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No. 41.

4th Session, 6th Parliament, 24 Victoria, 1861.

BILL.

**An Act to exempt Homesteads from seizure
and sale in execution.**

Received and read, first time, Saturday, 23rd
March, 1861.

Second reading, Tuesday, 2nd April,
1861.

Mr. A. P. McDONALD.

QUEBEC:
PRINTED BY THOMPSON, HUNTER & CO.,
ST. URSULE STREET

An Act to exempt Homesteads from seizure and sale in execution.

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

Preamble.

1. There shall be exempt by law from sale on execution for debts contracted after the passing of this Act, if the debtor be a householder and have a family, the land and the buildings thereon occupied as a residence and owned by the Debtor, to the value of six hundred dollars.

Homestead to value of \$600 exempted.

2. Such exemption shall continue after the death of such householder for the benefit of his widow and family, until the youngest child becomes twenty-one years of age and until the death of the widow; provided his widow or one or more of his family continue to occupy such homestead during such time, by themselves, or by any of them, or by their or any of their tenants, agents or servants.

Duration of exemption to widow, &c.

3. No release or waiver of such exemption shall be valid, unless the same is in writing, and is subscribed by such householder, and by his wife if he have one, and unless she also acknowledge the same in like manner as conveyances of real estate are by law required to be acknowledged by married women in alienating their real estate.

What release only shall be valid.

4. To entitle any property to such exemption, the conveyance of the same must 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 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, and to be known as the "Homestead Exemption Book."

Registration required to ensure exemption.

5. In case the Husband neglects or declines to claim for the property the benefits of exemption, or to record the conveyance of such property as a Homestead, the wife, or any of the children by their duly constituted guardian, as if they had no father, may claim the benefit of exemption, or may record the conveyance of such property as a Homestead.

Wife, child, &c., may claim the exemption in default of the husband.

6. Property shall not, by virtue of this Act be exempt from sale for non-payment of taxes or assessments, or for any debt contracted for the purchase thereof, or contracted prior to the recording of the aforesaid deed or notice.

Exemption not to extend to certain debts.

- 7.** If, in the opinion of the execution creditor, or of the Sheriff holding an execution against the lands or affecting the lands of such householder, the premises claimed by him or her as exempt, are worth more than six hundred dollars, the Sheriff shall summon, or the execution creditor shall require the Sheriff to summon six Appraisers, being persons qualified to serve as 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 Appraisers, 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 shall be worth six hundred dollars, and the residue of said premises may be advertised and put up to sale by such Sheriff under such execution.
- 8.** In case the value of the premises is, in the opinion of the Appraisers, more than six hundred dollars, and the premises cannot be divided as is provided for in the next preceding section, the Appraisers 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 such Sheriff the surplus over and above the six hundred dollars, within sixty days thereafter, such premises will be put up to sale.
- 9.** In case such surplus is not paid within sixty days, the Sheriff shall advertise and put up to sale the said premises, and if a sale shall be made, he shall pay out of the proceeds of such sale to such execution Debtor the said sum of six hundred dollars, which shall be exempt from execution for one year thereafter, and shall apply the balance on such execution.
- 10.** No sale shall be made unless a greater sum than six hundred dollars is bid for the property, and if not more than six hundred dollars is so bid, the Sheriff may return the execution for want of property whereon to levy.
- 11.** Insurance money to the amount of six hundred dollars on Homestead property destroyed by fire shall not be attached for debt.
- 12.** A widow, if the head of a family, may secure for her own property the benefits of exemption in the same manner as the male head of a family may.
- 13.** Homesteads protected by the law of exemption may be disposed of by will, but subject to the right of the widow and minor children thereto, so long as she or they or any of them continue in occupation thereof as aforesaid.
- 14.** On the death of a debtor, leaving a wife surviving, the Homestead shall, for the purpose of exemption, be considered to be vested in the wife for her life during the continuance of such exemption.
- 15.** On the death of the debtor, not leaving a wife surviving him, or leaving a wife surviving him, then on her death if there is a child, or there are children left under twenty-one years of age, the Homestead shall, for the purpose of exemption, be considered to be vested in the

Proceedings if the property be supposed to be worth more than \$600.

If the property can be divided.

And if it cannot be divided:

Surplus to be paid by debtor.

If not, sale to be made, and \$600 paid over to debtor.

No sale unless \$600 are bid.

Insurance money exempted.

Widow may ensure exemption.

As to disposal of exempted property by will.

Exemption to survive to the wife.

And to children until of age.

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child or children, but only so long as they may respectively be under twenty-one during the continuance of such exemption.

- 16.** The wife shall be bound to elect after the death of her husband, whether she will take homestead property or claim dower in other property, in lieu thereof. Widow to elect homestead or dower.
- 17.** If she elect to take dower then the homestead property shall go to the minor children in like manner as if she were dead. If she takes dower.
- 18.** If she elects to take the homestead, and if there are minor children entitled to the benefit thereof, she shall not alien the same during the minority of any such children, unless empowered so to do by the Judge of the County Court as hereinafter mentioned. If she takes the homestead and there are minor children.
- 19.** After the majority or death of such children, the wife shall in case she elect to accept the homestead, hold or dispose of the same in like manner as if she held the same by or under a title of dower. Her power after majority or death of children.
- 20.** In case of there being a wife and any minor child or children entitled to the benefit of such homestead, and in case the widow shall desire to sell her own and the minor's interest in the property, she shall be at liberty to do so with the consent of the Judge of the County Court in whose County the property is situated, upon such terms and conditions as the Judge may think it expedient to require or impose. She may sell with consent of County Judge.
- 21.** In case there is a minor child or there are minor children entitled to the benefit of such homestead, and the widow has either elected to take no part in the homestead, or is dead, the interest of the child or children in such homestead may, at the instance of any duly appointed guardian, be sold with the consent of the Judge of the County Court aforesaid. If the widow do not take the homestead, or is dead.
- 22.** The Judge shall, in every case, specify the terms and conditions in the instrument abandoning such right of exemption, and shall subscribe the same. Judge may specify terms.
- 23.** The Appraisers shall be bound to attend the summons for their attendance under the same penalties for default as Jurors for the County Court. Appraisers must Act.
- 24.** The Sheriff shall not be entitled to the costs of summoning Appraisers or any other charges consequent thereon, unless he first obtain the consent of the execution creditor to proceed in this manner. Sheriff's cost of appraisement.
- 25.** The costs and expenses of summoning the appraisers and of making the Appraisement shall, when incurred at the instance of the execution creditor, be part of the costs for executing the writ, and shall be paid and borne in like manner as other execution charges. How paid. Appraiser's Fees.
- 26.** The Appraisers shall for their services be entitled each to the sum of Appraisers fees.
- 27.** This Act shall apply only to Upper Canada. Act limited to U. C.

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 Registrar), }
of County }

SIR,—

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 and 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 describee 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 for taking affidavits.

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 Homesteads and certain other property, under a certain value, from sale under execution," passed _____, one thousand eight hundred and _____
(as the case may be) so far as it applies to real estate, so that any real 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, and the same shall be registered.)

Form of Notice by Sheriff to Owner of Homestead after Appraisement.

County Court.

C. D. }
vs. } County, ss.
A. B. }

SIR,—Take notice, that the foregoing is a copy of the certificate of appraisement this day made by the Appraisers by me summoned, as in

the said certificate mentioned ; and that unless the surplus value of the premises described in the said certificate, as so appraised over and above dollars, *mentioning the sum up to 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 put up for sale by virtue of an execution issued against you in the above entitled cause.

Dated the day of , one thousand eight hundred and

E. F.,
Sheriff of