

JUDGMENTS—ATTACHMENTS AND GARNISHMENTS—U.S. DISTRICT COURT OF ARIZONA FINDS GARNISHMENT RESTRICTIONS IN TITLE III OF CONSUMER CREDIT PROTECTION ACT INAPPLICABLE TO WAGES DEPOSITED IN BANK ACCOUNT—*Dunlop v. First Nat'l Bank of Arizona*, 399 F.Supp 855 (D. Ariz. 1975).

INTRODUCTION

In 1968, pursuant to the bankruptcy<sup>1</sup> and commerce<sup>2</sup> powers, Congress passed Title III of the Consumer Credit Protection Act (C.C.P.A.).<sup>3</sup> The general purpose of that act was to exempt from garnishment<sup>4</sup> seventy-five percent of the earnings of an employee for any one work week.<sup>5</sup>

In *Dunlop v. First Nat'l Bank of Arizona*,<sup>6</sup> the United States District Court for the District of Arizona found that the garnishment provisions of Title III of the C.C.P.A. do not exempt funds held by a bank in its depositors' accounts,<sup>7</sup> and that a garnishee bank is under no duty to contest garnishment proceedings against such funds.<sup>8</sup> This decision overrules previously issued opinion letters of the Department of Labor, which would extend Title III protection to such funds on the theory that they retain their character as earnings even after deposit in an account.<sup>9</sup> The immediate result of this decision, subject to the vagaries of state

1. U.S. CONST. art. I, § 8.

2. *Id.*

3. 15 U.S.C. §§ 1671-77 (1970).

4. 15 U.S.C. § 1672(C) provides:

The term 'garnishment' means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

5. *Id.* § 1673:

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any work week which is subjected to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage . . . in effect at the time the earnings are payable, whichever is less. . . . *Id.*

6. 399 F. Supp. 855 (D. Ariz. 1975), *appeal docketed*, No. 75-3763, 9th Cir., [hereinafter cited as *Dunlop*].

7. *Id.* at 857.

8. *Id.* at 858. While the court decided this issue, it did so via dicta only, and will not be analyzed in this note.

9. Opinion Letter of August 3, 1972 [1969-1973 Transfer Binder] CCH LAB. L. REP. ¶ 30,805 at 42,257.

law,<sup>10</sup> will be to provide creditors with an unprotected source of earnings from which to satisfy amounts owed them by debtors.

### FACTS AND HOLDINGS

This controversy finds its origins in a 1971 divorce action entitled *Hill v. Hill*,<sup>11</sup> which resulted in a decree of divorce, and a judgment for alimony and attorney's fees against the defendant, Joseph H. Hill. Pursuant to that judgment, the First National Bank of Arizona was served with a writ of garnishment<sup>12</sup> against Hill's bank account, demanding the sum of \$463.10, plus interest.<sup>13</sup>

The bank answered as to its indebtedness to Hill, received a copy of the garnishment judgment entered upon the writ, and, pursuant to the court judgment, issued a cashier's check in satisfaction of that garnishment judgment against it.<sup>14</sup> In response the Secretary of Labor, acting under the authority delegated him by the C.C.P.A.,<sup>15</sup> brought this action alleging that the bank had violated Title III of the C.C.P.A. with respect to the garnishment of earnings in Hill's checking account, and seeking an injunction against any further violations of the act by the defendant bank.<sup>16</sup>

The court in *Dunlop* was faced with a single, important issue of first impression: does the statutory restriction on garnishment in Title III of the C.C.P.A. apply to funds after they leave the hands of an employer and are deposited in a checking account with a financial institution?<sup>17</sup> Answering in the negative, the court found that neither the legislative history of the C.C.P.A., nor its statutory scheme, nor the decided case law could permit application of Title III to financial institutions.<sup>18</sup> Instead, the court held that, while

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10. While the court denies any Title III application to earnings after their deposit in a bank account, the decision is not finally dispositive of this issue, since 15 U.S.C. § 1677 would allow state garnishment provisions that are more restrictive than Title III to remain in force. See also the treatment of the Alaska wage exemption statute ALAS. STAT. § 09.35.080(1) (1973) in *Miller v. Monrean*, 507 P.2d 771 (Alas. 1973), discussed in the conclusion of this article.

11. Cause No. D. 122147 (Super. Ct. of Maricopa County, Ariz., 1971).

12. See ARIZ. REV. STAT. ANN. §§ 12-1573, 1574(A), 1578(A), 1584, 1585, 1586, 1589, 1592 for the applicable Arizona procedural rules on garnishment.

13. Motion for Summary Judgment for Defendant at 2, *Dunlop*.

14. *Id.*

15. 15 U.S.C. § 1676 (1970).

16. Cross motion for Summary Judgment for Plaintiff at 2, *Dunlop*.

17. *Dunlop* at 855-56.

18. *Id.* at 856-57.

Subchapters I<sup>19</sup> and III<sup>20</sup> are specifically addressed to problem areas within which financial institutions have a role to play, the purpose of Subchapter II<sup>21</sup> is to govern the relationship between employers and employees, and is aimed at "the evils that befall that relationship when wages are garnished."<sup>22</sup> The court found there was "not the slightest hint in the wording of 15 U.S.C. §§ 1671-1677 that the subchapter should be applied to financial institutions,"<sup>23</sup> and refused to "read into the act language and intent that are not present therein."<sup>24</sup>

### STATUTORY DEVELOPMENT

Prior to the enactment of the C.C.P.A., garnishment laws were left to the discretion of the individual states.<sup>25</sup> While the garnishment process could be viewed as applying to any property or debt in the hands of a third party (garnishee) and owed to the debtor-defendant,<sup>26</sup> its normal application is to wages held by an employer on behalf of an employee.<sup>27</sup> In the context of the employer-employee relationship, garnishment would have an employer pay over some or all of his employee's salary to a creditor of that employee.<sup>28</sup>

Where state laws placed strict limits on the amount of an employee's wages subject to garnishment, the result was probably a fair balance between society's concern in insuring that legitimate debts be paid, and its concern that the collection tools it sanctions do not cause undue distress and hardship.<sup>29</sup> However, in states where the garnishment laws were harsh, with little or no exemption allowed to the employee, the results were strikingly different.<sup>30</sup> Indeed, harsh wage garnishment has been cited as a major cause of

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19. 15 U.S.C. §§ 1601-66j (Supp. IV, 1974).

20. 15 U.S.C. §§ 1681-1681t (1970).

21. 15 U.S.C. §§ 1671-1677 (1970) [cited elsewhere in text as Title III].

22. *Dunlop* at 856.

23. *Id.*

24. *Id.* at 857.

25. See, e.g., Moran, *Relief for the Wage Earner: Regulation of Garnishment Under Title III of the Consumer Credit Protection Act*, 12 B.C. IND. & COM. L. REV. 101, 102 (1970) [hereinafter cited as *Moran*].

26. BLACK'S LAW DICTIONARY 810 (Rev. 4th ed. 1968).

27. Belsheim, *Wage Garnishment in Nebraska*, 51 NEB. L. REV. 63, 65 (1971).

28. *Id.*

29. Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CAL. L. REV. 1214, 1215 (1965) [hereinafter cited as *Brunn*]; see also *Moran* at 107 for an example of the effects of strict garnishment laws on the level of personal bankruptcies.

30. *Moran* at 107.

the riots of 1968, suicides, the dismissal of workers from their jobs, and bankruptcies.<sup>31</sup> It is the latter two of these results that were of concern to Congress.

Bankruptcy and loss of employment are two interrelated notions *vis-à-vis* the garnishment process.<sup>32</sup> When wages in the hands of an employer are garnished, the employer is forced to endure a number of inconveniences and expenses. He is often required to retain counsel, to file written answers, and to make court appearances. Further, in order to comply with the court order, payroll and accounting adjustments must often be made. Because of these burdens, the employers often chose to forego these expenses by discharging the employee.<sup>33</sup>

The desire to file bankruptcy stems from the fact that the bankruptcy discharges the employee's debts, thus eliminating the possibility of garnishment to satisfy these obligations. This in turn "appeases the harrassed employer and provides the debtor with an opportunity to retain his employment."<sup>34</sup> In response to these problems, and to the special urging of President Johnson who underscored the desperate need for this legislation to combat the ill effects of harsh wage garnishment laws,<sup>35</sup> Congress began work on the C.C.P.A.

Convinced of the causal connection between the unrestricted garnishment of compensation and the high level of personal bankruptcy in the United States,<sup>36</sup> and desirous of discouraging the predatory extension of credit to wage earners who were persuaded

31. Comment, *The Effect of the Garnishment Provisions of the Consumer Protection Act Upon State Garnishment Laws*, 9 HOUSTON L. REV. 537, 539 (1972).

32. Note, *Wage Garnishment Under the Consumer Credit Protection Act: An Examination of the Effects on Existing State Law*, 12 WM. & MARY L. REV. 357, 358-9 (1970).

33. Note, *Garnishment Under the Consumer Credit Protection Act on Existing State Law, and the Uniform Commercial Credit Code*, 38 U. CIN. L. REV. 338, 347 (1969).

34. *Id.* at 350.

35. 2 U.S. CODE CONG. & ADMIN. NEWS 1968 at p. 1966:

Hundreds of workers among the poor lose their jobs or most of their wages each year as a result of garnishment proceedings. In many cases, wages are garnished by unscrupulous merchants and lenders whose practices trap the unwilling workers.

*I am directing the Attorney General, in consultation with the Secretary of Labor, to make a comprehensive study of the problems of wage garnishment and to recommend the steps that should be taken to protect the hard-earned wages and the jobs of those who need the income most.* *Id.*

36. *Id.* at 1978; see also Brunn at 1236, where as a result of empirical studies the following data was discovered:

to buy goods they could not afford,<sup>37</sup> Congress enacted the C.C.P.A. in 1968, to become effective in July of 1970.

### ANALYSIS OF CASE

In its own review of the legislative history of the C.C.P.A., the court in *Dunlop* could discover no mention of "financial institutions" in reference to the Title III restrictions on garnishment.<sup>38</sup> This was considered "all the more revealing in light of the fact that the House subcommittee which held the hearings and reported out this subchapter was a subcommittee of the House Banking and Currency Committee."<sup>39</sup>

The court's analysis here could be criticized, if at all, only for too severely understating Congress' seemingly singular concern with the wage earner-debtor *vis-à-vis* the employment relationship.<sup>40</sup> While Congress recognized that "the need to restrict gar-

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#### States Having the Highest and Lowest per capita Bankruptcy Rates, 1962

| State      | No. of Filings per 100,000 population | State                | No. of Filings per 100,000 population |
|------------|---------------------------------------|----------------------|---------------------------------------|
| Alabama    | 279                                   | North Carolina       | 1                                     |
| Oregon     | 200                                   | Texas                | 2                                     |
| Tennessee  | 184                                   | South Carolina       | 3                                     |
| Maine      | 153                                   | Pennsylvania         | 4                                     |
| Georgia    | 149                                   | Maryland             | 5                                     |
| Arizona    | 147                                   | Florida              | 7                                     |
| California | 145                                   | Delaware             | 10                                    |
| Illinois   | 134                                   | South Dakota         | 11                                    |
| Ohio       | 132                                   | New Jersey           | 12                                    |
| Colorado   | 131                                   | Alaska               | 13                                    |
|            |                                       | District of Columbia | 13                                    |

Of the states in the high group only Illinois has an exemption as high as 85 per cent. . . . The states in the low group all had very high or one hundred per cent exemptions, except Maryland and in that state the use of garnishment is limited. *Id.* at 1236-37.

*Id.* at 1236-37.

37. Note, *Wage Garnishment Under the Consumer Credit Protection Act*, 12 WM. & MARY L. REV. 357, 361-62 (1970).

38. *Dunlop* at 856.

39. *Id.* The significance of this seems to derive from the inference that, had Congress intended Title III to apply to funds in bank accounts, such an application would at least have merited *some discussion* by a Congressional Subcommittee with such particular expertise in and concern for the area of financial institutions.

40. Not only is there no reference to the application of Title III to financial institutions in the legislative history, but throughout the legislative history Congress expressed concern that the employee be protected, within the context of the employment relationship, from being fired because of a garnishment of his wages, and from having so much of his wages withheld as to make the employees very survival difficult. *See generally* U.S. CODE CONG. & ADMIN. NEWS 1968 at p. 1962.

Nor is it insignificant that Congress' major concern in passing the

nishment is simply that the wage earner must have the protection and use of his salary",<sup>41</sup> there is nothing discoverable in the legislative history that even hints at a Congressional intent to extend this protection beyond the employer-employee relationship. Rather, its emphasis seemed restricted solely to providing employee-debtors an opportunity to avoid bankruptcy and still retain their employment.<sup>42</sup> Given the entirety of the legislative history of Title III, it seems an unavoidable conclusion that Congress never consciously entertained extending the C.C.P.A.'s protection to funds held by a financial institution.

The court next reviewed the statutory scheme of Title III as that subchapter relates to the rest of the C.C.P.A. Noting that both Subchapters I and III either specifically or by reference bring financial institutions within their ambit,<sup>43</sup> the court applied the following test:

Where Congress has specifically used a term [in this case "financial institutions"] in certain places within the statute [Subchapters I and III] and excluded it in another [Subchapter II] the court should not read that term into the excluded section.<sup>44</sup>

In applying that test, the court rejected the Department of Labor's view that Congress omitted the term because it could not have been expected to enumerate all the different types of institutions within which an individual might deposit his paycheck.<sup>45</sup> The Department's argument loses much weight in the context of the overall statute, since in Subchapter I Congress not only mentioned financial institutions, but went into great detail as to what agency should regulate them.<sup>46</sup> "If Congress had intended Subchapter II to be so applied, at least the general term financial institutions would have been employed."<sup>47</sup>

The statutory scheme of Title III is not without ambiguity, as pointed out by the Department of Labor in reference to the words *paid or payable*, appearing in the statutory definition of "earn-

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C.C.P.A. was to reduce the level of personal bankruptcies in the United States which, it was felt, resulted from "honest debtors driven by economic desperation from plunging into bankruptcy in order to *preserve* their employment and insure a *continued* means of support for themselves and their families." *Id.* at 1979.

41. 114 CONG. REC. 1834 (1968) (remarks of Representative Gonzalez).

42. *See* note 40, *supra*.

43. *Dunlop* at 856.

44. *Id.*

45. *Id.* at 857 n.10.

46. *See* 15 U.S.C. §§ 1601, 1607 (1970), *as amended*, (Supp. IV 1974).

47. *Dunlop* at 857 n.10.

ings."<sup>48</sup> Similar language had been construed within the context of the Social Security Act in *Philpott v. Essex County Welfare Board*.<sup>49</sup> In that case the concern was whether benefits paid pursuant to the Social Security Act, and subsequently deposited in the petitioner's bank account, were subject to garnishment.<sup>50</sup> The act prohibited levy, garnishment or attachment of funds *paid or payable* under the Subchapter.<sup>51</sup> The court there disallowed the garnishment on grounds that these funds retained their exempt status even after deposit in the bank account.<sup>52</sup>

The court in *Dunlop* distinguished *Philpott* primarily on the basis of the different purposes of the two statutes involved. The Social Security Act "expressed a concern on the part of Congress to protect a given fund from all methods of attachment."<sup>53</sup> Subchapter II of the C.C.P.A., the court reasoned, was not intended to protect a given fund from garnishment, but only to regulate the garnishment process itself.<sup>54</sup>

While the court went no further in its analysis of the *paid or payable* dilemma, this language in Title III had previously been construed by the U.S. District Court in North Dakota in *Hodgson v. Christopher*.<sup>55</sup> That court treated the *paid or payable* language in an accounting sense for purposes of Title III's garnishment restrictions, and found that "regardless of whether the debtor-employee's wages remain accrued but unpaid [payable], or have been reduced to a payroll check [and thus paid], whenever they remain in possession of the employer, they are 'withheld' within the context of the Act."<sup>56</sup> While the decision admits of at least one definition of paid or payable beyond its generic one, the case is also significant within the context of the main issue in *Dunlop*. If

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48. 15 U.S.C. § 1672 (1970) provides in part:

For purposes of this subchapter;

(a) The term 'earnings' means compensation *paid or payable* for personal services, whether denominated as wages, salary, commission, bonus or otherwise, . . . (emphasis added).

49. 409 U.S. 413 (1973).

50. *Id.* at 416.

51. The section involved was 42 U.S.C. § 407 of the Social Security Act, which provided:

The right of any person to any future payment under this subchapter shall not be transferable or assignable . . . , and none of the moneys *paid or payable* . . . under this Title shall be subject to execution, levy, attachment, garnishment or other legal process. . . . (emphasis added).

52. 409 U.S. at 416.

53. *Dunlop* at 857.

54. *Id.*

55. 365 F. Supp. 583 (D.N.D. 1973).

56. *Id.* at 587.

garnishment in the C.C.P.A. is "any legal or equitable procedure through which the earnings of any individual are required to be *withheld* for payment of any debt,"<sup>57</sup> and if they may only be withheld within the meaning of the act when they remain in the hands of the employer,<sup>58</sup> then logically financial institutions could not fall within the ambit of Title III, since they are not employers of their depositors.

The court next turned to the Department of Labor's argument that it should defer to the administrative opinions of the Department construing the application of Title III as extending to wages after their deposit in a checking account. In two opinion letters, the Department asserted that earnings deposited in a bank account retain their limited exemption under Title III so long as they are capable of identification as such.<sup>59</sup> The Department reasoned that it would be contrary to the "express mandate of the Act to assume that when a debtor deposits his earnings for safekeeping in a bank . . . [they] are transformed into a [bank] credit to which the Act's restrictions do not apply."<sup>60</sup>

The court in *Dunlop* acknowledged that an administrative interpretation of a statute is entitled to some deference.<sup>61</sup> However, the magnitude of such deference varies with the circumstances in which that interpretation is made, and in the absence of a statute giving an administrator power to make legislative rules, such rulings at best offer guidance to the courts, whose task it is to finally interpret statutes.<sup>62</sup> The court in *Dunlop* declined to follow the Department's opinion because it was "not supported by any independent basis save the opinion of the Department."<sup>63</sup>

In *Brennan v. General Telephone Co. of Florida*,<sup>64</sup> the Fifth Circuit Court of Appeals was faced with a similar problem as

57. 15 U.S.C. § 1672(c) (1970) (emphasis added).

58. 365 F. Supp. at 587.

59. Opinion Letter of August 3, 1972 [1969-1973 Transfer Binder] CCH LAB. L. REP. ¶ 30,805 at 42,257.

60. *Id.*

61. *Dunlop* at 857.

62. See *Brennan v. General Tel. Co. of Florida*, 488 F.2d 157, 160 (5th Cir. 1973); *Dunlop* at 857; but see *Brennan v. Kroger Co.*, 513 F.2d 961 (7th Cir. 1975) where, in viewing another administrative opinion of the Department of Labor, this court held that:

Although it cannot be argued that an administrative interpretation of a statute is controlling, nonetheless the administrator's interpretation of [Title III] is entitled to great weight and should be followed unless there are compelling indications that it is wrong. *Id.* at 965.

63. *Dunlop* at 857.

64. 488 F.2d 157 (5th Cir. 1973).

to an administrative opinion. There, based on a number of factors,<sup>65</sup> the court declared that the Department opinion letter, while entitled to some deference, was not worthy of great weight, and such an opinion could not be followed where (presumably as in *Dunlop*) it is contrary to the meaning of the statute.<sup>66</sup> The court in *Dunlop* found that to accept the Department's opinion would in effect force the court to legislate into the statute language and intent not otherwise present, a result the court found itself unwilling to sanction.<sup>67</sup>

In rejecting the Department of Labor's position in *Dunlop*, the court only in passing considered the ramifications of a contrary result, noting that for the bank to comply with the subchapter would involve a "staggering" complexity of administrative red tape.<sup>68</sup> In order to meet the requirements of Title III, a garnishee

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65. *Id.* at 160.

An administrator's views merit great weight if there is special agency expertise and lack of court expertise, a reenactment of the statute in circumstances which indicate legislative approval [of the opinion], a longstanding interpretation, or an interpretation made at the time of the statute's enactment by administrators who were especially informed of the legislative intent (contemporaneous construction). *Id.*

In that case, however, the court found only one of these factors arguably present (contemporary construction), and concluded that an administrator's opinion issued in 1970 was too far removed in time to be considered contemporaneous with the 1968 enactment of Title III. *Id.*

Since the same facts are present in *Dunlop*, the court's determination that great weight not be accorded to the opinion letters seems correct.

66. *Id.*

67. *Dunlop* at 857.

68. *Id.* at 856 n.7; see also Plaintiff's Reply of Defendant's Cross-Motion for Summary Judgment at 13-18, *Dunlop*. The Department proposed a multi-step procedure for ascertainment of the exempt amounts in a debtor's bank account. Under this proposal, the bank would first contact the debtor depositor in order to discover, by way of the debtor's records, the source of funds or deposit (paycheck, etc.), the depositor's gross earnings, and the amount of deductions from earnings legally required (presumably ascertainable from the depositor's paycheck stubs). Then, the identity of funds actually on deposit at the time of garnishment proceeding would be determined by use of a First In, First Out accounting technique. Once having ascertained this, one could apply the formula of 15 U.S.C. § 1673 to achieve the amount that could legally be withheld from the depositor.

If this information were not satisfactorily gathered from the depositor, the Department would have the bank contact the depositor's employer or other third party source of earnings for further information and/or corroboration.

But even the Department acknowledged that exact calculation of the Title III garnishable amount may not be possible, and therefore would have the bank determine, as best it could from its known information, the amount of *identifiable earnings* in the account that is exempted under Title III, and then have the bank seek guidance and assistance from the issuing court with respect to all areas of uncertainty. *Id.*

bank would seemingly need to initiate a number of procedures for the gathering and storing of information not otherwise wholly relevant to commercial undertakings.<sup>69</sup> The end result would be, within the context of the record in *Dunlop* at least, that a financial institution would be forced to assume a new and serious administrative burden to achieve a calculation that would in the end likely be incorrect, or at least insufficient to meet the requirements of the Act.<sup>70</sup>

In contrast, when the requirements of Title III are aimed specifically at employers, the formula prescribed by Congress is reduced to a simple bookkeeping exercise. Employers generally have easily accessible records of an individual's gross earnings for any "work week"; they can quickly deduce the "legally required" withholdings, and via simple subtraction and multiplication can calculate "disposable earnings"<sup>71</sup> and the seventy-five per cent exemption allowable under Title III. In sum, the information and calculations required of a garnishee under Title III are fairly inexpensive and simple when applied to an employer. But for a garnishee financial institution, compliance would seem an expensive, difficult, and finally, largely hopeless venture.

Had Congress prohibited all garnishment of wages, as it did in reference to Social Security benefits,<sup>72</sup> application of Title III to bank accounts containing wages would seem reasonable, or at least supportable by precedent.<sup>73</sup> But where the exemp-

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69. See Response to Cross Motion for Summary Judgment for Defendant at 25, *Dunlop*, where it is pointed out that 800 or so of the bank's customers are garnished each year, and Appendix II, where the bank outlines the procedures it would need to follow in order to comply with Title III. While many of the procedures named would concededly apply to any garnishment or attachment of a bank account (identification of debtor's account, discovery of whether it is jointly held or not, etc.) the special calculations required under Title III as to gross earnings, legally required deductions, disposable earnings and the maximum allowable weekly garnishable amount would place a heavy *new* burden on a garnishee-bank. This new burden would be magnified in cases where, for example, joint accounts of two or more wage earners were involved. *Id.*

70. *Dunlop* at 856 n.7; see Response to Cross Motion for Summary Judgment for Defendant at 25-26, *Dunlop*, and Reply to Defendant's Response to Cross Motion for Summary Judgment for Plaintiff at 18 n.10(1), wherein it appears that after three years of litigation, neither the Plaintiff nor the Defendant could arrive at sufficient information to make the calculation required by Title III. *Id.*

71. Gross earnings — legally required withholdings = Disposable Earnings; see 15 U.S.C. § 1672(d) (1970).

72. 42 U.S.C. § 407 (1970); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413 (1973).

73. See *Porter v. Aetna Casualty and Surety Co.*, 370 U.S. 159 (1962) (Benefits paid by U.S. Veteran's Administration retain exempt status under

tion from garnishment is based on a calculation of "disposable earnings," a sum readily calculable only by employer garnishees, it seems strongly evident that Congress was primarily, if not exclusively, interested in the evils that attach to the employment relationship when wages are garnished.<sup>74</sup>

### CONCLUSION

The decision in *Dunlop*, that the Title III restrictions on garnishment do not apply to earnings after they are deposited in a bank account, may raise as many issues as it resolves. While the opinion of the court seems fully supportable, and probably mandated by the scheme and intent of Title III, the consequences of the decision on individual debtor-employees subject to garnishment are far from clear.

It is an ordinary practice for employees to put their earnings in a check, savings, or other account.<sup>75</sup> Beyond that, the economic complexities of today may virtually require one to have an account, both as a means of distributing his salary in a reasonable and commercially acceptable manner, and also for purposes of keeping an accurate record of expenses incurred.<sup>76</sup>

An inescapable consequence of this decision, then, at least as it concerns the C.C.P.A. and its protection of an employee-debtor, is that an employee with credit difficulties will no longer be safe in depositing his wages in a checking account. While it may be true that garnishment of a checking account is likely to be a one shot occurrence,<sup>77</sup> nevertheless, it would seem that the resulting disincentive to deposit "earnings" in savings and checking accounts would be beneficial to neither the banks nor the debtor-employees in the long run.<sup>78</sup>

Of course, Title III is not and was not intended to be the only or last word on wage garnishment. Title III provides that:

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38 U.S.C. § 3101(a) after their deposit in Savings and Loan Ass'n.); *Lawrence v. Shaw*, 300 U.S. 245 (1936) (Veteran's benefits retain exempted status after being converted to bank credits).

74. *Dunlop* at 856.

75. *Power v. Loonan*, 49 Misc. 2d 127, —, 266 N.Y.S.2d 865, 866-67 (1966).

76. *Id.*

77. Response to Cross Motion for Summary Judgment for the Defendant at 6, *Dunlop*.

78. While the disincentive here alluded to applies strictly to checking accounts in the context of *Dunlop*, the principal would be equally applicable to deposits in a savings account.

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any state

(1) prohibiting garnishments or providing for more limited garnishments than are allowed under this subchapter. . . .<sup>79</sup>

The clear intent of the act, then, is to leave undisturbed those state garnishment laws providing more lenient exemptions to employee-debtors. Whenever a state income exemption statute has a broader application than Title III as it applies to wages deposited in a bank account, that statute would remain in force.<sup>80</sup> Therefore, whether wages in a bank account are finally garnishable will henceforth depend upon the laws of the individual states.

In *Miller v. Monrean*,<sup>81</sup> for example, the Alaska Supreme Court found that the Alaska statute<sup>82</sup> has a broader purpose than Title III, and that it "is reasonable to assume that the Alaska legislature, in effecting that broader purpose, intended to protect the debtor's income after it is received by him."<sup>83</sup> The court further found that the depositing of such earnings in a bank

79. 15 U.S.C. § 1677 (1970).

80. *Miller v. Monrean*, 507 P.2d 771, 774 (Alas. 1973).

81. 507 P.2d 771 (Alas. 1973).

82. ALAS. STAT. § 09.35.080 (1973) provides that:

The following property is exempt from execution, except as otherwise specifically provided . . .

(1) The income of the judgment debtor, . . . but the exemption may not exceed \$350.00 if he is the head of a family . . . the amount of the exemption shall be computed after deductions and payments . . . so as to assure the judgment debtor the receipt of the first \$350.00 per month if he is the head of the family . . .

Also of interest here is that in response to enactment of the Title III garnishment restrictions, perhaps in order to avoid the possibility of Title III's preemption of state law, Nebraska and Iowa abandoned their pre-Title III exemption statutes, and in their place substituted acts substantially the same as 15 U.S.C. §§ 1672-1674. See NEB. REV. STAT. § 25-1558 (Cum. Supp. 1974); IOWA CODE ANN. § 642.21 (Supp. 1976).

Under the prior Nebraska statute, the garnishment exemption was specifically limited to funds in the hands of the employer, and no Nebraska case law was discovered finding that such an exemption followed the wages into a debtor's bank account. See NEB. LAWS 1969, c.188, § 1, p. 779 (expired 1973).

The effect of the Consumer Credit Protection Act in Iowa, however, may be more dramatic. In *Staton v. Vernon*, 209 Ia. 1123, 229 N.W. 763 (1930), the Court found that the then current Iowa income exemption would follow the earnings into the employee's bank account. While the case has not been overruled, there remains a serious question as to whether it will survive the new Iowa law, which is identical to Title III of the Consumer Credit Protection Act. [See Iowa Code Ann. § 642, 21 (Supp. 1976)].

83. 507 P.2d at 774.

account does not so change the character of the earnings as to deprive them of their exempted status.<sup>84</sup> Therefore, while *Dunlop* decided the extent to which earnings are protected by Title III, the question of whether these wages are protected once they leave the hands of an employer and are placed in a bank account by an employee must, for the time being, rest with the courts and legislators of the states.

A second issue unresolved by the *Dunlop* decision concerns the extent to which a debtor's earnings are protected in a bank account where the employee is paid via an automatic transfer of funds directly from the employer's payroll account to the employee's checking account.<sup>85</sup> Such a case could arise either where the employee is given a special account by the employer mainly for payroll purposes, or where the employee is paid via an automatic transfer directly into the employee's personal checking account. The question remains whether *Dunlop* would extend to allow garnishment of the employee's account in either of these situations. On close reading of the court's opinion, even these funds would seem to be fully garnishable since the court appears to exclude fully the operation of Title III from financial institutions. This would seem an untoward result, especially in cases where an employee has no option as to the method by which he is paid. Nor does there appear to be any language in Title III that would prohibit an employer from presenting a debtor-employee with a take-it-or-leave-it choice on this matter.<sup>86</sup>

Finally, while it seems clear that *Dunlop* was itself rightly decided on the merits, it appears equally evident that the Congress, and society at large, need to take another look at wage garnishment laws in the United States. As far as it went, the C.C.P.A. seems to have been successful in its mission of stemming the increase in personal bankruptcies in the United States.<sup>87</sup> Nevertheless, an injustice seems to have been worked when any law, especially one properly construed, can have the effect of requiring a debtor-employee to "keep [otherwise exempted] money buried or in her

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84. *Id.*

85. See Opinion Letter of October 26, 1971 [1969-1973 Transfer Binder] CCH LAB. L. REV. ¶ 30,773 at 42,208.

86. 15 U.S.C. § 1674(a) provides:

No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

87. Shuchman and Jantscher, *Effects of the Federal Minimum Exemption from Wage Garnishment on Nonbusiness Bankruptcy Rates*, 17 COMM. L.J. 360, 363 (1972).

stocking in order to have it remain exempt."<sup>88</sup> The law should not compel such an absurdity.

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88. *Holmes v. Marschall*, 145 Cal. 777, 782, 79 P. 534, 537 (1905); see also *Rutter v. Shumway*, 160 Colo. 95, 98, 26 P. 321, 322 (1891).