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Creditor's Rights - Garnishment -Garnishment of Branch Banks

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COMMENTS

CREDITOR'S RIGHTS—GARNISHMENT—GARNISHMENT OF BRANCH BANKS—Branch banking, all but obliterated in the United States by the Civil War and the National Bank Act of 1865, has grown continuously since the early 1900's¹ until today the institution is authorized on a state-wide basis by the laws of seventeen jurisdictions.² With this development have appeared several related commercial questions, not the least important of which has been the effect of garnishment notice, served at one branch, upon other branches of the same bank.

I. *The Problem*

Under traditional legal analysis, branch banks are regarded as mere agencies of the banking corporation.³ Service of process on their officers binds the corporate principal.⁴ With the principal thus having knowledge, ". . . that knowledge or notice communicated to the principal, which imposes a duty upon it, becomes by that circumstance, the knowledge of all its agents when acting in an official capacity."⁵ Garnishment at a branch bank would therefore seem to impose upon the bank corporation the duty of impounding funds of the principal debtor regardless of the particular branch in which they were located. If funds of the principal debtor were paid out at a branch not served which had no knowledge of the garnishment, the bank would still apparently be liable to the garnishor.⁶ Inasmuch as most branch banks keep

¹ WESTERFIELD, HISTORICAL SURVEY OF BRANCH BANKING IN THE UNITED STATES (1939).

² *Arizona*, Ariz. Code Ann. (1939) §51-208; *California*, Cal. Finance Code Ann. (Deering, 1951) §500; *Connecticut*, Conn. Gen. Stat. (1949) §5783; *Delaware*, Del. Code Ann. (1953) tit. 5, §770; *District of Columbia*, D.C. Code (1951) §26-103(b); *Idaho*, Idaho Code (1948) §26-1001; *Maine*, Me. Rev. Stat. (1954) c. 59, §51; *Maryland*, Md. Code Ann. (Flack, 1951) art. 11, §65; *Nevada*, Nev. Rev. Stat. (1957) §660.010; *North Carolina*, N.C. Gen. Stat. (1950) §53-62; *Oregon*, Ore. Rev. Stat. (1955) §714.060(2); *Rhode Island*, R.I. Gen. Laws (1938) c. 129, §9; *South Carolina*, S.C. Code (1952) §8-57; *South Dakota*, S.D. Code (1939) §6.0402; *Utah*, Utah Code Ann. (1953) §7-3-6, as amended, S.B. 218 (1957); *Vermont*, Vt. Stat. (1947) §8721; *Washington*, Wash. Rev. Code (1951) §30.40.020. For varying positions in other states, see notes 66 to 70 infra.

³ Fordham, "Branch Banks as Separate Entities," 31 COL. L. REV. 975 (1931); 2 ZOLLMAN, BANKS AND BANKING §1295 (1936).

⁴ See TIFFANY, AGENCY, 2d ed., §108 (1924); 4 ZOLLMAN, BANKS AND BANKING §2322 (1936). Cf. *Walters v. Bank of America*, 9 Cal. (2d) 46, 69 P. (2d) 839 (1937); *Fay v. Swicker*, 154 Ohio St. 341, 96 N.E. (2d) 196 (1950).

⁵ Cf. *Gibson v. National Park Bank of N.Y.*, 98 N.Y. 87 at 95 (1885); *Block Bros. v. Liverpool and London and Globe Ins. Co.*, 208 Ala. 523, 94 S. 562 (1922).

⁶ *Ibid.* Cf. *Buchanan City Bank v. Cedar Rapids, Iowa Falls and N.W. R. Co.*, 62 Iowa 494, 17 N.W. 737 (1883).

books separate from the other branches and the central office,⁷ the latter therefore would have no way of ascertaining which of its branches carried the debtor's account. The corporation would have no means of self-protection other than notification to all branches of each garnishment upon any one branch. In view of the frequency with which bank deposits are garnished,⁸ such a situation would impose an intolerable burden on banking corporations with a number of branches. The purpose of this comment is to analyze judicial and legislative attitudes toward this problem.

II. *Judicial Development*

It appears that all of the reported decisions involving garnishment of branch banks have dealt with attempts to reach funds in a foreign branch. It is clear, however, that much of the courts' reasoning in these cases applies equally to domestic situations, and these decisions will therefore be examined with some care.

English jurists have found it expedient to discard the agency theory discussed above and have, by implication at least, declared that foreign branch banks are to be treated as separate entities. Specifically, it has been held that garnishment served on the London office of the Bank of India was ineffective to bind funds of the judgment debtor on deposit at an African branch.⁹ The decision was based on three grounds: (1) a bank's primary liability is to pay only at the branch of deposit and demand must be made there before the bank can be held liable elsewhere; (2) the debt being payable at the African branch, it was not within the jurisdiction of the court; and (3) if the bank should be held, discharge of the debt would not be recognized in Africa. The first ground of decision—that a deposit is payable primarily at the branch of deposit—has since become the settled law in England.¹⁰ The reasoning behind the rule is that for banks to operate efficiently and profitably it is necessary for them to some extent to localize their debts.¹¹ If banks were required to pay checks drawn on any

⁷ CHAPMAN AND WESTERFIELD, *BRANCH BANKING* 301 (1942); HOLLADAY, *CANADIAN BANKING SYSTEM* 57 (1938); MEGRAH, *THE ORGANIZATION AND FUNCTIONING OF BRANCH BANKING IN ENGLAND AND WALES* (1941); *In re Rivera*, (S.D. N.Y. 1948) 79 F. Supp. 510. But see notes 72 and 73 *infra*.

⁸5 ZOLLMAN, *BANKS AND BANKING* §3521 (1936).

⁹*Richardson v. Richardson & National Bank of India*, 137 L.T.R. (n.s.) 492 (1927).

¹⁰*Bagley v. Winsome*, 1 All E.R. 637 (1952); *Joachimson v. Swiss Bank Corp.*, [1921] 3 K.B. 110.

¹¹*Rex v. Lovitt*, [1912] A.C. 212.

branch¹² or pay deposits upon demand anywhere in the world, the branch with the account would never know the state of the account.¹³ It logically follows that a garnishor must also serve the depository bank for the garnishment to be effective on that deposit, since a fundamental maxim of garnishment is that a creditor can obtain no greater rights than his debtor.¹⁴

It should be noted, however, that in both English cases¹⁵ in which a creditor sought to garnish funds located at a branch other than the one served, the final basis for the courts' holding for the garnishee was that discharge of the garnishee would not be recognized at the place of deposit. Nevertheless, the decisions in this area have been analyzed to mean that as to a judgment creditor of a bank's depositor, the bank and its branches are for all purposes considered separate institutions.¹⁶ The logic behind these cases would seem to compel this conclusion.

In the United States, a line of New York decisions has reached a like conclusion respecting the effect of local garnishment on branch banks outside the country. The earliest case, *Chrzanowska v. Corn Exchange Bank*,¹⁷ involved the right of a branch bank to rescind a credit given to one of its depositors for a check deposited with it, but drawn on another branch of the same bank. The drawee branch refused to honor the check upon presentment, and the deposit branch rescinded the credit. Depositor then sued, claiming the check had been paid and the bank could not rescind. The court held for the bank, stating that as to this problem the "branches were as separate and distinct from one another as from any other bank." Reliance for this decision was put upon a New York statute¹⁸ which stated that a bank may open branches to make deposits, loans, etc., "to the customers of such branches only." From this statute the court evolved the rule that banks were not required to pay checks or deposits at any branch but the one of deposit. While no foreign branch was involved in the decision, the court's discussion of the branches as separate institutions was to

¹² *Woodland v. Fear*, 7 El. & Bl. 519, 119 Eng. Rep. 1339 (1857).

¹³ *Clare & Co. v. Dresdner Bank*, [1915] 2 K.B. 576; *Prince v. Oriental Bank Corp.*, [1878] 3 A.C. 325, 38 L.T.R. (n.s.) 41; *Leader & Co. v. Direction der Disconto-Gesellschaft*, 31 T.L.R. 83 (1914).

¹⁴ See note 10 supra; note 36 infra and accompanying text.

¹⁵ *Richardson v. Richardson & National Bank of India*, 137 L.T.R. (n.s.) 492 (1927); *Martin v. Nadel and the Dresdner Bank*, [1906] 2 K.B. 26.

¹⁶ 164 LAW TIMES 310 (1927).

¹⁷ 173 App. Div. 285, 159 N.Y.S. 385 (1916), affd. 225 N.Y. 728, 122 N.E. 877 (1919).

¹⁸ *New York Laws* (1909) c. 10, §109, 1 N.Y. Consol. Laws (1909) §109.

have considerable future significance. Six years later, *Pan American Bank and Trust Co. v. National City Bank*¹⁹ appeared in the Second Circuit involving a national bank in much the same fact situation. The court held that a foreign branch bank was a separate entity for the purpose of being a holder for the value of commercial paper drawn on another branch. To reach this conclusion, the court relied on the *Chrzanowska* holding and a federal statute²⁰ providing that each foreign branch of a national bank shall keep separate, independent books. From this statute the court concluded that a foreign branch is not a mere "teller's window," but a separate business entity. In 1927, the above two cases were relied upon in *Sokoloff v. National City Bank of New York*,²¹ where the court in discussing the rights of a depositor as against the parent bank and its branch, stated that the depositor had first to demand payment from the branch of deposit. The court said broadly that where a bank maintains branches, for some purposes each branch becomes a separate business entity with separate books of account.

When the question of ability of a creditor to garnish funds of his debtor in a foreign branch by service upon a domestic branch arose four years later in *Bluebird Undergarment Corp. v. Gomez*,²² these three decisions served as a solid basis for the holding that service was not binding on the foreign branch. The court argued that since the foreign branch kept its own books of account and since the debt was payable only at the branch of deposit, the conclusion followed as "a necessary corollary that the debt owed by a branch finds its situs within the territorial jurisdiction of such branch."²³ Not being within the jurisdiction of the New York court, the debt could not be attached there.

This concept, that a debt owed by a foreign branch is not within the garnishment jurisdiction of the court, prevailed for about twenty years as the announced reason for not permitting domestic garnishment proceedings to operate against foreign branches.²⁴ In 1950, however, the case of *Cronan v. Schilling*²⁵

19 (2d Cir. 1925) 6 F. (2d) 762, cert. den. 269 U.S. 554 (1925).

20 39 Stat. 755 (1916), 12 U.S.C. (1952) §604.

21 130 Misc. 66, 224 N.Y.S. 102 (1927).

22 139 Misc. 742, 249 N.Y.S. 319 (1931).

23 *Id.* at 744.

24 See, e.g., *Philipp v. Chase National Bank of City of New York*, 34 N.Y.S. (2d) 465 (1942); *Walsh v. Bustos*, 46 N.Y.S. (2d) 240 (1943).

25 100 N.Y.S. (2d) 474 (1950), *affd.* 282 App. Div. 940, 126 N.Y.S. (2d) 192 (1953).

arose in which plaintiff served the New York branch of Swiss Bank Corporation with a subpoena duces tecum requiring Swiss Bank to produce records showing whether it held any assets of plaintiff's debtor. The court vacated the subpoena to the extent that it required the Swiss bank to produce records relating to any account the debtor might have in Switzerland.²⁶ Despite a New York statute,²⁷ lack of jurisdiction could have been used as a basis for the decision, but the court apparently relied instead on policy grounds:

"Unless each branch of a bank is treated as a separate entity for attachment purposes, no branch could safely pay a check drawn by its depositor without checking with all other branches and the main office to make sure that no warrant of attachment had been served upon any one of them. Each time a warrant of attachment is served upon a branch, every other branch and the main office would have to be notified."²⁸

This emphasis on banking policy as the reason for not allowing service on a domestic branch to bind the foreign depository branch was continued in the 1955 case of *Newton Jackson, Inc. v. Animashaun*.²⁹ The court gave two reasons in support of the rule, one being that "the situs of the debt is at the branch where the account is carried."³⁰

"But the strongest reason is found in the crippling effect upon banking practice that would follow a different holding. In our case the agency in London has the books and records. The New York Agency has no knowledge of the accounts in London and vice versa. To make the London Branch chargeable with actions taken in New York or in all distant places where branches are located in respect to London accounts, would put the bank in great peril in dealing with its customers."³¹

²⁶ The court allowed the subpoena, however, as to records in Switzerland pertaining to any account the debtor might have in the New York branch.

²⁷ N.Y. Civil Prac. Act (Cahill-Parsons, 1955) §916(3). The statute was so worded as to make garnishment effective on resident or nonresident persons or corporations if the person or corporation could be served in the county, and the debtor could demand payment from such garnishee within the state. In most cases of foreign branch bank deposits the court would have no jurisdiction because the debtor would have to make his demand outside the state. But in cases where no demand need be made at the foreign branch, jurisdiction may be had. See *Silverman v. National City Bank of N.Y.*, 133 Misc. 201, 232 N.Y.S. 339 (1928). The statute would also seem to make service on one state branch binding on all other branches in the state.

²⁸ *Cronan v. Schilling*, note 25 supra, at 476.

²⁹ 148 N.Y.S. (2d) 66 (1955).

³⁰ *Id.* at 68.

³¹ *Ibid.*

Thus the New York courts have developed the rule from a question of statutory interpretation, to a question of jurisdiction, to a question of banking policy. In the final analysis they base their foreign branch rule on the same grounds as the English courts, that of preventing a crippling effect on branch operations due to the problem of giving notification of garnishment to all a bank's branches.

A single Illinois appellate court decision opposes this position. In *Bank of Montreal v. Clark*,³² a garnishment notice was served on the manager of the Chicago branch of the Bank of Montreal. Shortly thereafter the principal debtor went to the Toronto branch where he had his deposit and withdrew it. The court held the Montreal bank liable for the amount withdrawn on the theory that it was the branch manager's duty when served with process to inform the Toronto branch of the garnishment within the shortest practicable time. The court recognized that the branches were separate as to control and records, yet felt that they were only agencies of the bank and therefore agency law should apply. It is doubtful if this holding will be given authoritative weight in any well-reasoned opinion on the subject.³³ Here the Chicago manager happened to know what branch should be notified to prevent withdrawal of the garnished funds. The burden of notification was not great, but the court's language would require the same result if the agent had not known which of many branches to notify. Thus all branches must be notified,³⁴ a result avoided in New York, and the creditor is accorded greater rights than the debtor-depositor, who may demand payment only at the branch of deposit. On this latter point, the court blandly stated that garnishment service equalled a demand. This is undoubtedly true, but only when the garnishment is served at the bank where the deposit is held.³⁵ The English courts, on this exact question, have

³² 108 Ill. App. 163 (1903).

³³ Since the Clark decision Canada has passed a statute restricting the effectiveness of garnishment to the bank served. Can. Stat. (1954) c. 48, §96(4). Although not binding on United States courts, one New York court has held that it made Canadian branch banks separate entities as to garnishment. *Clinton Trust Co. v. Compania Azucarera Central Mabey S.A.*, 172 Misc. 148, 14 N.Y.S. (2d) 743 (1939), affd. 258 App. Div. 780, 15 N.Y.S. (2d) 721 (1939).

³⁴ In Illinois, however, if a reasonable attempt is made to notify the agents, but the money is paid out without actual notice, the garnishee is not liable. *Blinkley v. Clay*, 112 Ill. App. 332 (1904).

³⁵ See note 10 supra.

held that service of garnishment at a branch bank does not equal a demand at another branch where the funds are located.³⁶

In the foreign branch area, then, it seems well settled, *Bank of Montreal v. Clark* notwithstanding, that even without a statute, garnishment is effective only as to the branch served. As to state branch banks,³⁷ i.e., branches within the same state and of the same corporation as the one on which garnishment is served, the situation is not so clear. This is due to the fact that the exact question has apparently never been decided by the courts. That the question has not arisen may be because bank corporations just do not bother to appeal such cases. A more probable reason is that unlike foreign branches, state branches are usually within reach of the garnishor, and due diligence will undoubtedly uncover the branch where the debtor's account is kept, with resultant service on the depository bank.³⁸ Once the garnishor knows which branch holds the debtor's account, then even though he does not serve the depository bank, he may yet tell the branch served which bank has the debtor's account. Then only one branch need be notified, and no intolerable burden is put on the bank. This, however, was the exact situation in the foreign branch bank cases, and yet the courts spoke of the necessity of notifying each branch bank.³⁹ The fair presumption, therefore, is that the courts felt that to allow service on one branch to bind the depository branch where that branch was known would lead eventually to allowing such service to be binding on all branches though the depository branch was unknown, thus putting on the bank the burden of notifying all its branches. Any analysis must therefore assume that service will be made without knowledge on the part of the garnishor of what bank carries the deposit other than that it is a branch of the corporation served.

³⁶ *Richardson v. Richardson and National Bank of India*, 137 L.T.R. (n.s.) 492 (1927).

³⁷ No distinction will be drawn between national banks and state banks, for national banks in a given state are subjected by statute to the same territorial restrictions imposed on the state banks. 48 Stat. 189 (1933), 12 U.S.C. (1952) §36. They are also subject to the same garnishment laws. *Walters v. Bank of America*, 9 Cal. (2d) 46, 69 P. (2d) 839 (1937).

³⁸ This is borne out by a reading of the cases. See, e.g., *Puissegur v. Yarbrough*, 29 Cal. (2d) 409, 175 P. (2d) 830 (1946); *Educational Finance Corp. v. Penington*, 9 La. App. 691, 120 S. 239 (1929); *Walters v. Bank of America*, 9 Cal. (2d) 46, 69 P. (2d) 839 (1937).

³⁹ *Richardson v. Richardson & National Bank of India*, 137 L.T.R. (n.s.) 492 (1927); *Cronan v. Schilling*, 100 N.Y.S. (2d) 474 (1950), *affd.* 282 App. Div. 940, 126 N.Y.S. (2d) 192 (1953).

Prediction of what the courts will decide when the question is presented is almost impossible due to the vacillating opinions as to the exact relationship of the branch to the corporation. Depending on the circumstances, domestic branch banks have been held to be both separate entities and mere agencies.⁴⁰ What status they will assume in the circumstance of garnishment is a matter of conjecture. There is, however, in the decisions in this area the same seed from which grew the rule restricting the effect of garnishment in the foreign bank cases. It is necessary here also for the depositor to demand his funds at the branch of deposit,⁴¹ and, with the analogy to the foreign branch bank cases, the courts might well hold that garnishment process is effective only on the branch bank served. *Cronan v. Schilling* is particularly significant in this regard, for while a jurisdictional theory would be inapplicable to state branches, the policy basis upon which the case rested could also be used to find state branches separate entities for attachment purposes. That this would be the preferable result cannot be doubted. It places no greater burden on the garnishing creditor than he would sustain in seeking out the correct bank in a unit (no branch) banking system,⁴² and he would still have the right of discovery.

It appears, however, that the courts will not follow such a course with respect to state branches without compelling legislation. At common law the relation of a bank and its branches was principal and agent,⁴³ and the courts have displayed remarkable tenacity in clinging to this view.⁴⁴ The enactment of statutes limiting the effect of branch bank garnishment to a given area⁴⁵ supports this conclusion, for the implication is that, without them,

⁴⁰ See Fordham, "Branch Banks as Separate Entities," 31 COL. L. REV. 975 (1931); 48 COL. L. REV. 803 (1938); *Cable & Wireless, Ltd. v. Yokohama Specie Bank*, 191 Misc. 567, 79 N.Y.S. (2d) 597 (1948); *McGrath v. Agency of Chartered Bank of India, Australia, and China*, (S.D. N.Y. 1952) 104 F. Supp. 964; *Dean v. Eastern Shore Trust Co.*, 159 Md. 213, 150 A. 797 (1930).

⁴¹ *McBee v. Purcell Nat. Bank*, 1 Ind. Terr. 288, 37 S.W. 55 (1896); *Chrzanowska v. Corn Exchange Bank*, 173 App. Div. 285, 159 N.Y.S. 385 (1916), *afid.* 225 N.Y. 728, 122 N.E. 877 (1919); *Canal Bank and Trust Co. v. Denny*, 172 La. 840, 135 S. 376 (1931).

⁴² See, e.g., *First National Bank v. Bryant*, 168 Kan. 471, 213 P. (2d) 1002 (1950); *Sargent County v. State*, 47 N.D. 561, 182 N.W. 270 (1921).

⁴³ *Dean v. Eastern Shore Trust Co.*, 159 Md. 213, 150 A. 797 (1930).

⁴⁴ See, e.g., *Mullinax v. American Trust and Banking Co.*, 189 Tenn. 220, 225 S.W. (2d) 38 (1949); *Matter of Goebel*, 295 N.Y. 73, 65 N.E. (2d) 174 (1946); *Vanciel v. Kumle*, (Cal. App. 1944) 153 P. (2d) 785; *White v. Royal Bank of Canada*, 53 Ont. L. Rep. 543, 4 D.L.R. 1206 (1923); *Petrie v. Garfield Savings Bank*, 8 Ohio App. 266 (1917).

⁴⁵ See note 48 *infra*.

all branches throughout the state would be bound. Although there was dictum in the *Cronan* case that "for purposes of attachment, among others, each branch is a separate entity,"⁴⁶ the authority cited for the statement dealt only with foreign branches. Moreover, other dictum indicated that state branches would be regarded as mere agencies,⁴⁷ and it appears doubtful that New York will extend to state branches the "separate entity" rule which it developed as to foreign branches.

III. *Present and Future Legislation*

Only five western states⁴⁸ of the seventeen jurisdictions⁴⁹ which permit state-wide branch banking have enacted statutes which limit the effect of branch bank garnishment to a given area. The failure of other states to follow suit can possibly be explained by two factors. The first is that branch banking is still not looked upon with complete favor in this country,⁵⁰ and many legislatures may be disposed to restrict its growth. More persuasive is that branch banking corporations may feel little present need for such statutes. An examination of the present extent of branch banking explains why this is so.

Since the main problem, as pointed out above, is one of notification, the magnitude of the burden is directly proportional to the number of branches a bank has and the area over which they are spread. Thus banks in states which allow state-wide branch

⁴⁶ *Cronan v. Schilling*, 100 N.Y.S. (2d) 474 at 476 (1950), *affd.* 282 App. Div. 940, 126 N.Y.S. (2d) 192 (1953).

⁴⁷ *Id.* at 477. "Although the New York branch may be a separate entity as respects a debt due to Schilling from a Swiss branch, or property held for him by a Swiss branch, there appears to be no good reason for extending this doctrine to permit property actually belonging to Schilling, which is located *in this jurisdiction*, to escape attachment. Emphasis added.

⁴⁸ *Arizona*, *Ariz. Code Ann.* (1939) §25-206; *California*, *Cal. Civ. Code Ann.* (Deering, Supp. 1955) §542, ¶6; *Idaho*, *Idaho Code* (1948) §8-507; *Oregon*, *Ore. Rev. Stat.* (1953) §29.170(3); *Washington*, *Wash. Rev. Code* §7.32.120. Arizona's statute restricts the effect of garnishment notice to offices within the same county; Oregon's, within the same city; the remaining three make garnishment effective only on the branch served.

⁴⁹ See note 2 *supra*.

⁵⁰ See generally, WILLIS AND CHAPMAN, *THE BANKING SITUATION* 417 (1934), for a discussion of arguments against branch banking. For a more extended discussion, see CHAPMAN AND WESTERFIELD, *BRANCH BANKING* 58 et seq. (1942). Established banks successfully contested the allowance of a new branch in their area on the ground that it would compete with them and adversely affect their business in *Philadelphia Savings Fund Society v. Banking Board of Pa.*, 383 Pa. 253, 118 A. (2d) 561 (1955). See also *Bruner v. City Bank of Shelbyville*, 134 Ky. 283, 120 S.W. 345 (1909); *Morehead Banking Co. v. Tate*, 122 N.C. 313, 30 S.E. 341 (1898), for legal restrictions put on branch banking by the courts.

banking would be expected to bear the greatest burden and work the hardest for enactment of such statutes. Of the seventeen jurisdictions which allow state-wide branch banking,⁵¹ only California, Washington, Oregon, Idaho, and Arizona have enacted statutes restricting the effect of garnishment on branch banks.⁵² The need for such a statute in California is obvious. In 1954 there were 1,085 branch banks in that state,⁵³ and as far back as 1929 the Bank of Italy alone had 291 branches in 165 cities.⁵⁴ In the other four states the need is not so obvious, but it is interesting to note that in each state, the statute was passed during a period in which branch banking made huge gains, undoubtedly causing a belief that it would continue to grow, and that such a statute would be needed. Idaho and Oregon, for example, both passed their statutes in 1935 during a period in which branch banks increased in Idaho from none in 1930 to 37 in 1940 and in Oregon from one in 1930 to 67 in 1940. Washington enacted its statute one year earlier, 1934, and in the same period branch banks increased in that state from five in 1930 to 85 in 1940. Arizona passed its statute in 1954 after a period of ten years, 1940 to 1950, in which the number of branch banks more than doubled from 26 to 54.⁵⁵

Connecticut, Delaware, the District of Columbia, Maryland, Vermont, Maine, and Rhode Island also have state-wide branch banking, but they are all relatively small in area and population, so that the number of and distance between branch banks is not great. Maine, for example, has only about 70 branches for about 95 banks,⁵⁶ or an average of less than one branch for every bank. Thus the notice problem cannot be too great in these states.⁵⁷ Delaware not only has a small area, but also has a statute prohibiting garnishment of banks completely.⁵⁸ In Maine⁵⁹ and Vermont⁶⁰ statutes have been enacted that would allow a garnishee to be discharged if payment is made to the principal debtor after service

⁵¹ Note 2 *supra*.

⁵² Note 48 *supra*.

⁵³ KENT, MONEY AND BANKING 177 (1956).

⁵⁴ OSTROLENK, THE ECONOMICS OF BRANCH BANKING 170 (1930).

⁵⁵ BANK MERGERS AND CONCENTRATION OF BANKING FACILITIES, a Staff Report to Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 82d Cong., 2d sess., p. 10 (1952).

⁵⁶ *Ibid*.

⁵⁷ See note 73 *infra* and accompanying text.

⁵⁸ Del. Code Ann. (1953) tit. 10, §3502.

⁵⁹ Me. Rev. Stat. (1953) c. 114, §55(7).

⁶⁰ Vt. Stat. (1947) §1863.

of garnishment, but before actual notice of the garnishment is received at the branch that made the payment.⁶¹ Although this does not relieve the bank of the problem of making reasonable effort to give notice to all its agents,⁶² it does protect them if payment is made before notice can actually be given. On the other hand, each of the five states that has enacted a statute restricting the effect of service of garnishment on a branch bank apparently applies a stricter theory of notice. Under their rule notice to an agent is also notice to the principal and to all other agents of the principal, whether there was an attempt at actual communication with them or not.⁶³ Clearly such a statute as they have enacted is even more desirable in that situation.

Apparently in the larger states having state-wide branch banking, there are not yet enough branch banks to make the problem acute. For example, Nevada has but 18 branch banks, Utah only 23, and South Dakota and South Carolina each 48.⁶⁴ North Carolina would seem to be the only state allowing state-wide branch banking where the elements requiring a restrictive garnishment statute—a large number of branch banks and a large area over which to spread—are now present.⁶⁵

The balance of the states allowing branch banking do so only in limited areas.⁶⁶ Usually the area designated is either the city or county where the principal office is located.⁶⁷ Some states allow

⁶¹ Massachusetts has a similar statute which relates, however, to trustees who pay without notice. Mass. Laws Ann. (1948) c. 246, §27.

⁶² *Lyon v. Russell*, 72 Me. 519 (1881).

⁶³ *Dowell, Inc. v. United Pacific Casualty Ins. Co.*, 191 Wash. 666, 72 P. (2d) 296 (1937); *New England National Bank of Kansas City v. Hubbell*, 41 Idaho 129, 238 P. 308 (1925); *Fleishhacker v. Portland News Pub. Co.*, 158 Ore. 476, 77 P. (2d) 141 (1938); *Philips v. Colfax Co.*, 195 Ore. 285, 243 P. (2d) 276 (1952), rehearing den. 195 Ore. 301, 245 P. (2d) 898 (1952); *Hughes v. The Riggs Bank*, 29 Ariz. 44, 239 P. 297 (1925); *First National Bank of Reedley v. Reed*, 198 Cal. 252, 244 P. 368 (1926); *Snyder v. Security First National Bank*, 31 Cal. App. (2d) 660, 88 F. (2d) 760 (1939).

⁶⁴ See STAFF REPORT, note 55 supra.

⁶⁵ *Ibid.* In 1950 there were 216 branch banks in North Carolina.

⁶⁶ Branch banking in any form is prohibited in the following states: *Colorado*, Colo. Rev. Stat. Ann. (1953) §14-1-63; *Florida*, Fla. Stat. (1955) §659.06; *Illinois*, Ill. Rev. Stat. (1955) c. 161½, §9; *Kansas*, Kan. Gen. Stat. Ann. (Corrick, 1949) §9-1111; *Minnesota*, Minn. Stat. (1953) §48.34; *Missouri*, Mo. Rev. Stat. (1949) §362.105(1); *Montana*, Mont. Rev. Code (1947) §5-1208; *Nebraska*, Neb. Rev. Stat. (1954) §8-1,105; *Texas*, Tex. CONST., art. 16; *West Virginia*, W. Va. Code (1955) §3131; and *Wisconsin*, Wis. Stat. (1953) §221.04. The following prohibit branch banking, but allow banking offices: *Arkansas*, Ark. Stat. (1947) §67-319; *Iowa*, Iowa Code (1954) §528.51; and *North Dakota*, N.D. Rev. Code (1943) §6-0314. *Oklahoma*, *Wyoming* and *New Hampshire* have no statutory provisions.

⁶⁷ See Ala. Code (1940) tit. 62, §140 (now §140(1), Acts 1953, p. 613); Ga. Code Ann. (1936) §13-203 (editor's note); Ind. Stat. Ann. (Burns, 1950) §18-1707; Ky. Rev. Stat. (1956) §287.180; Mass. Laws Ann. (1948) c. 168, §5, as amended by H.B. 2567 (1957); N.J. Stat. Ann. (1950) §17:9a-19; Tenn. Code Ann. (Williams, 1934) §5950.

extension into adjoining counties⁶⁸ or into an area within a certain radius from the home bank.⁶⁹ New York is unique in restricting expansion of branch banks to banking districts,⁷⁰ which may include from three to fifteen counties.⁷¹ Being so restricted, the branches in these states are necessarily compact and close together. Thus the burden of notifying all branches each time a garnishment order is served would appear to be decreased by the mere closeness of the banks. An even stronger factor eliminating the need for a restrictive garnishment statute in these states is that banks compacted in a relatively small area frequently keep all books, including deposit account books, at the head office. Communications concerning the state of an account are then handled by telautograph.⁷² With such a system, notice of the garnishment need be given only at the head office, and the bank which carries the debtor's account can be readily ascertained and warned.⁷³ This fact, together with the fact that in December 1954, 43 percent of all branches were located in head office cities, and only 16 percent were located in counties not contiguous to those in which the parent banks were operating,⁷⁴ emphasizes the lack of any real notification burden and therefore of any necessity for restrictive garnishment statutes in these states.

IV. Conclusion

It may be that the courts will declare state branch banks to be separate entities for purposes of garnishment as they have done in the foreign branch bank area. It seems doubtful, however, whether they will follow this course, and until the question is decided, it must be assumed they will apply the common law principal-agent theory. Whether the legislatures will make them separate entities for this purpose will depend upon the need of each state for a branch banking system, and the pressure for such

⁶⁸ See Ohio Rev. Code Ann. (Page, 1954) tit. 11, §1103.09; Pa. Stat. Ann. (Purdon, 1945) tit. 7 (Supp. 1956) §819-204.1. A related type of provision is found in La. Rev. Stat. (1950) §§6:54, 6:55.

⁶⁹ See Miss. Code Ann. (1957) §5229; N.M. Stat. Ann. (1953) §48-2-17; Mich. Comp. Laws (1948) §487.34; Va. Code (1950) §6-26.

⁷⁰ 4 N.Y. Consol. Laws (McKinney, 1950) §105.

⁷¹ *Id.*, §3.

⁷² LANGSTON, BANK ACCOUNTING AND PRACTICE 405 (1940). But see note 7 *supra*.

⁷³ The same system is used for keeping the bank office accounts. So in those states allowing bank offices, the problem is likewise minimized. CHAPMAN AND WESTERFIELD, BRANCH BANKING 291 (1942).

⁷⁴ KENT, MONEY AND BANKING 177 (1956).

legislation. That both the need and the pressure will come cannot be doubted. At present the banking system of the United States is still dominated by the unit bank,⁷⁵ but branch banking has been growing steadily,⁷⁶ and the authorities indicate that it will continue to grow.⁷⁷ As the extent of branch banking increases, so will the necessity and pressure for garnishment statutes increase. There is no doubt that many more similar statutes will be enacted.

Thomas S. Erickson, S.Ed.

⁷⁵ In 1954, only 11.4% of commercial banks in the United States operated branches, and these averaged only 3.9 branches per bank. See KENT, MONEY AND BANKING 168, 176 (1956).

⁷⁶ See STAFF REPORT, note 55 supra; WILLIS AND CHAPMAN, THE BANKING SITUATION 394 (1934); BRADFORD, THE LEGAL STATUS OF BRANCH BANKING IN THE UNITED STATES (1940).

⁷⁷ See CHAPMAN AND WESTERFIELD, BRANCH BANKING 84 et seq. (1942); OSTROLENK, THE ECONOMICS OF BRANCH BANKING 201 (1930); WESTERFIELD, HISTORICAL SURVEY OF BRANCH BANKING IN THE UNITED STATES 38 (1939).