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Bergen County Circuit Court

ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, deceased, Plaintiff, vs. FREDERICK J. WORTENDYKE, Defendant.	On Contract Petition and Order for Discovery.

To His Honor Luther A. Campbell, Judge of the Bergen County Circuit Court:

The petition of Elmer Blauvelt, Administrator of the Estate of Cornelius D. Blauvelt, deceased, respectfully shows that on the seventeenth day of September, A. D. one thousand nine hundred and fifteen, Judgment was recovered for said plaintiff in the Bergen County Circuit Court in said cause against said defendant for the sum of $1,888.54 damages and costs of suit; and that afterwards your petitioner caused to be issued thereon a writ of execution directed to the Sheriff of the County of Bergen to be executed; that said Sheriff has since duly returned said writ unsatisfied according to the exigency of said writ.

Your petitioner further shows that in addition to the above-mentioned sum there is now due execution fees and Sheriff's fees, and interest on said sum of $1,888.54, from the date of said judgment, no part thereof having been paid.

Your petitioner believes that said defendant has property and money and things in action due to him or held in trust for him where the trust has been created by or the fund held in trust has proceeded from him over and above such property as is or may be reserved by law.

Your petitioner therefore prays your Honor to make an order requiring the said Frederick J. Wortendyke to appear and make discovery on oath concerning his property and money and things in action before your Honor, a Master in Chancery, or a Supreme Court Commissioner, at a time and place to be therein specified.

Dated, Feb. 29, 1916.

RAYTON E. HORTON,
One of the Attorneys for Petitioner.

STATE OF NEW JERSEY,
COUNTY OF PASSAIC, } ss.:

RAYTON E. HORTON, being duly sworn according to law, on his oath says that he is a member of the firm of HORTON & TILT, and that said HORTON & TILT are the Attorneys for the petitioner in the above stated cause; that the matters and things in the foregoing petition set forth are true, to the best of his knowledge, information and belief.

And deponent says in fact that on the seventeenth day of September, nineteen hundred and fifteen, petitioner recovered a judgment against Frederick J. Wortendyke in the Bergen County Circuit Court,

in said cause for the sum of One Thousand Eight Hundred eighty-eight dollars and fifty-four cents, damages and costs of suit; and that afterwards deponent caused to be issued thereon a writ of execution directed to the Sheriff of the said County of Bergen to be executed; that said Sheriff has since duly returned said writ unsatisfied according to the exigency of said writ, and that the defendant resides in Bergen County.

Deponent further says that in addition to the sum due for debt and costs of suit there is now due the fees for docketing, execution fees and Sheriff's fees, besides interest on said sum of $1,888.54 from the date of the judgment, and that no part thereof has been paid.

Deponent believes that the defendant has property and money and things in action due to him or held in trust for him where the trust has been created by or the fund held in trust has proceeded from himself over and above such property as is or may be reserved by law.

RAYTON E. HORTON.

Sworn and subscribed to before me
this 29th day of Feby., A. D. 1916.

JOSEPH BANKER,
Notary Public
of New Jersey.
(Seal)

ORDER.

Upon reading the duly verified petition in this cause presented to me by the plaintiff therein, I do order and require the defendant, Frederick J. Wortendyke, to appear and make discovery on oath concerning his property and money and things in action before Reuben M. Hard, a Supreme Court Commissioner, at his office, McFadden Building, 173 Main Street, Hackensack, New Jersey, on Wednesday, the 12th day of April, nineteen hundred and sixteen, at the hour of two in the afternoon of that day.

Given under my hand this Second day of March, nineteen hundred and sixteen.

LUTHER A. CAMPBELL,
Judge.

(Filed Apr. 4, 1917.)

BERGEN COUNTY CIRCUIT PLEAS.

ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, deceased, Plaintiff, vs. FREDERICK J. WORTENDYKE, Defendant.	On Contract Order Requiring Defendant to make Payments.

The examination of Frederick J. Wortendyke, the above-named defendant and judgment-debtor, upon oath in the above stated case, heard and taken before Reuben M. Hart, a Supreme Court Commissioner, pursuant to an order heretofore made by the above stated Court, having been certified to me under the hand of said Commissioner, and it being disclosed by said examination that said judgment-debtor are is in receipt of an income;

It is on this 29th day of November, nineteen hundred and sixteen, ordered, and said judgment-debtor is hereby directed to pay to the plaintiff out of said income the sum of Seven dollars during the first week of each month and every month thereafter on account of the plaintiff's unsatisfied judgment until such judgment, together with the costs thereon and the costs incident to the examination of the said judgment-debtor and to this order shall be fully paid; said payments to be made to the plaintiff's attorneys, Horton & Tilt, at their office, Room 520, United Bank Building, 152 Market Street, Paterson, New Jersey; and it is further ordered that the attorneys for plaintiff be allowed the sum of Ten

dollars according to statute (Chapter 366, L. 1911, Sec. 12, page 761) and that all taxable costs and allowances be paid in manner aforesaid, and that a copy of this order to be served on said defendant need not be certified.

LUTHER A. CAMPBELL,
Judge.

STATE OF NEW JERSEY,
COUNTY OF BERGEN, } ss.:

I, ALBERTA F. SIGLER, do solemnly swear that I will faithfully and truly take stenographically and reproduce in manuscript or typewriting the testimony to be given in the above-entitled cause.

ALBERTA F. SIGLER.

Subscribed and sworn to before me
this 7th day of June, A. D. 1916.

R. M. HART,
Supreme Court Commissioner.

STATE OF NEW JERSEY,
COUNTY OF BERGEN, } ss.:

I, ROSE C. MITCHELL, do solemnly swear that I will faithfully and truly take stenographically and reproduce in manunscript or typewriting the testimony to be given in the above-entitled cause.

ROSE C. MITCHELL.

Subscribed and sworn to before me
this twenty-seventh day of Septem., A. D. 1916.

R. M. HART,
Supreme Court Commissioner.

Deposition of F. J. Wortendyke.

Deposition and examination of witnesses taken before Reuben M. Hart, Esquire, a Supreme Court Commissioner, at his office in the McFadden Bldg., Hackensack, New Jersey, on the 7th day of June, nineteen hundred and sixteen, and the 27th day of September, nineteen hundred and sixteen, at the hour of two o'clock in the afternoon in the above stated cause, by virtue of an order of said Court made in said cause on the 2nd day of March, nineteen hundred and sixteen, in the presence of Rayton E. Horton, of the firm of Horton & Tilt, attorneys for the plaintiff, the defendant not being represented by counsel, the defendant being represented by Bogart & Harris.

FREDERICK J. WORTENDYKE, being duly sworn according to law on his oath this 7th day of June, A. D., 1916, says (Sigler) :

Q. Where do you live? A. Oradell.

Q. How long have you lived there? A. Eighteen years, I guess.

Q. What rent do you pay? A. $35.00.

Q. How long have you lived in that house? A. About a year.

Q. Are you married? A. Yes.

Q. Do you live with your wife? A. Yes.

Q. How many children have you? A. One.

Q. Hold old is that child? A. Seven.

Q. Do you own any interest in land? A. No.

Q. Does your wife? A. Yes.

Q. Did you ever own any land? A. No.

Q. Is your furniture insured? A. Yes.

Q. In whose name? A. My wife's name.

Q. What is her first name? A. Stella.

Q. Are you paying for any furniture on the instalment plan? A. Yes.

Q. How much are you paying a month? A. Only on a Victrola.

Q. Do you pay that? A. No.

Q. Does your wife pay it? A. Yes.

Q. Has your wife any income except what you give her? A. Yes.

Q. What do you do? A. I manage a garage.

Q. What garage? A. Oradell Garage & Machine Company.

Q. Is it a corporation? A. Yes.

Q. When was it incorporated?

Objection by Mr. Harris that question not material.

A. Last fall.

Q. Have you any money in the bank? A. No.

Q. Have you an account in any bank as attorney? A. No.

Q. Did you ever have? A. I act as attorney for my father.

Q. Have you an account then in a bank as attorney? A. Yes.

Q. Is your father alive? A. Yes.

Q. Have you a pass-book in your possession? A. Yes.

Q. You have a check book? A. Certainly.

Q. In what bank is this account? A. People's National.

Q. Is your father in Oradell? A. Portland, Oregon.

Q. How long has he been there? A. Five or six years.

Q. What money to put in the bank, money received from real estate that he owns? A. Yes.

Q. Will the check stubs show what you pay it out for? A. They certainly will.

Q. Is that the only bank account you have where you sign as attorney? A. Yes.

Q. Do you get anything from your father for acting as attorney? A. No.

Q. What wages do you get? A. $70.00 a month.

Q. Is that the only income you have? A. Yes.

Q. Do you get that from the corporation? A. Yes.

Q. Are you a stockholder there? A.No.

Q. Mrs. Wortendyke is, is she not? A. No.

Q. Has she any stock at all? A. No.

Q. Who is president of that corporation? A. J. S. Wortendyke.

Q. What does J. stand for? A. John S. Wortendyke.

Q. What relation is he to you? A. Father.

Q. Was he here when the corporation was organized? A. He was here for some part of it.

Q. Will the minutes show? A. I presume they will.

Q. Who is secretary? A. C. A. Bogert.

Q. Is he a member of the firm of Bogert & Harris? A. Yes.

Q. Who is treasurer? A. C. A. Bogert.

Q. How many other stockholders are there? A. I can't tell you.

Q. Who has the minute books and all other books? A. I could not tell you.

Q. Can you tell where the registered office is? A. No.

Q. Did your wife ever own any stock in that corporation? A. No.

Q. Was there ever a concern known as the Westwood Garage Company? A. Yes.

Q. What became of that? A. It was dissolved.

Q. Was it a legal dissolution under the direction of the Secretary of State or just stopped business?

Statement by Mr. Harris: It was a voluntary dissolution by provision of the statute.

Q. How many men are employed in the garage beside you? A. At the present time three. We have had as high as six or eight.

Q. Is Mr. Bogert a relative of yours? A. Yes.

Q. He is your agent, is he not? A. Bogert & Harris are.

Q. Do you carry any life insurance? A. Yes.

Q. How much? A. $3,000.

Q. What company? A. New York Life.

Q. How many years have you been in? A. I could not tell exactly, but I will tell you this that there isn't any more.

Q. What do you mean by there isn't any more? A. Endowment policy and there is nothing there.

Q. You mean you have borrowed all you can? A. Yes.

Q. Are you still paying on it? A. Yes.

Q. What does it cost you a year? A. About $43.00.

Q. Do you belong to any lodges? A. No.

Q. Who owns the house where you live? A. Mr. Veldram.

Q. You say Mrs. Wortendyke owns real estate? A. Yes.

Q. Does it produce income? A. Yes.

Q. Does anyone owe you any money? A. Why, yes, but it is so old that it is gone.

Q. Are there any other judgments against you? A. I believe there are.

Q. Are you at this time under order from any court to pay anything on any judgment against you? A. No.

Deposition of C. A. Bogert.

CLYDE A. BOGERT, being duly sworn according to law on his oath this 27th day of September, A. D., 1916, says:

Q. Mr. Bogert are you one of the officers of the Oradell Garage & Machine Company? A. Yes.

Q. What office do you hold? A. Treasurer.

Q. Do you know the defendant in this case, Frederick J. Wortendyke? A. Yes.

Q. Does he work for you? A. Yes.

Q. What position does he hold? A. General manager.

Q. What do you pay him a week? A. $15.00 a week.

Q. Did he ever get more? A. Not while I have been in the company.

Q. When was it incorporated? A. In March of this year, I think.

Q. Did he run a garage there before the corporation was formed? A. No.

Q. Did he have anything to do with the place where the corporation is or with the business that the corporation took over? A. Yes, I don't know what he had to do.

Q. Is his wife one of the stockholders? A. Yes.

Q. Is he one of the stockholders? A. No.

Q. Is his wife one of the largest stockholders? A. No.

Q. Have you the book here showing what his wages are? A. I have the book of accounts of the corporation.

Q. Will you show me the page that shows what his salary is? A. I don't know whether it has a number.

Q. Show me the last payment to him and read what you find? A. I am looking at page dated August 1st, 1916, which shows where he received $39.41 on August 1st, which indicates that that amount

was paid him up to that date. On another page dated in June shows that he received $50.00 for the month. Page preceding shows that he received $20.00 check #1538. The preceding items were cash. On two or three pages preceding the last I find where he received $36.25 which is designated as "pay-roll"; this was paid in cash. The preceding page shows $38.75 paid him by check 1527. I think these last two or three payments are likely in May. In April I find that he received $22.59 which shows that it was paid to "pay-roll." He received $10.00 again and $37.41 both marked "pay-roll" in March. The book shows that he received $30.00, $10.00 and $30.00 marked "pay-roll."

Q. Mr. Bogert, who are the chief stockholders in the company? A. John S. Wortendyke, S. D. Wortendyke, John W. Van Buskirk and myself.

Q. Do you or any of them hold any stock for the defendant in this case? A. Not to my knowledge.

No. 24.

COMMISSIONER'S FEES.

One hearing	$4.00
One Report	1.34
Swearing witness	.10
Taking examination...sheets, single space...	

Total,

R. H. HART,
Supreme Court Commissioner.

Certification.

COMMISSIONER'S CERTIFICATE.

I, REUBEN M. HART, a Supreme Court Commissioner of New Jersey, do hereby certify and send to his Honor, the Judge of the Court of Common Pleas of the County of Bergen, the within examination of the judgment debtor, produced before me, taken by me in persuance of an order of discovery made by said Judge on the second day of March, nineteen hundred and sixteen the original of said order being hereto attached.

Witness my hand this 7th day of June, nineteen hundred and sixteen.

R. M. HART,
Supreme Court Commissioner.

(Filed Dec. 1, 1916.)

BERGEN CIRCUIT COURT.

ELMER BLAUVELT, Executor, Plaintiff, vs. FREDERICK J. WORTENDYKE, Defendant.	Action at Law.

Messrs. HORTON & TILT, attorneys of plaintiff.
Messrs. BOGERT & HARRIS, attorneys of defendant.

CONCLUSIONS—CAMPBELL, *J.*

An examination of the statutes involved in this application, under supplementary proceedings, for an order directing defendant to make periodical payments from his income for and toward the payment and extinguishment of the judgment had by plaintiff against him, leads me irrisistibly to the conclusion that such statutes are not in conflict with each other but that both can stand.

I shall make no attempt to elaborate this finding, or give the various steps in my reasoning which have brought me to this conclusion, for the reason that a careful reading of the various statutes involved makes such a conclusion patent without the employment of intense or deep logic.

Under the statute under which the application is made, it is discretionary with the Court to make any order for payment, and if the conclusion is that in the exercise of sound discretion an order should be made, then it is likewise a matter of sound discretion as to what the amount of the payment should be.

In the exercise of such discretion the plaintiff should have such order and the amount should be

seven (7) dollars per month, and I have accordingly concurrently herewith made and signed such an order.

Dated, November 29, 1916.

LUTHER A. CAMPBELL,
Judge.

(Filed March 19th, 1917.)

NEW JERSEY SUPREME COURT.

FREDERICK J. WORTENDYKE, Prosecutor, vs. ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, and LUTHER A. CAMPBELL, Judge of the Bergen County Circuit Court, Respondents.	On Certiorari. Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss.:

FREDERICK J. WORTENDYKE, being duly sworn, upon his oath, deposes and says that a petition addressed to his Honor, Luther A. Campbell, Judge of the Bergen County Circuit Court, dated the twenty-ninth day of February, nineteen hundred

and sixteen, and on the same day verified by Rayton E. Horton, one of the attorneys for the petitioner, the plaintiff in the above-entitled action, was on or about the second day of March, nineteen hundred and sixteen, presented to the Honorable Luther A. Campbell, Judge as aforesaid, wherein it was prayed that an order be made requiring deponent to appear and make discovery on oath concerning his property and money and things in action before the Honorable Luther A. Campbell, Judge as aforesaid, a Master in Chancery or a Supreme Court Commissioner at a time and place to be specified in said order. That upon the presentation of said petition to the Honorable Luther A. Campbell, Judge as aforesaid, he made an order requiring deponent to appear and make discovery before Reuben M. Hart, a Supreme Court Commissioner, at his office, McFadden Building, No. 173 Main Street, Hackensack, New Jersey, on Wednesday, the twelfth day of April, nineteen hundred and sixteen, at the hour of two o'clock in the afternoon of that day, which order was given under the hand of said Judge the second day of March, nineteen hundred and sixteen.

That thereafter a copy of said order was served upon deponent, and on the twelfth day of April, nineteen hundred and sixteen, he appeared for examination before the said Reuben M. Hart, Commissioner as aforesaid, but said examination was adjourned from time to time thereafter until the twenty-third day of August, nineteen hundred and sixteen, when deponent was examined pursuant to said order before the said Reuben M. Hart, Commissioner as aforesaid, by Rayton E. Horton, one of the attorneys for the petitioner. That upon said examination it was discovered and disclosed by the testimony of deponent that he was in receipt of a salary of seventy dollars ($70.00) per month.

That thereafter deponent was served with a notice, dated October thirtieth, nineteen hundred and sixteen, of an application to his Honor, Luther A. Campbell, Judge as aforesaid, to be made on Saturday, the fourth day of November, nineteen hundred and sixteen, at the hour of ten o'clock in the forenoon, for an order directing deponent to make monthly payments of ten dollars ($10.00). That at the time of the application aforesaid, to wit, the fourth day of November, nineteen hundred and sixteen, deponent appeared before his Honor, Luther A. Campbell, Judge as aforesaid, and was represented by his counsel, Lewis R. Harris, Esquire, who objected to the making of said order upon the grounds that deponent was not in receipt of a salary of at least eighteen dollars ($18.00) per week and that Chapter 266 of the Laws of 1913 as amended by Chapter 113 of the Laws of 1916, which is entitled "A supplement to an act entitled 'An Act respecting an execution approved March 21, 1874,'" by its very terms and by implication repealed Section 24 of said Act to which it was a supplement, as said Section 24 had at various times been amended in so far as said supplement and its amendment was inconsistent with said Section 24 as aforesaid, under which it was claimed said Judge could direct payments to be made out of such income or salary of seventy dollars ($70.00) as aforesaid.

That thereafter and on the twenty-ninth day of November, nineteen hundred and sixteen, an order was made by the Honorable Luther A. Campbell, Judge as aforesaid, directing deponent to pay out of his income the sum of seven dollars ($7.00) during the first week of each month and of every month thereafter on account of the unsatisfied judgment obtained against him; said payments to be made to

plaintiff's attorneys, Horton & Tilt, at their office, Room No. 520, United Bank Building, No. 152 Market Street, Paterson, New Jersey.

WHEREFORE, deponent respectfully prays that a Writ of Certiorari be issued requiring the said Elmer Blauvelt, Administrator of the Estate of Cornelius D. Blauvelt, deceased, and Luther A. Campbell, Judge of the Bergen County Circuit Court, the said petition for discovery and the order issued thereon, the examination of deponent and notice of motion for an application for payments and the order for payments, together with all things touching and concerning the same, to certify to the Justices of the Supreme Court for review.

FREDERICK J. WORTENDYKE.

Sworn and subscribed to before me
this 16th day of March, 1917.

GEORGE C. FELTER, JR.,
Master in Chancery
of New Jersey.

(Filed March 19th, 1917.)

NEW JERSEY SUPREME COURT.

FREDERICK J. WORTENDYKE, Prosecutor, vs. ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, deceased, and LUTHER A. CAMPBELL, Judge of the Bergen County Circuit Court, Respondents.	On Certiorari. Writ.

STATE OF NEW JERSEY, to wit:

THE STATE OF NEW JERSEY TO Elmer Blauvelt, Administrator of the Estate of Cornelius D. Blauvelt, deceased, and Luther A. Campbell, Judge of the Bergen County Circuit Court, GREETING:

SEAL

We being willing for certain reasons to be certified of the petition of the said Elmer Blauvelt, Administrator, etc., as aforesaid, order for discovery based thereon, examination before Supreme Court Commissioner designated in said order of discovery, notice of application to Prosecutor for order for payment and order for payments based thereon, given or made by the Honorable Luther A. Campbell, Judge of the Bergen County Circuit Court, in proceedings supplementary to execution in a certain action, plaint or proceeding brought against Frederick J. Wortendyke, at the suit of Elmer Blauvelt, Administrator, etc., as aforesaid, in the Bergen County Circuit Court.

We do command you, the said Luther A. Campbell, Judge of the Bergen County Circuit Court, that the petition for an order of discovery dated the 29th day of February, 1916, the order of discovery based thereon dated the second day of March, nineteen hundred and sixteen, the examination of the Prosecutor herein before the Supreme Court Commissioner, Reuben M. Hart, on the twenty-third day of August, nineteen hundred and sixteen, the notice of application for order for payments dated the thirtieth day of October, nineteen hundred and sixteen, and returnable the fourth day of November, nineteen hundred and sixteen, and the order for payments based thereon dated the twenty-ninth day of November, nineteen hundred and sixteen, and all proceedings supplementary to execution in the aforesaid action brought in the Bergen County Circuit Court against the said Frederick J. Wortendyke by the said Elmer Blauvelt, Administrator, etc., as aforesaid, together with all proceedings and things touching and appertaining to the same as fully and entirely as before you the said Luther A. Campbell, they remain to our Justices of the Supreme Court of Judicature at Trenton on the sixth day of April, nineteen hundred and seventeen, you shall certify and send under your hand and seal, together with this Writ, that therein may be done what of right and according to the laws of this state should be done.

WITNESS, William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, this twentieth day of March, in the year of our Lord nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

LEWIS R. HARRIS,
Attorney.

(Filed April 7th, 1917.)

NEW JERSEY SUPREME COURT.

FREDERICK J. WORTENDYKE, Prosecutor, vs. ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, deceased, and LUTHER A. CAMPBELL, Judge of the Bergen County Circuit Court, Respondents.	On Certiorari. Prosecutor's Reasons.

The said Prosecutor, Frederick J. Wortendyke, by Lewis R. Harris, Esquire, his attorney, comes and prays that the order of the Honorable Luther A. Campbell, Judge of the Bergen County Circuit Court, made on the twenty-ninth day of November, nineteen hundred and sixteen, directing the Prosecutor herein among other things to pay out of his said income the sum of seven dollars ($7.00) during the first week of each month and every month thereafter according to the directions contained in said order may be set aside and reversed and for nothing holden for the following:

REASONS.

1. Chapter 266 of the Laws of 1915, being a supplement to an act entitled "An Act respecting any execution," approved March 21, 1874, by its third section expressly repeals all acts and parts of acts inconsistent therewith as is also done by the

third section of Chapter 113 of the Laws of 1916 which is an amendment to the preceding supplement.

2. That Chapter 266 of the Laws of 1915 as well as its amendment of the following year (Chapter 113) specifies an amount of wages, debts, earnings, salary, income from trust funds or profits due and owing to the judgment-debtor, a certain percentage whereof is subject to execution and upon which a lien is created, to-wit, the amount of eighteen dollars ($18.00) or more per week, and therefore any amount under eighteen dollars ($18.00) per week is exempt from the effect of any execution provided for in said supplement and amendment thereof and in no wise subject to the lien therein created, and is beyond the reach of any judgment-creditor under the maxim of *expressio unius est exclusio alterius.*

3. The method of reaching the judgment-debtor's wages, debts, earnings, salary, income from trust funds or profits due and owing to the judgment-debtor is entirely changed in the supplement of 1915 and its amendment of 1916 as previously provided by section 24 of the Act of 1874 as variously amended and its methods are so inconsistent and repugnant that if the later Legislation is valid and constitutional, by implication as well as by express provision, it must necessarily repeal and annul the procedure set forth in the twenty-fourth section of the Act of 1874 as amended.

4. That one of the reasons for the Legislation of 1915 and its amendment of the following year was to restore to judgment-debtors, in part, that exemption from application to the payment of their

debts of their earnings arising from their labor or personal services as the same existed from the enactment of the execution act in 1874 until the passage of Chapter 177 of the Laws of 1901 and that purpose is entirely frustrated by the continuation of proceedings under Section 24 of the Act of 1874 and its various amendments down to and including the amendment of 1907 as it existed prior to the passage of the supplement of 1915.

5. That another reason for the Legislation of 1915 and its amendment of the following year was to make the proportion or percentage of wages, debts, earnings, salary, income from trust funds or profits due or owing to the judgment-debtor, uniform up to one thousand dollars ($1,000.00), and leave the amount of the same below one thousand dollars ($1,000.00) that should be applied to the payment of debts no longer to the discretion of the Judge to whom a petition for payments might be made thus assuring to all judgment-debtors, up to the foregoing amount, equality of treatment and apprising in advance all creditors of the exact amount of a debtor's wages, debts, earnings, salary, income from trust funds or profits due and owing to the debtor, that would be or could be subjected to the payment of their debts.

6. The discretion of a Judge in making an order for execution under the supplement of 1915 and its amendment of the following year, as he was accustomed to exercise the same in making an order upon the judgment-debtor, under the provisions of Section 24 as amended of the Act of 1874 is not absolutely abolished but may be exercised where the wages, debts, earnings, salary, income from trust funds or profits exceed the sum of one thousand

dollars ($1,000.00) per annum and the express provision for the exercise of a Judge's discretion under certain circumstances, negatives the idea that his discretion can be exercised in any other case than that provided in the statute.

7. If a Judge may make an order at present under the twenty-fourth section of the execution act as amended, the purpose and object of the Legislation of 1915 and its amendment of the following year would be absolutely nullified.

8. The supplement of 1915 and its amendment of 1916, is in part an enactment practically verbatim of Section 1391 of the Code of Civil Procedure of the State of New York except that the amount designated in the Code is twelve dollars ($12.00) instead of eighteen dollars ($18.00) and in enacting such a provision of a sister state as an act or law of this state, it is the intention and customary that the construction placed upon such Legislation in the sister state will be following by the adopting state provided such construction is not contrary to the construction and policy of the Legislation of the adopting state upon such matters and the construction placed upon such section by the courts of the State of New York, is to the effect that all salary less than twelve dollars ($12.00) per week is beyond the reach of a judgment-creditor.

Respectfully submitted,

LEWIS R. HARRIS.

(Filed April 24th, 1917.)

NEW JERSEY SUPREME COURT.

FREDERICK J. WORTENDYKE, Prosecutor, vs. ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, deceased, and LUTHER A. CAMPBELL, Judge of the Bergen County Circuit Court, Respondents.	On Certiorari. Stipulation.

The Prosecutor having, within fifteen (15) days after reasons filed, duly noticed the above-entitled action for argument before Honorable Charles W. Parker, a Justice of the Supreme Court; and the respondent desiring, and the Prosecutor being willing to grant, an adjournment of the hearing so duly noticed, as aforesaid, upon the common understanding that such adjournment shall be in nowise prejudicial to the right of the Prosecutor to have said hearing before said single Supreme Court Justice,

IT IS, on this twenty-third day of April, 1917, stipulated and agreed by and between the said parties hereto, that the said hearing be adjourned from April 28th, 1917, to May 12th, 1917, at the place and hour and before the Justice of the Supreme Court designated in said order of argument.

LEWIS R. HARRIS,
Attorney for Prosecutor.

HORTON & TILT,
Attorneys for Respondent.

(Filed May 16th, 1917.)

NEW JERSEY SUPREME COURT.

May 15, 1917.

FREDERICK J. WORTENDYKE,
Prosecutor,

v.

ELMER BLAUVELT, Administrator, &c.

Certiorari to an order of the Circuit Court in proceedings supplementary to execution, requiring the prosecutor, a judgment debtor, to make payments out of income upon the judgment.

Argued before PARKER, *J.*, at Chambers.

For the prosecutor, LEWIS R. HARRIS.
For the defendant, HORTON & TILT.

MEMORANDUM.

The only question in this case is whether the act of 1915, p. 470, operates as a repealer of previous legislation whereby incomes of less than eighteen dollars per week could be reached under execution. The return in supplementary proceedings in this case showed an income of $70 per month and prosecutor claims that the Circuit Court had no right to order the appropriation of any part of it to the judgment.

Memorandum by Parker, J.

I think the point is well taken. The argument against it is that while the act cited expressly repeals all inconsistent acts, it does not repeal them so far as relates to appropriation of incomes less than $18.00 because itself expressly limited to incomes of that amount or over. I think, however, it was intended to provide not only a different method of reaching incomes and wages, etc., but also to limit attack on incomes to those of the designated amount. Legislation previously in force whereby incomes of lesser amount could be reached, is to my mind plainly inconsistent with it, and to the extent of such inconsistency, repealed. This was assumed in *Russell* v. *Mechanics Realty Co.*, 88 *N. J. L.*, 532. I think the income in question was exempt from attack, and the order is therefore set aside.

(Filed May 23rd, 1917.)

NEW JERSEY SUPREME COURT.

FREDERICK J. WORTENDYKE, Prosecutor, vs. ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, deceased, and LUTHER A. CAMPBELL, Judge of the Bergen County Circuit Court, Respondents.	On Certiorari. Order.

The Court having inspected the transcript and proceedings of the Honorable Luther A. Campbell, Judge of the Bergen County Circuit Court, returned with the certiorari in this cause, and the reasons for reversing the order of the Honorable Luther A. Campbell, Judge as aforesaid, and heard the argument of counsel therein, and having duly considered the same;

It is, on the 19th day of May, nineteen hundred and seventeen, ORDERED, that the order of the Honorable Luther A. Campbell, Judge as aforesaid, dated the twenty-ninth day of November, nineteen hundred and sixteen, be reversed, set aside, made void and for nothing holden and that the said Prosecutor in certiorari be restored in all things wherein he has lost by reason of the said order as aforesaid; and,

Order.

It is further ordered that there be allowed to the Prosecutor herein, his costs upon this proceeding to be taxed by the Clerk of the Court.

On Motion of

LEWIS R. HARRIS,
Attorney for Prosecutor.

Let this rule be entered.

C. W. PARKER,
J. S. C.

(Filed June 6th, 1917.)

NEW JERSEY SUPREME COURT.

FREDERICK J. WORTENDYKE, Prosecutor, vs. ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, deceased, and LUTHER A. CAMPBELL, Judge of the Bergen County Circuit Court, Respondents.	Notice and Grounds of Appeal.

To LEWIS R. HARRIS, Esq.,
Attorney for Prosecutor:

TAKE NOTICE that Elmer Blauvelt, Administrator of the Estate of Cornelius D. Blauvelt, deceased, appeals to the Court of Errors and Appeals from the whole of the order entered in this cause on the 19th day of May, 1917, reversing the order previously made therein by the Bergen County Circuit Court, dated the 29th day of November, 1916, on the following grounds:

(a) The Supreme Court reversed the order of the Bergen County Circuit Court, bearing date the 29th day of November, 1916, whereas it should have affirmed said order, for one or more of the following reasons:

(1) Chapter 266 of the Session Laws of 1915 as well as the amendment thereof in Chapter 113 of the Session Laws of 1916, is merely a supplement

to an act entitled "An Act respecting any execution," approved March 21st, 1874, and in nowise repeals any part thereof.

(2) Chapter 266 of the Session Laws of 1915, as amended by Chapter 113 of the Session Laws of 1916, affords a concurrent and auxiliary remedy with and to sections 23, 24, 25 and 26 of an act entitled "An Act respecting executions" (Compiled Statutes, Vol. 2, pages 2250, &c.).

(3) Chapter 266 of the Session Laws of 1915, as amended by Chapter 113 of the Session Laws of 1916, applies only to a judgment debtor with an income of eighteen dollars, or more, per week, and does not affect previous legislation whereby a debtor with an income of less than eighteen dollars per week could be reached in supplementary proceedings, as provided by Sections 23, &c., of "An Act respecting executions" (Compiled Statutes, Vol. 2, pages 2249, &c.).

(4) Sections 23, &c., of "An Act respecting executions" (Compiled Statutes, Vol. 2, pages 2249, &c.) are not superseded by Chapter 266 of the Session Laws of 1915, as amended by Chapter 113 of the Session Laws of 1916, in cases where the judgment debtor is possessed of an income less than eighteen dollars per week.

(5) The order of the Supreme Court in reversing the order of the Bergen County Circuit Court, in effect, declares that a judgment debtor with an income of less than eighteen dollars per week is wholly immune from his judgment creditor, although "An Act respecting executions" (Compiled Statutes, Vol. 2, pages 2249, &c.) provides that

such incomes may be reached at the discretion of the court.

Dated, May 22nd, 1917.

HORTON & TILT,
Attorneys for Respondent,
Elmer Blauvelt, Administrator of the estate of Cornelius D. Blauvelt, Dec'd.

New Jersey Court of Errors and Appeals

FREDERICK J. WORTENDYKE, Prosecutor-Appellee, vs. ELMER BLAUVELT, Administrator of the Estate of Cornelius D. Blauvelt, deceased, Respondent-Appellant, and LUTHER A. CAMPBELL, Judge of the Bergen County Circuit Court, Respondent.	On Certiorari.

BRIEF OF PROSECUTOR-APPELLEE

The appeal in this case presents for review an order of the Supreme Court, entered on the nineteenth day of May, 1917, after a hearing before the Honorable Charles W. Parker, a Justice of the Supreme Court, at Chambers, pursuant to the statute, upon a writ of certiorari to review an order of the Bergen County Circuit Court, dated the twenty-ninth day of November, 1916; which order of the Supreme Court reversed the order of the Bergen County Circuit Court. It is claimed by

appellant that the Supreme Court erred in reversing the order of the Bergen County Circuit Court for the reasons set forth in the appellant's notice and grounds of appeal, and he enumerates five respects in which such error was committed.

I

The first assignment of error is that:

> "Chapter 266 of the Session Laws of 1915, as well as the amendment thereof in Chapter 113 of the Session Laws of 1916 is merely a supplement to an act entitled 'An Act respecting any execution' approved March 21st, 1874, and in nowise repeals any part thereof."

Should we confine ourselves to a reading of the titles of these session laws of succeeding years, we would probably arrive at the same conclusion, but an examination and reading of these session laws of succeeding years reveal the fact that, not only by the third section of the statute of each of these succeeding years is there an express repeal of prior inconsistent legislation in the following words:

> "All acts and parts of acts inconsistent herewith are hereby repealed,"

but it would be found that the provisions of the supplement of 1915 and its amendment of the following year are in themselves sufficiently repugnant and inconsistent to effect a repeal of prior existing legislation upon the same subject *pro tanto*. That the question presented by this

ground of appeal is one of construction, after a reading of the new and old legislation, will undoubtedly be admitted by both sides, but in construing and interpreting such legislation, it is necessary to bear in mind certain canons of construction.

Among the first of such canons is the one, that, in passing or enacting legislation, especially that which is supplemental or amendatory of prior existing legislation, it is presumed that the legislature had in mind, at the time, the existing legislation upon the same subject and considered what effect the new legislation might or would have upon the old legislation.

Do we find anything in these session laws themselves that would indicate that the legislature anticipated that the new legislation would affect or modify the old legislation? Manifestly we do. It is found in the third clauses of these session laws to which reference has already been made, which clauses repeal all acts or parts of acts inconsistent therewith. Unless we are to presume that these clauses were inserted perfunctorily by the legislature, their inclusion can have but one interpretation, and that is that the legislature, in passing these laws, anticipated and considered that on account of their varying new provisions there would be and arise an inconsistency with the provisions or some of them, of former legislation upon the same subject. Should such an inconsistency arise, by their express provision, covering such a contingency, it was intended that the later legislation should supersede and prevail over the earlier legislation to the extent necessary to give full validity to the later legislation.

Of course it is not maintained that the third clauses, to which reference has already been made,

by their mere insertion in the new laws, would effect a repeal of any provisions of prior legislation, were the new provisions not repugnant to the old provisions, but it is not possible to escape the conclusion that, by their insertion, the legislature anticipated repugnancy and sought to provide in advance for the same.

Let us refer now more particularly to the provisions of the supplement of 1915 and its amendment of the following year, and compare them with the legislation as previously existing in Sections 23, 24, etc., of "An Act respecting executions," approved March 21st, 1874. We find that instead of permitting the Court or a judge in its or his discretion, to make an order upon the judgment-debtor, directing him to make payments in installments, in the discretion of the Court or judge, out of his income, property, money, things in action held in trust for the debtor, except such trust funds as are exempt by law, the Court or judge, upon the return of an execution unsatisfied, *must without discretion,* make an order for an alias execution, if the judgment-debtor is in receipt of wages, debts, earnings, salary, income from trust funds or profits due or owing to him, the amount of which is eighteen dollars ($18.00) or more per week, directing that ten per cent of his wages, debts, etc., should be applied by the employer of such judgment-debtor to the satisfaction of such alias execution and be paid to the officer serving such execution upon the employer, and in case of failure of said employer to comply with said alias execution, subjecting him to an action for the amount, which should be so retained by him. What differences, therefore, exist between the procedure set forth in the supplement of 1915 and its amendment of the following year,

and the procedure as it existed under Sections 23, 24, etc., of the execution act?

In the first place, whether an order should be made or not that the judgment-debtor should apply any portion of his wages, debts, earnings, salary or income to the payment of his debts, and the amount or proportion of the same that should be so applied by him, rested entirely in the discretion of the Judge making such an order, and from the exercise of this discretion there was no appeal or redress whatever, provided the discretion was not abused. Under the supplement, except in the small class of cases specified in the statute, that is where the income of the judgment-debtor exceeds one thousand dollars ($1,000.00) per year, the judge is compelled, by the very wording of the statute, to make an order under certain circumstances, not, however, to be served upon the judgment-debtor, but an order directing an alias execution to issue, under which execution, an amount, fixed and determined by the statute, of the judgment-debtor's income is to be taken and applied to the satisfaction of his debts.

In the second place, under Sections 23, 24, etc., the order made by the judge in his discretion was to be served upon the judgment-debtor personally, and payments thereunder were to be made by him to the judgment-creditor or his attorney. Under the supplement, payments are no longer made by the judgment-debtor, but, before his income reaches his hands ,there is deducted from the same, by his employer, under the authority of the alias execution, that portion of his income which is fixed in the statute.

In the third place, disobedience of the order served upon the judgment-debtor, under Sections 23, 24, etc., was punishable only as contempt of

Court, and, except for such punishment, the judgment-creditor was without redress in case the judgment-debtor refused to comply with the terms of such order, whereas, under the supplement, the satisfaction of the judgment-creditor is not made dependent upon the inclination or desire of the judgment-debtor to obey such an order, but the judgment-creditor receives a satisfaction of his judgment, irrespective of the desire of the judgment-debtor, from the employer of the latter and is not compelled to be satisfied merely with the punishment of the judgment-debtor, but in case of failure on the part of the employer of the judgment-debtor to comply with the alias execution, the judgment-creditor has his redress by an action at law against the employer of the judgment-debtor.

In the fourth place, as already intimated, not only is it no longer left to the discretion of the Court whether an order upon the judgment-debtor should be made or not, but also the amount to be paid by the judgment-debtor is also no longer left to the discretion of the judge, but the same has been definitely fixed by the statute at ten per cent, provided the debtor receives an amount of eighteen dollars ($18.00.) or more per week.

Considering these differences in procedure, we are impressed with the fact that the legislature, in passing the supplement of 1915 and its amendment of the following year, must have realized that the changes they had made in procedure were not only different but also so conflicting and inconsistent, and so manifestly so, that, to the extent of such inconsistency, the supplement and its amendment would repeal *pro tanto* prior existing legislation upon the same subject, and it intentionally inserted the third clauses in the supplement

and its amendment to indicate that there was such inconsistency and repugnancy and that it recognized the same.

There is in the inconsistencies, just enumerated, the situation that is contemplated and covered by numerous cases, not only in this State but in other states as well. This situation is exactly covered by the opinion of Vice-Chancellor McGill in *DeGinther v. New Jersey Home,* 58 N. J. L. (29 Vr.), 354, at pages 357 and 358, where he says, quoting with approval, from the opinion of Vice Chancellor Van Fleet in *Bracken v. Smith,* 12 Stew. Eq., 169:

> "Where there are two acts on the same subject the rule is to give effect to both if possible. But if the two are repugnant *or any of their provisions,* the later act without any repealing clause operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not in express terms repugnant, yet if the latter act covers the whole subject of the first and *embraces new provisions plainly showing that it was intended as a substitute for the first act* it will operate as a repeal of that act."

And in the same opinion Vice Chancellor McGill quotes from the opinion of Mr. Justice Dixon in *Haynes v. City of Cape May,* 23 Vr., 180, the following from the opinion of the learned justice:

> "But further it is a settled rule of statutory construction that when a later act deals generally with the subject-matter of earlier statutes, *not simply as a revision, but as a new and independent enactment,*

> that affords decisive evidence of an intent to abrogate and repeal the old legislation. *Roche v. Jersey City,* 11 Vr., 257; *Bracken v. Smith,* 12 Stew. Eq., 169."

Not only does the learned Vice Chancellor quote from the foregoing cases, but he cites the following cases as establishing this rule in the Courts of this State in addition to those already cited. *Gabler v. Elizabeth,* 13 Vr., 79, 81; *Henry v. Camden, id.,* 335; *Burlington v. Estlow,* 14 *id.,* 13; *Mulligan v. Cavanaugh,* 17 *id.,* 45, 49; *McCartin v. Trephagen,* 16 Stew. Eq., 323, 331; *Mersereau v. Mersereau Co.,* 6 Dick, Ch. Rep., 382; *Vreeland v. Jersey City,* 25 Vr., 49, 52; *Green v. Clarke,* 27 *id.,* 62; *Wilson v. Trenton, id.,* 469. This opinion of the learned Vice Chancellor was given in a case where the latter act did not have an express provision repealing prior legislation inconsistent or repugnant thereto and if he expressed himself so strongly in a case where the subsequent legislation had no express repealing clause, how much stronger is the effect of repugnancy and inconsistency where the legislature expressly indicates the repugnancy and inconsistency of the act which it is passing to prior legislation on the same subject by providing therein that all acts and parts of acts inconsistent therewith should be repealed.

II

The second ground for reversal of the order is that:

> "Chapter 266 of the Session Laws of 1915 as amended by Chapter 113 of the Session Laws of 1916, affords a concurrent and auxiliary remedy with and to Sections

23, 24, 25 and 26 of an act entitled, 'An Act respecting executions.' "

That the supplement of 1915 and its amendment of the following year created a class of judgment-debtors where no class had existed since Sections 23, 24, etc., of the execution act had been amended by Chapter 137 of the Laws of 1901 (L. p. 372), can admit of no doubt in the mind of anyone. Such being the case, what was the purpose or object of the creation of such a class? Was it for the purpose of subjecting this class to a procedure different from that existing under previous legislation and which was applied to all judgment-debtors indiscriminately, or was it to create a certain class only, to which the new procedure only, set forth in the supplement, should apply? If the former purpose or reason was the intent of the legislature, what was the logical foundation for the same? What peculiar reason existed for a change in procedure as affecting those receiving eighteen dollars ($18.00) or more per week, that would not continue to affect those receiving less than eighteen dollars ($18.00) per week? Manifestly none, and it is impossible to imagine any reason for such classification, that would not conflict with constitutional prohibitions. Such being the case, the only logical supposition as to the intent of the legislature was to create a class of judgment-debtors, who alone would be subject to the procedure set forth in the supplement and its amendment and that all judgment-debtors outside of this class were exempt, not only from the procedure set forth in the supplement and its amendment, but from all procedure as the same had existed prior to the enactment of this supplement.

If it be held that the supplement of 1915 and its amendment of the following year afford a con-

current and auxiliary remedy with and to Sections 23, 24, etc., of the execution act, then the situation presented by this supplement and its amendment is as follows, to wit: if a judgment-debtor is in receipt of less than eighteen dollars ($18.00) per week, the only procedure applicable to him is an application to a Court or judge for an order, in its or his discretion, that the judgment-debtor pay, in installments in the discretion of said Court or judge, on account of any judgment; if the judgment-debtor receives eighteen dollars ($18.00) or more per week, up to an amount of one thousand dollars ($1,000.00) per annum, it is optional with the judgment-creditor whether he applies for an order upon the judgment-debtor to pay in installments, in the discretion of the Court or judge, on account of the judgment, or whether he applies for an order for an alias execution, which is to be served upon the employer of the judgment-debtor, and in the latter case, receiving the amount, (*viz.,* ten per cent) fixed by the statute except in the case of a judgment-debtor receiving over one thousand dollars ($1,000.00) per annum, in which case the judgment-creditor might in the discretion of the Court or judge have a greater amount than ten per cent of the judgment-debtor's income applied to the payment of the judgment. Merely to recite the practical working of this supplement and its amendment, were they held to furnish a concurrent or anxiliary remedy, is sufficient to demonstrate the absurdity of such a contention and to indicate to any reasonable mind that the legislature could never have intended to create such an anomalous condition, as the attempted application of both the statutes at once creates, and the attempt to treat them as entirely reconcilable with each other.

As already inquired what reason is there for a concurrent or auxiliary remedy applicable to those judgment-debtors receiving eighteen dollars ($18.-00) per week? Could not the judgment-debtors receiving over eighteen dollars ($18.00) per week be reached as effectively under sections 23, 24, etc., of the execution act before the passing of the supplement and its amendment? Of course they could be reached as effectively under these sections and it was also possible, should a court or Judge deem it advisable, to reach more than ten per cent of such judgment-debtor's income. It may be suggested that the supplement and its amendment were passed for the purpose of making the treatment of judgment-debtors uniform and taking from those receiving eighteen dollars ($18.00) or more per week, a fixed and definite amount of such income. But what reason exists for such treatment to be meeted out to judgment-debtors receiving eighteen dollars ($18.00) or more per week that does not equally apply to those receiving less than eighteen dollars ($18.00) per week? Again, such uniform treatment could be avoided, at the option of the judgment-creditor, by making his application under sections 23, 24 etc., and not under the supplement and its amendment.

III and IV

If it is not possible to consider the supplement and its amendment as affording a concurrent and auxiliary remedy, what construction must be placed upon them? They must be considered as creating a procedure or remedy wholly inconsistent with the procedure or remedy existing under sections 23, 24, etc., of the execution act. The next

question, which then arises, is the extent to which sections 23, 24 etc., are repealed, and this brings directly to the third and fourth grounds of appeal set forth in appellant's notice, which may be treated together, as the idea expressed by each of them is the same, *viz;* that the supplement and its amendment if they are held to have repealed any portion of sections 23, 24 etc., repeal the procedure set forth in said sections only in so far as the same is applicable, to judgment-debtors receiving eighteen dollars ($18.00) or more per week, but with regards to those judgment-debtors who receive less than eighteen dollars ($18.00) per week, the procedure under the aforesaid sections remains intact and still applies to such judgment-debtors. Were this contention sound, we should have three contingencies in the procedure in supplementary proceedings, after the return of the original execution unsatisfied, to wit: first, an order, in the discretion of a court or Judge, to be served upon the judgment-debtor, for payments by him, in installments fixed in the discretion of the court or Judge, applying to judgment-debtors receiving less than eighteen ($18.00) dollars per week; second, in the case of judgment-debtors receiving eighteen dollars ($18.00) or more per week up to an amount of one thousand dollars ($1000.-00) per annum, an order for the issuing of an alias execution to take ten per cent of such weekly salary or income; and thirdly, in the case of those judgment-debtors receiving a salary or income of one thousand dollars ($1000.00) per annum, an order for an alias execution to take a portion of said salary or income greater than ten per cent, in the discretion of the court or Judge ordering the issue of an alias execution.

Let us consider for a moment, these three contingencies with regard to the discretion of the court or Judge. Firstly, in cases of judgment-debtors receiving less than eighteen dollars ($18.-00) per week, discretion might be exercised, not only with regard to making an order but also as to the amount of installments; secondly, in cases of judgment-debtors receiving eighteen dollars ($18.00) or more per week, no discretion is permitted, but an order *must* be made and the amount of salary or income appropriated is *arbitrarily* fixed by the supplement and its amendment up to a salary or income of one thousand dollars ($1000.00) per annum, above which, an amount greater than ten per cent of such salary, in the discretion of the court or Judge, might be appropriated or reached. What reason can there possibly be for a double discretion to be exercised by a court or Judge with respect to the salaries or incomes under eighteen dollars ($18.00) per week, which above this amount is entirely denied until the salary or income reaches one thousand dollars ($1000.00) per annum? Merely to state this situation is to show that such a condition of affairs was never contemplated by the legislature. That, under sections 23, 24 etc., discretion had been exercised was fully known to the legislature when the amendment and its supplement were passed, nor did the legislature in passing the supplement and its amendment deny all discretion, but on the other hand, it set forth distinctly the circumstance under which discretion was to be exercised, and it is no stretch of logic or reason to say that if the circumstance of the exercise of discretion was specifically expressed, discretion was to be exercised under no other circumstances. *Expressio unius est exclusio alterius.*

Again let us consider the first and second of these contingencies from a practical point of view. Take the case of a judgment-debtor receiving sixteen dollars ($16.00) or seventeen dollars ($17.00) per week. What is to prevent a court or Judge from making an order for the payment or application of two dollars ($2.00) per week to the satisfaction of a judgment, whereas if the judgment-debtor were in receipt of eighteen dollars ($18.00) per week only one dollar and eighty cents ($1.80) of such salary could be applied in satisfaction of a judgment? This is not an absurd or extreme illustration of the working of these sections 23, 24, etc., and the supplement and its amendment, if it be held that the latter repeal the procedure of the former only with respect to salaries or incomes of eighteen dollars ($18.00) or more per week.

How can these inconsistencies be reconciled with the idea that the supplement and its amendment repeal the procedure only in cases of salary or income of eighteen dollars ($18.00) or more per week, but leave intact the procedure as it existed before the passing of the same with regard to salary or income under eighteen dollars ($18.-00) per week? There has been and there will be no attempt to reconcile these inconsistencies, as it is manifestly impossible to reconcile them. The next question which then arises, is, are these inconsistencies so great and insuperable as to require the only alternative holding possible, to wit: that the supplement and its amendment repeal all procedure under sections 23, 24, etc., with respect to salary or income less than eighteen dollars ($18.00) per week? Such was the opinion of the Supreme Court, brought here for review, and it is impossible to see how any other decision can be reached.

Looking at such a holding from the affirmative side, what is its practical meaning? It means that all salary or income of less than eighteen dollars ($18.00) per week is exempt and beyond the reach of any procedure. To have a portion of one's earnings beyond the reach of an execution is not a novel situation in this state. By an examination of section 24 of the "Act respecting any execution," approved March 21st, 1874, as amended by an act of 1890, page 185, it will be seen that where it was believed.

> "That said judgment-debtor had property or money or things in action due to him or held in trust for him, where the trust had been created by or the fund held in trust has proceeded from him, over and above such property as is or may be reserved by law, to an amount exceeding fifty dollars,"

an order shall be made and it is further provided upon proof

> "that where any person owes the said judgment-debtor *otherwise than for his labor or personal services or the labor or personal services of any member or members of his family,"*

The Judge shall make an order forbidding the payment of such debt or a transfer of said property to the said judgment debtor or any third person until further order to be made by said Judge.

This section was futher amended by the Laws of 1901, Chapter 177, page 372, which omitted any reference to the requirement that the property or money or things in action due to the judgment-

debtor or held in trust for him should be over fifty dollars, and also omitted any reference to the requirement that the labor or personal services of the judgment-debtor or of any member or members of his family should be exempt from being reached under this act concerning executions. From the foregoing, is it unreasonable to assume that the legislature, in passing the supplement of 1915 and its amendment of 1916, was attempting to restore, an exemption, (although not in the same form) to the judgment-debtor, which would permit him to have the wherewithal, without question, to support his wife and family, especially when the new procedure in the supplement and its amendment was to reach and to deduct from his salary or income a fixed amount, even before the same reached the debtor's hands from his employer.

Not only is an exemption of some salary or income apparently re-established by the supplement and its amendment, but such a construction of the supplement and its amendment has already been made, although not in this state. It is not difficult to ascertain the origin of this supplement of 1915, for a comparison of the supplement of 1915 with section 1391 of the Code of Civil Procedure of the State of New York as the same existed then and has existed since 1911 if not earlier, shows that the phraseology of said supplement is in greater part taken *verbatim* from the aforesaid section of the Code, except that the amount designated in the Code is twelve dollars per week instead of eighteen dollars per week as in the supplement of 1915. That the borrowing or adoption of legislation by this state from a sister state, especially from the state of New York, is not infrequently done, is shown by the adoption in this

state of the transfer inheritance tax law of New York, and also the statute requiring persons carrying on business under a fictitious name to file a certificate, in the County Clerk's office and enacting penalties for the failure to do so. *Clay v. Edwards,* 86 Atl. Rep., 548; *Hopper v. Edwards,* 96 Atl. Rep., 667; *Rutkowsky v. Bozza,* 73 Atl. Rep., 502. In borrowing or adopting legislation of a sister state and in enacting such legislation in this state, it is the usual intention and customary that the construction placed upon such legislation in the sister state, will be followed by the adopting state, provided such construction is not contrary to the constitution and policy of the legislation of the adopting state upon such matters. *Rutkowsky v. Bozza,* 73 Atl. Rep. 502. This being the case, it behooves us to ascertain how the courts of the State of New York have construed and interpreted the aforesaid section of the Code. An examination of the reports of the State of New York, for cases on this question, does not disclose many occasions when this section has been passed upon by the courts and such cases as have been found have been the decisions of the lower courts in the state, the question apparently having never been appealed to the higher courts.

The first case to which we wish to call attention, is the case of *Duffy v. Morrissey,* 143 N. Y. Supp. 780; 82 Misc. 149, which was a decision of the Albany County Court in September, 1913. The facts in this case were, that a judgment-debtor was in receipt of wages and salary over twelve dollars ($12.00) per week; that a judgment was obtained against him and thereafter, according to due and legal procedure, execution was issued and served upon his employer requiring him to retain from the judgment-debtor's pay, one dollar and twenty

cents per week. The amount was paid for one week and thereafter a new contract was entered into between the employer and the judgment-debtor by the terms of which contract he worked a less number of hours a week and received less than twelve dollars ($12.00) per week. After the elapse of a certain length of time, the judgment-creditor brought suit against the employer for not complying with the mandate of the court, requiring him specifically to retain one dollar and twenty cents each week from the salary of the judgment-debtor which action was defended by the employer. His defense was, that the judgment-debtor no longer received wages of twleve dollars ($12.00) per week or over and this contention was held to be a good defense to the action of the judgment-creditor against the employer for not complying with the execution served upon the employer. The whole trend of the decision in this case is to the effect that the salary of any person under twelve dollars ($12.00) per week, is exempt from execution. Addington, J., in this case, says at page 782, of 143 N. Y. Supp.

> "The execution ceased to be a lien on said wages, after the payment of one dollar and twenty cents, the wages of the defendant not amounting to twelve dollars ($12.-00) per week, and hence, properly, as was his duty to himself and to the judgment-debtor, paid no further sums under the execution.
>
> "After the service of the execution upon the defendant, he had the right to enter into new conditions with the employer of the judgment-debtor which he did, and under these circumstances, if he retained any part

> of the wages which the judgment-debtor subsequently received, namely, less than twelve dollars ($12.00) per week, this defendant would be liable for the same to the judgment-debtor."

A further case from the reports of New York is the case of *Maged,* as receiver *v. City of New York* 133 N. Y. Supp., 969; 75 Misc., 634; which is an appeal to the Appellate Term of the Supreme Court, in which the opinion was written by Justice Seabury, and in which Justices Guy and Bijur concurred. In this case, a judgment was obtained against one, Mary E. Williams, for $42.15. The plaintiff, in the case against her, obtained a garnishee order on the ground that the said Mary E. Williams, who was in the employ of the defendant, was earning over twelve dollars ($12.00) per week. Under this order, the city paymaster accumulated from the earnings of the said Mary E. Williams, $42.15. Upon the application of the said Mary E. Williams, the garnishee order was vacated on the ground that she was earning less than twelve dollars ($12.00) per week. In his opinion, Seabury, J., says

> "the money in the hands of the defendant, is salary of Mary E. Williams and is the accumulation deducted from a salary of less than twelve dollars ($12.00) per week. As such, it was not subject to execution. Not being subject to execution, no action could be properly brought for its recovery."

From these decisions it is clearly demonstrated that the salary of a judgment-debtor under twelve dollars ($12.00) per week, in the State of New

York, is held to be exempt from execution and we can see no reason of public policy or constitutional prohibition from holding under like circumstances, in New Jersey, that the salary of a judgment-debtor, who receives less than eighteen dollars ($18.00) per week, is likewise exempt from execution. Such in effect was the decision of the Supreme Court, in this particular case, upon the hearing of the writ, and as much is admitted by the appellant, as set forth in his last ground of appeal from the order of the Supreme Court, to which we must finally refer.

V

> "The order of the Supreme Court, in reversing the order of the Bergen County Circuit Court, in effect, declares that a judgment-debtor with an income of less than eighteen dollars ($18.00) per week is wholly immune from his judgment-creditor, although 'An act respecting executions' (Compiled Statutes, vol. 2, page 2249) provides such incomes may be reached at the discretion of the court."

That the act respecting executions specifically provides that incomes of less than eighteen dollars ($18.00) per week may be reached at the discretion of the court, no one will maintain and it is only by inference, as it applied to all incomes indiscriminately, that it can be said that such incomes may be reached. This is merely to affirm in another way that the supplement and its amendment have no effect upon incomes of less than eighteen dollars ($18.00) per week. In reading and comparing the supplement and its amendment with sections 23, 24, etc., of the act, in what other respects do they conflict except in the

establishment of a class, where no class previously existed for fourteen years, and changing the procedure relating to the class established. These changes are so manifest and apparent that we cannot escape the conclusion that they were equally manifest and apparent to the legislature when the supplement and its amendment were passed, and, had it been the intention of the legislature to have left the procedure under the sections 23, 24, etc., intact to apply to salaries or incomes of less than eighteen dollars ($18.00) per week, it would have specifically disclosed this intention by a provision in the supplement and its amendment to this effect. We think the absence of such a provision negatives the idea, that after the passage of the supplement and its amendment, the procedure under sections 23, 24, etc., should any longer apply to salaries or incomes of less than eighteen dollars ($18.00).

Let us now consider the broad general grounds or reasons why the legislature was led to pass a supplement and an amendment thereto which admittedly affect sections 23, 24, etc, of an act respecting executions, to see whether or not from a consideration of these grounds or reasons, apart from the legal construction of the supplement and its amendment, we cannot find a confirmation of the construction we claim should be put upon the new legislation. Had the procedure under sections 23, 24 etc., proved inefficacious in reaching the salaries or incomes of judgment-debtors? In the great majority of cases, No, for the reason that the fear of punishment for contempt of court was sufficient to induce a compliance with orders made under sections 23, 24, etc. But what can be said as to the efficacy of such orders upon a stubborn or recalcitrant judgment-debtor, who feared not the

extreme punishment for contempt of court, incarceration. Not only was it possible that such punishment would be ineffectual to obtain a compliance with such order, but the tendency of late decisions in this state is to the effect that imprisonment for contempt of court, in refusing to obey an order of a court to make installment payments on account of a judgment, especially where the judgment-debtor's financial conditions had become worse, is equivalent in its effect to imprisonment for debt, which is constitutionally prohibited. (See the opinion of Justice Swayze in *Hershenstein v. Hahn,* 77 N. J. L., 39; 71 Atl. Rep., 105, at p. 107 of the latter report.) We see therefore that the order under sections 23, 24, etc., was effective only because of its deterrent effect on judgment-debtors in disobeying the same, but if carried to its logical conclusion, Courts hesitated to enforce the extreme penalty for disobedience.

All this questionable and uncertain result is entirely eliminated by the procedure under the supplement and its amendment and for the punishment for disobedience is substituted an action against the employer, should there be no compliance with the alias execution instead of the order upon the judgment-debtor. That such a remedy is more satisfactory and works more effectively, needs no demonstration, and such being the case, we have next to consider why the same was not made applicable to the salaries or incomes of all judgment-debtors indiscriminately as the order under sections 23, 24, etc., was applicable, or why the same was confined to the class of judgment-debtors receiving eighteen dollars ($18.00) or more per week.

Not only did the legislature have a precedent

before it, in legislation in New York, from which the present legislation is taken, as already indicated, in confining this remedy to a certain class of judgment-debtors, but to compel an employer to make trivial or small deductions from the salary or income of an employer was, not only burdensome upon him, but would subject him to actions for inconsequential amounts if he failed to obey the alias execution. Manifestly it was necessary to fix arbitrarily an amount, a percentage of which should be retained by the employer to be applied in satisfaction of the judgment, which it would be reasonable to require the employer to deduct and yet not so large as to enforce an unreasonable exaction from the judgment-debtor, and this amount the legislature saw fit to fix at eighteen dollars ($18.00) or more per week. We think that if there can be any just criticism of the supplement and its amendment, it can be directed only to the amount arbitrarily fixed, of eighteen dollars ($18.00) or more per week, and that this amount should have been smaller, but, however, this feature of the case is not before us and in passing upon the question raised, we must take the legislation as we find it.

In fine, therefore, we reach the conclusion that in passing the supplement and its amendment, the legislature anticipated that the same would have some effect upon prior existing legislation upon the same subject, and that by passing this supplement and its amendment, it was not thereby creating a procedure, and a class to which such procedure should apply independently of prior existing legislation, or a procedure or classification to exist concurrent with any pre-existing

classification or procedure, but it was its intention only to modify the circumstances and conditions under which a court might make an order, in the case of the class of judgment-debtors specified, and in no other case, for an alias execution, instead of an order upon the judgment-debtor, for the application of a portion of the judgment-debtor's salary or income to the payment of his debts.

To summarize, this conclusion is supported for the following reasons, viz: by the fact that the legislature contemplated a repeal *pro tanto,* by inserting the third section of the supplement and its amendment, to wit: "All acts and parts of acts inconsistent herewith are hereby repealed;" by the inconsistency and repugnancy of the provisions of the supplement and its amendment when compared with sections 23, 24 etc., of the act respecting executions; by a study of the provisions themselves of the supplement and its amendment; by the creation of a class of judgment-debtors, where no class had existed for fourteen years, to whom a new procedure should apply, which negatives the idea than the old procedure should continue to apply to those not in the new class created; by the absurd and anomalous condition that would arise from an attempt to reconicle or harmonize the provisions of the new and old legislation and to give effect to the old and new procedure as they related to their respective classes; by the fact that the discretion of a court or Judge is not entirely abolished by the supplement and its amendment, but its exercise is expressly acknowledged, and confined to those judgment-debtors whose salaries or incomes are one thousand dollars ($1000.00) or more per annum, which fact, implies that discretion is to be exercised only in the expressed case, and under no

other circumstances, *Expresso unius est exclusio alterius;* by an apparent restoration of an exemption for the benefit of a judgment-debtor's wife ~~coration. (Not only was it possible that such pun-~~ amendment of sections 23, 24 etc., by Laws 1901, Chapter 177 page 372; by the construction placed upon similar legislation in the state from which such legislation was introduced into this state, which construction held all salary or income of less than the amount specified, to wit: twelve dollars ($12.00) per week, to be exempt from execution; by an examination of the general reasons or grounds which underlay the occasion for such a change in procedure and its application to a certain class; and finally by the absence of any express provision that the older procedure should continue to be followed with regard to salaries or incomes of less than eighteen dollars ($18.00) per week.

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In view of all these various reasons tending to support the contention that the supplement and its amendment repealed sections 23, 24 etc., *pro tanto* and that the extent of this repeal was to exempt salaries or incomes of judgment-debtors of less than eighteen dollars ($18.00) per week, we cannot find that the Supreme Court in reversing the order of the Bergen County Circuit Court committed any error and that, upon review by this court, the order of the Supreme Court should be affirmed. All of which is respectfully submitted.

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