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## Homestead Law in Wisconsin

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## HOMESTEAD LAW IN WISCONSIN

The first constitution which was presented to the people of this state, then a territory, contained a provision securing to the debtor, from forced sale, a homestead. This provision was most thoroughly discussed before the people and although that provision in the form it was proposed fell with the rejected constitution, yet the next constitutional convention called immediately thereafter, not only recognized the principle of exemption but made it mandatory upon the legislature to provide "wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted".<sup>1</sup> No former contracts were to be interfered with; but after the passage of such laws, all contracts would be made in view of the exemption allowed, and without any hope or expectation of making the property thus exempted a resource out of which fulfillment of the contract could be enforced; and no restraint could be placed upon any interference with the personal liberty of the debtor; for imprisonment for debt was prohibited by the constitution.<sup>2</sup> The principle of exemption was therefore made a fundamental article and recognized as among the primary rights of the citizen to be protected and secured.

The constitutional provision made it mandatory upon the legislature to pass a homestead exemption law. There was, however, no power to compel the legislature to pass such law. The courts possessed no power to compel the legislature to enact the laws required by that section; nor could the courts in the absence of any statutes upon the subject by judicial decision supply the deficiency; but the omission would nevertheless be a clear violation of the plainly expressed will of the people. However, having once passed such law, the legislature thereafter was powerless to wholly repeal such law without the contemporaneous passage of a substitute.<sup>3</sup>

In pursuance of this constitutional mandate the first session of the legislature enacted in July, 1848, a homestead exemption law,<sup>4</sup> then recognizing the privilege of the debtor to enjoy the

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1. Section 17, Article I, Wisconsin Constitution.

2. Section 16, Article I, Wisconsin Constitution.

3. *Bull vs. Conroe*, 13 Wisconsin 233, 237.

4. Page 40, Laws of 1848, Wisconsin. Law as then passed is found unchanged in the Revised Statutes of 1849 as Sections 51 and 52, Chapter 102. These sections are found unchanged in the Revised Statutes of 1858, Sections 23 and 24, Chapter 134 R. S. 1858. These sections somewhat modified are now found as Sections 2983 of the Statutes.

necessary comforts of life by a wholesome law, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability, considering that the requisite to the comfort and happiness of the debtor and his family and to the good order and welfare of society was a home—a suitable place of residence with appurtenances in which he and they might remain unmolested by the importunate and pinching demands of his creditors.

The legislature did not intend to relieve debtors from the discharge of the duty to pay their debts or to interfere with the general power to compel its performance. But while a rigid and exact compliance with contracts and obligations was esteemed a matter of general public good, to enforce which it behooved the state to furnish its citizens with adequate means and facilities, still in view of the unfortunate condition of many debtors and the social and political aids which it engendered, it was considered better for society at large to withdraw from creditors so much of that coercive power which had theretofore remained in their hands, as was requisite to enable debtors, if they choose, by retaining these necessary comforts, to ameliorate their condition and relieve the public of an unwelcome burden. Individual happiness and public welfare demanded that forty acres in the country and one-fourth of an acre in the city be exempt from execution when used as a homestead.

#### *HOMESTEAD RIGHT NOT A VESTED RIGHT.*

The homestead rights thus granted to a debtor are not as to the particular property which comes within the protection of existing laws, vested rights or as partaking so much of the character of such rights that the legislature cannot by future enactments change or modify the laws so as to deprive debtors of a portion of the property which they hold exempt under existing laws. The immunities and benefits which debtors are to derive from the operation of such laws are spoken of in the constitution as *privileges*, not *absolute right*. They effect the remedies of the creditor rather than the strict legal rights of the debtor. They are more in the nature of gratuities, commanded by the constitution and enforced by the legislature.<sup>5</sup> However, the legislature having once passed an exemption law must leave the debtors in the enjoyment of enough of the comforts of life, so that it can-

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5. *Bull vs. Conroe*, 13 Wis. 233, 239.

not fairly and reasonably be said that the requirements of the constitution remain in whole, or in any material part unsatisfied.<sup>6</sup>

MEANING OF TERM HOMESTEAD.

The word "Homestead" signifies the prescribed quantity of land or lands, on which is situated the dwelling house used as a home. The chief characteristic and attribute of the homestead, therefore, as the word itself implies, is the land where is situated the dwelling and family of the owner.<sup>7</sup> The law contemplates that the homestead should form one body; it cannot be made up of disconnected tracts. It may be divided into separate lots by streams of water, highways, railways, etc., but must form one body as compact as possible subject to such easement.<sup>8</sup>

The question whether a building is a homestead does not depend upon its situation, external appearance or internal arrangement, but upon the fact that it is really and truly occupied as a dwelling house by the owner and his family; and the owner does not forfeit the right of devoting a portion of the building to another use than the residence of the family. Prior to the amendment the homestead provided by the statute was restricted only by the amount of land mentioned therein and not by the value thereof.<sup>9</sup> This has been changed so as to limit value to \$5,000.<sup>10</sup> Within this principle a building occupied as a homestead and used by the owner as a hotel was exempt.<sup>11</sup> If there are situated upon the exempted lot various buildings beside the dwelling house which are rented for stores, offices, etc., and occupied as such, these other buildings are not included in the homestead exemptions.<sup>12</sup>

If the premises are unoccupied as a homestead at the time the judgment is docketed the debtor cannot defeat or prevent its enforcement by afterwards moving in and occupying them as a homestead, so that if a judgment debtor, owning two lots of land, one of which is his homestead, sells his homestead and

6. See dissenting opinion Dixon, C. J.; *Phelps vs. Rooney*, 9 Wis. 78.

7. *Bunker vs. Locke*, 15 Wis. 635, 636; *Phelps vs. Rooney*, 9 Wis. 83. See also *Prin vs. Stone*, 70 Am. Dec. 348 note.

8. *Bunker vs. Locke*, *supra*; *Binzel vs. Grogan*, 67 Wis. 149; *Hornby vs. Sikes*, 56 Wis. 383.

9. *Phelps vs. Rooney*, 9 Wis. 70.

10. Section 2983.

11. *Harriman vs. Queen Ins. Co.*, 49 Wis. 72.

12. *Casselmann vs. Packard*, 16 Wis. 115.

thereafter occupies the other lot as such, the lien of the judgment on such other lots is thereby not removed.<sup>13</sup>

Where the owner of a homestead abandons it, as such, still retaining the legal title, judgments docketed against him become liens upon the land at once without any proceedings in equity to enforce them.<sup>14</sup> The law of 1858 provided that the owner of a homestead "may remove therefrom" and "that such removal" shall not render such homestead subject or liable to forced sale on execution. This provision was construed by the court to mean temporary removal with *animo revertendi* and not a permanent removal with *animo manendi*.<sup>15</sup> Prior to the passage of this amendment the court held that the exemption of the debtor's homestead continued only so long as he owned and occupied it as a homestead.<sup>16</sup>

#### PROCEEDS DERIVED FROM SALE OF HOMESTEAD.

Moneys due to the grantor of the homestead as a part of the purchase price were held not liable to garnishment when debtor intended in good faith to use the money to purchase another homestead.<sup>17</sup> The rule of this decision was incorporated into Section 2983 which provides "the homestead exemption shall extend to the proceeds derived from such sale when held with the intention to procure another homestead therewith for a period not exceeding two years". This right to the exemption of the proceeds is not waived by debtor using part of the proceeds to pay debts and support family,<sup>18</sup> nor does the statute require as a condition of such exemption that the debtor shall continue to reside in this state during the two years nor that he shall intend to procure another homestead in this state.<sup>19</sup> Moneys arising from the insurance of the homestead property are exempt also.<sup>20</sup>

13. *Bridge vs. Ward*, 35 Wis. 687.

14. *Moore vs. Smead*, 89 Wis. 558.

15. *Jarvais vs. Moe*, 38 Wis. 440; *Zimmer vs. Pauley*, 51 Wis. 282; *Moore vs. Smead*, 89 Wis. 558, 568; *Blackburn vs. Lake Shore Traffic Co.*, 90 Wis. 362.

16. *Hoyt vs. Howe*, 3 Wis. 752 (Pinney).

17. *Watkins vs. Blatschinski*, 40 Wis. 347.

18. *Binzel vs. Grogan*, 67 Wis. 147.

19. *Hewitt vs. Allen*, 54 Wis. 583, Cassody, J., dissenting.

20. Section 2982.

AGRICULTURAL PURPOSES.

The phrase "used for agricultural purposes" as applied to lands outside of villages and cities has been in the homestead law of Wisconsin ever since it was enacted in July, 1848. Our court has held that by Section 2983 the legislature intended fully to execute the mandate of Section 17, Article I of the constitution; and under that statute the homestead of a debtor which he owns and occupies together with the specified quantity of land appurtenant thereto is exempt from seizure or sale without regard to the use which he put such land or the business he pursues thereon.<sup>21</sup> The fisherman may build his home upon the barren beach, using his land for the spreading of his nets and the moving of his vessels; or the hunter may build his home in the forest and make no use of his land appurtenant to his dwellings except to pass over it yet he would be entitled to the exemption and would not be required to raise a bushel of beans or other produce annually upon his land, or pasture a cow upon it to come within the phrase "used for agricultural purposes".

TRANSFER AND INCUMBRANCE.

The act provides "no mortgage or alienation of a homestead by a married man shall be valid without the signature of the wife". It was early held<sup>22</sup> by our court that the assignment by a married man, without his wife, of a lease of a lot, and his sale of the dwelling house on the lot occupied by him as a homestead was not against the prohibition of this act, thus holding that the law as it then stood only prohibited the *owner* of land constituting a homestead from alienating the same without signature of wife. After this decision the legislature amended the law so that now any mortgage or other alienation by a married man of that which the law<sup>23</sup> exempts as his homestead without the signature of his wife is absolutely void. If, however, he is in possession under a lease which provides that the property shall be used exclusively as a hotel, the fact that he lives in the house will not make it a homestead and the husband may assign such lease without the signature of the wife.<sup>24</sup> The exemption extends to and protects the homestead, though it be held only under an equitable title, such as a land contract, and the owner, if a married

21. *Binzel vs. Grogan*, 67 Wis. 147.

22. *Platto vs. Cady*, 12 Wis. 461; 13 Wis. 480; 46 Wis. 682.

23. Chapter 172, Laws of 1867.

24. *Green vs. Pierce*, 60 Wis. 375.

man, cannot make an alienation of such homestead without the signature of his wife.<sup>25</sup> The husband may change his homestead or place of residence against the wish or consent of the wife, and thereby is enabled to make legal transfer of the same, without the signature of his wife — subject of course to her inchoate dower right.<sup>26</sup>

#### WHO MAY CLAIM HOMESTEAD RIGHTS.

The benefits of the homestead exemption law are, however, not restricted to married men;<sup>27</sup> but a single man who owns real estate and resides upon it, or who rents the premises and boards and lodges with his tenants is entitled to homestead rights. The homestead of the husband is in contemplation of law, the homestead of the wife and its character is not changed by the fact that she with or without reason chooses to live separate from the husband<sup>28</sup> but during the husband's life he is the absolute owner and possessor of the homestead and the statute does not have the effect to create a concurrent estate or possession in the wife.<sup>29</sup> Our court early decided<sup>30</sup> that to constitute a homestead the land must be owned in severalty, so that it could be set out by metes and bounds from that which was not exempt. In other words, an undivided interest in land cannot constitute a homestead.

This defect was remedied and the statute now provides:<sup>31</sup> "such exemption shall extend to land not exceeding, altogether the amount aforesaid owned by husband and wife, jointly, or in common, and to the interest therein of a tenant in common having a homestead thereon, with the consent express or implied of the co-tenants."

#### DESCENT OF HOMESTEAD.

By Section 2, Chapter 137, Laws of 1858, it provided that upon the death of the owner of a homestead, the same should descend to his widow, to be held by her during widowhood free from the encumbrances of all judgments and claims against deceased except mortgages lawfully executed thereon. This law

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25. *McCabe vs. Mazzuchelli*, 13 Wis. 478.

26. *Godfrey vs. Thornton*, 46 Wis. 677.

27. *Myers vs. Ford*, 22 Wis. 139.

28. *Herron vs. Knapp Co.*, 72 Wis. 553.

29. *Mash vs. Bloom*, 126 Wis. 385.

30. *West vs. Ward*, 26 Wis. 579.

31. Section 2983 R. S., Chapter 269, Laws of 1901. *Bartle vs. Bartle*, 132 Wis. 392.

was amended by Chapter 270 Laws of 1864, Chapter 301 Laws of 1883, and can be readily found by referring to Section 2271 of the Statutes.

OTHER QUESTIONS THAT HAVE ARISEN  
UNDER THE STATUTE.

The homestead law is a beneficent one and it is the duty of the court to construe it liberally.<sup>32</sup> The law exempts a homestead from a judgment rendered in an action of tort as well as a judgment in any civil action.<sup>33</sup> It is now the law of this state that where a debtor fails to select at the time of execution sale, his homestead, he is confined thereafter to the legal subdivision on which the dwelling house stands.<sup>34</sup>

Lumber and other building material purchased by a debtor for the purpose of repairs of the dwelling house and paid for by him and deposited upon the premises with intention to use the same in repairing the building are exempt.<sup>35</sup>

The statute extends its protection to one who buys land with the intention of building on it, and to the lumber and material actually on the ground designed for use in the construction of the house. Such land is "owned and occupied" within the meaning of the statutes.<sup>36</sup>

Where a mortgage covers the homestead and other property if the homestead can be sold separately without injury to the owner, in that case the homestead shall not be offered for sale, until all other lands conveyed by the mortgage shall have been offered and sold.<sup>37</sup>

A remainderman living with the tenant for life cannot by virtue of such possession claim the right of homestead.<sup>38</sup> The homestead right of a widow is not subject to partition, and the

32. *Binzel vs. Grogan*, 67 Wis. 47; *Scofield vs. Hopkins*, 61 Wis. 373, 374; *Watkins vs. Blatschinski*, 40 Wis. 352; *Jarvais vs. Moe*, 38 Wis. 446.

33. *Smith vs. Omans*, 17 Wis. 395.

34. *Martin vs. Aultman Co.*, 80 Wis. 150; see *Kent vs. Lasley*, 48 Wis. 257; *Kent vs. Agard*, 22 Wis. 150.

35. *Krueger vs. Pierce*, 37 Wis. 269, 271.

36. *Scofield vs. Hopkins*, 61 Wis. 370; *Shaw vs. Kirby*, 93 Wis. 379. See also *Zimmers vs. Pauley*, 51 Wis. 282; *Hoppe vs. Goldberg*, 82 Wis. 660.

37. Chapter 133, Laws of 1870. *Hansen vs. Edgar*, 34 Wis. 653; *Smith vs. Wait*, 39 Wis. 512; *Rozek vs. Redzinski*, 87 Wis. 525, 530.

38. *Cornish vs. Frees*, 74 Wis. 490, 496. See also *Reeves & Co. vs. Saxton*, 145 Wis. 10.



circuit court has no jurisdiction in partition proceedings to order a sale so as to divest her of such right.<sup>39</sup> The use of a homestead for an unlawful purpose, such as keeping a bawdy-house and selling liquor without license does not render it subject to seizure or sale or execution.<sup>40</sup>

The owner of a lot adjoining a street owns to the center of the street, subject to the public easements. Our court has held, however, that land included in a public street or alley is not to be reckoned in the measurement for the homestead exemption. The homestead statute exempts land "owned" and "occupied"; while the owner of land owns to the center of the street, he has no right to "occupy the street."<sup>41</sup>

If agricultural land occupied as a homestead is by the act of the legislature annexed to or included within the limits of a city or incorporated village, even against the wishes of the owner who still continues to use it for agricultural purposes only, the law exempts such lands used for agricultural purposes no longer. The exemption is abridged so as to include one quarter of an acre with the dwelling house thereon and its appurtenances.<sup>42</sup>

The conveyance of the homestead of an insolvent debtor is not fraudulent as to creditors.<sup>43</sup>

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39. *Voelz vs. Voelz*, 88 Wis. 461.

40. *Prince vs. Hake*, 75 Wis. 638.

41. *Weisbrod vs. Daenicke*, 36 Wis. 73.

42. *Bull vs. Conroe*, 13 Wis. 233.

43. *Shawano County Bank vs. Koeppen*, 78 Wis. 533; *Bank of Commerce vs. Fowler*, 93 Wis. 241.