

## CONVEYANCE OF HOMESTEADS.

### CHAPTER XXXVII.

#### CONVEYANCE OF HOMESTEADS NOT VALID UNLESS WIFE JOINS.

AN ACT making the conveyance of homesteads not valid unless the wife joins in said conveyance.

*Be it enacted by the Legislative Assembly of the Territory of Dakota:*

Exemption of homestead.

SECTION 1. The homestead of every family resident in this territory as hereinafter defined whether such homestead be owned by the husband or wife so long as it continues to possess the character of a homestead shall be exempt from judicial sale, from judgment lien and from all mesne or final process issued from any court.

What shall be deemed a family.

SEC. 2. A widow or widower though without children shall be deemed a family while continuing to occupy the house used as such at the time of the death of the husband or wife.

Husband and wife must sign conveyance.

SEC. 3. A conveyance or incumbrance by the owner of such homestead shall be of no validity unless the husband and wife, if the owner is married and both husband and wife are residents of the territory, concur in and sign the same joint instrument.

For what the homestead shall be liable.

SEC. 4. The homestead shall be liable for taxes accruing thereon, and if certified and recorded as hereinafter directed shall be liable only for such taxes and shall be subject to mechanics' lien for work, labor or material done or furnished exclusively for the improvement of the same, and the whole or a sufficient portion thereof may be sold to pay the same.

When it may be sold.

SEC. 5. The homestead may be sold for any debt created for the purchase thereof.

What homestead to embrace.

SEC. 6. The homestead must embrace the house used as a home by the owner thereof, and if he or she has two or more

houses thus used at different times and places, such owner may select which he or she will retain as a homestead.

SEC. 7. It may contain one or more lots or tracts of land with the buildings thereon and other appurtenances subject to the limitations contained in the next section, but must in no case embrace different lots and tracts unless they are contiguous or unless they are habitually and in good faith used as part of the same homestead. Same.

SEC. 8. If within a town plat it must not exceed one acre in extent, and if not within a town plat it must not embrace in the aggregate more than eighty acres. In town and out of town.

SEC. 9. It must not embrace more than one dwelling house or any other buildings except such as are properly appurtenant to the homestead as such, but a shop, store or other building situated thereon and really used or occupied by the owner in the prosecution of his own ordinary business may be deemed appurtenant to such homestead. What it may embrace.

SEC. 10. The owner, or the husband or wife may select the homestead, and cause it to be marked out, and platted and recorded as provided in the next section. A failure in this respect shall not leave the homestead liable, but the officer having the execution against the property of such a defendant may cause the homestead to be marked off, platted and recorded, and may add the expense thence arising to the amount embraced in his execution. Homestead to be platted.

SEC. 11. The homestead shall be marked off by fixed and visible monuments unless the same shall embrace the whole of a subdivision or lot, and in giving the description thereof when marked off as aforesaid the direction and distance of the starting point from some corner of the dwelling house shall be stated. The description of the homestead, certified and acknowledged by the owner, shall be recorded by the register of deeds of the proper county in a book to be called the "Homestead Book," which shall be provided with a proper index. Manner of marking off and describing homestead.

SEC. 12. The owner may from time to time change the limits of the homestead by changing the metes and bounds as well as the record of the description or may change it entirely; but such changes shall not prejudice conveyances or liens made or created previously thereto; and no such change of the entire homestead made without the concurrence of the Changing limits of homestead.

husband or wife, shall affect his or her right or those of the children.

Exemption of  
new home-  
stead.

SEC. 13. The new homestead, shall in all cases be exempt to the same extent and in the same manner as the old or former homestead was exempt.

When dis-  
trict court to  
determine  
question.

SEC. 14. When a disagreement takes place between the owner or any person adversely interested as to whether any land or buildings are properly a part of the homestead it shall be competent for the district court in any proper case to determine such question and all questions relating thereto.

In case of  
death of either  
husband or  
wife.

SEC. 15. Upon the death of either husband or wife the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law; and upon the death of both husband and wife, the children may continue to possess and occupy the whole homestead until the youngest child becomes of age.

Descent of  
homestead.

SEC. 16. Such homestead shall descend according to the rules of descent, unless otherwise directed by will, and shall be held exempt from any antecedent debt of the parent, and if it descends to the issue of either husband or wife it shall be held by such issue exempt from debts of their own, except as in the next section provided.

When home-  
stead liable for  
any debts.

SEC. 17. And if there be no husband or wife surviving, and no issue, the homestead shall be liable to be sold for the payment of any debts to which it might at that time be subjected, as if it had never been held as a homestead.

Homestead  
may be devised

SEC. 18. Subject to the rights of the surviving husband or wife as declared by law, the homestead may be devised like other real estate of the testator.

Family de-  
fined.

SEC. 19. Every family, whether consisting of one or more persons, in actual occupancy of a homestead as defined in this act, shall be deemed and held to be a family within the meaning of this act.

Conflicting  
acts repealed.

SEC. 20. Chapter thirty-seven of the laws of 1862, approved May 12, 1862, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

When to take  
effect.

SEC. 21. This act shall take effect and be in force from and after its passage and approval.

Approved, January 14, 1875.