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No. 23.

3rd Session, 5th Parliament, 19 Victoria, 1854.

BILL.

An Act to exempt the Family Homestead,
when under the value of \$, from forced
sales on execution, to pay Debts.

Received and Read 1st time, Tuesday, 3rd
March, 1857.

Second Reading, Monday, 9th March, 1857.

MR. MACKENZIE.

TORONTO :

PRINTED BY JOHN LOYD.

An Act to exempt the Family Homestead, when under the value of \$, from forced sale under Execution, to pay debts.

WHEREAS it is expedient to afford further relief to poor Families, and to persons who are broken down with age, poverty, or disease; as also to secure the possession of a homestead to Widows and Orphans in such cases as are hereinafter stated: Therefore Her Majesty, &c., enacts as follows :

Preamble.

I. In addition to the property exempt by law from sale under execution for debt, a lot of land, dwelling house and the out-buildings thereon, or so much thereof as shall not exceed in value hundred dollars, the property of a householder in actual possession thereof, shall be exempt from seizure or levy upon any execution issued on a judgment recovered upon or for any debt contracted jointly or severally, after the first day of January one thousand eight hundred and fifty-five.

A certain extent of real property exempted as regards debts contracted after 1854.

II. The widow and minor children of any person deceased, who held property exempted, as aforesaid, may continue to hold the exempted premises during the minority of such children, or while such widow remains unmarried, and the exempted property shall not be sold during such minority, or while the said widow remains unmarried, for the payment of any debt mentioned in the first section of this Act; Provided, nevertheless, that the said widow or some one of such children must actually occupy and possess the homestead in order to render it exempt as aforesaid.

The same property exempt when held by the widow, &c.

Proviso.

III. The head of any family, or any householder, wishing to avail himself of the benefits of this Act, may file a certificate by him signed, declaring such wish and describing the property, with the Register of Deeds in the County where the same is situate; and upon receiving the fees now allowed for recording deeds, such Register shall record the same in a book provided for that purpose, and known as the "Homestead Exemption Book;" and so much of the property in such certificate described, as does not exceed the value aforesaid, shall be exempt from seizure or levy on any execution issued on a judgment recovered for any debt, contracted jointly or severally, by the person signing such certificate, after the date of the recording thereof: and the record in such Register's office shall be *prima facie* evidence that the certificate purporting to be there recorded, was made, signed and filed, as appears upon such record; and upon being recorded as aforesaid, the property as described in the first section of this Act, shall be exempted within the provisions thereof.

Description of property for which exemption is claimed to be registered.

IV. Such exemption shall not extend to any mortgage lawfully obtained upon the property; but no such mortgage or other alienation of

Certain mortgages not within the exemption.

such land by the owner thereof, if a married man, shall be valid without the assent and signature of the wife to the same, freely given before a Judge of a County Court, or as is provided in the case of barring of dower.

Proceedings when the creditor alleges the property to be above the limited value. 5

V. When property exempted as aforesaid is alleged by a creditor to be of greater value than hundred dollars, it may be seized on execution, and the appraisers shall first set off such part of the property as the debtor may select; and if he neglects so to do, the officer may select for him to the value of hundred dollars, by metes and bounds, and shall then appraise and set off to the creditor the remainder 10 or so much thereof as may be necessary to satisfy such execution; and the appraisers shall be sworn accordingly; In case the premises exceed \$ in value, but cannot be divided as above, they shall deliver an appraisal of the property to the Sheriff, who shall deliver a copy thereof 15 to the debtor or some one of his family of a suitable age to understand it, with a notice that unless the execution debtor pay to the Sheriff within sixty days the surplus over \$ the premises will be sold; In case the surplus is not so paid the Sheriff may sell the property, and pay the debtor \$ of the proceeds, which shall be exempt from execution 20 for one year thereafter, and apply the balance towards satisfying the execution; Unless upwards of \$ is bid there shall be no sale, and the Sheriff shall return the execution unsatisfied for want of property. The costs of thus selling a homestead shall be included in the costs upon 25 the execution.

No sale unless more than the exempted amount is bid. Costs.

This Act not to affect debts contracted for the property, &c. 30

VI. The provisions of this Act shall not impair or affect any mechanic's or labourer's lien for work done or labour performed on the premises thus to be exempted from sale under execution for debt; nor shall it prevent the sale of the land and premises for debts incurred in the purchase of the same, or incurred prior to the recording of the same, as provided in section three, or for taxes.