THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

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CHAPTER 68.

HOMESTEAD EXEMPTION.

§ 5521. What may be exempt as a homestead—Rights of wife and children.

A homestead, consisting of any quantity of land not exceeding eighty acres, and the dwelling-house thereon and its appurtenances, to be selected by the owner thereof, and not included in the laid-out or platted portion of any incorporated town, city or village, or, instead thereof, at the option of the owner, a quantity of land not exceeding in amount one lot of the original plat or any rearrangement or subdivision of such plat, or of any part thereof, as the same shall exist at the date of the commencement of the action or proceeding in which the execution or other process hereinafter mentioned shall issue, or of the death under which the homestead is claimed, or, in case the buildings occupy parts of two or more lots as legally platted at the time the exemption is claimed, a quantity of land not exceeding in area one of the original lots in the same block, if within the laid-out or platted portion of any incorporated town, city or village having over five thousand inhabitants, or one half acre, if within the laid-out or platted portion of any incorporated town, city or village having less than five thousand inhabitants, and the dwelling-house thereon and its appurtenances, owned and occupied by any resident of this state, shall not be subject to attachment, levy or sale upon execution, or any other process issuing out of any court within this state. This section shall be deemed and construed to exempt such homestead, in the manner aforesaid, during the time it shall be occupied by the widow or minor child or children of any deceased person who was, when living, entitled to the benefits of this act. And whenever a married man shall abscond from the state, or desert his wife or minor children, the wife or minor children may continue to occupy such homestead, with the same right therein as any other owner of a homestead under the laws of the state; and that the same shall not be subject to levy or sale upon attachment, execution, or other final process issued against the said husband, or against the said wife, or against the said husband and wife: provided, they shall not have the right to sell or convey the said homestead.

(G. S. 1866, c. 68, § 1, as amended 1875, c. 65, § 1; Id. c. 66, § 1; G. S. 1878, c. 68, § 1; 1891, c. 81, § 1.)

By § 2, pending cases are not to be affected by Laws 1891, c. 81.

The ownership by the occupant of an undivided interest, as of an undivided three-fourths, in land occupied as a homestead, is sufficient ownership to sustain a homestead exemption. Kaser v. Haas, 27 Minn. 406, 7 N. W. Rep. 824. An outstanding interest in land held and occupied as a homestead does not, when conveyed during the continuance of the homestead right to the occupant, become subject to the lien of a judgment docketed prior to such conveyance, but while the homestead right exists. Id.

An undivided half of two city lots cannot be claimed as a homestead exempt from sale on execution. Ward v. Huhn, 16 Minn. 159, (Gil. 142.)

An equitable owner of land may properly claim and hold the same as a homestead, under the homestead law of this state. Wilder v. Haughey, 21 Minn. 101. Followed, Hartman v. Munch, Id. 107.

One actually owning and occupying property may hold it as a homestead, though the legal title be in another. Jelinek v. Stepan, 41 Minn. 412, 43 N. W. Rep. 90.

The benefits of a homestead law attach to the house and lot to which the debtor has such a term as may be sold on execution. In re Emerson (Minn.) 60 N. W. Rep. 23.

In a lease for a term of years, it was recited that the building was "to be used for hotel purposes, and operated as such;" and the lessee stipulated, "as a further condition of his occupancy of said premises, * * * to conduct or operate thereon or thereat a public inn" during his term. There was no covenant in the lease that the premises should be used for hotel purposes exclusively, nor was there a forfeiture clause, with the right of re-entry on the part of the lessor, in case they should not be so used. Held, that the clauses in question did not inure to the benefit of a receiver of the les-

sce, under the insolvency law, in a proceeding by the lessee to have a portion of the premises set apart to him as a homestead. Id.

To constitute a homestead under the act of 1858, exempting a homestead, actual residence upon the premises is necessary. Tillotson v. Millard, 7 Minn. 513, (Gil. 419.) To constitute a homestead, the claimant's residence or dwelling must be, or must have been, situated thereon. Kresin v. Mau, 15 Minn. 116, (Gil. 87;) Kelly v. Dill, 23 Minn. 435. The dwelling being on one tract, and the claimant owning another, which merely touches the first at a corner, the second is not part of the homestead. Kresin v. Mau, *supra*.

Where A. paid the consideration for land, and at his request the conveyance was made to B., and A. and his family lived upon and occupied the premises, but B. did not, held, that A. could not claim it as a homestead, because he was not the owner, and B. could not, because she did not live on the land. Sumner v. Sawtelle, 8 Minn. 309, (Gil. 272.)

The word "lot," as used in the homestead law, is not synonymous with "tract" or "parcel," but is to be understood in the sense of a village, town, or city lot, according to the survey and plat of the village, town, or city in which the property is situated. Wilson v. Proctor, 28 Minn. 14, 8 N. W. Rep. 830.

"The laid-out or platted portion of an incorporated town," etc., refers only to that part which is laid out and platted for city or urban purposes. In re Smith's Estate, 51 Minn. 316, 53 N. W. Rep. 711.

A homestead which has never been platted is not reduced in area because included within the extension of city or town limits by legislation, or because of the platting of the surrounding property. Baldwin v. Robinson, 39 Minn. 244, 39 N. W. Rep. 321.

To be "within the laid-out or platted portion," a tract claimed as homestead must itself be laid out or platted, or the owner must have performed equivalent acts with reference to it. Mintzer v. St. Paul Trust Co., 45 Minn. 328, 47 N. W. Rep. 973.

The quantity of land exempt as a "lot" is to be determined according to the size of lots in the plat on which the land is situated. Lundberg v. Sharvey, 46 Minn. 351, 49 N. W. Rep. 60.

That a part of the lot on which a party's dwelling-house stands, is used for other purposes, does not affect the right to claim the whole lot as exempt. Kelly v. Baker, 10 Minn. 154, (Gil. 124.)

Followed in Jacoby v. Parkland Distilling Co., 41 Minn. 227, 43 N. W. Rep. 52.

Where a debtor bargains for and purchases real estate, and pays the consideration, and causes the conveyance to be made to his wife, there attaches to the land presumptively a trust in favor of his creditors at the time. Rogers v. McCauley, 22 Minn. 384. And proof that the debtor made the purchase, and caused the title to be vested in his wife, for the purpose of making the real estate the place of residence of himself and family, does not tend to disprove the fraudulent intent; nor does proof that, after making the contract of purchase, he placed a house upon the real estate, and always afterwards resided with his family upon it. Id. The homestead right of the wife in such a case will not protect her interest from the claims of the creditors. Id. Sumner v. Sawtelle, 8 Minn. 309, (Gil. 272,) followed.

A conveyance of his homestead by the owner thereof (his wife joining) to a third person, and by such third person to said wife, both conveyances being without valuable consideration, such owner being at the time in embarrassed and failing circumstances, and the conveyances being made for the purpose of transferring the property to the wife, so that she could hold it free from the claims of her husband's creditors, is not fraudulent or void as respects creditors of the husband to whom he was indebted at the time when the conveyances were made. Morrison v. Abbott, 27 Minn. 116, 6 N. W. Rep. 455.

The owner cannot, by making the land his homestead, defeat the lien of an attachment previously levied. Kelly v. Dill, 23 Minn. 435.

A judgment becomes a lien on a homestead as on other real estate, and although, while it remains a homestead, it is exempt from sale on execution, it may be sold on execution as soon as it ceases to be a homestead, as where the owner sells it. Folsom v. Carli, 5 Minn. 333, (Gil. 264.)

An insolvent debtor, securing a homestead by moving into, and occupying as his dwelling, a building which he owns, for the express purpose of holding it exempt, merely exercises a legal right. Jacoby v. Parkland Distilling Co., 41 Minn. 227, 43 N. W. Rep. 52.

Under sections 93, 94, p. 363, Rev. St., as amended by Laws 1854, p. 103, it was not necessary to the validity of a mortgage upon a homestead that the mortgagor's wife should join in executing it. Olson v. Nelson, 3 Minn. 53, (Gil. 22.)

Y. (a married man) owning a block of 12 city lots, in which he had an unselected and unascertained homestead, executed a mortgage of the entire block. Held, that the holder of the mortgage (overdue) may properly maintain an action for foreclosure, in which he may have the homestead ascertained and set off, and the remainder of the block sold to satisfy the mortgage. Coles v. Yorks, 31 Minn. 213, 17 N. W. Rep. 341.

Where A. holds security upon two tracts of land, one of which is a homestead, and B. holds security only upon the tract not a homestead, A. will not be compelled to resort to the homestead tract first, in order to leave the other tract, as far as may be, to B. McArthur v. Martin, 23 Minn. 75.

See Piper v. Johnston, cited in note to § 4222; Smith v. Lackor, cited in note to § 5460; Barton v. Drake, 21 Minn. 299; Townsend v. Fenton, 30 Minn. 528, 16 N. W. Rep. 421; Neumaier v. Vincent, 41 Minn. 481, 43 N. W. Rep. 376; McCarthy v. Van Der Mey, 42 Minn. 189, 44 N. W. Rep. 53; McGowan v. Baldwin, 46 Minn. 477, 49 N. W. Rep. 251; Bergsma v. Dewey, 46 Minn. 357, 49 N. W. Rep. 57, Wylie v. Grundysen, 51 Minn. 360, 53 N. W. Rep. 805.

See, also, § 4470.

§ 5522. Mortgages and conveyances must be signed by wife—Exception—Mechanics' lien.

Such exemption shall not extend to any mortgage thereon lawfully obtained; but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same, unless such mortgage shall be given to secure the payment of the purchase-money, or some portion thereof. And such exemption shall not extend to any contract for a lien, or upon which a lien would arise under the lien laws of this state, for work done or material furnished in the erection or repair of a dwelling-house or other building on said land.

(G. S. 1866, c. 68, § 2, as amended 1869, c. 26, § 1; G. S. 1878, c. 68, § 2.)

§§ 5521 and 5522 of this chapter, providing for a homestead limited in area only, without regard to value, and that a mortgage or alienation of the homestead without the wife's signature shall be void, are constitutional and valid. Cogel v. Mickow, 11 Minn. 475, (Gil. 354;) Barton v. Drake, 21 Minn. 299.

See, also, Conway v Elgin, 38 Minn. 469, 38 N. W. Rep. 370.

A mortgage by a pre-emptor upon the land pre-empted, executed after the proofs were made pursuant to an agreement made before the proofs, to secure the price of a land-warrant used in paying for the land, is valid. Jones v. Tainter, 15 Minn. 512, (Gil. 423.) Such land-warrant is purchase money, and the mortgage takes precedence of a widow's dower and homestead right. Id.

A mortgage of a homestead by the owner, a married man, is valid, if it have merely the signature of his wife, although her signature be not attested, nor acknowledged by her. Lawver v. Slingerland, 11 Minn. 447, (Gil. 330.)

If the mortgagors, at the time of and ever since the execution of the mortgage, resided on the mortgaged premises as their homestead, and the wife had never in any way released her homestead right to the same or any part thereof, and the mortgage was not given to secure any part of the purchase price thereof, then the mortgage is wholly invalid. Coles v. Yorks, 28 Minn. 464, 10 N. W. Rep. 775.

A mortgage, not for purchase money, by a husband, without his wife's signature, is not made valid by a subsequent divorce. Alt v. Banholzer, 39 Minn. 511, 40 N. W. Rep. 830.

This section will not authorize a lien, and the enforcement thereof against a debtor's homestead, in favor of the claim of a material-man for materials furnished in the erection of a building on such homestead, there being no agreement between the parties creating the lien. Coleman v. Ballandi, 22 Minn. 144.

See Meyer v. Berlandi, 39 Minn. 438, 40 N. W Rep. 518.

It is constitutionally competent for the legislature to determine the amount of property that shall be exempted from seizure or sale for the payment of any debt or liability, and to increase or diminish such amount from time to time; but it cannot, in its exemption laws, discriminate between different classes of creditors and kinds of debts. Id.

See Ferguson v. Kumler, 25 Minn. 183, 188.

A receiver may be appointed in an action to foreclose a mortgage, though the property be homestead. Lowell v. Doe, 44 Minn. 144, 46 N. W. Rep. 297.

Where a mortgage covers a homestead and other land, the mortgagor is entitled, on foreclosure, to have the nonexempt property first sold. Horton v. Kelly, 40 Minn. 193, 41 N. W. Rep. 1031.

An assignment of a certificate of school lands occupied as homestead, without the wife's signature, is void, though the assignee receives and holds possession. Such assignment does not become operative upon the land's ceasing to be homestead. Law v. Butler, 44 Minn. 482, 47 N. W. Rep. 53.

No act of a wife not amounting to an estoppel, unless equivalent to her signature, would make the assignment effectual; and such estoppel must operate as to both husband and wife. Id.

A contract by a husband, in which his wife does not join, to convey his homestead, is void. Weitzner v. Thingstad (Minn.) 56 N. W. Rep. 817.

§ 5523. Levy—Selection of homestead.

Whenever a levy shall be made upon the lands or tenements of a householder whose homestead has not been selected or set apart by metes and bounds, such householder shall notify the officer at the time of making such levy of

what he regards as his homestead, with a description thereof, within the limits above prescribed, and the remainder alone shall be subject to sale under such levy: *provided*, that, in case such householder shall refuse or neglect to make such selection within twenty days after notice of such levy, the officer making such levy shall cause to be surveyed and set off to such person entitled to such exemption in a compact form, including the dwelling-house and its appurtenances, the amount specified in the first section of this act; and the expenses of such survey shall be chargeable on the execution, and collected thereupon.

(G. S. 1866, c. 68, § 3; G. S. 1878, c. 68, § 3; as amended 1883, c. 59, § 1.)

When the land sold on the execution consisted of a farm of 160 acres, and was sold as one tract, and there was a homestead upon it, and the part to be held as such was not selected by the party entitled, nor set apart by the sheriff, the sale was void as to the whole. Following Ferguson v. Kumler, 25 Minn. 183, 27 Minn. 156, 6 N. W. Rep. 618. Kipp v. Bullard, 30 Minn. 84, 14 N. W. Rep. 364.

§ 5524. Same—Survey.

If the plaintiff in the execution shall be dissatisfied with the quantity of land selected and set apart by such householder, as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning at a point to be designated by the owner, and set off in a compact form, including the dwelling-house and its appurtenances, the amount specified in the first section of this act; and the expenses of such survey shall be chargeable on the execution, and collected thereon.

(G. S. 1866, c. 68, § 4; G. S. 1878, c. 68, § 4; as amended 1883, c. 59, § 1.)

The fact that the homestead which a party has actually made, and is occupying and claiming as such, includes more land than is permitted to be included within the limits of an exempt homestead, under the provisions of § 5521, does not render the whole of such homestead tract liable to sale on execution, even though such party wholly neglect to define the boundaries of his homestead within the limits prescribed by that section. The ruling upon this point, in the decision of this case on a former appeal, (25 Minn. 183,) adhered to. Ferguson v. Kumler, 27 Minn. 156, 6 N. W. Rep. 618.

§ 5525. Same—Sale.

After the selection of [or] survey shall have been made, the officer making the levy may sell the property levied upon, and not included in such homestead, in the same manner as provided in other cases for the sale of real estate on execution, and in giving a deed or certificate of the same may describe it according to his original levy, excepting therefrom by metes and bounds, according to the certificate of the survey, the quantity set off as such homestead, as aforesaid.

(G. S. 1866, c. 68, § 5; G. S. 1878, c. 68, § 5; as amended 1883, c. 59, § 1.)

§ 5526. Dwelling-house, without land, exempt, when.

Any person owning and occupying any house on land not his own, and claiming said house as a homestead, shall be entitled to the exemption aforesaid.

(G. S. 1866, c. 68, § 6; G. S. 1878, c. 68, § 6.)

See Hamlin v. Parsons, 12 Minn. 108, (Gil. 59, 60.)

§ 5527. No exemption from taxes.

Nothing in this act shall be considered as exempting any real estate from taxation, or sale for taxes.

(G. S. 1866, c. 68, § 7; G. S. 1878, c. 68, § 7.)

§ 5528. Exemption not lost by sale or removal—Judgments are not liens.

The owner of a homestead under the laws of this state may remove therefrom, or sell and convey the same; and such removal, or sale and conveyance, shall not render such homestead liable or subject to forced sale on execution or other process hereafter issued on any judgment or decree of any court of this state, or of the district court of the United States for the state of Minne-

sota, against such owner; nor shall any judgment or decree of any such court be a lien on such homestead for any purpose whatever: provided, that this act shall not be so construed as in any manner to relate to judgments or decrees rendered on the foreclosure of mortgages, either equitable or legal.

(1860, c. 95, § 1; G. S. 1866, c. 68, p. 499; G. S. 1878, c. 68, § 8.)

Since the enactment of this statute, a sale of the homestead, even with a fraudulent intent, will not make the same liable to forced sale on execution. Morrison v. Abbott, 27 Minn. 116, 6 N. W. Rep. 455. Followed, Ferguson v. Kumler, 27 Minn. 156, 6 N. W. Rep. 618.

See, also, Baldwin v. Rogers, 28 Minn. 544, 11 N. W. Rep. 77; Kaser v. Haas, 27 Minn. 406, 407, 7 N. W. Rep. 824; Folsom v. Carli, 5 Minn. 333, (Gil. 264;) Donaldson v. Lamprey, 29 Minn. 18, 11 N. W. Rep. 116; Kipp v. Bullard, 30 Minn. 84, 14 N. W. Rep. 364; Horton v. Kelly, 40 Minn. 193, 41 N. W. Rep. 1031.

§ 5529. Absence for more than six months—Notice of claim to be recorded.

Whenever the owner of a homestead under the laws of this state shall remove therefrom, and cease to occupy the same as such homestead for a period of more than six consecutive months, his right to claim the same as such shall cease and determine on the expiration of such period of six months, unless, prior thereto, he shall file in the office of the register of deeds of the county wherein such homestead is situate, a notice by him subscribed, and acknowledged in the manner deeds are required by law to be acknowledged, particularly designating such homestead, and that he claims the same as such; and in no case shall his right to claim the same as a homestead continue for a longer period than five years from the filing of such notice, unless it has been accompanied, during some portion of said period, by an actual occupancy and residence thereon by him or his family.

(1868, c. 58, § 1; G. S. 1878, c. 68, § 9.)

Where the owner of a homestead has permanently and unequivocally abandoned it, by removing from it, and acquiring a new homestead elsewhere, his right of exemption to the first is lost. This is not such a removal as is contemplated or permitted by § 5528. Hence, filing notice of claim under this section, under such circumstances, will not preserve or continue his right of exemption. Donaldson v. Lamprey, 29 Minn. 18, 11 N. W. Rep. 119.

See, as to abandonment, Williams v. Moody, 35 Minn. 280, 28 N. W. Rep. 510.

See, also, Kaser v. Haas, 27 Minn. 406, 407, 7 N. W. Rep. 824.

The owner may remove for six months without thereby affecting his homestead right, although he files no notice, and never reoccupies. Russell v. Speedy, 38 Minn. 303, 37 N. W. Rep. 340.

What removal amounts to an abandonment. Stewart v. Rhoades, 39 Minn. 193, 39 N. W. Rep. 141.

Where the right has been lost by removal and failure to file notice, the premises do not pass to the surviving husband or wife. Bailif v. Gerhard, 40 Minn. 172, 41 N. W. Rep. 1059.

If the owner removes, and ceases to occupy the premises for more than six months, without filing the notice, his right ceases, although he may have removed with the intention of returning. Intention and preparation to return will not restore the right. Quehl v. Peterson, 47 Minn. 13, 49 N. W. Rep. 390.

See Gowan v. Fountain, 50 Minn. 264, 52 N. W. Rep. 862.