

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

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1891.

CHAPTER 49 (G. S. ch. 68).

HOMESTEAD EXEMPTION.

A reasonable amount of property shall be exempt from seizure or sale for the payment of any debt or liability. The amount of such exemption shall be determined by law. Const. art. 1, § 12.

Sections.

3941-3944. What is exempt.
3945-3947. Selection.
3948-3949. Sale—Removal.

WHAT IS EXEMPT.

SEC. 3941. **Homestead defined — Exemption.**— A homestead, consisting of any quantity of land not exceeding eighty acres, and the dwelling-house thereon and its appurtenances, to be selected by the owner thereof, and not included in the laid-out or platted portion of any incorporated town, city or village, or, instead thereof, at the option of the owner, a quantity of land not exceeding in amount one lot,† if within the laid-out or platted portion of any incorporated town, city or village having over five thousand inhabitants, or one half acre, if within the laid-out or platted portion of any incorporated town, city or village having less than five thousand inhabitants,† and the dwelling-house thereon and its appurtenances, owned and occupied by any resident of this state, shall not be subject to attachment, levy or sale upon execution, or any other process issuing out of any court within this state.

Widow — Minor child.— This section shall be deemed and construed to exempt such homestead, in the manner aforesaid, during the time it shall be occupied by the widow or minor child or children of any deceased person who was, when living, entitled to the benefits of this act.

When husband deserts.—*And whenever a married man shall abscond from the state, or desert his wife or minor children, the wife or minor children may continue to occupy such homestead, with the same right therein as any other owner of a homestead under the laws of the state; and that the same shall not be subject to levy or sale upon attachment, execution, or other final process issued against the said husband, or against the said wife, or against the said husband and wife: *provided*, they shall not have the right to sell or convey the said homestead.

G. S. ch. 67, § 1, as amended 1875, ch. 65 (March 5); 1875, ch. 66 (March 9). Below * is acts 1875, ch. 65. Acts 1875, ch. 66, inserted "the laid-out or platted portions" and the matter between ††. 3 M. 53; 5 M. 333; 7 M. 513; 8 M. 309; 10 M. 154; 11 M. 476; 12 M. 61; 15 M. 116; 16 M. 159; 21 M. 101, 107, 299; 22 M. 384; 23 M. 74, 435, 454; 31 M. 214; 28 M. 17; 27 M. 117, 407; 25 M. 188; 39 N. W. 322.

SEC. 3942. **Includes dwelling on other's land.**— Any person owning and occupying any house on land not his own, and claiming said house as a homestead, shall be entitled to the exemption aforesaid.

G. S. ch. 68, § 6.

SEC. 3943. **Not exempt, when.**— Such exemption shall not extend to any mortgage thereon lawfully obtained; but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same, unless such mortgage shall be given to secure the payment of the purchase money, or some portion thereof.

* And such exemption shall not extend to any contract for a lien, or upon

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which a lien would arise under the lien laws of this state, for work done or material furnished in the erection or repair of a dwelling-house or other building on said land.

G. S. ch. 68, § 2, as amended 1869, ch. 26. Amendment below *. 11 M. 447, 476; 15 M. 512; 21 M. 299; 22 M. 144; 23 M. 454; 28 M. 467.

SEC. 3944. **Same — Taxes.**—Nothing in this act shall be considered as exempting any real estate from taxation, or sale for taxes.

G. S. ch. 68, § 7.

SELECTION.

SEC. 3945. **Selection whenever levy made.**—Whenever a levy shall be made upon the lands or tenements of a householder whose homestead has not been selected or set apart by metes and bounds, such householder shall notify the officer at the time of making such levy of what he regards as his homestead, with a description thereof within the limits above prescribed, and the remainder alone shall be subject to sale under such levy. * *Provided*, that in case such householder shall refuse or neglect to make such selection within twenty days after notice of such levy, the officer making such levy shall cause to be surveyed and set off to such person entitled to such exemption in a compact form, including the dwelling house and its appurtenances, the amount specified in the first section of this act; and the expenses of such survey shall be chargeable on the execution and collected thereupon.

G. S. ch. 68, § 3, as amended 1883, ch. 59 (February 17). Amendment below *. 10 M. 154.

SEC. 3946. **Survey after selection.**—If the plaintiff in the execution shall be dissatisfied with the quantity of land selected and set apart by such householder as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning at a point to be designated by the owner, and set off in a compact form, including the dwelling house and its appurtenances, the amount specified in the first section of this act; and the expenses of such survey shall be chargeable on the execution and collected thereon.

G. S. ch. 68, § 4, as amended 1883, ch. 59 (February 17). Same as before amendment. 10 M. 154.

SEC. 3947. **Not included in homestead.**—After the selection of [or] survey shall have been made, the officer making the levy may sell the property levied upon and not included in such homestead in the same manner as provided in other cases for the sale of real estate on execution, and in giving a deed or certificate of the same may describe it according to his original levy, excepting therefrom by metes and bounds, according to the certificate of the survey, the quantity set off as such homestead, as aforesaid.

G. S. ch. 68, § 5, as amended 1883, ch. 59. Amendment inserted "After the selection or." 10 M. 154.

SALE — REMOVAL.

SEC. 3948. **Owner can sell or remove homestead.**—The owner of a homestead under the laws of this state may remove therefrom, or sell and convey the same; and such removal, or sale and conveyance, shall not render such homestead liable or subject to forced sale on execution or other process hereafter issued on any judgment or decree of any court of this state, or of the district court of the United States for the state of Minnesota, against such owner; nor shall any judgment or decree of any such court be a lien on such homestead for any purpose whatever: *provided*, that this act shall not be so construed as in any manner to relate to judgments or decrees rendered on the foreclosure of mortgages, either equitable or legal.

1860, ch. 95, approved March 10th: "An act to amend an act entitled 'an act for a homestead exemption,' passed August 12, 1858." 15 M. 116; 30 M. 85; 29 M. 21; 28 M. 117, 549; 27 M. 160, 407; 38 M. 304. This section does away with the disputed doctrine whether fraudulent conveyance does or does not estop debtor from claiming homestead after conveyance annulled. Smyth on Hom. §§ 238, 399, 469; 13 Am. L. R. 244, 697; 28 Gratt. 725.

SEC. 3949. **Removal from homestead.**—Whenever the owner of a homestead under the laws of this state shall remove therefrom, and cease to occupy the same as such homestead for a period of more than six consecutive months, his right to claim the same as such shall cease and determine on the expiration of such period of six months, unless, prior thereto, he shall file in the office of the register of deeds of the county wherein such homestead is situate, a notice by him subscribed, and acknowledged in the manner deeds are required by law to be acknowledged, particularly designating such homestead, and that he claims the same as such; and in no case shall his right to claim the same as a homestead continue for a longer period than five years from the filing of such notice, unless it has been accompanied, during some portion of said period, by an actual occupancy and residence thereon by him or his family.

1868, ch. 53: "An act limiting the time of absence from a homestead by the claimant thereof." Approved March 6, 1868. 38 M. 304; 39 N. W. 142.