

2168.

JUDGMENT—FOR NECESSARIES—FOLLOWED BY ATTACHMENT—
MAXIMUM AMOUNT TAXABLE AS COSTS.

SYLLABUS:

The sum of \$2.50 for costs and garnishee fee is the maximum amount that may be taxed as costs in any proceeding to recover and enforce a judgment from the personal earnings of a debtor, based upon a claim for work and labor or necessities.

COLUMBUS, OHIO, July 28, 1930.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—In your recent communication you present the following inquiry:

“The last sentence in Section 10271, which has to do with the exemption of personal earnings in attachment from payment of costs, reads as follows:

‘Both the debtor and the creditor shall likewise be released from any further liability to the court or any officers thereof in such proceedings or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in said original action.’”

Suppose judgment is taken on an action for necessities, in the amount of \$20.00, with costs in the amount of \$6.05, and an attachment is secured upon the wages of the defendant for which the regular garnishee fee, plus the \$2.00 costs, are charged.

May the squire, either in that proceedings or any other proceedings, attach the wages of the debtor for the payment of the \$6.05 costs charged in the original action; or does the above provision of the statute prevent him from collecting the costs of any kind in excess of the \$2.00 and the garnishee fee?

On account of the practices of certain justices of the peace in this county in collecting costs from debtors by attachment on wages, I am very desirous of learning the correct interpretation of the above section.

The 1926 Attorney General Opinion No. 3905 does not seem to clearly cover the point above mentioned.”

Section 10253 of the General Code, which enumerates the grounds which may be used as the basis of an affidavit in attachment, provides in subsection 9 thereof, among other things:

“No attachment shall issue by virtue of this chapter against the personal earnings of any defendant for services rendered by such defendant within thirty days before the commencement of the action or the issuing of the attachment, unless the defendant is not the support of a family, or unless the amount of the defendant’s earnings for said thirty days exceeds fifty dollars, and then only as to the excess over that amount, or unless the claim is one for work and labor, or necessities, and then for only twenty per cent of such personal earnings.”

Section 10271 of the General Code, to which you refer, provides:

“The personal earnings now exempted by law, in addition to the twenty per cent for work and labor, or necessities, shall be further liable to the

plaintiff for the actual costs of any proceedings brought to recover a judgment for such work and labor, or necessities, and for any proceeding to satisfy said judgment in any sum not to exceed two dollars and the necessary garnishee fee for each suit, attachment, aid of execution or other proceeding. Such garnishee may pay to such debtor an amount equal to eighty per cent of such personal earnings, less the sum of two dollars and the necessary garnishee fee not to exceed fifty cents, if the same is demanded by the garnishee, for actual costs as herein provided, due at the time of the service of process or which may become due thereafter and before trial and be released from any further liability to such creditor, or to the court or any officers thereof, in such proceeding, or in any other proceeding brought for the purpose of enforcing the payment of the balance of the costs due in said original action. Both the debtor and the creditor shall likewise be released from any further liability to the court or any officers thereof in such proceedings or in any other proceedings brought for the purpose of enforcing the payment of the balance of the costs due in said original action."

In the opinion to which you refer, found in Opinions of the Attorney General for 1926, at page 557, it was held as disclosed by the syllabus, that :

"Under the amended garnishee law \$2.50 is the maximum amount that may be charged for costs, including the garnishee fee, in any proceeding to garnishee wages, irrespective of the incidental actions instituted to enforce the judgment."

In said opinion reference is made to an opinion of the Attorney General, found in Reports for the year 1914, p. 1985, in which it was indicated that the term "costs" employed in Section 10271 of the General Code included magistrate and constable fees as well as the fees of witnesses and jurors. The 1926 opinion to which you refer contains a rather comprehensive discussion of the law both before and after its amendment in 1925 (111 O. L., p. 385). The following is quoted from the body of said 1926 opinion :

"In analyzing the two provisions there is no doubt in my mind but that \$2.00 is the maximum amount that may be charged for costs in such a case, whether it be in connection with securing judgment alone, or whether there is in connection with the same, other proceedings to satisfy said judgment."

An analysis of the opinion last mentioned would seem to be dispositive of your inquiry for the reason that it seems to hold that the sum of \$2.00 for costs and \$0.50 for garnishee fee is the maximum amount that may be charged for costs in any case, whether it be for the purpose of securing judgment or as an incident to the collection thereof. In the supposititious case which you present there would seem to be no authority, in view of what has been said, for the collection of more than \$2.00 costs plus the garnishee fee and the unpaid portion of the costs could not be used as a basis for a further attachment.

In view of the foregoing, it is my opinion that the sum of \$2.50 for costs and garnishee fee is the maximum amount that may be taxed as costs in any proceeding to recover and enforce a judgment from the personal earnings of a debtor, based upon a claim for work and labor or necessities.

Respectfully,
GILBERT BETTMAN,
Attorney General.