

MCCUNE v. ROGERS.

If a defendant, arrested on mesne process and carried before two justices on his application to be discharged, before any decision on the question of his discharge, withdraw his application, and, after commitment, give bail, the proceeding before the two justices will not prevent the discharge of his bail on motion made at the return term of the writ.

THE defendant was arrested on mesne process, and carried before two justices on his application to be discharged. The facts which appeared on the proceedings before the two justices are stated in the case of *Rogers v. Stevens*, reported in 45 N. H. 478, and are to be made part of this case. Since the hearing on that application, and before the return day of the writ, the defendant procured bail and was discharged from arrest. At the return term of the writ he moved that his bail be discharged and offered to submit to such examination as the court should order.

Morrison, Stanley & Clark, for plaintiff.

Smith & Topliff, for defendant.

PERLEY, C. J. The two justices, before whom the defendant's application for his discharge from arrest was heard, permitted him to withdraw the application before any decision was made on the question of his right to be discharged, and no decision or judgment was given in that proceeding. The case in this respect would seem to stand on the same footing as a nonsuit with the permission of the court in a suit at law.

In case of an arrest on mesne process by virtue of an affidavit endorsed on the writ, the statute provides, that, "at the return term of such writ, the defendant may move the court to be discharged, or that his bail or sureties may be discharged, and the court, upon satisfactory evidence that the defendant does not conceal his estate, and does not intend to leave the State, may order such discharge." Nothing done in this case on the application to the justices will prevent an application to the court for the discharge of the defendant's bail, and the court should have entertained the motion. What would have been the effect of a decision by the two justices refusing his discharge need not now be considered.

BUXTON v. DEARBORN & A.

A small piece of land, on which hay is cut for a cow kept at the house where a man lives, may be regarded as part of his homestead, though the land is separate from the house and a mile distant, provided that the house and the land together do not exceed five hundred dollars in value and the land is used in connection with the house to furnish necessary feed for the cow.

WRIT OF ENTRY for land in Francestown.

The defendants claimed title by virtue of the levy of an execution is-

sued on a judgment against the plaintiff founded on a cause of action arising since January 1, 1852.

The plaintiff claimed under the Homestead Act. At the time of the attachment and levy, the plaintiff Buxton owned and occupied a lot of land in Francestown upon which was a house in which he lived with his family.

The demanded premises had no buildings thereon, and are situated about one mile from the lot and house above named, and are in no way connected with the same, as a mile of lands of various persons intervene. Buxton has always cut hay upon the demanded premises which he has fed to his cow. No part of the demanded premises has ever been let to tenants, and the whole value of the same, together with the above named house and lot will not exceed in value five hundred dollars.

At the time of the attachment and levy, Buxton did not own, nor does he now own, any other real estate than that above named.

The execution under which the defendants claimed was in favor of Robert Bradford, and before the commencement of this suit Buxton made a demand upon him for a homestead to be assigned and set off to him from the demanded premises.

It was agreed that this case be submitted to the court upon the above stated facts, reserving to either party the right to a trial by jury without prejudice from any thing therein contained.

Morrison, Stanley & Clark, for plaintiff.

Dearborn & Scott, for defendant.

PERLEY, C. J. We understand the case to find that the plaintiff owned, and lived with his family in, a dwelling-house, in such way that he had a homestead there; that he kept a cow at the house; that the land in dispute was not contiguous to the house, but distant from it about one mile; that, while he lived in the house, the plaintiff occupied and used the land in dispute as mowing land, on which he cut hay for the cow kept at the house; that the quantity of hay cut was no more than was necessary for the feed of the cow, and that both the house and the land in dispute did not exceed five hundred dollars in value. The simple question submitted in argument is whether this piece of land thus used in connection with the occupation of the house, but separate from it, is to be regarded as parcel of the homestead within the meaning of that term as used in the statute.

It is "the family homestead of the head of each family," which the statute exempts from levy and attachment. The term "homestead" is used in the statute without further qualification; and the statute should have a liberal interpretation to accomplish the object of the law, which was to leave, for the upholding and support of a debtor's family, a property where they lived not exceeding five hundred dollars in value, that should be exempted from levy and attachment for his debts. If a piece of land was actually and conveniently used with the house, where a debtor lives, and was necessary to the convenient enjoyment of the house

as a home for his family, the land might well be considered as a mere appurtenant to the house, and it would be a narrow construction, tending to defeat the humane object of the statute, to hold that it could not be regarded as parcel of the homestead because it did not happen to adjoin the land on which the house stood.

The statutes in other States on the subject of homestead exemption are in terms so different from ours that cases in the construction of those statutes do not furnish us with any direct authority. But the inference from the discussions in those cases is strong that where the word "homestead" is used in a statute on that subject, without qualification, the term is broad enough to include land situated like that which is in dispute here. *True v. Morrill*, 28 Vt. 674; *Walters v. The People*, 18 Ill. 194; *Hancock v. Morgan*, 17 Texas 582.

Our conclusion is that the land in dispute was parcel of the plaintiff's homestead, and he must have judgment, unless the plaintiff should elect a trial.

HOYT v. WHITE.

The personal services and earnings of the wife and the profits and income of any business in which she may engage, at common law, and under our statutes of 1846 and 1860, relating to the rights of married women, belong to the husband absolutely and cannot be held by the wife to her sole and separate use.

But while the husband may thus enjoy and appropriate the earnings of the wife and the profits of her services, still, under our law regulating the trustee process, the husband's creditors cannot, on that process, hold any of the avails of the wife's personal services or earnings. The distinction between the terms "*personal services and earnings*" and "*labor*" as used in our statute regulating the trustee process.

THIS action is brought against James White and several trustees, and Mahala White, claimant of fund in trustees' hands. Mahala White, the claimant, is the wife of the defendant. Before marriage they made a marriage contract which is referred to in the opinion.

In 1864, at the date of the writ, and for several years before, the said Mahala was keeping a boarding house in Manchester, in her own name, and the trustees were boarding with her, and, at the time of the service of this writ, were indebted for board.

The husband made the boarding house his home, but spent a portion of his time in Deering, in farming. The wife purchased with her own money the household furniture and all things necessary for keeping the boarding house. Some things for furnishing the table she purchased of the husband. The husband was insolvent, and the wife had property. The husband and wife intended that she should keep the boarding house in her own name, and for her own benefit, so that his creditors could not attach and hold the proceeds of the boarding business.