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Homestead - Interest of Widow in Proceeds of Homestead Where Sold in Course of Administration

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HOMESTEAD—INTEREST OF WIDOW IN PROCEEDS OF HOMESTEAD WHERE SOLD IN COURSE OF ADMINISTRATION

When a homestead is sold during the course of administration, the question naturally arises as to the rights of the widow as well as those of the remaindermen in the proceeds. Initially it is well to define the concept of homestead. The Wisconsin supreme court in *Bunker vs. Locke*[1] stated that its chief characteristic is that it is the land where the dwelling of the owner is located. This is what the legislatures of the various states, including Wisconsin, have sought to protect against actions by the creditors.

The extent to which a homestead is protected depends entirely upon legislative action. Early Wisconsin legislatures did not place any limit upon the value of the homestead, but merely defined the quantum of land involved.[2] It was not until 1901 that the legislature saw fit to amend the Homestead law by placing a limitation of $5,000 upon the value of the homestead that would be exempt from execution.[3] It should be pointed out that the homestead was not protected against laborer, mechanics, and purchase money liens, and mortgages and taxes.[4] Furthermore, the protection that was placed upon the homestead was extended to the proceeds derived from its sale to the extent of $5,000, with which the debtor could purchase a new homestead.[5] Briefly what the Wisconsin legislature has protected from creditor action is a quantum of land together with dwelling house and appurtances claimed by the debtor as homestead, to the extent of $5,000. This protection extends not only to the estate but to the proceeds derived from its sale, and which are to be used to replace it.

If the homestead protection terminated upon the death of the debtor, the legislative intent to protect the homestead would be of little avail. However, by means of constitutional and statutory provisions, most states have transmitted this protection to the widow and children of the debtor.[6] Therefore, the fact that the estate may be insolvent does not destroy the right of the widow or of the deceased's children to homestead even though the property to be set apart constitutes the entire estate of the decedent.

In Wisconsin the interest of the widow and children in the homestead is protected, and under the statute, Section 237.02, the homestead descends:

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[1] Bunker v. Locke, 15 Wis. *635, *638 (1862).
[2] Wis. Stat. 3835 (1898).
[3] Wis. Session Laws, Chap. 269 (1901).
[4] Wis. Stat., 272.20 (1945).
[5] Ibid.
[6] 21 Cyclopedia of Law and Procedure, 562-571 (1906).

". . .free of all judgments and claims against such deceased owner or his estate except mortgages lawfully executed thereon and laborer's and mechanics liens."[7]

The same statute provides that the limitation as to value in Section 272.20 does not apply as between the widow or widower and the issue. By implication, therefore, this limitation would come into play only in the event of action by the creditors of the deceased. It would seem that the legislature, by this section, sought, in certain respects, to protect the widow and children in the same manner as it did the debtor in Section 272.20. Therefore, in the event of sale to satisfy mortgages and mechanic's and laborer's liens, the widow or children would not be entitled to any of the proceeds therefrom until these incumbrances were satisfied.

Where the value of the homestead is in excess of the statutory limitation and the creditors involved do not fit into one of the above classifications, a difficult problem arises as to how the proceeds derived from the sale should be distributed. The Wisconsin statutes are ambiguous in this respect.

Prior to the passage of the present dower statute in 1921, it appears that, in the event of the sale of the homestead, the widow had an election between taking her dower interest or her homestead interest. The question was presented as to what basis should be used in determining the respective interests, and was answered by the Wisconsin Supreme Court in the case of *Lands of Sydow*.[8] The litigants were the widow and the son and the case involved a dispute over the distribution of the proceeds ($7,000) derived from the sale of the homestead of the deceased. After tracing the development of the limitation placed upon the value of the homestead by the legislature in 1901, the court stated,

". . .The statutory definition of the term 'homestead' applies as well to the descent of land as to exemptions. . .The widow, therefore has a homestead right in only $5,000. If she elects to her dower interest therein, she can do so presently. . . Of course her dower interest in the $2,000 which the homestead 40 yielded in excess of the $5,000 should be paid the widow now, and the balance to the minor."[9]

Therefore, it would appear that the proceeds were divided into two distinct funds. The first fund represented the homestead as limited by statute. In this fund, the widow (prior to 1921) had an election between her homestead or dower right therein. Upon the termination of her widowhood, the remainderman was entitled to the fund or balance, depending upon her election. The second fund represented the other

[7] Wis. Stat., 237.02 (1945).
[8] Lands of Sydow, 161 Wis. 325, 154 N.W. 371 (1915).
[9] Ibid.

real estate of which the deceased died seized. To this fund, the widow's right of dower attached. The interest of the creditors of the deceased was recognized only in the balance that remained after the dower was deducted.

However, in 1921, the dower statute was amended to change the dower interest to a fee in 1/3 of the lands of which the husband died seized of an estate of inheritance.[10] The statute was further amended by adding,

> ". . .But such widow shall have no dower in any homestead of which her husband died seized, except in the proceeds thereof in lieu of her homestead rights in case of sale of the premises while she has homestead rights therein."[11]

It appears that it was intended by the statute that the new dower interest should attach only to the proceeds in the event of the sale of the homestead of the deceased. The question arises as to whether this interest attaches to the entire proceeds derived from the sale, or whether it attaches to only the amount limited by statute. In this connection, it can be noted that the statute speaks of the proceeds of the homestead and continues with the phrase "sale of the premises."[12] It does not say "sale of the homestead." Therefore, it would appear that the legislature intended to maintain the limitation as to value of the homestead in respect to the widow's right to dower therein. If this is the correct construction of this statute, then, by applying the rule laid down in the case of the *Lands of Sydow*,[13] the result would be substantially the same as before the passage of the amendment of the dower statute. The widow would have the right of dower in the fund representing the homestead as limited by statute and the balance of that fund would be held in trust for the remaindermen. Furthermore, the right of dower would attach to the excess immediately and the balance would be administered as part of the estate of the deceased. In other words, while the widow would have homestead rights in the premises, this right would only attach to so much of the proceeds that would represent the value of the homestead as limited by the statute.

However, it appears that another construction of this statute is possible. Instead of interpreting homestead, as used in the dower statute, to mean the homestead as limited by statute, it might well be interpreted as it was in *Bunker vs. Locke*.[14] In other words, the limitation as to value would be eliminated. If the latter is a correct interpretation, then it would appear that the right of dower attaches to the entire proceeds

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[10] Wis. Stat., 233.01 (1945).
[11] Ibid.
[12] Ibid.
[13] Lands of Sydow, 161 Wis. 325, 154 N.W. 371 (1915).
[14] Bunker v. Locke, 15 Wis. *635, *638 (1862).

derived from the sale. The further question arises as to how much of the proceeds must be set aside as the homestead interest of the children. Here, it appears that two factors come into play. The first is the statutory limitation of the value of the homestead, and the second is the life expectancy of the widow. Sec. 237.02[2] defines the second factor as the length of widowhood because her interest in the homestead is terminated by remarriage.[15] Since there is no practical way of determining this time, it would seem that the life expectancy figure must be used. By using this figure, it is possible to determine what sum drawing the stipulated rate of interest will equal $5,000 at the end of that number of years. This sum represents the children's homestead interest, and the balance remaining after the dower and homestead interests are deducted will be administered as part of the estate.

Which construction of the statute is correct seems open to debate. The first construction seems to be more in line with the legislative policy. As late as 1939, the Wisconsin Supreme Court indicated that the limitation as to value of the homestead as set forth by the homestead statute expressed the legislative intent to exempt property up to that value.[16] It is apparent that this limitation was placed for the benefit of the debtor's creditors. Therefore, if this limitation inures to the benefit of the creditors before the death of the debtor, it should not be lost by such death.

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[15] Wis. Stat., 237.02 (1945).
[16] Estate of McKenzie: Havitz v. McKenzie, 232 Wis. 425, 287 N.W. 695 (1939).