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ASSIGNMENTS - INJUNCTIONS - ENFORCEABILITY IN EQUITY OF PARTIAL WAGE ASSIGNMENTS

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ASSIGNMENTS — INJUNCTIONS — ENFORCEABILITY IN EQUITY OF PARTIAL WAGE ASSIGNMENTS — The complainant, a milling and textile company employing about 2,000 men, brought this action to enjoin certain wage assignments made by 1,100 of its employees. The assignments, voluntarily made to the respondent union (certified by the National Labor Relations Board), directed the company to deduct from each laborer's pay at the end of every month the amount of his union dues. The complainant had previously refused to sign a contract with the union which embodied a "check-off" provision. *Held*, the mass assignment being prejudicial to the rights of the complainant, the injunction should be granted. *Pacific Mills v. Textile Workers' Union of America*, (S. C. 1941) 15 S. E. (2d) 134.[1]

The wages of an employee are a "property right," and as such, it has long been recognized, capable of assignment.[2] Courts of law, however, have consistently refused to enforce a partial assignment against an unconsenting debtor, holding that to do so would subject him to several actions, whereas he has contracted to perform only a single act.[3] In equity, on the other hand, the interests of all the parties concerned can be determined in a single suit. The debtor can bring the entire fund into court and thus avoid separate proceedings and the risk of ascertaining the relative shares and rights of the substituted creditors. Both manifest justice and commercial necessity in the present business era seem to require that, when one party has agreed for a valuable consideration that another shall have a part of an amount due him, the agreement be enforced if not sub-

[1] The dissent of Acting Associate Justice Thurmond seems to do little more than to deny at length each and every conclusion of the majority opinion.

[2] Owens v. State, 53 Tex. Cr. 105, 112 S. W. 1075 (1908); Dunbar v. Johnston, 170 S. C. 160, 169 S. E. 846 (1933). See also 2 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., 756 (1927).

[3] 2 R. C. L. 619 (1914), and cases cited therein, note 2; Mandeville v. Welch, 5 Wheat. (18 U. S.) 277 (1820). As between the assignor and assignee the assignment is valid. 80 A. L. R. 413 at 423 (1932).

stantially prejudicial to the debtor.[4] It is on this ground that courts of equity, or their modern code equivalents, have almost unanimously held that a partial assignment, although unassented to by the debtor, is enforceable against him.[5] They have further recognized an assignment of wages to be earned in the future, if such is made under an existing contract of employment.[6] In granting the injunction in the instant case, which amounts in effect to a refusal to enforce the assignments, the court relies on the established doctrine that even where a case falls directly within the rule calling for equitable relief, there is always the reserved power to withhold it under the special facts involved.[7] The facts here advanced are: (1) the burden on the company of the additional bookkeeping and accounting that these numerous assignments would necessitate; [8] (2) the possible detrimental effect on the company's established policy against permitting wage assignments by employees. The first objection seemingly could be met by the recognized practice of setting a reasonable value on the clerical work and making the enforcement of the assignments contingent on payment therefor by the union.[9] As to the second, conceding that such a policy should carry weight,[10] it is generally adopted to protect the worker from unnecessary spending that will harness him with debts and reduce his incentive to work. Here the amounts assigned are not only small, but in view of the present trend toward a total unionization of labor, they might well be looked on as necessary expenditures. Though placing their decision on the points stated, the court also suggests that the "check-off" or any equivalent thereof is per se an unfair labor practice under the National Labor Relations Act. While that act has admittedly been

[4] 6 C. J. S. 1088 (1937), and cases cited in note 65 therein; Harris County v. Donaldson, 20 Tex. Civ. App. 9, 48 S. W. 791 (1898); McDaniel v. Maxwell, 21 Ore. 202, 27 P. 952 (1891).

[5] See annotation, 80 A. L. R. 413 at 414 (1932); Chase Nat. Bank v. Sayles, (C. C. A. 1st, 1926) 11 F. (2d) 948, cert. den., 273 U. S. 708, 47 S. Ct. 99 (1926). Missouri has consistently refused to enforce a partial assignment against an unconsenting debtor either at law or in equity, "for if you once grant the premise . . . no bounds can be fixed to the creditor's gracious option." Burnett v. Crandell, 63 Mo. 410 (1876); Bland v. Robinson, 148 Mo. App. 164, 127 S. W. 614 (1910). Some courts permitting recovery in equity go on the theory that the interest of a partial assignee is in the nature of an equitable charge or lien. 7 HARV. L. REV. 313 (1894); Stillson v. Stevens, (Tex. Civ. App. 1893) 23 S. W. 322. Others consider it an equitable property interest. 3 POMEROY, EQUITY JURISPRUDENCE, 4th ed., § 1280 (1918), and cases there cited.

[6] Seaboard Small Loan Corp. v. Ottinger, (C. C. A. 4th, 1931) 50 F. (2d) 856. But see 1 CONTRACTS RESTATEMENT, § 154 (1) (1932), in regard to validity at law. See Fortas, "Wage Assignments in Chicago," 42 YALE L. J. 526 at 551-553, notes 83-90 (1933), for general classifications.

[7] WALSH, EQUITY 43 (1930).

[8] A master found that the additional work would average about six man-hours per week.

[9] 2 WILLISTON, CONTRACTS, rev. ed., 1287 (1936); National Exchange Bank v. McLoon, 73 Me. 498 (1882).

[10] "A debt is property, which may be sold or assigned . . . and . . . its sale offers no ground for complaint by the debtor." State Street Furniture Co. v. Armour & Co., 345 Ill. 160 at 165-166, 177 N. E. 702 (1931).

subjected to a maze of conflicting interpretations, it seems doubtful whether the court's contention can be sustained.[11] Thus, on its face, this decision, departing from the general trend of recent cases, puts rather strict limitations on the rights of a partial assignee in equity. However, placed on other grounds, the result reached seems both logical and desirable. The objection to the assignment might be founded, not on its doubtful prejudicial effect on the debtor, but rather on the fact that its non-enforcement would be of little detriment to the union. The legal remedies available to a creditor for the collection of a debt when equity has refused to enforce a partial assignment are often ineffectual against the ordinarily impecunious, propertyless, laborer. However, with the paid-up union card becoming increasingly a necessary prerequisite to a job, the union is not left in the somewhat uncertain position of the more typical assignee. Under such circumstances there seems little reason for requiring the company, merely as a matter of accommodation for the workers and the union, to act as the latter's collection agent.

[11] It is the policy of the act, in part, "to secure and preserve for employees the right to bargain collectively without intimidation, coercion or other improper influence" from the employer. Valley Mould & Iron Corp. v. National Labor Relations Board, (C. C. A. 7th, 1940) 116 F. (2d) 760 at 764. The act specifically makes it an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization, contribute financial or other support to it, or to encourage or discourage membership in any labor organization. 49 Stat. L. 452, § 8 (2 and 3) (1935), 29 U. S. C. (Supp. 1939), § 158 (2 and 3). To the effect that the check-off practice is merely incidental to the unfair labor practice sought to be terminated, see National Labor Relations Board v. J. Greenebaum Tanning Co., (C. C. A. 7th, 1940) 110 F. (2d) 984 at 989, cert. den. sub nom. J. Greenebaum Tanning Co. v. National Labor Relations Board, 311 U. S. 662, 61 S. Ct. 18 (1940); National Labor Relations Board v. West Kentucky Coal Co., (C. C. A. 6th, 1939) 116 F. (2d) 816 at 822, stating there is nothing in the National Labor Relations Act to characterize the check-off as illegal. Cf. In the Matter of Lancaster Iron Works, 20 N. L. R. B. 738 (1940), where the check-off was regarded as an integral part of the unfair labor practice.