, Administra-
trix of the Estate of William
Brombacher, deceased,

Plaintiff,

vs.

JOURNEYMEN BARBERS' INTERNA-
TIONAL UNION OF AMERICA, a cor-
poration, and ANTHONY DANZA,
Defendant.

10

To—Anna Brombacher, or

Irwin Rubenstein, Esq., her attorney.

20

TAKE NOTICE that the defendants hereby appeal to the New Jersey Supreme Court from the judgment of the District Court of the First Judicial District of the County of Hudson, rendered in the above stated action on

Dated, April 2, 1929.

Respectfully,

30

O'BRIEN & TARTALSKY,
Attorneys for Defendants.

40

**Specifications of Determinations and
Directions Appealed From.**

NEW JERSEY SUPREME COURT.

10	ANNA BROMBACHER, Administra- trix of the Estate of William Brombacher, deceased, Plaintiff-Respondent,	} In Attach- ment.
	vs.	
	JOURNEYMEN BARBERS' INTERNA- TIONAL UNION OF AMERICA, LOCAL #362, <div style="text-align: right; padding-right: 10px;">Appellant.</div>	

20 The appellant herein, herewith files its specifications of determination and direction of the District Court of the First Judicial District of the County of Hudson, with respect to which it is dissatisfied in point of law.

30 1. That the Court erred in refusing to acquit said Journeymen Barbers' International Union of America, Local #362, as garnishee, on the hearing on the writ of *scire facias*, whereas said motion should have been granted.

2. That the Court erred in entering judgment in favor of the plaintiff and against said appellant, as garnishee.

O'BRIEN & TARTALSKY,
Attorneys for Appellant.

Transcript of Clerk's Docket.

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF HUDSON,
NEW JERSEY.

Before—LEWIS B. EASTMEAD, Esq., *Judge.*

<p style="text-align: center;">ANNA BROMBACHER, etc.,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOURNEYMEN BARBERS' INTERNA- TIONAL UNION OF AMERICA.</p>	}	<p>In Attachment. No. 30616.</p>	10
---	---	--	----

<p>STATE OF NEW JERSEY, } HUDSON COUNTY, } ss. :</p>	20
--	----

I. RUBENSTEIN, Plaintiff's Attorney.

O'BRIEN & TARTALSKY (Special), Defendant's
Attorneys.

February 16th, A. D. 1928 an affidavit was filed by the plaintiff alleging that Journeymen Barbers' Union absconds from their creditors and is not to the knowledge of the deponent, resident of the State of New Jersey at the present time, and that the said Journeymen Barbers' International Union of America owes to Anna Brombacher the sum of Five hundred dollars as nearly as this deponent can specify. 30

February 16th, A. D. 1928 a writ of attachment was issued to Joseph A. Conway, Constable.

May 21st, A. D. 1928 said Constable returned said writ as follows, viz :

Transcript of Clerk's Docket.

By virtue of the within writ, I did on the 21st day of May in the presence of a credible person, attach the property and estate of the defendant in the annexed inventory mentioned and described.

Witness, my hand, this 21st day of May, A. D. 1928.

10

JOSEPH A. CONWAY,
Constable.

COST

	Taking Affidavit		
	Writ Service,	1.50	
	Service and Return		1.50
	Trial Fee,	1.50	
	App's't and Notice,		.35
20	Attorneys fee		25.00
		<hr/>	<hr/>
		3.00	26.85
	Total 29.85		
	Order Filed Feb. 16 1928		1.00
	Notice to Quash Writ of Attachment filed July 17, 1928		
	On Certiorari Order		1.00

30 Inventory—All moneys now in your hands or in the bank belonging to the Journeymen Barbers' International Union of America an unincorporated body, not exceeding the sum of Five Hundred (\$500.) Dollars.

Plaintiff's demand was filed July Seventh on the case was called and the Court fixed July Eleventh for the trial of the within Cause of Action; the case was proceeded with as follows: witnesses sworn for plaintiff,

40

Transcript of Clerk's Docket.

For defendant, George P. Stacey, sworn as stenographer. Samuel Tartalsky of the firm of O'Brien & Tartalsky appeared specially for Defendant and moved to quash Writ. Anthony Danza was called and testified for defendant. Court adjourned further hearing to July 25, 1928.

Whereupon it is on this Sixteenth day of January, A. D. 1929, by this Court considered and adjudged that said Anna Brombacher Administratrix of the Estate of William Brombacher, Deceased, plaintiff recover against said Journeymen Barbers' International Union of America an unincorporated body defendant the sum of Five hundred dollars and damages and Twenty-nine dollars and eighty-five cents costs of suit. 10

Sciri Facias against Garnishee issued February 13th, 1929. Plea of Garnishee filed March 20, 1929. 20

In hearing on *sciri Facias*. Harry Schermer was sworn as Stenographer.

I hereby certify that the within record is a true transcript of the records on file in this office.

In witness whereof I have hereunto set my hand and the seal of this court this 26th day of April, A. D. 1929.

(Seal)

J. HENRY BENDER, 30
Clerk.

Affidavit of Anna Brombacher.

(Filed Feb. 16, 1928.)

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF HUDSON.

10 ANNA BROMBACHER, Administra-
trix of the Estate of William
Brombacher, deceased, Plaintiff,

vs.

JOURNEYMEN BARBERS' INTERNA-
TIONAL UNION OF AMERICA, an
unincorporated body, Defendant.

20 STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

30 ANNA BROMBACHER, being duly sworn according
to law, upon her oath says that: Journeymen Bar-
bers' International Union of America is not to de-
ponent's knowledge or belief resident at this time in
the State of New Jersey, and that summons cannot
be served upon it, and that it owes to this deponent
the sum of Five hundred (\$500.00) Dollars as near-
ly as deponent can ascertain.

ANNA BROMBACHER.

Sworn and subscribed to before me }
this 9th day of February, 1928. }

RAYMOND J. OTIS,
Attorney at Law of New Jersey.

Order.

(Filed February 16, 1928.)

**DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF HUDSON.**

ANNA BROMBACHER, Administra-
trix of the Estate of William
Brombacher, deceased,
Plaintiff,

10

vs.

JOURNEYMEN BARBERS' INTERNA-
TIONAL UNION OF AMERICA, an
unincorporated body,
Defendant.

The Court having read the affidavit for the issu-
ance of a writ of attachment in the above entitled
cause of action, and it being satisfied with the suffi-
ciency thereof.

20

It is on this 10th day of February, 1928,
ORDERED that the said writ of attachment be issued
in this cause.

LEWIS B. EASTMEAD,
Judge of the District Court of the
First Judicial District of the
County of Hudson.

30

40

Writ of Attachment.

HUDSON COUNTY, SS. :

THE STATE OF NEW JERSEY

TO ANY CONSTABLE OF SAID COUNTY :

10 GREETING: You are hereby commanded to attach the rights and credits, moneys and effects goods and chattels of JOURNEY-
 (L. S.) MEN BARBERS' INTERNATIONAL UNION OF AMERICA wheresoever they may be found in your county to the value of Five Hundred (\$500.) Dollars to answer the demands of ANNA BROMBACHER in an action on contract, and make return of such attachment to the District Court of the First Judicial District of the County of Hudson immediately after making the same, that there-
 20 in may be further done what law and justice shall require.

WITNESS, LEWIS B. EASTMEAD, Esq., Judge of said Court, at Union City, N. J., the 16th day of February, in the year one thousand nine hundred and twenty-eight.

HENRY BENDER,
Clerk.

30 IRWIN RUBENSTEIN,
Attorney.

By virtue of the within writ, I did on the 21st day of May, 1928 in the presence of a creditable person attach the property and estate of the defendant in the annexed inventory mentioned and described.

Witness, my hand this May 21st, 1928.

JOSEPH CONWAY,
Constable.

40

Inventory and Appraisement.

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF HUDSON.

ANNA BROMBACHER, Administra-
trix of the Estate of William
Brombacher, deceased,
Plaintiff,

vs.

JOURNEYMEN BARBERS' INTERNA-
TIONAL UNION OF AMERICA, an
unincorporated body,
Defendant.

10

Inventory and appraisement of the rights and
credits, moneys and effects, goods and chattels,
lands and tenements of the defendant, made by vir-
tue of the above stated Writ, on the 21st day of May,
1928, by Joseph A. Conway, a Constable of Hudson
County, and a discreet and impartial freeholder of
said County, to wit: William Lindke.

20

To: Journeymen Barbers' International Union of
America, an unincorporated body, Local No.

All moneys now in your hands or in the bank be-
longing to the Journeymen Barbers' International
Union of America, an unincorporated body, not ex-
ceeding the sum of Five Hundred (\$500) Dollars.

30

JOSEPH A. CONWAY.

40

State of Demand.

(Filed June 7, 1928.)

30616.

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF HUDSON.

10 ANNA BROMBACHER, Administra-
trix of the Estate of William
Brombacher, deceased,

Plaintiff,

vs.

JOURNEYMEN BARBERS' INTERNA-
TIONAL UNION OF AMERICA,
Defendant.

In Attach-
ment.

20

Plaintiff, residing in the town of West New York,
County of Hudson and State of New Jersey, com-
plaining of the defendant, says that:

1. On or before the death of William Brom-
bacher, to wit, the 29th day of July, 1926, he was a
contributing member to the defendant, a duly or-
ganized benefit association.

30

2. By virtue of the occupancy of such capacity
as contributing member for a period exceeding fif-
teen years, the estate of William Brombacher be-
came and is entitled to the sum of Five Hundred
(\$500.00) Dollars, in accordance with the provi-
sions of the constitution of the said association.

40

3. That the said William Brombacher, deceased,
did not pay his dues monthly in advance, in accord-
ance with Section 3 of the Constitution of the de-

State of Demand.

defendant, but the plaintiff alleges that the defendant is estopped from denying that the said William Brombacher or his estate is entitled to the benefits by reason of the conduct of the defendant, its officers or agents, in leading said William Brombacher, deceased, to believe that his neglect to make the payments in advance would not deprive his estate of benefits in accordance with the constitution. 10

4. That the defendant has waived the failure of the said William Brombacher, deceased, to make payments of his dues, monthly in advance, by its acceptance of dues paid by the said William Brombacher, deceased, for the month of July, 1926, and on or before the date of his death, for a period exceeding fifteen years. 20

5. That the said William Brombacher and his estate, have in all other particulars complied with the rules, regulations, conditions and provisions contained in the constitution and by-laws of the said organization.

6. That the plaintiff has demanded the sum of Five Hundred (\$500.00) Dollars, from the said organization, but the defendant has refused and still does refuse to pay the sum due. 30

Plaintiff demands judgment in the sum of Five Hundred (\$500.00) Dollars, together with costs of suit.

IRWIN RUBENSTEIN,
Attorney for Plaintiff.

Writ of Scire Facias Against Garnishee.

(Filed Feb. 13, 1929.)

THE STATE OF NEW JERSEY

TO ANY CONSTABLE OF SAID COUNTY

10 GREETING: JOURNEYMEN BARBERS' LOCAL UNION OF AMERICA and ANTHONY DANZA to appear before the District Court of the (L. S.) County of Hudson, to be held at the Dispatch Building, in the City of Union City, County of Hudson on the 20th day of March, nineteen hundred and twenty-nine, at ten o'clock in the forenoon, to show cause, if any they have, why ANNA BROMBACHER, Administratrix of the Estate of William Brombacher, deceased shall not have execution against it for the amount of a

20 certain debt of Five hundred (\$500.) Dollars, and held by the said Journeymen Barbers' Local Union of America for the said Journeymen Barbers' International Union of America and in its hands, due from the said Journeymen Barbers' Local Union of America and Anthony Danza to the said Journeymen Barbers' International Union of America, and attached in the hands of the said Journeymen Barbers' Local Union of America as garnishee by Joseph A. Conway, one of the Constables of the said

30 County by virtue of a certain writ of attachment issued out of the District Court of the First Judicial District of the County of Hudson in a suit in which Anna Brombacher, Administratrix of the Estate of William Brambacher was plaintiff and Journeymen Barbers' International Union of America and Anthony Danza were defendants on the 16th day of February, A. D. 1928 and hereof fail not.

Writ of Scire Facias Against Garnishee.

WITNESS, LEWIS B. EASTMEAD, Judge of the District Court of the First Judicial District of the County of Hudson at Union City, N. J., the 15th day of March, nineteen hundred and twenty-nine.

HARRY BENDER,
Clerk.

10

I served the within order on March 15th, 1929, on Anthony Danza, by reading the same to him a copy thereof.

JOSEPH A. CONWAY,
Hudson County Constable.

I served the order on March 15th, 1929 on Journeymen Barber International Union of America, a corporation by leaving the same to Mr. Danza agent and delivering to him a copy thereof.

20

JOSEPH A. CONWAY,
Hudson County Constable.

30

40

Stenographer's Minutes.DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF HUDSON.

ANNA BROMBACHER, Administra- trix of the Estate of William Brombacher, deceased, Plaintiff, vs. JOURNEYMEN BARBERS' INTERNA- TIONAL UNION OF AMERICA, Defendant.	}	In Attach- ment on Scire Facias.	10
---	---	--	----

UNION CITY, N. J., March 20, 1929.

Before—Hon. LOUIS B. EASTMEAD, *Judge.* 20

APPEARANCES:

IRWIN RUBENSTEIN, Esquire,
Attorney for Plaintiff;MESSRS. O'BRIEN & TARTALSKY,
Attorneys for Journeymen Barbers' Inter- 30
national Union of America, Local No.
362.Mr. Tartalsky: May I file the plea of the defend-
ant to the garnishee.

Anthony Danza. Called by Plaintiff. Direct.

ANTHONY DANZA, sworn.

DIRECT EXAMINATION BY MR. RUBENSTEIN :

Q. What position do you hold in the Journeymen Barbers' International Union of America, Local No. 362? A. Secretary and Treasurer.

10 Q. How many members are in the Local Union, approximately? A. According to my last report, 346.

Q. How many members were in the Local Union at the time this attachment was served upon you? A. About 350.

Q. How much does each member pay as per capita tax to the International? A. Eighty cents.

20 Q. Eighty cents for each member? A. Each member.

Q. Are you authorized to collect for the Union? A. Yes, sir.

Q. Under Section 84 of your By-Laws—

Mr. Tartalsky: I have no objection to that going in the same as if the original had been produced.

30 "SECTION 84. All moneys collected by the local union for dues, initiation fees, readmittance fees, assessments and so forth, excepting however fines and assessments imposed by the International Union upon the local unions or individual members, shall be the property of the local union and may be used for local expenses, but the local union shall at all times be bound to pay into the International treasury the per capita tax of seventy cents per month per member, two dollars of each initiation fee,

40

Anthony Danza. Called by Plaintiff. Cross.

two dollars of each readmittance fee, and two dollars from payments made with the deposit of retiring cards as provided in Sec. 24 of this constitution."

Q. Under Section 84 it says as follows: "But the local union shall at all times be bound to pay unto the International treasury a per capita tax of seventy cents per month per member"; now, excepting that that has been changed to eighty cents, is that correct? A. That is correct. 10

Q. You are bound to pay it, are you not? A. If I got it, yes, I have to pay.

Q. Well, answer my question yes or no. A. Yes.

Q. You did get paid, didn't you? A. Yes, sir.

Q. From all these members? A. Yes, sir.

CROSS EXAMINATION BY MR. TARTALSKY: 20

Q. You personally have no money, nor did you have in February, 1928, or at the time of the issuance of the writ of attachment, belonging to the International Union, did you? A. No.

Q. You are secretary and treasurer of Local No. 362? A. Yes, sir.

Q. And Local No. 362 has its own officers, has it not? A. Yes, sir. 30

Q. You function by electing your own members? A. Yes, sir.

Q. Where is your office located? A. At Journal Square, Concourse Building, Room 118.

Q. Are the officers of your local the officers of the International, or have they any rights or relations with them? A. No, sir.

Q. Who elects the officers of your local? A. Members of the local, at our regular meeting. 40

Anthony Danza. Called by Plaintiff. Cross.

Q. Have you a charter from the Journeymen Barbers' Union, the defendant in this case? A. Yes, sir.

Q. Where is the office of the defendant? A. In Indiana; in Indianapolis.

10 Q. Under Section 109 of the By-Laws you elect your officers at a period not less than one year nor more than three years; in that correct? A. Yes, sir.

"SECTION 109. All local unions shall elect their officers for a period of not less than one year and not more than three years. Such election shall take place at the last regular meeting in December and install the same at the first regular meeting in January."

20 Q. Under Section 110 you pass your own By-Laws in accordance with the constitution? A. Yes, sir.

30 "SECTION 110. Each local union may make its own By-Laws, which must, however, be in accordance with this constitution and subject to the approval of the General President, who shall be furnished with a duplicate copy which shall be issued to him for reference purposes, and no By-Laws or amendment thereto, nor any agreement, shall become effective unless above is complied with. This shall not interfere with the local autonomy as specified in Sec. 108."

Q. You say that in February of last year, and now, you had approximately 350 members? A. Approximately, yes, sir.

40

Anthony Danza. Called by Plaintiff. Cross.

Q. How much does each member pay in dues?

A. \$2.75.

Q. Per month? A. Per month.

Q. And that money is put into a fund, is it not?

A. A local fund.

Q. What bank is that deposited in? A. Labor National Bank.

Q. What name is the account in? A. The account is in the name of the Journeymen Barbers' Local No. 362. 10

Q. On whose authority are checks drawn? A. To withdraw the money it requires the signature of the secretary and treasurer and the president of the local.

Q. Has any other organization, or the International, the defendant in this case, any control over any of your money? A. Nobody has. 20

Q. Do I understand that from the dues each member pays you, or from the funds of the local, you pay a per capita tax of eighty cents to the International? A. Yes, sir.

Q. Upon what do you base the amount of the per capita tax which the local union pays to the International? A. It averages about \$270.

Q. No; I mean, upon what do you base it; upon the members in good standing? A. On the members in good standing. 30

Q. How much does the local union pay for the members to the International as a per capita tax? A. Eighty cents a member.

Q. In other words, the local union pays eighty cents per capita tax for each member in good standing? A. Yes, sir.

Q. On what day of the month of membership? A. On the first of the month. 40

Anthony Danza. Called by Plaintiff. Cross.

Q. Is that in accordance with Section 22 of the By-Laws, which concerns Revenue of the International Union, which says, "A per capita tax of eighty cents per month, based upon the membership from the first day of the month"? A. Yes, sir.

10 "SECTION 22. The revenue of the International Union shall be derived as follows: From charter outfits of \$25.00 each in advance, the outfit to consist of one charter, one embossing seal, two manuals, seven union shop cards, fifteen membership books, five retiring cards, five transfer cards, one cancelling outfit, one warrant book, one Secretary-Treasurer's ledger, one day cash book, one minute book, one
20 package printed envelopes, and all blank forms necessary for the transaction of business; from initiation fee, from readmittance fees, and retiring card fees on beneficiary members; from the sale of supplies and the per capita tax of 70 cents per month per member based upon the membership from the first day of the month, to be paid to the General Secretary-Treasurer on or before the twenty-fifth day of the month. The per capita tax herein provided shall be for
30 the members' dues to the international union, their subscription to the Journeymen Barber, and their payment to the sick and death benefit fund."

Q. In other words, if on the first day of the month you have a hundred members in good standing, you would send— A. Eighty cents a member.

Q. You advance this money, do you, for the members? A. Yes.

40

Anthony Danza. Called by Plaintiff. Cross.

Q. For how many months will you advance the per capita tax on behalf of the member? A. No more than two months.

Q. If, after having paid for a particular member for two months and the member has not repaid you, what would happen to the member? A. I suspend him.

Q. Is that in accordance with Section 76 of the By-Laws, which says, that if any member who on the last day of the month is indebted to a local union, and so on, he shall stand suspended? A. Yes, sir. 10

“SECTION 76. Any member who is, on the last day of each month, indebted to a local union for either dues, fines, assessments, or any other indebtedness, or any combination of above items of indebtedness equal in amount to two months’ dues, shall stand suspended. No member shall be subject to an assessment by any local union until such member has been a member of said local for at least thirty days. Any Secretary-Treasurer failing to enforce this section shall be fined \$5.00 for each offense, and for failure to pay the same to the International Union within sixty days the Secretary-Treasurer shall stand suspended.” 20 30

Q. Under Section 75 of the By-Laws, the local union may be suspended; is that right? A. Yes, sir.

“SECTION 75. If any local union is suspended by reason of any violation of the laws of the International Union or suspends active operation of its own accord, all moneys, books, seal 40

Anthony Danza. Called by Plaintiff. Cross.

and property must be forwarded to the general secretary-treasurer of the International Union. The local union's secretary-treasurer shall be held responsible for the faithful transmission of all the property in said secretary-treasurer's hands to the secretary-treasurer of the International Union."

10

Q. And its property taken from it if it does not comply with the By-Laws? A. Yes, sir.

Q. Did you have, on February 16, 1928, or have you now, either as an officer of the local union or in your own individual capacity, any moneys belonging to the International? A. No, sir.

20

Q. Was the International at the time the owner of any property, or goods, or rights, belonging to the local union? A. No, sir.

BY THE COURT:

Q. Well, you had this money that you were supposed to pay in the shape of the per capita tax in your hands at some time or other, didn't you? A. Yes, your Honor.

Q. Didn't you collect \$2.75 a month from each member? A. Yes, sir.

30

Q. Now, that eighty cents is the property of the International at Indianapolis, isn't it?

Mr. Tartalsky: I submit that that is a question of law for the Court to decide.

The Court: I just want to get that clear in my mind; that is my understanding. Is there any dispute that eighty cents out of this \$2.75 is really the property of the International?

40

Anthony Danza. Called by Plaintiff. Redirect.

Mr. Tartalsky: It is paid by the local, advanced as he says; they advance it for two months.

REDIRECT EXAMINATION BY MR. RUBENSTEIN:

Q. Whether or not you advance this per capita tax for each member, you are obligated to pay it, aren't you, to the International Union? 10

Mr. Tartalsky: I object to that as calling for a conclusion on a question of law.

The Court: I think that is so; I think the By-Laws are in evidence, those sections that you read into the record, they show what the obligations are.

Q. You know that payment to the plaintiff in this case was refused, because technically Mr. Brombacher's dues were not paid on the first of the month; if what you say is true, that your local union advanced the dues for two months, why was payment refused? 20

Mr. Tartalsky: Just a moment, Mr. Rubenstein, I object to that. Mr. Rubenstein has cited a case where proceedings cannot be attacked. 30

Mr. Rubenstein: I want to attack his credibility.

The Court: I don't see how that would affect his credibility, what his position is. You got your judgment in attachment.

Q. What amount was due in June?

40

Mr. Tartalsky: If your Honor please, I don't want to be objecting all the time, but I object to the word "due". How does he know whether it was due? He knows he pays it.

10 The Court: The question as I see it is primarily, to find out whether on the date this inventory and appraisal was made, this man, as secretary of the local union, then had in his possession any moneys belonging to or which were due or payable to the International Union, because I am frank to say that if he had those moneys which were due to the International by way of per capita tax in his possession at that time, they are subject to the levy of this writ of attachment; if I find that they were, in fact, moneys belonging to the International Union at Indianapolis.

20 Mr. Tartalsky: I am willing to stipulate this much: I am willing to stipulate that they served a writ of attachment on a given date upon Mr. Danza, who happens to be an officer of the local union; I am willing to stipulate that at that time and now they have a certain number of members; that these members pay dues of \$2.75 a month to the local; that the local union pays to the International eighty cents per month for each member in good standing; that the local union advances this sum of
30 eighty cents for each member for two months, and after that time, if it isn't paid, he is suspended.

Mr. Rubenstein: Are you willing to stipulate that at the time of the making of this levy, and since then, there has been at least \$500. of this eighty cents per capita tax which is payable by the local union to the International?

40 Mr. Tartalsky: I will stipulate that since the time of the service of the writ of attach-

ment and the making of the levy, this local union has paid to the International more than \$500.

Mr. Rubenstein: I offer the entire record of this case in evidence, if the Court please, in this proceeding.

Mr. Tartalsky: In the first place, I move for an acquittal on the part of Anthony Danza, personally, because he clearly had no funds of the union personally.

10

Mr. Rubenstein: I will consent to that.

The Court: I think that should be entered.

Mr. Tartalsky: And I further move for an acquittal of Local Union No. 362, on the ground that it does not appear that the local union, the garnishee in this case, was, at the time of the issuance of the writ of attachment, nor at any time since, indebted to the defendant in this action. I call your Honor's attention to that, because the writ of *scire facias* as issued says, "Shall have execution for a certain debt of \$500. held by the local and due from said local to the International." So that in their writ they limit it entirely to whether or not it is a debt. Now, a debt presupposes, of course, the relationship of creditor and debtor, which means that the creditor may at all times have an action of *assumpsit* against the debtor. From the undisputed evidence it appears that the only obligation which the local union is under is that on failure to pay it is suspended. That gives no right of action in debt. My authority for that is the case of *International Council v. State Council*, 64 Eq. 470, opinion written by Vice Chancellor Pitney, and affirmed subsequently by the Court of Errors and Appeals in 75 Eq. 245. Under those cases, the law is undoubtedly that the relationship exist-

20

30

40

ing between a parent body and the subordinate body is purely a voluntary one, similar to the federal government and the individual states; that is the illustration given in that case; it is purely a voluntary union; it may be terminated by either one of them, and there is a suspension if there is no living up by the local to the International.

10 The Court: Notwithstanding that there is a by-law providing for the suspension of the subordinate body on failure to pay that per capita tax?

Mr. Tartalsky: Exactly; that is just what the case decided, that it is not a debt; the penalty is that they are suspended; they are out. That was the entire question.

The Court: Isn't it a debt?

20 Mr. Tartalsky: It is not a debt; and my authority for that is Williams v. Clark, 174 Ill. 279, and Joyce on Insurance. There are other cases, of course, outlining the same situation, that the relationship is purely voluntary; that the member, if he does not pay, is suspended, and it is the same way with the local; if they do not pay, they are suspended. My further ground is that the *scire facias* in this case is defective, in that it does not state with precision and certainty the nature of the property attached. My authority is Walsh v. Blackwell, reported in 14 N. J. L. and 15 N. J. L. 354, and Neal v. Cook, 10 N. J. L. 357. For those reasons I move for an acquittal on behalf of the garnishee in this action.

30

40 Mr. Rubenstein: If the Court please, to be frank here, I think Mr. Tartalsky is correct in his one statement, that the *scire facias* should specifically state what the obligation is. In order that we have a proper question, I think we should agree on just what the issue is.

Mr. Tartalsky: I can not change the writ. You have the writ of attachment, which was made long before.

Mr. Rubenstein: I am not asking for any change in the writ of attachment. I am only talking about the *scire facias*.

Mr. Tartalsky: I have no objection to that amendment, if the Court permits it.

Mr. Rubenstein: After where is say "obligation" I ask that there be inserted "consisting of eighty cents per capita tax payable from each member of the local union to the defendant, Journeymen Barbers' International Union of America, a debt, obligation or credit." 10

Mr. Tartalsky: I have no objection to that going in. If the Court wants to put it in, I have no objection.

The Court: I will allow this writ of *scire facias* to be amended to read, "A certain debt, right, credit or obligation, consisting of all moneys now in the hands of Local Union No. 362 belonging to the Journeymen Barbers' International Union of America, a unincorporated body, not exceeding the sum of \$500. being moneys derived from the eighty cents per capita tax payable from each member of the Local Union to the defendant, Journeymen Barbers' International Union of America." 20

The Court: It seems to me that in this case there is undoubtedly in the hands of the treasurer of the Local Union No. 362 certain moneys which are due to the International for per capita tax. This original judgment, of course, was a judgment against the Journeymen Barbers' International Union of America, the parent body at Indianapolis, for benefits due under a death certificate. As the by-laws of the International provide in substance that this per 30 40

capita tax when levied became an obligation of some sort or other on the local union, the penalty for the non-payment of which is suspension from being in good standing with the International, with all the consequent disabilities that that imposes on members of the subordinate union, as generally practised in America. I find that these moneys that came into the hands of the secretary-treasurer, Mr. Danza, of the local union, to the amount of \$500. have been due in some shape or other to the International Union for per capita taxes, and they are rights, credits or effect of the parent body within the State of New Jersey that I feel are subject to attachment under the New Jersey processes. Accordingly, that leads me to the conclusion that they are subject to be reached by our processes. Judgment will be entered for \$500.

Mr. Tartalsky: I ask your Honor for an exception.

I, HARRY SCHIRMER, the stenographer designated by the Court and sworn, do certify that the foregoing is a true and accurate transcript of the minutes and proceedings taken by me at the hearing on the writ of *scire facias* in the case of Anna Brombacher, Administratrix, &c., against Journeymen Barbers' International Union of America, in the District Court of the First Judicial District of the County of Hudson.

HARRY SCHIRMER,
Stenographer.

TO THE CHIEF JUSTICE OF THE NEW JERSEY SUPREME COURT:

I do certify the foregoing transcript, made by the stenographer designated by me and sworn, as the minutes and proceeding of the hearing on the writ of *scire facias* in the case of Anna Brombacher, Administratrix, &c., plaintiff, against Journeymen Barbers' International Union of America, defendant, at the District Court of the First Judicial District of the County of Hudson, to be used on the appeal herein. 10

LOUIS B. EASTMEAD,
Judge.

It is agreed between the attorneys of the respective parties that the foregoing shall be the State of Case in the above entitled cause. 20

IRWIN RUBENSTEIN,
Attorney of Plaintiff.

O'BRIEN & TAFTALSKY,
Attorneys of Local #362, Garnishee. 30

Opinion of Supreme Court.

NEW JERSEY SUPREME COURT.

No. 458, MAY TERM, 1929.

ANNA BROMBACHER, Admx., etc.,
Appellee,

VS.

JOURNEYMEN BARBERS' INTERNA-
TIONAL UNION OF AMERICA, Local
No. 362, Garnishee,
Appellant.

10

Submitted May 17, 1929; decided July , 1929.

Appeal from District Court.

Before Justices Parker, Black and Bodine.

For the appellant, Samuel Tartalsky.

20

For the appellee, Irwin Rubenstein.

Per Curiam.

This is an appeal of a local lodge in a garnishee proceeding after judgment in attachment, against the National body.

30

Plaintiff is the widow of William Brombacher, who was a member of the local and whose estate, or widow, was entitled to death benefits from the National by reason of monthly payments to the local, in the usual manner. We gather from the case and briefs, though the point seems now unimportant, that William Brombacher did not pay his dues on the first of the month as required by the by-laws, but that the local advanced for him to the national, as in the Peterson case, 98 N. J. L. 196. As the dues were ultimately paid, that question is out of the case at this stage. We gather also that the national refused to pay the death benefit and the widow as beneficiary sued out an attachment in the district

40

Opinion of Supreme Court.

court against it as a non-resident debtor domiciled in Indiana, that the case was contested, and that the widow had a judgment. The national seems to have appeared specially only.

The writ of attachment was executed against funds in the hands of the local and in the physical custody of its treasurer Anthony Danza, and both were included in the *scire facias*, but at the end of the case Danza was discharged, by consent of the plaintiff's attorney. The theory of the *scire facias*, as fell as of the writ of attachment, was that in as much as the local was required under the regulations of the order to collect certain initiation fees and dues, and as out of the dues, the sum of 80 cents per month for each member was to be remitted by the local to the national, and as since the levy of the writ more than \$500. had come into the hands of the treasurer of the local for this purpose, this credit in favor of the national was liable to the attachment and subject to be paid to the plaintiff under the *scire facias*. The point was raised early in the case by motion to quash the attachment, but passed by the court, 6 Misc. 1069, and is now the sole remaining question in the case, viz., whether a sum of money collected by the local for account of the national, and actually in the hands of the local for that purpose, is a debt, or a right and credit, which may be attached as the property of the national, and the local compelled to pay, and receive or be entitled to credit with the national for such payment when made. Danza, the treasurer, testified that he had the money in his hands as the property of the national, and whatever may be the rule as to the right of the national to sue the local for the dues, the right of the national to sue Danza as its own agent for money had and received would seem to be fairly clear.

10

20

30

40

Opinion of Supreme Court.

As between the national and the local, we have in this state the decisions in the leading case of National Council v. State Council, 64 N. J. Eq. 470, and several times reported in its various phases. Counsel for appellant maintain that that case decided that under the conventional relations of the national and local bodies, the national body would not be able to enforce the payment of moneys collected for its account by judicial proceedings. But the general decision in the case as reported in 64 N. J. Eq. is to the contrary, as a reading of the headnote will show. It was a bill to require the payment of money collected, on the theory of a trust in which the local was trustee and the national the *cestui*; and Vice-Chancellor Pitney held that if the money were actually collected by the local for the benefit of the national, the bill would lie, but that the complainant had failed on its proof. If it could collect in equity under such circumstances, we see no good reason why it should not collect at law; for the very theory of the action for money had and received to the plaintiff's use, is a trust theory. In the present case, it is clear from testimony and admissions that the two organizations were on friendly terms and not at loggerheads as in the cited case; that the treasurer regularly sent forward the checks of the parent association for dues collected for its account; and we think it would be unreasonable to say that in that posture of affairs, the parent association could not sue for its own. Deeming that it could, we conclude that the fund was attachable and that the present defendant-appellant was accountable for it to the plaintiff on a *scire facias*.

The judgment will accordingly be affirmed.

Rule of Affirmance.

NEW JERSEY SUPREME COURT.

ANNA BROMBACHER, Administra- trix, etc., Plaintiff-Appellee, vs. JOURNEYMEN BARBERS' INTERNA- TIONAL UNION OF AMERICA, LOCAL No. 362, Garnishee-Appellant.	}	On Appeal.	10
---	---	------------	----

This matter coming on to be heard before this court at the May Term, 1929, on appeal from judgment of the First Judicial District Court of Hudson County and the court having considered the argument of counsel and having taken time to consider the same and being of the opinion that there is no error in the proceedings below ;

20

It is, thereupon ORDERED that the said judgment of the First Judicial District Court of Hudson County be and the same is hereby affirmed.
 Entered August 30, 1929.

30

On Motion of
 IRWIN RUBENSTEIN,
 Of Counsel.

40

New Jersey Court of Errors and Appeals

ANNA BROMBACHER, Administra-
trix, etc.,
Plaintiff-Appellee,

vs.

JOURNEYMEN BARBERS' INTERNA-
TIONAL UNION OF AMERICA, LOCAL
No. 362,
Garnishee-Appellant.

On Appeal.

BRIEF OF GARNISHEE-APPELLANT

Statement.

This is an appeal by Local No. 362 of the Journeymen Barbers' International Union from a judgment of the Supreme Court affirming a judgment of \$500.00 rendered against it as garnishee by the Judge of the District Court of the First Judicial District Court of Hudson County after hearing on the return day of a writ of *Scire Facias*.

Plaintiff instituted a suit in attachment against Journeymen Barbers' International Union, a foreign unincorporated association of the State of Indiana, to recover a death benefit alleged to be due from said Journeymen Barbers' International Union, the defendant. Under the writ of attachment, on May 21, 1928, the constable of the court made a levy upon the funds of the garnishee herein, Local No. 362, as follows:

"All moneys now in your hands or in the bank belonging to the Journeymen Barbers'

International Union of America, an unincorporated body, not exceeding the sum of \$500.00" (Case, p. 11).

Judgment by default was entered against the defendant Journeymen Barbers' International Union of America. The Supreme Court inadvertently in its opinion (Case, pp. 30-32) said that the case was contested. On March 15th, 1929, a *scire facias* issued out of said court against this appellant as garnishee to show cause on March 20, 1929, why the said plaintiff "should not have execution against appellant for the amount of a certain debt of \$500.00" (Case, p. 14). At the trial the court permitted an amendment to the writ of *scire facias* (Case, p. 29), to read:

"A certain debt, right, credit or obligation, consisting of all moneys now in the hands of Local Union No. 362 belonging to the Journeymen Barbers' International Union of America, an unincorporated body, not exceeding the sum of \$500. being moneys derived from the eighty cents per capita tax payable from each member of the Local Union to the defendant, Journeymen Barbers' International Union of America."

On the return day, appellant filed a plea asserting that it had no goods or chattels, rights or credits of the defendant in its custody or possession and that at the time of the execution of the writ or at any time since, it was not indebted to defendant (Case, p. 16). At the hearing plaintiff called as her witness, Anthony Danza, Secretary and Treasurer of Local 362, the garnishee herein. He testified substantially as follows:

That the appellant herein, Local 362 is a Local Union having its office at Journal Square, Jersey City (Case, p. 19); that defendant Journeymen Barbers' Union is an Association of the State of

Indiana and that appellant has a charter from said defendant (Case, p. 20); that the local may make its own by-laws in accordance with the constitution of the defendant body (Sec. 110 of By-laws, Case, p. 20); and that the local union elects its own officers (Sec. 109 of By-laws, Case, p. 18). *The local has control of all local affairs: all the moneys received from its members are deposited in a bank to its own credit, viz., Journeymen Barbers' Local No. 362 and all funds are withdrawn and checks signed by its own president and secretary-treasurer* (Case, p. 21).

According to the by-laws, so long as the local union is in good standing, and the garnishee herein Local 362, is in good standing, all moneys collected are its own property and used for local expenses (Case, p. 18). The local collects from its own members a monthly tax of \$2.75; eighty cents of which represents a per capita assessment imposed by the defendant, parent body, which among other things constitutes a fund in the possession of the national union out of which sick and death benefits are paid (Case, p. 22). It was and still is the practice of the garnishee herein, Local 362, to remit monthly a sum which is the product of as many times eighty cents as it has members in good standing upon the first day of the month. *The local union advances the per capita tax for the members regardless of whether the member pays the per capita tax for a period of two months and if, thereafter, the member has not reimbursed the local union he is suspended* (Case, pp. 21-22-23). *Likewise if the local union violates any of the laws of the international union it is suspended and thereupon the property is to be forwarded to the parent body.*

Mr. Danza testified:

“Q. How much does the local union pay for the members to the international as a per capita tax? A. Eighty cents a member.

Q. In other words, the local union pays Eighty cents per capita tax for each member in good standing. A. Yes, sir.

Q. On what day of the month of membership? A. On the first day of the month” (Case, p. 21) * * *

“Q. In other words, if on the first day of the month you have a hundred members in good standing, you would send— A. Eighty cents a member.

Q. You advance this money, do you, for the members? A. Yes” (Case, p. 22).

“Q. For how many months will you *advance* the per capita tax on behalf of the member? A. No more than two months.

Q. If, after having paid for a particular member for two months and the member has not repaid you, what would happen to the member? A. I suspend him.

Q. Is that in accordance with Section 76 of the by-laws, which says, that if any member who on the last day of the month is indebted to the local union, and so on, he shall stand suspended? A. Yes.

Q. Under Section 75 of the by-laws, the local union may be suspended; is that right? A. Yes, sir” (Case, p. 23).

The trial court rendered judgment against the appellant for \$500 and said “*As the by-laws of the International provide in substance that this per capita tax when levied became an obligation of some sort or other on the local union, the penalty for the non-payment of which is suspension from being in good standing with the International, with all the consequent disabilities that that imposes on members of the subordinate union, as generally practised in America*” (Case, pp. 29-30).

Exception was duly noted to the ruling of the court. An appeal was taken by Local 362 from the entry of such judgment which the Supreme Court affirmed, the opinion appearing at Case, pages 32-32A-32B.

In this brief, we shall refer to the defendant, Journeymen Barbers' International Union of America, as the parent body, and designate the garnishee appellant herein Local No. 362, as the subordinate body.

Argument.

The basis for plaintiff's procedure against appellant as garnishee is Sec. 76 of the District Court Act (2 Comp. Stat., p. 1979), which provides that a *scire facias* shall issue against the garnishee to show cause "*why the plaintiff should not have execution of the money due by said garnishee to, or held by him for the defendant, and in his hands, or the value of the goods and chattels, rights and credits of the defendant, which were in the custody or possession of the garnishee at the time of executing the writ of attachment*" and further provides that "if the garnishee shall appear at the return of the writ of *scire facias* and plead thereto that he had no goods and chattels, rights and credits of the defendant in his custody or possession, either at the time of executing the writ of attachment or at any time since, or that he was not indebted to the defendant, and the plaintiff on trial shall prove that he was indebted or had such goods and chattels or rights and credits, then the court shall find for the plaintiff." * * * but, if the court shall determine against the plaintiff, judgment should be entered in favor of the garnishee.

The burden of proof is on the plaintiff. We assert that plaintiff did not sustain the burden.

The question involved is purely one of law, i.e., whether the per capita tax imposed by the international union was a debt owing from the garnishee herein to the International, or whether the appellant herein had in its custody or possession any rights or credits of the defendant.

We respectfully contend that the per capita tax was neither a debt due from the garnishee to the parent body nor was the appellant herein in the custody or possession of any rights or credits of the defendant.

The Supreme Court in its opinion erroneously stated that "Danza the Treasurer of the Local Union testified that he had moneys in his hands as the property of the International" (Case, p. 32, ll. 35-37). He testified (Case, p. 24) as follows:

"Q. Did you have on February 16, 1928 or have you now, either as an officer of the local union or in your own individual capacity, any moneys belonging to the International? A. No, sir.

Q. Was the International at the time the owner of any property, or goods, or rights belonging to the local union? A. No, sir."

We respectfully submit that the Supreme Court erred in affirming the judgment of the District Court for in its opinion at (Case, p. 32B) the Supreme Court cited from the case of *National Council v. State Council*, 64 N. J. Eq. 470, which is authority for the appellant's contention that the per capita tax is not a legally enforceable debt and that the remedy of a parent body against a subordinate body is in equity and an equitable proceeding. The Supreme Court said (Case, p. 32B, ll. 22-26).

"* * * If it could collect in equity under such circumstances, we see no good reason why it should not collect in law; for the very

theory of the action for money had and received to the plaintiff's use, is a trust theory."

We respectfully submit that the Supreme Court is in error in holding that parent body can collect at law on the theory of money had and received.

THE LAW.

Prefatory Statement.

For the purpose of the present case, the defendant and its subordinate local unions are organized on the design of fraternal and beneficial associations. The precise relationship between the member to the local or the Local Union to the International Union is difficult to describe. There are no clear, legally definable and enforceable rights, duties, obligations and liabilities based upon precise contractual agreement.

The defendant, national union, is made up of a group of federated, autonomous locals based upon an organic plan which involves a mutual exchange of promises in return of mutual advantages arising out of their connection with one another. *The relationships between the member and the local union and the local union and the national body are purely voluntary.*

In the case of *State Council vs. National Council*, 71 Eq. 433, Vice Chancellor Pitney very ably discusses the relationship of sovereign and subordinate associations similar to labor organizations. At page 446 he said:

"In point of fact each local subordinate council has its own constitution and by-laws, and the logical result of the situation seems to be, as appears from an examination of the literature of the association, that while the national council cannot exist without the sup-

port of the several state councils, and while the state councils cannot exist without the support of the several local subordinate councils, these local subordinate councils are the original constituent units or atoms, who, having once acquired life and existence, may continue that life and existence without reference to or assistance from either state or national council."

Vice Chancellor Pitney's reasoning was adopted by Mr. Justice Swayze, speaking for the Court of Errors and Appeals in *State Council v. Enterprise Council*, 75 Eq. 245, at page 247, wherein he said:

"It is thus settled that it is the subordinate councils which have an independent existence, and that their relationship with the state and national councils is, as the vice-chancellor said, a purely voluntary one."

The obligation to pay a death benefit, if it exists in a particular case, is not upon the local union, but upon the national body (By-laws 22, Case, p. 22). The relation between the union and the member is not that of insurer and insured, nor is the local union a mere agent of the international or sovereign body to collect and remit premiums.

Peterson vs. Woodmen of the World, 98 Law 196.

The Appellant Had No Moneys Belonging to Defendant.

Chancellor Walker in *Edwards v. Stein*, 94 Eq., page 251 at page 256 described a garnishee as follows:

"A garnishee is one who has property or money in his possession belonging to a defendant; and he is so-called because he has had warning or notice of the attachment."

In 28 Corpus Juris, page 95, Sec. 121, the rule is thus stated:

"The very purpose of garnishment being to subject defendant's property to plaintiff's claim, it is obvious that *the ultimate question in garnishment proceedings is whether the property sought to be reached belongs to defendant. Plaintiff's right in this regard cannot rise higher than defendant's.*"

The undisputed evidence in the case established that the local union has all the indicia of title to the funds in its possession. The members pay their dues directly to the local. The money is all deposited to the local's credit in its own name. The checks against the account are drawn by the local's officers and used to pay its own obligations. It is clear that no part of the payment made by the members to the appellant is regarded as belonging immediately to the defendant international union.

Whatever moneys the local holds belong exclusively to itself, and not to the Supreme body.

Cooley's Briefs on Insurance, 2nd Ed., p. 93;

Supreme Etc. Order v. Grigsby, 158 Ill. 57; 52 N. E., p. 956.

Appellant Was Not a Creditor of Nor Did It Have Any Rights or Credits Belonging to the Defendant.

The members' voluntary commitment to pay the local his dues and assessments is not a contractual obligation and is revocable at will. He is personally liable to pay the dues and assessments but can at any time discontinue the payments without subjecting himself to any legally enforceable liability. The sole remedy against a defaulting member is sus-

pension (Case, p. 23). So, too, the sole remedy of the defendant as against the appellant for violation of its law is suspension. This the court found as a fact (Case, p. 30).

In 28 *Corpus Juris*, page 241, the rule is stated that

“plaintiff by garnishment can acquire no greater rights against the garnishee than are possessed by the principal defendant. In other words, plaintiff is not to be placed in any better position, nor the garnishee in any worse position, than he would be if defendant himself was enforcing his claim. The garnishee can be held only to the extent of defendant’s claim against him, although, conversely, plaintiff may recover what defendant might recover in a separate action against the garnishee.”

It is well settled, therefore, that only such demand can be subjected to garnishment as the defendant in its own name could recover from the garnishee in an action of debt or *indebitatus assumpsit*.

The term rights and credits are used in the District Court Act in the sense in which they are understood in the commercial law as the correlative of debt. Whenever, therefore, there is a credit in this sense, there is a debt, and without a debt there can be no credit and the test is whether the creditor could obtain a judgment in a law court for the amount of the indebtedness.

We contend that under the decisions of this State, the defendant parent body, could not maintain an action in *indebitatus assumpsit* against the garnishee for the per capita tax.

The Court of Errors and Appeals in 66 Eq., page 429, affirmed the opinion of Vice Chancellor Pitney in *National Council v. State Council*, reported in

64 Eq., page 470, which was a suit in equity by a national body against one of its chapters to impress a trust upon funds collected by the chapter to meet certain assessments imposed by the national body. **THE COURT GRANTED THE COMPLAINANT'S RIGHTS TO SUE IN EQUITY SINCE THE COMPLAINANT HAD NO LEGALLY ENFORCEABLE DEBT AGAINST THE INFERIOR BODY.** Vice Chancellor Pitney, at page 473, said:

"The precise question is whether the moneys realized by the defendant from that tax (per capita tax) are impressed with a trust in favor of the national council. The complainant alleges the affirmative and the defendant denies it.

*"In considering this question it must be borne in mind that the relation between the parties is a purely voluntary one. The constitution of the national council provides for the collection of a tax in the manner hereinbefore stated; but it is hardly necessary to remark that it has no power to enforce it. So with the State council; it imposes a tax upon the different subordinate councils, but has no power to enforce it. Neither have the officers of the subordinate councils any power to enforce a tax which they lay upon their members. Any member may withdraw at any time. * * * The relation, indeed, between them is quasi contractual; but I can find no warrant anywhere in the case, nor in the law applicable thereto, for the notion that the national council could bring an action at law against any state council and recover damages for its refusal to collect any tax which the national council may impose. Whatever right of that sort exists is unenforceable by legal action, and hence the complainant was compelled to put its case upon the ground of a trust, for money had and received. * * * And the mere fact that it has money in the treasury from whatever source, does not*

create a liability, neither at law nor in equity, to pay it over to the national council."

The case is a controlling authority on the present issue.

We have shown that the only consequence of a member's failure to pay the dues or assessments is suspension from the order. In *Joyce on Insurance*, 2nd Edition, Volume 5, Section 3487, page 5794, the rule is stated: "Nor will a suit lie by a mutual benefit association to cover assessment where the contract provides only for forfeiture of interest in case of non-payment". *Lehman v. Clark*, 174 Ill. 279; 51 N. E. 222.

In Volume 3 the same author, at page 2372, Section 1245-C, says:

"So assessments by mutual benefit association are not debts recoverable by action at law where the right to benefit is dependent on good standing in the society and good standing depends on the payment of assessments which are always made in advance, and not to meet accrued obligations." (*L'Union St. Jean et al. v. Ostiguy*, R. I. 56 Atl. 681.)

"And assessments to become due a foreign mutual insurance company from policy holders residing within the state, and which by terms of the contract are merely voluntary and when collected are impressed with a trust in favor of the other policy holders are not, when due, debts or choses in action enforceable by suit, at least not sufficiently so to justify the appointment of a receiver in the instance of a domestic creditor." (*Blackwell v. Mutual Reserve, etc., Assoc.*, (N. C.) 53 S. E. 833; 5 L. R. A. (N. S.) 771.

"So, under an Illinois decision (Lehman v. Clark, supra) the assessment is not a debt and the only right of the association or company is

to declare a forfeiture for non-payment; it has no right to recover the assessment in a suit otherwise the member would be indefinitely liable."

The testimony established that it is the practice of the local to advance the per capita tax on behalf of the member each month for a period of two months and upon failure of the member to make reimbursement he is suspended. The disbursements are made from the general funds of the local union which having advanced credit for its members relies on their good faith to discharge their obligations by paying the dues. *The member is always in arrears as to per capita tax and the local carries the risk of his default. Under the plan outlined, the local union is never in possession of funds which the national union may demand as taxes or the members require it to forward. The members' payments when made merely liquidate the local's quasi-debt against them which arises by virtue of the advances which the local makes in their behalf.*

The plaintiff cannot by attaching these funds make a credit which belongs to the local and the members that of the international union. The case of *Reinhart v. Empire Soap*, 33 Mo. App. 24, is somewhat in point. It was agreed between an employer and employee that the latter's wages should be paid a week in advance; the employer was summoned as garnishee of the employee. It appeared that the garnishee had advanced to the defendant a sum in excess of the amount of the attachment and it was held that the garnishee could not be charged because under the agreement (between employer and employee) there was never a time when the defendant could have maintained an action against the garnishee, since the employer did not,

as long as he advanced salary, hold any money of the defendant.

In 28 Corpus Juris, page 172, the rule is stated :

“* * * No garnishable debt can arise from a contract for personal service where the employee is paid in advance. This rule is especially applicable where the contract of employment is merely at will.”

The word “bound” as it appears in Section 84 of the by-laws (Case, p. 18) is used in an inartful sense. It is not meant as a binding duty, the correlative right of which belongs to the defendant. *The cases establish that the parent body cannot maintain an action at law to compel the payment.*

We have demonstrated that the appellant herein, Local 362, has no moneys or credits of defendant. It has been shown that there is no contractual duty upon the local to pay anything to the defendant. We do not concede that the local holds part of its funds in trust for the defendant. But, even if this *equitable interest* were established, it could not be made the subject of garnishment, for it is a fundamental rule of law that the process of garnishment is essentially a proceeding at law. It extends only to legal assets and intercepts only legal credits. It is not equitable in its nature or procedure, and never can touch mere equitable interests and assets in the hands of the garnishee.

Section 76 of the District Court Act does not include equitable interest and demands. In 28 Corpus Juris, page 101, the rule is thus stated :

“In the absence of a clear intention to include equitable interest and demands it is generally held that garnishment is unavailable to reach them. Fundamentally this rule is an incident of the very nature of garnishment as being a legal as distinguished from an equitable remedy.”

District courts are special statutory tribunals whose procedure is prescribed by act of the legislature and garnishment proceedings are proceedings to be strictly pursued in accordance with the statutory provisions. There is no statutory warrant for a district court garnishment to apply to equitable interests or claims.

We respectfully submit that the parent body had no legal claim against the local and could not enforce the payment of a per capita tax in any legal proceeding. We recognize that perhaps the parent body might file a bill in equity to impress a trust upon moneys collected by the local union, for per capita tax on the ground of a trust, for money had and received, but such a proceeding can ONLY be instituted in the court of equity. A court of law under the authorities cited would have no jurisdiction. Hence, we submit that the Supreme Court erred in stating the rule to be (Case, p. 32B) :

“* * * If it could collect in equity under such circumstances, we see no good reason why it should not collect at law; for the very theory for the action of money had and received to the plaintiff's uses is a trust theory.”

The remark of the Supreme Court in its opinion that the two organizations are on friendly terms and not at loggerheads is immaterial and such friendly relationship cannot vest the court with jurisdiction when none exists.

Conclusion.

We respectfully submit that in garnishment proceedings the plaintiff's rights would not rise higher than the judgment debtors, the defendant in this case, and since the defendant could not institute and recover at law the funds which the plaintiff

attempted to seize, the district court should have entered judgment in favor of the defendant. The Supreme Court erred in not reversing said judgment.

We respectfully submit that the judgment should be reversed.

O'BRIEN & TARTALSKY,
Attorneys for Garnishee Appellant.

SAMUEL TARTALSKY,
Of Counsel.

New Jersey Court of Errors and Appeals

<p>ANNA BROMBACHER, Administra- trix, etc., Plaintiff-Appellee,</p> <p style="text-align: center;">vs.</p> <p>JOURNEYMEN BARBERS' INTERNA- TIONAL UNION OF AMERICA, LOCAL No. 362, Garnishee-Appellant.</p>	}	On Appeal.
---	---	------------

BRIEF OF PLAINTIFF-APPELLEE.

The Facts.

In order that the Court may thoroughly comprehend the nature of the case, we desire to mention that this suit was based on the facts as alleged in the State of Demand, which were never disputed; that William Brombacher was a member of the Union for more than fifteen years, and as such, his estate was entitled to receive death benefits in the sum of \$500.00; that he died in the month of July, 1926 and had paid his dues before he died for both the months of July and August, 1926. The Union refused payment because, technically, the dues had not been paid on the first day of the month.

Of course, under the cases of this State, the Courts would not declare a forfeiture of the benefits.

Counsel for the appellant-garnishee says that "the Supreme Court inadvertently in its opinion said that the case was contested." The original

suit that was brought was contested and the defendant was represented by counsel at the trial. The Court found for the plaintiff. The question of jurisdiction, as a result of the service made, was not raised at this original trial and was raised when it came to enforce the judgment. The original suit, by agreement with counsel, was abandoned and the present suit commenced in Attachment. In the present suit, the defendant appeared specially.

We also desire to observe that if, as sworn to by the Secretary of the Local Union, the per capita taxes for a period of two months are advanced on the first day of the month, why has payment been refused to plaintiff?

Argument.

The only question before the Court is whether certain funds in the hands of the Local Union were subject to Attachment.

POINT I.

The Attachment Act reads "all rights, credits, monies and effects, goods and chattels, lands and tenements may be attached".

On page 19 of the Case, the Secretary of the Local Body was asked:

"Q. Under Section 84 (of the by-laws, which are the by-laws of the International Union) which says as follows: 'But the Local Union shall at all times be bound to pay unto the International Treasury a per capita tax of seventy cents per month per member'; now, excepting that that has been changed to eighty cents, is that correct? A. That is correct.

Q. You are bound to pay it, are you not? A. If I got it, yes, I have to pay.

Q. Will you answer my question, yes or no.

A. Yes."

Counsel for the garnishee in his brief says "that the word 'bound' as it appears in Section 84 of the By-laws is used in an inartful sense".

We respectfully submit that if words such as "bound" which are in common usage and have a definite meaning were to depend for their interpretation upon counsel, there would be no end of confusion in the carrying on of business and in the interpretation of laws.

On page 18 of the Case, the Secretary of the Local Union was asked:

"Q. Are you authorized to collect for the Union? A. Yes, sir."

This amply demonstrates that the moneys paid were collected by the Local Body for the defendant which had moneys in its possession which belonged to the defendant, to wit: the per capita tax of each member of the Local Body.

In *Briant v. Reid*, 14 N. J. E., page 272, it was held:

"A debt due defendant on negotiable paper before maturity is attachable."

In *Dock Company v. Mallery*, 12 N. J. E. 94, it was held:

"That the equity of redemption in chattels that have been mortgaged may be attached."

See also,

Blauvelt v. Fetchman, 48 N. J. L. 430.

It is our view that counsel has misinterpreted the reasoning of the Supreme Court in construing the case of *National Council v. State Council*, 64

E., page 470, and the examination of the opinion will clearly indicate this.

Counsel, in his brief, goes quite elaborately into the question of garnishment. It seems hardly necessary to state that the garnishment proceeding is merely a form of execution, and if the funds in the hands of the Local Union could be attached, there could be no question about the right to garnishee the funds in the hands of the Local Union, they being a fixed and determined sum. Counsel also stresses the point that the Local Union had all of the indicia of title. We wish to observe that in every case of garnishment, the garnishee has the indicia of title.

An examination of the case of *Edwards v. Stein*, 94 E., page 251, 119 A., page 504, clearly indicates that so long as the statutory requirements have been complied with, which in this case is not before the court, the right to garnishee the funds in the hands of the Local Union is beyond question.

Section 33 of the Attachment Act, P. L., 190, page 172, reads:

“This act shall be construed in all courts in the most liberal manner for the DETECTION OF FRAUD, the ADVANCEMENT OF JUSTICE and the BENEFIT OF CREDITORS.”

It will be recalled that the defendant is an unincorporated body, organized under the laws of the State of Indiana, and under the peculiar laws of that State, to sue, all members must be made parties defendant, not to speak of the obstacles in the way of going to Indiana and suing the defendant were it possible.

The course pursued by the plaintiff for the collection of this death benefit was the only one open to her, and it seems almost fraudulent on the part of the defendant, the International Union, to make

these expensive and successive attempts to deprive this poor, aged widow, the plaintiff in this cause, from realizing on a just and valid claim, and it certainly would be, as the Attachment Act reads, for the ADVANCEMENT OF JUSTICE to decide in her favor not only for herself, but in order to prevent others placed in a similar position, from being so deprived.

The same arguments raised in counsel's brief were raised before the Supreme Court, and the matter has been gone into so elaborately by the Supreme Court in its opinion, that we also rely upon the reasoning and logic as therein enunciated.

CONCLUSION.

We respectfully submit that the Supreme Court in its decision should be sustained.

Respectfully submitted,

IRWIN RUBENSTEIN,
Attorney for Plaintiff-Appellee.

