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EXEMPTIONS - "IMPLEMENTS OF THE DEBTOR'S TRADE"

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EXEMPTIONS — "IMPLEMENTS OF THE DEBTOR'S TRADE" — In an action for conversion by wrongful attachment, it was *held* that printing equipment [1]

[1] "a 12" x 18" printing press driven by an electric motor with connecting belt; a paper cutter and a lead cutter, both operated by hand; and two type cabinets, 52

constituted "implements of the debtor's trade" within the meaning of the exemption statute.[2] *Flaxman v. Capitol City Press*, 121 Conn. 423, 185 A. 417 (1936).

A considerable body of decisions deals with the construction of "implements of the debtor's trade." The ordinarily inarticulate premise is that although debtors should not be permitted to enjoy their wealth while their creditors remain unpaid, they should be permitted to retain their means of earning a living.[3] To this end, many distinctions are read into the bare statutory words. "Implements" is frequently qualified in terms of size or value.[4] That the object be propelled by hand, rather than by motor, has been held necessary.[5]

cases of type, two brass galleys, two composing sticks, three line gauges, a stone and stand, a rack of riglets, and a rack of wood furniture. . . . of a moderate value of $579."

[2] Conn. Gen. Stat. (1930), § 5791.

[3] Spooner v. Fletcher, 3 Vt. 133, Am. Dec. 579 (1830); Sallee v. Waters, 17 Ala. 482 (1850); Martin v. Buswell, 108 Me. 263, 80 A. 828 (1911); 7 BOST. UNIV. L. REV. 230 (1927); 2 DAK. L. REV. 140 (1928).

[4] Danforth v. Woodward, 27 Mass. 423, 20 Am. Dec. 531 (1830); Thresher v. McEvoy, (Tex. Civ. App. 1917) 193 S. W. 159; Boston Belting Co. v. Ivens, 28 La. Ann. 695 (1876); Kilburn v. Demming, 2 Vt. 404, 21 Am. Dec. 543 (1829); Willis v. Morris, 66 Tex. 628, 1 S. W. 799 (1886); Sallee v. Waters, 17 Ala. 482 (1850); Burt v. Stocks Coal Co., 119 Ga. 629, 46 S. E. 828 (1904); Meyer v. Meyer, 23 Iowa 359, 92 Am. Dec. 432 (1867); Fish v. Street, 27 Kan. 270 (1882); Howard v. Williams, 19 Mass. 80 (1924); Pierce v. Gray, 73 Mass. 67 (1856); Buckingham v. Billings, 13 Mass. 82 (1816).

Contra: Re Klemp, 119 Cal. 41, 50 P. 1062, 39 L. R. A. 340, 63 Am. St. Rep. 69 (1897); Spence v. Smith, 121 Cal. 536, 53 P. 653, 66 Am. St. Rep. 62 (1898); Reeves v. Bascue, 76 Kan. 333, 91 P. 77 (1907); Knox v. Chadbourne, 28 Me. 160, 48 Am. Dec. 487 (1848).

Some statutes expressly limit the value of the exempted property. Mich. Comp. Laws (1929), § 14578, three hundred and fifty dollars; Wis. Stat. (1935), § 272.18 (8), two hundred dollars. When this express limitation exists, the purpose of the statute can be accomplished without resorting to implied limitations or strict construction. Cunningham v. Brictson, 101 Wis. 378, 77 N. W. 740 (1898); Wood v. Bresnahan, 63 Mich. 614, 30 N. W. 206 (1886).

[5] Thresher v. McEvoy, (Tex. Civ. App. 1917) 193 S. W. 159. *Contra*: Re Klemp, 119 Cal. 41, 50 P. 1062, 39 L. R. A. 340, 63 Am. St. Rep. 69 (1897); Reeves v. Bascue, 76 Kan. 333, 91 P. 77, 123 Am. St. Rep. 137 (1907); Flaxman v. Capitol City Press, 121 Conn. 423 at 428, 185 A. 417 (1936), "In this day, when the application of motive power to the operation of what formerly were such distinctively hand tools as the egg beater in the home or the hair clipper in the barber shop is a matter of common everyday practice, it cannot be held that propulsion by power per se excludes an implement from the exemption which the statute would otherwise afford. Such implements fall within the principle as to 'improved and more expensive tools'. . . ."

The following cases were decided under statutes referring to "tools" rather than "implements." Boston Belting Co. v. Ivens, 28 La. Ann. 695 (1876); Pierce v. Gray, 73 Mass. 67 (1856); Garrett v. Patchin, 29 Vt. 248, 70 Am. Dec. 414 (1857); Spooner v. Fletcher, 3 Vt. 133, 21 Am. Dec. 579 (1830); Henry v. Sheldon, 35 Vt. 427, 82 Am. Dec. 644 (1862); Kilburn v. Demming, 2 Vt. 404, 21 Am. Dec. 543 (1829); Willis v. Morris, 66 Tex. 628, 1 S. W. 799 (1886); Peyton v.

The improvement [6] of an implement takes it out of the protected class only when it converts it into a machine,[7] and when this occurs it is irrelevant that the machine is a substitute for simple implements.[8] The protection of implements may be extended to such other things as are required for their effective use.[9] That the implement be chiefly used by the debtor or his servants,[10] rather than by lessees,[11] is ordinarily required. The phrase has been held to refer only to objects owned by the debtor in severalty, as distinguished from the undivided interest of a partner.[12] A requirement that the implement be necessary in the carrying on of the trade may be implied.[13] It has also been held that it need in some degree be peculiarly adapted to the trade.[14] Where the business consists of production for a general market, rather than on the order of persons in the vicinity, it constitutes manufacturing,[15] and the owner of the establish-

Farmers' Nat. Bank, (C. C. A. 5th, 1919) 261 F. 326; Buckingham v. Billings, 13 Mass. 82 (1816). *Contra*: Patten v. Smith, 4 Conn. 450, 10 Am. Dec. 166 (1823). On the other hand, the mere fact that it is operated by hand does not make it a tool. Knox v. Chadbourne, 28 Me. 160, 48 Am. Dec. 487 (1848).

[6] Seeley v. Gwillim, 40 Conn. 106 (1873); Re Klemp, 119 Cal. 41, 50 P. 1062, 39 L. R. A. 340, 63 Am. St. Rep. 69 (1897).

[7] Buckingham v. Billings, 13 Mass. 82 (1816); Pierce v. Gray, 73 Mass. 67 (1856); Knox v. Chadbourne, 28 Me. 160, 48 Am. Dec. 487 (1848); Atwood v. De Forest, 19 Conn. 513 (1849).

[8] Henry v. Sheldon, 35 Vt. 427, 82 Am. Dec. 644 (1862).

[9] Patten v. Smith, 4 Conn. 450, 10 Am. Dec. 166 (1823), "indispensable to attain the object of the legislature in allowing the exemption contemplated." Flaxman v. Capitol City Press, 121 Conn. 423, 185 A. 417 (1936). But see Danforth v. Woodward, 27 Mass. 423, 20 Am. Dec. 531 (1830), which suggests that since additional parts would be required for the effective use of the otherwise exempt property, the exemption would not accomplish the purpose of the legislature and will therefore not be allowed.

[10] Smith v. McBryde, (Tex. Civ. App. 1915) 173 S. W. 234; Sallee v. Waters, 17 Ala. 482 (1850); Green v. Raymond, 58 Tex. 80, 44 Am. Rep. 601 (1882); Howard v. Williams, 19 Mass. 80 (1824); Daniels v. Hayward, 87 Mass. 43, 81 Am. Dec. 731 (1862); McDowell v. Shotwell, 2 Whart. (Pa.) 26 (1836).

[11] Re Baldwin, 71 Cal. 74, 12 P. 44 (1886); Meyer v. Meyer, 23 Iowa 359, 92 Am. Dec. 432 (1867); Re Klemp, 119 Cal. 41, 50 P. 1062, 39 L. R. A. 340, 63 Am. St. Rep. 69 (1897); Spence v. Smith, 121 Cal. 536, 53 P. 653, 66 Am. St. Rep. 62 (1898).

[12] Giovanni v. First Nat. Bank of Montgomery, 55 Ala. 305 (1876); Guptil v. McFee, 9 Kan. 26 (1872); Pond v. Kimball, 101 Mass. 105 (1869); Bonsall v. Comly, 44 Pa. St. 442 (1863). *Contra*: Gilman v. Williams, 7 Wis. 287 (1859); Stewart v. Brown, 37 N. Y. 350 (1867); Burns v. Harris, 67 N. C. 101 (1872).

[13] Meyer v. Meyer, 23 Iowa 359, 92 Am. Dec. 432 (1867). But see Re Klemp, 119 Cal. 41, 50 P. 1062, 39 L. R. A. 340, 63 Am. St. Rep. 69 (1897), and Spence v. Smith, 121 Cal. 536, 53 P. 653, 66 Am. St. Rep. 62 (1898), which holds that all of the implements used on a twenty-seven hundred acre farm were exempt.

[14] Re Kessler, (D. C. Tex. 1924) 2 F. (2d) 284; Seeley v. Gwillim, 40 Conn. 106 (1873). But see Davidson v. Sechrist, 28 Kan. 324 (1882) and Abraham v. Davenport, 73 Iowa 111, 34 N. W. 767 (1887).

[15] Atwood v. De Forest, 19 Conn. 513 (1849); Smith v. Gibbs, 72 Mass. 298 (1856); Flaxman v. Capitol City Press, 121 Conn. 423, 185 A. 417 (1936).

ment cannot claim an exemption even for the implements he personally uses.[16] His employees, however, may have protection for their implements.[17] The debtor's trade is the one in which he is presently engaged, or one that is only temporarily suspended,[18] rather than permanently abandoned.[19] That the debtor is engaged in more than one trade has been held to deny him protection in neither.[20] Illegality of the trade renders the implements subject to attachment.[21]

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[16] Boston Belting Co. v. Ivens, 28 La. Ann. 695 (1876); Atwood v. De Forest, 19 Conn. 513 (1849); Smith v. Gibbs, 72 Mass. 298 (1856).

[17] Atwood v. De Forest, 19 Conn. 513 (1849).

[18] Baker v. Willis, 123 Mass. 194 (1877); Woods v. Bresnahan, 63 Mich. 614, 30 N. W. 206 (1886). The latter case permits the exemption despite the fact that temporarily suspended business is to be resumed only in another state.

[19] Re Fox, (D. C. La. 1924) 2 F. (2d) 374; Norris v. Hoitt, 18 N. H. 196 (1846); Willis v. Morris, 66 Tex. 628, 1 S. W. 799; Atwood v. De Forest, 19 Conn. 513 (1849).

[20] Parkerson v. Wightman, 4 Strob. (S. C. Law) 363 (1850); Howard v. Williams, 19 Mass. 80 (1824); Re Robinson, (D. C. Idaho 1913) 206 F. 176; Pierce v. Gray, 73 Mass. 67 (1856).

In these cases the court expressly relied upon the fact that a maximum exemption is prescribed by the statute. Eager v. Taylor, 91 Mass. 156 (1864); Baker v. Willis, 123 Mass. 194 (1877).

Multiplication of employment does not entitle a debtor to take advantage of several distinct exemptions. Jenkins v. McNall, 27 Kan. 532, 41 Am. Rep. 422 (1882); Bevitt v. Crandall, 19 Wis. 610 (1865).

Michigan has attempted to meet this problem by a variation of the statutory wording "the trade . . . in which he is wholly or principally engaged. . . ." Mich. Comp. Laws (1929), § 14578. Smalley v. Masten, 8 Mich. 529 (1860); Kenyon v. Baker, 16 Mich. 373 (1868).

[21] Walsch v. Call, 32 Wis. 159 (1873).