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EXEMPTIONS - LOSS OF HOMESTEAD EXEMPTION

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EXEMPTIONS — LOSS OF HOMESTEAD EXEMPTION — Due to inability to make a living, the defendant and his family left their homestead in 1932 with the intention of re-occupying it as soon as they secured enough money to buy the necessary equipment to maintain themselves on the farm. In October, 1937, a judgment was recovered by plaintiff against defendant, execution was issued and levy made on the still vacant homestead, and a date of sale set for June, 1939. Defendant claimed homestead exemption. *Held*, that since it did not appear when, if ever, defendant would return to the homestead, the removal and seven years' absence was an abandonment and the exemption was therefore lost. *Bank of Cruger v. Hodge*, (Miss. 1940) 198 So. 26.

The basic principle underlying the homestead exemption statutes is the protection of the family and not the exemption of a certain amount of real estate.¹ The courts have therefore favored a liberal construction to effectuate the

¹ SMYTH, HOMESTEAD AND EXEMPTIONS 50-51 (1875).

intention of the legislature.² However, the homestead exemption may be lost when the occupant abandons the farm as his home.³ The difficulty arises in determining when abandonment takes place, since it is purely a question of the intention with which the owner left the homestead.⁴ A temporary removal caused by some necessity or casualty with intent to return is not such an abandonment as will cause a forfeiture of the exemption.⁵ A prolonged absence with its implication as to intention⁶ or an intent to return at some indefinite future time,⁷ although not enough in themselves to cause loss of the exemption, are factors to be considered.⁸ In the principal case the owner was absent for seven years and intended to return at some indefinite and contingent time. In accordance with the rule of liberal construction of the exemption statutes, many courts,⁹ including the Mississippi court, hold that abandonment is established only when the removal is accompanied by an intent never to return and such intent is clear beyond all reasonable doubt.¹⁰ It would seem that under this view an intent to return at some indefinite future date contingent upon particular circumstances is sufficient to prevent a forfeiture of the exemption under some circumstances.¹¹ Although the test of intention is indefinite and provides prac-

² *Gilmore v. Brown*, 93 Miss. 63, 46 So. 840 (1908); *Jackson v. Coleman*, 115 Miss. 535, 76 So. 545 (1917); *Hill v. First Nat. Bank of Marianna*, 79 Fla. 391, 84 So. 190 (1920); *Andrews v. Security Nat. Bank*, 121 Tex. 409, 50 S. W. (2d) 253 (1932).

³ THOMPSON, *HOMESTEAD AND EXEMPTION* 217 (1878).

⁴ *Carter v. Pickett*, 39 Okla. 144, 134 P. 440 (1913); *Russell v. Koller*, 70 Okla. 258, 174 P. 560 (1918); *Moses v. White*, 6 Kan. App. 558, 51 P. 622 (1897).

⁵ *Miss. Code Ann.* (1930), § 1776: "Whenever the debtor shall cease to reside on his homestead, it shall be liable to his debts, unless his removal be temporary, by reason of some casualty or necessity, and with the purpose of speedily reoccupying it as soon as the cause of absence can be removed." See *Thompson v. Tillotson*, 56 Miss. 36 (1878); *Carter v. Pickett*, 39 Okla. 144, 134 P. 440 (1913); *Steel v. Blanchette*, 193 Mich. 167, 159 N. W. 138 (1916); *Bradley v. Humphreys*, 191 Ark. 141, 83 S. W. (2d) 828 (1935).

⁶ *Boyer v. Dague*, 167 Iowa 212, 149 N. W. 73 (1914); *Steel v. Blanchette*, 193 Mich. 167, 159 N. W. 138 (1916); *Rigdon v. Bogan*, 160 La. 551, 107 So. 403 (1926).

⁷ *Brattain v. Hite*, 101 Okla. 174, 224 P. 501 (1924); *Gulf Production Co. v. Continental Oil Co.*, (Tex. Civ. App. 1939) 132 S. W. (2d) 553; *Yellow-Hair v. Pratt*, 44 S. D. 136, 182 N. W. 702 (1921).

⁸ *Boyer v. Dague*, 167 Iowa 212, 149 N. W. 73 (1914); *Yellow-Hair v. Pratt*, 44 S. D. 136, 182 N. W. 702 (1921).

⁹ *Carter v. Pickett*, 39 Okla. 144, 134 P. 440 (1913); *Armstrong v. Neville*, (Tex. Civ. App. 1909) 117 S. W. 1010; *Gulf Production Co. v. Continental Oil Co.*, (Tex. Civ. App. 1939) 132 S. W. (2d) 553; *Bradley v. Humphreys*, 191 Ark. 141, 83 S. W. (2d) 828 (1935).

¹⁰ *Jackson v. Coleman*, 115 Miss. 535, 76 So. 545 (1917).

¹¹ *Boyer v. Dague*, 167 Iowa 212, 149 N. W. 73 (1914); *Schnaffer v. Campbell*, 198 Iowa 43, 199 N. W. 334 (1924); *Brattain v. Hite*, 101 Okla. 174, 224 P. 501 (1924); *Hewitt v. Carlson*, 60 S. D. 168, 244 N. W. 108 (1932). *Contra*: *Carter v. Pickett*, 39 Okla. 144, 134 P. 440 (1913); *White v. Roberts*, 112 Ky. 788, 66 S. W. 758 (1902); *Russell v. Koller*, 70 Okla. 258, 174 P. 560 (1918); *Pedersen v. Nielsen*, 212 Wis. 608, 250 N. W. 400 (1933). It seems that the only way the cases dealing with an indefinite intent to return can be reconciled is to say that the courts

tically no guide for future decision, as long as the policy of the statutes is to provide a home for the family and as long as the loss of exemption is caused by abandonment and not temporary removal, there seems to be no other solution. The courts could hold that as a matter of law an absence over a certain number of years causes loss of the exemption, but since the legislatures have not seen fit to provide such a standard in the statutes, it is not for the courts to set one.

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weigh the contingencies. In the Pedersen case the court said that the intent to return was too vague, because the purpose the owner intended to accomplish would take practically the rest of her life. The courts usually say that no general rule can be laid down as to the intent required, and that each case is to be decided on its own particular facts. *Yellow-Hair v. Pratt*, 44 S. D. 136, 182 N. W. 702 (1921).