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# HOMESTEAD VS. MECHANICS' LIEN

By DAVID W. KNAPP\*

## I. HOMESTEADS (HISTORY AND PRINCIPLES)

"Tenantry is unfavorable to freedom. It lays the foundation for separate order in society, annihilates the love of country, and weakens the spirit of independence. The tenant has, in fact, no country, no hearth, no domestic altar, no household god. The freeholder, on the contrary, is the natural supporter of free government, and it should be the policy of republics to multiply their freeholders, as it is the policy of monarchies to multiply their tenants."

Thus spoke Senator Benton in advocating in the United States Senate the adoption of a general homestead policy.<sup>1</sup> The homestead is defined by Black as being, "technically, and under the modern homestead laws, an artificial estate in land, devised to protect the possession and enjoyment of the owner against the claims of his creditors, by withdrawing the property from execution and forced sale, so long as the land is occupied as a home."<sup>2</sup> On the other hand Tiffany tells us that while the homestead frequently has the characteristics of an estate, it is difficult to conceive how the right of an owner of land to hold such land exempt from liability for debts can be in any sense an "estate."<sup>3</sup> Regardless of the difficulty of precise characterization of the homestead, the need for such laws has been recognized<sup>4</sup> and their beneficial objectives jealously protected in those states granting such rights.

The desirability of such protection for the homeowner was recognized by the framers of the Colorado Constitution when they provided the general assembly with authority to pass liberal homestead and exemption laws.<sup>5</sup> This protection of the homeowner was made real by the Legislature when they enacted the predecessor of what is now Article 3 of Chapter 77 of the Colorado Revised Statutes.<sup>6</sup> This, of course, was only a step in the right direction. The ultimate protection and its extensiveness had to be determined by the supreme court by interpretation of the statutory provisions.

In laying down a guide for subsequent interpretation of the statutes the supreme court stated, in an early case,<sup>7</sup> the two governing principles underlying all homestead legislation. These principles were declared to be,

"*First*, the beneficent design of protecting the citizen householder and his family from the danger of miseries of destitution consequent upon business reverses, or against calamities arising from other causes; and, *second*, the sound public policy of securing the permanent habitation of the family, and cultivating the local interest, pride, and affec-

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<sup>1</sup> Thirty Years in the Senate, 103-104; see Thompson, Homestead and Exemption Laws, §1 (1878).

<sup>2</sup> Black, Law Dictionary (4th ed. 1951).

<sup>3</sup> 2 Tiffany, The Modern Law of Real Property 1121 (1903).

<sup>4</sup> Forty-six states presently have provisions either in their constitutions or in their statutes. See appendices A and B.

<sup>5</sup> Colo. Const. art. XVIII, § 1.

<sup>6</sup> Colo. Rev. Stat. §§ 77-3-1 to 77-3-11 (1953).

<sup>7</sup> Barnett v. Knight, 7 Colo. 365, 3 Pac. 747 (1884).

tion of the individual, so essential to the stability and prosperity of a government."<sup>8</sup>

In that same case the court went farther in laying down a sound basis for giving full effect to the statutory provisions for the homestead by saying "homestead exemption is entirely the creature of statute, but the statute is not in derogation of the common law, for at common law the creditor had no right to sell the debtor's land, (Thomp. Homest. & Ex., Sec. 2, and note;) and the rule is fully established that the statutory provisions are to be liberally construed for the purpose of giving effect to the principles above named."<sup>9</sup> Through the years, since *Barnett v. Knight*, the Colorado Supreme Court has continued to recognize these fundamental principles and has further strengthened the position of the homestead by declaring that the statute in no way rests upon the principles of equity and does not in any way yield thereto.<sup>10</sup>

Two other declarations by the court have placed the homestead in an almost insurmountable position with regard to claims by creditors. First, the court has stated that "the policy of the State is to preserve the home to the family, even at the sacrifice of just demands, for the reason that the preservation of the home is deemed of paramount importance."<sup>11</sup> Second, in the response to a question whether the homestead was vitiated when the designation thereof as a homestead was for the purpose of preventing the creditor from collecting his debt, the court held and has repeatedly affirmed that such purpose and the consequent result of such designation are warranted by the statute.<sup>12</sup>

Thus, it is seen that the Colorado Supreme Court has fully recognized the importance of the homestead and has constantly striven for its fullest protection.

## II. MECHANICS' LIENS (HISTORY AND PRINCIPLES)

The mechanics' lien is also based on strong underlying public policy. At common law, no lien upon land was recognized.<sup>13</sup> Therefore, at present, the only liens which can be imposed upon land, apart from equitable liens proper and mortgages, are those authorized by statute, known as "statutory liens."<sup>14</sup> A lien is defined by Black as "a charge or security or encumbrance upon property."<sup>15</sup> Tiffany describes the mechanics' lien as "a lien on land and on the fixtures and improvements thereon, created by statute, to secure the compensation of persons who, under contract with the owner or some person authorized in his behalf, contribute labor or materials to the improvement of the land."<sup>16</sup> This definition leads inevitably to the basic purpose behind the mechanics' lien. The object and purpose of the mechanics' lien statute as stated by Lane "is to secure to the mechanic and materialman who, by their labor and material, have directly contributed to enhance the value of property, the security of a lien thereon to the extent they have thus

<sup>8</sup> *Id.* at 370, 3 Pac. at 748.

<sup>9</sup> *Id.* at 370, 3 Pac. at 748-49.

<sup>10</sup> *McPhee v. O'Rourke*, 10 Colo. 301, 15 Pac. 420 (1887).

<sup>11</sup> *Id.* at 307, 15 Pac. at 423.

<sup>12</sup> *Id.* at 306, 15 Pac. at 422.

<sup>13</sup> 2 Tiffany, *The Modern Law of Real Property* 1296 (1903).

<sup>14</sup> *Ibid.*

<sup>15</sup> See note 2 *supra*.

<sup>16</sup> See note 13 *supra* at 1297.

added to its value."<sup>17</sup> The Colorado Supreme Court aptly stated the purpose of the mechanics' lien when it said, "The manifest object is to prevent wrong to the mechanics by alienation or incumbrances during the progress of the work. Subsequent alienations or incumbrances are not prevented, but made subordinate to the right of the mechanics who, at the time, were engaged in working and continued afterward to work under previous employment by the vendor."<sup>18</sup>

The statutory proceedings to enforce such rights as are granted under the mechanics' lien laws are in their nature equitable and were administered by the Chancery side of the court at the time such was in being.<sup>19</sup> Thus, in considering the objects and purposes of the mechanics' lien laws, the underlying public policy seems to be made self-evident. The legislature was attempting to alleviate the plight of the laborer and materialman and to prevent the property owner from perpetrating a wrong upon them. That this policy is deserving of serious consideration and that these laws should be construed liberally in order to advance their purposes and objects and to favor those who have the right to invoke their aid was made quite clear early in Colorado judicial history.<sup>20</sup>

Thus, we have considered two entirely separate statutory rights granted by the Colorado legislature and the policies, purposes and objectives advanced by them. The questions that remain are: First, whether the rights granted by these statutes will come into conflict, and when? Second, if and when that occurs, which one will be superior and why?

### III. THE PROBLEM

Conceivably, two problems could arise in connection with the application of these two statutory provisions. In order to understand these problems better, two fact situations will be posed to illustrate how they might arise.

- A. In the first situation, let us suppose that H, home owner, owns a home which he has, according to the statute, designated as a homestead. Subsequently, he decides to place an addition on his house.<sup>21</sup> In order to do this, H hires C, contractor, to do the work and buys the material for the addition from M, a materialman. For various possible reasons, either C or M, or both, have not been paid.<sup>22</sup>
- B. In the second situation, nearly the same facts appear but the time sequence will be changed slightly. In this instance, let us assume that H has not designated his home as a homestead until after the work was started and material furnished but before the completion of the job and before execution on any judgment.

<sup>17</sup> Lane, *Mechanics' Liens in Colorado* 3 (1948).

<sup>18</sup> Mellor v. Valentine, 3 Colo. 255 (1877), citing Phillips, *Mechanics' Liens*, Sec. 228-229 (2d ed. 1883).

<sup>19</sup> The San Juan and St. Louis Mining and Smelting Co. v. French, 6 Colo. 214 (1882).

<sup>20</sup> *Maker v. Shull*, 11 Colo. App. 322, 52 Pac. 1115 (1898); *Cornell v. Conine-Eaton Lumber Co.*, 9 Colo. App. 225, 47 Pac. 912 (1896).

<sup>21</sup> Presumably the problem could not arise where the work accomplished was the entire construction of the house since it is necessary in Colorado to occupy the homestead. However, this type of factual situation and problem has arisen in other states where the homestead was declared before the mechanics' lien was perfected or where mere intent was sufficient to establish the homestead and occupancy was not a requisite. Also, of course, there is a stated exception in favor of the vendor's lien.

<sup>22</sup> In some states whether the unpaid person is C or M seems to be very critical. However, in Colorado it appears that it would make little difference with the possible exception of the equities being greater in one case than the other. Sometimes, non-payment of M is caused by insolvency of C.

In either case above, C or M, or both, could presumably avail themselves of the proceedings for foreclosure and sale of the property under the mechanics' lien laws. This of course is assuming that they have complied with the statutory requirements of notice, filing, etc. It also seems possible, however, from the strict wording of the homestead statutes that H could prevent the sale of his house by reason of its designation as a homestead.<sup>23</sup>

Here, it will be observed, the problem has arisen. H is entitled, according to the statute, to his homestead exemption. Similarly, C and M are entitled to satisfaction of their judgments for mechanics' liens

<sup>23</sup> It should probably be noted here that in order to make the problem really exist it will have to be assumed that the value of the property, even after the addition, does not exceed the statutory limit of \$5,000. It might also be worthy of mention at this point that a problem can arise with regard to additions concerning the actual sale. Supposedly, the lien exists only on that part of a house on which the work was done.

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Whether the second problem can arise must, of course, depend upon the solution to the first problem. If the homestead is not superior to the mechanics' lien when it is filed before the work was done or material furnished, *a fortiori*, the homestead could not be superior in the second case. However, if the homestead in the first case is superior to the mechanics' lien, then the question arises whether it is superior in all cases, *e.g.*, in problem 2.

#### IV. ANALYSIS OF THE FIRST PROBLEM

##### A. *The Homestead*

###### 1. *The Constitutional Provisions*

The Colorado Constitution provides that "The general assembly shall pass liberal homestead and exemption laws."<sup>24</sup> Exactly what this means or indicates concerning a possible solution to the present problem is difficult to determine. The constitutional provision has seldom been discussed in Colorado cases. In *Wright v. Whittick*,<sup>25</sup> it was held that this provision does not designate what shall constitute a homestead but that the statute must be examined to determine such matters. It has also been held that homestead laws are not in derogation of the common law and that they should be liberally construed.<sup>26</sup> Thus, it seems that the constitutional provision for the homestead exemption is somewhat meager and offers little aid in an analysis of the problem. An investigation into the constitutional history of this section has proved fruitless. However, it must be borne in mind that at least the framers of the Colorado Constitution felt the homestead was of sufficient importance to warrant specific mention of it.

###### 2. *Statutory Provisions.*

The Colorado statute provides that "every householder in the State of Colorado, being the head of a family, shall be entitled to a homestead not exceeding in value the sum of five thousand dollars, exempt from execution and attachment, arising from any debt, contract or civil obligation, entered into or incurred after the effective date of this section."<sup>27</sup> Other sections of the homestead laws declare the method for claiming the exemption,<sup>28</sup> the fact that it must be occupied,<sup>29</sup> the rights of widows,<sup>30</sup> the method of levy when the value exceeds the five thousand dollar limit,<sup>31</sup> the fact that the homestead is not valid against a vendor's lien,<sup>32</sup> and other matters not directly concerned with this problem.

It is interesting to note that there is a specific exception to the homestead exemption, namely, the vendor's lien, and that exception is the sole stated exception. Therefore any other exception must necessarily be implied.

<sup>24</sup> Colo. Const. art. XVIII, § 1.

<sup>25</sup> 18 Colo. 54, 31 Pac. 490 (1892).

<sup>26</sup> *Edson-Keither & Co. v. Bedwell*, 52 Colo. 310, 122 Pac. 392 (1913); *Martin v. Bond*, 14 Colo. 466, 24 Pac. 326 (1891).

<sup>27</sup> Colo. Rev. Stat. § 77-3-1 (1953).

<sup>28</sup> Colo. Rev. Stat. § 77-3-2 (1953).

<sup>29</sup> Colo. Rev. Stat. § 77-3-3 (1953).

<sup>30</sup> Colo. Rev. Stat. § 77-3-4 (1953).

<sup>31</sup> Colo. Rev. Stat. § 77-3-6 (1953).

<sup>32</sup> Colo. Rev. Stat. § 77-3-7 (1953).

In looking at the statute declaring a right to homestead, a few words and phrases stand out and might possibly indicate a solution to the problem. Note that the homestead is exempt from "execution and attachment." There are two different theories in regard to the operation and effect of the homestead statute upon the liens of judgments.<sup>33</sup> One theory is that no lien attaches at all, and the other is that the lien attaches but is in abeyance so long as the requirements of the homestead statute are complied with. The first theory is the one that has been adopted by the Colorado Supreme Court.<sup>34</sup> From this it could be reasoned that no lien will attach regardless of how it arose, whether it was by obtaining a judgment or by complying with the mechanics' lien laws.

It should also be noted that the statute declares the homestead to be exempt from "any debt, contract, or civil obligation." This particular wording was discussed in an early Colorado case,<sup>35</sup> and as might be suspected the language was held to be sufficiently broad and comprehensive to embrace any and all forms of indebtedness. This would appear to exclude any argument that the mechanics' lien is a peculiar type of obligation which will defeat the operation of the homestead exemption statute. One more thing regarding the homestead statutory provisions must be noted in any discussion on this topic. Nowhere in the homestead laws of Colorado is there stated an exception in favor of the mechanics' lien. This will be discussed in greater detail when the laws of other states are examined. The most logical conclusion that can be drawn at this point, however, is that the statutory construction theory of "*expressio unius est exclusio alterius*" applies and that the expression of an exception in favor of only the vendor, and of no others, precludes any other exception from being implied.

At this point it may seem to some to be ridiculous even to consider the possibility that a mechanics' lien might be superior to and operate against a prior recorded homestead. This does not appear to be so ridiculous, however, when one considers the statements of supreme courts of several other states, to the effect that homesteads and exempted property under homestead laws are liable the same as other property, the law deeming it more equitable to protect the man who puts his labor or money into the property than to preserve it for the family.<sup>36</sup>

## B. The Mechanics' Lien

### 1. Constitutional Provisions.

There is no provision for a mechanics' lien in the Colorado Constitution. Any possible indication as to a solution of this problem, based upon the absence of a constitutional provision for mechanics' liens seems tenuous to say the least. In a problem such as this, however, every point should be considered; and it seems that possibly the framers of the Colorado Constitution, while feeling that the homestead was of sufficient importance to require a specific provi-

<sup>33</sup> Woodward v. People's Nat'l Bank, 2 Colo. App. 369, 31 Pac. 184 (1892).

<sup>34</sup> Barnett v. Knight, 7 Colo. 365, 3 Pac. 747 (1884).

<sup>35</sup> See note 33 supra.

<sup>36</sup> See, e.g., Tyler v. Jewett, 82 Ala. 93, 2 So. 905 (1887); McAnally v. Hawkins Lumber Co., 109 Ala. 397, 19 So. 417 (1896); Anderson v. Seamans, 49 Ark. 475, 5 S.W. 799 (1887); Murray v. Rapley, 30 Ark. 568 (1881); Parsons v. Pearson, 9 Wash. 48, 36 Pac. 974 (1894).

sion in the Constitution, felt that the mechanics' lien was not of the same importance.

## 2. *Statutory Provisions.*

Basically the Colorado statutes give the mechanic, materialman, etc., a lien upon property upon which they have bestowed labor or for which they have furnished materials equal to the value of such labor or material.<sup>37</sup> One statutory provision which seems to have a possible connection with the instant problem is the section regarding priority of lien and attachment.<sup>38</sup> Some of the more important provisions of this section are that:

- (1) All liens established by virtue of the mechanics' lien statutes relate back to the time of the commencement of the work or the furnishing of the materials.
- (2) All such liens have priority over any and every lien or encumbrance subsequently intervening, and,
- (3) Nothing in the mechanics' lien laws should be construed as impairing any valid encumbrance already existing at the time the lien relates back to.

The first and second of these have greater application to the second of the posed problems. In the first problem the time of attachment of the mechanics' lien is not important; whether it will attach at all is the important consideration.

The third point, however, seems to be of some importance when one considers that courts sometimes classify the homestead exemption as a lien or encumbrance on the property.<sup>39</sup> Therefore, if one considers the homestead as a lien,<sup>40</sup> it seems it could be argued that the mechanics' lien could not impair that lien. Of course, it could also be argued that the legislature did not intend this type of lien but rather the conventional type of lien. At any rate this does not appear to offer a clear-cut answer.

Other provisions of the mechanics' lien statute which might offer some indication of a solution are those sections relating to the procedure to perfect such liens and to satisfy such judgments. One section prescribes a procedure for summons, hearing, etc., wherein an actual judgment is rendered establishing such lien.<sup>41</sup> Another section prescribes that satisfaction of these judgments shall be obtained in the manner provided for sales of real estate on execution issued out of any court of record.<sup>42</sup> The importance of these provisions is that they seem to tie in the idea that an actual judgment must be rendered and that foreclosure of such follows the same rules as other judgments. Therefore, it seems arguable that a judgment of a mechanics' lien stands in no better position than any other judgment and thus must be subject to a valid homestead exemption.

The mechanics' lien laws, like the homestead laws, contain no exception in favor of the homestead. Whether the absence of an exception in the mechanics' lien statutes carries the same import

<sup>37</sup> Colo. Rev. Stat. § 86-3-1 (1953).

<sup>38</sup> Colo. Rev. Stat. § 86-3-6 (1953).

<sup>39</sup> E.g. *Wallace v. First Nat'l Bank*, 125 Colo. 584, 246 P.2d 894 (1952); *Union Nat'l Bank v. Wright*, 78 Colo. 346, 242 Pac. 54 (1925), where it was held that in estate proceedings, the homestead is a lien on the home to which an heir or devisee succeeding to the title takes subject.

<sup>40</sup> This appears questionable since, as was pointed out before, the homestead seems to defy accurate classification for all purposes.

<sup>41</sup> Colo. Rev. Stat. § 86-3-13 (1953).

<sup>42</sup> Colo. Rev. Stat. § 86-3-14 (1953).



as the absence of an exception in the homestead statutes seems open to question. Here again we have various words, phrases, etc., that seem either to favor or to disfavor the superiority of the mechanics' lien over the homestead. Again, there is no clear-cut answer.

### C. *The General Rule*

The general rule for the situation posed in problem No. 1 is easily found but actually is of little help. It was accurately stated as far back as 1918, when it was declared that "the right to a mechanics' lien upon a homestead is governed almost exclusively by a statutory or constitutional provision, or both. The contemporary constitutional and statutory provisions should therefore be consulted in any investigation of this question."<sup>43</sup> Some authorities have been content merely to state the general rule and then give some examples of constitutional or statutory provisions and their effects on the decision. A typical example of this is a statement to the effect that "under some constitutional and statutory provisions property held exempt from ordinary debts as a homestead is not subject to a mechanics' lien . . ." and next it is stated, "on the other hand, under other constitutions and statutes, such homestead property is subject to a mechanics' lien the same as other property . . ."<sup>44</sup> A few authorities go farther than this and declare not only the standard general rule regarding the constitutional and statutory provisions but attempt to formulate a rule for situations in which it is not clearly expressed in the constitution or statutes whether there is an exception of one or the other. These authorities are, however, not only few in number, but seem to be fairly evenly divided as to what the rule should be. William M. Rockel in his treatise on mechanics' liens says, "Homesteads and exempted property under homestead laws are liable the same as other property, the law deeming it more equitable to protect the man who puts his labor or money into the property, than to preserve it for the family."<sup>45</sup> He further states that "the intent to exempt this property from the operation of the mechanics' lien law must be expressly declared by the statute or the constitution."<sup>46</sup> Another authority says "where a lien is given on 'all buildings' and there is nothing in the homestead or other acts exempting it, the property will be liable to this lien."<sup>47</sup>

<sup>43</sup> Annot., 1918D L.R.A. 1055.

<sup>44</sup> 57 C.J.S. *Mechanics' Liens* § 14 (1948).

<sup>45</sup> Rockel, *Mechanics' Liens* 22 (1909).

<sup>46</sup> *Id.* at 10.

<sup>47</sup> Phillips, *Mechanics' Liens* § 183a (2d ed. 1883).

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The contrary opinion has been declared by other authorities, however, equally confident of their correctness. After stating the general rule as explained above, the author of an annotation on this subject said "where there is a general exemption of homesteads in order that the homestead be subject to a mechanics' or materialmen's lien, there must be some provision taking such liens out of the exemption; in the absence of such a provision the homestead is not subject to the lien."<sup>48</sup> This author was not a voice alone, for we find others expressing this same truism. "Where the statute creating the homestead exemption contains no exception in favor of mechanics, there can be no mechanics' lien on a homestead."<sup>49</sup>

Upon final analysis of the views of these authorities on this subject little can be said but that they are very definitely in conflict. Further analysis, which will be accomplished later in this article, of the cases upon which these authorities base their opinions will perhaps draw them closer together. Even then, however, complete accord appears impossible.

#### D. Other States

A brief discussion of the constitutional and statutory provisions of other states seems to be in order at this point.<sup>50</sup> Twenty-eight states have a constitutional provision for a homestead exemption or something similar.<sup>51</sup> Of those twenty-eight, eighteen have very specific provisions regarding the homestead. These provisions include the value, size, exactly what the homestead is or is not exempt from and various other details regarding the homestead. Seven states have a general provision which designates that the legislature shall recognize the right of a debtor<sup>52</sup> or that the legislature shall provide for the exemption of a reasonable amount of real property.<sup>53</sup> Two other states have the same provision as Colorado.<sup>54</sup>

Of these same twenty-eight states, seventeen have a limitation of some sort imposed on the exemption. This limitation is either in the same provision or in an accompanying one. Ten of these states have specific exceptions in favor of the mechanics' and materialmen's liens. Six have an express exception in favor of only mechanics or laborers. However, on occasion courts have implied the exception for the materialmen in these provisions.<sup>55</sup> One state merely has a provision stating that the legislature can provide for waiver, alienation, and encumbrance of the homestead.<sup>56</sup> Neither of the states which have similar provisions to Colorado's have exceptions in their constitutions.

Forty-four states have some kind of a statutory provision for the homestead exemption. Again, these do not always call the exemption a homestead by name but rather may merely designate it as an exemption for real property. Thirty-four of these states have an express exception in favor of the mechanics' and materialmen's liens. This exception is sometimes in the homestead section and

<sup>48</sup> See note 43 *supra*.

<sup>49</sup> Boisot, *Mechanics' Liens* 136 (1897).

<sup>50</sup> For a detailed analysis of the provisions of the states, see Appendices A and B.

<sup>51</sup> Some states do not call the exemption a homestead, but merely call it an exemption of real property.

<sup>52</sup> See, e.g., Indiana, Appendix A.

<sup>53</sup> See, e.g., Maryland, Appendix A.

<sup>54</sup> Montana and Illinois.

<sup>55</sup> See, e.g., *Anderson v. Seamans*, 49 Ark. 475, 5 S.W. 799 (1887).

<sup>56</sup> See, e.g., Ga., Appendix A.

sometimes in the mechanics' lien section.<sup>57</sup> In those states which do not expressly except the materialman, the courts have usually implied such an exception.<sup>58</sup> Four states which do not have a statutory exception in favor of the mechanics' liens have a constitutional exception. One state has an exception stated in the mechanics' lien laws running in favor of the homestead.<sup>59</sup> Both states which have a provision similar to that of Colorado, have a statutory exception for the mechanics' lien.

Of the forty-six states which have a homestead or similar provision in either the constitution or statutes, there are only five which do not have a stated exception in either the constitution or statutes.<sup>60</sup> Decisions in these states which might be relevant to a solution to this problem will be discussed in the next section.

It is difficult to say whether these statistics indicate any actual solution to the problem. The statistics do seem, at least, to point out the advisability of enacting a statute declaring that the exception either does or does not exist. It also seems possible to reason that since so many states have exceptions in favor of the mechanics' liens, apparently they felt it was necessary to enact a statute to that effect and that otherwise the mechanics' lien would not be superior to the homestead. South Dakota seemed to feel the opposite was necessary, *i.e.*, that the mechanics' lien was not superior. In view of South Dakota's case history on this point, which will be discussed later, this is understandable and does not detract from the idea that if there is going to be an exception, either the constitution must be amended or a law passed to that effect.

### *E. Cases and Reasoning*

A study of the cases on this problem necessarily includes consideration of the applicable constitutional and statutory provisions. It would be helpful, of course, if some state had the exact or even similar constitutional and statutory provisions as Colorado. Unfortunately this is not the case.

As was pointed out in the preceding section, some states have detailed constitutional provisions for the homestead exemption.<sup>61</sup> In some of those provisions is a stated exception in favor of persons with liens for improvements.<sup>62</sup> There seems to be no question in such a situation but that there is a legitimate exception in favor of the mechanics' lien.

In other states, however, there is no stated exception in the constitution. In some of these states the legislatures have attempted to provide such an exception by statute.<sup>63</sup> It appears that whenever this was questioned the statutory exception was held invalid.<sup>64</sup> An attempt to enact this type of legislation brought about an interesting sequence of events in South Dakota. Originally the homestead in South Dakota was specifically stated to be subject to a mechanics' lien. Later the homestead law was amended, and the South Dakota Supreme Court held that the amendment, being repugnant

<sup>57</sup> See, *e.g.*, *Vt.*, Appendix B, "This chapter shall apply to homesteads."

<sup>58</sup> See, *e.g.*, *Bonner v. Minnier*, 13 *Mont.* 269, 34 *Pac.* 30 (1893).

<sup>59</sup> *S. D.*, *S.D.C.* 39-0702 (1939).

<sup>60</sup> *Colo.*, *N. Y.*, *Mo.*, *Utah* and *Mass.*

<sup>61</sup> See, *e.g.*, *Fla.*, Appendix A.

<sup>62</sup> *Ibid.*

<sup>63</sup> *S.D.*, *Ill.*, *Minn.*, *Ind.*, *Md.*, *Wisc.* and *Utah* have attempted this.

<sup>64</sup> This question was raised in *Minn.*, *S.D.*, and *Utah*.

to the clause subjecting homesteads to mechanics' liens, by implication repealed the clause.<sup>65</sup> Even later the homestead laws were again amended so that the homestead was to be subject to the mechanics' lien. This was in turn questioned, and the court followed the earlier case and held this provision to be unconstitutional and void.<sup>66</sup> Subsequent efforts to amend the constitution were unsuccessful. Finally the South Dakota Legislature, apparently convinced that any further efforts to subject the homestead to a mechanics' lien would be unsuccessful, decided to clarify the whole situation and passed a statute declaring that the mechanics' lien does not extend to nor affect the homestead.<sup>67</sup>

Minnesota was somewhat more successful in dealing with the problem. Like South Dakota, the Minnesota Supreme Court in *Coleman v. Ballandi*<sup>68</sup> declared that any change in the homestead laws would have to come by constitutional amendment. Unlike South Dakota, the Minnesota Legislature was able to enact such an amendment.<sup>69</sup>

A third state where the question arose was Utah. There, in *Volker-Scowcroft Lumber Co. v. Vance*,<sup>70</sup> the court held a statute which proposed to subject the homestead to a mechanics' lien to be unconstitutional and void. These appear to be the only states where such legislation has been questioned.

Another approach that has been applied successfully in a few instances is to subject the homestead to a mechanics' lien by implication. While generally this approach has been unsuccessful, it has worked and apparently is still the law in Missouri.<sup>71</sup> This same theory was applied in Kentucky prior to the enactment of a statute subjecting the homestead to the operation of the mechanics' lien. In *Robards v. Robards*,<sup>72</sup> the court said, "Assuming that the allegations of appellant in regard to her claim of homestead were sufficient, we do not think she was entitled to it as against the claim of appellee. Having induced him to improve the land, and then (as he contended) violated the contract to convey, she cannot defeat his lien for the enhanced value of the land by her claim of homestead." It appears somewhat questionable whether the court was applying a principle of implied exception or estoppel. This approach was also successful in a South Carolina case where a homestead was held to be subject to execution for a mechanics' lien even though the statute granting the right to enforce such a lien was not passed until after the creation of the lien.<sup>73</sup>

The cases holding such an exception to be implied seem to be decidedly in the minority. An Oregon court in holding that it would not imply such an exception said that "if the homestead laws contain no exception in favor of debts created in making improvements, the court can make none; and the homestead is liable only for such

<sup>65</sup> *O'Leary v. Croghan*, 42 S.D. 210, 173 N.W. 844 (1919), where the court held that any change in the homestead law would have to come by constitutional amendment.

<sup>66</sup> *Home Lumber Co. v. Heckel*, 67 S.D. 429, 293 N.W. 549 (1940). It is interesting to note that in this case the homestead was asserted against the builder of the house. The fact that S.D. requires only intent to occupy, if manifested to the builder, made this possible.

<sup>67</sup> S. D., S.D.C. 39.0707 (1939).

<sup>68</sup> 22 Minn. 144 (1875).

<sup>69</sup> Minn. Const. art. I, Sec. 12.

<sup>70</sup> 32 Utah 74, 88 Pac. 896 (1907).

<sup>71</sup> *Kansas City Granite v. Jordan*, 316 Mo. 1118, 295 S.W. 763 (1927).

<sup>72</sup> 27 Ky. L. Rep. 494, 85 S.W. 718 (1905).

<sup>73</sup> *Allen v. Harley*, 3 S.C. 412 (1862).

a lien when the exemption is waived in favor of it, which must be by the signature of the husband and wife to the contract.<sup>74</sup> Other states have followed this reasoning. South Dakota, while holding one of the statutes unconstitutional and void, went further and refused to imply the exception.<sup>75</sup> Michigan, before it enacted a statutory exception, refused to imply one in *Burtch v. McGibbon*.<sup>76</sup>

Other states have applied a limited form of this implication theory. That is, in several states there were stated exceptions, but only in favor of mechanics and laborers. The question arose when a materialman claimed a lien on the homestead. The courts seem to be fairly well split on this question. In a Montana case, the court held the materialman to be impliedly included in the exception.<sup>77</sup> A California court held otherwise than in the above Montana case, holding that their statute was not as broad as the Montana statute and did not include one furnishing material.<sup>78</sup> In states where only a statutory homestead provision exists, there seems to be no difficulty in enacting another statute excepting the mechanics' liens.<sup>79</sup>

Other theories have emerged in various cases regarding the homestead as a subject of the mechanics' lien. It has been held that the equity of a mechanic is similar to that of a vendor.<sup>80</sup> This theory was advanced by Thompson in his work on homesteads and exemptions, where he said that there is no difference in principle between a debt due to A, who has provided me with the land on which I have erected my building, and a debt due to B, who has furnished the materials to build it, and a debt due to C, whose labor has built it.<sup>81</sup> Other courts have used the estoppel principle to hold the homestead subject to a mechanics' lien.<sup>82</sup> Still others require the signature of both the husband and the wife.<sup>83</sup>

#### F. Colorado Cases

*McPhee v. O'Rourke*<sup>84</sup> seems to be the only Colorado case in which both the homestead and mechanics' lien were mentioned in

<sup>74</sup> *Davis v. Low*, 66 Ore. 599, 135 Pac. 314 (1913).

<sup>75</sup> *Fallihee v. Wittmayer*, 9 S.D. 479, 70 N.W. 642 (1897).

<sup>76</sup> 98 Mich. 139, 56 N.W. 1110 (1893).

<sup>77</sup> *Bonner v. Minnear*, 13 Mont. 269, 34 Pac. 30 (1893).

<sup>78</sup> *Richards v. Shear*, 70 Cal. 187, 11 Pac. 607 (1886).

<sup>79</sup> There are presently 12 states which have no constitutional exception for the mechanics' lien but do have both a statutory provision for the homestead and a statutory exception in favor of the mechanics' lien.

<sup>80</sup> *Hill v. LaCrosse & Mil. R.R.*, 14 Wis. 315 (1861).

<sup>81</sup> Thompson, *Homestead and Exemption Laws*, Sec. 312 (1878).

<sup>82</sup> *Jensen v. Griffin*, 41 S.D. 39, 168 N.W. 764; 46 S.D. 55, 190 N.W. 319 (1922).

<sup>83</sup> See Mich. *Compiled Laws of 1948* Sec. 26.282.

<sup>84</sup> *McPhee v. O'Rourke*, 10 Colo. 301, 15 Pac. 420 (1887).

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the same case. The only difficulty is that there was actually no mechanics' lien filed. In this case McPhee, the materialman, furnished materials used in improvements on the property. McPhee did not comply with the mechanics' lien laws and hence had no mechanics' lien. He did bring suit on the debt for the materials and obtained a judgment prior to the filing of a homestead. One of the questions before the court was whether the act of designating the property as a homestead should operate against a debt for materials used in improvements on the property before it was so designated. To this the court answered, "it is sufficient to say that there is no proviso in the statute against such operation. By failing to take the steps necessary to secure a lien upon the premises, under the provisions of our mechanics' lien act the right to subject the premises to such debt was lost." It must be noted, however, that a mechanics' lien was *not* filed, and any statement regarding the filing of a mechanics' lien is necessarily *dictum*. It must also be noted that in the *McPhee* case the homestead was filed prior to attachment. Whether the court was hinting that a mechanics' lien would be superior regardless of time or that, in this case, it would be superior since it would have been prior to the homestead seems to be questionable. The question of whether it really would have been prior in time will be discussed in the analysis of the second problem. At any rate, exactly why the filing of a mechanics' lien would have made McPhee's position better does not seem clear.

Other Colorado cases have dealt with various types of liens attaching to the homestead. The general rule usually applied is that "in a conflict between a homestead entry claimant and another lienor, the controlling factor, as we perceive the revelation, is that if the lien which the homestead entryman would supplant precedes in time of record and is specific and definite as to the property involved, it holds its preference."<sup>85</sup> This, of course, is the same rule consistently applied by the Colorado Supreme Court when considering the superiority of a judgment lien over the homestead. That is, until there is an actual levy, the lien is not specific and will not operate against a homestead which was filed after judgment but prior to levy.<sup>86</sup> The real question here, however, seems never to have been raised. That is, even if the homestead is declared long prior to the supplying of labor and materials, will the mechanics' lien be superior by reason of implied exception, estoppel, equity, etc., or are the mechanic and materialman on the same footing as the other creditors?

Other decisions in Colorado relate primarily to the question of priority in time. The question of the equities of particular liens does not seem to have been raised. Thus far the only lien given priority based on its nature is the vendor's lien, and that is done by statute.<sup>87</sup> This in itself may provide argument for the superiority of the homestead. That is, had the legislature felt the mechanics' lien claimants were entitled to greater rights than other lien claimants they would have so provided.

<sup>85</sup> *Bean v. Eves*, 92 Colo. 339, 20 P.2d 544 (1933).

<sup>86</sup> *Barnett v. Knight*, 7 Colo. 365, 3 Pac. 747 (1884).

<sup>87</sup> Colo. Rev. Stat. § 77-3-7 (1953).

### G. Conclusion on Problem No. 1

In coming to some conclusion on this problem, it is perhaps wise to consider some of the arguments raised earlier in this paper. There seems to be nothing in the wording of the statutes which would, beyond any question, dictate an answer. Both statutes have provisions which seem possibly to exclude the other. The homestead applies to all debts, contracts, and civil obligations. This would seem to include mechanics' liens. The mechanics' lien laws do not except the homestead from its operation. However, the mechanics' lien must come to judgment and attach the same as other judgments. Therefore, why should it be different from other judgments? The general rule as mentioned earlier offers little help.

Cases from other states, however, seem to offer some help; but it must be remembered that none of the other states have the same constitutional and statutory provisions as Colorado. Some have implied the exception for a mechanics' lien, and some have not. Those states where the exception could not be implied and could not even be enacted into the statutes probably carry little weight, as the constitutional provision in each case was very specific and explicit. As was stated, any change would have to come by constitutional amendment.

Colorado cases seem to be of little, if any, help. The *McPhee* case could perhaps be used in argument for both sides. However, it seems to be a better argument for the superiority of the homestead if filed prior to the furnishing of materials.

The statistics of what other states have done also seems to carry some weight for the homestead. However, this could be discounted somewhat by South Dakota's precedent of excepting the homestead from the operation of the mechanics' lien and also because many states have exceptions in their constitution and were merely following the mandate of the constitution when passing an exception statute.

Then, of course, arguments, and seemingly strong arguments, can be made from the policies and purposes underlying both statutes. On the mechanics' lien side, estoppel often enters the picture. Implied exception usually arises here also. On the homestead side there is the age-old and very strong principle of preserving the family home. Another consideration that perhaps warrants mentioning is that the homestead entryman is often not the villain in the picture. More often than not, the small contractor, who is the homeowner's agent by reason of our mechanics' lien law, is the person who was paid by the homeowner and suddenly found himself without funds. In such a case, which of the two innocent parties should bear the loss? To this writer, the equities and arguments appear to be in favor of the homestead.

## V. ANALYSIS OF THE SECOND PROBLEM

### A. Constitutional and Statutory Provisions

These provisions are, of course, the same. Some of the particular sections of the statutes will be more important, but the inquiry is directed to the same two statutory rights.

### B. *New Elements*

Two new elements come into play at this point. First, there is the relation back theory of the mechanics' lien. That is, the Colorado statute provides that all liens established by virtue of the mechanics' lien laws shall relate back to the time of the commencement of work under the contract, or if the contract be not in writing to the time of the commencement of the work upon the structure or improvement.<sup>88</sup> As far as the materialman is concerned it has been held that the date of the lien relates back to the time the first of the materials were furnished.<sup>89</sup> The other new element that comes into play is the judicial construction of the homestead law to the effect that the homestead is valid against judgment liens if entered before the lien becomes specific, *i.e.*, before a levy of an execution or attachment.<sup>90</sup>

These new elements in conjunction with the assumption that the homestead is superior to the mechanics' lien, if filed before the mechanics' lien is perfected and foreclosed on, bring about the new problem. At what point in time will the designation of the land as a homestead defeat the operation of the mechanics' lien? More specifically, does the relation back theory cause the mechanics' lien to defeat a homestead entry which was recorded subsequent to the commencement of the work but before actual levy on the property?

Here again the particular wording of the statutes is important. It appears from the wording of the mechanics' lien statutes that the lien would attach as of the date when the work was commenced or the material was furnished and would operate against the homestead. However, there still seems to be some question due to the fact that the statute says that the mechanics' lien relates back to that date and "shall have priority over any and every lien or encumbrance subsequently intervening."<sup>91</sup> Does it then relate back only as against other liens or also for the purpose of defeating a possible claim of homestead?

### C. *The General Rule*

The general rule appears to be highly in favor of the mechanics' lien in a problem such as this. Very positive statements have been made to this effect. In 18 Ruling Case Law, in a discussion on the homestead as a subject of the mechanics' lien, the author said, "Some of the states allow the right to a lien, while others deny it; but even under the rule of absolute exemption an existing mechanics' lien or one which is inchoate by virtue of a contract to supply materials, etc., cannot be defeated by the subsequent acquisition of a homestead in the property."<sup>92</sup>

In *Corpus Juris* it is stated that "while in some jurisdictions the rule is otherwise, or at least subject to limitations or modifications, the general rule is that the exemption cannot be claimed as against valid liens which have attached to the premises before they are impressed with the homestead character, whether such liens

<sup>88</sup> Colo. Rev. Stat. § 86-3-6 (1953).

<sup>89</sup> *Meller v. Valentine*, 3 Colo. 255 (1877).

<sup>90</sup> *Sterling Nat'l Bank v. Francis*, 78 Colo. 204, 240 Pac. 945 (1925); *Edson-Keith Co. v. Bedwell*, 52 Colo. 310, 122 Pac. 392 (1912); *Weare v. Johnson*, 20 Colo. 363, 38 Pac. 374 (1894); *Woodward v. People's Nat'l Bank*, 2 Colo. App. 369, 31 Pac. 184 (1892).

<sup>91</sup> Colo. Rev. Stat. § 86-3-6 (1953).

<sup>92</sup> 18 R.C.L. 888.



are obtained by contract or operation of law."<sup>93</sup> This article goes on to say that the rule has been applied in case of liens created by mechanics' liens.<sup>94</sup> As a further indication of the superiority of the mechanics' lien it is stated in *Corpus Juris Secundum*, that "the question whether particular property is a homestead, with respect to such a lien, is generally determined as of the time of the making of the contract under which the labor was performed or the materials were furnished. . . ."<sup>95</sup> In light of some of the Colorado decisions this, in itself, practically answers the question.

#### D. Other State Decisions

The case law is almost universally behind the rule that subsequent acquisition of a homestead will not defeat a mechanics' lien. This rule was announced in *Evans v. Jensen*,<sup>96</sup> where the court declared that notwithstanding the constitutional provision that the "legislature shall provide by law for selection by each head of a family an exemption of a homestead . . . from sale on execution," a pre-existing mechanics' lien is not affected by the subsequent acquisition of a homestead right in the property. In *Davies-Henderson Lumber Co. v. Gottschalk*,<sup>97</sup> the theory of relation back was used as an alternative basis for the decision in favor of the mechanics' lien. In that case the defendant argued that, as the law stood at the time the material was furnished, a claim for material could not attach to a homestead. The court held that a complete answer to this contention was that the lien must be held to relate to the time of furnishing the material, and at that time the homestead was not in existence.

One case stands out strongly in favor of the homestead in this type of situation, but it stands nearly alone. The court in this case appears to base its opinion primarily on the procedure required to foreclose on a mechanics' lien. In declaring the homestead to be superior, the court said "it is still necessary to foreclose such a lien by suit in which a decree is rendered as in other suits for such purposes. The decree thus rendered is not different from others in its effect upon the property, and there being no exception in the homestead laws in favor of such determination, it affects them in the

<sup>93</sup> 29 C.J. *Homesteads* § 202 (1922).

<sup>94</sup> *Id.* at Sec. 202.

<sup>95</sup> 57 C.J.S. *Mechanics' Liens* § 14 (1948).

<sup>96</sup> 51 Utah 1, 168 Pac. 762 (1917).

<sup>97</sup> 81 Cal. 641, 22 Pac. 860 (1889).

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same manner as in other judgments or decrees. The operation of the statute under consideration is not to impair the lien, but only to suspend its execution, and then only at the claim of the owner of the homestead."<sup>98</sup>

Another case which speaks for the homestead is *Walsh v. McMenomy*.<sup>99</sup> In this case work was done and material was furnished. Subsequently, but before judgment, a homestead was declared. At that time California had excepted mechanics and laborers from the homestead exemption but not materialmen. However, by statute the materialman's lien related back. In this case the court held that a subsequent acquisition of a homestead would defeat the materialman's lien. As was mentioned before, these cases seem to constitute a definite minority.

#### E. Colorado cases

Colorado cases shed some light on this problem, and seem to favor the mechanics' lien. Some weight, however, is cast in the direction of the homestead by cases speaking of the purpose of the designation of a homestead. It has been held that the causing of "homestead" to be entered in the margin was not for "the purpose of giving notice and securing protection to those dealing with the householder and extending credit to him."<sup>100</sup> Therefore it seems arguable that the mechanic is not warranted in relying on the debtor's declining to avail himself of the homestead privilege. However, later in the same case the court held that "the householder is in ample time if he records the election before a lien attaches in favor of his creditor."<sup>101</sup> (Emphasis supplied.)

The last statement quoted along with the statement of the court in *Trich v. Norton*<sup>102</sup> that "the lien of the mechanic or materialman begins with the commencement of the work or the furnishing of the material under his express or implied contract with his employer, and attaches upon whatever estate the latter may have at the commencement of such work, or the furnishing of materials, . . ." seems to make the position of the homestead claimant nearly untenable.

Other cases however still raise some question. For example, it has been held that in order to declare priority of a lien over the homestead entry, the land must have been *subjected* to the lien prior to the assertion of the homestead.<sup>103</sup> The question is, what does the court mean by "subjected to"?

The case which seems to establish the superiority of the mechanic in a problem like this is *McPhee v. O'Rourke*.<sup>104</sup> This case was discussed to a certain extent in the analysis of the first problem. To review the facts briefly the more important points are that no mechanics' lien was filed, judgment was obtained for material furnished, and a homestead was filed subsequent to the time of furnishing the material. The critical words were uttered regarding the question of whether a homestead should operate against a claim for material used in improvements before the property was designated

<sup>98</sup> *Johnson v. Tucker*, 85 Ore. 646, 167 Pac. 787 (1917).

<sup>99</sup> 74 Cal. 356, 16 Pac. 17 (1887).

<sup>100</sup> *Barrett v. Knight*, 7 Colo. 365, 3 Pac. 747 (1884).

<sup>101</sup> *Id.* at 369. 3 Pac. at 748.

<sup>102</sup> 10 Colo. 337, 15 Pac. 680 (1887).

<sup>103</sup> *Howell v. Burch Warehouse & Transfer Co.*, 100 Colo. 247, 67 P.2d 73 (1937).

<sup>104</sup> *McPhee v. O'Rourke*, 10 Colo. 301, 15 Pac. 420 (1887).

as a homestead. The court's reply was in the affirmative, saying that "by failing to take the steps necessary to secure a lien upon the premises, under the provisions of our mechanics' lien act, the right to subject the premises to such debt was lost." The question which was raised earlier regarding this statement was whether it was indicating that a mechanics' lien would be superior to a homestead whenever the homestead was filed or whether it was indicating that in this case it would be sufficient since the relation back theory would cause the lien to ante date the designation of the homestead. However, it seems that whatever the court was indicating is of little concern regarding this problem since either construction would cause the homestead to be subject to the mechanics' lien whenever the homestead was subsequently acquired.

The only thing that detracts from the overwhelming weight of this case in favor of the mechanics' lien in the second problem is that the statement quoted was *dictum* since no mechanics' lien was ever filed. However, this would not seem likely to detract much.

#### F. Conclusion on Second Problem

Various points have been raised to favor either the mechanics' lien or the homestead. The strongest points for the homestead seem to be that:

1. The statute and the cases say that the mechanics' lien relates back for the purpose of establishing priority of the lien over other *liens* and *encumbrances*. This leaves the question of whether the homestead is a lien or encumbrance.
2. The purpose of making a marginal entry is not to give a potential creditor notice and, any creditor deals with the debtor knowing that the debtor can avail himself of the homestead privilege any time before *actual* and *specific* levy of an execution or attachment.
3. As stated in the Oregon case<sup>105</sup> the mechanics' lien must be foreclosed on in the same manner as other decrees. Therefore, it could be argued that as against a homestead the mechanics' lien is the same as any other judgment.

The points which seem to favor the mechanics' lien are:

1. Most of the authorities flatly state that subsequent acquisition of a homestead will not defeat the mechanics' lien.
2. The majority of the states have held the mechanics' lien superior in such cases.
3. The Colorado cases seem to indicate that the mechanics' lien actually *attaches* as of the date of commencement of work and furnishing of materials.
4. The *McPhee* case<sup>106</sup> seems to establish that, for whatever reason, the homestead would not be superior.

To this writer not only the reasoning but the equities seem to favor the mechanic in a case such as this.

#### V. CONCLUSION

It has been the purpose of this article to bring to light unsolved questions which seem to exist regarding two statutory rights. It may be asked why these questions have not been raised before.

<sup>105</sup> See note 98 *supra*.

<sup>106</sup> See note 104 *supra*.

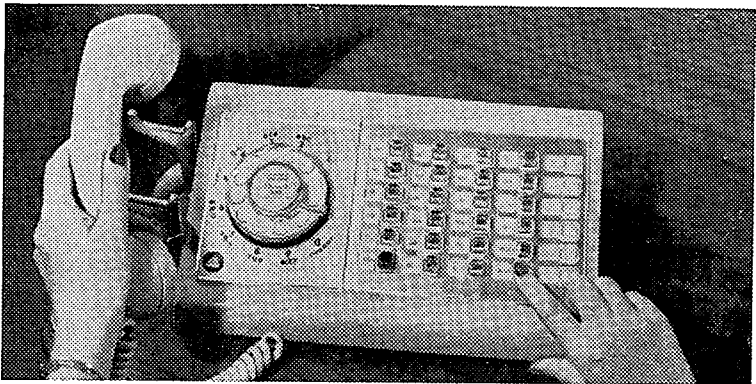
There are several possible reasons. One reason might be that in order for either of these problems to arise it takes a particular factual situation which might not often occur. There has to be a low valuation on the house since the homestead exemption only extends to \$5,000.00. Also, it would have to be an addition rather than the original construction. Another possible reason is that there is often not enough money involved to warrant an appeal. Finally, it seems likely that if much money is involved, bank financing would be required and this would nearly always include a written waiver of the homestead exemption.

Whatever the reason the questions seem never to have reached the Colorado Supreme Court. If and when they do, it appears that at least the first of the two problems will require a great deal of "balancing of the equities."

APPENDIX A  
 CONSTITUTIONAL PROVISIONS

<i>State</i>	<i>General Provision For Homestead</i>	<i>Specific Provision For Homestead</i>	<i>Exceptions</i>
Ala.	.....	Art. 10, §§205, 206	Excepts mechanics' liens on premises. Art. 10, §207
Ark.	.....	Art. 9, §3	Excepts laborers' or mechanics' liens. Case law says lumber furnished gives mechanics' lien and is excepted. Art. 9, §3
Ariz.	.....	.....	.....
Calif.	.....	Art. 17, §1	.....
Colo.	Art. XVIII, §1	.....	.....
Conn.	.....	.....	.....
Del.	.....	.....	.....
Fla.	.....	Art. X, §1	Art. X, §1, mechanics' liens.
Ga.	.....	Art. IX, §1	Art. IX, §1 gives Gen. Assembly authority to provide for waiver, encumbrance, alienation.
Hawaii	.....	.....	.....
Idaho	.....	.....	.....
Ill.	Art. JV, §32	.....	.....

<i>State</i>	<i>General Provision For Homestead</i>	<i>Specific Provision For Homestead</i>	<i>Exceptions</i>
Ind.	.....	Provision for exemption of a reasonable amount of real property. No actual homestead provision.	.....
Iowa	.....	.....	.....
Kansas	.....	Art. XV, §9	Art. XV, §9, Mechanics' liens.
Ky.	.....	.....	.....



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<i>State</i>	<i>General Provision For Homestead</i>	<i>Specific Provision For Homestead</i>	<i>Exceptions</i>
La.	-----	Art. XI, §1	Laborers' liens Art. XI, §2
Maine	-----	-----	-----
Md.	-----	Art. III, §44 — Legislature to provide for ex- emption of rea- sonable amount of property from execution.	Mechanics' liens Art. III, §44
Mass.	-----	-----	-----
Mich.	-----	Art. XIV, §2	-----
Minn.	-----	Same as Mary- land. To be deter- mined by law. Art. I, §12	Both laborers' and material- men's liens Art. I, §12
Miss.	-----	-----	-----
Mo.	-----	-----	-----
Mont.	Art. XIX, §4, same as Colo.	-----	-----
Nebr.	-----	-----	-----
Nev.	-----	Right of debtor to be recognized by law (reasonable amount of prop- erty) Art. I, §14	Art. IV, §30
N. H.	-----	-----	-----
N. J.	-----	-----	-----
N. M.	-----	-----	-----
N. Y.	-----	-----	-----
N. C.	-----	Art. X, §1	Laborers' liens Art. X, §1
N. Dak.	-----	Right of debtor be recognized by law. Art. XVII, §208	Laborers' and material men's Art. XVII, §208
Ohio	-----	-----	-----
Okla.	-----	Art. XII, §§1, 3	Art. XII, §§2, 3, work on premises
Ore.	-----	-----	-----
Penn.	-----	-----	-----
R. I.	-----	-----	-----
S. C.	-----	Art. III, §28	Art. III, §28 For erection or mak- ing of improve- ments.
S. D.	-----	Right of debtor to be recognized by law. Art. XXI, §4	-----

<i>State</i>	<i>Homestead Provision</i>	<i>Exception For Mechanics' Lien</i>	<i>The Exception Includes Materialmen</i>
Tenn.	.....	Homestead in value in all of \$1,000 to be exempt. Art. XI, §II	Debts contracted for improvement. Art. XI, §II
Tex.	.....	Art. XVI, §51	Debts for work and materials in constructing home. Art. XVI, §50
Utah	.....	Art. XXII, §1	.....
Vt.	.....	.....	.....
Va.	.....	Real and personal property to value not exceeding \$2,000 to be exempt. Art. XIV, §190	Laborers' or mechanics' liens. Art. XIV, §190
Wash.	.....	Legislature to protect by law certain portion of homestead. Art. XIX, §1	.....
W. Va.	.....	Homestead to be exempt. Art. VI, §48	Debts for erection of improvements. Art. VI, §48
Wis.	.....	Right of debtor to be recognized by law. Art. I, §17	.....
Wyo.	.....	Homestead to be exempt from forced sale. Art. XIX, §1	Art. XIX, §1

APPENDIX B  
STATUTORY PROVISIONS

Ala.	Title 7, §625	Title 7, §627	Yes
Ariz.	Title 33, §1101	Title 33, §33-1103 as amended, Laws of 1959. Only if mechanics' lien attached before property was claimed as a homestead.	Yes
Ark.	Provides details for claiming.	.....	.....
Calif.	C.C. §1240	C.C. §1241	Yes

<i>State</i>	<i>Homestead Provision</i>	<i>Exception For Mechanics' Lien</i>	<i>The Exception Includes Materialmen</i>
Colo.	C.R.S. 77-3-1	-----	-----
Conn.	-----	-----	-----
Del.	-----	-----	-----
Fla.	§222.01	-----	-----
Ga.	Title 51, §51-101	Title 51, §51-101	Yes
Idaho	Chap. 10, §55-1001	Chap. 10, §55-1005	Yes
Ill.	Chap. 35, §1	Chap. 82, §3 Lien Chapter	Yes
Ind.	Chap. 35, §2-3501 Real estate exemption.	Chap. 35, §2-3515	Yes
Iowa	Chap. 561, §1-20 Details for constitutional provision.	Chap. 561, §21 (3)	Yes
Kansas	Chap. 60, Art. 35, §3501	Chap. 60, Art. 35, §3501	Yes
Ky.	Chap. 427, §427-060	Chap. 427, §427-060	Yes
La.	Title 20, §1 Details of claiming.	-----	-----
Maine	Chap. 112, §68	Chap. 112, §71	Yes
Md.	-----	-----	-----
Mass.	Chap. 188, §1	-----	-----
Mich.	Title 27, §27.1572	Title 26, §26.282 Requires contract in writing by both husband and wife.	Yes
Minn.	Chap. 510, §510.01	§510.01	Yes
Miss.	Chap. 3, §317	Chap. 3, §327	Yes
Mo.	Title 35, §513.475	-----	-----
Mont.	Title 33, §33-104	Title 33, §33-105	By case law.
Nebr.	Chap. 40, §40-101	Chap. 40, §40-103	-----
Nev.	Chap. 115, §115-010	Chap. 115, §115-040	Yes
N. H.	Chap. 480, §4	Chap. 480, §4 (II)	Yes
N. M.	Chap. 24, §24-6-1	Chap. 24, §24-6-1	Yes
N. J.	-----	-----	-----
N. Y.	-----	-----	-----
N. C.	-----	-----	-----
N. D.	Chap. 47, §47-18-01	Chap. 47, §47-18-01 (1)	Yes
Ohio	Title 23, §2329.73	Title 23, §2329.72	Yes
Okla.	Title 31, §1	Title 31, §5 (3)	Yes
Ore.	Title 2, §23.240	Title 2, §23.260	Yes
Penn.	-----	-----	-----
R. I.	-----	-----	-----



<i>State</i>	<i>Homestead Provision</i>	<i>Exception For Mechanics' Lien</i>	<i>The Exception Includes Materialmen</i>
S. C.	Title 34, §34.1	Title 34, §34-62	Yes
S. D.	Chap. 51-17, §51-1701	Exception in favor of homestead in mechanics' lien Chapter. §39.0702	-----
Tenn.	Chap. 3, §26.301	Chap. 3, §26-307	Yes
Tex.	§3833	§3839 — must be in writing.	Yes
Utah	Title 28, Chap. 1, §28-1-1	-----	-----
Vt.	Title 27, §101	Title 9, §1927 Mechanics' lien Chapter says provisions of this chapter shall apply to homesteads.	-----
Va.	Title 34, §34-4	Title 34, §34-5 (2)	Yes
Wash.	§6.12.010	§6.12.010	Yes
W. Va.	Chap. 38, Art. 9, §3911	Chap. 38, Art. 9, §3913	Yes
Wis.	Chap. 272, §272.20	Chap. 272, §272.20	Yes
Wyo.	Title 1, Chap. 21, §1-498	(Mechanics' Lien Chapter) Title 29, Chap. 2, §291-24	Yes
Alaska	§22-1-6	Laws of 1957, Chap. 61	Yes
Hawaii	§233-64	§233-64	Yes

COMPLIMENTS  
OF  
SYMES BUILDING