

CHAPTER 510

HOMESTEAD EXEMPTIONS

510.01 HOMESTEAD DEFINED; EXEMPT; EXCEPTION.

HISTORY. R.S. 1851 c. 71 ss. 93 to 103; Minn. Const. art. 1, s. 12; 1858 c. 25 ss. 1 to 11; P.S. 1858 c. 61 ss. 92 to 102; G.S. 1866 c. 68 s. 1; 1875 c. 65 s. 1; 1875 c. 66 s. 1; G.S. 1878 c. 68 s. 1; 1891 c. 81 s. 1; G.S. 1894 s. 5521; R.L. 1905 s. 3452; G.S. 1913 s. 6957; G.S. 1923 s. 8336; M.S. 1927 s. 8336.

NOTE: The editors of the consolidated Statutes 1858 were unable to harmonize the provisions of Revised Territorial Statutes 1851, Sections 93 to 103, and Laws 1858, Chapter 25, and printed both. The revision of 1866 repealed both codes, and enacted a new chapter on homesteads, Chapter 68.

1. Policy and construction
2. Scope
3. Essential occupancy
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5. Alienation and estoppel
6. Liens and debts
7. Insolvency and bankruptcy

1. Policy and construction

The legislature having full power to control remedies, the exemption law of 1858 is intended to operate upon debts contracted prior to its passage. *Grimes v Byrne*, 2 M 89 (72).

To constitute a homestead actual residence upon the premises is necessary, and removal of the claimant permits a legal lien in favor of a judgment creditor, and the right of the judgment creditor to sell becomes vested, and cannot be divested by a subsequent act of the legislature. *Tillotson v Millard*, 7 M 513 (419).

An equitable owner of land may properly claim and hold the same as a homestead. *Wilder v Haughey*, 21 M 101.

Sale of the homestead, even with a fraudulent intent, will not make it liable to forced sale on execution, and the fact that the homestead includes more land than is permitted, does not render the tract liable for sale on execution even if the owner fails to define his boundaries. *Ferguson v Kumler*, 27 M 156, 6 NW 618.

The statute imposes no restrictions on the uses of a homestead, provided only it is the dwelling of the claimant, and the fact that he moved into a business block for the sole purpose of acquiring homestead rights was his privilege. His statement to creditors prior to acquiring a homestead right does not constitute an estoppel. *Jacoby v Parkland*, 41 M 481, 43 NW 376.

Laws applicable to homesteads should receive a liberal construction. A homestead right to a farm, acquired before the extension of municipal limits brought the land into the city, is not lost so long as it is used as a farm, and the surroundings remain rural in character. *Kiewert v Anderson*, 65 M 491, 67 NW 1031.

A homestead may be claimed in land of which a party is in possession under a contract of purchase, or under any other equitable title, and has the same right to have the non-exempt part first applied to the discharge of a lien, as if he held the legal title. *Keith v Albrecht*, 89 M 247, 94 NW 677.

An unrecorded deed of a homestead is valid as against a judgment creditor who had notice thereof before the land became subject to his judgment. *Oxborough v St. Martin*, 142 M 34, 170 NW 707.

Upon the death of the spouse holding the fee title, the surviving spouse takes the homestead right, not by any right of survivorship, but as property set aside by law from decedent's estate for the benefit of the surviving spouse and children, and where the wife has been wrongfully induced by fraud to release her homestead rights she is entitled in a court of equity to be restored to her rights. *Tomlinson v Bank*, 162 M 230, 202 NW 494.

Where a husband embezzles funds of his employer and uses the money to build a home which he occupies as a homestead, the property being in the name of himself and wife as tenants in common, a constructive trust arises in favor of the injured party. *American v Houle*, 169 M 209, 210 NW 889.

A devise of the statutory homestead by will, duly consented to in writing by testator's spouse, conveys the homestead free from the claims of general creditors, unless such will expressly makes the homestead subject to the payment of debts. *In re Overvold*, 186 M 359, 243 NW 439.

A debtor claiming an exemption of his property from execution and sale under section 510.01 has the burden of proving that he comes within the statutory requirements. Homestead laws are to be liberally construed in order to "carry out the manifest purpose of the legislature". *Jensen v Christensen*, 216 M 92, 11 NW(2d) 798.

The referee properly found that the bankrupts, husband and wife, in moving from their farm in Minnesota to Iowa, left the farm temporarily and did not lose their right to claim and hold the land as a homestead. *In re Crocker et ux*, 217 F 167.

On death of spouse holding fee title to a homestead the surviving spouse takes homestead rights, not by right of survivorship, but as property set apart by law from decedent's estate for benefit of surviving spouse or latter's children; and if fraud was practiced on a wife in obtaining her signature on a deed to the homestead the wife was entitled to follow the proceeds of the sale of the homestead on so much thereof as went into purchase of annuity contract by husband. *Maruska v Equitable Life*, 21 F. Supp. 844.

The old age assistance lien is enforceable as against an estate in the land for the life of the recipient after the recipient vacates the property, and upon sale by her the interest acquired by the purchaser is subject to the state's lien. 1942 OAG 267, April 18, 1942 (521P-4); OAG Jan. 8, 1944 (521P-3).

Homestead, acquisition of. 1 MLR 455.

Homestead exemption; homestead in wife's name. 2 MLR 392.

Election of remedies. 6 MLR 508.

Loss of exemption by dissolution of family. 10 MLR 258.

Exemption of crops growing on the homestead. 11 MLR 635.

Conflicts of laws as to domicile. 15 MLR 672.

Creditor's rights. 25 MLR 385.

2. Scope

That part of the lot on which the dwelling stands, is used for other purposes, does not affect the exemption rights to the entire lot. *Keely v Baker*, 10 M 154 (124).

To constitute a homestead, the claimant's residence must be or must have been situated thereon, and where the dwelling is on one tract and the claimant owns another which merely touches the first at a corner, the second tract is not a part of the homestead. *Kresin v Mau*, 15 M 116 (87).

An equitable owner of land may claim same as his homestead. *Wilder v Haughey*, 21 M 101.

The homestead may not be levied on though it exceed the statutory limit and the owner has neglected to define the limits he desires to reserve. *Ferguson v Kumler*, 27 M 156, 6 NW 618.

The ownership by an occupant of only a three-fourths interest in the land is sufficient to sustain a homestead exemption. *Kaser v Haas*, 27 M 406, 7 NW 824.

Where an owner removes from a property and acquires a new homestead elsewhere, his right of exemption is lost, and he cannot preserve the right by filing a notice under the statute. *Donaldson v Lamprey*, 29 M 18, 11 NW 119.

Fixtures wrongfully severed from the homestead are exempt. After severance the owner may sue for its conversion as personal property, and the money recovered is exempt. *Wylie v Grundysen*, 51 M 360, 53 NW 805.

The homestead exemption is not alone for the husband and his protection, but for the benefit of the wife and children as well. It is not only a privilege but an absolute right, and where the wife has been wrongfully induced by fraud to release her homestead rights she is entitled, in a court of equity to be restored to her legal rights. *Tomlinson v Bank*, 162 M 230, 202 NW 494.

The homestead law is liberally construed for the benefit of the debtor, and where a homestead is included with other lands in a mortgage, the claimant may, on reasonable demand, have the other lands first applied in satisfaction of the mortgage. *Mulroy v Sioux Falls*, 165 M 295, 206 NW 461.

Evidence showing that husband and wife had lived on land, though frequently absent, and had retained home there, leaving household furniture, held, to sustain order setting apart homestead to surviving widow. *Wells-Dickey v Lindberg*, 165 M 492, 206 NW 929.

Judgment for money loaned to purchase a homestead, upon the promise of the husband that when the title was acquired he would secure the loan by a mortgage on the premises, cannot be made a lien on the land. *Bank v Lentz*, 171 M 431, 214 NW 467.

Where two brothers, owners of land in joint tenancy, operated the land as partners, and both occupied the land as a homestead, the surviving brother did not lose his homestead rights after the dissolution of the partnership and the death of one brother. *Eberhart v Bank*, 172 M 200, 214 NW 793.

There is no abandonment of a homestead until the owner removes therefrom and ceases to occupy it as his home. Intention to remove at some future time is not sufficient. *Bowers v Norton*, 173 M 576, 218 NW 108.

A summer cottage, fully furnished for housekeeping and equipped with year-round heating apparatus may be held as a homestead where the owner resides therein more than six months of the year. *Gussman v Rodgers*, 190 M 153, 251 NW 18.

A judgment lien on real property is not defeated by a homestead right acquired by the judgment debtor after docketing the judgment. *Rusch v Lagerman*, 194 M 469, 261 NW 186.

In partition proceedings, the fact that one of the cotenants claims homestead exemption in his undivided interest does not prevent a sale of the property which cannot be divided without great prejudice to the owners. *Smith v Wright*, 195 M 589, 263 NW 903.

Where life estate is coupled with power of disposition, and right to use the proceeds for support of the tenant, the life tenant may even dispose of the homestead if clearly necessary, but not to waste on profligate living. *Beliveau v Beliveau*, 217 M 235, 14 NW(2d) 360.

In a tax classification statute, homestead means the residence of the owner, and is not concerned with the size. OAG Nov. 7, 1933.

Personal property tax judgment is not a lien on judgment debtor's homestead. OAG Sept. 14, 1934 (421a-9).

Protection of purchaser at execution sale. 24 MLR 807.

Scope of homestead exemption. 25 MLR 67.

3. Essential occupancy

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. *Folson v Carli*, 5 M 333 (264).

The act of 1860 is not retroactive, and the judgment obtained prior to that act is a vested right, of which the judgment creditor could not be divested by legislative act. *Tillotson v Millard*, 7 M-513 (419).

Where A bought land, and had the conveyance made to B, and A and his family occupied the premises, A could not claim the property as a homestead as he was not the owner, and B could not because she did not live on the land. *Sumner v Sawtelle*, 8 M 309 (272).

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

To constitute a homestead, the claimant's residence must be, or must have been, situated thereon. *Kresin v Mau*, 15 M 116 (87); *Kelly v Dill*, 23 M 435.

When the owner of a tract or lot, within the statutory limit of a homestead, actually occupies the same as his sole place of residence, such lot or tract becomes his homestead, without further selection. *Barton v Drake*, 21 M 299.

The statute gives the homestead exemption absolutely, without making the right to it depend upon any affirmative action upon the part of the person claiming it. *Ferguson v Kumler*, 25 M 183.

The method of dedicating land as a homestead is by visible use and occupancy, and where the homestead is included in and a part of a larger tract than allowable for a legal homestead, the purpose of selection by the widow or family, or by court order, is not to vest the homestead in the widow or family as that is done by occupancy, but to determine the exact boundaries so that the overage may be subject to administration. *Wilson v Proctor*, 28 M 13, 8 NW 830.

The terms "occupancy" and "residence" as used in the homestead exemption laws refer to an actual occupancy of the premises, and if the owner removes for a period of six months without filing the notice as required by statute his right of exemption ceases though he may intend to return and may be actually about to do so. *Quehl v Peterson*, 47 M 13, 49 NW 390.

Actual occupancy, as distinguished from possession (which may be constructive) is the prominent idea associated with the word "homestead". *Clark v Dewey*, 71 M 108, 73 NW 390.

Conflict of laws as to domicile. 15 MLR 668.

4. Limitations

(a) as to area or value

A homestead law which measures the homestead according to area and not by value, is valid. *Cogel v Mickaw*, 11 M 475 (354); *Barton v Drake*, 21 M 299; *In re How*, 59 M 415, 61 NW 456.

A homestead which has never been platted or laid out, subsequently brought within a municipality by legislative enactment, extending the corporate limits, cannot be reduced in area except by some act of the homestead claimant. *Baldwin v Robinson*, 39 M 244, 39 NW 321.

An insolvent debtor may secure a homestead by moving into and occupying as his dwelling a building he owns. *Jacoby v Parkland*, 41 M 227, 43 NW 52.

Where the judgment debtor claims as his homestead the whole of a five-acre tract in St. Paul, on which he resides, whether or not the whole is exempt depends on whether or not it is within rural or urban territory. *Bank v Banholzer*, 69 M 24, 71 NW 919.

The homestead exemption is measured by area, and the quantity of land may be selected as such, notwithstanding a part thereof is devoted to purposes other than a dwelling. *Lockey v Lockey*, 112 M 512, 128 NW 833; *Stanning v Crookston*, 134 M 478, 159 NW 788.

(b) as to use

That part of a lot on which the dwelling house stands is used for other purposes, does not affect his right to claim the whole lot as exempt. *Kelly v Baker*, 10 M 154 (124).

Where a judgment debtor owns a three-story building, and occupies the second story as a home and rents the first and third floors, the entire building is exempt. *Umland v Holcombe*, 26 M 286, 3 NW 341.

The statute imposes no restrictions upon the uses of a homestead, provided only that it is the dwelling of the claimant. *Jacoby v Parkland*, 41 M 227, 43 NW 52.

The benefits of a homestead law are not confined to an ownership in fee, but attach to the house and lot to which the debtor has such a term as may be sold on execution. *In re Emerson*, 58 M 450, 60 NW 23, 69 M 292, 72 NW 119.

Illegal use and occupancy of a homestead does not render it subject to sale on execution. *Ryan v Colburn*, 185 M 347, 241 NW 388.

5. Alienation and estoppel

A married man whose wife and children lived apart from him in an adjoining state, married another woman, and later acquired a parcel of land on which he resided as a homestead. Prior to his death, he deeded the property to the woman with whom he was living, but his wife in the distant estate did not join, held, the deed void, and upon his death the wife by the first ceremony became tenant for life, with remainder to the children in fee. *St. Denis v Mullen*, 157 M 266, 196 NW 258; *Rux v Adam*, 143 M 35, 172 NW 912.

An oral agreement made by one spouse to give a mortgage on the family homestead is wholly void. *Kingery v Kingery*, 185 M 467, 241 NW 583.

The rule that the husband as head of the family has the right to fix the domicile has no special application where there is no showing that he actually did so; and the fact that a year previous to the taking of a judgment against him, he filed a petition in bankruptcy in Chicago, listing that city as his home, is not conclusive. *Gussman v Rodgers*, 190 M 153, 251 NW 18.

6. Liens and debts

Where the debt is for materials furnished to erect a dwelling on a homestead, the creditor can obtain an ordinary money judgment, and seize and sell the property on execution the same as any other real estate, and this holds good as to the transferee of the debt. *Nickerson v Crawford*, 74 M 366, 77 NW 292.

A homestead is not exempt from execution on an indebtedness for labor or material furnished in erecting a house, and a lien may be acquired in an action as well by levying an attachment as by docketing the judgment. *Bagley v Pennington*, 76 M 226, 78 NW 1113.

The amendment to the Constitution of Minnesota, Article 1, Section 12, adopted November 6, 1888, relating to labor or materials used in building or repairing tenements or homestead property was entirely prospective. *Brown v Hughes*, 89 M 150, 94 NW 438.

Real estate of a debtor, including his homestead, is liable to be sold on execution for the payment of any debt incurred to any laborer or servant for labor; and this liability extends to a debt incurred by a copartnership in which the homestead owner was a partner. *Lindberg v Johnson*, 93 M 267, 101 NW 74.

Husband gave mortgage on premises describing himself as widower; after his death the court found that at the time of giving the mortgage he was married and living on the premises with his wife thus canceling the mortgage. *Lamont v Lamont*, 128 M 525, 151 NW 416.

Statement in a confession of judgment, upon a promissory note given for borrowed money, waiving defendant's right and benefit of the law exempting property from sale on execution, does not subject defendant's homestead to levy under execution issued upon such judgment. *Benning v Hessler*, 144 M 403, 175 NW 682.

A homestead claimed by husband and wife may be part on land owned by one part on land owned by the other. The bankruptcy court has jurisdiction to determine the claims of bankrupts to their exemptions. Where within the statutory time after levy the homestead owners presented to the sheriff their selection of a homestead, and it was ignored, the judgment creditors cannot contest the selection made. *Rossing v Larson*, 162 M 176, 202 NW 711.

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Since the amendment to the constitution in 1888 homesteads are subject to mechanic's lien. *Gale v Hopkins*, 165 M 177, 206 NW 164.

A foreclosure sale of several parcels of land in gross is not void, but voidable, and where the complaint shows a timely request to sell the unexempt land first, and such lands were of sufficient value to satisfy the mortgage, the sale may be avoided, *Mulroy v Bank*, 165 M 295, 206 NW 461.

An award under the workmen's compensation act, and a judgment in the district court upon the award is not a lien upon the employee's homestead. *Asse v Langston*, 175 M 161, 220 NW 420.

The constitutional provision relating to a laborer's lien on the homestead does not create a liability against the homestead of one who is not the master or employer, although he has by some collateral contract or agreement with the employer made himself liable for payment. *Lahti v Peterson*, 175 M 389, 221 NW 534.

A general provision in a will directing the executor to pay all the testator's debts does not make such debts a charge upon the homestead when the estate disposed of by will consists of homestead and other property. In *re Overhold*, 186 M 359, 243 NW 439.

The constitutional provision does not include a claim by an automobile salesman for unpaid wages earned while he was in the employ of the homestead owner. *Fletcher v Scott*, 201 M 609, 277 NW 270.

Where former owners of a homestead remain in possession after being divested of title by foreclosure, and while in possession the title holder conveys the property to wife of one of the mortgagors, on the promise of husband and wife to execute a mortgage thereon, equity will enforce performance of the promise by decreeing a vendor's lien superior to any homestead right. *Hecht v Anthony*, 204 M 432, 283 NW 753.

7. Insolvency and bankruptcy

An attachment by a creditor, from the time the lien attaches by seizure, is a vested right and property, and the act of the debtor in going on the property at a later date is ineffective to create a homestead right superior to the attaching creditor. *Kelly v Dill*, 23 M 435; *Liebetau v Goodsell*, 26 M 417, 4 NW 813.

An insolvent debtor, and in contemplation of insolvency moved into a building for the express purpose of creating a homestead right as against his creditors. His action was within his legal rights, and the property became his homestead. *Jacoby v Parkland*, 41 M 227, 43 NW 52.

K purchased premises on August 6, 1886, and went into immediate possession, until he sold the premises to Neumaier on March 16, 1887. Held, that Vincent's judgment docket against K on March 12, 1886, never so attached to the homestead as to defeat the homestead exemption. *Neumaier v Vincent*, 41 M 481, 43 NW 376.

Where a vendor conveyed to a vendee through a third person, a judgment of record against said third party conduit did not attach because said third party was at that time residing on the premises. *Goswitz v Jefferson*, 123 M 293, 143 NW 720.

Under the bankruptcy act, a lien of a judgment procured less than four months preceding the filing of the petition in bankruptcy is annulled thereby, even as to property of the bankrupt, his homestead, set aside to him as exempt. *Landy v Martin*, 193 M 252, 258 NW 573.

510.02 AREA, HOW LIMITED.

HISTORY. G.S. 1866 c. 68 s. 1; 1875 c. 65 s. 1; 1875 c. 66 s. 1; G.S. 1878 c. 68 s. 1; 1891 c. 81 s. 1; G.S. 1894 s. 5521; R.L. 1905 s. 3453; 1907 c. 335 s. 1; G.S. 1913 s. 6958; G.S. 1923 s. 8337; M.S. 1927 s. 8337.

Decedent occupied a house built on a tract consisting of three lots. The house was situated in part on each of the three. The method of selecting a homestead is by visible use and occupancy, and where the homestead is included as part of a tract beyond the statutory limitation, the purpose of permitting the occupant,

or the court to make a selection, is not to vest any right but to determine the exact boundaries so that the excess may be the subject of levy or of administration. *Wilson v Proctor*, 28 M 13, 8 NW 830.

A tract of land to be "within the laid out or platted portion" of a municipal corporation, must itself be laid out or platted, or its owner must have performed act equivalent. *Mintzer v St. Paul*, 45 M 323, 47 NW 973.

Two separate ten-acre parcels of land, touching only at the corners, between which is a regular roadway, if owned, occupied and cultivated as one farm, may constitute a homestead, although the residence and appurtenances are all located upon one tract. *Brixius v Reimringer*, 101 M 347, 112 NW 273.

The homestead exemption is measured by area, and the quantity of land there prescribed may be selected as such, notwithstanding a part thereof may be devoted to purposes other than that of the dwelling place of the owner. *Lockey v Lockey*, 112 M 512, 128 NW 833.

The entry and docketing of a judgment against a bankrupt, pending the bankruptcy proceedings and before the discharge of the bankrupt, becomes a valid lien upon real estate of the bankrupt, which by reason of the homestead exemption, at the time of the adjudication did not pass to the bankrupt estate, but which was liable to the payment of the debt represented by the judgment, because not a part of the homestead when the debt was created; the homestead limit having been enlarged by statute subsequent to the creation of the debt. *Gregory v Cale*, 115 M 508, 133 NW 75.

Husband and wife were owners of adjoining lots. The dwelling house was principally on the wife's lot but extended onto the land of the husband. Held, that as the land was within the limit as to area, it was a homestead, and both lots were exempt. *Gilbert v Case*, 136 M 257, 161 NW 515.

Bankruptcy exemptions are the same as those allowed by governing state statutes; and crops growing on exempt property are not exempt. *Vought v Kanne*, 10 F(2d) 747.

Marshaling, in bankruptcy, of the homestead rights of a bankrupt, part of whose claimed homestead was acquired before and part subsequent to the amendment to sections 510.02 and 510.03. In re *Cale*, 182 F 439.

In construing homestead preferential tax law, the area of homestead is determined by use as a place of abode. 1934 OAG 795, Nov. 7, 1933 (232).

Classification of homesteads for purposes of taxation. 1934 OAG 796, Feb. 10, 1934 (232a).

Platted portion of city. 1 MLR 90.

Acquisition of homestead. 1 MLR 455.

Exemption of crops growing on homestead. 11 MLR 635.

Inheritance tax procedure, 23 MLR 121.

Scope of the homestead exemption. 25 MLR 67.

510.03 EXISTING EXEMPTION NOT AFFECTED BY CHANGES.

HISTORY. R.L. 1905 s. 3454; G.S. 1913 s. 6959; G.S. 1923 s. 8338; M.S. 1927 s. 8338.

A homestead which has never been platted or laid out, subsequently brought within an incorporated municipality by legislative enactment extending the corporate limits, cannot be reduced in area by laying out or platting contiguous lands by persons other than the homestead claimant. *Baldwin v Robinson*, 39 M 244, 29 NW 321.

"Laid out or platted portion" refers only to that part which is laid out and platted for urban purposes, and not to land divided into farm lots for rural purposes. *Smith's Estate*, 51 M 316, 53 NW 711.

Where blocks in a platted part of a city were generally subdivided into lots of various sizes and the locality was urban in character, and one block was not so subdivided, it was held that the owner could hold as his homestead only so much as a tract of the average sized lots in that locality. *Heidel v Benedict*, 61 M 170, 63 NW 490.

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Rules for construing the meaning of the word "lot": (1) The mere fact that a trust of land is designated as a "lot" is not conclusive; (2) the homestead must be measured by the ordinary, prevailing and standard size of lots in the plat in which the tract is located; (3) the tract designated as a "lot" must be substantially larger than standard lots in the same plot in order to justify a court in holding that it is not all within the spirit and intent of the exemption statute. *Ford v Clement*, 68 M 484, 71 NW 672.

The judgment debtor claims as his homestead the whole of an unplatted five-acre tract in the platted portion of the city of St. Paul. Held, to be exempt because it is not in the urban portion of the city. *Bank v Banholzer*, 69 M 24, 71 NW 919.

Scope of homestead exemption. 25 MLR 67.

510.04 TITLE MAY BE IN HUSBAND OR WIFE; EQUITABLE TITLE EXEMPT.

HISTORY. G.S. 1866 c. 68 ss. 1, 6; 1875 c. 65 s. 1; 1875 c. 66 s. 1; G.S. 1878 c. 68 ss. 1, 6; 1891 c. 81 s. 1; G.S. 1894 ss. 5521, 5526; R.S. 1905 s. 3455; G.S. 1913 s. 6960; G.S. 1923 s. 8339; M.S. 1927 s. 8339.

Where A paid for land, and at his request the deed was made to B and so recorded, and A lived on the land but B did not, it was held, that B could not claim the homestead since she did not reside on it and A could not because he was not the record owner. *Sumner v Sawtelle*, 8 M 309 (272).

Parsons mortgaged to Hamlin lot 6 upon which was dwelling house. Later and without the consent of Hamlin, Parsons removed the house to lot 7. Held, the lien of the mortgage was not extended to lot 7, nor could lot 7 be sold on foreclosure, but Hamlin retained his lien on the dwelling house, and it could be sold to satisfy the balance after exhausting lot 6. *Hamlin v Parsons*, 12 M 108 (59).

A equitable owner of land may claim and hold the same as a homestead. *Wilder v Haughey*, 21 M 101.

The homestead laws were not enacted as a shield to cover fraudulent acts. *Rogers v McCauley*, 22 M 384.

A homestead is protected against any mortgage, except for the purchase money, given by a married man without the signature of the wife. *Smith v Lackor*, 23 M 454.

The sale of a homestead will not make it liable to forced sale on execution. *Ferguson v Kumler*, 25 M 183, 27 M 156, 6 NW 618.

The ownership by the occupant of an undivided interest in land is sufficient ownership to sustain a homestead exemption. *Kaser v Haas*, 27 M 406, 7 NW 824.

Compensation award, proceeds of condemnation proceedings of irregular tract claimed as a homestead. *Secombe v Borland*, 34 M 258, 25 NW 452.

A person having an undivided interest in a tract of land is not entitled to claim as a homestead more in area than as specified in the statute. *O'Brien v Krenz*, 36 M 136, 30 NW 458.

Dying wife, her husband joining, conveyed to a trustee, the family continuing to reside on the premises, held, as against the grantee of the trustee, that the property did not lose its homestead character. *Jelinek v Stepan*, 41 M 412, 43 NW 90.

An assignment of a school certificate is void where the land represented by the certificate is occupied as a homestead, and the wife did not join in the assignment. *Law v Butler*, 44 M 482, 47 NW 53.

A building which is exempt from levy as an appurtenant of an exempt homestead does not lose its exempt character by severance from the realty by a trespasser, and the owner may sue for its conversion as personal property. *Wyllie v Grundysen*, 51 M 360, 53 NW 805.

A wife's interest in the homestead is such that she may protect it and may redeem from a mortgage having precedence of the homestead right. A foreclosure of such mortgage by action to which she is not made a party will not affect her homestead interest. *Spalti v Blumer*, 56 M 523, 58 NW 156.

A tenant for years is entitled to homestead on the demised premises. In re *Emerson*, 58 M 450, 60 NW 23.

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Where the homestead is in the name of the wife, and the husband owns no land in the village, he is not a freeholder. *Hamilton v Village*, 85 M 83, 88 NW 419.

A homestead may be claimed where the occupant is in possession under a contract to purchase. *Keith v Albrecht*, 89 M 247, 94 NW 677; *Hook v Northwest*, 91 M 482, 98 NW 463.

Neither husband nor wife can dispose by sale or conveyance of a homestead right without the express consent of the other. What neither is able to do directly, neither will be permitted to do indirectly by sale on partition. *Grace v Grace*, 96 M 294, 104 NW 969.

A wife has an interest in the homestead, although the legal title is in the husband's name, and she is entitled to the peaceful enjoyment thereof and may recover damages for any unlawful invasion. *Lesch v Railway*, 97 M 503, 106 NW 955.

Under a contract for the sale of lands, the vendee acquires an equitable title to which the wife's statutory marital right attaches; and that holds true even if the contract expressly provides that the vendee may nominate the grantee in the deed. *Wethington v Railway*, 123 M 483, 144 NW 222.

Husband and wife own adjoining city lots; the buildings were in part located on back lots. Held, that the fact of separate ownership was not material and the land selected was a homestead and exempt from levy. *Gilbert v Case*, 136 M 257, 161 NW 515.

A judgment debtor transferred to his wife all his unexempt property, and she in turn deeded the homestead to him, held to be in fraud of creditors, and the claimed homestead liable for debts. *Small v Anderson*, 139 M 292, 166 NW 340.

Where the sheriff levies an execution on debtor's homestead containing an area larger than the statutory limit, the selection by the owner is conclusive. *Rossing v Westbrook*, 162 M 176, 202 NW 711.

Conveyance of homestead right wherein the wife has been induced through fraud to join, may be set aside in a court of equity. *Tomlinson v Bank*, 162 M 230, 202 NW 494.

An oral agreement made by one spouse while both are living to give a mortgage on the family homestead, is wholly void. *Kingery v Kingery*, 185 M 467, 241 NW 583.

Homestead in wife's name. 2 MLR 392.

Scope of the homestead exemption. 25 MLR 68.

510.05 NO ALIENATION WITHOUT CONSENT OF SPOUSE.

HISTORY. G.S. 1866 c. 68 ss. 1, 2, 7; 1869 c. 26 s. 1; 1875 c. 65 s. 1; 1875 c. 66 s. 1; G.S. 1878 c. 68 ss. 1, 2, 7; 1891 c. 81 s. 1; G.S. 1894 ss. 5521, 5522, 5527; R.L. 1905 s. 3456; G.S. 1913 s. 6961; G.S. 1923 s. 8340; M.S. 1927 s. 8340.

A mortgage by a preemptor, executed after proofs were made, and for the money to be used in obtaining the final land warrant, is a purchase money mortgage and takes precedence of the wife's homestead right. *Jones v Tainter*, 15 M 512 (423).

Owner of school land certificates has an equitable interest, and if occupied as a homestead the concomitant limitations apply. *Wilder v Haughey*, 21 M 101; *Hartman v Munch*, 21 M 107; *Law v Butler*, 44 M 482, 47 NW 53.

The provisions of limitation on alienation of the homestead are constitutional. *Barton v Drake*, 21 M 299.

Property held and occupied as a homestead is protected against any mortgage, except for the purchase money, given by the owner without the consent of the wife. *Smith v Lackor*, 23 M 454.

Where the owner of a homestead has a wife, it is not competent for him, alone, in any way to waive the homestead exemption. *Ferguson v Kumler*, 25 M 183; *Fletcher v Scott*, 201 M 615, 277 NW 270.

A material alteration in a mortgage, made after the wife had signed and lost all possession or control and made with full knowledge of the mortgagee, voids the mortgage. *Coles v Yorks*, 28 M 464, 10 NW 775.

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The holder of a mortgage covering land which includes an unascertained homestead may maintain an action for foreclosure, in which he may have the homestead ascertained and set off, and the remainder sold to satisfy the mortgage. *Coles v Yorks*, 31 M 213, 17 NW 341.

As the head of the family, it is for the husband to determine the domicile, including that of the wife, so when he and his wife remove from a homestead, he having no intention of returning, that constitutes abandonment. *Williams v Moody*, 35 M 280, 28 NW 510.

The husband executed a mortgage in which the wife did not join. Being subsequently divorced the husband deeded the homestead to the wife. She in this action asks to have the mortgage set aside. Held, that on the doctrine of estoppel, she must assume and pay the mortgage because she accepted a deed from her husband containing a proviso to that effect. *Alt v Banholzer*, 36 M 57, 29 NW 674.

A husband, induced through fraud, to join in a deed given by the wife conveying the homestead may maintain an action to have the conveyance set aside. *Farr v Dunsmoor*, 36 M 437, 31 NW 858.

When a deed executed by both husband and wife is placed in escrow, and upon performance of the conditions delivery is made to the grantee, the transaction is complete, and the homestead rights waived. *Knopf v Hansen*, 37 M 215, 33 NW 781.

A mortgage of the homestead by the husband without the wife's signature, is wholly void. *Conway v Elgin*, 38 M 469, 38 NW 370; *Alt v Banholzer*, 39 M 511, 40 NW 830; *Jelinek v Stepan*, 41 M 412, 43 NW 90.

A married woman is estopped by her covenants. *Sandwich v Zellmer*, 48 M 408, 51 NW 379.

The contract of the husband, the wife not joining, to convey the homestead, is void for all purposes, and the husband is not liable in damages for its non-performance. *Weitzner v Thingstad*, 55 M 244, 56 NW 817; *Hovseth v Fuglesteen*, 165 M 38, 205 NW 607; *Sherwood v Rosenstein*, 179 M 42, 228 NW 337.

The consent of a wife is not essential to the assignment of a mortgage given by the husband prior to his marriage. *Spalti v Blumer*, 63 M 269, 65 NW 454.

A wife or husband may be estopped by conduct from asserting their want of assent to a conveyance. *Knight v Schwandt*, 67 M 71, 69 NW 626; *Osman v Wisted*, 78 M 295, 80 NW 1127.

Where a husband and wife resided on the wife's property as their homestead, a judgment of absolute divorce obtained by her terminated his homestead right. *Kern v Field*, 68 M 317, 71 NW 393.

Fraud alleged in the execution of a mortgage in which the wife joined. *Bank v Flynn*, 75 M 279, 77 NW 961.

Burden is on the one who attacks the record title. *Esty v Cummings*, 75 M 549, 78 NW 242.

Where as a settlement in divorce proceedings each had an undivided one-half of what was originally the homestead, an action in partition will not lie. *Grace v Grace*, 96 M 294, 104 NW 969.

Prior to March 1, 1906, when the Revised Laws went into effect, garnishment process reached the proceeds received from the sale of the homestead. *Fred v Bramen*, 97 M 484, 107 NW 159.

An attempted conveyance of the homestead by owner without his wife's signature is void although she may have abandoned her home and is living elsewhere. *Murphy v Renner*, 99 M 348, 109 NW 593.

Contract by husband agreeing to convey right of way to railroad crossing the homestead was void without the wife's signature. *Delisha v Traction Co.* 110 M 518, 126 NW 276.

A wife who joins her husband in deeding the homestead, owned by the husband, as security for a loan then made and for future advances to him, binds her homestead right for such advances when made. *Staples v Bank*, 122 M 419, 142 NW 721.

A deed not signed by the grantor's wife was void as to the homestead part of the property, and the record contains no facts on which to predicate an estoppel. *Eklaw v Nelson*, 124 M 335, 144 NW 1094.

Homestead cannot be legally covered by a mortgage without the wife assenting thereto. *Lamont v Lamont*, 128 M 525, 151 NW 416.

A deed granting a perpetual right of way over a homestead is invalid, unless signed by both husband and wife. *Lindell v Peters*, 129 M 288, 152 NW 648; *Warsaw v Bakken*, 133 M 128, 157 NW 1089.

Judgment and order for partition ordered by the lower court was reversed on appeal. *Brokl v Brokl*, 133 M 218, 158 NW 244.

Where both husband and wife intended to convey the homestead, and each executed and delivered formal deeds of conveyance, the deeds were invalid but a subsequent purchaser in good faith may invoke the doctrine of estoppel. *Bullock v Miley*, 133 M 261, 158 NW 250.

Where husband and wife were joint tenants in a homestead property, and the wife executed a contract of sale, the husband not joining therein, the husband thereafter confirming the same, it was held that on an offer of the husband and wife to execute a legal deed to the property, on refusal of the grantee, he may be mulcted in damages. *Lennartz v Montgomery*, 138 M 170, 164 NW 899.

Where the title to a homestead is of record in the name of the husband, but has in fact been conveyed to the wife by unrecorded deeds, and the wife, her husband joining, leases it to a tenant who is in possession at the termination of the homestead right, such possession is notice of her title. *Oxborough v St. Martin*, 142 M 34, 170 NW 707.

Land owned and occupied by a man, who had left his wife and family, and was living with a woman not his wife, is his homestead, and a deed executed by him without the signature of his legal wife, was invalid, and on his death the homestead went to his legal wife and their children according to the statutory laws of descent. *Rux v Adam*, 143 M 35, 172 NW 912.

A husband owning homestead property, may lease a portion of it for a period of six months, if by so doing he does not interfere with the use of the property as a homestead. *Bacon v Mirau*, 148 M 268, 181 NW 579.

Where the husband falsely represented that he was unmarried, and placed a mortgage on his homestead, the wife not joining, and after the death of the wife, the mortgage foreclosed, held, the mortgage while invalid, may nevertheless be foreclosed, the husband being estopped to set up the lack of the wife's signature. *Bosich v Bank*, 150 M 242, 184 NW 1021.

Husband abandoned his legal wife, and later remarried, settled on a homestead and there resided for a number of years. A short time before his death he, through a third party conveyed the homestead to the woman with whom he was living and who had no notice of his previous marriage. She in turn sold it to an innocent purchaser. Held, that the deed to the so-called second wife was invalid; that the property was the legal homestead of the owner; that after his death it reverted to his legal wife and children; that the legal wife and eldest son, having had notice and having taken no action over a period of many years, were estopped from raising an issue; that as to the others there was no estoppel. *St. Denis v Mullen*, 157 M 266, 196 NW 258.

The homestead exemption is not alone for the husband and his protection, but for the benefit of the wife and children as well. It is not only a privilege but an absolute right, and where the wife has been induced by fraud to release her homestead rights, she is entitled, in a court of equity, to have such conveyance set aside and to be restored to her legal rights. *Tomlinson v Bank*, 162 M 230, 202 NW 494.

A wife having executed a note and mortgage on the homestead and entrusted them to her husband without restrictions on their use, cannot resist foreclosure by denying her husband's authority to use same as security in obtaining a loan at the bank. *Bank v Giller*, 162 M 391, 203 NW 227.

Held to be sufficient consideration for the mortgage and not induced by duress. *Heins v Byers*, 162 M 349, 202 NW 733.

No estoppel can be predicated on a promise which reserves to the promisor the privilege of non-performance. *Butler Brothers v Levine*, 166 M 158, 207 NW 315.

Two brothers as joint owners occupied an 80-acre homestead as joint tenants. After a dissolution of the partnership and the death of one of the owners, it cannot be claimed under the circumstances that the farm ceased to be a home-

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stead because its use had been devoted to partnership purposes. *Eberhart v Bank*, 172 M 200, 214 NW 793.

The statute authorizing a conveyance by the husband or wife of an insane spouse includes mortgages under the term conveyances, and the mortgage is valid although the guardian of such insane person joined in the instrument instead of endorsing his consent thereon as prescribed in the statute. *Hayes v Johnson*, 172 M 504, 215 NW 857.

An oral agreement made by one spouse to give a mortgage on the family homestead, is not merely voidable but is wholly void under our homestead laws. *Kingery v Kingery*, 185 M 467, 241 NW 583.

The equitable interest of a vendee, under a contract for deed cannot be alienated without the signature of the other spouse where the land covered by the contract is occupied by the vendee as a homestead, and the court on its own motion and at any time may invoke the doctrine. *Craig v Baumgartner*, 191 M 42, 254 NW 440.

A separation agreement between husband and wife in terms obligating each to join with the other in the execution of future conveyances or encumbrances of real property belonging to either is illegal because of section 519.06. *Simmer v Simmer*, 195 M 1, 261 NW 481.

Lien imposed by the old age pension lien act is constitutional, this statute being of equal validity with the homestead act. *Dimke v Finke*, 209 M 38, 295 NW 81.

Refusal to set aside a deed whereby plaintiff and his wife, now deceased, conveyed their homestead to her daughters by a former marriage. *Martin v Tucker*, 217 M 108, 14 NW(2d) 107.

Parol evidence is admissible to clarify ambiguity in terms of a trust deed including the homestead and in which both husband and wife join. *Graham v National Surety*, 244 F 914.

Brothers held not to be such partners as would destroy the homestead right of one of them, married and residing on the land. *Citizens Loan v Eberhart*, 298 F 291.

Surviving wife is entitled to the proceeds of the sale of the homestead, when the homestead was sold by the husband in defraud of her marital rights, and the proceeds invested in an annuity. *Maruska v Equitable Life*, 21 F. Supp. 841.

Homestead; conveyance by husband and wife. 2 MLR 63.

Homestead in wife's name; fraudulent acts. 2 MLR 392.

Homestead; necessity of consent of insane spouse. 10 MLR 350.

Homestead; abandonment of. 10 MLR 439.

Homestead; effect of conveyances by the owner. 25 MLR 71.

Homestead; old age pension liens. 25 MLR 520.

510.06 EXEMPTION NOT LOST BY DEATH OR DESERTION.

HISTORY. G.S. 1866 c. 68 s. 1; 1875 c. 65 s. 1; 1875 c. 66 s. 1; G.S. 1878 c. 68 s. 1; 1891 c. 81 s. 1; G.S. 1894 s. 5521; R.L. 1905 s. 3457; G.S. 1913 s. 6962; G.S. 1923 s. 8341; M.S. 1927 s. 8341.

Surviving spouse takes the homestead not by right of survivorship but as property set aside by law from decedent's estate for the benefit of the surviving spouse and children, and where the wife has been induced through fraud to release her rights she may in a court of equity be restored to her legal rights. *Tomlinson v Bank*, 162 M 230, 202 NW 494; *Maruska v Equitable Life*, 21 F. Supp. 841.

Husband and wife executed a mortgage on their homestead and placed them in escrow with a bank to be delivered on certain conditions. The terms not being complied with there was no delivery. The husband thereafter negotiated a loan from the escrow bank, using the note and mortgage as security. Held, that no valid title passed to the bank and the mortgage was ineffective. *Stibal v Bank*, 190 M 1, 250 NW 718.

Homestead, abandonment of. 10 MLR 439.

Effect on conveyance by owner. 25 MLR 71.

510.07 SALE OR REMOVAL PERMITTED; NOTICE.

HISTORY. 1860 c. 95 s. 1; G.S. 1866 c. 68 p. 499; 1868 c. 58 s. 1; G.S. 1878 c. 68 ss. 8, 9; G.S. 1894 ss. 5528, 5529; R.L. 1905 s. 3458; G.S. 1913 s. 6963; G.S. 1923 s. 8342; M.S. 1927 s. 8342.

1. Sale or conveyance; title of grantee
2. Application of exemption rights to proceeds of sale
3. Temporary removal
4. Abandonment

1. Sale or conveyance; title of grantee

A conveyance of the homestead vests good title in the grantee free from the debts of the grantor. *James v Wilder*, 25 M 305; *Furman v Tenny*, 28 M 77, 9 NW 172; *Baldwin v Rogers*, 28 M 544, 11 NW 77; *Horton v Kelly*, 40 M 193, 41 NW 1031; *Keith v Albrecht*, 89 M 247, 94 NW 677.

A conveyance may vest good title in the grantee even if made with fraudulent intent. *Morrison v Abbott*, 27 M 116, 6 NW 455; *Ferguson v Kumler*, 27 M 156, 6 NW 618; *Oxborough v St. Martin*, 142 M 34, 170 NW 707.

Ownership of an undivided interest is sufficient on which to predicate a homestead right, and acquisition of the outstanding interest makes that also fully exempt. *Kaser v Haas*, 27 M 406, 7 NW 824.

Owner may sell and convey the homestead without subjecting it to lien of judgment to which it was exempt in his hands. *Gordon v Emerson*, 168 M 336, 210 NW 87.

What constitutes a homestead. 1934 OAG 798, Aug. 7, 1934 (414a-9).

Actual occupancy required; filing notice ineffectual. 1940 OAG 310, May 13, 1940 (232d).

Defects in the title of the judgment debtor. 24 MLR 807.

2. Application of exemption rights to proceeds of sale

Prior to March 1, 1906, when the Revised Laws went into effect, the proceeds of the sale of the homestead were subject to levy or garnishment. *Fred v Bramen*, 97 M 484, 107 NW 159.

Statutory exemption of proceeds of life insurance does not extend to property purchased therewith. Our homestead law is to be construed liberally, but not strained. *Ross v Simser*, 193 M 410, 258 NW 582.

A debtor claiming exemption of his property from execution and sale under statute providing for such exemption has the burden of proving compliance with statute. Temporary absence from premises will not of itself destroy judgment debtor's right to claim premises as her homestead. *Jensen v Christensen*, 216 M 92, 11 NW(2d) 798.

Enforceability against homestead after sale thereof, applied to old age pension lien. 1942 OAG 267, April 18, 1942 (521-P-4).

As to crops growing upon the homestead. 11 MLR 640.

3. Temporary removal

Under the statute the owner may remove from his homestead for a period of six months, without such absence affecting his homestead rights. The immunity does not depend upon his filing notice nor upon reoccupation but is absolute. *Russell v Speedy*, 38 M 303, 37 NW 340.

Homestead rights were not lost where the dwelling was destroyed by fire on September 23, and the place was rebuilt and reoccupied in the January following. *Stewart v Rhodes*, 39 M 193, 39 NW 141.

In computing the time the owner is absent from the homestead and the time within which the notice must be filed, the first day of his absence must be excluded and the last day included. Moreover the evidence indicated no abandonment. *Jaenicke v Fountain*, 106 M 442, 119 NW 60.

A temporary removal from and rental of the building under duress of financial stringency, leaving her furniture, and returning and occupying between the time one tenant moved out and a new temporary tenant was secured, is not deemed an abandonment. *Lundgren v Yde*, 171 M 176, 213 NW 537.

Homestead was occupied by defendant even though occasionally absent, and even during the time it was leased to a relative with whom she resided. *Jensen v Christensen*, 216 M 92, 11 NW(2d) 798.

Homestead; duration and termination. 25 MLR 70.

4. Abandonment

Where the owner of a homestead has abandoned it by removing from the premises and establishing a homestead elsewhere, his right of exemption is lost, and the filing of the statutory reservation notice a nullity. *Donaldson v Lamprey*, 29 M 18, 11 NW 119.

Evidence of abandonment must be clear and convincing. There must be an actual removal from the premises. A mere intention to remove is not sufficient, as where the husband files on a government homestead and makes some improvements thereon, but his family continues to reside in the old homestead. *Robertson v Sullivan*, 31 M 197, 17 NW 336.

The actual removal from a homestead, not intending to return, constitutes an abandonment. The husband as head of the family, has the right to fix the place of domicile. *Williams v Moody*, 35 M 280, 28 NW 510; *Mahon v Van Walkenburg*, 152 M 162, 188 NW 316.

Premises were occupied as a homestead until June 1, 1881, on which date husband and wife removed, rented the premises and lived elsewhere until the death of the husband June 30, 1882. No statutory notice was filed. Held, as to the widow the place was not a homestead. *Bailiff v Gerhard*, 40 M 172, 41 NW 1059.

Where the owner removes from and ceases to occupy the homestead for more than six months, and without filing the statutory notice, the exemption ceases, and intention or preparation to return is insufficient. *Onehl v Peterson*, 47 M 13, 73 NW 639; *Sheehan v Bank*, 163 M 294, 204 NW 38.

Homestead rights in homestead in the form of a life estate received through the death of her husband, is lost by remarriage and removal from the premises. *Gowan v Fountain*, 50 M 264, 52 NW 862.

Removal with no intention to return and occupy constitutes abandonment. *Clark v Dewey*, 71 M 108, 73 NW 639.

Owner removed from his homestead, his family remaining, later the family moved to the new home, held, that although he filed the statutory notice the evidence indicated the establishment of a new home with no intention to return and a consequent abandonment of his homestead rights. *Kramer v Lamb*, 84 M 468, 87 NW 1034.

Where the owner ceased to occupy the homestead for six consecutive months, and failed to file the statutory notice, she has abandoned it and it becomes subject to levy. *Hall v Holland*, 138 M 403, 165 NW 235.

Where the wife left her husband and he moved out, rented the property and resided in a hotel, the homestead right is deemed abandoned. *Leach v Leach*, 167 M 489, 209 NW 636.

Two brothers as joint tenants and as copartners in farming had each homestead rights in the premises. After the dissolution of the copartnership, and the death of one of the brothers, it cannot be claimed that the survivor had in any way lost his homestead rights. *Eberhart v Bank*, 172 M 200, 214 NW 793.

There is no abandonment until the owner removes therefrom. Intention to move at some future time is not sufficient. So where the husband, the wife not joining, leases the property standing in the name of the wife to a third party, there is no act of abandonment. *Bowers v Norton*, 173 M 576, 218 NW 108.

Homestead laws relating to taxation. 206 F 877; 217 F 168; OAG Aug. 7, 1934 (414a-9); OAG 1934 (798); OAG June 2, 1936 (408d); OAG 1940 (310).

Operation of judgment lien after termination of homestead exemption. 23 MLR 979.

510.08 SELECTION AFTER LEVY.

HISTORY. G.S. 1866 c. 68 s. 3; G.S. 1878 c. 68 s. 3; 1883 c. 59 s. 1; G.S. 1894 s. 5523; R.L. 1905 s. 3459; G.S. 1913 s. 6964; G.S. 1923 s. 8343; M.S. 1927 s. 8343.

The statute gives the homestead exemption absolutely, without making the right to it depend upon the affirmative action of the claimant toward the levying officer. *Ferguson v Kumler*, 25 M 183, 27 M 156, 6 NW 618.

Where one of two adjoining owners takes and holds actual possession of land beyond his rightful boundary, under a claim of title, such possession may be considered adverse, and if such holding continues for a sufficient time, ripens into good title. *Seymour v Carli*, 30 M 84, 14 NW 364.

A sheriff's sale of lands on execution, in which he sells as one parcel, for one gross sum, a homestead and other lands not exempt, is void as to the whole of the lands so sold. *Mohan v Smith*, 30 M 259, 15 NW 118.

Where owner of a block of 12 lots on which he has an unselected homestead, mortgages the entire tract, the mortgagee may foreclose and by that action have the homestead set off, and the remainder sold to satisfy the mortgage. *Coles v Yorks*, 31 M 213, 17 NW 341, 36 M 388, 31 NW 353.

A mortgagee of a tract of land including a homestead and exceeding the legal limit is not bound by a judgment under a mechanic's lien foreclosure which reduces the homestead below the legal limit. And in default of a selection by the mortgagor, the mortgagee after he becomes owner of the property by foreclosure may make a selection. *Talbot v Barager*, 37 M 208, 34 NW 23.

Loss of homestead rights by waiver and estoppel. *Osman v Wisted*, 78 M 295, 80 NW 1127.

An equitable owner under a land contract is entitled to have his homestead rights in the property, and where he fails to make a selection the levying officer may do so. *Hook v Northwest*, 91 M 482, 98 NW 463.

A homestead may be part on land owned by the husband and part on land owned by the wife. The bankruptcy court has jurisdiction to fix the homestead. Held, that where within the statutory time the homestead claimants presented their selection to the sheriff, and their request was ignored, the selection would stand as valid. *Rossing v Westbrook*, 162 M 176, 202 NW 711.

Where sheriff in a mortgage foreclosure ignored homestead owner's request for sale of separate tracts, the case against the sheriff dismissed because the complaint did not properly state a cause of action. *Mulroy v Rowe*, 162 M 311, 202 NW 723.

Creditors' rights. 25 MLR 78.

510.09 SELECTION; HOW MADE.

HISTORY. G.S. 1866 c. 68 ss. 3, 4; G.S. 1878 c. 68 ss. 3, 4; 1883 c. 59 s. 1; G.S. 1894 ss. 5523, 5524; R.L. 1905 s. 3460; G.S. 1913 s. 6965; G.S. 1923 s. 8344; M.S. 1927 s. 8344.

Where owner made an assignment, in selecting her homestead she could not reject a part of the dwelling for the purpose of including a brick store in her selection. She must make her selection in a reasonable manner, and cannot carve out a homestead in such a way as to leave backyards inaccessible except through an alley. *Bank v How*, 61 M 238, 63 NW 630.

The mere fact that the owner of a homestead plats it and sells some of the lots, does not destroy the homestead character of the remaining land where no dedication of streets has been made and the tract contiguity has been preserved. *Phelps v Northern*, 70 M 546, 73 NW 842.

Where the interest of an equitable owner under a land contract is sold on execution, the sheriff may set off the homestead in case the homestead owner fails so to do. *Hook v Northwest*, 91 M 482, 92 NW 463.

Where within the statutory time the owner presented to the sheriff his selection of a homestead, that selection is controlling unless timely objection is made. *Rossing v Larson*, 162 M 176, 202 NW 711.