

No. 183, S.]

[Published June 13, 1949.

CHAPTER 245.

AN ACT to renumber 370.01 (46) to be 370.01 (46) (a) and to amend the same as renumbered; to amend 237.02, 238.04, 272.20, 272.21, 278.11, 314.05 and 316.11 (1); and to create 237.025, 370.01 (46) (b) and (47) of the statutes, relating to homesteads and homestead exemptions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 237.02 of the statutes is amended to read:

237.02 When the owner of any homestead shall die, not having lawfully devised the same, such homestead shall descend * * * in the manner following:

(1) If the decedent shall have no lawful issue, to the widow or widower.

(2) If the decedent shall leave a widow and issue or a widower and issue, to the widow or widower so long as not remarried, and upon marriage or death to the original decedent's heirs according to section 237.01 * * *.

(3) If the decedent shall leave issue and no widow or widower, to such issue according to section 237.01.

(4) If the decedent shall leave no issue or widow or widower, * * * according to section 237.01, subject to lawful liens thereon * * *.

SECTION 2. 237.025 of the statutes is created to read:

237.025 HOMESTEAD EXEMPTION. (1) If there be a widow or widower or child or child of a deceased child of the deceased owner, the exempt homestead shall descend subject to lawful liens thereon but free of all judgments and claims against the deceased owner or his estate.

(2) If there be a widow or widower or minor child of the deceased owner, such exempt homestead shall in addition be free from expenses of last illness and funeral and the costs and charges of administration.

SECTION 3. 238.04 of the statutes is amended to read:

238.04 When any homestead shall have been disposed of by the last will and testament of the owner thereof the devisee shall take the same free of all judgments and claims against the testator or his estate, except mortgages lawfully executed thereon and laborers' and mechanics' liens *to the extent that the testator shall leave other property*

subject to payment of the same. When devised to any of the persons mentioned in section 237.025, the same exemptions shall apply as set forth therein. * * *

SECTION 4. 272.20 of the statutes is amended to read:

272.20 (1). * * * An exempt homestead as defined in section 370.01 (47) selected by a resident owner * * * and occupied by him shall be exempt from execution, from the lien of every judgment and from liability for the debts of such owner to the amount of \$5,000, except mortgages, laborers', mechanics' and purchase money liens and * * * taxes and except as otherwise provided. Such exemption shall not be impaired by temporary removal with the intention to reoccupy the premises as a homestead nor by the sale thereof, but shall extend to the proceeds derived from such sale to an amount not exceeding \$5,000, while held, with the intention to procure another homestead therewith, for 2 years. Such exemption extends to land owned by husband and wife jointly or in common and to the interest therein of tenants in common, having a homestead thereon with the consent of the cotenants, and to any estate less than a fee.

(2) Any owner of * * * an exempt homestead against whom a judgment has been rendered and docketed, and any heir, devisee or grantee of such owner, or any mortgagee of such homestead, may proceed under section 269.56 for declaratory relief if such homestead is less than \$5,000 in value and the owner of such judgment shall fail, for 10 days after demand, to execute a recordable release of such homestead from his judgment lien.

SECTION 5. 272.21 of the statutes is amended to read:

272.21 (1) Whenever a levy shall be made upon lands of any person, he may notify the officer making such levy, at any time before the sale, that he claims * * * an exempt homestead in such lands, giving a description thereof, and his estimate of the value thereof; and the remainder alone shall be subject to sale under such levy, unless the plaintiff in the execution shall deny the right to such * * * exemption or be dissatisfied with the quantity or estimate of the value of the land selected.

(2) If such plaintiff is dissatisfied with the quantity selected or the estimate of the value thereof, the officer shall cause such lands to be surveyed, beginning at a point to be designated by the owner and set off in compact form * * *. After the lands are surveyed and set off, if in the opinion of the plaintiff, the same shall be of greater value than \$5,000, the officer may still advertise and sell the premises so set off, and out of the proceeds of such sale pay to the exempt homestead claimant the sum of \$5,000 and apply the balance of the proceeds of such sale on the execution; but no sale shall be made in the case last mentioned unless a greater sum than \$5,000 shall be paid for said premises. The expenses of such survey and sale shall be collected on the execution if the owner claimed as his homestead a greater quantity of land or land of greater value than he was entitled to; otherwise such expenses shall be borne by the plaintiff.

(3) If such survey be made the land not exempt shall be sold, but if any person shall neglect or refuse to select his exempt homestead and notify such officer, such officer shall, upon request of the plaintiff, and may without such request, give notice to such person that at a time and place to be therein named he will survey and locate the exempt homestead; and unless such person shall on or before the time so fixed select such exempt homestead, such officer shall survey and locate and set the same off in a compact form * * *. If the owner after such notice selects his exempt homestead, then the provisions of this section shall apply the same as if he had selected it before such notice.

(4) A homestead so selected and set apart by such officer shall be the exempt homestead of such person * * *. The costs of such notice and survey shall be collected upon the execution. A failure of the officer to set apart such homestead shall affect such levy, only as to such homestead; and the failure of such person to select his homestead shall not impair his right thereto, but only his right to select the same when such selection shall be lawfully made by such officer. After such homestead is thus set off by such officer, if, in his opinion or in the opinion of the plaintiff, the premises are of greater value than \$5,000 he may sell the same as where the owner makes the selection.

(5) If the land claimed as * * * an exempt homestead * * * exceeds in value \$5,000, the officer shall not be bound to set off any portion thereof * * * but may sell the same, unless the debtor shall make his selection of such a portion thereof as shall not exceed \$5,000 in value.

SECTION 6. 278.11 of the statutes is amended to read:

278.11 If any defendant appear and answer that any portion of the mortgaged premises is * * * an exempt homestead the court shall ascertain whether such be the fact, and if so whether the part of the mortgaged premises not included in the exempt homestead can be sold separately therefrom without injury to the interests of the parties, and in that case shall direct in the judgment that the exempt homestead shall not be sold until all the other mortgaged lands have been sold.

SECTION 7. 314.05 of the statutes is amended to read:

314.05 When the person who is entitled to the homestead or *exempt homestead* of which the decedent died seized and the creditors or other persons in interest are unable to agree as to the boundaries thereof, the homestead or *exempt homestead* may be assigned by the court upon petition. The petition shall describe the lands from which the petitioner asks to have the homestead assigned and allege the facts upon which the petitioner relies. Notice of the proceedings shall be given as provided by section 324.18 and costs shall be awarded as the court shall order. The heirs of any deceased person who, if living, might exercise the right of selecting a homestead, may exercise the right, and if they are minors or under other disability such right may be exercised for them by their guardian or by the court in such manner as will be most beneficial for them.

SECTION 8. 316.11 (1) of the statutes is amended to read:

316.11 (1) Whenever the *exempt* homestead of the decedent is part only of a tract of land which was subject to a mortgage at the time of his death, and all other real estate and personal property of the decedent has been applied to the payment of his debts and the expenses specified in section 316.01, or is insufficient therefor and the part of the mortgaged premises not included in the *exempt* homestead cannot be sold separately therefrom without injury to the interests of the parties, the court may order the sale of the whole tract; or if a part of the tract can be sold separately, and only a part is necessary to be sold in connection with the *exempt* homestead to prevent such injury, then an order to first sell the part which can be so separately sold, and the remainder afterwards, may be made. The order, in either case, shall direct that the entire estate, including the interest of the mortgagee, be sold; but no such order to sell shall be made when the mortgage debt is not wholly due unless the mortgagee shall consent in writing thereto; if such consent is given and the sale is made for less than the amount of such debt with interest and costs of sale, the mortgagee shall have the same right to proceed, in an independent action, against every party who may be personally liable for the debt secured by the mortgage and to a personal judgment for any deficiency against such party as if such sale had not been made.

SECTION 9. 370.01 (46) of the statutes is renumbered to be 370.01 (46) (a) and amended to read:

370.01 (46) (a) The word "homestead" means the estate * * * *dwelling and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, but not less than one-fourth acre (if available) and not exceeding 40 acres.*

SECTION 10. 370.01 (46) (b) and (47) are created to read:

370.01 (46) (b) The amendment effected September 1, 1949 by chapter 245, Laws of 1949 (Bill No. 183, S.) shall not affect liens of creditors attaching prior thereto nor rights of devisees or heirs of persons dying prior thereto.

370.01 (47) EXEMPT HOMESTEAD. The words "exempt homestead" mean that part of the homestead within the limitation as to value set forth in section 272.20, except as to liens attaching before September 1, 1949 or rights of devisees or heirs of persons dying before September 1, 1949.

SECTION 11. This act shall take effect September 1, 1949.

Approved June 8, 1949.
