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3rd Session, 6th Parliament, 23 Victoria, 1860.

BILL.

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

Received and read, first time, Monday, 5th March, 1860.

Second reading, Wednesday, 7th March, 1860.

Mr. DALY.

QUEBEC:

PRINTED BY THOMPSON & CO., ST. URSULE STREET.

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 : Preamble.

5 I. In addition to the property now exempt by law from sale under execution, there shall be exempt from sale under execution, for debts contracted after the passing of this Act, if the debtor be a householder and have a family, the lot and buildings thereon, occupied as a residence and owned by the debtor, to the value of one thousand dollars ; Exemption of homestead to amount of \$1000.
 10 and also such household furniture, farming utensils, goods and chattels, or mechanics' tools, as such debtor may require, to the amount of And certain property.
 dollars ; and such exemption shall continue after the death of such debtor for the benefit of his Widow and family, (provided his widow or one or more of his family continue to occupy such Duration of exemption.
 15 homestead) until the youngest child is 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 debtor and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged.

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 purchased before the passing of this Act, or the conveyance does not shew such design, a notice that the same is designed to be so held shall be executed and acknowledged by the person owning the What must be done to constitute any property a homestead under this Act.
 25 said property, which shall contain a full description thereof, and shall be recorded in the Office of the Registrar of the County in which the said property is situate, in a book to be provided for that purpose, and known as the " Homestead Exemption Book :—But no property shall Case where property is worth more than \$1,000.
 30 by virtue of this Act, be exempt from sale for non-payment of taxes or assessments, or for a debt contracted for the purchase thereof, or prior to the recording of the aforesaid deed of notice.

III. If, in the opinion of the Sheriff holding an execution against such householder, the premises claimed by him or her as exempt, are worth more than one thousand dollars, he shall summon six qualified Case where property is worth more than \$1,000.
 35 jurors of his County, who shall upon oath, to be administered to them by such Sheriff, appraise the said premises ; and if, in the opinion of the jury, the property may be divided without injury to the interests of the parties, they shall set off so much of the said premises, including the dwelling house, as in their opinion, is worth one thousand dollars, and the The same
 40 residue of the said premises may be advertised and sold by such Sheriff.

IV. When, in the opinion of the appraisers, it would injure the The same

where the property cannot be divided. property of the debtor to divide the homestead, the plaintiff in execution shall receive in lieu of the proceeds of the sale such a sum annually, above dollars, as the appraisers shall decide upon as a reasonable rent; and he shall continue to receive the rent in quarterly instalments until the debt, interest and costs are paid. The plaintiff, when in receipt of such rent, may cause a re-appraisement once in two years, and the rent shall be paid according to the last appraisement: if between any two appraisements the value of the homestead has not increased one hundred dollars, the costs of the appraisements must be paid by the plaintiff.

Notice of sale to be given by the Sheriff. V. In case the value of the premises exceeds in the opinion of the jury, the sum of *one thousand* dollars, and the premises cannot be divided as is provided for in the third section, the jury 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 nature thereof, with a notice thereto attached, that unless the execution debtor pays to the said Sheriff the surplus over and above *one thousand* dollars within sixty days thereafter, the premises will be sold.

Exemption of \$1,000 of the price, if the property is sold by the Sheriff. VI. In case such surplus is 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 *one thousand* dollars, which shall be exempt from execution for one year thereafter, and apply the balance on such execution: Provided, that no sale shall be made unless a greater sum than *one thousand* dollars be bid therefor, in which case the Sheriff may return the execution for want of property whereon to levy.

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

If wife objects to payment of homestead amount. VIII. If the wife object to the payment of the homestead amount to the husband, the Sheriff may deposit it in a safe bank in the joint name of the husband and wife, where it shall be free from attachment for one year:

Insurance money. IX. Insurance money on homestead property destroyed by fire shall not be attached for debt.

Widow may secure the benefit of exemption. X. A widow, if the head of a family, may secure to herself the benefits of exemption in the same manner as the male head of a family.

Privilege of a Wife.

If husband neglects, his wife may secure the benefit of execution. XI. When homestead property, not already entered upon record as held for a homestead, is attached by a sheriff, or on execution, and the husband forgets, neglects or declines, to claim for the property the benefits of exemption, the wife may demand of the Sheriff to have the property appraised, and so much thereof set apart for a homestead as may by law be entitled to exemption. With this demand of the wife, the Sheriff shall be bound to comply.

As to disposal XII. Homesteads protected by the law of exemption, cannot be

5 disposed of by will so long as the widow or minor children shall continue to occupy the same of homesteads by will.

Exemption Releases.

XIII. No release of exemption shall be valid unless executed and acknowledged by both husband and wife. Release of exemption must be by husband and wife.

Certain Personal Property Exempt.

XIV. The following personal property and valuables, shall be exempt from seizure in execution, viz.: All necessary wearing apparel of the debtor and his family; all bedsteads, beds, and bedding; all cooking utensils and other household furniture, to the value of two hundred dollars; the family Bible, pictures, school books, or library; two cows; five swine; one yoke of oxen and a horse; or, in lieu of them a span of horses; ten sheep and the wool therefrom either as raw material or manufactured into yarn or cloth; necessary food for the support of the stock mentioned for one year, whether provided or growing, as the debtor may choose; one wagon, cart, or dray; one sleigh; one plough; one drag; and other farming utensils, including tackle for teams, to the value of fifty dollars; a seat or pew in any church, and the family church lot; provisions and fuel necessary for six months' consumption; the tools and implements, or stock in trade, of any mechanic, miner, or other person, for the purpose of carrying on his trade or business, to the value of two hundred dollars; library and implements of any professional man, to the value of two hundred dollars; also, the horse, saddle, bridle, harness, wagon, and sleigh used by a physician, clergyman, or public officer, or by the use of which a farmer or laborer gains subsistence. Certain personal property exempt from seizure and sale.

XV. All growing crops until harvested are exempt from seizure in execution. Growing crops.

XVI. All Acts and provisions of law inconsistent with this Act are hereby repealed. Contrary Acts.

SCHEDULE.

Form of clause in a deed of property intended by the purchaser to be held exempt.

Exemption Clause.

The premises above described and by these presents conveyed, are designed to be held as a homestead, exempt from sale on execution, according to the provisions of the Act entitled, "An Act to exempt Homesteads and certain other property, under a certain value, from sale under execution," passed _____, one thousand eight hundred and _____, (as the case may be).

FORM OF NOTICE OF EXEMPTED HOMESTEAD TO BE ENTERED ON RECORD.

To C. D., Clerk, (or Register), }
of _____ County, }

SIR,—

Please to take notice, that I design to hold as a homestead exempt from sale on execution, according to the provisions of the Act entitled, "An Act to exempt Homesteads certain other property, under a certain value, from sale under execution," passed , one thousand eight hundred and (as the case may be), the following described premises, to wit: (*describe the property as it is described in the deed.*)

Dated, the day of , one thousand eight hundred and

A. B. [SEAL.]

The above notice must be acknowledged before a Justice of the Peace or a Commissioner of Deeds.

FORM OF RELEASE OF EXEMPTION.

Know all men by these presents: That I, A. B., , of the town (or city) of , in the County of , and , in consideration of the sum of dollars, to me paid by C. D. , the receipt whereof is hereby acknowledged, do hereby release and waive any and all benefit of the Act entitled, "An Act to exempt Homestead and certain other property, under a certain value, from sale under execution," passed , one thousand eight hundred and (as the case may be), so that any property held by me as exempt under, or by virtue thereof, may be levied upon and sold on any execution issued against me for any demands owing to the aforesaid C. D.

Witness my hand and seal, this day of , one thousand eight hundred and .

(*This release must also be signed by the wife, or it will be of no effect.*)

FORM OF NOTICE BY SHERIFF TO OWNER OF HOMESTEAD AFTER APPRAISEMENT.

County Court,

C. D.

vs.

A. B.

} County, ss.

SIR,—Please to take notice, that the foregoing is a copy of the certificate of appraisal this day made by the freeholders by me summoned, as in said certificate mentioned; and that unless the surplus value of the premises described in said certificate, as appraised by said freeholders, over and above dollars, (*mentioning the sum up to which homestead property is exempt by the law, as the case may be*), which homestead property is exempt by the law, as the case may be), be paid to me within sixty days from the date of the service of this notice, the said premises will be sold, by virtue of an execution issued against you in the above entitled cause.

Dated the day of , one thousand eight hundred and

and

E. F.,
Sheriff of