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Prejudgment Garnishment of Wages: A Fair Concept of Due Process

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RECENT DECISIONS

Prejudgment Garnishment of Wages: A "Fair" Concept of Due Process. In *Sniadach v. Family Finance Corporation of Bay View*,[1] the Supreme Court of the United States held that Wisconsin's prejudgment garnishment procedure with respect to wages violates the fundamental principles of due process of law under the Constitution of the United States.

Under the Wisconsin statutory procedure, allowing garnishment of wages before judgment, an alleged creditor was permitted to cause the wages of an alleged debtor to be turned over to the court or to be held by the employer pending the outcome of the principal action on the debt.[2] The creditor could invoke the procedure simply by alleging that a debtor owed him a sum due under a contract,[3] by paying to the clerk of court a fee for the issuance of a summons,[4] by serving the summons on the employer-garnishee,[5] and within ten days thereafter, serving the summons on the debtor.[6] The validity of the garnishment could not be tested until the principal action was tried.[7] The defendant was entitled to a subsistence allowance from his employer of $25 to $40 depending upon the number of his dependents, "But in no event in excess of 50% of the wages or salary owing."[8] At the time Sniadach was handed down, forty-one jurisdictions permitted some sort of prejudgment garnishment.[9] Of these, seventeen states, including Wisconsin, permitted alleged creditors to deprive workers of their earnings with neither a prior hearing nor the demonstration of some special circumstances justifying the summary relief.[10]

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[1] 395 U.S. 337 (1969).

[2] WIS. STAT. §267.02(1) (1967). This statute has been amended to disallow "any garnishment action affecting the earnings of the principal defendant prior to judgment in the principal action." Earnings are defined in §267.01(5): "'Earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments received pursuant to a pension or retirement program." Wis. Laws ch. 127 (1969).

[3] WIS STAT. §267.05(4) (1967).

[4] WIS STAT. §267.04(1) (1967).

[5] *Id.*

[6] WIS. STAT. §267.07 (1967).

[7] WIS. STAT. §267.16 (1967).

[8] WIS. STAT. §267.18(2) (1967).

[9] Petitioner's Brief for Certiorari at 7, Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).

[10] *Id.* In the other twenty-four jurisdictions, such garnishments are obtainable only upon a showing by the plaintiff that without the garnishment, his chance of collecting any judgment he might be awarded is small. In these jurisdictions, a plaintiff seeking to garnishee a defendant's wages must show that defendant is a non-resident, OHIO REV. CODE §2715.11, or that defendant has concealed himself with intent to avoid service, N. C. GEN. STAT. §1-440.2-3, or that defendant has absconded, NEV. REV. STAT. §31.010, or that defendant has secreted his property with intent to defraud, TENN. CODE ANN. §23-601, or that he has no other property in the state, S. D. CODE §37.2802.

In *Sniadach,* a finance company had issued a garnishment summons against the employer-garnishee on the basis of the employee's alleged default—on a promissory note for $420. Both the principal defendant and the garnishee were served with the summons and a copy of the complaint on the same day. The garnishee filed his answer, alleging that he had in his possession the sum of $63.18 belonging to the principal defendant, that he would pay one-half thereof as a subsistence allowance to the defendant and retain the other half, pending further instruction from the court. Thereafter, the defendant served on plaintiff's counsel an order to show cause why the garnishment proceedings should not be dismissed for violation of Wisconsin constitutional provisions and the United State Constitution, which secure due process and equal protection under the law. Both the county court and the circuit court upheld the constitutionality of prejudgment wage garnishment. Their decisions were affirmed by the Wisconsin Supreme Court which held that there was no deprivation of property involved in garnisment proceedings.[11]

The Wisconsin court relied on the leading case of *McKay v. McInnes,*[12] where the United States Supreme Court held that an attachment of real property prior to judgment merely resulted in the creation of a temporary lien on the property. Under this reasoning, the defendant was not deprived of his property because the attachment did not destroy his title thereto. The United States Supreme Court further stated that the attachment procedure and the subsequent litigation of the principal action were not two distinct controversies but were a part of one continuous process of adjudication.[13] In *Byrd v. Rector,*[14] another case relied on by the Wisconsin court, the Court went on to fully explain the *McKay* reasoning:

> . . . the defendant is not deprived of his property by reason of the levy of the copy of the attachment upon a person who is indebted to him or who has effects belonging to the defendant. The most that such procedure does is to deprive the defendant of the possession of his property temporarily by establishing a lien thereon. Whether the defendant shall be deprived of such property must depend of course upon the plaintiff's subsequent ability to obtain a judgment in personam or in rem on his claim against the defendant. If, after having full opportunity to be heard in defense of such claim, a judgment is rendered thereon

[11] Family Finance Corp. v. Sniadach, 37 Wis. 2d 163, 154 N.W.2d 259 (1967).
[12] 127 Me. 110, 141 A. 699 (1928), *aff'd,* (per curiam), 279 U.S. 820 (1928).
[13] *Id.* at 116, 141 A. at 702.
[14] 112 W.Va. 192, 163 S.E. (1932). An infant plaintiff who had been injured by the explosion of a dynamite cap which had been negligently disposed of by a nonresident defendant, commenced a suit in tort for his personal injury. The attachment was executed by levying on personal property of the defendant which was located in the county where the accident took place.

> against the defendant or his property, there has been no lack of due process.[15]

In *Ownbey v. Morgan*,[16] the Supreme Court upheld a foreign attachment law which required a security bond to be deposited in court, equal to the value of the property attached, before a defendant could even appear and defend. This case was cited by the Wisconsin court for the proposition that harsh results are of no consequence in determining the constitutionality of the procedure.[17] A strong regard for historical precedent lent additional support in defense of the procedure:

> The ability to place a lien upon a man's property, such as to temporarily deprive him of its beneficial use, without any judicial determination of probable cause dates back not only to medieval England but also to Roman times. . . .[18] "(And) if a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it . . ."[19]

Having determined that the general attachment procedure presents no constitutional infirmity, the court reached the same conclusion as to the garnishment of wages. The court seemed to indicate that the term "creditor's remedy" is descriptive of a distinct legal concept which embraces, without categorical distinction, the remedies of attachment and garnishment. It is only under this rationale that the ultimate conclusion of the court seems to follow logically:

> While neither *Ownbey v. Morgan* nor *Coffin Brothers v. Bennet* involved garnishment before judgment statutes, their rationale, when cited by the United States Supreme court as authority for affirming *McInnes v. McKay* becomes clear. It is that the *creditor's remedies involved,* though harsh, did not deprive a man of his property without notice and an opportunity to be heard. (emphasis supplied.)[20]

Most jurisdictions, including Wisconsin, have held that attachment and garnishment are essentially the same type of procedure.[21] Both procedures have the identical effect of creating a lien on the property which has been subjected to their process. It is with this lack of dis-

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[15] *Id.* at 198, 163 S.E. at 848.
[16] 256 U.S. 94 (1921).
[17] *See* note 20, *infra.*
[18] 37 Wis. 2d at 171, 154 N.W.2d at 264. This statement appears to say too much, for the remedy was not generally a part of the common law. "The remedies of attachment and garnishment were generally considered not to exist at common law, although in some states the remedy of attachment was recognized at common law as part of the service of process in a civil suit. The remedies are of great antiquity and traces of them have been discovered in the Roman Law and they were a recognized practice under the early customs of the London Merchants." 6 AM. JUR.2d *Attachment and Garnishment* § 3 (1963). They are now regarded as only existing by virtue of statute. *Id.*
[19] *Id.* at 171-72, 154 N.W.2d at 264.
[20] *Id.* at 171, 154 N.W.2d at 264.
[21] 6 AM. JUR.2d *Attachment and Garnishment* § 3 (1963).

tinction that the Wisconsin court reiterated the constitutional blessing of the general attachment procedure and applied it to prejudgment garnishment proceedings.

Justices Heffernan and Wilkie, in a dissenting opinion, felt that the constitutionality of attachment proceedings generally, and wage garnishment particularly, could not be determined as an all or nothing proposition. The remedies are unique and their operation and effect should be examined under the particular circumstances of each case in order to determine if due process is satisfied. This necessarily entails a consideration of the subject matter involved. In the instant case, said the dissenters, the majority failed to consider the uniqueness of wages and the fact that they represent a new and distinct property concept.[22] Stressing the requirement of reasonable notice, the dissenters were inclined to uphold the procedure if the statute had specified a definite time within which the principal action had to be brought.[23]

A number of arguments attacking the garnishment procedure were raised by the appellant but were not considered by the majority because of the defendant's lack of standing. Among these arguments were: (1) that poor wage earners could have their wages garnisheed on non-meritorious claims;[24] (2) that the statutory subsistence allowance was inadequate;[25] (3) that the procedure whereby a bond might secure the release of the garnisheed property unfairly prejudiced the poor wage earner;[26] (4) that garnishment proceedings were the cause of many discharges from employment;[27] and (5), that the statutory procedure failed to give the debtor adequate notice.[28] The dissenting opinion indicated that the court might have been influenced in refusing to consider these arguments by the fact that legislation designed to abolish the remedy of prejudgment garnishment of wages was pending.[29] It is interesting to note that the decision of the United States Supreme Court was hinged primarily on these arguments.

In contrast to the majority of the Wisconsin Court, the Supreme Court of the United States placed a great deal of emphasis on the fact that wages were the subject of the action. The Court's determination that the proceeding as applied to wages is unconstitutional seems to be

[22] 37 Wis. 2d at 181, 154 N.W.2d at 268.
[23] *Id.* at 183, 154 N.W.2d at 270.
[24] *Id.* at 167, 154 N.W.2d at 261. "Here, appellant's indebtedness is on a note, and her affidavit in support of the order to show cause contains no allegation that she is not indebted thereon to plaintiff."
[25] *Id.*
[26] *Id.* "Appellant has made no showing that she is a person of low income and unable to post a bond."
[27] *Id.* 154 N.W.2d at 262. "Appellant, however, has made no such showing that her employer reacted in this manner."
[28] *Id.* at 168, 154 N.W.2d at 262. Inadequate notice is argued in that WIS. STAT. § 267.07(1) allows ten days time between service on the garnishee and the debtor. "Here, appellant was served on the same day as the garnishee."
[29] *Id.* at 185, 154 N.W.2d at 271.

based on a sense of fairness to the poor wage earner. While disclaiming any role as a "super legislative body,"[30] the Court seemed to rely heavily on legislative testimony.[31] A recent study in four Wisconsin cities concluded that "(g)arnishment is used not only to secure payment of sums legitimately due, but also to force alleged debtors to pay without contesting the debts in court."[32] Garnishment and the resulting loss of employment apparently are a major cause of bankruptcies in the United States.[33] "Apart from those collateral consequences, it appears that in Wisconsin the statutory exemption granted the wage earner is 'generally insufficient to support the debtor for any one week.' "[34] The result, concludes the Court, is that the poor wage earner is so unduly prejudiced by such a procedure that judicial relief is properly available under the Fourteenth Amendment:

> Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing (cf. Coe v. Armour Fertilizer Works, 237 U.S. 413, 423) this prejudgment garnishment procedure violates the fundamental principles of due process.[35]

Mr. Justice Harlan based his concurring opinion on a less sociological and more legalistic analysis of the case. Stating that due process requires "notice and an opportunity to be heard" before one is deprived of property or the unrestricted use thereof, he recognized that special justification may, in certain circumstances, allow for less than a literal interpretation of this language.[36] And the "fundamental fairness" of the situation is a proper subject for consideration in determining whether or not such justification exists.[37] Here, however, he felt that there was no reason to deprive the defendant of her wages before a determination of the validity or probable validity of the claim.[38]

Mr. Justice Black, on the other hand, felt that the majority was deciding a question of pure policy and was thereby usurping a state legislative function.[69] Furthermore, he said, "fundamental fairness" is not a proper basis on which to decide the constitutionality of an established legal procedure because the term defines no boundaries of interpretation.[40] The effect of the "fundamental fairness" test would be to leave

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[30] 395 U.S. at 339.
[31] *Id.* at 340-41.
[32] Petitioner's Brief, *supra* note 9 at 8-9.
[33] *Id.* at 11 n. 5.
[34] 395 U.S. at 341.
[35] *Id.* at 342.
[36] *Id.* at 343.
[37] *Id.* at 342.
[38] *Id.* at 343.
[39] *Id.* at 345.
[40] *Id.* at 350-51.

the interpretation of law to the unrestricted opinions of individual judges.[41]

The failure of the majority of the United States Supreme Court to define the basis of its holding in a clear legal analysis generates a number of unanswered questions: Must all prejudgment procedures be reexamined for a determination of whether or not they are "fundamentally fair?" Are all legal actions which directly or indirectly affect wages before judgment constitutionally unfair? Or is the rule in *Sniadach* only applicable to the prejudgment *garnishment* of *wages?*

A recent decision of the Wisconsin Supreme Court interpreted *Sniadach* as totally abolishing the remedy of prejudgment garnishment. In *Larson v. Fetherston,*[42] where corporate accounts receivable were the subject of the procedure, the court declared:

> Although the majority opinion in *Sniadach* makes reference to the hardship of the unconstitutional procedure upon the wage earner, we think that no valid distinction can be made between garnishment of wages and that of other property. Clearly, a due process violation should not depend upon the type of property being subjected to the procedure.[43]

This interpretation necessarily generates an inquiry into the validity of related types of prejudgment procedures.

Attachment is a remedy whereby persons or property are taken into legal custody for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, of furnishing security for debts or costs, or of arresting a fund in the hands of a third person who may become liable to pay it over.[44] Theoretically, the only difference between garnishment and attachment is that in the former, property of the alleged debtor is taken into legal custody from the possession of a third person, whereas in the latter, property is taken directly from the possession of the alleged debtor.[45] It is unrealistic, however, to suggest that a violation of due process can depend on such a technical distinction. Furthermore, the Wisconsin court has held that the procedures are to be considered identical.[46] Does it follow that prejudgment attachment is also unconstitutional? Or does the requirement that certain justification be alleged before the attachment procedure can be invoked save prejudgment attachment from unconstitutionality?[47]

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[41] *Id.*
[42] 44 Wis. 2d 712, 172 N.W.2d 20 (1969).
[43] *Id.* at 718, 172 N.W.2d at 23.
[44] BLACK'S LAW DICTIONARY 161 (4th ed. 1968).
[45] 6 AM. JUR.2d *Attachment and Garnishment* § 3 (1963).
[46] *Id. Cf.* LaCrosse National Bank v. Wilson, 74 Wis. 391, 43 N.W. 153 (1889); Bragg v. Gaynor, 85 Wis. 468, 55 N.W. 919 (1893).
[47] Wis. Stat. § 266.03 (1967), sets forth the justification needed to be alleged before the remedy of attachment may be invoked:
"(1) ON CONTRACT OR JUDGMENT. Before any writ of attachment shall be executed the plaintiff or some one in his behalf shall make and annex

Besides attachment, the availability of a number of other prejudgment procedures may be in jeopardy. Replevin involves an action to recover property which is unlawfully detained and allows the immediate repossession of the property by the plaintiff at the commencement of the action.[48] The Uniform Fraudulent Conveyance Act allows a creditor to set aside a conveyance against an alleged fraudulent grantor or grantee before the claim is reduced to judgment.[49] A lis pendens proceeding creates a lien on real estate before a judicial determination of the merits of the claim.[50] A construction lien,[51] a mechanic's lien,[52] and an innkeeper's lien[53] may all be effected prior to a judicial determination of the indebtedness which is necessary to create these liens.

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thereto an affidavit stating that the defendant is indebted to the plaintiff in a sum exceeding fifty dollars specifying the amount above all set-offs, and that the same is due upon contract or upon a judgment and that the affiant knows or has good reason to believe either:

"(a) That the defendant is absent from this state, or is concealed therein so that summons cannot be served on him; or

(b) That the defendant has disposed of or concealed or is about to dispose of or conceal his property or some part thereof with intent to defraud his creditors; or

(c) That the defendant has removed or is about to remove property out of this state with intent to defraud his creditors; or

(d) That the defendant fraudulently incurred the obligation respecting which the action is brought; or

(e) That the defendant is not a resident of this state; or

(f) That the defendant is a foreign corporation; or if domestic that no officer or agent thereof on whom to serve the summons exists or resides in this state or can be found; or

(g) That the action is against a defendant as principal on an official bond to recover money due the state or to some county or other municipality therein, or that the action is against the defendant as principal upon a bond or other instrument given as evidence of debt for or to secure the payment of money embezzled or misappropriated by such defendant as an officer of the state or of a county or municipality therein."

[48] WIS. STAT. ch. 265 (1967). The action applies only to wrongfully detained property and requires an affidavit of the plaintiff that he is entitled to the possession of the property claimed in the principal action. Upon requisition to the sheriff, supported by a bond, the sheriff may take and retain the property from the possession of the defendant. The classical grounds of attachment need not be present.

[49] WIS. STAT. § 242.09 provides that:

"(1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser,

(a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

(b) Disregard the conveyance and attach or levy execution upon the property conveyed. . . ."

WIS. STAT. § 242.10 provides for similar relief when the claim has not yet matured.

[50] WIS. STAT. § 281.03 (1967).

[51] WIS. STAT. § 289.01 (1967).

[52] WIS. STAT. § 289.41 (1967).

[53] WIS. STAT. § 289.43 (1967). It should be noted that California's Innkeeper's Lien Law was recently held unconstitutional by the United States District Court for the Northern District of California. The court's decision was based on Sniadach. Klim v. Jones, 39 U.S.L.W. 2060 (August 4, 1970).

Might these remedies also constitute a violation of due process under the rationale of *Sniadach* and *Fetherston?*

Any unqualified extension of *Sniadach* to all prejudgment procedures seems to be incompatible with the following language contained in the opinion:

> Such a summary procedure may well meet the requirements of due process in extraordinary situations. . . .[54] A procedural rule that may satisfy due process for attachments in general, . . . does not necessarily satisfy procedural due process in every case.[55]

It is apparent from the foregoing language that the Court in *Sniadach* did not intend to upset the attachment procedure in general; rather, it limited its denouncement explicitly to the situation where wages are the subject matter of the garnishment.

On the other hand, the United States Supreme Court does seem to place great significance on the fact that prejudgment garnishment of wages might deprive a wage earner of the necessities of life: "It is a most inhuman doctrine. It compels the wage earner, trying to keep his family together, to be driven below the poverty level."[56] Are all legal procedures which effectively result in a prejudgment deprivation of wages subject to the same attack of being constitutionally unfair? Is the Supreme Court, in deference to the less affluent, creating a new property concept to which all legal proceedings must pay heed?

In attempting to resolve these questions, two preliminary considerations must be entertained. First, if the purpose of the Court's ruling that wages are exempt from prejudgment seizure is to allow an alleged debtor to maintain a minimum standard of living, then all forms of remuneration which are depended upon for the necessities of life should be included in the Supreme Court's definition of "wages." It would be erroneous to draw the technical distinctions between "wages", "earnings" and other "income" under this rationale.[57] Secondly, if in fact a new class of property was created, its constitutional protection should

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[54] 395 U.S. at 339.
[55] *Id.* at 340.
[56] *Id.*
[57] "Wages" have been defined as: "Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips and any other similar advantage received from the individual's employer or directly with respect to work for him." Ernst v. Industrial Commission 246 Wis. 205, 16 N.W.2d 867 (1944). "Earnings" have been defined as: "The gains of a person derived from his services or labor without the aid of capital." Brown v. Hebard, 20 Wis. 330 (1866). It would appear that, under these definitions, "wages" are limited to the situation where an individual is employed by another, whereas "earnings," in addition to including "wages," would include returns of self-employment. Thus, "income" would include "wages," "earnings," and returns on capital investments. It is conceivable that many persons obtain money solely from "income." Does the Wisconsin statutory amendment discriminate against these persons? See note 2 *supra.*

be available against an indirect as well as a direct taking of that property. A legal procedure which effects a direct deprivation of wages is in consequence no different from a legal procedure which deprives a person of the opportunity to acquire those wages. It is a maxim of the law that "one cannot do indirectly which the law forbids him to do directly."

The legal process may be invoked in numerous instances which might result in an individual being effectively deprived of necessary income. Discovery proceedings which compel a possible party defendant to testify in an adverse examination may deprive that party of wages as a result of the time lost from employment.[58] Must compensation be given for the time required for such an examination? Under the Uniform Commercial Code, a secured party may, on default, take possession of the debtor's collateral and foreclose without judicial proceedings if done in a commercially reasonable manner.[59] If such collateral is income producing, is not the debtor being deprived of the income before it has been judicially determined that he was in default? Similarly, a receiver may be appointed in a mortgage foreclosure action to preserve the rents and profits accruing from the property during the pendency of the action.[60] Is not the debtor being deprived of the rents and profits before it has been judicially determined that he was in default? If *Sniadach* is construed as creating and protecting a new class of property, are not these proceedings subject to a constitutional reexamination?

CONCLUSION

The confusion generated by the *Sniadach* decision which may result in an attempt to disrupt all prejudgment procedures or to treat wages as a separate class of property in all cases, is a product of the Court's failure to examine fully the issue: deprivation of property without due process of law.

The leading authority on this issue is *Mullane v. Central Hannover Trust Company*.[61] That case concerned the kind of notice required that would reasonably and timely apprise interested parties of their rights

[58] WIS. STAT. § 887.12(6) (1967).

[59] UNIFORM COMMERCIAL CODE § 9-503 provides that: "Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without a removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9-504."

[60] WIS. STAT. § 268.16(1) (1967), provides for the appointment of a receiver: "On the application of either party, when he establishes an apparent right to or interest in property which is the subject of the action and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially impaired."

[61] 339 U.S. 306 (1950).

in property before they could be deprived of that property by adjudication. The Court succinctly stated the minimum requirements of due process:

> . . . deprivation of life, liberty or property by adjudication must be preceded by notice and an opportunity for hearing *appropriate to the nature of the case.*[62] (emphasis supplied).

In a garnishment before judgment situation, notice and opportunity for hearing is afforded at best contemporaneously with the deprivation of property. It is a legal fiction to suppose that a person is not in some way "deprived" of property which is garnisheed before judgment. It cannot be realistically asserted that Mrs. Sniadach was not deprived of her wages while they were being held by her employer. Due process in that case, then, required that she be given "appropriate" notice and opportunity for hearing. The Court in *Mullane* gives some indication of what is meant by "appropriate":

> A construction of the Due Process Clause which would place impossible or impractical obstacles in the way could not be justified.[63]
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> "The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals."[64]

Thus, the *Mullane* decision provides some guidelines for developing a workable formula for determining the constitutionality of any prejudgment procedure. The reasonable character of the particular procedure is found by balancing the necessity of the action on the part of the plaintiff against the inconvenience and prejudice suffered thereby on the part of the defendant. And the nature of the property involved is only relevant insofar as it adds a substantial prejudice to either party.

In *Sniadach* there was no real necessity of garnisheeing the debtor's wages before the trial of the principal action: the property was not unique from the standpoint of the plaintiff; personal jurisdiction was readily available as the debtor was a resident of the state of Wisconsin; there was no allegation that the debtor was about to abscond from the jurisdiction or about to conceal her property in an effort to defraud creditors; and there was no agreement between the parties that garnishment would result from a default. Furthermore, there was no statutory requirement that grounds of necessity be alleged. Balanced against this lack of necessity was the substantial prejudice suffered by the defendant under a statutory procedure which allowed the plaintiff to deprive her of 50% or more of her wages.

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[62] *Id.* at 313.
[63] *Id.* at 313-14.
[64] *Id.* at 315.

In conclusion, it seems apparent that application of the rule of *Sniadach* may not be strictly limited to garnishment or to wages. For example, the rule of *Sniadach* could be utilized to condemn the attachment of such things as household goods, automobiles and other chattels where an argument of necessity could be made.[65] While the scope of the Sniadach rule remains unclear, what is quite clear is that the threat of constitutional attack has cast shadows on legal proceedings, the validity of which, prior to *Sniadach,* had scarcely been questioned.

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[65] Such a rationale was recently adopted by the United States District Court for the Northern District of New York (three judge court). In holding unconstitutional a New York statute which permitted the prejudgment seizure upon default of payment for chattels bought on conditional sale, the court made the following reference to Sniadach:

> Beds, stoves, mattresses, dishes, tables and other necessities for ordinary day-to-day living are, like wages in Sniadach, a "specialized type of property presenting distinct problems in our economic system," the taking of which on the unilateral command of an adverse party "may impose tremendous hardships" on purchasers of these essentials. That it is a temporary taking, does not obviate the objection that it is a taking prior to hearing and notice. . . .
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> Lack of refrigeration, cooking facilities and beds create hardships, it would seem, equally as severe as the temporary withholding of one half of Sniadach's pay, and measured by Sniadach, the hardships imposed cannot be considered de minimus. . . .

Laprease v. Raymours Furniture Co., Inc., 39 U.S.L.W. 2082 (July 29, 1970).