

and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it otherwise be provided or there be something in the subject or context repugnant to such construction.

A. D. 1869.

10. This Ordinance may be cited for all purposes as the "Health Ordinance, 1869,"

Short Title.

CHAP. 84.

An Ordinance to assimilate the Law exempting the Homestead and other Property from forced Seizure and Sale, in certain cases, in all parts of the Colony of British Columbia :

A. D. 1867.

[22nd March, 1867.]

WHEREAS it is expedient to assimilate the law exempting the homestead and other property from forced seizure and sale, in certain cases, in all parts of the Colony of British Columbia :

Preamble.

Be it enacted by the Governor of British Columbia, with the advice and consent of the Legislative Council thereof, as follows:

1. The "Homestead Act, 1866," of the formerly separate Colony of Vancouver Island and its Dependencies, is hereby repealed: Provided, however, that such repeal shall not affect any rights heretofore acquired under such repealed Act, or any liabilities or penalties already incurred under such Act, but all such rights, liabilities, and penalties shall be available and capable of imposition respectively as if such Act were still in force.

Repeals the "Homestead Act, 1866," with proviso.

2. The word "Homestead" shall be held to mean the pieces or parcels of land, together with any erections or buildings thereon, whether leasehold or freehold, or both leasehold and freehold, with their rights, members, and appurtenances which shall be duly registered as such in manner hereinafter mentioned; and for the purposes of this Ordinance any erection or building, or any such homestead as aforesaid, whether or not the same be affixed to the soil, shall be taken to be real estate and part of such homestead.

Homestead defined.

3. The homestead aforesaid shall be registered in manner following:—The owner of such homestead shall cause the title to the same to be registered by the Registrar of Real Estate as in the case of other real estate, according to the law in force in that part of the Colony in which such homestead is situate, and in addition thereto shall cause a notice of registration, which may be in the

Mode of registration of homestead.

A. D. 1867.

Form 1 in the schedule hereunto annexed, to be lodged with such Registrar, accompanied with a schedule of instruments evidencing his title to such homestead, and a declaration to the effect mentioned in Forms 2 and 3 respectively, in the said schedule: that is to say, in case the owner of any homestead shall declare his assets to be not less than the sum of two thousand five hundred dollars, then the declaration shall in that case be to the effect mentioned in Form 2; and in case the owner of any homestead shall declare his assets to be not greater than the value of the homestead, such homestead being of less value than two thousand five hundred dollars, then the declaration shall be to the effect mentioned in Form 3, and thereupon it shall be the duty of such Registrar to register such homestead, if he shall be satisfied that the owner has a *prima facie* title thereto, and without such notice of registration and such declaration duly declared and filed with such Registrar, as the case may require, such Registrar shall not register such homestead, and any declaration in the form or to the effect of Forms 2 and 3 respectively, may be made before such Registrar, or any person by law entitled to receive solemn declarations.

False declaration a
misdemeanor.

4. Any person wilfully making a false declaration of any matter required or permitted to be declared by this Ordinance shall be guilty of a misdemeanor, and on conviction shall be liable to punishment as for perjury.

Homestead, when
registered, free from
seizure for debt, &c.

5. The homestead aforesaid, after the same shall have been duly registered, shall be free from forced seizure or sale by any process at law or in equity, or on any proceeding in bankruptcy for or on account of any debt or liability incurred after the registration of such homestead in manner aforesaid: Provided, however:

In case of its being
of a value not greater
than \$2,500.

(1.) That in case such homestead shall at the time of the suing out of any process at law, or in equity, or of bankruptcy, be of a value not greater than two thousand five hundred dollars, then the same shall be wholly exempt from forced seizure or sale:

If of a greater value
than \$2,500.

(2.) That in case such homestead shall at the time of such suing out of process at law, or in equity, or of bankruptcy, be of a greater value than two thousand five hundred dollars, then so much only of such homestead shall be liable to seizure or sale as aforesaid, as shall exceed the sum of two thousand five hundred dollars.

Falsehood of decla-
ration to vitiate re-
gistration.

6. The registration of any homestead under the provisions of this Ordinance, shall be utterly void and of no effect, and all the benefits of this Ordinance shall be forfeited if any declaration of matters required or permitted to be declared shall be false to the

knowledge of the person effecting the said registration, or on whose behalf the same shall be registered.

A. D. 1867.

7. It shall be lawful for any person claiming the benefit of the provisions of this Ordinance with respect to any homestead, at the time of registration or at any time thereafter, to limit any homestead in favour of such persons and for such estates, and subject to such uses, trusts, and purposes as those to which lands can now be limited according to the nature and incidents thereof; but in case no special limitation shall be made, the said homestead shall enure to the owner, for whose benefit the same shall be registered for an absolute estate in the same, according to the nature thereof, subject to the right of the widow as hereinafter mentioned.

Homestead, if not otherwise limited, to enure as an absolute estate in the owner, according to its nature.

8. Nothing herein contained shall be held to prevent the person for whose benefit a homestead shall be registered at any time from abandoning, aliening, mortgaging, or otherwise parting with, limiting, or encumbering his interest therein, as to him may seem fit, regard being had to the nature, quality and incidents thereof, and of his power to dispose of the same: Provided, however, that in case the owner of any homestead be a married man, he shall not during coverture so abandon, alien, mortgage, part with, limit, or encumber the same, except with the consent of his wife, if she be a resident of this Colony, such consent to be given by way of acknowledgment by her in the manner provided for in cases of the execution of instruments affecting real estate within the said Colony by married women; but in case such wife be not a resident no such consent shall be requisite.

Owner of homestead may abandon, &c., but if a married man with the consent of his wife, if a resident of the Colony.

9. Any homestead, and the benefits and privileges conferred upon any person or persons under this Ordinance in respect of any homestead, may be abandoned by document, which may be in the Form 4 of the schedule hereunto annexed, duly executed by the person or persons interested therein; and such document shall be filed in the office of the Registrar, as in this Ordinance aforesaid, and the registration of the homestead shall be thereupon cancelled in such form as is now used in the cancellation of charges.

Form of abandonment of homestead.

10. If any person holding property under this Ordinance shall die intestate, leaving a widow and minor children, the homestead of the value aforesaid shall wholly pass to such widow, to be held by her during the minority of such children, or while said widow remains unmarried; and the exempted property shall not be sold during such minority, or while such widow remains unmarried, for the payment of any debt which shall have been contracted by any such deceased person subsequent to the due registration of such homestead.

Widow to inherit homestead if husband dies intestate.

A.D. 1867.

Personal property of debtor to amount of \$150 exempt from seizure for debt.
[*Vide Chap. 85.*]

11. The following personal property shall be exempt from forced seizure or sale by any process at law or in equity, or from any process in bankruptcy, that is to say: the goods and chattels of any debtor or bankrupt, at the option of such debtor or bankrupt, or if dead, of his personal representative, to the value of one hundred and fifty dollars, the same not being homestead property under the provisions of this Ordinance.

Questions under the Ordinance by which Court decided.

12. On the return of any process at law or in equity, or in any matter of bankruptcy, in case any question shall arise in whole or in part, touching any matter provided for by this Ordinance, the Court out of which such process shall issue, or the Court of Bankruptcy, as the case may be, shall dispose of such question between the parties interested therein, by way of summons and order in a summary way: provided, however, that with respect to any matter of fact, such matter shall, at the request of any party interested, be tried with or without a full jury of eight persons, at the option of such persons, and as to any matter involved, not being matter of fact, the Court shall make such order as to partition and sale of any portion of a homestead which exceeds in value the sum of two thousand five hundred dollars, and, generally, as to costs and other matters, with a view to the final adjustment of any question depending between the parties, as to such Court shall seem fit: provided, however, that in the matter of the sale of any portion of the homestead, of a value exceeding the sum of two thousand five hundred dollars, due regard shall be had to the choice and preference of the owner and parties interested in the portion reserved from sale; and provided, also, that in case of the sale of a property comprising a homestead over the value of two thousand five hundred dollars, it shall be lawful for the Court ordering such sale, to order the sale of the whole, or portion or portions of such property, if occasion shall require, for the fair realization of its value, and make such order for the due investment of the residue by purchase of other homestead property, or by distribution among persons interested therein, after deducting therefrom the sums due to the creditors, as to such Court shall seem meet.

Duty of Registrar of Titles in registering homesteads.

13. Every Registrar of real estate in the said Colony shall keep proper books, in which all notices of registration of homesteads, abandonments, and declarations shall be recorded, as also indices referring to the registration, abandonment, and other dealings with homesteads under this Ordinance, and, in particular, a nominal list of all persons claiming the benefits of homesteads under the provisions of this Ordinance, with the descriptions of the homesteads claimed; and shall, further, have the custody of all original notices of registration, declaration, and abandonments, but as to other documents affecting the same, he shall deal therewith as in other

cases of real estate registered in the Land Registry Office, according to the law affecting registration of land in force in the several parts of the Colony.

A.D. 1867.
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14. The said last mentioned nominal list of persons claiming the benefit of homestead, shall be open to inspection by the public, free of charge, and all other documents lodged with such Registrars as aforesaid, and relating to the registration or abandonment of, and other dealings with the homestead, may be inspected by the public on payment of the proper fees in that behalf, as hereinafter mentioned.

Nominal list of persons owning homesteads to be inspected free of charge.

15. Every registrar of real estate shall be entitled to take the fees specified in Form 5 in the Schedule to this Ordinance annexed; and, in so far as the fees therein specified do not apply, such Registrar shall be entitled to the like fees which are by law chargeable under the laws in force in that part of the Colony in which such homestead is registered, for matters and things done and performed, or permitted by him, in pursuance of the duties and powers imposed and conferred upon him by the provisions of this Ordinance; all such fees to be paid into the Treasury of the said Colony as general revenue, for the use of Her Majesty, Her heirs and successors.

Fees of registration, &c., of homestead.

16. Nothing in this Ordinance contained shall be construed as exempting any real or personal property from sale for taxes, or from distress for rent.

Reservation of liabilities in respect of taxes.

17. This Ordinance may be cited for all purposes as the "Homestead Ordinance, 1867."

Short Title.

SCHEDULE.

FORM 1.

Notice of Registration.

I, A. B., of _____, hereby give notice that I desire to have registered [Lot _____, Section _____, District _____, or other description in full], being [tenure freehold or leasehold] as a homestead, [and if specially limited add (and I hereby declare that the same is limited as in the deed hereunto annexed)], under and by virtue of the provisions of the "Homestead Ordinance, 1867."

A.D. 1867.

FORM 2.

For a Homestead of any Value where the Owner declares his Assets to be not less than the full Value of \$2,500.

I, A. B., of _____, declare that, over and above all debts and liabilities whatsoever to which I am now liable, wheresoever the same may have been incurred, I am seised of or possessed of assets in real or personal estate to an amount not less than the sum of two thousand five hundred dollars.

FORM 3.

For a Homestead of less value than \$2,500, where the Owner desires to declare his Assets to be not less than the value of the Homestead at the time of Registry.

I, A. B., of _____, declare that, over and above all debts or liabilities whatsoever to which I am now liable, wheresoever the same may have been incurred, I am seised or possessed of assets in real or personal estate to an amount not less than the sum of \$ [insert the value of the homestead registered.] And I, the said A. B., hereby declare, to the best of my knowledge and belief, the homestead hereby registered does not exceed in value the sum of \$ [insert the value of the homestead.]

FORM 4.

Abandonment of Homestead.

I, _____, of _____, hereby abandon all homestead rights in the property registered as a homestead, that is to say [describe the property.]

Dated this _____ day of _____, A.D. 18 _____.

(Signed) L. S.

[If the consent of the wife is required add her acknowledgments as in the case of acknowledgment of deeds by married women.]

FORM 5.

Fees to be taken by Registrar of Real Estate.

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| For every registration of land as a homestead, including the filing of notices and declarations, and deeds filed therewith, but exclusive of all other fees for the registration of the title thereof | \$5 00 |
| For every abandonment of a homestead | 5 00 |
| For the inspection of original documents affecting a homestead, per document..... | 0 25 |
| If more than four documents | 1 00 |