Constitutional and Economic Aspects of Mortgage Moratorium Legislation

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ONE of the gravest problems which has developed during the latter phases of our economic crisis has been an insistent demand on the part of the public for relief against mortgage foreclosures, and more particularly, the evictions resulting therefrom. This agitation has thus far expressed itself most forcibly in the course of the foreclosure of farm mortgages, where groups of farmers have banded themselves together, and under the protective cover of general social distress have offered organized opposition against foreclosure sales of mortgaged properties. Within the past few months, and particularly after the fall elections of 1932, this cry has been taken up by legislative leaders in many states, with the result in Wisconsin that there has been enacted Chapter 11 of the Laws of 1933. This Chapter creates five new sections to be added to the existing laws on mortgage foreclosures, namely Sections 278.101 to 278.105.

Section 278.101 is a preamble to the remaining sections, and sets forth at some length the existence of a grave emergency which generally threatens public housing, and which "imperils the public welfare, health and morals and the peace and security of the people of the state." This emergency declaration was, it is to be presumed, designedly included in the Act by the framer thereof, in order to bring it within the scope of the police power, as such power has been defined in the so-called "Rent" Cases, so as to avoid, if possible, the constitutional pitfall of impairment of contract rights. This phase of the question will be hereinafter treated more fully.

Section 278.102 provides that the court may in mortgage foreclosure actions, where the mortgaged premises is either a farm or a homestead, extend the one year period of redemption specified in Section 278.10 for an additional two years. This power is expressed to be discretionary with the court, and may be exercised by the court upon such terms and conditions as it may impose. The Section also provides that default in the payment of taxes, interest, or insurance premiums, or two or more of such items, shall not ipso facto be cause for the appointment of a receiver, but that such appointment of receivers shall be within the discretion of the court. This latter addition to Section 278.102 does not have a great deal of legal significance, since the appointment of a receiver in mortgage foreclosure actions has always

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been in the discretion of the court. However, possibly this clause is meant as an indication to trial courts that they should not appoint receivers merely on the basis of default in the payment of interest, taxes or insurance premiums as has at times previously been the practice.

Section 278.103 provides for the obtaining of an additional period of redemption, not to exceed two years, in situations where judgment has already been entered in the foreclosure action, in the manner and upon the terms expressed in Section 278.102.

Section 278.105 provides for the giving of notice by plaintiffs in mortgage foreclosure actions to the mortgagor, whether or not he has appeared in the action, upon the motion for confirmation of the sale. This provision is made applicable to all mortgage foreclosure actions, regardless of whether they relate to farm or homesteads.

Another recent enactment growing out of this same situation is Chapter 15 of the Laws of 1933, which provides for the creation of Boards of Mediation in the various counties, the function of such boards being the adjustment of differences between mortgagor and mortgagee as to interest rates, and as to the retention of possession by the mortgagor. The "whip" in this section is as follows: "The court in exercising the discretion conferred upon it in Chapter 278 of the Wisconsin Statutes shall take into consideration the refusal of either party to submit to mediation, or his failure to accept the recommendations of the Mediation Board."

There is no question but that these laws have arisen as a consequence of a breakdown in the functioning of our economic system, which has rendered it impossible in many cases for mortgagors to fulfill their contracts. To the extent that this legislation represents a social protest against this condition, it must be respected, regardless of its efficacy or of the individual sympathies and interests of a commentator. However, a historical reference to almost any period of severe stress will show that proposals almost inevitably arise which are calculated to relieve the misfortunes of one class at the direct expense of another. These proposals are always enthusiastically acclaimed by those who are the recipients of the relief, and by those upon whom the burden of the relief does not fall, but who are quick to exploit in demagogic fashion the misfortunes of their fellows.

It is for the purpose of guarding against precisely such situations that there has been incorporated into our Constitution and the body of law emanating therefrom, the well known prohibitions against impairing the obligation of contract and against taking property without due process, and the first step in the analysis of the complete effect of the new moratorium legislation is a consideration of the possible infringement of rights thus guaranteed.
The contract between the mortgagor and the mortgagee is embodied primarily in the mortgage, and also in the existing statutes respecting the mutual rights, remedies and liabilities of the parties. In this connection it may be remarked that in Wisconsin, there is no statute which absolutely entitles the mortgagee to a sale of the mortgaged premises in foreclosure after only one year of redemption. Under Chapter 195 of the Laws of 1859, the mortgagee was entitled to an immediate sale, and the mortgagor was given one year within which to redeem. Chapter 143 of the Laws of 1877 which is substantially identical with the now controlling Section 278.10 effected a change and provided that "no such sale shall be made until the expiration of one year from the date of such judgment," and under Section 278.13 the mortgagor is permitted to redeem within such year. It seems to be commonly assumed that our statutes now in force create for the mortgagee an absolute right to have the premises sold at the expiration of no more than one year, but this does not definitely appear from the statute. The question is of some importance in the consideration of the constitutionality of the moratorium legislation, because if the law does not create a vested right in the mortgagee to insist upon a sale after a period of no more than a year, then manifestly the legislature is at liberty to extend the period of redemption without impairing existing contract obligations. However, practically all mortgages contain a provision that the mortgagee may sell the mortgage res at public sale upon default of any of the conditions, and this contract provision coupled with the limitation prescribed in Section 278.10 would seem to create a fixed contract obligation which has for the past generation operated to entitle the mortgagee to a sale after a period of no more than a year, and which probably comes within the purview of the constitutional limitations.

Viewing the provisions of the newly created Section 278.102, it is apparent that under its authority the court may, if it so wills, grant to the mortgagor an additional estate of two years, during which time the benefit of the security which the mortgagee has contracted for is kept from him. The court may, and under this section it would be very difficult to challenge its discretion, permit such additional two years without imposing as a condition precedent the payment by the mortgagor of interest or taxes, and even if the court does let the mortgagee into the possession of the premises pending the additional period of redemption, he may not be able to derive a net sum sufficient to pay the interest. Also, it must be borne in mind that the additional period of redemption imposes on the mortgagee the burden of speculating with future real estate prices. Thus, although it pleases us to assume generally that conditions and real estate values will improve in the
near future, yet the experience of the past few years has painfully
demonstrated to us that our optimistic prognostications are not infalli-
ble, so that where a sale of the mortgaged premises might today bring
a sum sufficient to repay the mortgage indebtedness, two years from
now there may be a loss. When all of these additional burdens and
detriments which are imposed upon the mortgagor by this legislation
are viewed as a whole, in conjunction with the decisions of the United
States Supreme Court, it is difficult to arrive at any conclusion other
than that the provisions permitting and creating additional periods of
redemption are void and unconstitutional as to mortgages executed
before their passage.

Possibly the leading case that justifies the above conclusion is the
case of Barnitz v. Beverley,\(^1\) wherein it is held that a statute creating
for the mortgagor a redemption period of eighteen months from the
date of the foreclosure sale, and granting to the mortgagor the right
of possession during such period, is unconstitutional as a substantial
impairment of the rights of an existing mortgagee. In this case is dis-
cussed the rule that the laws of the state existing when the mortgage
contract is entered into and determining its force and effect are a part
of the contract, so as to come within the meaning of Article I, Section
10, Clause 1, of the United States Constitution: "No state shall \(* * *
* * * law impairing the obligation of contracts \(* * *.
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The controversy concerned a mortgage on property in the State of
Kansas, executed in 1885. The law at the time of the execution of the
mortgage provided that after a foreclosure and sale of the mortgaged
premises, the purchaser was let into actual possession as soon as the
sale was confirmed, and the sheriff's deed issued, without any right of
redemption to the mortgagor. By a statute enacted in 1893, an attempt
was made to give to the mortgagor the additional rights above men-
tioned, so that the law in question closely parallels the Wisconsin
moratorium legislation.

It would be idle to review in detail the reasoning of the court con-
tained in its opinion, since a reference thereto will be much more satis-
factory to the reader, but one point urged as a contention by the pro-
tagonists of the law under question is worthy of somewhat extended
mention. The chief point of defense contended for in most of the
leading cases wherein this type of issue is presented is that the new
law does not impair the contract obligation, but merely alters the rem-
edy whereby the contract may be enforced. It is urged that there is no
vested right in a remedy, and that an alteration of a procedural statute
does not come within the constitutional inhibition. This rule, academ-

\(^1\) 163 U. S. 118 (1896).
ically stated, is sound, and has been upheld by the United States Supreme Court in the leading case of *Tennessee v. Snead,* and a reference to the opinion will amplify what is here briefly stated. However, the response to this contention made in the Barnitz Case, and adhered to in later cases, is that where a change in the remedy is so substantial as to impair the value of the contract or to render its enforcement impracticable or impossible, such attempted change is no longer a matter of procedure, but constitutes a substantial impairment of the obligation.

It is interesting to note that in the early Wisconsin case of *Von Baumbach v. Bade,* it was held that a law which created a six months period during which a mortgagor might answer in a foreclosure action, instead of the previous twenty day period, and which provided for a six month notice of sale instead of the previous six weeks notice, was constitutional as affecting merely the remedy and not the primary obligation. Chief Justice Dixon in an extended opinion admits the rule that laws which impair an existing contract obligation, a portion of which is the then-existing laws, are unconstitutional, but arrives at the conclusion that the legislation in question, even though it added many months to the period during which the mortgagee could not obtain the benefit of his security, was procedural in nature, and therefore, represented a valid exercise by the legislature of its discretionary power to prescribe remedies. The opinion argues that the new law does not take from the mortgagee his remedy, but merely alters the method of enforcement, and that so long as there is left to the mortgagee a substantial remedy, his contract obligation is not impaired within the meaning of the constitution.

Depending upon the individual viewpoint, of course, this case is somewhat startling, since it discusses and quotes from several United States Supreme Court cases which seem to be directly opposed to the result ultimately arrived at. The issue was never taken to the United States Supreme Court, and had it been, in view of later decisions, the writer is somewhat dubious as to what would have been the outcome.

The same question as to whether a new law so alters old laws which affect contract rights as to constitute a substantial impairment thereof, is interestingly discussed in the case of *Robinson v. Howe.*

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2 *96 U. S. 69* (1877).
3 *9 Wis. 559* (1858).
4 *13 Wis. 341* (1861); See also the case of *Second Ward Bank v. Schrank,* 97 Wis. 250, 73 N.W. 31 (1861) for a learned discussion of the distinction between a law that merely affects the remedial procedure, and one that so materially affects the procedure as to substantially impair the value of the original contract.

Other leading cases are cited in the Barnitz Case, and in this brief treatment of the subject, no attempt will be made to analyze fully each of the
The holding of this case is that where land has been sold for taxes under a law which provided that the owner might redeem within a specified time after the sale, it is not in the power of the legislature by a subsequent act to extend the period of redemption for a longer period. The reasoning of the opinion is that the purchaser of the tax certificate entered into a contract with the State at the time of the purchase, the then-existing laws being a part of that contract, and that any subsequent alteration whereby the rights of the purchaser are materially varied is void and ineffective. The situation presented in this case would seem to be very analogous to the situation at bar, inasmuch as an additional period of redemption is involved in both.

Bradley v. Lightcap, is one of the later judicial expressions of the rule, and is important because the attempted legislative alteration in the procedure was not nearly so substantial as has been here attempted by Chapter 11 of the Laws of 1933. In the Bradley Case, a law was enacted which required the certificate of purchase given by the sheriff at a mortgage foreclosure sale to be turned in by the purchaser within two years in an application for a deed to the premises. Formerly there had been no limitation upon the time within which the purchaser must

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various opinions. A mere enumeration of the decisions is impressive of the fact that existing contract obligations and laws respecting the enforcement thereof, have been accorded every safeguard in the maintaining of their constitutional integrity. Howard v. Bugbee, 24 How. 461 (1860) holds that a statute of Alabama creating a new redemption period of two years after sale for the benefit of creditors of the mortgagor is unconstitutional as to sales made under mortgages executed prior to the enactment.

In Brine v. Insurance Co., 96 U. S. 627 (1877) the boot pinches on the other foot. There it was held that in the face of a state law existing when the mortgage was made providing twelve months for redemption after foreclosure sale, the Circuit Court of the United States could not, in the exercise of its equitable discretion, disregard the state statute, and order real estate to an immediate sale. The court states at p. 637:

"The decisions of this court are numerous that the laws which prescribe the mode for enforcing a contract which are in existence when it is made, are so far a part of the contract that no changes in these laws which seriously interfere with that enforcement are valid, because they impair its obligation within the meaning of the Constitution of the United States."

See also Bronson v. Kensie, 1 How. 311 (1843) for a full discussion of the rule and its limitations. This case concerns an Illinois statute which attempted to create a twelve month period of redemption after sale, where no such redemption period previously existed. The holding is that the attempted alteration, whether considered as procedural or substantive, is so substantial that it impairs the contract obligation.

5 195 U. S. 1 (1904). For late cases discussing the point further, see Conley v. Barton, 260 U. S. 677 (1923); State v. Gether, 203 Wis. 311, 234 N.W. 331 (1931); and Bennington County Savings Bank v. Lowry, 160 Wis. 659, 152 N.W. 463 (1915).
apply for a deed. The law provided further that in the event of the failure of the purchaser to so apply for his deed within the time limited, his title became imperfect and the mortgagor could maintain an action in ejectment. The Supreme Court of the State of Illinois handed down two separate opinions in this case, arriving at opposite conclusions in each (the personnel of the court having changed after the writing of the first opinion), and finally held that the new legislation affected the remedy only, and was valid as to a purchaser under a mortgage executed when the old law was in force. The United States Supreme Court reversed the Illinois Court, holding that there had been a substantial impairment of the contract that existed between the parties, the old law being taken to be a part of such contract.

**Scope of the Police Power with Respect to Moratorium Legislation.**

There is no doubt that the framers of Chapter 11 of the Laws of 1933, were familiar with the rule that is here discussed, and sought to evade its effect by bringing the law within the scope of the police power by the declaration of an emergency concerning the public welfare. It is well known that under certain circumstances, where the public welfare, health or safety is involved, constitutional rights of private contracts and private property must yield to the great public need which is expressed as the police power. However, it is equally true that the police power has certain quite clearly defined limitations, and invasions by virtue of its right must be clearly justified within such limitations.

That branch of the law wherein the police power has been extended to its furthest extreme, and upon which the proponents of the mortgage moratorium legislation will probably rely is expressed in the so-called "Rent" Cases. If the moratorium legislation is analogous to the legislation involved in the "Rent" Cases, and is predicated upon a situation which concerns itself so directly with the public welfare, health and safety, as in the "Rent" Cases, then it may be accorded constitutional vindication by virtue of the police power. The crisis out of which grew these cases is interesting and is within the memory of many of us.

During the Great War, hundreds of thousands of people poured into the cities of New York and Washington. This influx was so great that the housing situation became acute, and landlords took undue advantage of the condition. They demanded high rentals, and tenants who could not, or would not pay, were evicted. New home construction was, because of the War, at a standstill, and there seemed to be no relief from the oppressive demands of the landlords. It has been said that by the fall of 1920, the condition had become so acute in the
City of New York that notices to vacate had been issued wholesale, and in addition thereto, summary eviction proceedings against tenants were pending in the number of one hundred thousand, which meant that a total of approximately five hundred thousand people were in process of summary dispossession. In short, the housing situation had arrived at a point where the public health, sanitation and general welfare of the inhabitants of the City of New York were endangered. Special commissions were appointed by the legislature, and the governor, and these reported the emergency conditions prevailing, whereupon the laws known as the Housing Acts were enacted. Under these new laws, all future rentals were limited to a "reasonable rent," and the power to determine what constituted such a reasonable rent was placed in the courts. The rights of the landlord and tenant under any existing lease were not disturbed, however. It was provided that upon the expiration of an existing lease, if the tenant in possession were willing to pay a reasonable rent, he could not be evicted. These laws purported to regulate future rentals only. They did not in any way disturb existing leases or rent contracts.

It cannot be denied that the landlord's right to contract freely with respect to future rentals was curtailed, and to that extent he was deprived of certain rights in his property. The validity of these laws was quickly challenged in the courts, and the New York Court of Appeals sustained them as a legitimate and justified exercise of the police power in the presence of a grave public emergency. This New York Statute was later sustained by the Supreme Court of the United States, four judges dissenting. The court clearly emphasizes in its decision that the financial distress of individual members of the community is not considered in determining whether the exercise of the police power was justified. The infringement upon the property rights of the landlord is based solely upon the public distress, and the fact that a condition existed where there was a serious danger to the public health and morals.

Later this point was again emphasized by the United States Supreme Court in a consideration of the Rent Acts of the District of Columbia. In Washington, the situation was very similar to that in New York, and the Rent Acts were similar in their operation to the Housing Acts of New York. A Rent Commission was created, having control over future rentals. Rents under existing leases were not disturbed, and the law was operative merely as to new leases or new

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7 People v. LaFetra, 230 N.Y. 429, 130 N.E. 601 (1921).
9 Act of Oct. 22, 1919, Chap. 80, title 2; 41 Stat. at L. 297, 298, 301.
rental arrangements. In the case of Block v. Hirsh,\(^\text{10}\) the Rent Acts are considered and sustained by a divided court, as being within the scope of the police power. The majority opinion is written by Mr. Justice Holmes, one of the liberal leaders of the court, and it is interesting to note that in his later opinion in Pennsylvania Coal Co. v. Mahon,\(^\text{11}\) he referred to his former decision, and said that it "went to the verge of the law."

An interesting question that arises in connection with the consideration of the scope of the police power is whether a declaration of a public emergency and a danger to the public health, welfare and safety, by the legislature, is binding upon the courts, so as to foreclose them from inquiry into the extent of such declared emergency. This point was to a considerable extent settled in the case of Chastleton Corp. v. Sinclair,\(^\text{12}\) wherein the court was required to pass upon the question of the validity of the Rent Acts of the District of Columbia at a later date when the emergency was alleged to have abated to a large extent. The Rent Acts by enactment of Congress had been extended for more than five years, and the court in determining whether the emergency still existed, despite the enactment of Congress, stated as follows:\(^\text{13}\)

"In our opinion, it is open to inquire whether the exigency still existed upon which the continued operation of the law depended. A law depending upon the existence of an emergency or other set of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed. * * * If about all that remains of our conditions is the increased cost of living, that is not in itself a justification of the Act."

This rule would seem to be sound, since an emergency is by its very nature subject to sudden change, and it would scarcely be logical to justify a continued interference with property rights merely because the legislature had at one time declared an emergency and based a law thereupon extending over a period of years. Also, it must be remembered in connection with this point that no matter how great is the threatened danger to the public welfare, the taking of property under the authority of the police power must be in accordance with the predetermined principles and limitations of the police power.

The case of Pennsylvania Coal Co. v. Mahon,\(^\text{14}\) is an illustration of this rule, and is an extremely interesting decision, particularly as it comes so closely after the "Rent" Cases which represented such an ex-

\(^{\text{10}}\) 256 U. S. 135 (1921).
\(^{\text{11}}\) 260 U. S. 393 (1922).
\(^{\text{12}}\) 264 U. S. 543 (1924).
\(^{\text{13}}\) at pp. 547-48.
\(^{\text{14}}\) 260 U. S. 393 (1922).
tension of the police power. The facts were as follows: a coal mining company owned certain lands, and had conveyed the surface to various purchasers, under deeds that expressly reserved the right to remove the coal, and which provided further that the grantee of the surface took the premises with the risk attendant to the mining of the coal. It developed that the mining operations caused the sinking of dwelling houses. As a result of this situation, there was enacted in Pennsylvania the Kohler Act, which forbade mining in such a way as to cause subsidence of any structure used as a dwelling house. The action was instituted to restrain the mining of coal under the plaintiff's dwelling, and it was sought to sustain the statute as a proper and legitimate exercise of the police power. The majority opinion by Mr. Justice Holmes holds the statute unconstitutional as an unwarranted invasion of private contract obligations, and is an extremely illuminating discussion of the scope of the police power. Justice Brandeis dissents, the substance of his opinion being that the statute is a legitimate enactment justified by the public need.

This quotation from the majority opinion in the Coal Company Case stands out in its analogy to our mortgage moratorium situation.

"In general it is not plain that a man's misfortune or necessities will justify his shifting the damages to his neighbor's shoulders. * * * We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.'

Social and Economic Aspects

This confronts us squarely with the social and economic desirability and soundness of our moratorium legislation. It is the writer's opinion that the legislation, if challenged, will not meet the qualifications of a legitimate exercise of the police power, this opinion being based of course upon judicial precedent. We must always recognize the reservation, however, that at times there have been departures from judicial precedent to meet new conditions. It has been said that all progress is a departure from precedent, and no doubt it will be urged in support of this legislation that so grave and general a public emergency exists as to warrant the extension of the police power to validate the moratorium legislation, if the police power is not already sufficiently broad at the present to justify it.

I do not think that the legislation will receive judicial approval, however, for the reason that it does not seem to correct the admitted problem in a sound or socially equal manner. No one can deny that a

15 at p. 416.
tremendous personal crisis has developed in the lives and affairs of thousands of small home owners, who are in danger of losing their properties through a condition to which they have not contributed. It is unquestionably unfair and unjust that these people should suffer such a loss, in the same way that it is unfair and unjust that millions of people throughout the United States are in want through no fault of their own. This represents a broad social and economic problem, and its solution must be broad and sound, socially and economically. We cannot take from the pockets of one group, and transfer into the pockets of another. If the mortgage moratorium legislation proposed to save farms and homesteads to the mortgagors by some sort of a general state payment or guaranty, such an act would in my opinion be socially, if not economically, sound, because of the general distribution of the cost over all classes. But to require a mortgagee alone to assume the burden which society as a whole has cast upon an unfortunate mortgagor is unjust.

If the problem be weighed upon the scale of moral justice, there is even less reason to require the mortgagee to assume the risk and cost of the mortgagor's relief. The mortgagee is the individual who has made it possible for the mortgagor to have possession of his property in the first instance. His situation is often as humble as that of the mortgagor. He has in many cases lent his money upon a high real estate valuation, contributed to by the patriotic prosperity psychology of past years, and he is in danger of taking a serious loss. The only reason that exists for forcing him to bear this undue burden is the fact that he happens to be nearest in his relations to the mortgagor, and is one of a class that receives little sympathy from the masses. To champion the underdog is a splendid cause, and all thinking individuals should feel very keenly for the unfortunate plight of the pauperized home owner who is in danger of losing his home. Legislation that seeks to relieve his plight is most praiseworthy, from the standpoint that it represents a public protest against the conditions which have contributed to it. However, we should never lose sight of the fact that the problem is broad, and that the solution must be broad. It cannot be localized, nor the burden of the solution thrown upon one class of individuals who happen to be conveniently accessible.

There is another aspect of the situation which is equally serious. In all of the foregoing discussion, we have treated the moratorium legislation in its effect on pre-existing mortgages. What as to its effect on new mortgages executed after the legislative enactment? There is no question that the legislature was perfectly within its rights in authorizing the creation of a longer period of redemption in respect to new mortgages, and accordingly, all funds hereafter invested in mort-
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gage securities are subject to this added redemption period. The effect of this has already been noticed, and will become even more noticeable as time goes on. There will be an utter disinclination on the part of the investing public to place any funds upon the security of mortgages on homesteads or farms. A putative mortgagee is not primarily a purchaser of the mortgage res; he is fundamentally a lender of money, and he has the right to expect that either through payment or through recourse to his security, he will receive his money back. In the face of the new legislation, his security becomes more uncertain, and therefore, less desirable. He cannot definitely plan that his funds will return to him at the end of a stated period, and the disadvantages of including mortgages in an investment portfolio are greatly increased by this uncertainty.

When this factor is taken into account, together with the already prevalent distrust of mortgage lending, it will result in a practical absence of funds for mortgage loans, unless such loans are collateralized by additional security. The economic effect of this condition will, if it continues, scarcely be healthy, to say the least. I need not point out here how important it is to the community that new sound building projects be readily financed. Also, it is common knowledge that many owners of property expect to finance their holding by a permanent continuing mortgage arrangement. When these mortgages become due, owners will experience difficulty, and will be required to pay exorbitant commissions in order to renew or replace their loans.

This discussion may, perhaps justly, be accused of having wandered too far from the legal aspects of the question into social, economic and political considerations. If this is true, it is because the problem is inextricably bound up with the general economic disturbance which produced it. When one spends a day in the Circuit Court of Milwaukee County, and sees hundreds of equities swept away from their owners as a routine mechanical procedure, one must be impressed by the gravity of the situation. Most of these mortgagors who pass through the courts are unable to pay even an additional year's interest and taxes to avail themselves of the additional year of redemption granted by the 1931 legislature. This 1931 legislation was more fair in its application, and so regardless of its constitutionality, it was generally welcomed by mortgagees as an equitable method of co-operation between the parties. However, the distress of property owners is so severe that they have generally been unable to avail themselves of this relief, and thousands of pieces of real estate are passing into the hands of unwilling mortgagees.

This turnover of real estate in and of itself, is something of an adjustment, since it represents the passing of holdings from weak
hands to stronger hands, and places the burden of supporting the un-
fortunate losers upon the community at large. It is not a happy adjust-
ment, but is merely a part of a wholesale liquidation, or scaling down
of our whole scheme of values, which when completed will afford us a
healthy, sound base upon which to build anew. Perhaps out of it all we
will learn how to control the new and terrifically complex economic
structure which became the heritage of this generation, so as to pre-
serve hereafter a more constant equilibrium in its development.\textsuperscript{16}

\textsuperscript{16} Acknowledgement is gratefully made to Mr. William E. Jones of the Milwau-
kee Bar for his suggestions.