

exercise it, are derived, not from an order of the court in which the damages may have been assessed, but from the provisions of the statute, and this remedy is open to the plaintiff in this case. The sheriff does not need a writ or mandate from the court, but only a certified copy of the assessment, in order that he may know the amount to be paid, and, having this, he can then proceed as in the statute directed. If the court should order the marshal to remove the defendant from the premises, it might lead to complications that should be avoided. Hence it is the safer rule to leave the parties to the rights and remedies pointed out by the statute.

The order to be entered, therefore, will be conformed to the rulings thus made.

WEBSTER and others v. BOWMAN and others.

(Circuit Court, D. Minnesota. December 31, 1885.)

PUBLIC LAND—MORTGAGE OF HOMESTEAD LAND BEFORE PATENT ISSUED—WHEN VALID.

A mortgage executed on land entered under the homestead act of congress, before expiration of the five-years residence thereon required by the statute, is void ; but if, at the time the mortgage was executed, the right to a patent had been perfected, by a residence on the land for five years, it will be valid.

This is a suit in ejectment. An amended answer is put in, to which a demurrer is filed.

Samuel Appleton and C. B. Palmer, for plaintiffs.

Warner, Stevens & Lawrence, for defendants.

The court (NELSON, J.) construed the answer to allege that Webster made a homestead entry July 7, 1875, under the United States laws; and on that day gave his promissory note to one Anna North, and executed a mortgage with his wife to secure on the homestead property the payment of the note. North foreclosed the mortgage, and became purchaser. After the expiration of the time for redemption she conveyed the land; so that, by divers mesne conveyances, her claim of title became vested in a corporation under whom defendant Neuner was in possession. That the receipt given Webster by the receiver of the United States land-office was not the final certificate given after a residence of five years and fulfillment of the requirements of the homestead statute. The demurrer was sustained, and the court held: (1) That the promissory note given under the alleged circumstances, and secured by the mortgage, was a debt within the terms of section 4 of the United States homestead act; (2) that the mortgagee was apprised that the land was not liable to the payment of the debt, it being created after Webster had settled upon the land under the homestead act of congress, and before expiration of

the five-years residence thereon required; (3) that if, at the time the mortgage was executed, the right to a patent was perfected by a residence on the land for five years, the fourth section of the homestead act did not apply.

Leave was given to amend the answer if it could be shown that *in fact* Webster had resided five years on the premises, or become entitled to a patent at the time the debt was created and the mortgage executed.

SCHLEY *v.* PULLMAN PALACE CAR CO,¹

SAME *v.* ALLEN PAPER CAR-WHEEL CO.

SAME *v.* TRUSTEES PULLMAN LAND ASS'N.

(*Circuit Court, N. D. Illinois.* December 23, 1885.)

HUSBAND AND WIFE—CONVEYANCE OF WIFE'S LAND—ILLINOIS ACT OF FEBRUARY 22, 1847.

Under section 2 of the act of February 22, 1847, (2 Scates, T. & B. Ill. St. 965,) when a married woman, above the age of 18 years, and not residing in the state of Illinois, executed a deed in another state, where she resided, the mere signing, sealing, and acknowledgment of the deed by her husband was sufficient, although his name did not appear in the granting clause of the instrument.

Ejectment.

S. Corning Judd, and Ritchie, Esher & Judd, for plaintiff.

Alfred Ennis, Lyman & Jackson, and Flower, Remy & Gregory, for defendants.

GRESHAM, J. These are actions in ejectment to recover lands upon which the city of Pullman in part stands. Juries were waived, and the cases were submitted to the court upon a stipulation that if the following instrument should be held valid and binding as a deed of conveyance by husband and wife, judgment should be entered for the defendants:

"This indenture, made this twenty-sixth day of May, A. D. 1856, witnesseth, that I, Christina Lynn, sister and heir at law of Henry Millspaugh, deceased, who was a recruit of Lieutenant T. W. Denton, of the 13th regiment, United States infantry, war of 1812, with Great Britain, of the county of St. Clair and state of Michigan, party of the first part, in consideration of the sum of \$43 in hand paid by Milton and Thomas C. McEwen, of the county of Orange and state of New York, party of the second part, the receipt of which is hereby acknowledged, do hereby release, grant, bargain, and quitclaim unto the said party of the second part, their heirs and assigns, forever, all her right, title, claim, and interest in that certain tract of land granted by the United States unto David Millspaugh and Christina Lynn, the brother and sister and only heirs at law of Henry Millspaugh, deceased, as follows, to-wit: The south-east quarter of section numbered fifteen, (15,) in township num-

¹ Affirmed. See 7 Sup. Ct. Rep. 730.