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Arthur S. O'Neill Jr.

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COMMENTS

CREDITOR'S RIGHTS—EXECUTION ON A JUDGMENT— PENNSYLVANIA EXEMPTIONS.

A creditor who has obtained a judgment still faces the problem of realization. Some debtors cannot or will not pay. The creditor must then levy on the debtor's property or attach debts owing to him. However, this cannot be done where the property or debts are exempt. The extent to which property and debts are exempt from process is the subject of this Comment.

I.

LIMITATIONS ON THE COMMENT.

An exemption may be defined as a privilege given by the state to a debtor to retain certain property free from seizure under judicial process by his creditors. Exempt property is generally thought of as that property which can be sold, pledged, or mortgaged by the debtor while at the same time it can remain out of the creditors' reach; but to limit this Comment to this class of property would make it less than a full and realistic examination of exemptions. The purpose behind an exemption law is another matter. The true exemption law not only allows the debtor to dispose of the exempt property freely but recognizes that an important duty of a debtor is to support himself and his family. In addition, there are other laws which provide exemptions to the debtor only incidentally in accomplishing other primary goals. This Comment shall also include those laws.

At the common law neither the warden of a debtor's prison nor the sheriff had the right to search the person of a judgment debtor; however, equity was able to make him surrender "phylacteries as distinct from raiment." The debtor's only exemption lay in such clothing as was reasonably necessary to protect him from indecent exposure or physical suffering.¹ The policy in this country has been to liberalize the common law exemption privilege by statute. These statutes vary greatly in wording and interpretation; for example, there is a controversy as to whether "wearing apparel" includes jewelry.² Therefore, one must look to his own state

1. GLENN, *FRAUDULENT CONVEYANCES AND PREFERENCES* § 167 (rev. ed. 1940).

2. *Id.* § 169. It never came up in Pennsylvania.

statutes and decisions. In this Comment the Pennsylvania statutes and decisions will be examined and compiled to give a complete view of the Pennsylvania exemption picture. A discussion of fraudulent conveyances will be avoided except to note in passing that a debtor who obstructs or interferes with, or attempts to avoid the execution of a judgment against him by such conveyances may not claim his exemption.³

II.

EXEMPTION STATUTES IN GENERAL.

Since exemption statutes are in derogation of the common law they are strictly construed in determining whether one is within the class entitled to an exemption,⁴ although once the right is established some liberality may be allowed to accomplish its purpose.⁵ Since these statutes are not self-executing, the privilege must be claimed, and a delay in making the claim may be a waiver of the privilege.⁶ The claim for an exemption, being a personal privilege, must be claimed by the person entitled to it and cannot be assigned or claimed by a stranger.⁷ Further, it is well to keep in mind that the commonwealth is not bound by an act of the legislature unless named therein, and unless the statute specifically includes the commonwealth, the exemption laws cannot be invoked against it by the defendant when the commonwealth is the execution creditor.⁸

If a citizen of this commonwealth, by transfer of his claim for debt against a resident of this commonwealth, or by some other means, has his claim collected by proceedings outside the state in order to deprive the debtor of his exemption rights, for value or not, where all parties are within the jurisdiction of the commonwealth, such a person is liable for the amount paid by the debtor in such a proceeding plus interest and costs. And in the collection of this amount the offender is not entitled to the benefit of the exemption laws of the commonwealth.⁹ In addition, any transfer and commencement of proceedings outside the commonwealth which might deprive the debtor of the benefit of the exemption laws is considered prima facie evidence of a violation of the act prohibiting the deprivation of exemption privileges.¹⁰

3. *Robinson v. Stamper*, 16 Pa. D.&C. 621 (C.P., Phila. 1932).

4. *Fell v. Johnston*, 154 Pa. Super. 470, 36 A.2d 227 (1944); *Reinhart v. Gerhardt*, 152 Pa. Super. 229, 31 A.2d 737 (1943).

5. *Fell v. Johnston*, 154 Pa. Super. 470, 36 A.2d 227 (1944).

6. *Harlan v. Haines*, 125 Pa. 48, 17 Atl. 298 (1889).

7. *Bogert v. Batterton*, 6 Pa. Super. 468 (1898).

8. *Commonwealth v. Wilcox*, 53 Dauph. 1, 46 Pa. D.&C. 435 (C.P., Dauph. 1942).

9. PA. STAT. ANN. tit. 12, § 2175 (Supp. 1954).

10. *Id.* § 2176.

III.

EXEMPTIONS FROM EXECUTION.

A.

True Exemptions.

This group of exemptions includes only those which are true exemptions, that is, the property is exempt while still at the complete disposal of the debtor and is exempt in order to effect the sustenance and rehabilitation of the debtor.¹¹

Pennsylvania exempts from execution on judgment on a contract all wearing apparel of the debtor and his family, bibles and school books in use in the family, as well as \$300 worth of any property owned or in possession of the debtor.¹² In order to take advantage of the \$300 exemption the sheriff must be requested by the debtor to arrange for such property to be appraised.¹³ The debtor's election of retention includes bank notes, money, stocks, judgments, or other indebtedness, as well as other personality.¹⁴ It must be emphasized that the right is merely to retain \$300 worth of personal property, not \$300 out of the proceeds of the sale of such property.¹⁵ The claim may also be made from realty if the appraisers decide that the land can be divided without harm.¹⁶ But if it is decided that the realty cannot be divided without harm to the land the debtor shares in the proceeds of the sale.¹⁷

Joint owners of realty cannot claim the \$300 exemption out of that property.¹⁸ Nor are partners entitled to an exemption out of partnership property,¹⁹ but, like joint owners sued on a joint debt, each can enjoy an exemption out of his separate property.²⁰ A defendant in a tort action is not entitled to the benefit of this act,²¹ unless the tort is waived and the suit is brought in assumpsit.²² Although a debtor may waive the benefit of

11. While the property can be pledged or mortgaged and still be exempt from the claims of creditors, the exemption, of course, cannot be claimed against the pledgee or mortgagee. For example, an exemption could not be claimed against the proceeds of a sale by the debtor's mortgagee. *McAuley's Appeal*, 35 Pa. 209 (1860); *Morgan v. Noud*, 1 Phila. 250 (D.C., Pa. 1851).

12. PA. STAT. ANN. tit. 12, § 2161 (Supp. 1954).

13. *Id.* § 2162.

14. *Id.* § 2166.

15. *Assigned Estate of Strunk*, 12 Del. 221 (C.P., Pa. 1912); *Assigned Estate of Gilbert*, 29 Lanc. L. R. 76 (C.P., Pa. 1911).

16. PA. STAT. ANN. tit. 12, § 2164 (Supp. 1954).

17. *Id.* § 2165.

18. *Fikes v. Skiles*, 53 Lanc. L. R. 427 (C.P., Pa. 1954). To hold otherwise would be to allow each of two joint debtors \$300, or a total of \$600, or to allow \$150 each, both alternatives being foreign to the statute.

19. *Clegg v. Houston*, 1 Phila. 352 (D.C., Pa. 1852).

20. *Friday v. Glasser*, 14 Pa. Super. 94 (1900) (joint owners); *Lippencott's Estate*, 8 Phila. 236 (C.P., Pa. 1871) (partnership).

21. *Keyon v. Gould*, 61 Pa. 292 (1868).

22. *Wireman v. Mueller*, 18 W.N.C. 84 (C.P., Phila., Pa. 1886).

this exemption,²³ the waiver is not binding unless based on consideration.²⁴ However, if the waiver is made at the time the debt is created, the consideration for the debt will support the waiver.²⁵ A waiver, on the other hand, cannot disturb the priority of a secured creditor's lien; namely, a waiver of an exemption to a junior lienor is a waiver to all those with prior liens.²⁶

Another of these exemptions is a sewing machine which belongs to a seamstress or a private family.²⁷

The wages of any laborer and the salary of any person in public or private employment (for mental or manual work)²⁸ are not liable to attachment in the hands of the employer.²⁹ (Although there is some confusion in Pennsylvania it seems that wages are assignable, and thus this is a true exemption.)³⁰ This exemption includes non-resident as well as resident laborers,³¹ and cannot be waived.³²

Certain insurance proceeds are also exempted by true exemption statutes. The net amount payable under any policy or annuity on the life of any person, assigned to or made for the benefit of his wife, children, or dependent relatives is exempt, whether or not the right to change the beneficiary is reserved.³³ The benefits or proceeds from group insurance,³⁴ any accident or disability policy,³⁵ or relief provided by a fraternal benefit society³⁶ are also free from execution.

B.

Exemptions in the Nature of a Spendthrift Trust.

Exemptions on property which is not at the complete disposal of the debtor to be sold, pledged, or mortgaged are not exemptions in the true sense. The exemptions in this group are of this type. However, they are clearly for the benefit of the debtor. The foremost example of this type,

23. *Bowman v. Smiley*, 31 Pa. 225 (1858).

24. *Hutchinson v. Campbell*, 25 Pa. 273 (1855).

25. *Bowman v. Smiley*, 31 Pa. 225 (1858).

26. *Keetley v. Campbell*, 15 Pa. Super. 415 (1900); *Hoerner v. Cordell*, 10 Pa. Super. 314 (1899).

27. PA. STAT. ANN. tit. 12, § 2167, 2168 (Supp. 1954).

28. *Bell v. Roberts*, 150 Pa. Super. 469, 28 A.2d 715 (1943).

29. PA. STAT. ANN. tit. 42, § 886 (Supp. 1954). But it is interesting here to note that on an employee's judgment against an employer for \$100 or less for wages for manual labor no exemption is allowed the employer. PA. STAT. ANN. tit. 43, § 232 (Supp. 1954).

30. *Bruton, Wage Assignments in Pennsylvania—The Need for Judicial and Legislative Clarification*. 94 U. PA. L. REV. 19 (1945).

31. *Morris Box Board Co. v. Rossitor*, 30 Pa. Super. 23 (1906).

32. *Ibid.*

33. PA. STAT. ANN. tit. 40, § 517 (Supp. 1954).

34. *Id.* § 534.

35. *Id.* § 766.

36. *Id.* § 1066.

although not statutory, is a spendthrift trust, which is exempt from the beneficiary's creditors but not alienable *by him*.³⁷

An employee's claim for compensation under the Workman's Compensation Act of 1939 is exempt from execution and attachment,³⁸ except for legal fees incurred in supporting the claim for compensation.³⁹ Furthermore, any sum payable under the World War II Veteran's Compensation Act of 1947 is not the object of any legal or equitable process.⁴⁰ Pensions paid to the employees of first,⁴¹ second,⁴² or third class cities,⁴³ retirement allowances or amounts payable under the Police Pension Fund,⁴⁴ the State Employee Retirement System,⁴⁵ or under county retirement of the second,⁴⁶ fourth,⁴⁷ fifth, sixth, seventh, and eighth⁴⁸ classes are also exempt from execution or attachment. An annuity or contract of insurance issued by a company doing business in Pennsylvania to a solvent citizen, or pensions paid by a private corporation or employer out of a trust fund to retire the citizen-employees which are not assignable nor subject to execution by the terms of the plan are exempt up to \$100 a month.⁴⁹ Further, the proceeds of an annuity or insurance policy with a spendthrift provision issued by an insurance company doing business in this state, even though retained at maturity and not separated from the company's general funds is also exempt from execution.⁵⁰

C.

Exemptions Incidental to the Legislative Purpose.

The exemptions in this group are not true exemptions either. They protect the debtor only incidentally in accomplishing another objective, and do not have for their purpose subsistence or rehabilitation of the debtor. These exemptions might be subdivided according to the primary reason for these laws which collaterally benefit the debtor.

The first group includes those laws which use the exemption to encourage another objective: capital stock in a co-operative association is exempt to the extent of \$25 belonging to anyone who is a householder and

37. *Riverside Trust Co. v. Twitchwell*, 342 Pa. 558, 20 A.2d 768 (1941).

38. PA. STAT. ANN. tit. 77, § 621 (Supp. 1954).

39. *Id.* § 1021.

40. PA. STAT. ANN. tit. 51, § 455.8 (Supp. 1954).

41. PA. STAT. ANN. tit. 53, § 3522 (Supp. 1954).

42. *Id.* § 9422.

43. *Id.* §§12198-4383. This is an optional plan.

44. *Id.* § 344.

45. PA. STAT. ANN. tit. 71, § 1747 (Supp. 1954).

46. PA. STAT. ANN. tit. 16, § 2151-1716 (Supp. 1954) (second class).

47. *Id.* § 331.20 (fourth class).

48. *Id.* § 332.18 (fifth to eighth classes).

49. PA. STAT. ANN. tit. 40, § 515 (Supp. 1954). The statute itself is ambiguous as to whether pensions are limited to \$100, but *Craft v. Livingston*, 82 Pa. D.&C. 277 (C.P., Phila. 1952) took this for granted.

50. PA. STAT. ANN. tit. 40, § 514 (Supp. 1954).

has a family.⁵¹ This is the result of early legislation directed at encouraging co-operatives. Materials delivered to a turnpike or plank road company intended to be applied to construction or repairs on a road are exempt⁵² as a result of a legislative desire to build more roads.

The second group or subdivision includes those laws in which the exemption is used to protect rights other than the debtor's: articles, wares, or property of any kind while on an international exhibition held under the auspices of the United States Government within this commonwealth is exempt from execution⁵³ in order to keep the government from being harrassed by creditors. Uniforms and equipment of an officer or enlisted man of the National Guard are exempt,⁵⁴ and, in fact, all the property of any person is exempt when on active duty in the National Guard and for thirty days thereafter.⁵⁵ Funds or property in the hands of a municipal government, or municipal officer in his capacity as such, are not subject to execution.⁵⁶ The reason is the policy that the government should be free from the annoyance and uncertainty arising out of disputes between individuals.⁵⁷ A guest's property held by an innkeeper under a lien for charges due him is exempt,⁵⁸ in order, it seems, to protect such guests from this unforeseeable risk and possible fraud. A seat on a stock exchange is exempt⁵⁹ from execution because it is a personal privilege and not one to be sold at an auction. Stock subscriptions are made exempt when the corporation becomes insolvent,⁶⁰ presumably in order that all creditors might be treated equally. A partner's interest in a partnership, where there has been no segregation or liquidation of his interest and no money has been lent by the partner to the partnership, is not subject to attachment on a judgment against the individual partner.⁶¹ It seems clearly to have been enacted in order to protect the other partners from an untimely liquidation.

In the final group is the exemption of money on the person of the debtor.⁶² The apparent reason for this exemption is to avoid a breach of the peace.

51. PA. STAT. ANN. tit. 14, § 9 (Supp. 1954).

52. PA. STAT. ANN. tit. 15, § 2638 (Supp. 1954). However sequestration is still available.

53. PA. STAT. ANN. tit. 12, § 2174 (Supp. 1954).

54. PA. STAT. ANN. tit. 51, § 1-840 (Supp. 1954).

55. *Id.* § 1-842.

56. *Commonwealth v. Mooney*, 172 Pa. Super. 30, 92 A.2d 258 (1952); *Fairbanks Co. v. Kirk*, 12 Pa. Super. 210 (1899); *Frantz Equipment Co. v. Lee Butler Co.*, 67 Pa. D.&C. 249 (C.P., Phila. 1949). An example of this would be property in the sheriff's hands. *McHugh v. Laudherr*, 46 Lack. Jur. 129, 52 Pa. D.&C. 481 (C.P., Phila. 1945).

57. *Commonwealth v. Mooney*, 172 Pa. Super. 30, 92 A.2d 258 (1953).

58. PA. STAT. ANN. tit. 37, § 71 (Supp. 1954).

59. *Pancoast v. Gewen*, 93 Pa. 66 (1879).

60. *Lane's Appeal*, 105 Pa. 49 (1884).

61. *Northampton Brewery Corp. v. Laude*, 133 Pa. Super. 181, 2 A.2d 533 (1939); *Monroe Loan Soc'y. v. Morelle*, 62 Mont. 336 (C.P., Pa. 1947); PA. STAT. ANN. tit. 59, § 72(2)(c) (Supp. 1954).

62. PA. STAT. ANN. tit. 12, § 2117 (Supp. 1954).