

Following is an extract from the opinion given by Graves J. ".....If a property is of practically no value, and parties interested therein have knowledge of the fact that another is claiming title to the property, then, if the party claiming the title proceeds to take his chance, expend his money and his work upon such property, with the knowledge of the other parties, and by virtue of his acts the property suddenly becomes valuable, laches can be properly invoked, on the theory that the property only had a speculative value, which was suddenly placed in the category of real, or great value, by the money and work of the adverse claimant....."

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#### HOMESTEAD.—WHEN IT MAY BE SOLD FOR PAYMENT OF DEBTS.

A question of much difficulty to purchasers of property and title examiners had arisen because of the Missouri Homestead statute. The courts construed the homestead exemption liberally in favor of the owner, his wife and children and against creditors, and in consequence the title to property which has previously been subjected to the homestead claim is involved in much doubt. The courts therefore set aside any sale by order of the probate court to satisfy creditors claims out of the homestead unless the provisions of the statute have been strictly complied with and the rights of the parties enjoying the homestead exemption fully relinquished.

The Homestead Act of 1895, and as amended in 1907, provides that when a decedent dies, title to the homestead real estate becomes vested in his heirs, subject to the enjoyment of the homestead by his widow and children, free from the payment of debts not legally charged thereon in the decedents life time or those created subsequently to the acquisition of the homestead, until the children attain their majority, and until the death or remarriage of the widow. In the late case of *Dennis v. Gorman*, 233 S. W. 50, in the Missouri Supreme Court, it was held that where the homestead was sold by order of the probate court for debts not charged thereon during the decedent's lifetime, that there being no jurisdiction of the subject matter, the sale was absolutely void and subject to collateral attack. It was also held that inasmuch as the remainder in fee passed to the heirs of the deceased husband, it was not necessary for the continuation of the homestead that the children entitled thereto should remain in possession. To the same effect was the holding in *In Re Boward's Estate*, 231 S. W. 600.

The fact that the children who enjoy the homestead exemption during minority also have the remainder in fee (together with the other heirs of the decedent) makes their interest in many cases equivalent to a fee simple estate. The statute further provides that the homestead property cannot be sold for debts unless the heirs holding the remainder are persons other than the decedent's children. So where the heirs of the deceased householder are his own

children or decendants (and not collateral heirs) and the same children enjoy the homestead during minority, it has been held that their homestead right amounts to an absolute exemption, forever free from sale for the payment of debts; *Armour v. Lewis*, 252 Mo. 568, and cases in accord. In this state from 1865 to 1875, the statute gave the widow a homestead in fee simple, similar to the result in some cases under the statute today. It will be seen that the title of any person claiming through a purchaser at a sale of homestead property for the payment of debts, even though it be by order of the probate court, is very doubtful and should be accepted with caution.

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#### INSURANCE—LIABILITY OF INSURANCE COMPANY FOR SLANDER OF ITS AGENT.

In the case of *Vowles v. Yakisk* 179 N W 117 (Iowa) plaintiff's grocery store was destroyed by fire, and agent of defendant insurance company while adjusting the loss, asserted in the presence of witnesses that plaintiff had burned the building. In an action for slander against the Insurance company, the court says that the real question of the case is not whether the company had expressly authorized the words spoken, but rather, whether the agent at the time he uttered the words complained of was acting within the scope of his authority and in the actual performance of his duties touching the subject-matter of the transaction. The mere fact that the agent was acting in that capacity at the time the words were spoken would not fasten liability on the company, unless the test of the scope of his employment was satisfied. The court found that the agent at the time he spoke the words in question was acting beyond his authority, as it was not his duty to inquire into the origin of the fire, and therefore the company could not be liable for his words unless a subsequent ratification could be proved, and further that an acceptance of the agent's settlement did not amount to a ratification where the sole question negotiated in making the settlement was the amount of loss sustained and not the origin of the fire. A verdict of five thousand dollars damages in the trial court was reversed and the case remanded.

But the dissenting opinion of Weaver, C. J. seems to rest more upon the weight of authority and the better reasoning. He is inclined to view the conclusion of the court as an unnecessary refinement upon the laws of master and servant, and holds that the slanderous remarks of the agent can hardly be dissociated from his official employment and that the company should be held liable for such remarks where the agent was acting in its behalf at the time the remarks were made. He cites a number of authorities which seem to be well considered opinions of respectable courts as sustaining his conclusions, *Fensky v. Maryland Casualty Co.*, 264 Mo. 154. *Nesbit v. C. R. I. & P. R. R. Co.*, 163 Ia. 39. *Palmer v. Railroad Co.*, 133 N. Y. 261. A complete review of this question will be found in a note in 13 A. L. R., 1142.