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# SUPREME COURT of the UNITED STATES

**OCTOBER TERM, 1933**

# No. 370

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HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION,

*Appellant,*

*vs.*

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,

*Appellees.*

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## APPELLEES' BRIEF ON APPEAL

### I.

### Statement of Case

The appellees adopt the statement of the case as set forth in appellant's brief with the following qualifications and additions:

Subsequent to the passage and approval of Chapter 339 of the General Laws of Minnesota for 1933, and prior to the 28th day of April, 1933, the appellees, in compliance with the provisions of said act, applied to the court for an extension of the time of redemption from the mortgage foreclosure sale in this case by serving notice of motion and petition (R. 46, 47). At the time of the making of the mortgage and at the time of the hearing on appellant's petition for extension of

the time of redemption the dwelling house on appellee's real property was occupied by the appellees as their homestead, as appears from the findings of the court (R. 47), and hence the said real property was appellees' homestead "in the ordinary sense of the word" notwithstanding the fact that certain rooms in the house on said property were rented.

At the time of the hearing on the application for extension the appellees had a substantial equity in the mortgaged premises. The premises were bid in at the foreclosure sale for Thirty-seven Hundred and Ninety-eight One Hundredths Dollars ($3,700.98) on May 2, 1932 (R. 46), and this amount, plus interest thereon from the date of sale represented the value of appellees' interest in the property at the time of the said hearing. The reasonable market value of the premises at the time of the hearing was found by the court to be Six Thousand Dollars ($6,000.00) (R. 47). The reasonable value of the income of said property and the reasonable rental value of said property at the time of said hearing was found by the court to be Forty Dollars ($40.00) per month (R 47). In its judgment extending the time for redemption the court ordered the appellees to pay Forty Dollars ($40.00) per month during the extended period of redemption from May 2, 1933, the date of the expiration of the original period of redemption (R. 50).

For convenience, in the remainder of this brief, we will refer to Chapter 339 of General Laws of Minnesota for 1933 as "The Minnesota Mortgage Moratorium Law."

## II.

## Summary of Argument

Point A. The Minnesota Mortgage Moratorium Law does not violate the contract clause contained in Section 10 of Article I of the Constitution of the United States because

it is an emergency measure and its enactment was justified under the police power of the state.

Point B. The Minnesota Mortgage Moratorium Law does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Point C. The Minnesota Mortgage Moratorium Law does not violate the equal protection clause contained in the Fourteenth Amendment to the Constitution of the United States.

Point D. The provisions of the Minnesota Mortgage Moratorium Law are severable, and for that reason the court is not called upon to determine the constitutionality of those parts of that law which have no bearing on the case at bar, and moot questions arising out of provisions of that law, which have no bearing on the case at bar, are not properly before the court.

Point E. The Minnesota Mortgage Moratorium Law is just, fair and reasonable and benefits both the mortgagor and the mortgagee, and does no more than vest in the courts equitable powers to cope with emergency conditions.

## III.

## Argument

### POINTS A AND B

**The Minnesota Mortgage Moratorium Law does not violate the contract clause contained in Section 10 of Article I of the Constitution of the United States because it is an emergency measure and its enactment was justified under the police power of the state.**

**The Minnesota Mortgage Moratorium Law does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.**

Because of the close connection between Points A and B, we will discuss them together.

Every contract is entered into subject to the implied limitation that in an emergency its terms may be varied in a reasonable manner under the exercise of the police power of the state This limitation upon contract rights is as much a part of any contract as if it were incorporated therein in writing and, therefore, this law does not impair the obligation of the mortgage contract between appellant and appellees within the meaning of the contract clause contained in Section 10 of Article I of the Constitution of the United States.

Neither does this law deprive the appellant of its property without due process of law by making provision for an extension of the time of redemption from the mortgage foreclosure sale. On the contrary, it provides for an orderly proceeding to determine what extension, if any, should be made, the amount which must be paid and the other conditions which must be performed as a condition precedent to the making and continuance of the extension. The statute provides that the mortgagee or his assigns shall have an opportunity to be heard and to defend, protect and enforce his rights in said proceeding. Pursuant to this law the appellant was given due notice of the application for an extension. It appeared at the hearing in said proceedings and took part therein. Although the court at said hearing granted an extension of the time of the redemption, it ordered that as a condition precedent to such an extension the appellees must pay the full rental value of the premises during the extended year of redemption.

We concede that in normal times and under normal conditions The Minnesota Mortgage Moratorium Law would be unconstitutional. But these are not normal times and these are not normal conditions. A great economic emergency has

arisen in which the state has been compelled to invoke the police power to protect its people in the possession and ownership of their homes and farms and other real estate from the disastrous effects of the wholesale foreclosure of real estate mortgages which inevitably resulted from the present state wide, nation wide, and world wide economic depression.

General conditions resulting from this depression are well known, and we will not burden the court with a recital of them. However, we feel that a brief statement of conditions in Minnesota in so far as they relate to the necessity of the passage of this law would not be inappropriate.

Minnesota is predominantly an agricultural state. A little more than one half of its people live on farms. At the time this law was passed the prices of farm products had fallen to a point where most of the persons engaged in farming could not realize enough from their products to support their families, and pay taxes and interest on the mortgages on their homes. In the fall and winter of 1932 in the villages and small cities where most of the farmers must market their produce, corn was quoted as low as eight cents per bushel, oats two cents and wheat twenty-nine cents per bushel, eggs at seven cents per dozen and butter at ten cents per pound. The industry second in importance is mining. In normal times Minnesota produces about sixty per cent of the iron of the United States and nearly thirty per cent of all the iron produced in the world. In 1932 the production of iron fell to less than fifteen per cent of normal production. The families of idle miners soon became destitute and had to be supported by public funds. Other industries of the state, such as lumbering and the manufacture of wood products, the manufacture of farm machinery and various goods of steel and iron have also been affected disastrously by the depression.

Because of the increased burden on the state and its poli-

tical subdivisions which resulted from the depression, taxes on lands, which provide by far the major portion of the taxes in this state, were increased to such an extent that in many instances they became confiscatory. Tax delinquencies were alarmingly great, rising as high as 78% in one county of the state. In seven counties of the state the tax delinquency was over 50%. Because of these delinquencies many towns, school districts, villages and cities were practically bankrupt. In many of these political subdivisions of the state local government would have ceased to function and would have collapsed had it not been for loans from the state

One of the major problems arising out of the depression is the proper handling of mortgage debts. The problem of mortgage debts has been particularly acute in the State of Minnesota because of the fact that Minnesota is an agricultural state and the income of the majority of our people comes from land. Chief Justice Wilson in his concurring opinion in the decision of the Minnesota Supreme Court in the case at bar, *Blaisdell* v. *Home Building & Loan Ass'n* (1933) —Minn. —; 249 N. W 334, 893, points out that most of the real estate mortgages existing today were contracted when the general price level was about twice, and the farm values were about four times as high as they are today. (R. 29). At the time of the passage of this Mortgage Moratorium Law real estate had practically ceased to have a market value and could scarcely be sold at any price, and the income from real estate was not sufficient in many instances to pay the interest on the mortgage and the taxes on the premises. Our people, with their savings tied up in closed banks, with their earning power greatly reduced or entirely wiped out, were unable to make the payments on their mortgages as they became due. Not only could they not meet these mortgage payments, but they were unable to refinance their loans or sell their properties so as to realize something

out of their equities. Consequently, the number of mortgage foreclosures in this state increased by leaps and bounds until in the spring of 1933 it had reached an all time maximum. The throwing upon the market of these mortgaged premises had the inevitable effect of further depreciating and dragging down real estate values throughout the state. It is obvious that if these foreclosures had been allowed to continue and to increase in number unrestricted and unabated, a large portion of the homes and farms of the people of this state would inevitably have reverted to and become the property of trust companies, banks, insurance companies and other mortgagees.

For several months prior to the passage of the Mortgage Moratorium Act many serious breaches of the peace occurred from time to time throughout the state, especially in the rural districts, in connection with mortgage foreclosure sales, and in many instances these sales were interrupted and prevented by mobs of people, otherwise peaceful and law abiding, who had been driven to desperation by the fear of losing their homes In some instances mobs comprising more than a thousand people gathered together and forcibly prevented the holding of foreclosure sales These disturbances increased in violence and in number until the Governor of the state, in the interest of preserving the public peace and the safety of the community, was compelled to and did issue an executive order directing sheriffs to refrain from foreclosing mortgages on homes until the legislature had an opportunity to pass a relief measure to cope with the emergency.

Unfortunately there are many home and farm owners in the State of Minnesota who cannot get any relief from this law because the burden of mortgage indebtedness on their land is too great. However, there are many mortgagors in this state who, if allowed to retain the possession and owner-

ship of their lands will be able to save them if economic conditions improve within a reasonable period of time. In the past history of this country depressions have come, run their course of one year or a few years and then normally prosperous times have returned. May we not expect this depression, although more intense and wider in scope, to run a similar course. This law will enable many owners of mortgaged real estate to retain the ownership and possession of their real estate until such time as economic conditions improve and real estate again has a market value so loans can be refinanced or real estate sold at normal prices. Moreover, the national government has passed laws providing for the making of loans to owners of farms and homes, and when these laws are put into full operation many mortgagors will be able to refinance their loans through the government.

Because of the existence of these conditions it is our contention that the legislature of Minnesota was justified in enacting the Mortgage Moratorium Law as an emergency measure under the police power of the state, and that the law so enacted does not violate either the contract clause or the due process clause of the Constitution of the United States. In support of this contention we submit the authorities which are hereinafter set forth.

## Scope of Police Power

The early decisions of the federal courts, as we interpret them, quite generally limited the exercise by the state of its police power to matters affecting the public health, public morals and public safety, but in the last half century this limitation has been abandoned and these courts, as well as many of the state courts, have enlarged by judicial interpretation the scope of this power to meet the requirements

of changing economic and industrial conditions and the growth of the states and the nation. It is now, we think, the consensus of the judicial opinion that the state may exercise its police power not only for the promotion and protection of the public health, public morals and public safety, but also to promote the wealth and prosperity, the comfort, convenience, and happiness, in short, the general welfare of the people of the state.

*Black on Constitutional Law* (4th Ed.), page 366.
*Barbier* v. *Connolly* (1885), 113 U. S. 27.
*Mugler* v. *Kansas* (1887), 123 U. S. 623.
*Camfield* v. *U. S.* (1897), 167 U. S. 518.
*C. B. & Q. Ry. Co.* v. *People* (1906), 200 U. S. 561.
*Sligh* v. *Kirkwood* (1915), 237 U. S. 52.
*Blaisdell* v. *Home Building and Loan Association* (1933), .... Minn. ....; 249 N. W. 334, 893.

In *C. B. & Q. Ry.* v. *People,* supra, at page 592 the court said:

> "The learned counsel for the railway company seem to think that the adjudications relating to the police power of the State to protect the public health, the public morals and the public safety are not applicable, in principle, to cases where the police power is exerted for the general well-being of the community apart from any question of the public health, the public morals or the public safety. * * * We cannot assent to the view expressed by counsel. We hold that the police power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety. *Lake Shore & Mich. South. Ry.* v. *Ohio,* 173 U. S. 285, 292; *Gilman* v. *Philadelphia,* 3 Wall. 713, 729; *Pound* v. *Turck,* 95 U. S. 459, 464; *Railroad Co.* v. *Husen,* 95 U. S. 470. And the validity of a police regulation, whether established directly by the State or by some

public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation."

In *Sligh* v. *Kirkwood,* supra, at page 58, the court said:

"The limitations upon the police power are hard to define, and its far-reaching scope has been recognized in many decisions of this court. At an early day it was held to embrace every law or statute which concerns the whole or any part of the people, whether it related to their rights or duties, whether it respected them as men or citizens of the State, whether in their public or private relations, whether it related to the rights of persons or property of the public or any individual within the State. *New York* v. *Miln,* 11 Pet. 102, 139. The police power, in its broadest sense, includes all legislation and almost every function of civil government. *Barbier* v. *Connolly,* 113 U. S. 27. It is not subject to definite limitations, but is co-extensive with the necessities of the case and the safeguards of public interest. *Canfield* v. *U. S.,* 167 U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or public health. *Chicago, etc., Ry.* v. *Drainage Commissioners,* 200 U. S. 561, 592. In one of the latest utterances of this court upon the subject, it was said: 'Whether it is a valid exercise of the police power is a question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals and safety, but to those which promote the public convenience or the general prosperity.' And further, 'It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government.' *Eubank* v. *Richmond,* 226 U. S. 137, 142."

It was long ago decided in the Legal Tender Cases (1870), 12 Wall. 457, that "It is not to be denied that acts may be adapted to the exercise of lawful power, and appropriate to it, in seasons of exigency, which would be inappropriate at other times." (P. 540). This principle has been reaffirmed by our courts many times since, and it is now well established that in emergencies state and nation alike may, under the police power, pass laws which in normal times would impair the obligation of contracts and deprive persons of their property without due process of law

In *Barbier* v. *Connolly* (1885) supra, at page 31, the court said:

> "Neither the Amendment (referring to the Fourteenth)—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

In *Manigault* v. *Springs* (1905), 199 U. S 473, at page 480, the court said·

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power which in its various ramifications is known as the police power is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is

paramount to any rights under contracts between individuals."

In *Atlantic Coast Line Railroad Co.* v. *City of Goldsboro* (1914), 232 U. S. 548, at page 558, the court said:

> "For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of a state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant and that all contracts and property rights are held subject to its fair exercise."

In *Union Dry Goods Co.* v. *Georgia Public Service Corporation* (1919), 248 U. S. 372, at page 376, the court said:

> "Contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government and no obligation of a contract can extend to defeat the legitimate government authority. * * * It is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community."

In *New Orleans Gas Co.* v. *Louisiana Light Co.* (1885), 115 U. S. 650, at page 672, the court said:

> "The constitutional prohibition upon state laws impairing the obligation of contracts does not restrict the power of the state to protect the public health, the public morals, or the public safety as the one or the other may be involved in the execution of such contracts."

In *Marcus Brown Holding Co.* v. *Feldman* (1921), 269 F. 306, affirmed in 256 U. S. 170, the court, at page 315, said:

> "It cannot be too often said that a constitution is not a code nor a statute, that it declares only fundamental principles, and is not 'to be interpreted with the strictness of a private contract.' *Legal Tender Cases,* 110 U. S. 421, 4 Sup. Ct. 122, 28 L. Ed. 204. To this doctrine we owe the rulings that even the contract clause of the Constitution does not override the power of the state to establish regulations reasonably necessary to secure the health, comfort, or general welfare of the community—that is, to exercise the police power of the state (*Atlantic, etc., Co.* v. *Goldsboro,* 232 U. S. 548, 34 Sup. Ct. 364, 58 L. Ed. 721); that in like manner 'reasonable restraints' may be placed upon freedom of contract (*Rail & River Co.* v. *Ohio, etc., Comm'n,* 236 U. S. 338, 35 Sup. Ct. 359, 59 L. Ed. 607); and that a Legislature may make police regulations, although they interfere with the full enjoyment, of private property, and no compensation be given (*Chicago, etc. Co.* v. *Drainage Comm'n,* 200 U. S. 561, 26 Sup. Ct. 341, 50 L. Ed. 596, 4 Ann. Cas. 1175). Such decisions (and we cite but few of many) reduce the question to this: Are these statutes an exercise of police power reasonably suitable for combating or lessening the evil proved, and therefore constitutional, although at other times and under other circumstances they might plainly be obnoxious to fundamental principles of constitutional government?"

In *People* v. *LaFetra,* 230 N Y 429, 442; 130 N. E. 601, 605, the court said:

> "The proposition is equally fundamental that the state may establish regulations reasonably necessary to secure the general welfare of the community by the exercise of its police power, although the rights of private property are thereby curtailed and freedom of contract is abridged. * * * The legislative or police

> power is a dynamic agency, vague and undefined in its scope, which takes private property or limits its use when great public needs require, uncontrolled by the constitutional requirement of due process. Either the rights of property and contract must, when necessary, yield to the public convenience, advantage and welfare, or it must be found that the state has surrendered one of the attributes of sovereignty for which governments are founded and made itself powerless to secure to its citizens the blessings of freedom and to promote the general welfare. * * *
>
> Emergency laws in time of peace are uncommon but not unknown. Wholesale disaster, financial panic, the aftermath of war (*Hamilton* v. *Kentucky Distilleries & W. Co.,* 251 U. S. 146, 161, 40 Sup. Ct. 106, 64 L. Ed. 194), earthquake, pestilence, famine and fire, a combination of men or the force of the circumstances may, as the alternative of confusion or chaos, demand the enactment of laws that would be thought arbitrary under normal conditions (*Bowditch* v. *Boston,* 101 U. S. 16, 18, 19; *American Land Co.* v. *Zeiss,* 219 U. S. 47. Although emergency cannot become the source of power, and although the Constitution cannot be suspended in any complication of peace or war (*Ex parte Milligan,* 4 Wall. 2, 18 L. Ed. 281), an emergency may afford a reason for putting forth a latent governmental power already enjoyed but not previously exercised."

In *Guttag* v. *Shatzkin,* 230 N. Y. 647, 650; 130 N E. 929, 930, the court said

> "While the states are subject to the contract clause of section 10, article I, and section 1, article XIV of the United States Constitution, the police power of the states may affect contracts and modify property rights without violation of these provisions. Conceding the health, safety, and morals of its citizens to be involved, and the circumstances to justify a proper interference by the state, neither the contract nor due process of

law clause stand in the way. *Union Dry Goods Co.* v. *Georgia Public Service Corporation,* 248 U. S. 372. *These sections of our federal Constitution and the police power of the states harmonize and never conflict.''* (Italics ours)

**The Rent Cases**

The most important decisions from the standpoint of this case are the three great decisions rendered by the United States Supreme Court in the four cases of *Block* v. *Hirsh* (1921) 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman* (1921), 256 U. S. 170; *Levy Leasing Co.* v. *Siegel* (1922), 258 U S. 242; and 810 *West End Avenue, Inc.* v. *Stern* (1922), 258 U. S. 242, which are known as The Rent Cases. These decisions are particularly significant in connection with the present discussion because they each involve a state of facts very similar to that which confronts the court in passing upon the constitutionality of the Mortgage Moratorium Act.

In the case of *Block* v. *Hirsh,* supra, the court considered the constitutionality of an act of Congress relating to the District of Columbia. This act created a commission with power, upon notice and hearing, to determine whether the rent, service and other terms and conditions of the use and occupancy of apartments, hotels and other rental property in the District of Columbia, were fair and reasonable, and, if found otherwise, to fix fair and reasonable rents, etc., in lieu; it provided that a tenant's right of occupancy should, at his option, continue, notwithstanding the expiration of his term, subject to regulation by the commission, so long as he paid the rent and performed the conditions fixed by his lease or as modified by the commission; reserved, however, to the owner his right to possession for actual bona fide occupancy by himself, his wife, children or dependents, upon

giving a thirty days' notice to quit; made the commission's findings conclusive on matters of fact, but reviewable by the Court of Appeals of the District on matters of law; limited the regulation thus established to a period of two years; and declared that its provisions were made necessary by emergencies growing out of the War, resulting in rental conditions dangerous to the public health and burdensome to public officers, employees and accessories, and thereby embarrassing the Federal Government in the transaction of the public business.

In this case the Supreme Court held:

1. That the declaration of facts by a legislative body "concerning public conditions that by necessity and duty it must know, is entitled to great respect" by the courts.

2. That circumstances may clothe "the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law." At page 156 the court said:

> "*Plainly circumstnces may so change in time or so differ in space as to clothe with such an interest what in other times or in other places would be a matter of purely private concern.* It is enough to refer to the decisions as to insurance, in *German Alliance Insurance Co.* v. *Lewis,* 233 U. S. 389; irrigation, in *Clark* v. *Nash,* 198 U. S. 361; and mining, in *Strickley* v. *Highland Boy Gold Mining Co.,* 200 U. S. 527. They sufficiently illustrate what hardly would be denied. They illustrate also that the use by the public generally of each specific thing affected cannot be made the test of public interest. *Mt. Vernon-Woodberry Cotton Duck Co.* v. *Alabama Interstate Power Co.,* 240 U. S. 30, 32, and that the public interest may extend to the use of land. *They dispel the notion that what in its immediate aspect may be only a private transaction may not be raised by its class or character to a public affair.*" (Italics ours.)

3. That the law was not an unconstitutional restriction of the owners' dominion or right of contract or a taking of his property for a use not public. The court said:

> "The fact that tangible property is also visible tends to give a rigidity to our conception of our rights in it that we do not attach to others less concretely clothed. But the notion that the former are exempt from the legislative modification required from time to time in civilized life is contradicted not only by the doctrine of eminent domain, under which what is taken is paid for, but by that of the police power in its proper sense, *under which property rights may be cut down, and to that extent taken, without pay.* Under the police power the right to erect buildings in a certain quarter of a city may be limited to from eighty to one hundred feet. *Welch* v. *Swasey,* 214 U. S. 91. Safe pillars may be required in coal mines. *Plymouth Coal Co.* v. *Pennsylvania,* 232 U. S. 531. Billboards in cities may be regulated. *St. Louis Poster Advertising Co.* v. *St. Louis,* 249 U. S. 269. Watersheds in the country may be kept clear. *Perley* v. *North Carolina,* 249 U. S. 510. *These cases are enough to establish that a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation.* But if to answer one need the legislature may limit height, to answer another it may limit rent. We do not perceive any reason for denying the justification held good in the foregoing cases to a law limiting the property rights now in question if the public exigency requires that. The reasons are of a different nature but they certainly are not less pressing.
>
> "The main point against the law is that tenants are allowed to remain in possession at the same rent that they have been paying, unless modified by the Commission established by the act, and that thus the use of the land and the right of the owner to do what he will with his own and to make what contracts he pleases are cut down. But if the public interest be

established the regulation of rates is one of the first forms in which it is asserted, and the validity of such regulation has been settled since *Munn* v. *Illinois,* 94 U. S. 113." (P. 155.) (Italics ours.)

4. That such a regulation was justified as a temporary measure, even if it might not be upheld as a permanent regulation. The court said: *"A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."* (P. 157) (Italics ours)

5. That machinery is provided to secure the landlord a reasonable rent. The court says:

> "It may be assumed that the interpretation of 'reasonable' will deprive him in part at least of the power of profiting by the sudden influx of people to Washington caused by the needs of Government and the war, and thus of a right usually incident to fortunately situated property—of a part of the value of his property as defined in *International Harvester Co.* v. *Kentucky,* 234 U. S. 222. *Southern Ry. Co.* v. *Greene,* 216 U. S. 400, 414. But while it is unjust to pursue such profits from a national misfortune with sweeping denunciations, the policy of restricting them has been embodied in taxation and is accepted. *It goes little if at all farther than the restriction put upon the rights of the owner of money by the more debatable usury laws."* (P. 157.) (Italics ours.)

6. *That the court will not pass upon the wisdom of the means adopted by the legislative body if the end in view is justifiable.*

The three other cases all have to do with the so-called "housing acts" which were passed by the legislature of New York in 1920. These laws were passed on September 27, 1920. They recite the existence of an emergency and provide

they shall not be applicable to buildings in course of construction or commenced after the passage of the laws, and that they shall be effective only until November 1, 1922. These laws were made applicable only to a city having a population of one million or more, or to a city in a county adjoining any such city. They prohibited the bringing of summary proceedings and actions in ejectment against tenants to recover the possession of real property occupied for dwelling purposes, except in certain cases not here material. These laws provided that it should be a defense in an action for rent accruing under an agreement for dwellings that such rent was unjust and unreasonable, and that the agreement under which the same is brought was oppressive They permitted the landlord to plead and prove in such action a just, fair and reasonable rent and to recover judgment therefor or institute a separate action for a recovery thereof, and also provided that if the judgment recovered for rent was not paid the landlord should be entitled to immediate possession of the premises.

In the case of *Marcus Brown Holding Co.* v. *Feldman,* supra, the owner of an apartment house brought a suit for the purpose of ousting certain holdover tenants by means of mandatory injunction. The tenants were holdovers after the lease had expired, claiming the right to possession as occupants of the premises for dwelling purposes, under the above mentioned New York laws, and offered to pay a reasonable rent and any reasonable increase in rent as the same might be determined by a court of competent jurisdiction. The tenant's lease expired on September 30, 1920, three days after the laws were passed. The lease contained a covenant to surrender possession at the termination thereof. Before the passage of the new laws, another lease of the premises had been made to go into effect on October 1, 1920. It was claimed by the apartment house owner that the

laws under which the tenant claimed the right of possession were unconstitutional. The court found that the laws were constitutional. "The chief objections to these acts," said the court, "have been dealt with in *Block* v. *Hirsh.*" As to the objection that the laws impair the obligation of the contracts of the lessee to surrender possession and of the new lease which was to go into effect on October 1, 1930, the court said: *"but contracts are made subject to this exercise of the power of the State when otherwise justified, as we have held this to be"* (P. 198) (Italics ours)

In the case of *Levy Leasing Co.* v. *Siegel and* 810 *West End Avenue Inc* v *Stern,* supra, which were decided in the same opinion, the Supreme Court of the United States again passed upon the constitutionality of these New York "housing acts." In the first of these cases it was alleged that an apartment was leased to the defendant from October 1, 1918 to October 1, 1920 at the stipulated rental of $1,450.00 per annum payable in equal monthly installments in advance. That while in possession under that lease in May, 1920, and before the housing laws were passed, the defendant executed a new lease for two years beginning at the expiration of the former lease on October 1, 1920, at a rental increased to $2,160.00 payable in equal monthly installments in advance, and that the defendant refused to pay the installment due on October 1, 1920. Judgment for one month's rent was prayed for. The defendant admitted the execution of the scond lease but averred that the second lease was signed under coercion and duress of threats of eviction, and that the rent stipulated for was "unjust, unreasonable and oppressive." He offered to pay the same amount of rent as was paid for the preceding month and asserted the right to continue in possession under the emergency acts.

In the second case it was alleged that the defendant is a tenant holding over after expiration of his lease, and that he

refused to surrender possession as he stipulated in his lease to do and that he claimed the right to retain possession under the emergency housing laws which suspended the right of action to recover possession except under circumstances which were not applicable to the case. In upholding the constitutionality of these laws the court said:

> "In terms the acts involved are 'emergency' statutes and, designed as they were by the legislature to promote the health, morality, comfort and peace of the people of the State, they are obviously a resort to the police power to promote the public welfare. They are a consistent inter-related group of acts essential to accomplish their professed purposes.
>
> "The warrant for this legislative resort to the police power was the conviction on the part of the state legislators that there existed in the larger cities of the State a social emergency, caused by an insufficient supply of dwelling houses and apartments, so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the State. *That such an emergency, if it really existed, would sustain a resort, otherwise valid, to the police power for the purpose of dealing with it cannot be doubted, for, unless relieved, the public welfare would suffer in respects which constitute the primary and undisputed, as well as the most usual, basis and justification for exercise of that power.*" (P. 245.) (Italics ours.)

In its decision the court says that the ~~first~~ second case presents precisely the same questions of fact and law as the *Marcus Brown Holding Co.* case presented, and must be ruled thereby.

As to the ~~second~~ first case, in answer to the claim that the impairment of contracts clause of the constitution was not considered or decided in the *Marcus Brown Holding Co.* case, the court quoted from the decision in said case to show

that it had passed upon the impairment of contracts clause in that case, and stated that the decision in that case was binding.

It was also urged that the law providing for the recovery of rent was invalid because of the provision "It shall be a defense to an action (by the landlord) that such rent (demanded) is unjust and unreasonable and that the agreement under which the same is sought to be recovered is oppressive" was too indefinite a standard to satisfy the due process of law clause of the Constitution.

In answer to this objection the court said: "The standard of the statute is as definite as the 'just compensation' standard adopted in the Fifth Amendment to the Constitution and therefore ought to be sufficiently definite to satisfy the Constitution." (P. 250.)

With respect to the right of the legislature to make modifications of remedial statutes, the court said: "Given a constitutional substantive statute, enacted to give effect to a constitutional purpose, the States have a wide discretion as to the remedies which may be deemed necessary to achieve such a result and it is very clear that that discretion has not been exceeded in this instance by the State of New York." (P. 250)

Let us compare the more salient provisions of the congressional statute and the New York laws, which were passed upon in the so-called rent cases, with the Minnesota Mortgage Moratorium Act now under consideration. The laws passed upon in the rent cases all declared the existence of an emergency. The Mortgage Moratorium Law also declared the existence of an emergency. The laws in the rent cases were in operation for approximately two years. The Mortgage Moratorium Law is also operative for a period of approximately two years. The statutes construed in the Rent Cases interfered with contract rights yet provided that by

The statement in the last paragraph on page 23 of appellees' brief to the effect that the laws construed in the so-called Rent Cases give relief only to tenants who are actually occupying real estate for dwelling purposes is too broad. It is true insofar as the New York Housing Laws are concerned, but the act of Congress which was construed in Block v. Hirsh relates to the use and occupancy of apartments, hotels and other rental property. The premises involved in the Block case were used for business purposes.

the decision of a court or commission reasonable compensation should be given in lieu of the contract rights interfered with. The Mortgage Moratorium Act also interferes with contract rights and in lieu of the contract rights so interfered with provides for the payment of such amount as to a court of equity shall under all circumstances seem just and equitable.

Indeed, it seems clear that the laws construed in the so-called Rent Cases interfere more with contract rights than does the statute which is now before this court. Under the laws construed in the so-called Rent Cases, providing the tenant complied with the conditions imposed, his right of occupancy continued for a period of two years after the passage of the laws as a matter of right, notwithstanding the expiration of his lease. In this Mortgage Moratorium Act, the owner of the mortgaged premises is not entitled to any extension of the year of redemption, as a matter of right, and can only get such extension if and when the court deems that such extension is justifiable.

It is true that the laws construed in the so-called Rent Cases give relief only to tenants who are actually occupying the real estate for dwelling purposes, while the Mortgage Moratorium Act is applicable to all real estate, whether occupied by the owner of the mortgaged premises as a dwelling or otherwise. However, in the case now before this court the applicants for relief occupied the mortgaged premises as their home and hence were in exactly the same position as were the lessees who were entitled to relief in the measures construed in the so-called Rent Cases. In any event, in the present emergency we see no sound reason for differentiating between real property upon which the mortgagor dwells and other mortgaged real property belonging to him through which he makes his livelihood. Moreover it is impossible to disassociate property in homes from property in other forms.

Take away from the plumber his shop; from the grocer, his store; from the artist, his studio, and you take away that means of livelihood which alone makes it possible for him to keep and maintain his home It follows that in arguing for the validity of this act in its application, not alone to homes, but to all mortgaged property, we are in effect arguing for those things which are the very foundation stones of this commonwealth, the maintenance of the home and the retention of that general distribution of the wealth of this nation without which a general distribution of the ownership of homes cannot continue.

It is certainly true that the state is founded upon the home. It is likewise true that the ownership of the home by the occupant thereof is an important factor in building a sound and stable home and thereby a sound and enduring state. It is likewise true that a general distribution among the people of a fair proportion of the wealth of the nation is one of the prerequisites of a peaceful and happy commonwealth.

The emergency which was found to exist at the time of the passage of the laws in the Rent Cases is simply not comparable with the emergency which now exists in the State of Minnesota The emergency which gave rise to the enactment of these laws grew out of housing conditions existing in the District of Columbia and a few cities in the state of New York shortly after the World War, in a period of prosperity. The present emergency which necessitated the passage of this Mortgage Moratorium Law is based on an economic depression of unparalleled magnitude and severity which exists not only in the State of Minnesota and in the United States but in the whole civilized world.

At the time the Courts held that an emergency existed, which justified the enactment of this housing legislation, there was a job for every man that would work and there

was a living wage paid for the labor performed. Houses were scarce, to be sure, and rents were high, but men were not starving and freezing.

Compare if you will the situation in Minnesota Many of our farmers have lost or are in danger of losing their homes by tax sales or mortgage foreclosures and produce has been bringing a price that will scarcely pay their taxes, and the interest on their mortgages. The home owners of the cities are in no better plight; they cannot find employment; their small reserves are exhausted; the banks that held the savings of many of them are closed and in addition there is the ever present menacing danger of wide-spread rioting and lawlessness by people otherwise peaceful and law-abiding about to be rendered homeless and shelterless.

In the Rent Cases the Supreme Court recognized the principle that emergencies for legislative purposes might arise from economic and business conditions, but it is still claimed by some that an emergency to justify the exercise of the police power must arise from some extraordinary and unexpected catastrophe such as floods, earthquakes and other disturbances of nature.

Justice Olson of the Supreme Court of Minnesota, in his concurring opinion in the case at bar, *Blaisdell* v. *Home Building and Loan Association*, supra, disposes of this contention in the following language:

> "The reason why a flood or an earthquake may create an emergency is not because they are catastrophes of nature, but because of their widespread destruction of the property and homes of thousands of people, causing want and suffering to a great number of people and injury and danger to public welfare. The present nation wide and world wide business and financial crisis has the same results as if it were caused by flood, earthquake, or disturbance in nature It has deprived millions of persons in this nation of their

employment and means of earning a living for themselves and their families; it has destroyed the value of and the income from all property on which thousands of people depended for a living; it actually has resulted in the loss of their homes by a number of our people and threatens to result in the loss of their homes by many other people in this state; it has resulted in such widespread want and suffering among our people that private, state and municipal agencies are unable to adequately relieve the want and suffering, and congress has found it necessary to step in and attempt to remedy the situation by federal aid. Millions of the people's money were and are yet tied up in closed banks and in business enterprises.

To say that economic crises are to be anticipated is no good ground for making any distinction. Floods are recurring events, at least in the Ohio and Mississippi valleys. Earthquakes are recurring events, at least on the Pacific coast.

"The test of an emergency is not the cause thereof but the resulting public want, suffering and danger. The cause, whatever it may be, produces the emergency, but is not itself the emergency. A disease may be caused by a germ, but the germ is not the disease. The disease is the effect on the human body caused by the germ. So the present emergency is not the business and financial crisis, but the widespread loss, suffering and want of a great number of the people of this state, and the impairment of and danger to the public welfare. The situation presented to the legislature was of unprecedented magnitude, duration, and disastrous effect on the people. Prior economic disturbances in this state were of comparatively minor importance. Prior to 1880 we had comparatively few people affected by such crises. There was no widespread loss of employment or of homes. There were great unused natural resources and great opportunities for people to start anew and regain their losses. It is not so today. Such crises since that date, up to the present, have been of comparatively short duration,

> and not very widespread or serious. Much more could be said on the subject, but I believe what has already been stated is entirely sufficient to show that the legislature was confronted with a vital crisis, and was justified, if not required, in enacting any needed laws to relieve the situation under its police powers, and for the public welfare of the state." (R. 31, 32.)

Concluding and summarizing our argument with reference to the Rent cases, we submit that the statutes which were construed in those cases are fundamentally the same as the Mortgage Moratorium Act that the emergency which brought about the enactment of the laws which were upheld in those cases was insignificant as compared to the emergency which necessitated the passage of the Mortgage Moratorium Law, and that the basic legal principles upon which the courts decided those cases are controlling in the case at bar. We quote the following applicable statement made by Justice Holt in the majority opinion of the Minnesota Supreme Court in the case at bar, *Blaisdell* v *Home Building and Loan Association,* supra, comparing the statutes con strued in the Rent Cases and the Mortgage Moratorium Law:

> "To us it appears about as much of public concern whether numerous owners of homes and lands—providing the necessary shelter and means of livelihood—must lose them because a temporary unforeseen economic depression prevents a redemption within the time the law or contract permits, as that certain tenants who are in possession shall remain in spite of the terms of the lease because of the temporary scarcity of available quarters. * * * the courts found the emergency and its relief one of sufficient public interest to permit the police power of the state to impair the obligation of contracts. It appears to us that the economic emergency which now threatens the loss of homes and lands which furnish those in possession the

necessary shelter and means of subsistence is an equally potent cause for the enactment of chapter 339, L. 1933, under the police power of the state, that the housing emergency was in Washington and New York, which the Supreme Court of the United States deemed sufficient for the enactment of the relief statutes for those cities. We have not overlooked the fact that Mr. Justice Holmes, who spoke for the majority in *Block* v. *Hirsh* and *Marcus Brown Co.* v. *Feldman,* supra, in *Pennsylvania Coal Co.* v. *Mahon,* 260 U. S. 393, said that the cases mentioned went 'to the verge' of what was permissible under the constitutional limitations. However, to us no more of public health or public welfare seems involved in the extension of the tenancy to certain tenants then in possession of shelter than in the extension of the occupation of homes, shelter, or means of subsistence to mortgagors and judgment debtors in possession. That the courts may doubt the wisdom of the law is no ground upon which to declare it invalid. It is to be presumed constitutional until the contrary appears beyond a reasonable doubt. *Dunnell,* Minn. Dig Sections 1605 and 8931." (R. 26.)

**Recent Emergency Legislation Which Has Been Upheld as Constitutional**

In the case of *Thompson* v. *Auditor General,* 247 N. W. 360, which was decided in March, 1933, the Supreme Court of Michigan held unconstitutional a state law postponing the sale of lands for taxes in anticipation of the payment of which money had been advanced and notes issued, which were to be retired from the taxes when collected.

A few days later the court reversed itself and filed a supplemental opinion as follows·

"The legislative acts considered in this case contain no declaration that an emergency exists which requires special and temporary legislation under the police

> powers of the State. The decision filed is upon the law unaffected by emergency police powers. It now having been shown to the court that the legislative acts considered were in effect intended to be temporary and emergency legislation under the police power of the state, and in view of the fact that an emergency exists and it appearing that other legislation is contemplated to meet the crisis, we desire to make it clear that the decision in this case is not to be taken as determinative of the exercise of the police power by the legislature. In these circumstances, the writ of mandamus being discretionary we have decided that it should not issue."

This supplementary opinion is not given in the printed reports of the case, but is referred to in a note. The foregoing is taken from a certified copy of the supplemental opinion which was furnished by the clerk of the Supreme Court of Michigan.

In the case of *Zimmerman, Conservator,* etc et al. S C. ex rel. v. *Gibbes,* etc., et al. the Supreme Court of the State of South Carolina, on May 11, 1933, held that the South Carolina Emergency Banking Act of 1933 giving the governor of the State plenary powers to supervise and control banks and prohibiting the institution of legal proceedings against banks without the governor's written approval is not unconstitutional on the ground that it deprives the depositors of an insolvent bank, precluded thereby from instituting court proceedings for the appointment of a receiver and the liquidation of the bank's assets, of their property without due process of law; or on the ground that it prevents their collection of the stockholders' liability guaranteed to them by the constitution; or on the ground that it denies them the right of a speedy remedy in the courts for the redress of a wrong.

The court further held that the act is a valid exercise of

the police power for the common good and the general welfare in view of the serious conditions prevailing in banking circles prior to and at the time of the passage of the act. (So far as we have been able to discover the foregoing South Carolina case has not been published in the reports )

In the case of *The People of the State of New York* v. *Leo Nebbia* (1933), 186 N. E. 694, the Court of Appeals of New York held that a New York statute (Laws 1933, ch. 158) which creates a Milk Control Board and directs the Board until March 31, 1934, to fix the minimum wholesale and retail prices for milk handled within the State for fluid consumption and authorizes it, if it sees fit, to fix the maximum prices, and which empowers the Board to exclude from the milk business any person who violates the statute or any order of the Board, is not, in so far as it provides for the fixing of minimum prices for milk, unconstitutional on the ground that it abridges the property rights of and interferes with the freedom of contract of milk dealers in violation of the due process clauses of the State and Federal constitutions. Because the statute was enacted as a temporary measure to meet an existing emergency and declares that during such emergency the milk business is affected with the public health and interest it was held that the statute constituted a valid exercise of the police power to promote the public welfare during such an emergency, the Act providing for a price which will yield a 'reasonable return' to the producer and the milk dealer

In this case the court said·

> "Doubtless the statute before us would be condemned by an earlier generation as a temerarious interference with the rights of property and contract (*Matter of Jacobs,* 98 N. Y. 98, 50 Am. Rep. 636; *Lochner* v. *New York,* 198 U. S. 45, 25 S. Ct. 539,

49 L. Ed. 937, 3 Ann. Cas. 1133); with the natural law of supply and demand. But we must not fail to consider that the police power is the least limitable of the powers of government and that it extends to all the great public needs; that constitutional law is a progressive science; that statutes aiming to establish a standard of social justice, to conform the law to the accepted standards of the community, to stimulate the production of a vital food product by fixing living standards of prices for the producer, are to be interpreted with that degree of liberality which is essential to the attainment of the end in view (*Austin* v. *City of New York,* supra, page 117 of 258 N. Y., 179 N. E. 313); and that mere novelty is no objection to legislation (*People ex rel. Durham Realty Corp.* v. *La Fetra,* 230 N. Y. 429, 130 N. E. 601, 16 A. L. R. 152).

"The state courts should uphold state regulation whenever possible. They should be clearly convinced that a statute is unconstitutional before they declare it invalid. *Cf. Ives* v. *South Buffalo Ry. Co.,* 201 N. Y. 271, 91 N. E. 431, 34 L. R. A. (N. S.) 162, Ann. Cas 1912B, 156, with *Arizona Employers' Liability Cases,* supra; also cf. *People ex rel. Rodgers* v. *Coler,* 166 N. Y. 1, 59 N. E. 716, 52 L. R. A. 814, 82 Am. St. Rep. 605, with *Atkin* v. *Kansas,* supra.

"With full respect for the Constitution as an efficient frame of government in peace and war, under normal conditions or in emergencies, with cheerful submission to the rule of the Supreme Court that legislative authority to abridge property rights and freedom of contract can be justified only by exceptional circumstances and, even then, by reasonable regulation only, and that legislative conclusions based on findings of fact are subject to judicial review, we do not feel compelled to hold that the 'due process' clause of the Constitution has left milk producers unprotected from oppression and to place the stamp of invalidity on the measure before us.

"With the wisdom of the legislation we have naught to do. It may be vain to hope by laws to oppose the

> general course of trade. The English Parliament, unhampered by the limitations of a written constitution, adopted statutes which directly fixed or empowered certain persons to fix, the prices of wine and coal. (6 Holdsworth's History of English Law, p. 346.) Yet it is said that: 'The growth of the capitalistic organization of all branches of industry will strengthen the tendency to allow prices to be determined by relation to supply and demand.' *Holdsworth,* supra.
>
> "We are unable to say that the Legislature is lacking in power, not only to regulate and encourage the production of milk, but also, when conditions require, to regulate the prices to be paid for it, so that a fair return may be obtained by the producer and a vital industry preserved from destruction. *Hamilton, 'Affectation with Public Interest,'* 39 *Yale Law Journal,* 1089-1101. The policy of noninterference with individual freedom must at times give way to the policy of compulsion for the general welfare."

This case is before this court for review and the argument here has been set for December 4th next.

In the case of *Southport Petroleum Co.* v. *Ickes* (Equity No. 56024), the Supreme Court of the District of Columbia, in refusing to enjoin Secretary Ickes from exercising powers derived from the President under the National Industrial Recovery Act, declared that "necessity confers many rights and privileges which otherwise would not exist," and added that, while the course of the Constitution is not set aside in such circumstances, yet its construction must be in the light of and to some extent subject to the primal and fundamental concept of the necessity for self-preservation. The court forcefully pointed out that where, after a legislative declaration of the national emergency, Congress conferred authority upon the Executive to meet the crisis, "every presumption is in favor of the validity of the authority so granted * * * The court will not lightly exercise its power

in any way to complicate the problem of the legislative and executive departments in the present emergency."

In the case of *State ex rel. Lichtscheidl* v. *Moeller, Sheriff,* .... Minn. ....., 249 N. W. 330, which was decided on July 7, 1933, the Supreme Court of the State of Minnesota held that a statute authorizing sheriffs to adjourn mortgage foreclosure sales for not to exceed ninety days was a valid emergency measure enacted under the police power, the exercise of which was justified by existing critical and financial crisis, there being no showing that the statute substantially obstructed or retarded enforcement or diminished value of mortgage contracts. On page 333 the court said:

> "The Legislature, coming from all parts of the state, at the time it passed chapter 44, Laws 1933, had full knowledge of the critical situation then existing and deemed it necessary to enact the law as an emergency measure, under the police power, to temporarily protect owners of property and homes, and for the public welfare and protection."

In the case of *State of Oklahoma, ex rel. Edward K. Roth,* as Trustee for *Ray R. Roth* v. *E. A. Waterfield,* Court Clerk, No. 24650, which was decided on October 17, 1933, the Supreme Court of the State of Oklahoma held constitutional those parts of a mortgage moratorium law which vested in the trial courts a judicial discretion to grant continuances of mortgage foreclosure actions in proper cases upon conditions protecting the rights of the mortgagees and providing compensation for delays thus afforded, and held unconstitutional those parts of the statute which arbitrarily delay mortgage foreclosure proceedings without making provisions for compensating mortgagees and without providing for the protection of the rights of the mortgagees.

In this case, which was brought subsequent to the passage

of the moratorium act to foreclose a mortgage on real estate executed prior to that time, the plaintiff applied for a writ of mandamus to compel the defendant, as clerk of court, to issue a summons requiring defendant to answer twenty days after the return date. The clerk claimed that under the mortgage moratorium act the time allowed to answer should be nine months instead of twenty days. Under the laws of Oklahoma, which were in force and effect at the time of the passage of the moratorium law and the execution of the mortgage, a defendant in an action brought to foreclose a mortgage or other lien upon real estate had twenty days in which to answer. Section 1 of the mortgage moratorium law provides that in all actions to foreclose mortgages or other liens on real estate which had been commenced prior to the passage of the act, and in which no answer had been interposed, the defendant should not be held to answer until the expiration of nine months after date of the service of the summons on the defendant who is the record owner of the mortgaged real estate, and in all such suits commenced after the passage of the law the defendants were allowed nine months after the date of the service of the summons on the defendant who is the record owner of the mortgaged premises, within which to answer. Section 1 of the law also provides that in all actions pending at the time of the passage of the law where the answers had been filed but trials had not been had, no court should render judgment therein until the expiration of nine months after the passage and approval of the law. Sections 2 and 3 of the act provide as follows:

> "Section 2. For a period of two (2) years from and after the approval of this Act, the District Judge, or the Judge of the Superior Court of the County in which any real estate mortgage foreclosure of a deed of trust, or other instrument, the security of which is

real estate, is hereby vested with the jurisdiction and discretion of granting a continuance of said cause, upon his own motion, or upon application of the owner of said property, in person, or by his attorney, and upon such terms and for such times as said Judge may deem best.

"Section 3. The Judge of said Court shall continue said cause for such time as he may deem best, or when it may be made to appear to the court that:

(First), the owner shall pay, at any time before confirmation of sale, the accruing interest and all taxes due upon said property; or:

(Second), At any time before confirmation of sale, where the said owner shall pay or cause to be secured, a reasonable rental for the time or term which said Judge shall order said cause to be continued; or:

(Third), At any time before confirmation of sale, where it shall appear that the value of the property is sufficient to satisfy the lien, together with the cost, and the owner shall pay or otherwise secure the taxes due upon said land."

Section 7 of the act provided that it should remain in force for a period of two years from and after the date of its approval. Section 8 of the act provided that the provisions of the act should be severable and if any clause, sentence, paragraph or section thereof was held void the decision of the court should not affect or impair any of the remaining parts of the act Section 9 of the act declared the existence of an emergency

In discussing the authority of the legislature to pass a law altering the terms of the contract, including the laws which the court construed to be a part thereof, the court said:

> "* * * changes in the obligations of contracts may be made when made as a proper exercise of the police power, not because constitutions may be suspended by police power but because the right to legislate in the exercise of that power is a part of the existing law of the state at the time of the execution of the contract, and as such enters into the terms and provisions of the contract in the same manner that statutes prescribing procedure becomes a part of the contract.
>
> "It may be said that all property rights including contracts are subject to the proper exercise of the police power, and in that respect it is often said that individual rights to property being subject to the exercise of this power are qualified as distinguished from absolute.
>
> "Having arrived at this conclusion the question of the constitutionality in so far as it relates to the clauses concerning the obligation of contracts now presents the narrower question. Is the subject matter of the act in question within the proper field of the police power?"

As to whether the emergency upon which the act was based was sufficient to authorize the legislature to invoke the police power of the state, the court said:

> "In view of the gravity of the economic situation and its effect in preventing mortgagors meeting the full amount of the mortgage indebtedness on the due date thereof and its further effect in destroying competitive bidding at foreclosure sales and in view of the eminence of the authority which has approved such legislation we have concluded that the situation is such as to warrant a temporary interference with contract rights through the enactment under the police power of appropriate legislation that does not violate constitutional provisions and in which proper provision

> is made for the protection of the rights of the mortgagee during the period of the delay."

The court reached the conclusion that Section 1 was invalid for the reason that it arbitrarily delays mortgage foreclosure actions without adequate provision for protection of the rights of the mortgagee during the period of delay.

The court further held that the remainder of the law was constitutional as a fair and reasonable exercise of the police power of the state when interpreted to vest in the district court the power to exercise judicial discretion in granting continuances on account of existing economic conditions in that class of cases only when (1) the owner shall pay at any time before confirmation of sale, the accruing interest and all taxes due upon said property; (2) before confirmation of sale when the owner shall pay or cause to be secured a reasonable rental value for the time or term which said judge shall order said cause to be continued; (3) where before confirmation, it shall appear that the value of the property is sufficient to satisfy the lien and costs of foreclosure, and the owner shall pay or otherwise secure taxes due upon said lands; or (4) when the district court in the exercise of sound judicial discretion shall make such other requirements as will reasonably compensate and adequately protect the mortgagee during the period of delay

Relating to the applicability of this law to all real estate the court said

> "It should be mentioned, however, that though the emergency which justifies a portion of the act is more apparent in the case of homesteads than other property, the application of the act is not and need not be strictly confined to homesteads."

In the case of *State* v. *Circuit Court,* .... S. D. ...., 249 N. W. 631, decided July 7, 1933, the Supreme Court of South

Dakota sustained the validity of a law passed in 1933 under which a proceeding to foreclose a mortgage by advertisement might, at the option of the mortgagor, be changed to a proceeding to foreclose by action. In this case the court held that a clause in a mortgage authorizing the mortgagee to foreclose the mortgage by action or advertisement, as by statute in such case made and provided, related to the remedy in force at the time of the foreclosure, but said:

> "We * * * think it doubtful even had the parties not contracted with reference to the manner of the execution of the power of sale, that any substantial right of the mortgagee has been interfered with by this act of 1933. So long as there remains sufficient remedy on the contract which secures all the substantial rights of the parties, an act of the Legislature changing the remedy does not impair the obligation of the contract."

**Recent Emergency Legislation Held Unconstitutional**

In the case of *State ex rel. Cleveringa* v. *Klein,* .... N. D . ... 249 N. W 118, decided on June 12, 1933, the Supreme Court of the State of North Dakota held a mortgage moratorium statute passed by the legislature of North Dakota to be unconstitutional. By the terms of this law the period within which a mortgagor or judgment debtor might redeem from a foreclosure or execution sale of real estate made after the passage and approval of the act, was extended from one year to two years from the date of sale, and the period within which a mortgagor or judgment debtor might redeem from a mortgage foreclosure or execution sale of real estate but for which deed had not been issued, was extended for a period of two years from the date of the passage and approval of the act.

The act declared that the law was an emergency measure, contained a statement of conditions which constituted an

emergency, and provided that it should be in force and effect only for two years from and after its passage and approval.

It will be noted that this North Dakota law is similar in its terms to that part of the Oklahoma moratorium law which was declared unconstitutional in that it arbitrarily extended the time of redemption and made no provision for the compensation of mortgagees or for the protection of their rights.

This North Dakota decision is referred to in the decision of the Minnesota Supreme Court in the case at bar, and also in the decision of the Oklahoma Supreme Court which is above referred to.

**When Emergency Legislation Ceases to be Operative**

The fears expressed in appellant's brief that the next legislature or succeeding legislatures will extend and continue to extend the time for operation of the mortgage moratorium act are groundless. The minute the emergency ceases to exist then the legislature has no power to extend the time for operation of the act or provide for additional similar emergency legislation. In fact, should the emergency cease to exist before the expiration of the time of operation provided for in the act, the act would immediately become void and inoperative The validity of this mortgage moratorium act at all times depends wholly upon the continued existence of the emergency.

The Supreme Court of the United States in the case of *Chastleton Corporation* v. *Sinclair* (1924), 264 U S. 543, after the emergency had passed, for which a remedy was provided by the measure construed in *Block* v. *Hirsh*, above referred to, again made clear that such an act should be upheld only as an emergency measure. For this reason, the court refused to sustain the validity of the law as extended,

because the emergency no longer existed, declaring that a law depending upon the existence of an emergency, or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed. (P. 547).

**Power of Legislature to Determine Existence of Emergency**

The police power of the state is vested in the legislature. It is the legislature's duty and responsibility to determine when the emergency exists and how it will be met. When they have made this determination and passed a law to cope with the emergency, the courts should not set aside that law unless it has no real or substantial relation to the emergency. The following authorities are applicable:

The Supreme Court of the United States in the case of *Mugler* v. *Kansas* (1887), 123 U. S. 623, in upholding the constitutionality of the prohibition law of Kansas declared that:

> "If * * * a state deems the absolute prohibition of the manufacture and sale, within her limits, of intoxicating liquors for other than medical, scientific, and manufacturing purposes, to be necessary to the peace and security of society, the courts cannot, without usurping legislative functions, override the will of the people as thus expressed by their chosen representatives. They have nothing to do with the mere policy of legislation. * * * Indeed, it is a fundamental principle in our institutions, indispensable to the preservation of public liberty, that one of the separate departments of government shall not usurp powers committed by the Constitution to another department. * * * It is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question." (P. 662.)

In the case of *Atkin* v. *Kansas* (1903) 191 U. S. 207 at page 223, the court said:

> "We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizen against merely arbitrary power. That is unquestionably true. But it is equally true—indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the Constitution."

In the case of *Jacobson* v. *Massachusetts* (1905), 197 U. S. 11, 31, the Supreme Court of the United States declared:

> "If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

In the case of *People* v. *LaFetra,* 230 N. Y. 429, 440, 130 N. E. 601, in determining whether the legislature of New York had the power to enact the housing legislation hereinbefore referred to, the court said:

> "Whether or not a public emergency existed was a question of fact, debated and debatable, which addressed itself primarily to the Legislature. That it existed, promised not to be presently self-curative, and called for action, appeared from public documents and

> from common knowledge and observation. If the law-making power on such evidence has determined the existence of the emergency and has, in the main, dealt with it in a manner permitted by the constitutional limitations upon legislative power, so far as the same affect the class of landlords now challenging the statutes, the legislation should be upheld. How it may operate on other classes or individuals not before the court is not our present concern."

In the case of *Guttag* v. *Shatzkin,* supra, the New York of Appeals, commenting upon the power of the New York legislature to pass the housing acts which are hereinbefore referred to, said·

> "The only question here is one of fact, not one of law; Do the facts call into existence the power reserved to the states to legislate for the safety and health of the people. Within its sphere the police power of the states is not unlike the war power of the nation. Both are rules of necessity, impliedly or expressly existing in every form of government; the one to preserve the health and morals of a community; the other to preserve sovereignty."

The legislature of the State of Minnesota without a single dissenting vote found that an emergency existed which called for the passage of the Mortgage Moratorium Act. The fact that the members of that great legislative body, entertaining widely different economic and political views, and coming from every walk of life and from every part of the state of Minnesota, all arrived at the same conclusion and joined in declaring that an emergency existed in the state, and that it was necessary to invoke the police power to cope with that emergency, is convincing evidence of the seriousness of the emergency, the necessity for the passage of the law, and of the fairness and reasonableness of the measure enacted.

**Practical Construction Recently Placed on Emergency Powers**

To show the practical construction that legislative bodies and executives have been placing upon their powers to act in emergencies which have recently arisen out of the depression, we call attention of the court to the recent mortgage foreclosure moratorium laws passed by the legislature of the states of Iowa, Wisconsin, North Dakota and Oklahoma; to the executive orders of the Governors of Minnesota and North Dakota, imposing moratoriums on mortgage foreclosures; to recent executive orders and legislative acts closing all the banks in practically every state in the Union; and finally to the proclamation by the President closing every bank in the United States. We also call the court's attention to the moratoriums on insurance loans imposed by legislative enactments, and by order of insurance commissioners, moratoriums which affected practically every insurance company in the United States.

We also call attention to the acts of Congress declaring invalid all provisions in contracts in so far as payment is required to be made in gold, and to the National Industrial Recovery Act by which Congress virtually placed commerce and industry under the supervision and control of the United States Government These moratoriums and other similar measures all interfered with contract rights. In practically every case the interference with contract rights was considerably more sweeping and far-reaching than is the interference with contract rights under the provisions of the Minnesota Mortgage Moratorium Law.

**Powers of Courts of Equity to Cope With Emergency Conditions**

Courts of equity have always possessed jurisdiction to relieve against penalties and forfeitures which necessarily

abridged the contractual and property rights of one of the parties under the strict wording of their contract.

In the present economic crisis the courts have not hesitated to extend and use equitable powers to cope with emergency situations. By means of these equitable powers in many instances they have interfered with contract rights when it was necessary to take such action in the interests of public safety and the general welfare of the people.

In the outstanding case of *Suring State Bank* v. *Giese,* 246, N. W. 556 (Feb. 6, 1933), although there was no statute in Wisconsin which authorized the court to refuse to confirm a foreclosure sale at an entirely inadequate price, yet invoking its equitable powers, the court rose to the occasion and did refuse to confirm the sale, declaring:

> "The court takes judicial notice of the fact that the present economic depression has not merely resulted in a serious dislocation of the value of real estate, but also in the almost complete absence of a market for real estate. As a consequence there is no cash bidding at sales upon foreclosure In normal times competitive bidding is the circumstance that furnishes reasonable protection to the mortgagor, and avoids the sacrifice of the property at a grossly inadequate sale price. In the present situation the device of a judicial sale largely fails of its intended purpose because of the lack of competitive bidding, and the question arises whether a court of equity is wholly impotent to rise to the needs of justice and see that the parties are fairly and properly protected. This is not a situation in which ordinary logic with respect to values has much vitality. In theory, a thing that cannot be sold has no value, and so with a parcel of real estate that is offered for sale at foreclosure. It may be argued that it is worth what purchasers will pay for it, and no more, and that if the only price offered constitutes but a negligible part of its theretofore assumed value, it nevertheless represents the value of the real estate

at that time. Such a conclusion is shocking to the conscience of the court, or, as the old equity courts said, to the conscience of the chancellor, and to all notions of justice as applied to this situation. Certainly the land has value so long as it or the buildings upon it may be used, and certainly in the case of farm lands, which constitute the homes of farmers, the premises have value in the sense of usefulness, however difficult it may be to translate this value into terms of dollars. Furthermore, this real estate, which is suffering from the consequences of a period of readjustment through which we are passing has potential or future value which may legitimately be taken into account. Its value in terms of dollars has been affected by a general condition. No one piece of land has depreciated in value; it has all depreciated. It has all suffered from the lack of demand on the part of the buyers. Under these circumstances it is within the power of a court of equity, without the aid of statute, to take one or all of three steps for the protection of the parties and the promotion of a fair solution of the difficulties. What is said here is said in the light of the present emergency, and because of the present inadequacy of a judicial sale to establish a fair value for the security." (P. 557.)

In the case of *First Union Trust Savings Bank* v *Division State Bank,* et al., decided by Judge Harry M Fisher of the Cook County Circuit Court on April 1, 1933, the judge in the language of the "American Bar Association Journal" (May, 1933):

"After carefully reviewing the ruinous course of foreclosures and after taking judicial notice of the seriousness of the emergency, reached a result that, as far as the writer knows, is by all odds the most significant and far-reaching in beneficent effect yet reached by any court. He held (1) that no receiver be appointed; (2) that the mortgagor be allowed to remain

> in possession of the property subject to the same duties as a receiver and subject also to the same penalties for contempt; (3) that the complaint should not proceed with the foreclosure until the further order of the court, but that jurisdiction of the case should be retained and the complainant be given the right to proceed with foreclosure upon a showing that economic conditions have so changed as to justify such a course."

Further commenting upon the decision, the "American Bar Association Journal" says that the decision preserves the interest of both the mortgagor and the mortgagee.

In the very recent case of *Harry Kresner, Inc.* v. *Fuchs,* (Mar. 1933), 262 N. Y S. 669, the court held that—

> "As respects the claimed right to accelerate the maturity of whole principal on default in interest of which mortgagee tendered payment, that in times of financial depression courts do not favor oppressive acts on the part of mortgagees though claimed to be founded on legal rights."

In the case of *New Jersey National Bank & Trust Company* v. *Lincoln Mortgage Tile & Guaranty Company,* 105 N. J. Eq. 557, decided in 1930, the court directed the trustee of a mortgage not to declare default and bring foreclosure in view of the emergency.

## POINT C

**The Minnesota Mortgage Moratorium Law does not violate the equal protection clause contained in the Fourteenth Amendment to the Constitution of the United States.**

It is claimed by the appellant that the act discriminates against creditors holding real estate security and against

debtors whose indebtedness is not secured by mortgages on real estate; that it discriminates against those who hold mortgages executed prior to the passage of the act to which the act by its term is applicable, and in favor of persons whose mortgage was executed subsequent to the passage of the act, to which the act by its terms is not applicable, and that the act grants special privileges to the state and to the United States in that it provides that its provisions shall not apply to mortgages held by the United States as security or pledge, and to mortgages held as security or pledge to secure the payment of a public debt or to secure the payment of public funds. With respect to the complaint that the act exempts mortgages held by the state and United States as aforesaid, it seems to us that it was not necessary to make the specific exemption in the statute inasmuch as the mortgagors in such mortgages could not in any event have availed themselves of the remedies provided for in the act as against the state or the United States as the commencement of proceedings to avail themselves of the remedies afforded would amount to bringing suit.

The claim of appellant appears to be that because of these alleged discriminations the act violates the equal protection clause of the constitution of the United States. It is our contention that this act does not make any unjust discriminations which would result in a violation of the said equal protection clause. Under the rules laid down by the United States Supreme Court the power of the state to classify for the purposes of legislation are very broad.

This question was before the Supreme Court of the United States in *Magoun* v. *Illinois Trust & Savings Bank* (1898), 170 United States 283. That case arose from a law of the State of Illinois imposing a graduated tax upon gifts and inheritances, graduated according to amount and according to the relationship of the beneficiary to the testator or intes-

tate. The court found this classification permissible. The limitations imposed by the Fourteenth Amendment were expounded by the court as follows·

> "Is the act open to this criticism? The clause of the Fourteenth Amendment especially invoked is that which prohibits a State denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances.' *Kentucky Railroad Tax Cases,* 115 U. S. 321, 337. It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. *Hayes* v. *Missouri,* 120 U. S. 68.
>
> "But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the State a wide latitude as far as interference by this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in *Mobile County* v *Kimball,* 102 U. S. 691, that this Court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of state laws is not neces-

sarily an objection to their constitutional validity!'' (P. 293.)

In *Quong Wing* v. *Kirkendall* (1912), 223 U S 59, the question before the court was the discrimination in a state law in the matter of taxation, against the hand laundry and in favor of the steam laundry, and also a discrimination against men and in favor of women. The court held the act constitutional. It said:

> ''A State does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry. Like the United States, although with more restriction and in less degree, a State may carry out a policy, even a policy with which we might disagree. *McLean* v. *Arkansas,* 211 U S 539, 547. *Armour Packing Co.* v. *Lacy,* 200 U. S. 226, 235. *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, 562. It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, as was illustrated in *American Sugar Refining Co.* v. *Louisiana,* 179 U. S. 89, 92, 95; *Williams* v. *Fears,* 179 U. S. 270, 276; *W. W. Cargill Co.* v. *Minnesota,* 180 U. S. 452, 469. It may favor or discourage the liquor traffic, or trusts. The criminal law is a whole body of policy on which States may and do differ. If the State sees fit to encourage steam laundries and discourage hand laundries that is its own affair. And if again it finds a ground of distinction in sex, that is not without precedent. It has been recognized with regard to hours of work. *Muller* v. *Oregon,* 208 U. S. 412. It is recognized in the respective rights of husband and wife in land during life, in the inheritance after the death of the spouse. Often it is expressed in the time fixed for coming of age. If Montana deems it advisable to put a lighter burden upon women than upon men with regard to an employment that our people commonly regard as more appropriate

> for the former, the Fourteenth Amendment does not interfere by creating a fictitious equality where there is a real differencee. The particular points at which that difference shall be emphasized by legislation are largely in the power of the State." (P. 62.)

The Supreme Court again considered this question in *Missouri, Kansas and Texas Railway Company* v. *May* (1904), 194 U. S. 267. A legislative act of the State of Texas required all railway companies to keep their right of way clear of noxious weeds but imposed no corresponding mandate on other owners of land. The court considered the question whether the act was in violation of the Fourteenth Amendment. It announced its opinion in these words:

> "It is admitted that Johnson grass is a menace to crops, that it is propagated only by seed, and that a general regulation of it for the protection of farming would be valid. It is admitted also that legislation may be directed against a class when any fair ground for the discrimination exists. But it is said that this particular subjection of railroad companies to a liability not imposed on other owners of land on which Johnson grass may grow, is so arbitrary as to amount to a denial of the equal protection of the laws. There is no dispute about general principles. The question is whether this case lies on one side or the other of a line which has to be worked out between cases differing only in degree. With regard to the manner in which such a question should be approached, it is obvious that the legislature is the only judge of the policy of a proposed discrimination. The principle is similar to that which is established with regard to a decision of Congress that certain means are necessary and proper to carry out one of its express powers. *McCulloch* v. *Maryland,* 4 Wheat. 316. When a state legislature has declared that in its opinion policy requires a certain measure, its actions should not be disturbed by the courts under the Fourteenth Amendment,

> unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched.
>
> Approaching the question in this way we feel unable to say that the law before us may not have been justified by local conditions." (P. 269.)

In the case of *Patsone* v. *Commonwealth of Pennsylvania* (1914), 232 U. S. 138, the facts were as follows: Defendant was an unnaturalized foreign born resident of Pennsylvania and was charged with having in his possession a shotgun in violation of a state law. This law made it unlawful for such a person to kill any wild bird or other animal except in defense of person or property and likewise unlawful for him to own or be possessed of a shotgun. Defendent was convicted. On successive appeals, the matter reached the Supreme Court. In upholding the validity of the Pennsylvania law the Supreme Court remarked:

> "But we start with the general consideration that a State may classify with reference to the evil to be presented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 80, 81. The State 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.' *Central Lumber Co.* v. *South Dakota,* 226 U. S. 157, 160. *Rosenthal* v. *New York,*

> 226 U. S. 260, 270. *L'Hote* v. *New Orleans,* 177 U. S. 587. See further *Louisville & Nashville R. R. Co.* v. *Melton,* 218 U. S. 36. The question therefore narrows itself to whether this court can say that the Legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. *Barrett* v. *Indiana,* 229 U. S. 26, 29." (P. 144.)

In the case of *Miller* v. *Wilson* (1915), 236 U. S. 373, at page 384, the court said:

> "It (the legislature) is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously, step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all-embracing terms.' *Carrol* v *Greenwich Ins. Co.,* 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied."

In the case of *Marcus Brown Holding Co.* v. *Feldman* (1921) supra, answering the contention that the New York so-called "housing acts" violated the equal protection law of the Fourteenth Amendment of the Constitution of the United States, the court said:

> "It is said too that the laws are discriminating, in respect of the cities affected and the character of the buildings, the laws not extending to buildings occupied for business purposes, hotel property or buildings now in course of erection, etc. But as the evil to be met was a very pressing want of shelter in certain crowded centers the classification was too obviously justified to need explanation, beyond repeating what was said

> below as to new buildings, that the unknown cost of completing them and the need to encourage such structures sufficiently explain the last item on the excepted list." (P. 198.)

We believe that an examination of these cases will impress upon this court the correctness of the following summary statement of the views of the Supreme Court of the United States with reference to the use of classification on state legislation. If an act is intended to subserve some purpose of public policy; if the classification adopted to attain that purpose is reasonable and not purely arbitrary; if the act applies impartially to all the individuals within the same class, this court will sustain it. Moreover, this court will not inquire into the wisdom of the classification or hold the act invalid because it may be possible to point out other groups of individuals who might have been included within its classification, and were not so included.

## POINT D

**The provisions of the Minnesota Mortgage Moratorium Law are severable, and for that reason the court is not called upon to determine the constitutionality of those parts of that law which have no bearing on the case at bar, and moot questions arising out of provisions of that law which have no bearing on the case at bar are not properly before the court.**

While we believe that the act involved in this case is constitutional in all respects, it is our contention that questions concerning the constitutionality of other parts of this act which have no bearing upon the relief granted should not be considered because the provisions of the act are severable. It appears from a reading of the whole act that the relief asked for and received by the appellees is the

principal relief provided for by the act and that the provisions of the act relating to the granting of this relief can be easily separated from the rest of the act, and in themselves constitute a complete statute. That the legislature did not intend that the act should be considered as a whole in determining its constitutionality, but intended that its parts should be severable, is apparent from Section 9 of Part 1 of said Chapter 339, which reads as follows:

> "Sec. 9. The provisions of this Act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this Act."

Relating to the power of the court to sustain provisions of the act as constitutional even though a part thereof is unconstitutional, the following rule is laid down in Black on Constitutional Law (4th Ed.) on page 75:

> "The rule is that if the invalid portions can be separated from the rest, and if, after their excision, there remains a complete, intelligible, and valid statute, capable of being executed, and conforming to the general purpose and intent of the legislature, as shown in the act, it will not be adjudged unconstitutional in toto but sustained to that extent."

In *Hill* v. *Wallace* (1922), 259 U. S. 44, 71, in commenting upon a provision similar to the provision contained in Section 9 of the Mortgage Moratorium Act, which is quoted above, the court said:

> "Undoubtedly such a provision furnishes assurance to courts that they may properly sustain separate sections or provisions of a partly invalid act without hesitation or doubt as to whether they would have been

adopted, even if the legislature had been advised of the invalidity of part."

In Dorchy v. Kansas (1924), 264 U S. 286, 290, 291, the court construing a provision similar to the provision contained in Section 9, which is hereinbefore quoted, said that such a provision provides a rule of construction which may sometimes aid in determining the legislative intent, but that it is an aid merely not an inexorable demand and that in cases coming from the state courts, the United States Supreme Court, in the absence of a controlling state decision, may, in passing upon the claim under the federal law, decide, also, the question of severability.

The appellant's brief raises and discusses a number of questions which are in no way related to the provisions of the act under which the appellees secured relief, hence it is our contention that these questions are moot in so far as this case is concerned. Chief among these moot questions which are discussed in appellant's brief are the following: the right to have a proceeding to foreclose a mortgage by advertisement changed to a proceeding to foreclose by action; the arbitrary extension of the period of redemption from a mortgage foreclosure sale for a period of thirty days after the passage aand approval of the act; the prohibition of the bringing of suits for deficiency judgments until after the expiration of the time for redemption; the extension of the time allowed by law for redemption from execution sales upon judgments recovered on notes secured by mortgages; and, the extension of the time allowed by law from execution sales and sales in proceedings where mortgages are foreclosed by action.

The only questions before the court in this case are the questions which arise out of that part of the act under which the appellees secured the extension of the time of re-

demption. No other parts of the law affect the rights of the appellant

## POINT E

**The Minnesota Mortgage Moratorium Law is just, fair and reasonable and benefits both the mortgagor and the mortgagee, and does no more than vest in the courts equitable powers to cope with emergency conditions.**

Until the passage of the Minnesota Mortgage Moratorium Law, the courts of the state of Minnesota were practically powerless to give equitable relief to the owners of mortgaged premises because nearly all of the mortgages were foreclosed by advertisement. By the provisions of this act the courts have been given the power to render equitable relief to mortgagors where foreclosures are had by advertisement as well as where they are had by action. There is no provision in the act which gives the owner of the mortgaged premises any absolute rights, but all the remedies which the owner can get under this act he can secure only with the approval of the court. The court in every instance where relief is asked for is empowered by the terms of the act to deny the relief in cases where it would be inequitable to grant it. This act in effect does nothing more than give to the court in Minnesota equitable powers in foreclosure proceedings analogous to the powers which courts of other states during the present depression have found it necessary to assume without direct legal sanction. Thus the legislature by passing this law, for a limited period, has invoked the police power to assist the court in extending their equitable jurisdiction to all mortgage foreclosures.

As an emergency measure the Mortgage Moratorium Act

is an extremely conservative law. It aims to protect the mortgagee as well as the mortgagor. It does not wipe out the mortgagee's security or impair that security. It merely gives the court the power, in cases where it is equitable, to postpone for a limited time, the mortgagee's right to realize on his security by requiring reasonable payments to be made. In fact, in most cases where relief is granted the mortgagee wil be better off than if he took over the property himself. During the period of economic depression he would be unable to sell the property for the amount of his mortgage or rent it for an amount sufficient to pay the mortgage interest, the taxes and upkeep of the property, and in many instances he would be unable to collect the rent agreed upon. Certainly the appellant in this case cannot complain of the treatment which he has received by the court. He has been awarded the full rental value of the property during the entire extended period of redemption.

Under this law, if conditions change during the extended period of redemption, the court is authorized on the application of either party to revise and alter the terms of the extension in such manner as the changed conditions and circumstances may require. By this provision the court may not only alter the amount to be paid by the mortgagor, but may shorten the time for redemption if conditions warrant it. Under the terms of this law, if the owner fails to make the payments as fixed by the court, or commits waste on the premises his right of redemption ceases in thirty days.

The law has been in operation for approximately six months, and has proven itself to be both beneficial and practical. Thousands of mortgagors have availed themselves of this law by applying to the court for extensions of the time of redemption, and have thus been enabled to retain the ownership of their homes and other real estate which they

would otherwise have lost irrevocably. The courts of this state have applied the law in a just, fair and equitable manner to the general satisfaction of both mortgagees and mortgagors and the public. Because of the existence of this law thousands of settlements and compromises between mortgagees and mortgagors have been effected without court proceedings. It is our firm conviction that this act has done more than any other law passed by the 1933 legislature of the state of Minnesota to relieve the distressed economic conditions existing among our people.

## IV.

### Conclusion

In conclusion and to summarize this argument, we contend:

1. That at the time of the passing of the Mortgage Moratorium Law the State of Minnesota was experiencing extraordinary economic distress justifying a reasonable exercise by the state legislature of its police power in the interest of the public health, public safety, public morals and the general welfare.

2. That the state legislature possessed the power to choose the means for relieving that emergency providing those means were reasonable.

3. That the Mortgage Moratorium Law went no further in the exercise of this power than was necessary in so serious an emergency, and was accordingly a reasonable exercise of the state's police power.

4. That the act does little more than give to the courts of Minnesota equitable powers over mortgage foreclosures such as have been exercised by the courts of some other states without specific legislative authority.

5. That the act embodies all of the limitations on legislative action in emergencies of a similar character as set forth by this Court in its decisions, namely:

(a) Its remedies are appropriate to the distress sought to be relieved.

(b) The relief given by the act is limited in point of time to the probable period of distress.

(c) The relief given by the act is restricted in such a manner as to give fair consideration to both parties to the mortgage contract.

(d) The act leaves it to the courts to decide as to what is fair and reasonable between mortgagor and mortgagee. It is left to the courts to determine whether there shall be an extension of time in which to redeem, the length of time of such extension and the terms on which it shall be given.

6. That this act should accordingly be held consitutional for substantially the same reasons as the housing legislation of New York and the District of Columbia was held constitutional by this Court.

For the reasons which are hereinbefore set forth and under the authorities and legal principles which have been discussed in this brief, we respectfully submit that the

constitutionality of the Minnesota Mortgage Moratorium Law should be upheld and the judgment of the Supreme Court of the State of Minnesota should be affirmed.

Respectfully submitted,

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