

sideration for their certificates, thought they were actually becoming cestuis in a trust. However, by principles of equity, where the trust is set aside, the certificate holders may be given a lien on the res which was purchased with their money. The lien in this instance would give the certificate holders a preference over general creditors as to the proceeds of the res. A dictum from *Seiger v. Seiger*, 162 Minn. 322, 202 N.W. 742 (1925), advanced the point that, where a trustee wrongfully invests money, the beneficiary may have a lien or a charge upon the res.

Lastly, it is remotely possible to apply the theory of marshalling assets. According to the Ulmer case the creditors of the bank are allowed to satisfy their claims from the general assets of the bank, and from the trust res also. It would only seem equitable to require the creditors of the bank to come against the general assets first, and leave the res for the certificate holders, with whose money the res was purchased. See *McMahan v. Fetherstonhaugh*, 1 I.R. 83 (1895).

By the above four solutions, the cestui is put in status quo to the detriment of no other claimant. If *Squire v. Central United National Bank* is carried to the Supreme Court the Ulmer case may be reaffirmed in its sweeping nullification of the trust in the interest of general creditors, or it may be limited, and a remedy adopted in the interest of the certificate holders. It is a choice of policies.

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## WORKMEN'S COMPENSATION

### EXEMPTION OF AWARD FROM ATTACHMENT AFTER PAYMENT TO INJURED EMPLOYEE

Plaintiff employee recovered an award under the provisions of the Workmens' Compensation Act, and deposited it in a bank unmixed with other funds. There it was attached by plaintiff's creditors for the payment of pre-existing debts. Plaintiff petitioned the Common Pleas Court of Stark County to have the funds declared exempt from execution. The court held that compensation was not exempt from attachment and execution after payment in view of the express working of Section 1465-88 Ohio General Code. *Talaba v. Auld*, 19 Abs. 676, 3 Ohio Op. 556, affirmed by the Court of Appeals without opinion in 4 Ohio Op. 252 (1935).

The pertinent part of Section 1465-88 of the Ohio General Code provides that "Compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to such employees or their dependents."

It is settled that no property is exempt from seizure for debts unless it has been made so by statute. *Chandler v. Horne*, 23 Ohio App. 1, 154 N.E. 748, 5 Abs. 3 (1926). Owing to dissimilarity of statutes, the decisions of the courts of other jurisdictions on the problem involved in the principal case have not been uniform. Construing a Texas statute providing that "all compensation allowed . . . shall be exempt," etc., the courts of that state have held compensation exempt from execution both before and after payment to the injured employee. *Gaddy v. First Nat. Bank of Beaumont*, 115 Tex. 393, 283 S.W. 472 (1926). Likewise, under a statute providing that "compensation or benefits due . . . shall be exempt from all claims of creditors," the New York Court of Appeals, speaking through Chief Justice Cardozo in *Surace v. Danna*, 248 N.Y. 18, 161 N.E. 315 (1928), held that compensation continues to be exempt after deposit to the employee's credit in a trust company. These New York and Texas decisions were based on the ground that the award represents a maintenance fund for the injured employee during periods of disability and to permit the money to be taken by creditors as soon as it reaches the employee would effectually thwart this desirable social policy. But under a statute reading, "claims or payments due . . . shall be exempt," it was held in *Hawthorn v. Davis*, 140 So. 56 (La. 1932), that the award was exempt only before payment on the ground that such was the manifest intent of the legislature. This was also the view taken in *Wartella v. Osick*, 108 Pa. Super. 589, 165 A. 660 (1933), where the statute exempted "claims for payments due."

Closely analogous to the statute involved in the instant case is the section of the federal pension law dealing with the exemption of war veterans' pensions from the claims of creditors. 38 U.S.C.A. Sec. 54 (Repealed Aug. 12, 1935, C. 510, Sec. 3, 49 Stat. 609) provided that any sum of money "due or to become due" shall be exempt, "whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto." It has been uniformly held that by necessary implication from the explicit wording of this act, pension money is not exempt after it has reached the pensioner. *Fulwiler v. Infield*, 6 O.C.C. 36, 3 O.C.D. 338 (1891); affirmed without opinion in *Wilson v. Fulwiler*, 52 Ohio St. 623 (1894); *McIntosh v. Aubrey*, 185 U.S. 122, 22 S.C. 561 (1901). However, under a federal statute, 38 U.S.C.A. Sec. 618, which provides that "no sum payable to a veteran . . ., no adjusted service certificate, and no proceeds of any loan made on such certificate shall be subject to attachment," etc., it has been held that the proceeds of a loan on an adjusted war service certificate are exempt from execution so long

as the fund can reasonably be traced. *Second Nat. Bank v. Hoblit*, 41 Ohio App. 126, 179 N.E. 812 (1931).

It is to be noted that the Ohio statute in question differs from those quoted above in that it contains in clear language the qualification that the award is to be exempt "before payment." Thus, it is not open to the liberal construction that has been given the New York and Texas Statutes. But, as was stated by the court, the statute does not effectuate nor carry out the broad purposes of the Workmen's Compensation Act. The act was designed to provide a means of livelihood for the injured employee during disability and to prevent him from becoming a charge on the public. These objects are to a great extent defeated if the funds are subject to attachment immediately upon receipt by the disabled employee. For these reasons, in line with the court's suggestion, it is desirable that the statute be amended so as to exempt from attachment and execution compensation both before and after payment.

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