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CONSTITUTIONAL LAW—IMPRISONMENT FOR DEBT—
SEMI-MONTHLY PAYDAY LAWS

The Georgia Code requires certain employers to pay their employees twice per month¹ and further provides that if such employers wilfully refuse to make such payments they shall be fined.² Defendant demurred to his indictment under these sections on the ground that they are unconstitutional. The demurrer was overruled, and the defendant was convicted. On appeal, held: judgment reversed. The involuntary attendance at his criminal trial of a person accused under these sections is imprisonment for debt and is prohibited³ by the Georgia Constitution.⁴

The constitutionality of semi-monthly payday laws has been questioned on two different grounds. One type of attack directly denies the power of the legislature to dictate terms into the employment contract. These attacks are based on freedom of contract and raise questions of "due process," class legislation, denial of "equal protection," and the impairment of the obligations of contracts. The courts, however, have held that the semi-monthly payday laws are a valid exercise of the police power and that the freedom of contract may be subordinated to the public interest in the welfare of the wage earner.⁵ Recognition is given to the economic inequality of the employer and employee

1. GA. CODE ANN. § 66-102 (1933):

Every person, firm, or corporation, . . . employing wageworkers, . . . who may be employed by the month or year at stipulated salaries, shall make payments in check or lawful money of the United States to said employees or to their authorized representatives; such payments to be made on such dates during the month as may be decided upon by such person, firm, or corporation: Provided, however, that the dates so selected shall be such that the month will be divided into at least two equal periods; and the payments made on each such date shall in every case correspond to the full net amount of wages or earnings due said employees, laborers, or wageworkers for the period for which said payment is made.

2. GA. CODE ANN. § 66-9901 (1933):

In case any employer contemplated by section 66-102 shall refuse or wilfully fail to make payments to the wage-earner, of wages or earnings when demanded, as therein required, upon the regular days of payment, such employer, the members of the firm, the directors, officers, and superintendents or managers of corporations and associations shall, upon conviction, be sentenced to pay a fine not exceeding \$200; insolvency shall be the only defense to an indictment for such an offense, . . .

3. GA. CONST. Art. I, § 1, par. 21: "There shall be no imprisonment for debt."

4. *Messenger v. State*, 72 S.E.2d 460 (Ga. 1952).

5. *Erie R.R. v. Williams*, 233 U.S. 685 (1914); *Arizona Power Co. v. State*, 19 Ariz. 114, 166 Pac. 275 (1917); *Arkansas Stave Co. v. State*, 94

which results in the inability of the employee to force semi-monthly cash payments of wages. In addition, it has been held that the semi-monthly payday laws do not violate the United States Constitution.⁶

The other attack admits the power to regulate the terms of employment but contends that the method adopted by the legislature to enforce such regulation is unconstitutional. This attack is based upon the constitutional prohibitions against imprisonment for debt, and its success depends largely on the jurisdiction. The wording of the prohibition varies from state to state; nor do all state constitutions limit such imprisonment. The provision in some states is absolute, in some states fraud cases are specifically exempted from the limitation, and in some states the provision does not apply unless the debtor transfers all his property to his creditors.⁷ Also, the semi-monthly payday laws are not uniform; some states do not have them, in some states they apply only to corporations, in some states their violation is criminal, in some states the only penalty for their violation is extra damages in civil actions to recover wages, and in some states both the civil and criminal penalties attach.⁸

Of the semi-monthly payday laws which provide criminal sanctions many impose fines but not imprisonment. Of course, such a statute would be unconstitutional if it resulted in actual pre-trial confinement.⁹ In the principal case the court held that although the statute provided for a fine only, the involuntary attendance of the defendant at the trial constituted imprisonment. Although this is the only case in which such a broad definition of imprisonment has been applied to invalidate a semi-monthly payday law, equally broad definitions have been used in tort actions for false imprisonment.¹⁰ Furthermore, the court in

Ark. 27, 125 S.W. 1001 (1910); Commonwealth v. Reinecke Coal Mining Co., 117 Ky. 885, 79 S.W. 287 (1904); State v. Missouri Pacific Ry., 242 Mo. 339, 147 S.W. 118 (1912); State v. Brown & Sharpe Manufacturing Co., 18 R.I. 16, 25 Atl. 246 (1892). *But cf.* Standard Liquors, Inc. v. Norcovich, 121 Ind. 600, 99 N.E.2d 268 (1951); Livingston v. Susquehanna Oil Co., 113 Kan. 702, 216 Pac. 296 (1923).

6. Erie R.R. v. Williams, 233 U.S. 635 (1914).

7. Smith, *The Constitutionality of Bimonthly Pay Day Laws*, 16 TENN. L. REV. 940, 949 (1941).

8. *Id.* at 940.

9. *In re Crane*, 26 Cal. App. 22, 145 Pac. 733 (1914).

10. Watkins v. Oakland Jockey Club, 86 F. Supp. 1006, 1017 (W.D. Ark. 1949): 'Every confinement of the person is an imprisonment, and any express

the similar case of *State v. Prudential Coal Co.*,¹¹ reached the same result as the principal case but employed a different rationale. In that case it was held that a payday law which provided for a fine was unconstitutional because if the defendant refused to pay the fine, he would be imprisoned to enforce the payment of the fine, and such imprisonment would indirectly be imprisonment for the non-payment of wages and therefore barred by the constitution.

On the other hand the attack based on the imprisonment for debt clause will fail against payday laws applicable only to corporate defendants. Such statutes cannot violate restrictions on imprisonment for debt because of the physical impossibility of imprisoning a corporate defendant.¹² The statutes which provide only for civil penalties for infringement likewise do not violate the imprisonment for debt clauses since they make no provision for imprisonment.¹³

It has been said that the imprisonment for debt provisions do not apply to criminal actions,¹⁴ but the courts generally have held that the legislature cannot make the mere non-payment of a debt a crime and thus accomplish indirectly what they are forbidden to do directly.¹⁵ In those states which have a specific or implied exception in the imprisonment for debt clauses of their constitutions, statutes which make only the fraudulent non-payment of wages criminal are immune to attack on an imprisonment for debt ground.¹⁶ The legislature, however, is limited in what it can declare presumptive evidence of fraud; presumptions created

or implied threat of force whereby one is deprived of his liberty or compelled to go where he does not wish to go is an imprisonment. . . ." *National Bond & Investment Co. v. Whithorn*, 276 Ky. 204, 209, 123 S.W.2d 263, 266 (1938): ". . . Any exercise of force, by which in fact the other person is deprived of his liberty, compelled to remain where he does not wish to remain, or to go where he does not wish to go is an imprisonment."

11. 130 Tenn. 275, 170 S.W. 56 (1914).

12. *Arizona Power Co. v. State*, 19 Ariz. 114, 166 Pac. 275 (1917); *accord*, *Commonwealth v. Reinecke Coal Mining Co.*, 117 Ky. 885, 79 S.W. 287 (1904); *State v. Missouri Pacific Ry.*, 242 Mo. 339, 147 S.W. 118 (1912).

13. *Moore v. Indian Spring Channel Gold Mining Co.*, 37 Cal. App. 370, 174 Pac. 378 (1918); *Standard Liquors, Inc. v. Norcovich*, 121 Ind. 600, 99 N.E.2d 268 (1951); *McGinnis v. Keen*, 189 Ore. 445, 221 P.2d 907 (1950); *accord*, *State v. Prudential Coal Co.*, 130 Tenn. 275, 170 S.W. 56 (1914).

14. *Ex parte Nowak*, 184 Cal. 701, 195 Pac. 402 (1921); *Ex parte Britton*, 127 Tex. 85, 92 S.W.2d 224 (1936).

15. *Ex parte Trombley*, 31 Cal. 2d 801, 193 P.2d 734 (1948); *In re Crane*, 26 Cal. App. 22, 145 Pac. 733 (1914); *State v. Prudential Coal Co.*, 130 Tenn. 275, 170 S.W. 56 (1914).

16. *Ex parte Trombley*, *supra* note 15.

by the legislature must not be arbitrary and unreasonable; they must have a reasonable relation to the circumstances of life.¹⁷ It is doubtful, therefore, if the mere non-payment of wages could be declared presumptive evidence of fraud. One court, however, held that a wilful refusal to pay, when the employer had the ability to pay, was fraudulent in itself and therefore within the fraud exception to the prohibition on imprisonment for debt.¹⁸

Semi-monthly payday laws are constitutional unless they violate a constitutional restriction against imprisonment for debt. Such constitutional restrictions are violated only by statutes imposing criminal sanctions, either fines or imprisonment, on non-corporate offenders for the non-fraudulent non-payment of wages.¹⁹ Presumably, even this type of statute does not violate the constitutional restriction in those states which require that the debtor transfer all his property to his creditors, except in the case of an employer who is in fact insolvent. The amount of legislation on this subject indicates that many legislatures feel that regular, short-term, cash payments to employees are necessary to the well-being of the society. The liberty of the citizen, however, is much prized in our society, and the bar on criminal sanctions to enforce semi-monthly payday laws in the individual employer situation seems highly desirable.

CONSTITUTIONAL LAW — SCOPE OF THE EQUAL PROTECTION CLAUSE

Defendant, a Mexican, claimed that he was denied equal protection of the law in his trial and conviction for murder because members of his nationality had been systematically and wilfully excluded from the grand and petit juries before which his cause was heard. Evidence that there were some Mexicans qualified for jury service but that none had been called for twenty-five years was heard, but there was no direct testimony showing discrimination by the state officers. Defendant's motion to have the

17. *Tot v. United States* 319 U.S. 463 (1943); *Taylor v. Georgia*, 315 U.S. 25 (1941); *Morrison v. California*, 291 U.S. 82 (1934).

18. *Ex parte Trombley*, 31 Cal. 2d 801, 193 P.2d 734 (1948) (even though the element of deception, usually essential to fraud, is absent).

19. *In re Crane*, 26 Cal. App. 2d, 145 Pac. 733 (1914); *State v. Prudential Coal Co.*, 130 Tenn. 275, 170 S.W. 56 (1914); *accord*, *McGinnis v. Keen*, 189 Ore. 445, 221 P.2d 907 (1950).