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The Exemption Laws of Washington

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It was with the sincerest pleasure that the faculty and students of the Law School received the announcement of the appointment of Alfred J. Schweppe as Dean of the school, to take office at the beginning of the next school year. No better qualified, nor more promising man could have been selected for the position. His ability as a teacher has already been demonstrated. He comes to the University of Washington after a brilliant record as a student at the University of Wisconsin, and of Minnesota, and as a practicing lawyer in Seattle.

Mr. Schweppe has had offers of positions from Minnesota and California, and the University of Washington is to be congratulated on securing him.

THE EXEMPTION LAWS OF WASHINGTON—Remington's Compiled Statutes for 1922, Section 563, specifies what property shall be exempt from execution and Section 703 specifies the amount of wages exempt from garnishment. This note will discuss these two exemption sections only and will not include the homestead law, which in a sense is itself an exemption law.

In general, Section 563 provides for the exemption of the following property: (1) All private libraries not to exceed five hundred dollars in value, and all family pictures and keepsakes; (2) all wearing apparel of every person or family; (3) to each family, household furniture in the amount of five hundred dollars; (4) cows, calves, swine, with feed for same, bees, etc., and if no such property is desired any other property not to exceed two hundred fifty dollars in value in lieu of such animals; (5) all firearms kept for the use of any person or family; (6) all the tools of the person's trade. Section 703 provides for the

exemption of wages from garnishment in the amount of ten dollars per week in case of suit to collect for necessities and in the amount of one hundred dollars in case of suit to collect for non-necessities.

All the provisions of Section 563 are clearly expressed and the interpretation is clear with the exception of sub-division number four.¹ This sub-division is termed the "in lieu of" statute. Around this clause of the statute many interesting cases have arisen. To claim this exemption the statute requires the person to be a householder and Section 565² defines who shall be a householder in the state of Washington.

Questions continually arising under the "in lieu of" statute are whether an automobile, corporate stock and the like can be claimed as exempt in lieu of animals not to exceed two hundred fifty dollars in value. The statute seems to allow such exemption in clear terms and yet there has been considerable controversy over this part of the statute.

The first case of importance interpreting the "in lieu of" statute was the case of *Creditors Collection Association v. Bisbee*.³ In that case money was claimed as exempt under the statute. However, the case laid down the rule that the words "other property" in lieu of the certain specified domestic animals, meant property of a like nature under the rule of *ejusdem generis*.⁴ Hence, money could not be selected in lieu of such exempt property.

In the case of *Lemagie v. Acme Stamp Works*,⁵ our court overrules in part *Creditors Collection Association v. Bisbee*, supra, and lays down the present day rule to be applied to this class of cases. In this case the court held that shares of stock could be selected by a householder in lieu of the animals named in the statute. The court says in overruling the *Bisbee* case that that case is not in consonance with the general rule of liberality in construing exemption statutes.⁶ The court says the decision overlooked the obvious intent of the legislature to

¹ "To each householder, two cows, with their calves, five swine, two stands of bees, thirty-six domestic fowls, and provisions and fuel for the comfortable maintenance of such householder and family for six months, also feed for such animals for six months: Provided, that in case such householder should not possess or shall not desire to retain the animals above named, he may select from his property and retain other property not to exceed two hundred and fifty dollars, coin, in value."

² Householder defined—"A householder, as designated in all statutes relating to exemptions, is defined to be: (1) The husband and wife, or either. (2) Every person who has residing with him or her, and under his care and maintenance, either, (a) His or her minor child, or the minor child of his or her deceased wife or husband, (b)" etc.

³ 80 Wash. 358, 141 Pac. 886 (1914).

⁴ *Ejusdem generis*. Of the same kind or nature; of the same class. In the construction of statutes, contracts and other instruments, where an enumeration of specific things is followed by a general word or phrase, the latter is held to refer to things of the same kind as those specified.

⁵ 98 Wash. 34, 167 Pac. 60 (1917).

⁶ It is firmly established principle that exemption laws must be liberally construed in favor of the debtor. *Mikkelson v. Parks*, 3 Wash. T. 527, 19 Pac. 31 (1888) *Dennis v. Kass*, 11 Wash. 353, 39 Pac. 656 (1895) *Puget Sound Packing Co. v. Jeffs*, 11 Wash. 466, 39 Pac. 962 (1895) *North Pacific Loan Co. v. Bennett*, 49 Wash. 34, 94 Pac. 644 (1908) *State ex rel. McKee v.*

grant an exemption to any householder of *any property* to the value of two hundred fifty dollars, as is manifested clearly by the attending provision which states that if the householder shall not desire to retain the animals mentioned he may select from his property, not such property or other like property, but merely other property without any limitation whatsoever. This Washington decision is conclusive that any property, disregarding entirely the rule of *ejusdem generis*, may be selected in lieu of the animals mentioned, with one absolute qualification as contained in Section 703,⁷ that wages and salaries cannot be exempted in lieu of other property and the possible qualification that money cannot be exempted in lieu of other property.

In the case of *In re Crook*,⁸ a decision by Judge Neterer, the court in interpreting the statute in bankruptcy proceedings held clearly that the bankrupt could select any property in lieu of the animals named except money, which the court states is all that *Creditors' Collection Association v. Bisbee* held. Judge Neterer says in his opinion that in view of the purpose of the statute to protect the welfare of the unfortunate, and the further fact that exemption statutes have always been liberally construed, it would seem that the conclusion is inevitable that the debtor can select from his chattel property other property than the animals mentioned without limitation.

In *Hills v. Joseph*, in the Circuit Court of Appeals, Ninth Circuit, Judge Rudkin affirmed the rule of *In re Crook* and held that a householder could select in lieu of the animals mentioned, merchandise from his stock in trade. The court considered and explained the previous decisions of *In re Scheier*¹⁰ and *In re Swanson*.¹¹

From these cases the logical conclusion is that any property whatsoever in the amount of two hundred fifty dollars may be claimed as exempt in lieu of animals, with the possible exception of money. The state courts might even allow money in lieu of such animals, but the federal courts have clearly announced a contrary rule.

In applying Section 703, providing for the exemption of wages from garnishment proceedings, to a particular state of facts, one must ask himself three major questions: 1. Did the defendant have a family dependent upon him for support at the time of the service of the writ and of the answer thereto? 2. Are the wages and salary garnished recompense for personal services rendered by the defendant? 3. Is the garnishment grounded upon a debt for actual necessities furnished to the defendant?

To have an exemption under this statute the first two questions

McNeill, 58 Wash. 47, 107 Pac. 1028 (1910) *Beecher v. Shaw*, 44 Wash. 166, 87 Pac. 71 (1906), *Lemagne v. Acme Stamp Works*, 98 Wash. 34, 167 Pac. 60 (1917) *In re Crook*, 219 Fed. 979 (1915) *Hills v. Joseph*, 229 Fed. 865 (1916) *In re Swanson*, 213 Fed. 353 (1914).

⁷ "And provided further that no money due or earned as wages or salary shall be exempt from garnishment in lieu of any other property."

⁸ 219 Fed. 979 (1915).

⁹ 229 Fed. 865 (1916).

¹⁰ 188 Fed. 744 (1911).

¹¹ 213 Fed. 353 (1914).

must be answered in the affirmative. The answer to the third merely determines the amount of the exemption. If the answer to the third question is "No" then an exemption of one hundred dollars may be allowed. If the answer is "Yes" then only an exemption of ten dollars a week is allowed, with a limit of four weeks.

In answer to the first question the courts have held that a man has a family dependent upon him if he has a wife, although the wife helps to support the family,¹² or if he has a daughter of age, but out of work and with no income.¹³ The courts also hold that where the wife, aged mother, or minor son or daughter has no income, then clearly the father has a family dependent upon him.

In answer to the second question the courts lay down the rule that by earnings is meant the reward of labor or the price of personal services performed. Hence gains of a person derived from services of labor without the aid of capital would be earnings.¹⁴ A person engaged to superintend the erection of a building has been held a laborer within the meaning of a statute exempting the wages of such person from garnishment.¹⁵ In *Adcock v. Smith*¹⁶ the court held that where a person is employed by an iron company to puddle iron at a fixed rate per ton receiving his pay monthly on a particular day and is required to begin and quit work at certain hours, his compensation constitutes wages for personal services within the meaning of the exemption laws. Even bonuses have been held to be wages.¹⁷

With respect to the reduction of the exemption to ten dollars per week where the claim is for necessaries furnished, it is contended very seriously that this section of the statute is rendered unconstitutional by reason of the recent decision in the case of *Verno v. Hickey*.¹⁸ In that case the respondent had recovered a judgment of \$631.30 for work and labor performed. Execution was issued and the sheriff levied on certain personal community property consisting of household furniture and wearing apparel. The appellants duly claimed the property as exempt under the provisions of Remington's Compiled Statute, Section 563. The respondent contended that the property was not exempt from execution because of the provisions of Section 564. This section provides as follows: "No property shall be exempt from execution for

¹² *Ness v. Jones*, 10 N. D. 587, 88 N. W. 706 (1901). The husband was engaged in business and during the period he was so engaged the wife managed the home farm and supplied the necessaries for the support of the family with only slight assistance from her husband. The husband and wife had lived together on the home premises and the former was not disabled nor unwilling to labor for the support of his family. *Held*. That the husband was the head of the family within the exemption statute.

¹³ Although a daughter is of age the father owes a moral duty to support her if she has no source of income. By the great weight of authority this moral duty is sufficient to class the father as having a family dependent upon him. *In re Opava*, 235 Fed. 779 (1916) *Webster v. McGowan*, 8 N. D. 274, 78 N. W. 80 (1899).

¹⁴ *Jones v. Nicoll*, 72 Misc. Rep. 483, 131 N. Y. Sup. 341 (1911).

¹⁵ *Moore v. Henry*, 14 Md. 558 (1859).

¹⁶ 97 Tenn. 373, 37 S. W. 91 (1896).

¹⁷ *Laird v. Carten*, 196 N. Y. 169, 89 N. E. 822 (1909).

¹⁸ 35 Wash. Dec. 17, 237 Pac. 5 (1915) see 1 WASH. L. REV. 209.

clerks', laborers', or mechanics' wages earned within this state, nor for actual necessities, not exceeding fifty dollars in value or amount furnished to the defendant or his family within sixty days preceeding the bringing of an action therefor, nor shall any property be exempt from execution issued upon a judgment against an attorney or agent on account of any liability incurred by such attorney or agent to his client or principal on account of any monies or other property coming into his hands from or belonging to his client or principal. Provided that nothing herein shall be construed as repealing or in any wise affecting Section 703 *infra*." *Held* That the portion of the statute which provides that no property shall be exempt for clerks', laborers' or mechanics' wages is unconstitutional as an infringement of the exemption rights under Article 19, Section 1, of the state constitution, and a violation of the equal privileges and immunities guarantee of Article 1, Section 12. The rule which the court adopts is that the legislature cannot constitutionally classify general debts and general debtors upon a basis of different natures of debts so that all such general debtors will not have equal immunity of exemption as against all forced sales to satisfy their general debts. In support of the rule which is apparently adopted, the court cites *Tuttle v. Strout*¹⁹ and *Bofferding v. Mengelkoch*.²⁰

If such is the rule, then that part of the statute which limits the rights of exemption where the claim is for necessities is also unconstitutional. Following the same rule as applied to the provision of Section 703, limiting the exemption from garnishment to \$10 per week, where the claim is for necessities furnished, would also render such provision unconstitutional. If it is unconstitutional to give the laborer, the clerk or the mechanic a greater immunity from claims of exemption than any other general creditor then it would seem that it is equally unconstitutional to give the doctor, the grocery man, or the landlord any greater immunity. They are all general creditors, the distinction being in the nature of the debts. It is submitted that under the rule adopted by the court in *Verino v. Hickey supra*, that part of Section 703, which provides that if the garnishment be founded upon a debt for actual necessities furnished to the defendant for his family or dependents, no exemption shall be allowed in excess of \$10 out of each week's salary,²¹ is also unconstitutional, not on the theory that it is an abridgement of the judgment debtor's exemption rights under Article 19, Section 1, of the state constitution, but that it grants to certain general creditors privileges and immunities which it denies to other general creditors, in violation of the provisions of Article 1, Section 12, of the constitution.

This concludes the court's general interpretation of the statutes providing for exemptions. One important feature, however, remains to be discussed. When must a claim for exemption be made in order that

¹⁹ 7 Minn. 465, 82 Am. Dec. 108 (1862).

²⁰ 129 Minn. 184, 152 N. W 135 (1915).

²¹ A similar provision in the Minnesota statutes was declared unconstitutional, see *Bofferding v. Mengelkoch, supra*.

the claim be timely? The general rule is well settled that in the absence of an express statute²² the claim for exemption must be made within a reasonable time and a claim made at any time before sale under execution comes within the rule.²³

The courts of Washington have held that a judgment against a garnishee defendant is the same as a sale under execution. In the case of *United States Fidelity Co. v. Hollenshead*²⁴ the defendant made no claim for exemption until after trial on the garnishment proceedings and announcement of the judgment against the garnishee defendant. On the day prior to the formal entry of the judgments, the defendant made his claim for exemption. *Held* That it was not timely. This case then merely holds that the defendant is bound to set up his every claim or demand before trial to the end that the court shall not render an improvident judgment. In the course of its opinion the court says that a garnishment is a proceeding *in rem* and that the effect of the judgment in such proceeding is to put the parties in a like position as if the sheriff had made a sale of personal property and paid the proceeds into the registry of the court to be applied in satisfaction of the judgment. This case was cited and affirmed in the case of *Hanson v. Hodge*.²⁵

A claim for exemption is therefore timely in Washington if made at any time before judgment in garnishment proceedings or before sale under execution or attachment.

Maurice W Orth.

POWER OF CORPORATION TO DISCHARGE THOSE EMPLOYED UNDER CONTRACT FOR TERM OF YEARS—This note will be limited to an exposition of the law of the state of Washington with only a brief reference to that of foreign states.

Unfortunately for the prospective employee of a Washington corporation, the right to discharge him, even though employed under written contract for a term of years, is regulated by statute. The pertinent clause reads that the corporation shall have power "to appoint such *officers, agents, and servants* as the business of the corporation shall require, to define their powers, prescribe their duties, and to fix their compensation.

"To require of them such security as may be thought proper for the fulfillment of their duties and to *remove them at will* except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders as hereinafter provided."¹

Whatever the law might be, in the absence of this express declaration of the legislature, is not in issue, for the law-making branch of

²² Washington has no express statute on this point.

²³ *State ex rel. Hill v. Gardner* 32 Wash. 550, 73 Pac. 690 (1903) *United States Fidelity Co. v. Hollenshead*, 51 Wash. 326, 98 Pac. 749 (1909) *Messenger v. Murphy*, 33 Wash. 353, 74 Pac. 480 (1903).

²⁴ 51 Wash. 326, 98 Pac. 749 (1909).

²⁵ 92 Wash. 426, 159 Pac. 388 (1916).

¹ Rem. Comp. Stat., § 3809 [5], P. C. § 4515 [5].