

without removing or retaining possession of the property, by leaving a copy of the writ with the town-clerk. In such case the attachment is not made by leaving the copy. Some act of the officer by which he acquires legal control of the property is necessary, otherwise no attachment is made. G. L., c. 224, s. 16; *Scott v. Print Works*, 44 N. H. 507. In this case the return upon the writ shows that all the steps necessary in the attachment of real estate were taken. The return is, that the officer attached the land and left a copy. Although the return does not recite that the attachment was made "by leaving the copy," that act being a necessary one in making the attachment, and there being nothing to show that it was done with any other intention or to effect any other object, it must be understood that it was done as the means and for the purpose of attaching the debtor's real estate. The return showing an attachment valid against a subsequent conveyance, no amendment is necessary.

At the time of the levy, the appraiser, Varney, could have had no interest in the proceeding. The Farmington Bank, in which he was a depositor, had received payment of the note in full, and had parted with all its interest in the suit. It could not be affected by any judgment that followed, nor by any proceedings to enforce a judgment, and Varney, at the time of his appointment and of the levy, was a disinterested appraiser. If this were not so, the officer's certificate of making a levy by a set-off of land by three disinterested appraisers cannot now be questioned by the plaintiff. *Bank v. Eastman*, 44 N. H. 431, 439.

*Bill dismissed.*

CARPENTER, J., did not sit: the others concurred.

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SQUIRE v. MUDGETT.

The only measure of the homestead right is value; therefore a homestead right in a life estate is five hundred dollars' worth of that estate, and not five hundred dollars' worth of the premises in which the life estate exists.

BILL IN EQUITY, alleging that the plaintiff is seized, for the life of William C. Mudgett, of a tract of land in Tilton, on which are situated a dwelling-house, shed, and barn, and also a store and store shed, and that the defendant is entitled to a homestead in five hundred dollars' worth of said dwelling-house, or of said dwelling-house, shed, and barn, during her minority, and praying that a homestead in five hundred dollars' worth thereof may be

assigned to her to hold until she shall arrive at the age of twenty-one years, if she shall live so long. Facts agreed by the parties.

The defendant is a child of William C. Mudgett, and the only child of Sarah J. Mudgett. Sarah J. Mudgett died in November, 1879, seized in her own right of the premises described in the bill. The plaintiff, having a judgment against William C. Mudgett, caused his life estate as tenant by the courtesy to be set off on execution September 8, 1880. The appraisers certify that "the estate of the said debtor for the term of his natural life only in the said tract of land subject to a homestead right therein is of the value of one hundred dollars and no more, and we have set off all the estate of the said debtor therein to the creditor at that sum." In making the set-off the appraisers called the whole property worth one thousand dollars, from which they deducted five hundred, and appraised the debtor's interest in the remainder at one hundred.

No application was made by the defendant to the officer to have a homestead set off to her, and none was set off. The defendant claims that she is entitled to a homestead in the estate of the debtor, William C. Mudgett, that the said Mudgett's life estate is of less value than five hundred dollars, and claims that the extent is void on account of the error in the appraisal, and should be set aside.

The plaintiff claims that the defendant's homestead right is in five hundred dollars' worth of the property valued as a fee simple, and not in a life estate worth five hundred dollars.

The questions, whether the plaintiff is entitled to have a homestead assigned to the defendant, and, if so, what the homestead right shall be, are submitted to the decision of the court.

*E. A. Hibbard*, for the plaintiff.

*C. C. Rogers*, for the defendant.

BLODGETT, J. It was decided in *Squire v. Mudgett*, 61 N. H. —, that this defendant was entitled to a homestead in the life estate of her father upon which the plaintiff's execution was levied; and the material question now is as to the extent of her homestead right. That is to say, Is it five hundred dollars' worth of the land in which the life estate exists? or, Is it such a part as that sum bears to the value of the whole life estate?

The answer cannot be regarded as doubtful, for the statute estimates and measures the homestead right by value, and by nothing else. G. L., c. 138, ss. 1, 5. The character of the estate out of which a homestead is to be taken is therefore of no consequence, because, whatever may be the nature of such an estate, in duration or extent, if it is sufficient to support a homestead, the value of that right can alone be considered in its assignment.

But it is argued that the effect of this construction is to give to

the defendant a more extensive homestead territorially than she would be entitled to were the father an owner in fee simple of the premises levied upon, and that it is not conceivable that the legislature so intended. This argument may be plausible, but it is not sound. It not only overlooks the language of the statute, which is so plain and imperative that it closes the door against discussion, but it also interpolates and substitutes quantity for value, which is manifestly another and a very different thing.

But, aside from the terms of the statute, the force of the argument is destroyed by the obvious fact that a homestead right in an estate less than a fee is not as valuable as a homestead right in the fee, and it must therefore be of a correspondingly greater extent territorially in order to effect an equality in the rights of the respective owners. And this, it is conceived, was the reason why value was made the measure of the homestead right in all cases by the legislature, for there is no other standard which would operate so equally, or which would so well secure the benefits intended to be conferred by the homestead act.

The defendant, during her minority, is entitled to a homestead out of the life estate, unless sooner terminated; but whether such homestead will attach to the store and store shed, is a question for the decision of which more facts are necessary.

*Case discharged.*

CARPENTER, J., did not sit: the others concurred.

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CARROLL.

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PITMAN *v.* THOMPSON & *a.*

A submission under the statute, upon which no award has been filed, is no bar to an action for the same cause brought to enforce a laborer's lien.

ASSUMPSIT, for labor. Writ dated April 12, 1883. Plea, the general issue, with a brief statement of a prior arbitrament and award. The cause was tried by a referee, whose report is for the plaintiff in the sum of \$349.40. January 29, 1883, the parties submitted all matters in difference to arbitrators under the statute, stipulating that the award should be filed with a motion for judgment thereon at the coming April term for this county. A hearing was had before the arbitrators, March 5, 1883, and they awarded to the plaintiff \$250, but the submission and award were not filed with the clerk until February 18, 1884. After the submission, and before the award, the defendants failed, and this suit was brought, and an attachment of certain timber made upon the writ to enforce the plaintiff's lien. The referee reports that the plain-