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# Judgments -- Effect of Personal Property Exemption

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other's wife;<sup>35</sup> was living in a state of fornication with his mistress;<sup>36</sup> was assaulted without provocation after first combat had ceased.<sup>37</sup>

In *Zohner v. Sierra Nevada Life & Casualty Co.*,<sup>38</sup> where insured was killed when he drove his car against a pillar on the sidewalk on the left side of the street, recovery was allowed though the policy excluded injuries sustained while violating law. The California court said that the mere fact that a car is driven upon the left side of the highway or across a sidewalk does not, under all circumstances, constitute a violation of law. This seems to be a better result than that reached by the court in the principal case. The rule requiring one to drive on the right side of the road applies ordinarily only when one vehicle meets another.<sup>39</sup> What difference should it make in the liability of the insurer whether the insured while driving along a straight unobstructed highway happened to run off the left instead of the right-hand side of the road?

JULE McMICHAEL.

### Judgments—Effect of Personal Property Exemption.

By virtue of the North Carolina Constitution<sup>1</sup> a resident debtor is entitled to \$500 personal property free from execution for the collection of a debt, this exemption being subject to allotment upon demand at any time before the process is executed by a sale.<sup>2</sup>

In a recent North Carolina case<sup>3</sup> the plaintiff held a valid judgment against the defendant for \$3,650. Execution had been returned unsatisfied. Defendant was the owner of four life insurance policies under whose health benefit clauses he was receiving \$300 monthly. Plaintiff, by supplemental proceedings, sought to reach this \$300 monthly benefit and apply it on his judgment. The court held that the defendant should be allowed to select the \$300 each month as a part of his \$500 personal property exemption, so that at all times he

<sup>35</sup> *Supreme Lodge K. P. v. Crenshaw*, 129 Ga. 195, 58 S. E. 628 (1907).

<sup>36</sup> *Acc. Ins. Co. v. Bennett*, 90 Tenn. 256, 16 S. W. 723 (1891).

<sup>37</sup> *Grose v. Liberty Industrial Ins. Co.*, 6 La. App. 390 (1927).

<sup>38</sup> *Supra* note 25.

<sup>39</sup> *Mike v. Levy*, 210 App. Div. 813, 206 N. Y. Supp. 4 (1924); *Weinstein v. Wheeler*, 135 Ore. 518, 295 Pac. 196 (1931); *Seegerstrom v. Lawrence*, 64 Wash. 245, 116 Pac. 876 (1911); see *Dole v. Lublin*, 112 Conn. 603, 153 Atl. 856, 858 (1931); *Reid v. McDevitt*, 140 So. 722, 723 (Miss. 1932).

<sup>1</sup> Article X §1.

<sup>2</sup> N. C. CODE ANN. (Michie, 1931) §737.

<sup>3</sup> *Commissioner of Banks v. Yelverton*, 204 N. C. 441, 168 S. E. 505 (1933).

should have the amount of \$500 which could not be reached by the creditor. No matter how frequently creditors may bring execution against the debtor he is entitled to ask for a reassignment of his personal property exemption at each different levy.<sup>4</sup> Accordingly, if between the first and second levies the debtor has consumed half of his previous exemption he is entitled, upon the second levy, to replenish the remainder by \$250, bringing the total exemption back to the \$500 allowed. The creditor cannot avoid the exemption by having the payments not yet due declared subject to the payment of his debt.<sup>5</sup>

If the plaintiff, in a proper case, had attempted to reach the property of the defendant by attachment and garnishment instead of by judgment and execution the result would have been the same. An attachment is in the nature of a preliminary execution against the property of the defendant which is subject to levy; and garnishment is used to reach the debtor's property which is in the hands of a third person and not subject to actual levy. A resident debtor can claim his exemptions as against such proceeding.<sup>6</sup>

If the plaintiff, a resident creditor seeking to avoid the exemption laws of this state, should proceed in the courts of another state by attachment and garnishment against a non-resident debtor of a resident defendant, he may thus succeed in reaching property to be applied to his debt;<sup>7</sup> but since both plaintiff and defendant are in such case residents of the state, the defendant may ask the court to grant an injunction to restrain the creditor from proceeding in the other state.<sup>8</sup> If the plaintiff is a non-resident and should proceed by garnishment against a debtor of the defendant in another state, the

<sup>4</sup> *Frost v. Naylor*, 68 N. C. 325 (1873); *Shepherd v. Murrill*, 90 N. C. 208 (1884); *Pate v. Harper*, 94 N. C. 23 (1886); *Jones v. Alsbrook*, 115 N. C. 46, 20 S. E. 170 (1894); *Gardner v. McConnaughey*, 157 N. C. 481, 73 S. E. 125 (1911); *Befarrah v. Spell*, 178 N. C. 231, 100 S. E. 321 (1919).

<sup>5</sup> 12 R. C. L. 800 ("By reason of the rule that the garnishing creditor can reach no more than the garnishee owes the principal debtor.")

<sup>6</sup> *Gamble v. Rhyne*, 80 N. C. 183 (1879); *McINTOSH*, N. C. PRACTICE AND PROCEDURE (1929) §§809 (3), 819.

<sup>7</sup> *Chicago, Rock Island & P. R. Co. v. Strum*, 174 U. S. 710, 19 Sup. Ct. 797, 43 L. ed. 1144 (1899). ("It is held generally that exemption laws are a part of the remedy of the forum and have no force beyond the bounds of the state enacting them." *Armour Fertilizer Works v. Sanders*, 63 F. (2d) 902 (1933); *Goodwin v. Claytor*, 137 N. C. 224, 49 S. E. 173 (1904); *Penn. R. Co. v. Rogers*, 52 W. Va. 450, 44 S. E. 300 (1903); *McIntosh*, *op. cit. supra* note 6 §758.

<sup>8</sup> *Cole v. Cunningham*, 133 U. S. 107, 10 Sup. Ct. 269, 33 L. ed. 538 (1889); *Morton v. Hull*, 77 Tex. 80, 13 S. W. 849 (1890); *Wierse v. Thomas*, 145 N. C. 261, 59 S. E. 58 (1907).

defendant would not be allowed to set up his personal property exemption since it applies only within the state.<sup>9</sup> Where a resident debtor has brought action against his debtor and reduced his claim to a judgment in this state, a non-resident creditor cannot reach the amount due on such judgment by attachment and garnishment in another state.<sup>10</sup> While this will protect the exemption of the debtor in this state, the reason for such ruling is to preserve the control of the court over the judgment rendered, since this would be interfered with by the garnishment of the judgment debtor.

From this discussion the following conclusions may be drawn: (1) The resident debtor's personal property exemption is afforded complete protection from execution (a) where the creditor is a resident of this state, and (b) where the creditor, although a non-resident, brings action within this state; (2) the debtor cannot protect his exemption where the creditor, a non-resident, brings his action in a state foreign to the debtor.

J. CARLYLE RUTLEDGE.

#### Landlord and Tenant—Set-Offs Against Lease Deposits.

*A* deposited \$3,000 with *B* as a binder to insure *A*'s taking possession of a store under a build and lease contract.<sup>1</sup> *A* later became indebted to *B* on a collateral agreement for construction extras. *A* then assigned the deposit to *C* and later went bankrupt. Held, *B* is entitled to a set-off for the extras against *C*.<sup>2</sup> As the assignee can take no more than the assignor had,<sup>3</sup> the real question at issue is what were *B*'s rights against *A*, the assignor.

Such deposits are generally held not to create a debtor-creditor relationship. Two cases especially may be pointed out. In one, the

<sup>9</sup> *Harris v. Balk*, 198 U. S. 215, 25 Sup. Ct. 625, 49 L. ed. 1023 (1904); *Sexton v. Phoenix Insurance Co.*, 132 N. C. 1, 43 S. E. 479 (1903); *Balk v. Harris*, 132 N. C. 10, 43 S. E. 477 (1903); *Watson v. Seaboard R. Co.*, 198 N. C. 471, 152 S. E. 408 (1930); *Penn. R. Co. v. Rogers*, *supra* note 7.

<sup>10</sup> *Manufacturing Co. v. Freeman*, 175 N. C. 212, 95 S. E. 367 (1918); *Wabash R. Co. v. Tourville*, 179 U. S. 322, 21 Sup. Ct. 113, 45 L. ed. 210 (1900); *Shinn v. Zimmerman*, 3 Zabriskie (N. J.) 150 (1851); *McIntosh*, *op. cit. supra* note 6 §819.

<sup>1</sup> Receipt for the deposit read: "Received of *A*, check for Three Thousand Dollars (\$3,000.00) to be held by us as a binder to guarantee your carrying out lease made between yourselves and *B*, said lease being on store located at . . . , same to be returned when satisfactory bond is furnished or when you begin occupying store. Signed, *B*."

<sup>2</sup> *Commercial National Bank v. Cutter Realty Co.*, 205 N. C. 99, 170 S. E. 139 (1933).

<sup>3</sup> *Bank v. Bynum*, 84 N. C. 24 (1881); N. C. CODE ANN. (Michie, 1931) §446.