

Soldiers' and Sailors' Civil Relief Act in 1942: Operation, Need for Clarification, Future Significance

Brooke Tibbs

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

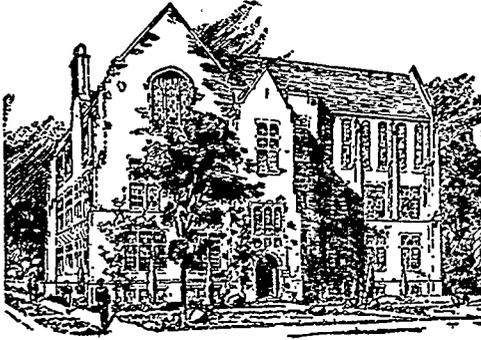
Repository Citation

Brooke Tibbs, *Soldiers' and Sailors' Civil Relief Act in 1942: Operation, Need for Clarification, Future Significance*, 27 Marq. L. Rev. 59 (1943).

Available at: <http://scholarship.law.marquette.edu/mulr/vol27/iss2/1>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

MARQUETTE LAW REVIEW



VOLUME XXVII

FEBRUARY, 1943

NUMBER TWO

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT IN 1942: OPERATION, NEED FOR CLARIFICATION, FUTURE SIGNIFICANCE

BROOKE TIBBS*

THE Soldiers' and Sailors' Civil Relief Act as it now stands is a composite of similar legislation passed in 1918 during the last war, substantially re-enacted in 1940 more than a year before the United States entered the present war, and of amendments adopted in 1942.¹

The express purpose of the Act is to "suspend enforcement," temporarily, of civil liabilities of persons in the military service in order to entitle them to devote their entire energy to the "defense needs" of

* Yale University, A.B.; Univ. of Wisconsin, LL.B.; Chairman, Legal Service Committee, Milwaukee Bar Association; Member Board of Governors, Wisconsin Bar Association.

¹ 54 Stat. 1178; 56 Stat. 282; Public Laws No. 732, also 753, 77th Cong.; see also 50 U.S.C. § 501-585. References are to section numbers as used in Statutes and Amending Acts of 1942.

the nation.² With few exceptions, the provisions of the Act do not relieve a debtor of liability.³ Although certain rights have been recognized as being "extinguished," the Act is officially described as "freezing" debt obligations, as "directed toward merely the withholding of remedies," and as affecting only adjective law.⁴ In general it provides a qualified moratorium on civil liabilities of men in the armed forces and certain others incidentally affected.

The method by which the soldier⁵ is protected and the rights of the various parties are adjusted, is through judicial machinery, broad discretionary power being lodged in the courts.

Despite division of the Act under headings, provisions under various of such headings must be considered in order to really determine how the law applies to any particular subject.

SPECIFIC APPLICATION OF THE ACT.

The principal *subject of relief* is the soldier's civil liability which existed at the time of entry into military service. However, all actions against the soldier are subject to supervision; and relief is expressly afforded as to certain liabilities incurred subsequent to entrance into military service, as in relation to leases, taxes, and insurance.⁶

The *person entitled to benefits of the Act* is primarily a person in the military service of the United States, such service period being generally considered to commence with the order to report for induction.⁷ Citizens serving in the armed forces of other United Nations are also protected.⁸ Dependents of the soldier are afforded relief in relation to lease, purchase contracts, and secured liabilities; also as to taxes other than income.⁹ The lessor of the soldier is granted conditional relief as to the leased property; and employes of a soldier apparently have certain protection in respect to real estate taxes.¹⁰ Persons secondarily liable with the soldier, and his sureties, may be afforded relief correlative to that granted the soldier.¹¹ The Act also seems to have limited application to a "homestead entryman" engaged in performing farm labor, without any military service whatever.¹²

² Title of Act and Section 100.

³ Cf. 1917 Wis. Statutes § 4232a, rendering a soldier "exempt from civil process;" held to contravene the 1918 Soldiers' Relief Act: *Konkel v. State*, 168 Wis. 335.

⁴ Hearings before Committee on Military Affairs on H.R. 7029, 77th Cong. 10, 11, 47.

⁵ "Soldier" is used herein to refer to a "person in military service" under the Act.

⁶ Secs. 300, 500(1), 513, 700(1), 400(a).

⁷ Sec. 101(1)(2); 106. "Missing" persons are deemed in military service: sec. 601(3).

⁸ Secs. 104, 512.

⁹ Secs. 306; 500(1).

¹⁰ Secs. 300(2)(4), 500(1).

¹¹ Sec. 103; see also sec. 204 as to proceeding against co-defendants.

¹² Sec. 510(1).

As to *procedure*, relief can be granted by "any court" of the United States or its territories in "any action or proceeding."¹³ The action may be one against the soldier, or may have been brought by the soldier.¹⁴ Where no action is pending, the soldier or his dependent may, under certain circumstances, make special application to the court for relief, as in relation to extension by instalment payments and relief from eviction or rental liability under a lease.¹⁵ Similar application may be made by the creditor of the soldier for correlative relief respecting purchase contracts, mortgages, and taxes where relief is granted to the soldier under a lease, and to prevent reduction of interest rate to the 6% otherwise limited by the Act.¹⁶ The court may disregard the Act if property dispositions have been made "with intent to delay the just enforcement" of certain rights.¹⁷

In most cases the court's power is exercised by ordering a *stay of proceedings*. A general power of stay is provided for "any action or proceeding"; and for relief from penalty.¹⁸ A special power of stay is provided in relation to persons secondarily liable, executions and attachments, rights of both tenant and owner under leases, in relation to sales contracts, secured obligations, storage liens, and tax sales.¹⁹ Co-ordinate to the general stay is a general tolling of limitations both for and against the soldier during the period of military service except as to Revenue Laws.²⁰

The power of the court is largely *discretionary*. In some situations the court's power depends on whether the soldier's military service has had an adverse effect upon his ability to pay,²¹ or on ability to interpose his defense.²² In still other situations the court's discretion is described in varying but broad terms.²³ And in some situations this discretion is entirely unqualified, as in requiring plaintiff to file bond before entry of judgment, and in granting stays to persons secondarily liable.²⁴

An essential part of procedure under the Act is the *appointment of an attorney* for the soldier. The court is required to appoint an attorney for a defendant before entry of judgment against him, and after period of default, unless it affirmatively appears that such defendant is not in military service. Showing in this regard may be made by affidavit

¹³ Secs. 102(1) (2), 200(1), 201.

¹⁴ Compare secs. 200, 201.

¹⁵ Secs. 700, 300.

¹⁶ Secs. 304(2), 206.

¹⁷ Sec. 600.

¹⁸ Secs. 201, 204, 202.

¹⁹ Secs. 103(1), 203(2) (b), 300(2), 301(3), 302(2) (a), 305(2) (a), and 500(2), respectively.

²⁰ Secs. 205, 207.

²¹ Secs. 202, 200, 300(2), 301(3), 302(2), 305, 306, 500(2).

²² Sec. 200(4), 201.

²³ See Footnote 89.

²⁴ Secs. 200(1); and 103(1) (2).

or by official certificate.²⁵ The court also has discretionary power to appoint an attorney for a soldier where he is not otherwise represented.²⁶ The soldier's "legal representative" (as well as the soldier) is expressly authorized to apply for relief from a judgment; and the attorney would apparently be a "person on behalf" of the soldier who would be authorized to apply for a stay in the course of any court proceeding.²⁷ However, the attorney has no power to waive.²⁸ And it is apparently contemplated that the lawyer serve without compensation, except possibly in probate proceedings.²⁹

Waiver of rights under the Act is covered, and apparently limited, by three provisions. The soldier may waive right in relation to secured obligations and sales contracts by written agreement of the parties, presumably bi-lateral, executed after the soldier has entered military service.³⁰ A co-obligor of the soldier, generally a guarantor or an accommodation maker, may waive by a writing, separate from the main obligation, apparently unilateral,—which is rendered ineffective if such co-obligor subsequently enters military service.³¹ And life insurance collateral may be released by written consent of the soldier.³² As above stated, power of waiver is expressly denied to the attorney representing the soldier.³³

Actions generally against the soldier are the subject of general relief under the law. An attorney may be appointed for the soldier at any stage of such proceedings; and such appointment is mandatory before entry of any judgment against the soldier.³⁴ On application made during or within sixty days after military service, relief may be obtained by requiring plaintiff to file bond, by stay of proceedings on just terms for a period up to three months after military service, and by order "to protect the rights of the soldier."³⁵

²⁵ Sec. 200(1); 601. As to an action involving more than one "judgment," see 20 Neb. Law Rev. 357, 361. Affidavit of non-military service made before expiration of time for answer held insufficient: *National Bank v. Van Tassel*, 36 N.Y.S. (2d) 478 (1942); and see cases under 1918 Act cited 28 Iowa Law Rev. 19. Court finding on "adequate investigation" held to constitute sufficient proof of non-military service: *Petition of Institution for Savings* (Mass. 1941) 33 N.E. (2d) 526.

²⁶ Sec. 200(3).

²⁷ Secs. 200(4), and 201.

²⁸ Sec. 200(3).

²⁹ *Weyenberg v. Downey*, 25 N.Y.S. (2d) 600 (1941); *In re Cool's Estate* (N.J. 1941) 18 Atl. (2d) 714; see also Memorandum of Committee on National Defense, A.B.A. 3/25/41, p. 5.

³⁰ Sec. 107.

³¹ Sec. 103(4).

³² Sec. 305(1).

³³ Sec. 200(3).

³⁴ Sec. 200(3), 200(1).

³⁵ Secs. 200(1) (3), 201, 204.

Judgments against the soldier are subject to general stay of enforcement,³⁶ and cognovit judgments cannot be enforced by sale or seizure of security, without court approval, during or within three months after military service.³⁷ Judgments entered against soldiers during or within thirty days after military service are subject to vacation on application within ninety days after military service.³⁸

Garnishment and attachment proceedings are governed by the above provisions relating to actions generally and to judgments; and are also subject to express restriction by stay and vacation.³⁹

As to the soldier's *obligations generally, existing prior to military service*, maturity may be extended on an instalment basis and on other just terms, provided application is made during or within six months after military service.⁴⁰ Interest on all such obligations is limited to 6% unless on application by the obligee, a court finds that the soldier's ability to pay is not materially affected by the military service.⁴¹

Obligations secured by real estate owned by a soldier are subject to the above provisions relating to actions, judgments, and obligations generally. Such debts which existed prior to military service are also covered by express provisions: (a) that there be court approval of any sale or foreclosure of such security during and within three months after military service; (b) that foreclosure commenced during military service be subject to stay or other equitable disposition; and (c) that maturity may be extended on an instalment basis for a period equal to the combination of the period of military service and the remaining life of the obligation.⁴² The Act also contains a provision that no part of the period of military service after October 6, 1942 shall be included in any period "provided by any law for the rememption of real property sold * * to enforce any obligation * *."⁴³ As above indicated, the Act does permit of waiver of such relief by written agreement of the parties executed after the commencement of the period of military service.⁴⁴

Obligations secured by personal property are covered by the above provisions relating to "obligations secured by real estate"—excepting (a) maturity may be extended only for a period equal to that of the prior military service,—not to the combined period of military service and remaining life of the contract;⁴⁵ and (b) period of redemption is

³⁶ Secs. 201, 203 (2), 204.

³⁷ Sec. 302 (3).

³⁸ Sec. 200 (4).

³⁹ Secs. 204, 203 (b).

⁴⁰ Sec. 700.

⁴¹ Sec. 206.

⁴² Secs. 302 (3); 302 (2); and 700 (1) (2), respectively.

⁴³ Sec. 205.

⁴⁴ Sec. 107.

⁴⁵ Sec. 700 (1) (b).

not extended. However, other provisions relate specially to personal property. Repossession of real property may be made by leave of court after an appraisal and payment of "just" sum to the soldier or dependent, where undue hardship will not result to such persons.⁴⁶ Life insurance collateral cannot be taken over by the creditor during or within a year after the military service except by leave of court; and the government-guaranteed policies cannot be "forfeited" for "any indebtedness."⁴⁷ A lien for storage cannot be enforced without court approval during or within three months after military service.⁴⁸

Sales of real and personal property are subject to the appropriate provisions above referred to. Furthermore, where such contracts were effective by payment prior to military service, they are enforceable only by court action, the court having power to order repayment, repossession, stay of proceedings, or other equitable disposition.⁴⁹ With respect to real estate sales, maturity may be extended on just terms and with equal periodic instalments for a period equal to that of military service combined with the remaining life of the contract.⁵⁰ With respect to personal property sales, (a) maturity may be similarly extended for the military service period;⁵¹ and (b) repossession may be effected by leave of court after an appraisal and payment of a just sum to the soldier or dependent where "undue hardship" will not result.⁵² The Act permits waiver of such relief by written agreement of the parties executed after the commencement of military service.⁵³

Liability under *leases*, as for accrued rent, is subject to the appropriate general provisions above referred to, also to certain special provisions.

—As to a lease executed before the tenant's entry into military service and covering property occupied by the soldier's dependents, rent liability may be terminated in general on thirty days' written notice, effective on monthly rent day, otherwise on the last day of a calendar month;—although this relief is subject to modification as "justice and equity may under the circumstances require," upon application by the lessor within the termination period.⁵⁴ A lease with a view to purchase is also subject to the provisions relating to sales of property.⁵⁵

—As to a lease on the home of dependents of the soldier, unless the monthly rental exceeds \$80, eviction rights must be exercised by court

⁴⁶ Sec. 303.

⁴⁷ Secs. 305(1); 403.

⁴⁸ Sec. 305(2).

⁴⁹ Secs. 301(1); 301(3).

⁵⁰ Sec. 700(1)(a).

⁵¹ Sec. 700(1)(b).

⁵² Sec. 303.

⁵³ Sec. 107.

⁵⁴ Sec. 304(1)(2).

⁵⁵ Sec. 301(1).

action, and the court may "stay the proceedings for not longer than three months" or "make such other order as may be just";—although where such relief is granted to the tenant, the lessor is "entitled" to relief "similar" to that provided by the Act in respect to sales of property, secured obligations, and taxes.⁵⁶ (For "tax" provisions see below). Payments on such rental may be ordered out of the soldier's allotment under government regulations.⁵⁷ Certain provisions relating to leases may be waived by written agreement executed after the soldier has entered military service.⁵⁸

As to all *taxes except on income*, including taxes on real property occupied by dependents "or employes" of a soldier, sale cannot be had except by leave of court; such sale will be stayed until six months after military service if the soldier's ability to pay is materially affected by his military service.⁵⁹ Moreover, if real estate tax sale is had, the period of military service is not to be included in computing the period of redemption.⁶⁰ On application made during or within six months after military service, maturity of all taxes may be extended on an instalment basis for the period of military service and on other just terms.⁶¹

Income taxes of the soldier may be deferred as to collection during and for six months after military service if the soldier's ability to pay is materially impaired; and he is protected against double residence for state tax purposes.⁶²

Life insurance of a soldier is, on application, subject to protection. Policies up to \$10,000, in force October 6, 1942 or at least thirty days before entrance into military service, may be covered by government guaranty of premium during and for two years after military service; such policies cannot be forfeited for indebtedness.⁶³ As above stated, a debt secured by any of a soldier's life insurance as collateral is subject to restriction in enforcement.⁶⁴

Rights of the soldier in *public lands* are the subject of protection under the Act, to-wit: Homestead rights, desert lands, irrigation rights, rights to mineral lands, and mining claims.⁶⁵ To obtain certain of such relief, the oldier is required to file notice within a limited time after entrance into military service, or after October 6, 1942.⁶⁶ The period of relief variously extends for the period of military service and

⁵⁶ Secs. 300(1); and 300(2).

⁵⁷ Sec. 300(4).

⁵⁸ Sec. 107(b).

⁵⁹ Sec. 500(1)(2).

⁶⁰ Sec. 205.

⁶¹ Sec. 700(1)(b).

⁶² Secs. 513; 514.

⁶³ Sec. 400-408.

⁶⁴ Sec. 305(1).

⁶⁵ Secs. 502, 503(1)(2); 504(1)(2); 508; 501(1), 506(1); 505(1).

⁶⁶ Secs. 504(3), 505(2), 506(2), 510(1).

six months thereafter, also for a period of hospitalization and disability.⁶⁷

Probate proceedings are not expressly referred to in the Act. However, the provisions as to general relief, relating to the filing of affidavit as to non-military service, the appointment of attorney for defendant, the vacation of judgment, and the granting of stays relate to "any action or proceeding commenced in any court"; and the Act provides for tolling of limitations on the "bringing of any action or proceedings in any court," in actions by or against "heirs, executors, administrators" of the soldier.⁶⁸ And a New Jersey court has expressly held probate proceedings to be within the purview of the relief statute.⁶⁹ It may be noted, however, that the benefits of the Act have been held not extend to a soldier acting in a representative capacity.⁷⁰

Penalties for violations of the Act are provided in certain respects. Breach or attempted breach, knowingly, of the provisions relating to repossession on sales, secured obligations, exiction, life insurance collateral, and storage liens, constitute misdemeanors.⁷¹ Similarly intentional use of a false affidavit of non-military service, and improper attempt to collect rent accruing after lease termination, are declared to be misdemeanors.⁷²

QUESTIONS OF INTENT AND CONSTRUCTION

In some respects the intent of the Soldiers' and Sailors' Relief Act is doubtful and judicial construction may well involve various legal questions, for example:

—Was it intended that the period for relief against a judgment expire ninety days after the termination of military service, even though the soldier have notice or knowledge of the entry of such judgment?⁷³

—Is it entirely consistent and practical that varying periods of time be fixed in limiting the soldier's right to apply for relief under the Act? Six months after end of military service is provided in respect to extension on maturities on an instalment basis,⁷⁴ and redemption from tax sales.⁷⁵ Ninety days after end of military service is apparently provided in relation to vacation of a judgment⁷⁶ Sixty days after end

⁶⁷ See secs. 501(1), 502, 503(2), 504(1)(2), 505(1), 508.

⁶⁸ Secs. 200, 201; 205.

⁶⁹ *In re Cool's Estate*, (N.J. 1941) 18 Atl. (2d) 714; and see 28 Iowa Law Rev. 29-32.

⁷⁰ *Halle v. Canenaugh* (N.H. 1920) 111 Atl. 76.

⁷¹ Secs. 301(2), 302(4), 300(3), 305(3).

⁷² Secs. 200(2); 304(3).

⁷³ Cf. sec. 200(4).

⁷⁴ Sec. 700.

⁷⁵ Sec. 500(3).

⁷⁶ Sec. 200(4).

of military service is apparently provided in relation to stays of proceedings generally.⁷⁷ Six months after start of military service is provided in relation to public lands.⁷⁸

after start of military service is provided in relation to public lands.⁷⁸

—Is it entirely consistent that the relief to the soldier extend for varying periods of time after his military service? A period equal to that of military service is provided in relation to extension of maturity on instalment basis.⁷⁹ Two years after military service is provided in relation to protection of life insurance policies, and one year for life insurance collateral.⁸⁰ Six months after termination of military service is provided for stays in relation to tax sales and income taxes.⁸¹ Three months after military service is the protection period on foreclosure of encumbrances and sales generally, on storage lien enforcement, and on stays generally.⁸²

Is it entirely consistent that the period of the soldier's hospitalization and disability be added to his direct military service in computing the time within which the soldier may apply for relief in certain respects,⁸³ and not in others?

—Was it intended that the special relief relating to foreclosure actions on secured obligations *not* apply to actions brought immediately after military service?⁸⁴

Is it consistent that the benefits of the Act extend to the soldier's dependents only in matters involved under Article III (generally leases, sales, mortgages) and in respect to taxes, and not in respect to other general provisions?⁸⁵

—Who are "dependents" of the soldier?⁸⁶

—What is the significance of the varying provisions as to the court's extent and manner of considering facts and relief? In one instance the requirement is "notice and hearing," in another, "such notice to the parties affected as it may require," in another "hearing";⁸⁷ in other provisions notice and hearing are not mentioned. The term "opinion of

⁷⁷ Sec. 201.

⁷⁸ Secs. 504(1), 505(1)(2), 506(2), 511.

⁷⁹ Sec. 700.

⁸⁰ Secs. 403; 305(1).

⁸¹ Secs. 500(2)(3); 513.

⁸² Secs. 302(3); 305(2), 204. Comment 91 Penn. Law Rev. 192 re six month-three month variance.

⁸³ Secs. 504(1), 505(1), 508.

⁸⁴ See sec. 302(3) relating to proceedings "commenced during the period of military service."

⁸⁵ Sec. 306; cf. sec. 300, 500, 103(4), 503. Comment 36 Ill. Law Rev. of Northwestern Univ. 337.

⁸⁶ Act contains no definition, although one provision, sec. 300(1), refers to the "wife, children, or other dependents." Comment in Hearings before Committee on Military Affairs on H.R. 7029, 77th Cong. pp. 23, 24.

⁸⁷ Secs. 700; 602; 302(2).

the court" likewise is used with relation to some,⁸⁸ but not all fact determinations?

—What various meanings, if any, are intended in describing the types of court orders authorized to be made under the Act: "As may be equitable to conserve the interest(s) of all parties"; "as justice and equity may in the circumstances require"; "in accordance with principles of equity and justice"; "as in its (the court's) opinion may be necessary to protect rights"; "as may be just?"⁸⁹

—Is any distinction intended between the "leave" of court required in relation to disposition of life insurance collateral,⁹⁰ and the "approval" by the court, required in relation to enforcement of storage liens, and other relief?⁹¹

—In matters relating to sales contracts, is the court required to enter a stay of proceedings if the defendant's ability is materially affected by his military service; or, may the court make any disposition of the case as may be "equitable"?⁹²

—What distinction is intended between the two terms used to describe the effect military service must have had upon the soldier's financial situation to entitle him to relief under the Act, to-wit: materially "impaired" and materially "affected"?⁹³

—What is the nature of the relief, "similar" to that granted persons in military service, which, in event of lease termination, may be granted to a lessor not in military service?⁹⁴

—Is a distinction intended between the term "equal instalments" and the "equal periodic instalments" in the two provisions relating to extension of obligations?⁹⁵

—Is the court's power to stay exiction proceedings limited to three months?⁹⁶

—Has the court any power, discretionary or otherwise, to have rent paid by use of allotment, which may be ordered under "regulations"

⁸⁸ Secs. 304(2), 305(1), 306, 500(2).

⁸⁹ Secs. 301(3), 302(2)(b), 305(2)(b); 304(2); 103(3); 200(1); 204, 300(2), 700. Note absence of any qualification in discretion relating to posting of bond and relief to sureties [(secs. 200(1) and 103(1)(2)]; comment on wide discretionary power in 36 Ill. (N.W.) Law Review, 325; comment regarding section 304(2) in 91 Penn Law Rev. 186.

⁹⁰ Sec. 305(1).

⁹¹ Secs. 305(2), 302(3).

⁹² Compare "shall," with use of "or" connecting the various clauses in sec. 301(3).

⁹³ Secs. 202, 306; and 201, 206, 300(2), 301(3), 302(2), 305(1), 700(1), respectively.

⁹⁴ Sec. 300(2).

⁹⁵ Subsec. (a) and (b) of sec. 700(1).

⁹⁶ See sec. 300(2); compare *Gilluly v. Hawkins* (Wash. 1919) 182 Pac. 958; and *Riordan v. Zube* (Cal. App. 1920) 195 Pac. 65; note discussion, Hearings before Committee on Military Affairs on H.R. 7029, 77th Cong. pp. 14-17; also 91 Penn Law Rev. 84.

prescribed by the Secretaries of War and Navy?⁹⁷ Was it intended that an owner of real estate, unlike other creditors, be compelled to extend credit for three months or other period to the soldier-tenant without any financial protection within control of the court?⁹⁸

—Is it entirely consistent that, when a soldier-lessee obtains relief, correlative relief may be granted his lessor, yet when a soldier-mortgagor obtains relief, correlative relief is not so afforded his mortgagee?⁹⁹

—Is the redemption period in a real estate mortgage foreclosure, which, as in Wisconsin, occurs primarily *before* a sale, necessarily extended by the period of military service of any defendant?¹⁰⁰

—Is it intended that there be no extension of redemption period in relation to tax or mortgage sales of personal property?¹⁰¹

—Should not the soldier or dependent or employe be required to file notice by affidavit or otherwise, in order to obtain relief relating to tax sales?¹⁰²

—Is the "appointment" of attorney mandatory before entry of judgment against a soldier even though he personally appears or is represented by an authorized attorney?¹⁰³

—Is there any significance in the distinction between the "legal representative" who may act on behalf of a soldier in respect to vacation of judgments, and the "person on * * behalf of the soldier" who may apply for a stay of proceedings?¹⁰⁴

—Who is a "bona fide purchaser for value under such judgment" in the provision protecting third party rights on vacation of a judgment entered against the soldier?¹⁰⁵

—Was it intended that a soldier be permitted to waive secondary liability rights by execution of a writing during military service? If so, can all rights under the Act be so waived?¹⁰⁶

⁹⁷ Compare sec. 300(4). Information as to "prescribed regulations," if any, is not available in this corps area.

⁹⁸ Compare sec. 300(2) and (4); see Comment 91 Penn L. Rev. 184.

⁹⁹ Lessor relief under secs. 300, 304. Protection need of mortgagee would include taxes on real estate not occupied by soldier, dependent or employe. Cf. sec. 500(1). See also Comment 91 Penn Law Rev. 187.

¹⁰⁰ Compare sec. 205 relating to redemption of property "sold." Comment 28 Law Rev. 14.

¹⁰¹ Compare extension of redemption on sales of real estate under sec. 205.

¹⁰² Under sec. 500(1)(2) no method is provided by which municipal authorities can practically determine who property in the municipality is and is not owned or occupied by a person "in military service" or his dependent or employe. Compare filing of notices in relation to public lands, secs. 504(3), 505(2), 506(2).

¹⁰³ Note use of phrase "shall have appointed" in sec. 200(1).

¹⁰⁴ Secs. 200(4), and 201.

¹⁰⁵ Sec. 200(4). For varying opinions as to whether a purchaser can be "bona fide" where requirements as filing of affidavit of non-military service, have not been complied with, see 28 Iowa Law Rev. 23-27, 34.

¹⁰⁶ Cf. sec. 103(4) under which such waiver is rendered invalid by "subsequent" entrance into military service. See Report, War Work Sub-Committee, A.B.A. 7/18/42, p. 5; also 15 Wis. Bar Association Bulletin, p. 222.

—Does the Act apply to administrative agencies and governmental tribunals? While the provision as to tolling of limitations, as recently amended, includes “any action or proceeding in any court, board, bureau, commission, department, or other agency of government,” the general authority under the Act applies only to “courts.”¹⁰⁷

What if any power has the court to appoint a custodian for property of the soldier during his military service?^{107a}

FUTURE IMPORTANCE OF CLARIFICATION

The immediate purpose of the Act is to strengthen the morale of the soldier during the war, but the substantial significance and value of this legislation depend upon its application *after* the war. This law is designed as both present and future protection for individual property rights of the men in the armed forces. If those property rights are denied, or prejudiced, as a result of military service, not only will the men properly feel that a grave injustice has been done them, but their part in our economic system, and indeed that system itself, may be jeopardized. In view of the number of men in the armed forces, and the period of time involved, this Relief Act will be of far greater significance in our nationay life than any other similar law in the history of the country.

To make the Act really effective after the war, (a) the rights of the soldier must be made known to him immediately upon his discharge from military service; (b) he must be properly represented in the enforcement of his rights; and (c) such rights must be as free from doubt as possible, so that they may be judicially declared without undue delay.

Doubt as to the meaning of provisions of this Act will result in extended legal controversy which, regardless of outcome, may well deprive soldiers of the relief intended. Neither the soldier's financial situation, nor the amount involved, will normally permit of long drawn-out litigation. To avoid this danger, at least the apparent difficulties of construction should be eliminated if possible. In respect to this particular statute, the need for later judicial clarification should be reduced to a minimum. It is submitted that Congress might consider the possibility of clarifying phraseology of the Soldier's and Sailor's Civil Relief Act in respects above mentioned.

¹⁰⁷ Secs. 205; 101(4). See Hearings before Committee on Military Affairs on H.R. 7029, 77th Cong. 13; also recommendation War Work Sub-Committee, A.B.A. 7/18/42, p. 23.

^{107a} Compare Alberta Statutes 4 Geo VI c 4 (1940) providing for “Public Administrator” to care for soldier's property; and approval comment 36 Ill. L. Rev. of Northwestern Univ. 334.

LAWYERS AND THE FUTURE OF THE RELIEF ACT

The lawyer is already a vital factor in the present operation of the Civil Relief Act. The American Bar Association and local associations had set up facilities to render legal service under the Act some time before the United States entered the war. Since December 1941, thousands of lawyers throughout the nation have offered their services and, without compensation, have handled tens of thousands of legal matters for men in the armed forces and their dependents. Requests for such service have come from the American Red Cross, Army Emergency Relief, the U.S.O. and other public and private relief organizations as well as directly from the soldier.¹⁰⁸

After the war, when the soldiers are leaving military service, it will be vital that the ex-service men promptly obtain correct information as to their rights under the Act; and that they be properly represented in the enforcement of those rights. Lawyers will be essential in both respects. Although the Act provides for official notice to the soldier "of the benefits accorded by" it,¹⁰⁹ it is obvious that he cannot fully understand the scope and limitations of the relief afforded under this complex statute without professional legal advice. Moreover the need for such promptness and accuracy in obtaining such service is accentuated by the relatively short¹¹⁰ and varying periods *after* military service within which the soldier must act to obtain relief. Relief under the Act is afforded solely by court proceedings. The ex-soldier will obviously require legal representation in obtaining such relief.

A serious problem is presented as to just how the ex-soldier can be assured of obtaining legal advice and representation. In many, if not most of the controversies, the soldier will not be in a position to pay a reasonable attorney fee. Yet it would not seem proper that lawyers be asked or even expected to continue rendering such service after the war, entirely without compensation. The matter appears to be one worthy of immediate consideration and action on the part of the organized bar, possibly in collaboration with federal and state authorities.

The economic readjustment of the soldier and his continuance as part of the free-enterprise-life of the nation, may depend materially upon the Soldiers' and Sailors' Civil Relief Act, and upon whether that Act is given its real intended effect after the war. It is not only the duty, but the privilege of the lawyer to take a leading role in accomplishing this purpose. Such service will advance lawyers in the regard of their community; and an enlightened public will realize the true meaning of law in a democracy.

¹⁰⁸ See War Department Communications 5/24/41, 6/18/41 annexed to Report of A.B.A. Committee on National Defense 9/29/41; also A.B.A. War Bulletin July, 1942.

¹⁰⁹ Sec. 105.

¹¹⁰ Cf. two years in Alberta and Saskatchewan, unlimited in Great Britain and Manitoba. also discussion: 36 Ill. Law Rev. of Northwestern Univ. 333-336.