

WAGE ASSIGNMENTS IN CHICAGO— STATE STREET FURNITURE CO. v. ARMOUR & CO.

A. FORTAS †

IN the various plants of Armour & Co. in Chicago, some 5,000 persons are employed. Their average wage in these times is less than \$1200 a year. But the desire for cash, for flattering clothes, furniture, radios and the wares of jewelry stores prevails no less than among their more fortunate fellows. The law, seeking to promote commerce, encourages the use of credit facilities for the satisfaction of these desires. So, also, does it admit the need of the creditor for payment. Some collection devices it provides; some, it recognizes; some, it tolerates.

The most satisfactory security which a creditor can obtain from an impecunious, propertyless workingman, is a pledge of the proceeds of his labor. Probably the threat most effective to induce this workingman to perform the unpleasant task of paying his debts is a declaration of intention to enforce this security. So it is that Armour's laborers, in return for present goods, assign their future subsistence. Such assignments have long been held, in the absence of statutory prohibition, enforceable at law if made under an existing employment.¹

†Third year student in the Yale School of Law. This study was conducted in Chicago during the summer of 1932. It is an adjunct of the bankruptcy project sponsored by the Institute of Human Relations of Yale University and the Yale Law School. The writer wishes to acknowledge his indebtedness to Professor William O. Douglas. He conceived the idea of this study and was frequently consulted while it was being conducted and while this paper was being written.

1. *Brewer v. Griesheimer*, 104 Ill. App. 323 (1904); *Rodijkheit v. Andrews*, 74 Ohio St. 104, 77 N. E. 747 (1906); see Note (1907) 5 L. R. A. (n.s.) 565-567; RESTATEMENT OF CONTRACTS (A. L. I. 1932) § 154 (1). So, even though the employment is from day to day and terminable at will. *Wellborn v. Buck*, 114 Ala. 277, 21 So. 786 (1897). Or the employment is at piece work. *Hartley v. Tapley*, 68 Mass. 565 (1854); *Kane v. Clough*, 36 Mich. 436 (1877).

An assignment of future wages is prior in right to garnishment if notice of assignment is given the employer in time to plead it as a defense to the garnishment proceedings. *Steltzer v. Condon*, 139 Iowa 754, 118 N. W. 39 (1908); *Garland v. Harrington*, 51 N. H. 409 (1871); *Tiernay v. McGarity*, 14 R. I. 231 (1883); *Mace v. Richardson*, 100 Me. 70, 60 Atl. 701 (1905). It is usually held that collection of the wages by the assignor does not create a presumption of fraud of creditors. *Dolan v. Hughes*, 20 R. I. 513, 40 Atl. 344 (1898); *Schofield v. McConnell*, 119 Mass. 368 (1876); *cf. Provencher v.*

In July, 1928, Armour entered into an agreement with each of its employees, by which the employee promised, in consideration of his employment, not to sell or assign "any right to or claim for wages or salary," due or to become due, without the consent in writing of Armour and Company; and agreed that "any attempted sale, transfer or assignment without such written consent shall be null and void."² Thereafter Armour sent to the loan companies and instalment sellers in Chicago a written notice stating that its employees "have entered into a stipulation with the company as a part of their contract of employment that they will not assign their wages or salary;" and that Armour would thereafter honor no wage or salary assignments. This notice, its recipients were informed, was given "as a courtesy" to enable them to avoid taking "unenforceable assignments" which might involve them in loss.³

I

Philanthropy did not entirely, or probably even principally, induce Armour to take this step. Neither did kindly paternalism chiefly motivate the interest in the plan manifested by employers of higher salaried labor.⁴ But certainly, the prevalence of overindulgence in credit opportunities might justify an attempt to make credit less available by restricting the coinage with which it is purchased. Over-reaching and overloading are, by definition, evils; their existence is

Brooks, 64 N. H. 479, 13 Atl. 641 (1887) (assignee to return part of wages to assignor). But an assignment of future wages to the assignor's wife was held, as against an attaching creditor, fraudulent as a matter of law in *Robinson v. McKenna*, 21 R. I. 117, 42 Atl. 510 (1898). Compare *Hirschberg v. Chic Drees Co.*, 72 Misc. 339 (N. Y. Sup. Ct. 1911). And in *O'Connor v. Mehan*, 47 Minn. 247, 49 N. W. 982 (1891), the assignment was held fraudulent in fact, reference being made to the "regular practice" of a "class of men" who assign their wages in advance to put them beyond the reach of creditors.

Assignment of the future earnings of public officials is held void. Cases are collected in Notes (1910) 17 Ann. Cas. 525; Ann. Cas. 1913B 1080; (1911) 31 L. R. A. (n.s.) 374.

2. This is not a unique instance in Illinois litigation of an employer seeking relief from the burden of wage assignments. In 1914, the Postal Telegraph Co. sought unsuccessfully to enjoin high-rate lenders from bringing suit on wage assignments or attempting "to extort money" from its Chicago employees, alleging, *inter alia*, that the company's attempt to comply with these assignments had caused employees to quit its service. *Postal Telegraph Co. v. Staehle*, 188 Ill. App. 464 (1914).

3. *Women's Wear Daily*, April 5, 1930, at 3 (a Chicago trade publication).

4. The files of the Chicago Better Business Bureau reveal that at least 3 other firms had adopted Armour's scheme. That a large printing establishment did so in April, 1930, is stated in the *Women's Wear Daily*, *loc. cit. supra* note 3.

much more difficult to establish. Evidence of their existence among wage and salary earners was obtained in 658 cases from the files of two companies in Chicago.⁵ For a compensation, these companies will cash the debtor's pay check, giving him whatever is deemed necessary for the current necessities of life and pro-rating the remainder, less their fees, among his creditors. They will attempt to persuade each creditor to refrain from filing its wage assignment or levying garnishment against the debtor, promising that if, as, and when the debtor delivers to them his pay check, they will forward a stipulated amount to the creditor. To induce the creditor's acquiescence, the companies point out that no collection expenses to the creditor are involved; that agreement of all the creditors is sought and if it is obtained, the possibility that a rival creditor will obtain priority in the debtor's wages by filing a wage assignment or levying garnishment is minimized; that if such an agreement is not procured, it is likely that a wage assignment will be filed by some creditor and that the debtor will be discharged from his employment with a consequent loss to all; that the debtor is more likely conscientiously to pay a company to which he has confided his financial affairs than to pay his creditors.

The records have been divided into four groups, according to income. In Group I, the weekly income ranged from \$11.25 to \$28.30, and the amounts owed varied from \$40 to \$1145. Fifty-nine persons are included. Eighteen of these had no dependents; 11 had 1 dependent; 6 had 2 dependents; 12 had 3 (the median).⁶ One debtor listed as many as 8 dependents; he owed \$339; \$46 to a licensed loan company, on which he was paying 3½% per month (on unpaid balances), \$250 to 3 retailers, and the remainder to an individual. The number of creditors to which each person was indebted at the time he consulted the "amortization" companies varied from 1 to 18; the median was 4. The debtor listing 18 creditors owed \$1032.89; \$315.50 to 6 licensed loan companies; \$350 to 3 unlicensed lenders—to whom he was paying an interest rate of 110% to 240%; \$169.39 to 6 retailers; and the remainder to 3 unclassified creditors. His closest rivals in number of creditors were an individual who listed 15; another, listing 13; one, listing 12; and two, listing 10.⁷—Forty-

5. 595 cases are from the files of the American Amortization Company, covering a period from January, 1929 to July, 1932. 63 cases were obtained from the Financial Adjustment Co., including only a period from April to August, 1932. A description of the procedure of the former company may be found in Douglas and Marshall, *A Factual Study of Bankruptcy Administration and Some Suggestions* (1932) 32 COL. L. REV. 25, 54.

6. 4 had 4 dependents; 4 had 5; 1, 6; 1, 8; no information on this point in 2 cases.

7. 4 listed 2 creditors; 12, 3; 14, 4; 7, 5; 5, 6; 5, 7; 3, 8; 2, 9.

eight persons listed debts to 135 retailers,⁸ amounting in the gross to \$8,784.97. Each of these 48 persons, therefore, owed an average of 2.81 retailers the sum of \$183.02. Forty-six persons owed 105 licensed loan companies⁹ a total of \$10,362.34. An average of \$224.39 was owed to 2.28 loan companies. Twelve were indebted to 29 unlicensed lenders in the total sum of \$1,085.28. In terms of an average, each of these 12 persons owed 2.41 unregulated lenders \$90.44. Further information is set forth in the following tables.

GROUP I (Yearly income—\$596.25 to \$1500)

<i>Average Size of Family</i>	<i>Average Number of Creditors</i>	<i>Average Total Debt</i>
2.91	5.52	\$410.26

	<i>Retailers</i>	<i>Creditors</i>			<i>Miscellaneous</i>
		<i>Licensed Loan Cos.</i>	<i>Unlicensed Lenders</i>	<i>Individuals</i>	
% of total number of creditors	41.41	32.2	8.86	8.86	8.66
% of total amount owed	36.29	42.81	4.48		

One hundred and ninety-eight persons comprise Group II. Their weekly income was from \$28.30 to \$37.73. Their indebtedness ranged from \$40 to \$1736.80. Twenty-four had no dependents, 42 had 1, 47, 2 (the median). The number of dependents ranged upward to 9.¹⁰ The number of creditors varied from 2 to 15, the median being 5. Besides the debtor listing 15 creditors, one individual listed as many as 14; 7 listed 13.¹¹ The total debt of the individual owing 15 creditors amounted to only \$564. He owed \$429 to 5 licensed loan companies; \$37 to 3 unlicensed lenders; \$78 to 6 retailers. The comparatively small amounts owed to his numerous creditors suggest that the major part of his original indebtedness to each had been paid before he sought the aid of the "amortization" company. A debtor selected at random from the median group owing 5 creditors listed a total debt of \$910; \$600 was owed to 3 licensed loan companies and \$310

8. This term is used here and hereafter, even though "instalment sellers" is generally more precise. An accurate separation of open book accounts and instalment sales could not be made since the only relevant information available was the name of the creditor, the type of business conducted, and, sometimes, the article purchased. Many concerns, especially department stores, do both types of business.

9. This term is descriptive of companies licensed and operating under the Illinois Small Loans Act. ILL. REV. STAT. (Smith-Hurd, 1931) c. 74, §§ 13-18.

10. 38 listed 3 dependents; 22, 4; 1, 7; 4, 6; 14, 5. In 5 cases no information on this point was available.

11. 12 listed 2 creditors; 25, 3; 23, 4; 41, 5; 26, 6; 17, 7; 19, 8; 13, 9; 7, 10; 3, 12.

to 2 retailers.—Four hundred sixty-seven retailers were listed by 162 of these debtors as having claims against them of \$33,401.42. Each of these 162 debtors owed an average of 2.90 retailers \$206.18. Three hundred eighty-seven licensed loan companies were named as claimants of their wealth by 173 persons. An average of 2.24 licensed lenders had claims against each of these debtors to the extent of \$256.64. Seventy-eight of this group owed 135 unlicensed lenders a total of \$5,129.04. Each owed 1.73 unlicensed lenders an average of \$64.48.

GROUP II (Yearly income—\$1500 to \$2000)

<i>Average Size of Family</i>	<i>Average Number of Creditors</i>	<i>Average Total Debt</i>
3.30	6.09	\$501.23

	<i>Retailers</i>	<i>Creditors</i>		<i>Individuals</i>	<i>Miscellaneous</i>
		<i>Licensed Loan Cos.</i>	<i>Unlicensed Lenders</i>		
% of total number of creditors	37.98	31.33	11.22	9.13	10.33
% of total amount owed	33.61	44.68	5.06		

Three hundred and seventy-one cases, a majority of those recorded, are included in Group III. The income of this group is relatively high, \$37.73 to \$56.60 a week, but its superior earning power was evidently unavailing to save it from the toils of debt. Dependents, creditors and debt all show a forward progression.

GROUP III (Yearly income—\$2000 to \$3000)

<i>Average Size of Family</i>	<i>Average Number of Creditors</i>	<i>Average Total Debt</i>
3.63	7.18	\$618.34

	<i>Retailers</i>	<i>Creditors</i>		<i>Individuals</i>	<i>Miscellaneous</i>
		<i>Licensed Loan Cos.</i>	<i>Unlicensed Lenders</i>		
% of total number of creditors	37.6	29.81	10.36	9.27	12.96
% of total amount owed	46.74	46.74	5.37		

The indebtedness of the persons in this group ranged from \$59 to \$2170. Forty-four listed no dependents; 92 listed 3 (the median). One individual listed as many as 11 dependents.¹² The number of creditors varied from 2 to as many as 25, the median being 6.¹³ The

12. 71 listed only 1 dependent; 44 listed 2 dependents. 63 listed 4; 20, 5; 9, 6; 11, 7; 3, 8; 2, 9; no information was obtained in 11 cases.

13. 11 listed 2 creditors; 33 listed 3; 61, 4; 47, 5; 48, 6; 45, 7; 32, 8; 28, 9; 18, 10; 15, 11; 8, 12; 4, 13; 5, 14; 6, 15; 4, 16; 2, 17; 1, 18; 1, 21; 1, 22.

individual listing 25 creditors had 3 dependents; he owed a total of \$976.03. He was indebted to 9 retailers in the sum of \$411.95; to 2 licensed loan companies in the sum of \$384.28; and he owed 2 unlicensed lenders \$33. The remainder was owed to 8 individuals and 4 unclassified creditors. One of the individuals listing 6 creditors, the median number, was selected at random. He had 2 dependents and owed a total of \$480.84. Of this, \$300 was owed to a licensed loan company; \$55.84 to 4 retailers; and the remainder to an individual.—Two hundred ninety-nine persons in this group owed 1,034 retailers a gross sum of \$76,027.89. In terms of an average, each owed 3.46 retailers \$215.77. Only 27 debtors listed no obligations to licensed loan companies. Three hundred and forty-four owed 820 licensees a total of \$109,798.77. Each of these listed an average debt to 2.38 loan companies of \$319.18. About 40%, 151 persons, owed unlicensed lenders \$12,624. Each of these was indebted to 1.88 unregulated money-lenders in the sum of \$86.46.¹⁴

It is not insisted that these figures be taken as establishing the existence of an over-expansion of consumer credit. Admittedly, the cases are few and present the financial condition of a group who became so deeply involved as to seek the assistance of these companies. But it is significant that at a point in the lives of these men they were so unable themselves to reconcile their income with the demands of their creditors that they sought the aid of private companies, willing in return for this assistance to add 4.5% or 10% (according to which company they consulted) to their already existing debt. What brought these companies customers was not conscience, but the desire to obtain relief from the harassment of creditors and in particular from the threat that their wage assignments would be enforced by filing them with the employer. Even bankruptcy, under

14. Group IV includes only 30 cases. The weekly income was \$56.60 to \$80; the indebtedness ranged from \$400 to \$4794. 2 had no dependents; 2 had 1; 7, 2; 6, 3; 5, 4; 3, 5; 2, 6; 2, 7; 1, 10. The number of creditors ranged from 3 to 21; 2 had 3 creditors; 4, 4; 2, 5; 2, 6; 4, 7; 2, 8; 6, 9; 2, 10; 1, 11; 2, 12; 1, 13; 1, 21.

GROUP IV (Yearly Income—\$3000 to \$4200, Weekly Income \$56.60 to \$80.)

<i>Average Size of Family</i>	<i>Average Number of Creditors</i>	<i>Average Total Debt</i>
4.5	8.16	\$1,082.26

	<i>Creditors</i>				
	<i>Retailers</i>	<i>Licensed Loan Cos.</i>	<i>Unlicensed Lenders</i>	<i>Individuals</i>	<i>Miscellaneous</i>
% of total number of creditors	35.1	30.61	3.26	19.59	11.44
% of total amount owed	21.17	41.65	2.54		

the Illinois decisions, can afford no relief from the creditor's power under the assignment.¹⁵ Only by paying or somehow appeasing the creditor can the debtor avoid the consequences of an assignment, once executed, unless the Federal court, sitting in bankruptcy can and will enjoin the assignee's filing or enforcing the wage assignment. The first instance in Illinois of such an injunction, however, occurred in January, 1933, and its validity has not been tested.^{15a}

How often the creditor would actually have resorted to garnishment, to filing with the debtor's employer a copy of his assignment of wages, to an informal plea to the employer to assist in collecting from the debtor, is conjectural. How often such action on the part of the creditor would have resulted in the employer's discharging the debtor is unknown. The threatened act and the warned consequence are generally in themselves sufficient. Certain it is that many employers have notified their employees that one or two or three "wage tie-ups" are grounds for discharge. And it is equally certain that creditors have made capital of this edict. Perhaps if they were not aware that the rule is honored as much in the breach as in the observance, they would evidence realization of the anomaly of giving verbal currency to a rule which would put an end to the source of income upon which they rely for payment.

II

Why is it that employers threaten and now and then discharge employees because of garnishment or filing assignments of their wages? What are the principal reasons for Armour's attempt to invalidate assignments of the wages of its employees? First, there is the vicarious and often indignant morality of some employers: that a man who does not pay his debts in due course, is not worthy of employment. This factor, fairly well isolated, accounts for an occasional, if rare, discharge of an employee who files a petition in bankruptcy. Secondly, an employer will feel that a slaughterer cannot neatly dispatch his allotted animals, or a motorman carefully drive his car and trustworthily collect his fares if his wages are not paid to him to be distributed for food and shelter, but to a creditor; or if he has that morning, at home or on his job, received a visit from an "outside man" of his creditor. But thirdly and principally, the

15. *Mallin v. Wenham*, 209 Ill. 252 (1904); *The Monarch Discount Company v. The Chesapeake & Ohio Ry.*, 285 Ill. 233, 120 N. E. 743 (1918); *Wabash Rr. Co. v. Meyer*, 119 Ill. App. 104 (1905). This is the minority rule. See *infra* notes 73-77.

15a. *Chicago Daily News*, January 31, 1933. See note 77a, *infra*.

employer is unwilling to bear the expense and risk incident to collecting from the employee what is due the creditor. Where a writ of garnishment has been served, the employer must appear in court unless he is willing to be defaulted in the entire sum the creditor seeks, regardless of the amount due the employee. No court appearance is necessary where the creditor notifies the employer that, by force of an assignment to him, the employee's wages are to be held for the creditor. Several clerical steps are necessary, however.

The procedure in handling wage assignments followed by the various large firms in Chicago which were interviewed of course differs in particulars, but the following is descriptive. The creditor delivers a copy of the assignment of wages to the cashier's office. By this instrument the employee has "sold, assigned, transferred and set over" all his salary and wages (or, if the assignee is operating under the Illinois Small Loans Law, 50% thereof) earned or to be earned in the employ of his present employer or "any other by whom he might thereafter be employed."¹⁶ The cashier then makes a notation

16. This clause is not enforceable in courts without equity powers. An assignment of future wages, to be valid, must be executed under an existing employment (*supra* note 1), and is enforceable in courts of law only as to earnings under that employment. *National Biscuit Co. v. Consolidated Agencies Co.*, 153 Ill. App. 214 (1910); *Richards v. Olsen*, 185 Ill. App. 395 (1914); *Draeger v. Wisconsin Steel Co.*, 194 Ill. App. 440 (1915); *Close v. Independent Gravel Co.*, 156 Mo. App. 411, 138 S. W. 81 (1911); *McKneely v. Armstrong*, 212 S. W. 175 (Tex. Civ. App. 1919); *Cooper v. Douglass*, 44 Barb. 409 (N. Y. 1864). But see *infra* pp. 536-538.

For this purpose, a new employment is held to exist where the assignor has merely ceased to work for his employer for a short time, later being rehired. *National Biscuit Co. v. Consolidated Agencies Co.*, *supra*; *cf. Trumbower v. Ivey*, 2 Pa. Co. Ct. 470 (1886). So, if the employment is elective, even if there is no interruption in employment, but the assignor is reelected to his position. *Twiss v. Cheever*, 84 Mass. 40 (1861); *Eagan v. Luby*, 133 Mass. 543 (1882); *Herbert v. Bronson*, 125 Mass. 475 (1878). But *contra* if the position is not elective and there is a new contract, but continuous employment. *Hax v. Acme Cement Co.*, 82 Mo. App. 447 (1900).

In equity, the assignment is enforceable as to wages under a new employment. *Edwards v. Peterson*, 30 Me. 367, 14 Atl. 936 (1888); *Holt v. American Woolen Co.*, 129 Me. 108, 150 Atl. 382 (1930). Generally, suits to enforce wage assignments involve small sums of money and are begun in municipal or magistrates' courts without equity powers.

In Massachusetts, stringent regulations are provided for wage assignments. However, a statutory form is prescribed which contains the clause quoted in the text. MASS. GEN. LAWS (1932) c. 154, § 5. In *Raulins v. Levy*, 232 Mass. 42, 121 N. E. 500 (1919), it was stated, by way of dictum, that nevertheless an assignment did not bind wages earned under an employment not existing at the time of its execution. But a dictum in the later case of *Gilman v. Raymond*, 235 Mass. 284, 127 N. E. 794 (1920), is to the contrary effect. See *Rosenthal, Two Recent Cases on Wage Assignments* (1920) 5 MASS. L. Q. 472.

to hold the assignor's check. The assignor is not notified that a wage assignment has been filed against him until he calls for his check on pay-day. The paymaster then informs him that his check is detained by the cashier's office. The employee must thereupon go to the cashier's office (which may be in a different section of the city). He is there informed who has filed the assignment and is instructed to get a release from the creditor.¹⁷ No payment is made by the employer directly to the creditor.¹⁸ Generally, the employee will somehow obtain sufficient money to satisfy the creditor and procure a written release. Rarely does the creditor insist upon what, according to Illinois law, he is entitled to claim—50% of the wages if he is operating under the Small Loans Law,¹⁹ 100% otherwise. Nor does he often demand, if the balance due him is substantially equal to the wages, payment of the entire balance although he has taken from the wage earner a note with an acceleration clause. Usually he will demand that the debtor bring his account up to date by paying defaulted instalments. Sometimes the creditor will send an agent along with the employee, and he will hand the cashier a written release and collect from the money the cashier pays the employee. Creditors have attempted to avoid the expense of sending an agent by tendering the employer a release conditional upon the employer's paying them a stipulated sum from the wages due. Employers generally will not recognize such a release since it involves the trouble and expense of "splitting the pay check" and mailing separate checks to creditors.

In a rare case, the employee fails to obtain a release. Thereafter he will collect no wages unless and until he brings it to the attention of the employer that the sum detained on authority of the filed assignment has equalled the amount claimed by the creditor. Often, if the employee fails to induce the creditor to release his wages the employee will resign his position. The employer will not then, as

17. This procedure is also followed when a "demand in garnishment" (as distinguished from a summons in garnishment) is filed. The Illinois garnishment law provides that a "demand in garnishment" must be served upon the employer at least 24 hours before bringing suit. The employer must hold the wages which are subject to garnishment for 5 days after service of demand. ILL. REV. STAT. (Smith-Hurd, 1931), c. 62, § 14. If no summons in garnishment is served upon the employer within the 5 days, he releases the wages.

The abuse of this provision is widespread. Demands in garnishment are frequently served without any intention of proceeding to suit against the debtor and his employer (as garnishee). They are generally served upon the employer a day or two before pay-day, and the employee's wages are detained and he is instructed to get a release. Thus the demand in garnishment, for the space of five days at least, serves the same purpose as a wage assignment.

18. Employers of not over 15 or 20 persons, however, were found often to pay the assignor's wages to the creditor. And see *infra*, note 54.

19. ILL. REV. STAT. (Smith-Hurd, 1931) c. 74, § 16.

a matter of course, send to the creditor the amount due. Some employers will pay if the creditor makes demand; some will insist that he bring suit, in which case he must serve notice of suit on the assignor five days in advance,²⁰ thereby protecting the employer against any possible future claim that payment to the creditor was not authorized. If the creditor fails to make this demand, or, as sometimes happens, if he fails to sue because of inertia or inability to serve the assignor, the wages remain in the employer's possession, and at the end of the statutory period of limitation are mingled with its general funds.

In another instance which now and then occurs, the final result of the creditor's attempt to collect through filing his wage assignment is again that the employer retains the fund. The employee may not negotiate with the creditor for a release of his wages: perhaps he feels that the creditor will demand his entire wages; perhaps he feels that the claim is unjust, and that his expostulations will be of no avail. In either event, he may choose to resign his position and seek to evade the creditor's vigilance in another employment. In such a situation, it is quite likely that the creditor will not follow up the filing of the assignment; the employer will not notify him that his net has caught wages of his debtor,²¹ and the creditor will likely conclude that this was just one of the hundreds of assignments which are filed with employers against persons who are not now, or never were, employed by them.²²

Indeed, wage assignments serve Chicago creditors in many ways other than as a simple transfer of the power to collect wages. Besides their utility by way of warning or threat against a recalcitrant debtor, they are widely used as "tracers." That is, if a creditor has a claim against a person who at one time was employed by a concern

20. ILL. REV. STAT. (Smith-Hurd, 1931) c. 110, § 18. The assignor may interplead and maintain "any just set-off, discount or defense."

21. It may be gathered from the foregoing that Chicago employers assist creditors as little as possible, in order so far as they can to minimize the trouble and expense of handling wage assignments. A railroad refuses to give any information at all to creditors of its employees; it even refuses to give telephone information as to whether an individual's wages are being held.

22. 44% of the assignments filed with Armour & Co. from January to July, 1932, were against persons who were no longer or had never been in its employment. Some of these may, of course, be attributed to recent discharges because of business conditions. Of the assignments filed with a street railway company from 1930 to August, 1932, about 14% were against persons who were not on the pay roll. Permanence of employment is unusually characteristic of this company. 27% of the assignments filed with a newspaper company from October, 1929, to February, 1931, were against persons not then employed.^o Further details of the wage assignments served upon these companies are given *infra*.

in the Chicago Stock Yards, but who has now, in the terminology of collection agents, quietly "skipped," he will send copies of the assignment of wages to every one of the Stock Yards companies, hoping that at one of them, the employee is now working without having adopted another name. True enough, by law the assignment is valid only as to wages earned under the employment existing at the time the assignment was executed.²³ But the law in this respect matters little.

It would be decidedly inaccurate to say that employers honor wage assignments against their employees with a total disregard of their validity. At least one company, the Chicago Surface Lines, has consistently disregarded assignments filed with it by two notorious unlicensed lenders.²⁴ Armour and other employers provide an opportunity for their employees to consult designated officials in their personnel or legal departments when the employees feel that an assignment has been unjustly filed.²⁵ Because of the enormous number of assignments filed, however, this opportunity must be restricted. Moreover, familiarity with the law of wage assignments is by no means prevalent among the advisors, legal and lay; and their desire to help the employee may be counterbalanced by a suspicion, prompted by experience, that he is perhaps lying as to the execution of the assignment, and by a peculiar belief that if the employee owes the creditor, he should pay regardless of the invalidity of the assignment.²⁶

23. *Supra* note 16.

24. From September 1931 to August 1932, 198 assignments were filed with the Surface Lines by these lenders.

25. Reference has been made to a practice of some employers to arrange their employees' wages so as to defeat collection by garnishment or notice of assignment. For example, it is said, the employer will make the employee an advance of wages or a loan. Whitaker, *The Finance Company Racket* (1931) 23 THE AMERICAN MERCURY 433, 434. No evidence of this was found in the Chicago study.

26. In addition to the assistance above recorded, many Chicago employers provide facilities for obtaining cash loans either from a fund furnished by the employer, or from a coöperative Employee's Bank or Credit Union. A recent study of Chicago employers, made by Mr. Edward R. Gegan, a student at the University of Chicago, indicates that the availability of such facilities decreases the number of wage assignments and garnishments. Mr. Gegan states that 60 companies with no loan facilities for employees reported 1,724 garnishments and assignments per year for a total of 21,046 employees—or a ratio of one to every twelfth employee. 29 companies with some type of loan service reported 1,284 garnishments and assignments for a total of 23,332 employees—or a ratio of one to every eighteenth employee. Six of 33 companies reported as a positive benefit to themselves, accruing from the existence of a loan plan, a reduction in the number of wage assignments and garnish-

By and large, however, assignments are handled as a matter of routine. If the assignor's name is on the company payroll, his check will be detained until a release is procured, with scarcely another glance at the filed notice.²⁷

Substantiation of the point that assignments are honored regardless of their invalidity was found in the files of the Legal Aid Bureau of Chicago. True enough, an assignor will seek legal aid only when he feels fairly certain that the assignment is invalid, and therefore the cases may well be called pathological. But aside from the incidental value of these cases in disclosing and describing the widespread use of wage assignments in Chicago, they present instances in which wages were actually held up by the employer and the employee failed by his own efforts to persuade the creditor or the employer to release.

Four hundred and thirty-two cases which the Bureau handled in the 22 months from July 1, 1930 to April 1, 1932 were studied. The amounts claimed by the creditors against whom complaint was made ranged from \$3 to \$625. The average was \$93.14, the median \$57.25. Of the 432 assignments investigated, 42.13% were, in the best judgment of the writer on the facts recorded by Legal Aid investigators, legally unenforceable.²⁸ 6.43% of these had been executed by minors.

ments handled. GEAGAN, THE EMPLOYER-EMPLOYEE PLAN AND THE LOAN COMPANY (Univ. of Chicago, School of Business—unpublished).

27. Of course, the employee has a cause of action against the creditor who collects his wages on an invalid assignment. And if the filing of the invalid assignment has caused the employer to discharge him, he may recover for the consequent loss, including damages for mental distress. *Lopes v. Connolly*, 210 Mass. 487, 97 N. E. 80 (1912); *Doucett v. Sallinger*, 228 Mass. 444, 117 N. E. 897 (1917); *Kennedy v. Hub Mfg. Co.*, 221 Mass. 136, 108 N. E. 932 (1915); *Cotton v. Cooper*, 160 S. W. 597 (Tex. Civ. App. 1913), *aff'd*, 209 S. W. 135 (Tex. 1919) (\$400 actual, \$3500 exemplary damages against "loan shark"); *Suarey v. McFall Bros.*, 87 S. W. 744 (Tex. Civ. App. 1905); *Alabama Brokerage Co. v. Boston*, 18 Ala. App. 495, 93 So. 289 (1922), *aff'd sub. nom. Ex parte Alabama Brokerage Co.*, 208 Ala. 242, 94 So. 87 (1922) (\$10,000 damages); *Southern Finance Co. v. Foster*, 19 Ala. App. 109, 95 So. 338 (1923), *cert. den.*, 209 Ala. 113, 95 So. 340 (1923); *Bryant v. Askin Finance Co.*, 146 S. C. 520, 144 S. E. 231 (1928). But *cf. Hutchins v. Jones Piano Co.*, 209 Iowa 431, 228 N. W. 281 (1929) (employer's independent act, not filing of assignment held proximate cause of discharge); and see *Haines v. M. S. Welker & Co.*, 182 Iowa 431, 165 N. W. 1207 (1918).

28. This does not include 14 assignments given to secure usurious loans. It is not clear that these assignments are unenforceable in Illinois. The Illinois Appellate Court has held that the wage assignment may be enforced only to the amount of the principal due. *Samuel v. Coles*, 203 Ill. App. 358 (1917). It does not appear that the assignor contended before the Appellate Court that the assignment was entirely unenforceable. It may be that since enactment of the Illinois Small Loans Law, usurious loans will be held unenforceable as to both principal and interest. This was held in *Raming v. Peysner*, 259

50.48% were unenforceable because since their execution the assignor had entered upon a new employment. In the remaining 43.09% the supposed assignor had not executed the assignment; he had been the victim of one of the several transactions which recur with stereotypical regularity in the records of these cases. His wife (or a friend) had purchased the goods and, upon request, had signed his name either without any intimation that she was signing her husband's name to a note with confession of judgment clause and to a wage assignment, or consciously forging his name to these instruments. The latter practice is delicately encouraged by a few dealers who allow the purchaser to take the note and wage assignment out of the store and to return them with the name of a co-signer filled in. In some cases it was discovered that the purchaser had merely given the supposed assignor's name as reference. When the dealer had failed to collect from the purchaser, he had sent a "notice of assignment" to the employer of the person given as reference. The latter would then call to obtain a release and the dealer would demand that he force the purchaser to pay, or that he himself pay. In a few instances the dealer assured the complainant of his willingness to release his wages and asked the complainant to sign a "release" which proved to be an assignment of his wages. These cases generally involve a small group of instalment sellers of furniture, jewelry, clothing and radios.²⁹

Most of the wage-assignment cases handled by the Legal Aid involve complaints against the practices of instalment sellers. Three hundred forty-three, or 83.22%, of the 412 cases involved such creditors.³⁰ Fifty-two per cent of these assignments were determined to be invalid. Only 20 licensed lenders were involved. The amounts owed them ranged from \$19 to \$425; the average was \$97.77, the median \$67. Forty per cent of the assignments filed by them were invalid. In fourteen cases complaint was made against unlicensed lenders. The remaining fifty-five were scattered among discount companies, collection agencies, purveyors of educational courses, and a well-known Rent-a-Car company.³¹

Ill. App. 152 (1930). In this event, the assignment would fail. The Illinois law, however, declares only that the making of such loans is "unlawful." ILL. REV. STAT. (Smith-Hurd, 1931) c. 74, § 13.

29. Information as to these practices was also obtained from the files of the Chicago Better Business Bureau.

30. The articles purchased from these creditors were as follows: clothing, 128; radios, 87; furniture, 78; jewelry, 27; miscellaneous, 23. The amount owed ranged from \$4.50 to \$625. The average was \$90.79, the median, \$59.89.

31. A Chicago company operating similarly to the Morris Plan Banks does not take wage assignments. Credit unions do, however, but seldom use them and then only as authority to the employer, of whose organization they are

III

One cannot sweepingly condemn employers for honoring invalid wage assignments and thereby abetting an abuse when the problem is considered from the employer's standpoint. From this point of view, the tendency to handle the torrent of wage assignments in a manner which is least expensive to the employer and least likely to involve him in litigation is comprehensible, and one can well understand the eagerness of Chicago employers for the success of Armour's attempt to prevent its employees' assigning their wages.

Comprehensive information was obtained from the records of 3 companies in Chicago: a street-railway, an afternoon newspaper, and Armour and Co., meat packers. The type of employee is different in each of these. The typical street-railway employee is a man slightly beyond middle age, probably of foreign birth, barely literate, and possessed of a large family. His income is from \$35 to \$45 a week, but it has lately decreased because of lay-offs. The newspaper employees are of three types: Printers and pressmen—generally native-born, substantial citizens; they are highly unionized and their wage for a full week's work is \$55 to \$70; nevertheless, in 1932 (as in 1931) their union membership was not an unmixed blessing to the employed, since they had to contribute a substantial tithe to the union for relief of its unemployed. Drivers (workers in circulation department)—these, too, are unionized, but their income is considerably lower; they are generally younger men and racially heterogeneous. Office—stenographers and reporters. The employees of Armour here concerned are laborers in its plants, generally unskilled. Office employees at Armour, as at the street-railway company, are comparatively untroubled by wage assignments.³² That they are widely used by them is undoubtedly true, but a necessary inference is that the white-collar employee is generally more successful in budgeting his income and appeasing his creditors. Armour's plant employees are to a large extent negroes; their average wage is less than \$100 a month.

The Street Railway

Information from this company was obtained for the period from January 31, 1928 to August 1, 1932. The average number of employees, including 328 persons employed in its general office, was 17,327. An average of 3,407 wage assignments were filed with the

a part, to pay them part of the assignor's wages. Cf. CLARE, FINANCING THE CONSUMER (1930) 95-96.

32. This was generally reported by the companies interviewed. But cf. the Afternoon Newspaper, *infra*.

company each year.³³ Only 463 "demands in garnishment"³⁴ were served upon the company yearly.³⁵ For the year 1930, the wages of 1890 out of its 17,450 employees were at least once detained because a creditor had filed with the company notice that he held an assignment of wages. In other words, at least one wage assignment was filed against one out of every 9.02 employees.³⁶ A majority of these, 1313, were only once affected by the filing of an assignment; assignments were filed against one employee 22 times, against ten, 10 times in the course of the year.³⁷ In some cases, a release was procured on the same day the notice of assignment was filed; but the number of days from the filing of the assignment until a release was obtained ranged upward to 198. The average was 13.17, the median 1.7.

In 1931, the wages of 1698 employees, or one out of every 10.1, were held because of the filing of a wage assignment. Against one individual, 16 assignments were filed in the course of the year; against 10, 9 assignments were filed; but 1170, a large majority, were affected only once.³⁸ Here again, some of the assignments were released

33. Year by year, the number of assignments and "demands in garnishment" was as follows:

<i>Year</i>	<i>Wage Assignments</i>	<i>Garnishments</i>
Ending January 31, 1929	3,648	490
Ending January 31, 1930	3,359	438
Ending January 31, 1931	3,631	481
Ending January 31, 1932	2,993	444
January 31 to August 10, 1932	1,592	—

34. See note 17, *supra*.

35. There is some evidence that this company charges its employees \$3 each time it must enter a court appearance to answer a summons in garnishment. No employer was found which charged its employees a fee for handling wage assignments. In the early Rhode Island case of *Tiernay v. McGarity*, *supra* note 1, an assignee of wages asserted that the employer of the assignor charged its employees 3% of their wages for accepting and agreeing to pay under an assignment. A Minnesota statute, after requiring the employer's written consent as a condition of an assignment's validity, provides that any employer charging a fee for collecting under an assignment is guilty of a misdemeanor. This probably applies to fees charged an employee as well as a creditor. MINN. STAT. (Mason, 1927) § 4136.

36. On July 29, 1932, 4 days after pay day, assignments had been filed against the wages of 149 of the 3000 employees of the Chicago elevated railway company. Assignments are filed in greatest numbers a few days before pay day.

37. In 1930, the wages of 281 employees were twice detained because assignment had been filed; of 103, 3 times; of 60, 4 times; of 38, 5 times; of 20, 6 times; of 22, 7 times; 15, 8 times; 10, 9 times; 10, 10 times; 5, 11 times; 2, 12 times; 6, 13 times; 2, 15 times; 1, 16 times; 1, 17 times; 1, 22 times.

38. In 1931, 2 assignments were filed against 225 employees; 3, against 121; 4, against 72; 5, against 36; 6, against 25; 7, against 15; 8, against 5; 9,

the very day they were filed; others were in force for longer periods, the extreme being 317 days. The average was 16.01; the median, 8.³⁹

Despite the evidence here adduced of creditors' difficulty in securing voluntary payment from this company's employees, the latter are considered a profitable field for the operations of retailers and loan companies. They are inundated with easy-credit literature, distributed in large part by newly-established loan and instalment companies, allured by their numbers and relative stability of employment. The types of creditors filing wage assignments, and the percentage filed by each are set forth in the following table.

Year	PERCENTAGE OF WAGE ASSIGNMENTS FILED			
	Retailers	Licensed Loan Cos.	Unlicensed Lenders	Others
1930	59.44	27.37	6.57	6.62
1931	54.70	27.01	8.20	10.19
1932 (to Aug. 10)	56.04	25.96	4.90 ⁴⁰	13.10

The policy of this company with reference to discharge because of wage assignments, garnishments or both is typical. The announced rule is that three "wage tie-ups" are ground for dismissal. Had this policy been strictly enforced, 296 of the company's employees would have been discharged because 3 or more assignments were filed against them in 1930 alone;⁴¹ 303, because of assignments filed in 1931.⁴² As a matter of fact, however, the rule is invoked only when for other reasons the discharge of the employee is desired. If traffic has fallen off, invocation of the rule is a convenient method of displacing employees and at the same time making a disciplinary gesture. If the individual concerned is a new employee, he may be discharged because of frequent filings against him. Thus it happens that a man may be dismissed from his position because of his creditors' filing assignments plus the incidence of unfavorable business conditions, and thereafter be discharged from each new employment because the same wage assignments have again been filed against him.

against 10; 10, against 6; 11, against 6; 12, against 2; 13, against 1; 14, against 2; 15, against 1; 16, against 1.

39. In 1932, an employee obtained release of his wages which had been held because of assignment for 2 years and 34 days.

40. This drop in the number of assignments filed by unlicensed lenders is in part due to the effect upon the profession of the company's refusal to honor the assignments of two most notorious lenders, and in part to the District Attorney's campaign against "loan sharks" in the winter of 1931.

41. See note 37, *supra*.

42. See note 38, *supra*.

The Afternoon Newspaper

In the period of 16 months for which records were available—from October, 1929 to February, 1931—203 wage assignments were filed with this company, or roughly, 152.4 a year.⁴³ Forty-nine “demands in garnishment” were made upon the company, or 36 a year.⁴⁴ Approximately 1800 persons were in its employ: 1200, in the plant and circulation departments (printers, pressmen and drivers); 600, in the office. Of the total number of assignments, 45.32% were filed against plant and circulation employees; 27.58%, against office help. In proportion to the number of persons employed in the respective departments, wage assignments were filed more frequently against office employees. The reasons for this highly unusual situation cannot be found; persons in the trade suggest the improvidence of newspapermen. No information could be obtained as to the salary paid this group. Releases were procured in some cases the same day the assignment was filed; the pay of one employee was held by the company, as it accrued, for 198 days. In terms of an average, wages were held on assignment for 5.75 days; the median was 3.

Most of the assignments were filed by retailers.⁴⁵

% of total assignments filed	CREDITORS			
	<i>Retailers</i>	<i>Licensed Loan Cos.</i>	<i>Unlicensed Lenders</i>	<i>Miscellaneous</i>
	63.05 ⁴⁶	26.65	1.47	8.83

43. For comparison with the Afternoon Newspaper data is the following information. During the year 1930, 179 wage assignments and 24 “demands in garnishment” were filed with a Chicago printing and publishing establishment which employs 2466 persons. The amounts demanded ranged from \$1.25 to \$1,650, the average being \$80.21. 70.14% were filed by instalment sellers; 21.59% by licensed loan companies; 2.48% by the employee’s bank; and the rest by miscellaneous claimants. It was stated frankly that all assignments are honored, with no attempt to discriminate between valid and invalid claims.

A Chicago morning newspaper, during the week ending July 30, 1932, received 21 notices to hold the wages of employees for the use of their assignees. This company employs about 2500 persons.

44. 11 of these were served by the bank operating upon a “Morris Plan” referred to *supra*, note 31; 9 by individuals; 6 by landlords; 5 by discount companies; 4 by industrial banks; 4 by doctors; 3 by licensed loan companies; 3 by retailers; 3 by collection agencies; and 1 by an unlicensed lender.

45. Retailers filed 60.86% of the assignments filed against plant employees, and 57.14% of those filed against the office force; licensed loan companies filed 30.43% of the assignments against plant employees, 26.43% of those against office employees; unlicensed lenders filed 2.15% of the assignments against plant employees, and none against office help. A miscellaneous group of creditors including discount companies and collection agencies filed the remaining 6.56% against plant, 16.43% against office employees.

46. 51% of the retailers were dealers in clothing; 23%, furniture; 12%, jewelry; 9%, radio; 5%, scattered.

A sample of 80 of the 128 assignments filed by retailers reveals that the amounts claimed ranged from \$1.35 to \$504.10. The average was \$56.93, the median \$32. Amounts claimed by licensed lenders were available in 49 of the 54 cases. They ranged from \$10 to \$365, the average being \$104.61, the median, \$75.

This company has no official policy of discharging employees because of frequent filing of assignments against them. A highly intelligent solicitude for its employees is displayed; and if an employee complains that an assignment has been unjustly filed, careful and effective inquiry is made. Where the creditor's claim is of doubtful merit, he is asked to send a certified copy of the assignment for examination. The comparatively small number of assignments handled makes specific inquiry possible; officials who are extremely group-conscious and unusually well-informed in the technicalities of wage assignment law make it effective. An Employees' Bank⁴⁷ and a recently organized Credit Union⁴⁸ are in operation, sponsored by the company.

Armour and Company

Only about 106 wage assignments are filed against Armour's 1392 office employees each year. The specific data hereafter discussed concern only its 5,380 plant workers. A large majority of the assignments were filed by retailers. The income of Armour's employees is so low as to place them, by and large, outside the field of operation of the licensed loan companies.⁴⁹ Negro laborers, furthermore, are

47. This organization makes loans for a period of several days or a week or two on single name paper. It takes wage assignments, but seldom, it is claimed, needs to seek collection from the employer. It charges a fee of 1% a week.

48. The company's credit union was organized in about September, 1931. The employees are said to be unwilling to dissolve the Employee's Bank because of familiarity with its procedure and the ease of obtaining a short term loan from it.

As of June 30, 1932, there were 345 members of the Credit Union. The share account was \$5,540. \$5,472 was outstanding in 107 loans. The average amount of these was \$51.04; they ranged from \$8 to \$250. 25 of these loans were, so the borrowers stated, to meet taxes, insurance, or mortgage payment; 23, for medical care or funeral expenses; 12, to pay other debts; 9, for automobile expenses; 5, for rent; 5, to pay outstanding balances on former Credit Union or Employee's Bank loans; 2, for furniture and clothing; 2, to assist relatives of the borrower; 2 of the loans were procured expressly to obtain release of wage assignments; in 10, the reason was not stated, and the 12 remaining were for miscellaneous purposes.

49. The licensed lenders seem to be of the opinion that the rate of interest to which they are restricted, 3½% per month on unpaid balances, makes it unprofitable to make loans of below, say, \$75. Comparison of the average amount

not considered a fair risk by money lenders. Retailers, instalment sellers, on the other hand, apparently feel that the probability of loss is offset by the probability of collection plus a liberal profit margin.

<i>Period</i>	PERCENTAGE OF WAGE ASSIGNMENTS FILED			
	<i>Retailers</i>	<i>Licensed Loan Cos.</i>	<i>Unlicensed Lenders</i>	<i>Miscellaneous</i>
1932 (to July 1)	76.57	2.35	1.21	9.87
1930	77.43	1.77	1.10	9.70

No distinction was made in the records of the company between wage assignments and "demands in garnishments" until 1929. Information as to their numbers is set out in the following table.⁵⁰

<i>Period</i>	WAGE ASSIGNMENTS AND GARNISHMENTS		<i>Total</i>
	<i>Wage Assignments</i>	<i>Garnishments</i>	
1932 (to July 1)	2715	69	2784
1931	3390	385	3775
1930	1641 ⁵¹	507	2148
1929	2540	287	2827
1928			2809
1927			2779
1926			1878
1925			1585
1924			1480
1923			1243
12/1/21 to 12/31/22			973
1920			597
1919			636

It is true that a great number of these assignments were, at least during the years from 1930 when a displacement of labor was proceeding, filed against persons not in Armour's employ at the time of

owed licensed and unlicensed lenders by the debtors described in the early part of this article brings home the fact that the two are not competitors, but operate in different spheres.

50. No information could be obtained as to the number of employees for the years before 1932.

51. The drop in the number of assignments in 1930 was a result of Armour's refusing to honor assignments on the strength of its contract with its employees, heretofore described. Immediately the Illinois Supreme Court on June 19, 1931 decided that this contract was of no effect against an assignee, there was a tremendous leap in the number of assignments filed. 2,083 were filed for the five months, July through November, 1931; more than the entire number filed in 1930. In May, 1931, 143 assignments were filed; 188 in June; 616 in July; 408 in August; 319 in September; 416 in October; and 324 in November.

filing.⁵² Even these, however, involved clerical attention and entailed a risk of litigation if through inadvertence they were erroneously dishonored.

A high-salaried man in the personnel department devotes his entire time to wage assignments and garnishments against the company's plant employees. Two young attorneys spend part of their time assisting him. The wage assignment must be recorded in a permanent book and notices to detain wages must be sent to cashier and paymaster; the employee must be informed by whom his wages are claimed; releases must be received and notices thereof sent to cashier and paymaster. If the employee complains that his wages are unjustly claimed, the creditor is telephoned. This is considered a service to the employee (as indeed it may be in view of the unlikelihood of suit by the employee), not a protection to the company against the employee's suit if his wages are paid the creditor on an unjustified claim or an invalid assignment,⁵³ and the creditor's word is generally accepted.⁵⁴

IV.

In the light of the foregoing, Armour's attempt to prevent its employees' assigning their wages without the company's consent can

52. See note 22, *supra*.

53. There are five credit unions in the Armour organization in Chicago and one in South Chicago. In its plant credit union, the membership is 964. As of June 1, 1932, its share account was \$24,733.70; 1,370 loans had been made since its organization, February 18, 1931, and a total of \$79,537.25 had been loaned. As of July 26, 1932, 527 loans were outstanding. A sample of 100 showed a range in the amount borrowed from \$5 to \$343; an average of \$73.90. 34 loans were, the borrowers stated, to pay for medical care and funeral expenses; 24 for coal, rent, gas and electric, or groceries; 13 for taxes, assessments, insurance, and mortgage obligations; 7 were to help relatives or friends; 6, for clothing and furniture; 16, for miscellaneous purposes.

The borrower assigns his shares as security, as well as his interest in the Employee's Pension Fund. No wage assignments are taken, but if the borrower is delinquent, the Timekeeper, who serves as a Credit Union official, will deduct from his pay check.

54 The records of a railroad, the central offices and shops of which are in and around Chicago, showed that in 1930, 1472 wage assignments had been filed against its employees; 1198 in 1932. It employs 30,000 to 35,000 persons. The stated rule of this and 4 other railroads interviewed is that 3 garnishments or wage assignments against an employee would cause his discharge. The writer was informed, however, that this rule is seldom enforced; that its intended value is to induce employees to curb the nuisance of wage tie-ups.

During the year 1931, 1,727 wage assignments were filed against the approximately 26,000 Chicago employees of a telephone company. This is the only one of the companies employing a great many persons which frequently makes payments directly to the creditors of its employees. The company maintains a fund from which loans are made to its employees.

well be understood. But acquiescence on the part of the principal users of assignments, instalment sellers, was not to be expected. In February, 1929, the State Street Furniture Co. had taken an assignment of the wages of Willie Stevens, a negro laborer in Armour's employ. In March, 1929, and again in August, the furniture company served upon Armour written notice of this assignment, stating that \$38 was due it. On the strength of the agreement into which all of Armour's employees, including Stevens, had entered, and of which the State Street Furniture Co. had been given written notice, Armour refused to pay Stevens' wages to his assignee. Suit was brought in the Chicago Municipal Court.

The case, the Illinois Supreme Court later said, was "of great importance to all mercantile firms which sell goods on the instalment plan."⁵⁵ Spurred by notice from four other companies, that contracts like Armour's had been signed by their employees and that wage assignments would no longer be honored,⁵⁶ instalment sellers of "clothing, ready-to-wear, furniture, jewelry, house-utilities, and a number of department store managers" met with an official of a local Retail Credit Association. Some of the department stores were reluctant to "come forward with assistance in fighting for the retention of the wage assignment." Nineteen such firms were interviewed by the sponsors of the "fight." According to a local retailer's newspaper, their refusal to help was due to a nice gentility as well as to a measure of disinterest. "Their lack of cooperation was attributed partly to the fact that they do not wish to be known as wage assignment houses and partly to the fact that wage assignments, which in some cases were taken, have practically never been used."⁵⁷ Nevertheless, the \$3,500 campaign fund was raised, and the State Street Furniture Co. won its case in all courts.⁵⁸

"The issues in this case," said the Illinois Supreme Court,⁵⁹ "do not require the determination" of questions of "public policy." The "general right of an employee to assign his wages as security for a

55. *State Street Furniture Co. v. Armour & Co.*, 345 Ill. 160, 162, 177 N. E. 702, 703 (1931).

56. See note 3, *supra*.

57. It is true that some retailers and one licensed loan company regularly take assignments of wages, but seldom file them with the employer. This is a result of the first reason given by the quoted department stores: namely, that these companies "do not wish to be known as wage assignment houses." Generally, however, it does not follow that because wage assignments have practically never been filed, they have "practically never been used." Reference to their power in notices sent to delinquent debtors is probably not without effect.

58. The source of the information in this paragraph is *Women's Wear Daily*, April 5, 1930, at 3.

59. *Supra* note 55.

debt has long been recognized.”⁶⁰ Since “here the assignment is of the entire claim”, it is not necessary to have the consent of the employer.⁶¹ Therefore, “the withholding of consent cannot make the assignment void.” And a contract making the validity of an assignment conditional upon such consent is “not binding upon the assignee, who was not a party to the agreement.”⁶² Besides these general principles, the court felt compelled by its prior decision in *Massie v. Cessna*⁶³ in which the court had held unconstitutional an act of the Illinois Legislature, passed in 1905, regulating the assignment of salary and wages.⁶⁴

But it is not clear that either the decision in *Massie v. Cessna* or general legal principles can furnish a proper premise for the court's conclusion. Prior to the present case, *Massie v. Cessna* had been cited only as holding that regulation of assignments of *salary as well as wages* is not a proper exercise of the police power.⁶⁵ And law

60. *Supra* note 1.

61. If the assignment is of only part of the claim and if the employer has not consented to the assignment, he may successfully interpose this as a defense to an action at law. *Chicago, B. & Q. Rr. v. Provolt*, 42 Colo. 103, 93 Pac. 1126 (1908); *Central Ry. v. Dover*, 1 Ga. App. 240, 57 S. E. 1002 (1907); *Cincinnati, H. & D. Ry. v. Lima Ry. Supply Co.*, 27 Ohio Civ. 807 (1905); *Jermyn v. Moffitt*, 75 Pa. St. 399 (1874). A partial assignment is enforceable “in equity,” i.e., in a proceeding where “all having collectively a right to entire performance” may be joined. RESTATEMENT OF CONTRACTS (A. L. I. 1932) § 156; *Graham v. Southern Ry. Co.*, 173 Ga. 573, 161 S. E. 125 (1931); cf. *Lowenthal v. Fairfax Loan & Investment Co.*, 163 S. E. 514 (Ga. Ct. App. 1932).

Where a statute provides that only 50% of the wages is collectible under an assignment, an assignment of 50% has been held enforceable at law as an assignment of all the law permits. *American Laundry Machinery Co. v. Daneman*, 27 Ohio App. 103, 160 N. E. 867 (1927). It has been held otherwise in Massachusetts under a statute exempting three-fourths of the wages. *Gilman v. Raymond*, *supra* note 16.

62. An Iowa statute relating to wage assignments provides that an assignment is valid despite the fact that “the terms of an instrument” prohibit its assignment. It is likely that the statute was addressed to “non-transferable” labor tickets. It has been held that assignment of tickets so marked does not give the assignee a right against the employer. *Sperry & Hutchinson Co. v. Siegel-Cooper & Co.*, 309 Ill. 193, 140 N. E. 864 (1923); *Tabler & Co. v. Sheffield Land, Iron & Coal Co.*, 79 Ala. 377 (1885); *Barringer v. Bee Line Construction Co.*, 23 Okl. 131, 99 Pac. 775 (1909).

63. 239 Ill. 352, 88 N. E. 152 (1909). See Blake, *The Validity of Laws Regulating Wage Assignments* (1911) 5 ILL. L. REV. 343.

64. In *Wabash Rr. Co. v. Smith*, 134 Ill. App. 574 (1907), the Illinois Appellate Court held that a contract between employer and employee prohibiting assignment of wages without stipulating that they be void, was inoperative against an assignee. A New York court has recently so decided, but the opinion by Untermyer, J., states at length that if the agreement had provided that claims for salary were not assignable, the assignee could not recover. *Sacks v. Neptune Meter Co.*, 258 N. Y. Supp. 254 (Sup. Ct. 1932).

65. “The statute now under consideration is invalid because it violates the provision of our constitution which has been invoked by limiting the right of

review commentators⁶⁶ have pointed out that according to the law of assignment of contract rights as stated by two previous Illinois decisions,⁶⁷ and by Professor Williston⁶⁸ and the Restatement,⁶⁹ restriction of assignability in the contract creating the right is effective against an assignee.^{69a}

The fact that the case is "technically inconsistent" with decisions relating to the assignment of contract rights other than rights to future wages is not unique in wage assignment decisions. Generally, however, the "variation" has occurred in cases in which the power to assign future earnings was restricted.⁷⁰ For example, the Restatement⁷¹ and Professor Williston⁷² state as the "technically accurate rule" that an assignment of future wages entitles the assignee to such wages despite the intervention of the assignor's bankruptcy. Professor Williston states that an assignment of future earnings

persons earning the higher salaries to assign or transfer their salaries in such manner as they see fit, there being nothing . . . requiring or warranting a statute giving to such persons the benefit that might with entire propriety be given to wage earners by an act in reference to the assignment of their wages." 239 Ill. 352, 361, 88 N. E. 152, 155 (1909) (italics supplied). In *People v. Stokes*, 281 Ill. 159, 171, 118 N. E. 87 (1917), the Illinois Small Loans Law was held constitutional despite the fact that its wage assignment limitation applied to both salary and wages. The objection in *Massie v. Cessna* to regulating assignments of salary was held to be obviated by a limitation of the Small Loans Law to transactions involving no more than \$300. See also *Snite v. Chicago & E. I. Ry. Co.*, 247 Ill. App. 118 (1927); *Speilberger Bros. v. Brandes*, 3 Ala. App. 590, 58 So. 75 (1912); *Heller v. Lutz*, 254 Mo. 704, 164 S. W. 123 (1913); *Fay v. Bankers Surety Co.*, 125 Minn. 211, 214, 146 N. W. 359, 361 (1914); *Wright v. B. & O. Ry. Co.*, 146 Md. 66, 125 Atl. 881 (1924); *State v. Sherman*, 18 Wyo. 169, 192, 105 Pac. 299, 306 (1909); *Juhan v. State*, 86 Tex. Crim. 63, 65, 66, 216 S. W. 873, 874, 875 (1918); *Murphy v. County of St. Louis*, 244 N. W. 335, 336 (Minn. 1932).

66. Notes (1932) 45 HARV. L. REV. 581; (1932) 26 ILL. L. REV. 800. The case is also discussed in Note (1932) 41 YALE L. J. 464; Comment (1932) 31 MICH. L. REV. 236.

67. *Mueller v. Northwestern University*, 195 Ill. 236, 63 N. E. 110 (1902); *Sperry & Hutchinson Co. v. Siegel, Cooper & Co.*, 309 Ill. 193, 140 N. E. 864 (1923).

68. WILLISTON, CONTRACTS (1925) § 422.

69. RESTATEMENT OF CONTRACTS (A. L. I. 1932) § 151 (c).

69a. The most recent article on the general subject of restriction of assignments is Grismore, *Effect of a Restriction on Assignment in a Contract* (1933) 31 MICH. L. REV. 299.

70. Professor Williston states, for example, that the limit to a man's power to assign future debts set by the rule that it cannot be validly exercised if no contract has yet been formed (see note 16, *supra*, for a more complete statement of this rule), is an arbitrary one. *Op. cit. supra* note 68, § 414.

71. RESTATEMENT OF CONTRACTS (A. L. I. 1932) § 154 and especially, Illustration 4 to Subsection 1.

72. *Op. cit. supra* note 68, § 414.

operates to give the assignee "authority or power to collect," and as "an implied agreement on the assignor's part not to revoke this power." Nothing can here be found which "can be called a provable claim, and a discharge in bankruptcy is applicable only to provable claims." Nevertheless, only Illinois,⁷³ Massachusetts,⁷⁴ and possibly Texas⁷⁵ have enforced this rule. In the federal courts⁷⁶ and in five state courts,⁷⁷ the contrary result is reached.^{77a} It is held that no lien arises in favor of an assignee of future wages until the wages are earned; no lien as to wages earned subsequent to adjudication exists, therefore, at the time of adjudication. Since the debt is provable in bankruptcy, and since no lien can arise "ancillary" thereto if the debtor obtains his discharge, the assignee has no claim to wages earned after adjudication.⁷⁸ So convincing was this second sequence of propositions to one federal court that it declared its regret that the "purpose and effect" of the Bankruptcy Act made the result

73. *The Monarch Discount Co. v. The Chesapeake & Ohio Ry. Co.*; *Mallin v. Wenham*; *Wabash Rr. Co. v. Meyer*, all *supra* note 15.

74. *Citizens Loan Ass'n v. Boston & M. Rr.*, 196 Mass. 528, 82 N. E. 696 (1907); Note (1908) 14 L. R. A. (n.s.) 1025. In *Mitchell v. Leland*, 190 Mass. 258, 76 N. E. 670 (1906), it was held that, although the creditor might have enforced his assignment, he could not hold the assignor personally liable, bankruptcy intervening.

75. *Leslie v. Roberts*, 32 S. W. (2d) 873 (Tex. Civ. App. 1930) (employer deposited money in court. Held, assignee entitled in preference to assignor).

76. *Seaboard Small Loan Co. v. Ottinger*, 50 F. (2d) 856 (C. C. A. 4th, 1931); *In re West*, 128 Fed. 205 (D. Ore. 1904); *In re Karns*, 148 Fed. 143 (S. D. Ohio 1905); *In re Ludeke*, 171 Fed. 292 (E. D. N. Y. 1909); *In re Home Discount Co.*, 147 Fed. 538 (N. D. Ala. 1906); *In re Lineberry*, 183 Fed. 338 (N. D. Ala. 1910); *In re Voorhees*, 41 F. (2d) 81 (N. D. Ohio 1930); *In re Fellows*, 43 F. (2d) 122 (N. D. Okla., 1930); *In re Potts*, 54 F. (2d) 144 (D. Idaho 1931).

77. *Levi v. Loewenhart*, 138 Ky. 133, 127 S. W. 748 (1910); *Leitch v. No. Pac. Ry. Co.*, 95 Minn. 35, 103 N. W. 704 (1905); *Rate v. American Smelting & Refining Co.*, 56 Mont. 277, 184 Pac. 478 (1919); *Hupp v. Union Pacific Rr. Co.*, 99 Neb. 654, 157 N. W. 343 (1916); *Rowe v. Public Finance Co.*, 37 Ohio App. 13, 174 N. E. 164 (1930), discussed in Comment (1932) 27 ILL. L. REV. 60 (disapproving the case in favor of the Illinois view); Notes (1931) 5 So. CALIF. L. REV. 159; (1931) 74 A. L. R. 900.

77a. As stated above, a federal court in Illinois has recently enjoined the filing of a wage assignment or suit thereupon, the assignor having filed a petition in bankruptcy. The bankrupt claimed that he was accommodation co-signer on a note given for the loan of \$230 from a licensed loan company, and that he had paid \$370 in interest, leaving intact the principal of \$230 and accrued interest. He listed assets of \$100 and only the liability to the loan company. *Chicago Daily News*, January 31, 1933.

Whether this injunction would be sustained on appeal is conjectural, in view of the Illinois position that a wage assignment creates a lien which is not affected by bankruptcy. Cf. BANKRUPTCY ACT, § 67 (d).

78. See particularly, *Seaboard Small Loan Co. v. Ottinger*, *supra* note 76.

inexorable despite the "undesirable" limitation upon the wage earner's borrowing power which it entailed.⁷⁹

By and large, however, it is accurate to say with Professor Williston that it is the court's conception of the "hardship of the case" which has induced its decision on marginal points of wage assignment law.⁸⁰ But unhappily there are different conceptions of the "hardship of the case." Some courts have felt that the hardship of a pledge of future earnings is such that a man's power to incur it should be circumscribed.⁸¹ Others, like the Illinois Appellate Court in the *State Street* case, have been impelled by the contentions that restricting the wage earner's power to assign his future earnings would inflict a hardship upon creditors, who desire to collect easily and with a maximum of certainty; that it would limit the wage earner's ability to secure credit and would thus be an injustice to him.⁸²

The doubts and misgivings which the latter position raises are many; the questions suggested by the propositions upon which it relies are complex.

Solicitude for creditors may well be manifested by insuring the orderly collection of receivables properly acquired in the extension of deserved credit. Is it solicitous of the creditor group to encourage, by permitting the pledging of future income, the extension of present credit on the scale which the Chicago material indicates? The risks to be considered are overloading beyond any possibility of payment; and the paralysis of future purchasing power by the dead hand of past commitments.

79. *In re Voorhees*, *supra* note 76.

80. *Loc. cit. supra* note 72.

81. Pennsylvania courts in particular have expressed this attitude in no uncertain language. "A man cannot sell himself into slavery." *Lehigh Valley Rr. v. Woodring*, 116 Pa. St. 513, 9 Atl. 58 (1887). In *Foster's Application*, 23 Pa. Dist. 558 (1914), the court declared unconstitutional a statute regulating the assignment of future wages on the ground that it was an attempt to authorize such assignments. It is beyond the limit of freedom of contract, the court said (p. 564), "when a man's future labor is pledged to pay his past debts, with the consequence that he and his family are rendered liable to fall from the status of free citizenship into the degradation of pauperism." *Cf. Cooper v. Douglass*, 44 Barb. 409 (N. Y. 1864).

The disadvantage to the employer in reducing the employee's incentive to labor has also been observed. See, *e.g.*, *Gardner v. Hoeg*, 35 Mass. 168 (1836). In a case involving a public official the effect upon the employer of an assignment of future wages was said to be like "paying for a dead horse." *Kaminsky v. Good*, 124 Ore. 618, 623, 265 Pac. 786, 788 (1928).

82. See, *e.g.*, *In re Voorhees*, *supra* note 76; GALLERT, HILBORN, AND MAY, *SMALL LOAN LEGISLATION* (1932) 190.

Without doubt the wage earner's opportunity to secure credit should be safe-guarded. But the pertinent issue is to what extent should it be protected; how much and what sort of credit extension should he be encouraged or permitted to obtain? If it is true, as is to be supposed, that there is a positive correlation between the facility and certainty of permissible security and collection devices, and the willingness to extend and power to procure credit, the relation of a particular device to the quantity and character of credit extended on its strength is a pertinent issue. The conclusion which the writer hazards is that credit extended because of the power with which wage assignments invest creditors is credit which the wage earner should not be given or the creditor extend. If repossession, attachment, garnishment, and levy of execution do not justify credit extension, no credit should be granted. True enough, the prohibition of wage assignments may restrict the volume of credit extended to wage and salary earners. But it is believed that such restriction will, if anything, tend to bring the volume of credit in closer accord with an optimum based on ability to pay. In the light of existing conditions commonly observed and specifically indicated by the Chicago study, it is not the expansion of credit which needs encouragement, but its restriction and rationalization, from the standpoint of both creditor and debtor. If, along with the effect of wage assignments upon credit volume, are considered the abuses which they abet and their psychological impact upon the assignor, the conclusion seems justified that they should be prohibited. Assuming the existence of a case of dire and pressing necessity for goods or a loan of money, justification of the use of wage assignments because of it requires the assertion of several doubtful propositions: that although the person is gainfully employed, credit would not be procured without an assignment of wages; that the extension of credit to the individual in such a case is as important as preventing his overreaching (a condition which his inability to obtain credit without assignment indicates) with its attendant financial and psychological hardships, and the creditor's overloading him; that provision for such a case justifies the general permission of assignments of future wages.

Statutory enactments by the legislatures of many states have clearly indicated a policy which measurably accords with this position. In 39 states there are statutes in some manner regulating wage assignments.⁸³ In Missouri, all assignments of wages, salary

83. Idaho, Kansas, Mississippi, North Dakota, Oklahoma, South Carolina, South Dakota, Washington and the District of Columbia have no statutory provisions relating to wage assignments. The Nevada statute declares only that an assignment of wages by a person against whom there is outstanding an

or earnings not earned at the date of assignment are void.⁸⁴ Statutes in Pennsylvania,⁸⁵ Indiana⁸⁶ and Ohio⁸⁷ provide similarly as to the earnings of employees of designated types of employers who are required to pay their employees at stated intervals. In most states, however, regulation rather than prohibition has been deemed adequate. In 19 states wage assignments are regulated only when given in connection with small loans.⁸⁸ In 15 others there are

unsatisfied judgment shall be conclusive evidence of fraud of creditors. NEV. COMP. LAWS (Hillyer, 1929) § 1550.

84. MO. REV. STAT. (1929) § 2171. The same provision is in its Small Loans Law. *Id.* § 5560. The former was held constitutional, as a proper exercise of the police power in *Heller v. Lutz*, 254 Mo. 704, 164 S. W. 123 (1913).

85. PA. STAT. (Purdon, 1931) title 43, § 271. In a case presenting only the issue of the validity of the part of this statute relating to the invalidation of agreements between employer and employee relieving the former from the statutory duty to pay wages in cash, a lower court held the act unconstitutional. *Showalter v. Ehlan*, 5 Pa. Super. Ct. 242 (1897).

86. IND. ANN. STAT. (Burns, 1926) § 9352. Held constitutional in *International Text Book Co. v. Weissinger*, 160 Ind. 349, 65 N. E. 521 (1902); *Chicago & E. Rr. Co. v. Ebersole*, 87 N. E. 1090 (Ind. 1909). See its Wage Broker Law, *infra* note 89. See also the Georgia statutes, note 88, *infra*.

87. OHIO CODE (Supp. 1931) § 12946 (1) (2) (applying to employees of firms etc. employing more than 5 persons).

88. ARIZ. REV. CODE (Struckmeyer, 1928) § 2012 (like Uniform Small Loans Law provision; loan must be contracted or renewed simultaneously with execution; assignment must be in writing signed by borrower and consented to by spouse; 10% of wages collectible); DEL. LAWS (1927) c. 208 (written consent of employer required); FLA. GEN. LAWS (1927) § 4014 (like Arizona); GA. CODE ANN. (Michie, 1928) § 3465 (assignment of future wages to secure loan is void; held constitutional, *Central Ry. v. Dover*, 1 Ga. App. 240, 57 S. E. 1102 (1907), but *cf. Id.* § 1770 (provision like Arizona in Small Loans Law; probably licensees may take assignments, but assignments by other lenders will be void under § 3465); ILL. REV. STAT. (Smith-Hurd, 1931) c. 74, § 16 (like Arizona, but 50% collectible); act held constitutional, *People v. Stokes*, *supra* note 65, see also *Id.* c. 32, §§ 351, 353 (Wage Loan Corporation Act, hereafter discussed); KY. STAT. (Carroll, 1930) § 4758a-1 *et seq.* (consent of employer; limited to 90 days); LA. STAT. (Marr's Supp., 1926) p. 1033, ACTS (Extra Session, 1928) no. 7, § 16 (consent in writing of employer and wife); MICH. COMP. LAWS (1929) § 12214 (like Arizona); MONT. REV. CODE (Choate, 1921) § 4176 (only assignment of wages theretofore earned valid); NEB. COMP. STAT. (1929) § 36-203 (executed and acknowledged by borrower and wife), *Id.* § 45-120 (consent of wife); N. J. STAT. SERVICE (1932) § 35-37 (like Arizona); N. Y. CONSOL. LAWS (Cahill, 1930) c. 3, § 347 (like Arizona); *Id.* c. 42, § 42 (must file copy with employer within 3 days after execution; probably applies to all except licensees under Small Loans Act who are governed by c. 3, § 347); held constitutional, *Thompson v. Erie Rr. Co.*, 207 N. Y. 171, 100 N. E. 791 (1912), see also *Id.* c. 32, § 197 (assignment to relieve employer from duty of paying wages as provided void) and *Id.* c. 26, § 86-a (assignment of salary of municipal employees shall not prevent payment directly to employee); N. C. CODE (1931) § 4509 (misdemeanor to charge more than 6% upon loan upon assignment or sale of wages); ORE. CODE (1931) § 22-2606 (assignment to secure loan at more than

special statutes applying to assignments to secure loans in addition to statutes regulating wage assignments generally.⁸⁰ Of this group of 34, Missouri⁹⁰ and Montana⁹¹ provide that an assignment of unearned wages or salary to secure a loan is void. Sixteen of these states have provisions applying to licensees under their Small Loans Laws, modeled upon the Uniform Law which requires as condition of the assignment's validity that the amount of the loan be paid the borrower simultaneously with the execution of the assignment; that the assignment be in writing signed in person.⁹²

10% interest must recite loan was executed in conformity with Small Loans Act); TEX. STAT. (Vernon, 1928) § 6165a (wife must join or separately acknowledge); UTAH COMP. LAWS (1917) § 4385 (consent of wife); VA. CODE (1930) (like Arizona); W. VA. CODE (1931) c. 47, art. 7, § 16 (like Arizona), see also *Id.* c. 21, art. 5 § 3 and c. 49, art. 4, § 5; WYO. REV. STAT. (1931) §§ 8-101, 8-102 (written acceptance of employer and recordation and consent of wife).

89. The laws of these jurisdictions relative to assignments in connection with loans are here listed. ARK. DIG. STAT. (Crawford & Moses, 1919) § 7133 (acceptance of employer and recordation); COLO. ANN. STAT. (Courtright's Mills, 1930) § 7754 (Wage Broker Law: assignment limited to wages earned in period not exceeding 30 days; wife's consent), *Id.* § 5008d (Small Loans Law: loan must be contracted simultaneously; assignment must be in writing signed by borrower and consented to by spouse; 10% of wages collectible); CONN. GEN. STAT. (1930) § 4080 (like Colorado Small Loans Law); IND. ANN. STAT. (Burns, 1926) § 9357 (like Colorado Wage Broker Law); IOWA CODE (1931) §§ 9427, 9428 (like Colorado Small Loans Law); ME. STAT. (1930) c. 57, § 154 (writing signed in person by borrower and wife and to secure debt contracted simultaneously); MASS. GEN. LAWS (1932) c. 140, §§ 107, 108; c. 154, § 2 (acceptance of employer and recorded; must be in standard form and exempt \$10 a week of the wages or salary; see *Mutual Loan Co. v. Martell*, 222 U. S. 225 (1911), 200 Mass. 482, 86 N. E. 916 (1909)); MD. ANN. CODE (1924) art. 58a (like Colorado Small Loans Law); MINN. STAT. (Mason, 1927) § 4136 (consent of employer; wife must join; void if assignment for more than 60 days; held constitutional, *Fay v. Bankers Surety Co.*; *Murphy v. County of St. Louis*, both *supra* note 65); MO. REV. STAT. (1929) (assignments of unearned wages or salary void); OHIO CODE (Supp. 1931) §§ 6346-11, 6346-12 (writing signed by borrower; consent of wife; limited to 25% of wages of married, 50% of wages of unmarried person); PA. STAT. (Purdon, 1931) tit. 43, § 273 (acceptance of employer; consent of wife); R. I. ACTS (1923) pp. 30-31 (like Colorado Small Loans Law); TENN. CODE (Shannon, 1932) §§ 6738, 6739 (like Colorado Small Loans Law), held constitutional, *West v. Jefferson Woolen Mills*, 147 Tenn. 100, 245 S. W. 542 (1922); WIS. STAT. (1931) (like Colorado Small Loans Law). For an elaborate collection of relevant cases, see GALLERT etc., *op. cit. supra* note 82, at 179 *et seq.*

90. *Supra* note 89. Missouri's statute applying to assignments of future wages for any purpose was held constitutional in *Heller v. Lutz supra* note 65.

91. *Supra* note 88.

92. There is evidence that enterprising merchants and money lenders have procured an employee to be invested with notary powers. Some statutes expressly provide that an acknowledgment may not be taken by the assignee or

by the borrower and wife; and further prescribes that only 10% of the borrower's compensation shall be collectible from the employer, from the time that a verified copy of the assignment and statement of the amount unpaid is served upon the employer.⁹³ Seven states require that the employer's written consent must be obtained in order that the assignment be valid.⁹⁴ This provision in all probability amounts to a virtual prohibition of assignments, since the employee will be unwilling to ask the employer's consent and the employer unwilling to give it.⁹⁵

Only twenty states⁹⁶ have statutes relating to wage assignments other than in connection with loans.⁹⁷ Of these states, only 7, besides the 4 declaring them void,⁹⁸ effectively restrict the use of wage assignments. Alabama has enacted a statute declaring that all assignments of future wages are void, except that wages to be earned within 30 days may be assigned to secure a purchase of necessities.⁹⁹ California provides similarly, except that no time limit is prescribed.¹⁰⁰ Five states provide that no assignment of future earnings is valid unless assented to in writing by the employer.¹⁰¹ Four states¹⁰² require that a copy of the assignment

his employee. See COLO. ANN. STAT. (Courtright's Mills, 1930) § 7756; IND. ANN. STAT. (Burns, 1926) § 9359; MONT. REV. CODE (Choate, 1921) § 4178.

93. Arizona, Colorado, Connecticut, Florida, Georgia, Illinois (50% collectible), Indiana, Iowa, Maryland, New Jersey, New York, Rhode Island, Tennessee, Virginia, West Virginia, Wisconsin. See *supra* notes 88, 89.

94. Arkansas, Delaware, Louisiana, Massachusetts, Minnesota, Pennsylvania, Wyoming. See *supra*, notes 88, 89.

95. See Smith, *The History and Purpose of the Wage Assignment Statutes* (1920) 5 MASS. L. Q. 479.

96. In addition to these 20, Vermont provides that an assignment of future wages, to be valid against trustee process, must be to secure simultaneously or previously contracted debt, or debt for necessities and recorded. VT. GEN. LAWS (1917) § 1946. In Maine, for the assignment to be valid against others than the parties thereto, it must be recorded. ME. STAT. (1930) c. 123, § 9.

97. In *Missouri Pacific Rr. Co. v. Warren*, 162 Ark. 199, 258 S. W. 130 (1924) it was held that a statute restricting wage assignments in connection with loans did not apply to a wage assignment to secure a purchase of goods.

98. Missouri, Pennsylvania, Indiana, Ohio (the last 3 applying only to designated employee-groups). See *supra* notes 84-87.

99. ALA. CODE (Michie, 1928) §§ 9232, 9233.

100. CAL. CIV. CODE (Deering, 1931).

101. LA. STAT. (Wolff, 1920) p. 2110, MASS. GEN. LAWS (1932) c. 154, §§ 3, 4 (and $\frac{3}{4}$ of weekly earnings exempt); MINN. STAT. (Mason, 1927) §§ 4185, 4186 (and assignability limited to wages to be earned not more than 60 days after execution); N. H. PUB. LAWS (1928) c. 327, § 3 (and recorded); TENN. CODE (Shannon, 1932) § 8562.

102. CONN. GEN. STAT. (1930) § 4706 (within one month); MD. ANN. CODE (Bagby, 1924) art. 8, § 11 (within 3 days) (assignability limited to wages to be earned not more than 60 days after execution); N. MEX. STAT. ANN. (1929)

be served upon the employer within a specified time of its execution.¹⁰³ Statutes in 5 states require only the written consent of the wife or recordation, or both.¹⁰⁴

The emphasis upon the loan aspect of the wage assignment problem has an apparent explanation. Wage assignments were early used, so far as the reported cases indicate, to secure merchants who advanced supplies to textile workers, to sea-farers, to lumberjacks, etc., and to their families in their absence.¹⁰⁵ But later and before their widespread use by instalment sellers, they became a characteristic part of the "loan shark" business.¹⁰⁶ The critical attention directed to the operations of high-rate lenders incidentally revealed the part that wage assignments played in their operations and legislative attempts were made to curb their use. This experience was carried over to the drafting of Small Loans Laws, and wage assignments taken by licensees were subjected to regulation. But despite the fact that under the usual Small Loans Law, and in some jurisdictions by special statutes, a usurious debt to an unlicensed lender is void as to both principal and interest and therefore the wage assignment securing the obligation is unenforceable, the lender is still able to induce a few courts to enforce his assignment by casting the transaction in the form of a sale of wages. Statutes in 20 states make this palpable evasion impossible by expressly providing that a "sale of wages" shall be subject to the regulations provided for assignments of wages.¹⁰⁷

§ 8-101; R. I. GEN. LAWS (1923) (assignability of future wages limited to 1 year; recordation).

103. This requirement is intended to lessen the importance of the wage assignment as a threat. The threat of notifying the employer is, of course, unavailable after the employer has been notified. See GALLERT, etc., *op. cit. supra* note 82, at 194.

104. ARK. DIG. STAT. (Carroll, 1919) § 7134; COLO. ANN. STAT. (Court-right's Mills, 1930) §§ 7747-7749 (and not valid against creditor without notice, actual or from recordation); IOWA CODE (1931) §§ 9454, 9455 (and acknowledged); NEB. COMP. STAT. (1929) § 36-203; WIS. STAT. (1931) § 241.09 (assignability limited to 2 months).

105. See GALLERT etc., *op. cit. supra* note 82, at 184 *et seq.* This book contains an analysis and collection of wage assignment legislation and cases. *Id.* at 179 *et seq.* and *passim*.

106. See McCrea, *Small Finance and the Wage Earner* (1909) 17 YALE REV. 432; for a description of the operation of a "loan shark salary buyer," see Cotton v. Cooper, 160 S. W. 597 (Tex. Civ. App. 1913).

Prior to the passage of the Small Loans Law, Chicago, it is said, was the "happy hunting ground" for the "loan shark" operating in violation of usury laws. Eubank, *op. cit. infra* note 113; CLARK, *op. cit. supra* note 31, at 39.

107. Independently of statute, it is generally held that a "sale" of wages is a loan secured by the assignment thereof. See GALLERT etc., *op. cit. supra* note 82, *passim*, and especially the chapter on "Purchase of Wages as a Loan." *Id.* at 218 *et seq.*

The Chicago material clearly reveals that, in Illinois at least, it is of urgent importance that wage assignment regulation include instalment sales. A recent investigation in New York city,¹⁰⁸ conducted by the Russell Sage Foundation, similarly discloses the inadequacy of the New York legislation which applies only to money lenders,¹⁰⁹ and a bill has been prepared limiting to 10% the amount collectible under an assignment of future wages and providing that concurrent levies may not be made upon a single payment of compensation for services.

Attempts have been made in Illinois to procure the enactment of statutes regulating generally the assignment of future wages. In 1905 a statute was enacted requiring that an assignment of wages or salary be in writing signed and acknowledged in person by the assignor and spouse, and that a copy be served upon the employer within three days.¹¹⁰ This statute was held invalid in *Massie v. Cessna*, heretofore discussed.¹¹¹ At least two bills have been proposed but not enacted in the last few years prescribing similar requirements and attempting to avoid the holding in the *Cessna* case by restricting their application to wages. At the present time there exist two relevant statutes in Illinois which the courts have upheld. In 1913, an act was passed authorizing the incorporation of semi-philanthropic Wage Loan Corporations.¹¹² These were to lend money, not to exceed \$250 to any one person, charging therefor a maximum rate of 3% per month. The dividends of such corporations were limited to 6%; the governor and the mayor were each to appoint a director. No limitation was placed upon the amount

108. In the December, 1932, issue of the North Carolina Law Review, the necessity for wage assignment legislation in North Carolina is discussed. Banks, *Proposals for Legislation in North Carolina* (1932) 11 N. CAR. L. REV. 51, 74 *et seq.*

109. The following information was given the writer by Mr. Rolf Nugent of the Russell Sage Foundation: Eight employers in New York City reported for 1931 about 1900 wage assignments filed against their 105,000 employees. One large utility company reported an increase in the number of assignments filed from 39 in 1928 to 137 for the first 11½ months of 1931.

"Some 60 merchants in New York City are using wage assignments as security for instalment sales. . . . But four credit jewelry merchants, one radio shop and one furniture store filed nearly half of the assignments received by several employers. Almost without exception [the report reads] the employees whose wages had been assigned to these six merchants complained that they thought they were signing a receipt."

110. ILL. STAT. (Hurd, 1908) p. 176.

111. *Supra* note 63.

112. ILL. REV. STAT. (Smith-Hurd, 1931) c. 32, §§ 348-360. Held constitutional in *The Monarch Discount Company v. The Chesapeake & Ohio Ry. Co.*, 285 Ill. 233, 120 N. E. 743 (1918).

collectible under an assignment of wages. During only a few years immediately succeeding the enactment of the bill, however, were Wage Loan Corporations organized.¹¹³ It is possible that the lapse of interest in semi-philanthropic loan corporations was in part occasioned by the passage in 1917 of an act modeled upon the first draft of the Uniform Small Loans Law.¹¹⁴ Licensees under this act could lend not over \$300 to any one person, and could charge 3½% per month on unpaid balances. Wage assignments taken by licensees were declared invalid unless in writing signed by the borrower and to secure an existing debt or one simultaneously contracted. Fifty per cent of the assignor's future wages could be collected from the employer. The Wage Loan Corporation Act no longer attracted capital; nor could corporations organized under it compete in advertising and collecting ability with the managing geni of the Small Loan companies, many of whom had received their training in the highly competitive field of unlicensed lending which existed in Chicago before 1917.

It seems doubtful that any restriction short of prohibition will cure the ills wage assignments have propagated in Chicago, so integral a part do they play in its consumer credit business. Requirements like that of the Illinois Small Loan Law will not be of great value. Limitation of the amount collectible to 50% of the assignor's wages is a merely negative provision if, as the Chicago study showed, creditors rarely claim more than a fraction of the wages, and if the amount which the creditor collects is determined not by the legal effect of the assignment, but by negotiation between debtor and creditor. It is true that the bargaining position of the parties is somewhat affected by the legal import of the documents the debtor has executed. But generally the debtor is ignorant of their legal effect and the creditor not unwilling to take advantage of his ignorance. A more serious deficiency of statutory limitation of the amount collectible, no matter how drastic, is that it leaves intact the creditor's threat that he will file the assignment and that his action will induce the employee's discharge. Requiring that the assignment be in writing and executed by the borrower¹¹⁵ is merely an edict against oral assignments; insisting upon

113. No corporation is now operating in Illinois under the Wage Loan Corporation Act. It is stated that one such corporation had as one of its main objectives the defense of borrowers against "loan sharks," and that from November 1913 to June 1916, it made 2,004 settlements with lenders. Eubank, *Loan Sharks and Loan Legislation in Illinois* (1917) 8 J. CRIM. L. AND CRIM. 69.

114. ILL. REV. STAT. (Smith-Hurd, 1931) c. 74, §§ 13 *et seq.* Held constitutional in *People v. Stokes*, *supra* note 65.

115. The Illinois statute does not require that the assignment be executed *in person* by the borrower, as do most of the statutes previously cited. Such

the wife's consent may confine within reasonable limits the use of wage assignments for the benefit of mistresses, but beyond that its value depends upon an obsolescent conception of the wife's providence.¹¹⁶

But, primarily, the vice of wage assignments inheres not in their execution or legal import, but in the facile informality of the procedure by which they may be procured and invoked and in their utility as instruments of moral persuasion. An informal and speedy procedure for collecting small debts is desirable, to be sure; but it requires the administration of an agency interested in the equities of both debtor and creditor. It cannot be entrusted to the unwilling hands of a disinterested party, the employer.¹¹⁷ Nor does it seem feasible to add to the creditor's arsenal of threats the assertion, well-founded in fact, that, without having to invoke the slightest action of court machinery, he can require the employer to assist in the collection of his obligation and so easily invite the debtor's discharge.

Formality of execution by acknowledgment and recordation seems hardly a sufficient restraint upon the creditor's power. So far as it restricts the use of assignments it is effective. But where wage assignments are taken in the volume which many Chicago firms maintain, the services of a notary are readily procurable.¹¹⁸ Recordation in gross may be a simple process, the debtor paying the charges. But prohibition of assignments of future salary and wages, allowing garnishment, attachment, and levy of execution as the exclusive means of reaching an employee's wages or salary, seems clearly desirable. The unproved possibility of a consequent curtailment of the wage earner's credit is an unconvincing argument in opposition. It is equally applicable to exemption statutes. The pertinent issue would seem to be the extent

provision probably invalidates an assignment executed by attorney. Even in its absence, however, a power of attorney cannot make possible the assignment of wages earned in an employment not existing when the power was executed. *Stromberg, Allen & Co. v. Hill*, 170 Ill. App. 323 (1912); *Blakeslee v. Make-Man Tablet Co.*, 175 Ill. App. 515 (1912); *Richards v. Chicago, R. I. & P. Ry. Co.*, 100 Neb. 505, 160 N. W. 892 (1916); *Cox v. Hughes*, 10 Cal. App. 553, 102 Pac. 956 (1909); *Lehigh Valley Rr. v. Woodring*, 116 Pa. 513, 9 Atl. 58 (1887).

In *Snite v. Chicago and E. I. Ry. Co.*, 247 Ill. App. 118 (1927) it was held that although two assignments had been executed (one by the licensee pursuant to power of attorney) only 50% of the wages could be collected, as provided by the Illinois Small Loans Law.

116. The utility of requiring that a copy of the assignment be served upon the employer within a short time after execution has already been stated. *Supra* note 103.

117. See *Sturges and Cooper, Credit Administration and Wage Earner Bankruptcies* (1933) 42 YALE L. J. 487, 518-525.

118. See note 92, *supra*.

to which his credit opportunities are curtailed. As has heretofore been indicated, it is highly doubtful that, in an age where the enterprising force in trade is the seller and not the buyer, merchants or money lenders will refuse credit to a man who is solvent and gainfully employed, content to rely upon the articulated policy of the state expressed in its garnishment and exemption statutes where reliance upon legal process is necessary. It is not convincing, moreover, to insist that the possibility of credit curtailment which the prohibition of the assignment of future wages may entail should prohibit such a measure. That a considerable limitation of the credit now extended would be desirable for both creditor and debtor, measured by present ability to pay, seems a warranted conclusion. From the point of view of the creditor community, furthermore, wage assignments are insidious means of obtaining preferences. Intelligent credit management is difficult where a previous assignment of wages, with or without notice to the employer, as the local rule may be, entitles the assignee to a prior claim to the fund from which all creditors expect payment.^{118a} From the debtor's viewpoint, the possible effect of wage assignments upon the stability of his employment and the powerful bludgeon they afford his creditors counterbalance the doubtful propositions that their prohibition would curtail his credit opportunities and that such curtailment would be disadvantageous.

That this prohibition be by statutory declaration that assignments of future wages are null and void, as in the states heretofore listed, is not essential. Virtually the same result may as well be achieved by requiring the employer's written consent as a condition of their validity.¹¹⁹ Nor should accomplishment of the desired end by contract between employer and employee be disapproved, as in the *State Street* case. Even if it be admitted that the source of such a contract is to be found in the employer's desire to cast off the burden of handling wage assignments, the contract should not be condemned as oppressive of the employee when in fact it is not. In the factual setting of wage assignments in Chicago, there is no place for

118a. See Sturges and Cooper, *op. cit. supra* note 117, elaborating this proposition.

119. The effectiveness of the Massachusetts wage assignment law which requires the employer's consent is asserted in *Reports of the Directors and Counsel of the Boston Legal Aid Society for 1915-16* (1927) 2 MASS. L. Q. 314, 320. But in Smith, *The History and Purpose of the Wage Assignment Statutes* (1920) 5 MASS. L. Q. 479, the requirement that the employer must consent is assailed as a limitation on the employee's borrowing power. Asking the employer's permission to assign, it is asserted, "runs counter to the instinct of most men." Before enactment of its present statutes, the Legal Aid report indicates, Massachusetts had apparently been faced with a plethora of assignments and their attendant evils.

the principles that the employee may not deprive himself by contract of the "liberty and property right" in "contracting for the disposal of his wages,"¹²⁰ or that the employer should not be allowed to force such a contract upon his employees.¹²¹

120. *State Street Furniture Co. v. Armour & Co.*, *supra* note 55, at 703.

121. See Notes (1932) 45 HARV. L. REV. 581; (1932) 41 YALE L. J. 464; (1932) 26 ILL. L. REV. 800, 802.