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2nd Session, 6th Parliament, 22 Victoria, 1859.

BILL.

An Act to exempt from sale or execution
the Homestead of a Householder having a
family.

Received and read, first time, Monday, 21st
February, 1859.

Second reading, Wednesday, 23rd February,
1859.

MR. BELLINGHAM.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

This Bill seems principally intended to protect the real property of a debtor, though sect 7 applies exemption to the same amount to goods where Debtor do not own real estate.

See also 13 Vic. c. 108.

An Act to exempt Homesteads and certain other property under a certain value from sale under execution.

WHEREAS, to prevent the ruin of families, and to secure a home to Widows and Orphans, it is expedient to exempt homesteads, to a certain value and under certain circumstances, from sale under forced execution: Therefore Her Majesty, &c., enacts as follows:

5 I. In addition to the property now exempt by law from sale under execution, there shall be exempt by law from sale on execution, for debts contracted after the passing of this Act, the lot and buildings thereon occupied as a residence and owned by the debtor, being a householder and having a family, to the value of *six hundred dollars*, and also such household furniture, farming utensils, goods and chattels, or mechanics' tools, as such judgment debtor may require, to the amount of *dollars*; and such exemption shall continue after the death of such householder, for the benefit of his widow and family,—provided some or one of them continue to occupy such homestead,—until the youngest child become twenty-one years of age; and until the death of the widow: And no release or waiver of such exemption shall be valid unless the same be in writing, subscribed by such householder, and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged.

Property exempted.

Person Court Exemption
Under 13 Vic. c. 53. s. 89 exempt from distress by Bailiff of Debts Court. "wearing apparel and bedding of person and family and the tools & implements of his trade to the value of Five Pounds, to that extent protected from seizure."

20 II. To entitle any property to such exemption, the conveyance of the same shall show that it is designed to be held as a homestead under this Act; or if already purchased, or the conveyance does not show such design, a notice that the same is designed to be so held shall be executed and acknowledged by the person owning the said property, which shall contain a full description thereof, and shall be recorded in the office of the Registrar of the County or Registration Division in which the property is situate, in a book to be provided for that purpose, known as the 'Homestead Exemption Book'; But no property shall, by virtue of this Act, be exempt from sale for non-payment of taxes or assessments, or for any debt contracted for the purchase or improvement thereof, or prior to the recording of the aforesaid deed or notice.

Conditions of exemption.

Superior Court Exemption
Under 20 Vic. c. 57. s. 24 "The necessary wearing apparel, the bed and bedding, and one stove and the looking utensils of a party against whom any writ of execution may be issued, or of his family, and also the tools & implements of his trade to the value of Fifteen pounds, shall be under any execution, protected from seizure of the S. Court" [of Common Law] or from any County Court.

III. If, in the opinion of the Sheriff holding an execution against such holder of the premises claimed by him or her as exempt, the same are worth more than *six hundred dollars*, he shall summon six qualified Jurors of his County or Judicial District, who shall, upon oath, to be administered to them by such Sheriff, or by a Justice of the Peace, appraise such premises; and if, in the opinion of the Jury, the property may be divided without injury to the interests of the parties, they shall

Proceedings when the property seized is worth more than \$600. If it can be divided.

See also Com Law Pro: Act.

196. c. 43. sect 308. -

as to Exon with property of debtor in Exon on the limits. Exempt

wearing apparel of debtor family & their beds & bedding household utensils not Exceeding together £10 - & tools and implements of trade, -not Exceeding £10. -

set off so much of the said premises, including the dwelling-house, as in their opinion shall be worth *six hundred dollars*, and the residue of said premises may be advertised and sold by such Sheriff.

And if it cannot be divided. IV. In case the value of the premises shall, in the opinion of the Jury, be more than *six hundred dollars*, and they cannot be divided as is provided for in the last section, they shall make and sign an appraisal of the value thereof, and deliver the same to the Sheriff, who shall deliver a copy thereof to the Execution Debtor, or to some of his family of suitable age to understand the meaning thereof, with a notice thereto attached, that unless the Execution Debtor shall pay to said Sheriff the surplus over and above *six hundred dollars* within sixty days thereafter, such premises will be sold.

Division of the proceeds if it is sold. V. In case such surplus be not paid within the said sixty days, it shall be lawful for the Sheriff to advertise and sell the said premises, and out of the proceeds of such sale to pay to such Execution Debtor the said sum of *six hundred dollars*, which shall be exempt from execution for one year thereafter, and apply the balance on such execution to the satisfaction of the judgment debt; Provided that no sale shall be made if no greater sum than *six hundred dollars* be bid for the property, in which case the Sheriff may return the execution for want of property whereon to levy.

Proviso.

Costs. VI. The costs and expenses of selling of such homestead, and other proceedings as provided herein, shall be charged and included in the Sheriff's bill of costs, upon the said execution.

As to debtors not owning real estate. VII. In cases of debtors not being owners of real estate, this Act is to apply to goods and chattels to the aforesaid amount of *dollars*, as described in the first section.

Commencement of Act. VIII. This Act shall take effect on the first day of *one thousand eight hundred and fifty*, and not before.