

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 890 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.

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