

days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family, supported in whole or in part by his labor, are exempt; but where debts are incurred by any such person or his wife or family for the common necessities of life, then the one-half of such earnings above mentioned are nevertheless subject to execution, garnishment, and attachment, to satisfy debts so incurred. The words 'his family,' as used herein, are to be construed with the words 'head of family,' as used in Section 6969."

By this section, unless burial expenses are classed as "common necessities of life," the earnings are exempt. In approaching a question of this kind the Montana Supreme Court has held that exemption statutes are to be liberally construed for the benefit of the exemption claimant. (*McMullen v. Shields*, 96 Mont. 191.) (See also *In re. Frazer*, 5 F. Supp. 903, and 25 C. J. Sec. 718.) Exemption acts are enacted for the public welfare to prevent the citizens of the state from being deprived of subsistence by harassing litigation. (*Bronson v. Kinzie*, 1 How (U. S.) 311, 11 L. Ed. 143, *Kirkman v. Bird*, 61 P. 338.) Similarly acts exempting earnings are to protect dependents of the head of the family from being deprived of the food, clothing, and shelter necessary for the support of life. And the term "necessaries of life" is a relative term and elastic in its use and must be given the meaning necessary to carry out the purpose of the legislation.

Therefore, in Section 9429, necessities of life must be confined to items requisite for the support of life in order to carry out the desire of the legislature to preserve the earnings of the head of the family for his dependents.

It has been suggested that since Section 11034, Revised Codes of Montana, 1935, charges certain persons with the duty of burial, that as to those persons expenses incurred in carrying out this duty would be a "necessary of life" and the exemptions cited in Section 9429 would not be applicable. It must be remembered, however, that attachment is an extraordinary and summary remedy created for the collection of debts and the legislature in

Opinion No. 157.

Attachment and Execution—Exemption of Earnings—Burial Expenses—Necessaries of Life.

HELD: The earnings of the head of a family are exempt from execution or attachment for the collection of an unpaid bill for burial expenses.

October 26, 1939.

Mr. Angus McDonald, Sheriff
Granite County
Philipsburg, Montana

Dear Mr. McDonald:

You have asked if the earnings of the head of a family are exempt from levy of attachment for the collection of an unpaid bill for burial expenses.

Section 9429, Revised Codes of Montana, 1935, is as follows:

"The earnings of the judgment debtor for his personal service rendered at any time within forty-five

the public interest and under the police power can declare that the public welfare is best subserved by restricting the application of such a remedy to those cases where families will not be caused to suffer hardship and the future welfare of the state be thus imperilled.

In the case of burial expenses, the duty created by Section 11034, R. C. M., 1935, remains and the ordinary expenses contracted in carrying out this duty are chargeable to the person at whose instance they were incurred and in the event of his failure to pay the creditor has available all the ordinary legal processes for collection. But the debtor may claim the exemptions provided by Section 9429, R. C. M., 1935, and as that section has been analyzed the debtor's earnings for personal service rendered at any time within forty-five days preceding the levy of attachment would be exempt.