290 U.S. 398

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 370

HOME BUILDING AND LOAN ASSOCIATION,
APPELLANT,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL,
HIS WIFE

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED AUGUST 21, 1933

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IN DISTRICT COURT OF HENNEPIN COUNTY

JOHN H. BLAISDELL and ROSELLA BLAISDELL, his Wife,
Petitioners,

vs.

HOME BUILDING AND LOAN ASSOCIATION, Respondent

AMENDED NOTICE OF MOTION FOR ORDER EXTENDING PERIOD OF REDEMPTION FROM FORECLOSURE SALE, ETC.

To the above named respondent, Home Building and Loan Association:

You will please take notice, that at a special term of the above named court, to be held at the court house, in the city of Minneapolis, Hennepin County, Minnesota, on Tuesday, the 9th day of May, 1933, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, the above named petitioners will move the court for an order extending the period of redemption from the real estate moragage foreclosure sale mentioned in the hereto attached petition until May 1, 1935; determining the reasonable value of the income of the real property affected by said sale and/or the reasonable rental value of said property, and directing and requiring your petitioners to pay to the clerk of court, or to some depositary to be named by the court, such reasonable part or portion of such income or rental value, for application upon or toward the payment of taxes, insurance, interest and/or mortgage indebtedness, as to the court shall appear just and equitable, at times and in the manner to be fixed, determined and ordered by the court. [fol. 2] Said motion will be made and based upon the verified petition of John H. Blaisdell and Rosella Blaisdell, a copy of which is hereto attached and herewith served upon you, and upon such additional evidence as may be offered by the parties and received by the court upon the hearing of said motion and application.

The grounds of said motion are that the property and premises affected by said mortgage foreclosure proceedings and sale are greatly in excess of the amount for which they

were sold; that said premises are the home and homestead of your petitioner; that the equity of petitioners in said premises is of the value of many thousands of dollars; that petitioners have made every reasonable effort to refinance said premises and mortgage loan and to redeem said premises from said sale, but have, by reason of the grave public economic emergencies and depression, been wholly unable to do so and that they are without any adequate means of refinancing said premises or redeeming the same from said sale at the present time, but that petitioners have good reason to believe and do believe that, if granted a reasonable extension of the period in which to redeem said premises from said sale with the accompanying right to occupy and manage the same during said extended period, that they will be able to either redeem said premises or to sell and dispose of their equity in said premises for a sum largely in excess of said foreclosure sale price, during said extended period for redemption; and that unless said period to redeem be so extended, said premises and homestead will be and become irrevocably lost to them.

George C. Stiles, Attorney for Petitioners, 404 Hodgson Building, Minneapolis, Minnesota.

[fol. 3] IN DISTRICT COURT OF HENNEPIN COUNTY

AMENDED PETITION

To the Honorable District Court for the county of Hennepin, state of Minnesota:

Your petitioners, John H. Blaisdell and Rosella Blaisdell, respectfully represent and state to the court:

I

That during all the time hereinafter mentioned, they were and still are the owners and in possession of that certain tract or parcel of land, known and described as lot eight (8), block twenty (20), Wilson, Bell and Wagners Addition to Minneapolis; that said premises were during all of said time and now are occupied, used and owned by your petitioners as their home and homestead.

II

That said premises were during all the time herein mentioned and now are fairly and reasonably worth and of the value of fifteen thousand dollars ($15,000.00).

III

That said premises were during all the time herein men- executed and delivered to the Home Building and Loan Association a mortgage upon said premises, to secure the payment of money by petitioners to said Home Building and Loan Association; which said mortgage contained a valid power of sale by advertisement in the usual and customary form of such powers of sale.

IV

That thereafter, your petitioners, unavoidably and by reason of facts and circumstances wholly beyond their control, defaulted in the conditions of said mortgage, whereupon said mortgagees foreclosed said mortgage by advertisement and on the 2nd day of May, 1932, caused said premises to be sold and were by said respondent, Home Building and Loan Association, bid in under said foreclosure proceedings, for the sum of $3,700.98; that the period of redemption from said mortgage foreclosure sale will expire on the 2nd day of May, 1933, and that said respondent is now the owner and holder of the sheriff's certificate of sale, in said foreclosure proceedings.

[fol. 4]

V

That your petitioners have made earnest efforts to refinance said loan and to redeem said property from said foreclosure sale, but because of the grave public economic depression and emergency which your petitioners allege now exists and for upwards of three years has existed throughout the state and nation, they have been and still are unable to obtain any substantial loan upon said property, or to refinance said mortgage or to redeem their said property from said foreclosure sale; and that unless the extension of the period of redemption prayed for in this petition be granted by the court, said premises and homestead of your petitioners will be and become irrevocably lost to them.

VI

That aside from said premises, your petitioners have no other property or means upon or through which to obtain funds necessary to redeem from said mortgage foreclosure sale.

VII

That the reasonable value of the gross rents of said premises during normal economic conditions or times is approximately twenty-three hundred forty dollars ($2,340.00) per annum and that the reasonable and necessary expenses of operation, upkeep, insurance and taxes is approximately nine hundred sixty dollars ($960.00) per year, leaving a net monthly rental income during normal times of about one hundred fifteen dollars ($115.00) and that the reasonable value of the rents realized from said premises for the twelve months between May 1, 1932, and May 1, 1933, has been and is approximately the sum of thirty-seven dollars ($37.00) per month, and no more.

VIII

That the fair and reasonable value of said property greatly exceeds the amount of money due to said mortgage, including all liens, costs and expenses and that said mortgagee is amply secured.

IX

That unless the time to redeem from said sale be extended, as hereinafter prayed, said petitioners will suffer the loss of their entire equitable estate in said premises, to the unjust enrichment of said mortgagee.

[fol. 5]

X

That no previous application has been made for an extension of the period of redemption from said sale.

XI

That this petition is made in support of a motion or application for an order of this honorable court, after hearing upon said motion, which is hereto attached, extending the period of redemption from said sale until May 1st, 1935, and determining the reasonable value of the income

of the property sold, or the reasonable rental value thereof, or both, and directing and requiring your petitioners to pay all or such reasonable part of such income or rental value, in or toward the payment of taxes, insurance, interest and/or mortgage indebtedness, as to the court shall appear just and equitable, at times and in the manner to be fixed, determined and order- by the court.

George C. Stiles, Attorney for Petitioners, 404 Hodgson Building, Minneapolis, Minnesota.

Duly sworn to by John H. Blaisdell and Rosella Blaisdell. Jurat omitted in printing.

[fol. 6] In District Court of Hennepin County

Bill of Exceptions, Objections to Introduction of Evidence and Motion to Dismiss

Be it remembered that at the present regular term of this court held at the city of Minneapolis, Hennepin County, Minnesota, on the 11th day of May, 1933, the Honorable Arthur W. Selover, judge of said court presiding, the above entitled cause came on for trial, George C. Stiles, Minneapolis, Minnesota, appeared as counsel on behalf of the petitioners, and Strong, Myers & Covell, Minneapolis, Minnesota, appeared as counsel on behalf of respondent. That in the trial the following proceedings were had, namely:

John H. Blaisdell, was called and sworn as a witness on behalf of the petitioners, testified as follews:

Direct examination.

By Mr. Stiles:

"What is your name?

Mr. Covell: I object to the introduction of any evidence in this action on the grounds that the Act, Chapter 339 of the Laws of Minnesota, 1933, under which this proceeding is brought is in violation of the Constitutions of the United States and of Minnesota, and respondent moves that the petition be dismissed for that reason.

(Arguments.)

The Court: Objection is sustained and motion to dismiss the petition is granted.

Mr. Stiles: The petitioners except to the rulings of the court:"

The above named petitioners, on the 18th day of May, 1933, and within the time allowed therefor, tendered this proposed bill of exceptions and prayed that the same be signed and sealed and made a part of the record in this cause.

Now, therefore, I, Arthur W. Selover, judge of said court, who presided at the trial of said cause, after due notice being given to respondent in said cause, and upon examination and consideration of the proposed bill of exceptions, and the court having found the same to conform to the truth, I hereby certify that the above and foregoing [fol. 7] transcript of the evidence and proceedings taken in the trial of said cause contains all the evidence offered, given or introduced in said cause; all the objections and motions thereto and all the rulings of the court to such objections and motions, and all the exceptions to such rulings, and the same is ordered and certified as part of the record in these proceedings and cause.

Dated this 18th day of May, 1933.

A. W. Selover, Judge of the District Court, Fourth Judicial District.

[fol. 8] In District Court of Hennepin County

Order Sustaining Objection and Dismissing Petition

The above entitled cause came on for trial before the undersigned, one of the judges of the above entitled court, on the 11th day of May, 1933, at 10 o'clock in the forenoon of that date, George C. Stiles, Esq., appearing as attorney for petitioners, and Strong, Myers & Covell appearing as counsel on behalf of the respondent.

That the petition prayed for an extension of the period of redemption from the sale of a certain mortgage, a copy of which is attached to the petition and marked Exhibit A. The petitioners sought such extension under the authority of Chapter 339, of the Session Laws of Minnesota, 1933, at the opening of the trial and before the introduction of any

testimony therein respondent objected to the introduction of any evidence on behalf of the petitioners on and for the reason that Chapter 339 of the Session Laws of Minnesota, 1933, was unconstitutional in that it impaired the obligation of contract in violation of the federal and state constitutions; that it deprived the respondents of its property without due process of law; that said Chapter 339 is a special law and not a general law and therefore violates Art. 4, Sec. 33, of the Constitution of Minnesota and that the said Chapter 339 is class legislation and violates Art. 4, Sec. 33, of the Constitution of Minnesota, and that said Act is not justified nor warranted as an exercise of police power and that said Act serves a private and not public purpose.

Court having considered all the files and records herein and having heard the argument of counsel and having been fully advised in the premises,

It is hereby ordered, that the said motions be granted and that the petition be and hereby is dismissed.

Let judgment be entered accordingly.

Dated May 16th, 1933.

By the Court,

A. W. Selover, Judge.

[fol. 9] EXHIBIT "A"

This Indenture, Made this 1st day of August, A. D. 1928, between Rosella Blaisdell and John H. Blaisdell, her husband, of Hennepin County, Minnesota, parties of the first part, and Home Building and Loan Association, Minneapolis, Minnesota, party of the second part:

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Thirty-eight hundred dollars ($3800.00) to them in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to the said party of the second part, its successors and assigns, forever, all of the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota, described as follows, to-wit: Lot Eight (8), Block Twenty (20), Wilson, Bell and Wagner's Addition to Minneapolis according to the plat thereof on file and of record in the office of the Register of Deeds in and for said Hennepin County.

To have and to hold the same, Together with all singular the hereditaments and appurtenances, including all apparatus and fixtures of every description for watering, lighting, heating and screening said premises, and the use, income, rents and profits thereunto belonging or in anywise appertaining, unto the said party of the second part, its successors and assigns forever. And the said parties of the first part do covenant with the said party of the second part, its successors and assigns as follows: First, that they are lawfully seized of said premises; Second, that they have good right to convey the same; Third, that the same are free from all incumbrances; Fourth that the said party of the second part, its successors and assigns, shall quietly enjoy and possess the same; and that the said parties of the first part will warrant and defend the title to the same against all lawful claims.

Provided, nevertheless, That, whereas, the said parties of the first part have entered into a contract in writing with said Association, in the words and figures following, to-wit:

$3800.00. Minneapolis, Minnesota, August 1, 1928.

"Received of Home Building and Loan Association, of "Minneapolis, Minnesota, Thirty eight hundred dollars, as "loan advanced on 38 shares of unpaid loan stock of said "Association, No. 384, owned by Rosella Blaisdell and John "H. Blaisdell, her husband, in consideration thereof we "agree to pay said Association interest on said loan, and "on all past due balances of interest and other charges "under this contract and the mortgage securing said loan "until paid, at the rate of seven per cent per annum, pay-"able monthly. We also agree to pay at the office of said "Association monthly without demand therefor, such addi-"tional sums as will, together with the monthly interest "aforesaid, amount to not less than the sum of Forty one "and 80/100, all of which sums shall be applied as follows:

"First. To the payment of interest accruing under this "contract.

"Second. To the payment of any insurance premium, "taxes, or assessments paid by said Association according "to the by-laws of said Association, and said mortgage.

"Third. The balance of said payments shall be credited "as dues on said stock, and all accruing credits thereon are "hereby assigned to said Association as collateral security "for said loan. Said Association is hereby authorized to "withdraw semi-annually, to-wit: on the first days of Jan- "uary and July of each year, the amount so credited on "said stock and apply the amount so withdrawn as a credit "on the principal of said loan. The amount remaining "unpaid after making any such credit shall bear interest "thereafter at the rate above named.

"Said monthly payments shall continue until said loan "and all other sums advanced in accordance with this con- "tract or said by-laws shall be paid with interest as herein "specified.

"Said loan may also, at any time, be paid in full, or in "part by payment or payments of amounts of One Hun- "dred Dollars each, and such payments shall be credited "upon said loan, and for each One Hundred Dollars so "paid, one share of said stock shall be cancelled. All right "to dividend on said stock is hereby waived. If the entire "amount of the loan is paid within five years, 60 days ad- "vance interest on the original sum shall be paid.

"If any payments required by this contract shall remain "due and unpaid for two months, or if any default occurs "in the conditions of the mortgage securing said loan, then "the entire amount of this obligation remaining unpaid "shall immediately thereupon become due and payable."

Now Therefore, If the said parties of the first part shall pay to said Association, its successors or assigns, the said sums of money when due, as set forth in said contract, then this deed shall be null and void, otherwise to be and remain in full force and effect. But if default shall be made in the said monthly payments or of any part thereof, for the space of two months after the same shall become due, or if any taxes or assessments, or premium for insurance, on the property hereby mortgaged, be due and unpaid for the space of two months, then and in such case, the whole principal debt remaining unpaid shall immediately thereupon become due, payable and recoverable; and if default shall be made in any of the conditions, stipulations, covenants and promises herein, or in said contract contained, on the part of said parties of the first part, the said parties of the first part do hereby authorize and empower the said party of

the second part, its successors or assigns, or its or their agent or attorney, to at once enter upon and take full possession of said premises, and to take and receive the rents, use, profits and income on said premises, and apply the same to the payment of taxes, insurance premiums, and the payments accrued and accruing under this mortgage and said contract, the cost of repairs on said premises, and the cost of collecting said rents, income and profits, and to pay the surplus, if any, to said parties of the first part, their heirs and assigns. But such possession and use shall in no way prejudice the right of redemption in case of foreclosure of this mortgage. And the said parties of the first part, in case of any default do hereby authorize and empower the said party of the second part, its successors and assigns, to sell the hereby granted premises at public auction, and convey the same to the purchaser in fee simple, agreeable to the statute in such case made and provided; and out of the money arising from such sale to retain the principal and interest which shall then be due on said contract, and all sums of money paid by the party of the second part for taxes on said premises and for insurance on said buildings together with all costs and charges, and also the sum of Seventy-five Dollars, as attorney's fees, and pay the overplus, if any, [fol. 9a] to the said parties of the first part, their heirs, administrators and assigns. And the said parties of the first part do further covenant and agree to and with the said party of the second part, its successors and assigns, to pay said sums of money, taxes, assessments and premium on insurance above specified at the times and in the manner above mentioned, together with all costs and expenses, if any there shall be, and also in case of the foreclosure of this mortgage the sum of Seventy-five Dollars as attorney's fees, in addition to the costs and expenses of said foreclosure, which said sum is hereby acknowledged and declared to be a part of the debt hereby secured, and which shall be assessed and payable as part of said debt, and that they will pay all taxes and assessments of every nature that may be assessed on said premises, or any part thereof, before any penalty shall accrue for nonpayment thereof, and will keep said mortgaged premises insured in some responsible insurance company designated by the President of said Association, for the sum of Thirty-eight hundred Dollars Fire Insurance and Thirty-eight hun-

dred Dollars Tornado Insurance, and the insurance so taken or assigned that in case of loss the same shall be payable to said Association.

And it is hereby expressly agreed between the parties hereto, that upon default of the said parties of the first part, their heirs and assigns, to keep the buildings upon the said premises so insured, and the insurance so taken or assigned that in case of loss, if any, the same shall be payable to said Association, or to pay said taxes or assessments as above provided, the said party of the second part may, in its option, keep the same insured, and may pay said taxes and assessments, and any sums paid to procure such insurance, or for taxes or assessments, as aforesaid, shall be deemed to be a portion of the moneys secured by this mortgage, and recoverable.

In testimoney Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Rosella Blaisdell (Seal). John H. Blaisdell (Seal).

Signed, sealed and delivered in presence of Theo. Kolste, Judith Fritz.

STATE OF MINNESOTA,
Couty of Hennepin, ss:

On this 1st day of August A. D. 1928, before me personally appeared Rosella Blaisdell and John H. Blaisdell, her husband, to me known to be the same persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Theo. Kolste, Notary Public, Hennepin County, Minn. My Commission Expires October 20, 1932 (Notarial Seal.)

[Endorsed:] No. ——. Mortgage Deed to Home Building & Loan Association. Office of Register of Deeds. County of Hennepin, State of Minnesota, ss. I hereby certify that the within deed was filed for record in this office on the — day of ——, A. D. 192-, at — o'clock — M. and is duly recorded in Book —— of Mortgages of the records of this office on page —. —— ——, Register of Deeds, per —— ——, Deputy.

[fol. 10] IN DISTRICT COURT OF HENNEPIN COUNTY

NOTICE OF MOTION FOR A NEW TRIAL

To the above named respondent:

You will please take notice, that at a special term of the above named court to be held in the court house in the city of Minneapolis, on the 17th day of May, 1933, at two o'clock in the afternoon thereof, or as soon thereafter as counsel can be heard, the above named petitioners will move the court for an order granting them a new trial in the above entitled action.

Grounds of said motion are that the court erred in each and all of the following particulars:

1. In excluding all evidence of the petitioners;
2. In dismissing petition in this proceeding and action;
3. In holding that Chapter 339, Minn. Laws of 1933, impairs the obligations of the mortgage contract in violation of the federal and state constitutions;
4. In holding that the Act deprived the respondents of their property without due process of law;
5. In holding that Chapter 339, Minn. Laws of 1933, is a special law and not a general law and therefore violates Art. 4, Sec. 33, of the Constitution of Minnesota;
6. In holding that said Act is class legislation and violates Art. 4, Sec. 33, of the Constitution of Minnesota;
7. In holding that the said Act was and is not justified nor warranted as an exercise of police power;
8. In holding that no public emergency existed which would justify the Act under the police power of the state;
9. In holding that the Act serves a private and not a public purpose;
10. In holding that the Act is unconstitutional.

That the above motion will be made and based upon the bill of exceptions, a copy of which is hereto attached and herewith served upon you and upon all the files and records herein.

George C. Stiles, Attorney for Petitioners, 404 Hodgson Building, Minneapolis, Minnesota.

[fol. 11] In District Court of Hennepin County

Order Denying New Trial

The above entitled matter came on before the undersigned, one of the judges in the above named court, upon the motion of the petitioners for an order granting a new trial therein. George C. Stiles, Esq., appearing upon behalf of petitioners in support of said motion, and Strong, Myers & Covell, Esqs., appearing on behalf of respondent and in opposition to said motion.

The court, having considered all the files and records herein and having heard argument of respective counsel and being fully advised in the premises, it is hereby ordered that the said motion be and the same is hereby denied in all respects.

It is further ordered: That the memorandum hereto attached be and the same is hereby made a part of this order.

May 17th, 1933.

A. W. Selover, Judge of the District Court, Fourth Judicial District.

In District Court of Hennepin County

Memorandum

The court has endeavored to give to the questions here involved such careful and studious attention as their great importance and the able manner in which they have been presented by counsel deserve.

The legislative Act here involved undertakes to give a positive and arbitrary extension of 30 days from and after the date of the passage of the Act, for redemption from mortgage foreclosure sales of real property, and to authorize the court on terms to be fixed by the court to extend further the time to redeem up to May 1st, 1935; and, both as to pending and future foreclosures of mortgages by advertisement under powers of sale, purports to abolish sales under such powers, and to compel the foreclosures to proceed by action instead, and attempts to restrict and prohibit within certain limits, the taking of deficiency judgments on

such foreclosure sales. The constitutionality of the Act is challenged, on the ground, first, that it violates the Constitution of the United States, Article I, Section 10, providing [fol. 12] that no state shall pass any law impairing the obligation of contracts; and the Constitution of the state of Minnesota, Article I, Section II, providing that no law impairing the obligation of contracts shall ever be passed; second, that it violates also that portion of the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws; third, that it violates Article I, Section 2, and Article IV, Section 33, of the Constitution of the state of Minnesota, prohibiting special legislation, and, fourth, that it violates Article IV, Section 27, of the Constitution of the state of Minnesota, providing that no law shall embrace more than one subject which shall be expressed in its title.

It seems almost too plain for argument that the law on its face does impair the obligations of the mortgage contract. If specific authority in this state be needed, it is to be found in the cases of Heyward v. Judd, 4 Minn. 483 (375); and Goeven v. Schroeder, 8 Minn. 387 (344), holding that a statute attempting to alter the period of redemption on previously existing mortgages containing powers of sale, impaired the obligation of the contracts; and in the case of O'Brien v. Krenz, 36 Minn. 136, holding that a statute attempting to abolish foreclosures under powers of sale in mortgages existing before its passage, impaired the obligation of the contracts, was unconstitutional and void. Other pertinent cases, too numerous to mention, could be cited both from state and federal courts, including the Supreme Court of the United States.

Great stress, however, is placed by the petitioner upon the nine "Whereas" clauses preceding the enacting clause of the statute here involved, whereby the legislature attempts, by the recitals therein, to establish an emergency and to make the Act general instead of special legislation, and therefore within the police power of the state. The further claim is made in this respect that the court must take these legislative declarations without question and assume that the Act is consequently of a general and not of a special nature. This claim seems to be met effectively

by the provisions of the Constitution of the state of Min-
[fol. 13] nesota, Article IV, Section 33, providing as follows:

"In all cases when a general law can be made applicable, no special law shall be enacted; and whether a general law could have been made applicable in any case, is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject."

Great reliance is also placed by the petitioner upon two decisions of the Supreme Court of the United States, viz.:

Block v. Hirsch, 256 U. S. 135, 41 Sup. Ct. 458; and
Marcus Brown Holding Co., Inc., v. Feldman, 256 U. S. 170, 41 Sup. Ct. 456,

holding constitutional in the Block case an Act of Congress permitting tenants to retain possession of leased premises contrary to the terms of existing leases, and in the Marcus Brown case holding constitutional the so-called Housing Act of the Legislature of the state of New York. In both these cases the enactments were challenged as impairing the obligation of existing contracts and taking property without due process of law, but were sustained by a five to four decision as proper exercises of police power. These cases are both clearly distinguishable from the instant case. The acts are both sustained as within the police power, because they affected the health and safety of the people of the respective communities in which they were effective and were therefore for the benefit of the general public. We are not here concerned with any consideration of general import as to public health, public safety or public morals or of any other consideration of a public and general nature which properly can bring into operation the police powers of the state.

It is true that in the decisions just referred to reference was made to legislative recitals of an existing emergency and that the court in passing upon that matter stated that while such recitals were not conclusive, they were entitled to "great respect." There was not involved, however, in either of those cases any such constitutional provision as that in Section 33 of Article IV of the Constitution of this state, providing, as previously quoted, that such questions

[fols. 14] "shall be judicially determined without regard to any legislative assertion on that subject."

It may and must be conceded that the police power of the state is very extensive and in a proper case and within the limitations fixed by law may impinge upon private rights, contract and otherwise, but it is recognized in all decisions that its exercise in all cases must be for a public and not for a private purpose. It cannot be used properly to nullify completely the constitutional provisions forbidding the impairment of the obligations of contracts and the taking of property without due process of law. In the opinion of the court the statute now before us attempts to do both and is not for the benefit of that limited class of debtors who have given mortgages upon real property. In singling out for special protection this particular class of debtors, the statute here involved unjustly discriminates against debtors who have not given mortgages on real estate but have given mortgages on personal property, or have given notes with ordinary collateral security, or have given wholly unsecured notes, or who are indebted in some other manner. It discriminates also against mortgagees of real property as compared with creditors holding or owning obligations other than real estate mortgages.

For every mortgagor who, oppressed by the burden of the mortgage debt, prays the court under the provisions of this Act that both federal and state constitutional provisions be annulled or suspended for his benefit, there is a mortgagee equally oppressed by his debts who in order that he may pay them prays as fervently that the protection of these Constitutions be not removed from him If a court operating under this statute gives special relief to the mortgagor of real estate, the vast array of other debtors outnumbering these mortgagor debtors at a ratio of perhaps a thousand or more to one, to whom no relief can be granted under the Act, have just reason to complain. An Act establishing a general moratorium as to all debts could more easily be sustained than the statute here in question.

Assuming and conceding the existence of an emergency as extensive and oppressive as set forth in the "Whereas" clauses preceding the enacting clause of this statute, still [fol. 15] no proper exercise of police power can justify its enactment, since it is beneficial to a segregated few only of the many suffering debtors and necessarily discriminates against all the rest.

If a legislature can destroy a private real estate mortgage contract under the guise of an exercise of the police power of the state, it can so destroy all other contracts.

If legislation of this character be sustained here and generally followed in the several states by other legislation of similar import affecting mortgage and other contracts, the protective constitutional guarantees as to life, liberty and property will be subjected to a process of such destructive attrition that eventually little or nothing of them will escape the engulfing force of the police power of the state.

The court is satisfied that this statute violates not only the federal and state Constitutions forbidding impairment of the obligations of contracts, and the Fourteenth Amendment of the Federal Constitution forbidding any state to deprive any person of property without due process of law or to deny to any person within its jurisdiction the equal protection of the laws, but also the several provisions of the Constitution of the state of Minnesota against special legislation.

It is not necessary to consider, and the court does not consider or decide whether this statute violates also Section 27 of Article IV of the Minnesota Constitution providing that no law shall embrace more than one subject which shall be express in its title.

It has been intimated in argument that serious disturbances may arise on account of this and any other similar rulings. If such disturbances do arise, let the responsibility for them rest where it belongs, upon those who, by initiating and fostering this legislation, have created in the minds of a special and limited class of debtors a false hope that both the Constitutions of the United States and of the state of Minnesota may be annulled or temporarily set aside for their special benefit, rather than upon judicial officers who, [fols. 16 & 17] by their oath of office, have sworn to hold both of these Constitutions and to the best of their ability are endeavoring to see that they operate fairly, equitably and uniformly upon all whom they concern.

It follows from the views expressed by the court, that the motion to exclude evidence under the amended petition herein and to dismiss said petition on the grounds stated

in the motion must be and the same hereby is in all respects granted.

By the Court,

A. W. Selover, District Judge.

(Notice of appeal on file.) (Appeal bond waived.)

[fol. 18] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

No 164

Hennepin County

29615

JOHN H BLAISDELL et al, Appellants,

vs.

HOME BUILDING AND LOAN ASS'N, Respondent.

—— Minn. —— 249 N. W. 334

Holt, J., Wilson, C. J., Olsen, J., and Loring, J., concurring. Stone, J., dissenting.

SYLLABUS

1. It is conceded that Chapt. 339, L. 1933, under which the time for redemption from mortgage foreclosure sales may be extended, impairs the obligation of the mortgage contract.

2. The existence of the economic emergency justified the legislature in the exercise of the police power of the state to enact the law to relieve from the emergency

3. Whether the emergency existed and was of such nature that resort might be had to the police power of the state was primarily for the legislature, but though the courts have authority to determine whether such emergency in fact exists, common knowledge of conditions and the action of the President and the Congress indicate a reasonable basis for legislative action.

4. The law goes no farther than reasonably necessary in granting relief under the existing conditions.

5. The title does not embrace more than one subject,—the extension of the time of redemption. The other matters are incidental.

6. The law is general, and not objectionable as special or class legislation.

Reversed.

[fol. 19] OPINION—Filed July 7, 1933

HOLT, Justice:

Appellants presented a petition to the district court for an order extending the period of redemption under the provisions of c. 339, L. 1933. The substance of the petition was that appellants owned a certain lot in Minneapolis, which was their homestead and of the reasonable value of $15,000; that appellants on May 1, 1931, executed and delivered their mortgage to respondent on said lot to secure the payment of a certain sum of money, which mortgage contained a valid power of sale by advertisement; that thereafter by reason of circumstances beyond the control of appellants default in the condition of the mortgage was made, and it was foreclosed by advertisement, and sold to respondent on May 2, 1932, for $3,700.98; that the time of redemption will expire on May 2, 1933, and that respondent is the owner and holder of the sheriff's certificate of sale on the foreclosure; that appellants have made earnest efforts to refinance the loan and redeem, but have failed because of the economic depression that has existed throughout the state for the last three years, and that unless the period of redemption be extended the property will be irretrievably lost to appellants; that the reasonable net income in normal times is $115 per month, and that for the last year it has been only $37.00 per month; that the reasonable value of the property greatly exceeds the money due on the mortgage; that unless the time to redeem from the said sale be extended, appellants will suffer the loss of their whole equitable interest in the property; and appellants prayed that the court grant a hearing to extend the period of redemption until May 1, 1935, that it determine the

reasonable rental value of the property, and directing and requiring appellants to pay all or such reasonable part of such rental value toward the payments of taxes, insurance and interest on the mortgage indebtedness as to the court appears reasonable and just. On the hearing respondent objected to the introduction of any evidence on the ground that c. 339, L. 1933, was unconstitutional in that it impaired the obligation of the mortgage contract, that it was special [fol. 20] and class legislation, and not warranted under the police power of the state. The objection was sustained, and appellants' motion for a new trial being denied, they appealed.

Appellants concede, as they must, that chapter 339, L. 1933, impairs the obligations of the mortgage contract. It is too long for insertion in an opinion. It is declared to be an emergency measure, and is not to remain in operation beyond May 1, 1935. Its object is to authorize the district court to extend the time for redemption from mortgage foreclosure sales and execution sales of real estate, and incidentally thereto, to withhold during that time the power of sale by advertisement, and the right to deficiency judgments. That this is impairing the obligation of the mortgage contract and the rights of judgment creditors is settled by the following decisions: Heywood v. Judd, 4 Minn. 377 (G); Goenen v. Schroeder, 8 Minn. 344 (G); Carroll v. Rossiter, 10 Minn. 141 (G); Hillebert v. Porter, 28 Minn. 496, 11 N. W. 84; O'Brien v. Krenz, 36 Minn, 136, 30 N. W. 458; Dunn v. Stevens, 62 Minn. 380, 64 N. W. 924; Bronson v. Kinzie, 1 How, 311; Edwards v. Kearzey, 96 U. S. 595; Barnitz v. Beverly, 163 U. S. 118.

The only ground upon which chapter 339, L. 1933 can be sustained is that it is legislation in virtue of the police power of the state called into exercise because of "the public economic emergency" which the act declares exists in the state. Respondent concedes that under the police power the state may impair the obligations of contract. Courts have so held. State v. Houghton, 144 Minn. 1, 174 N. W. 885, 176 N. W. 159; State v. Houghton, 164 Minn. 146, 204 N. W. 569; Sligh v. Kirkwood, 237 U. S. 52; Price v. Illinois, 238 U. S. 446; Perley v. North Carolina, 249 U. S. 510; Miller v. Schoene, 276 U. S. 272: In Sligh v. Kirkwood, supra, we find the following: "The police power, in its broadest sense, includes all legislation and almost every

function of civil government. Barbour 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. United States, 167 [fol. 21] 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 the public health.'' To what extent emergency legislation under the police power of the state may impair contract obligations or impinge on any constitutional provision, has received exhaustive considerations in cases arising out of the so-called housing legislation in New York and in the District of Columbia On all questions involved and decided therein the similarity or occasion for the emergency legislation and its effect in impairing the obligations of contract, and in violating the due process clause are so pointedly applicable here that we feel they should be followed The opinion of Judge Pound in People v. LaFetra, 230 N. Y. 429, and the concurring opinion of Judge Crane, expressed in Guttag v Shatzkin, 230 N. Y. 647, go quite fully into every legal proposition now raised. Edgar A. Levy Leasing Co. v. Siegel, 230 N. Y. 634, decided on the opinion in the LaFetra case, was affirmed in 258 U. S. 242. We quote from Judge Pound's opinion the principles controlling in a case of this sort: ''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 lawmaking power on such evidence has 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. * * * 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. (citing authorities) * * * Emergency laws in time of peace are uncommon but not unknown. Wholesale disaster, financial panic, the aftermath of war (Hamilton v. Kentucky Distillaries & W. Co.,

251 U. S. 146, 161, 40 Sup. Ct. 106, 64 L. ed 194) earthquake, pestilence, famine, and fire, a combination of men [fol. 22] or force of 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, 25 L. ed. 980; American Land Co. v. Leiss, 219 U. S. 47, 31 Sup. Ct. 200, 55 L. ed. 82). 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 '' The laws involved in the LaFetra case permitted tenants to retain possession after the expiration of the lease upon paying reasonable rent, and, where a lease had been entered for a fixed rent, upon the tenant's application that the stipulated rent was unreasonable or extortionate he could have the rent reduced. The summary dispossessory remedy was temporarily withdrawn from the landlords. A somewhat similar housing or renting act was passed by Congress for the city of Washington. The act of Congress and the New York acts came before the Federal Supreme Court in Block v. Hirsch, 256 U. S. 135 and Marcus Brown Co. v. Feldman, 256 U. S. 179 (affirming 269 Fed. 606), and were sustained by a 5 to 4 decision. Later cases arising from the same acts are Edgar A. Levy Leasing Co. v. Siegel, 258 U. S. 242 and Chastelton Corporation v. Sinclair, 264 U. S. 543. In the Siegel case the New York housing acts were again under attack of various constitutional grounds, but upheld, there being only three dissenters at that time. The proposition was there pressed that the relation of landlord and tenant "is a private one and is not so affected by a public interest as to render it subject to regulation by the exercise of the police power." But the court held the question foreclosed by the Marcus Brown Co. case. Again it was contended that that case did not squarely present whether or not the housing acts impaired contract obligations, but the court in denying this contention, quotes from the Marcus Brown Co. decision: "The chief objections to these acts have been dealt with in Block v. Hirsch. In the present case more emphasis is laid upon the impairment of the [fol. 23] obligation of contract of the lessees to surrender

possession and of the new lease which was to have gone into effect upon October 1, last. But contracts are made subject to the exercise of the police power of the state when otherwise justified as we have held this to be." Several cases are cited to support the last proposition. It is, however, true that the dissenting justices deny that the cases sustain what the majority deduce from them. Even though the dissenting opinions in the Block and Marcus Brown Co. cases may appear more in harmony with past interpretation of constitutional provisions, this court should follow the principles established by the prevailing opinions therein. They, and the later cases above cited, hold that in an emergency the legislature under the police power of the state may temporarily withdraw a summary remedy given by statute for the enforcement of contract rights, provided some adequate remedy remains; that in a public emergency statutes may be enacted which impair temporarily the obligations of contract, provided they be such as the emergency reasonably demands and the impairment be no more than is just and equitable under the circumstances; and that whether such an emergency exists as justifies the exercise of the police power is primarily for the legislature to whose judgment courts must give due weight, but the courts do possess the final authority to determine whether the emergency does in fact exist (Chastleton Corporation v Sinclair, supra), and whether the legislation for its relief is just and reasonable (Lawton v. Steele, 152 U. S. 133).

The main proposition upon which this law must rest is the existence of "a public economic emergency." True, the legislature in § 1 of the law declares that it exists, and a preamble of nine "whereases" seeks further to disclose the necessity for the law. It may be questioned whether an economic emergency should invoke the police power of the state to grant relief which impairs the obligations of contract. History reveals that when the Constitution of the United States was adopted the economic depression or emergency was, if anything, more acute under then existing conditions than at present, yet, notwithstanding, there was inserted in the document the prohibition against state legis- [fol. 24] lation impairing contract obligations. Economic depressions may scarcely be called emergencies for they occur frequently and with more or less severity. The extension of the period of redemption by the Kansas legis-

lature was no doubt caused by one of these economic depressions yet the court gave the subject of emergency legislation no consideration in Barnitz v Beverly, supra, holding the law invalid because it impaired the obligation of contract. It may further be questioned as a fact whether there really is an emergency requiring legislative relief in the situation of mortgagor to mortgagee. As a rule, in times of great economic depression and great depreciation of real estate values, the mortgagee does not desire the land, and rather than take the land, would be glad to grant longer extensions on better terms than the court would be authorized to give under this law. In a great many foreclosure sales and execution sales under the present depreciated values the right of redemption is of no value, and the owner will not use it even if funds were available. And again, it may well be argued that legislation which impairs contract obligations defeats its purpose. It tends to withdraw from the borrower the funds which otherwise he might procure. Lenders will not loan their money in a state where the contract for its repayment may be impaired at the uncontrolled whim of its legislature. But, with these and other objections to the law which may be raised, we reach the conclusion that it must be sustained. In addition to the weight to be given the determination of the legislature that an economic emergency exists which demands relief, the court must take notice of other considerations. The members of the legislature come from every community of the state and from all the walks of life. They are familiar with conditions generally in every calling, occupation, profession and business in the state. Not only they, but the courts must be guided by what is common knowledge. It is common knowledge that in the last few years land values have shrunk enormously. Loans made a few years ago upon the basis of the then going values cannot possibly be replaced on the basis of present values. We [fol. 25] all know that when this law was enacted the large financial companies, which had made it their business to invest in mortgages, had ceased to do so. No bank would directly or indirectly loan on real estate mortgages. Life insurance companies, large investors in such mortgages, had even declared a moratorium as to the loan provisions of their policy contracts. The President had closed banks temporarily. The Congress, in addition to many extra-

ordinary measures looking to the relief of the economic emergency, had passed an act to suppy funds whereby mortgagors may be able within a reasonable time to refinance their mortgages or redeem from sales where the redemption has not expired. With this knowledge the court cannct well hold that the legislature had no basis in fact for the conclusion that an economic emergency existed which called for the exercise of the police power to grant relief.

But it is claimed that the emergency sought to be relieved by this law is a private matter between mortgagors and mortgagees or between owners of lands and their judgment creditors which is not of public concern, so as to justify the exercise of the state's police power. It is said the housing statutes for the cities of Washington and New York related to shelter or places to live—a matter involving public health, public morality, and public safety. Yet when those statutes came before the courts it was urged, and with perhaps as good reason as in the instant case, that they related to the private affairs between landlords and tenants in which the public was not interested. So here respondent asserts that whether title to lands pass to the mortgagees at any certain time between now and May 1, 1935, can be of no public concern. The title to lands, it is said, must rest in some one, and public welfare is not dependent upon whether it is in one individual or in another. 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 [fol. 26] scarcity of available quarters. All would-be tenants could not be accommodated, and it would seem that so long as the landlords were willing to let all available room it was none of the public's concern who were accepted as tenants But 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 Hirsch 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. §§ 1605 and 8931.

It cannot be said that this law goes beyond what is reasonable to give relief in a temporary emergency. At the mortgagor's option the right to foreclose by advertisement may be withheld or rather changed into a foreclosure by action during the operation of the law, that is, up to May 1, 1935 The right to foreclose by action remains intact. The right of redemption may be extended by the district courts to the date mentioned; but to do so the courts must determine the terms upon which such extension may be had, and during that period the rental value of the prop- [fol. 27] erty must be applied upon the payment of taxes, insurance and the debt The condition that the mortgagor or the one obtaining the extension to redeem must meanwhile pay the rental value of the property goes far to giving compensation for the extension secured The relief ap pears to be no more than what must be regarded as reason able and just.

After this cause was submitted, on June 12, 1933, the Supreme Court of North Dakota, filed its decision in State ex rel. Cleveringa v. Klein, —— N. W. ——, holding the act of that state, extending the time of redemption from real estate mortgage foreclosure sales and real estate execution sales, unconstitutional. The court said that no matter what the emergency might be the bill of rights in

their state constitution prohibited the legislature from enacting any law impairing the obligations of private contract. And it further held that its law extending the time of redemption was forbidden by § 10 art. 1 (impairing the obligations of contract) and §1 of the 14th amendment (depriving of property without due process of law) of the Federal constitution. We notice this difference between our law and that of North Dakota; the act of North Dakota extends the time of redemption unconditionally, while under our act the mortgagor, or the one who desires to avail himself of the extension, must pay the reasonable rental value of the property, during the period of extension, to the party holding the certificate of sale. It appears to us that this provision of our law may be held to provide compensation so that there is no taking of property without due process of law. However, there can be no doubt that in some degree our act, as well as that of North Dakota, impairs the obligations of the mortgage contract, and hence runs counter to § 10 of art. 1 of the Federal Constitution. But our conclusion is that the legislature, under the police power of the state, has authority to enact laws to relieve a public emergency even though such laws temporarily impair obligations of contract, provided the impairment is no more than reasonably necessary. To that extent the police power is supreme.

The law is challenged because of its title. Attention is called to the word "inequitable" therein. The word may be disregarded. It adds nothing except to suggest that, perhaps, there may be certain foreclosures where no equity [fol. 28] whatever remains in the mortgagor, and hence these cannot be said to be inequitable so as to call for the interposition of relief. It is further claimed that the title embraces more than one subject. To us both title and act contain only one subject, viz., the extension of the time to redeem from involuntary sales of real estate under powers or under executions. All other provisions are ancillary or incidental thereto.

The law is said to contravene § 33 Art. IV of the state constitution forbidding special or class legislation The law is general applying to the whole state. The classification extends to all mortgage foreclosure sales and execution sales that had taken place and where title had not passed prior to the enactment, and also to sales in the future dur-

ing the operation of the law—up to May 1, 1935. The temporary economic emergency affecting such mortgagors and judgment debtors justified the classification. That the law does not cover every case of owners of property who are affected by the economic depression or emergency does not condemn it. State v. Elliott, 135 Minn. 89, 160 N. W. 204; Miller v. Wilson, 236 U. S. 384.

The order is reversed.

Holt, Justice.

IN SUPREME COURT OF MINNESOTA

CONCURRING OPINION

WILSON, Chief Justice, Concurring:

I concur in all that Mr. Justice Holt has written. In addition thereto it seems to me that c. 339, L. 1933, does little more than merely transfer our statutory foreclosure by advertisement into a foreclosure by action wherein the court has equitable powers to do substantially all the things which this act authorizes the court to do. Suring State Bank v. Geise et al., —— Wis. ——, 246 N. W. 556

This statute subjects the mortgagee to the rules of equity but it also exacts equity, in turn, from the mortgagor as a condition under which he may have a longer time in which to redeem. If the mortgagor gets an extension of time in which to redeem he is required to substantially protect the [fol. 29] mortgagee from loss by reason thereof. This he ought to do. While it temporarily protects the mortgagor from a loss of his title and a deficiency judgment it takes so little away from the mortgagee that it cannot be said to invoke an unreasonable application of the police power and under the authorities cited in State ex rel. Lichtscheidl v. Moeller, 249 Minn. 330, I am of the opinion that the statute should be sustained. Where the police power is involved we must all give. We cannot all receive only.

In my judgment every citizen should be encouraged in the spirit of achievement. If he is to be deprived of the happiness and satisfaction which he may find in achievements he becomes less useful to the community and society. Man is ambitious to better provide for those who by nature or law are dependent upon or entitled to his bounty. The law should protect him in his accumulations. It is best that the rash of ambition may develop on every person. If so

the public is interested in the solvency and prosperity of the people. It follows that it is detrimental to the public interest for our people to lose their valuable lands, improved or unimproved, at a time when the banks are closed and when it is impossible to find anyone who will make a mortgage loan. Funds are simply not available regardless of the security offered. The plight of the landowner has been enhanced because of the depreciation in land values resulting in many cases of the land being worth less than the mortgage. In such case the mortgagor can have no legislative help. Conditions are abnormal. To this situation the banks, acting under governmental requirements, have contributed by calling for liquidation to strengthen their own reserves.

As a rule mortgagees want their money, not land. Most of the real estate mortgages existing today were contracted when the general price level was about twice, and the farm values about four times, as high as today. It is estimated that mortgage foreclosures in the last three years aggregate about half a million in number. Farm mortgage debts amount to about nine billion dollars. But in comparison to the number of defaults the number of foreclosures has not [fol. 30] been large. There are authorities which in substance hold that "hard times" or "stormy weather" affords no basis for disturbing normal procedure. 3 Jones, Mortgages (8 ed 1928) note (1933), 42 Yale Law Journal, 960 Perhaps we might find that Barnitz v. Beverly, 163 U. S. 118, so held. But, as time marched on, that court later in Block v. Hirsch, 256 U. S. 135, and Marcus Brown Co. v Feldman, 256 U. S 170, established a modern judicial doctrine. Indeed the opinion in Barnitz v. Beverly does not disclose the "stormy weather" then existing in Kansas and it does not show that counsel even suggested that the statute was valid under the police power. There has always been a development in judicial construction to meet new and changing conditions and Barnitz v. Beverly has been succeeded by the cases mentioned.*

"The law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society."

*As said by Mr. Chief Justice Green in Hodges v. New England Screw Company et al., 1 R. I. 312, 356:

The mortgagee is entitled to some protection during the interim of the extension and this statute gives him that protection. These laws have been enacted in several of the states and while all courts do not agree the modern judicial doctrine seems to sustain such legislation. An interesting and helpful discussion is found in 42 Yale Law Journal, 1236.

In considering what may be done under a statute we must presume that all courts will properly perform their duties.

Mortgagees have little fear from this particular statute. Few of them would wish to deprive the mortgagor of an opportunity of getting his property out of a burning house. I insist that the courts can do very little for the mortgagor under this statute. The legislature so intended. If it had provided no compensation or protection incident to the extension I would have agreed to the conclusion reached by the North Dakota court. I would then think the application of the police power was unreasonable. Our legislature acted cautiously and yet probably went as far as they could. In my judgment this statute is not a violation but a vindication of our form of constitutional government.

Wilson, C J

[fol. 31] IN SUPREME COURT OF MINNESOTA

CONCURRING OPINION

OLSEN, Justice, Concurring:

Chapter 339, Laws of 1933, does not appear to me to be as drastic and dangerous as stated in Justice Stone's dissenting opinion. It appears to be conceded that the legislature was confronted with an extraordinary emergency, and that, in such an emergency, the legislature may enact emergency laws vitally necessary for the welfare of the people of the state, provided it does not thereby unreasonably impair the obligations of contracts or leave the contract holders without a reasonably adequate remedy on their contracts. The law has the effect of extending the time for redemption on mortgage and execution sales on mortgage debts. If it stopped with that, the time extension until May 1, 1935, might be held unreasonable. But the act goes further and provides that, during the time so extended,

the property owner must account for and pay to the mortgage holder the income from or rental value of the property, or such part thereof as the court finds to be just and equitable. In the case of farm property it may be necessary, in some cases, to devote a part of the income or rent to the upkeep of the farm, and, in case of residence or business property, it may be necessary to apply part of the rent or income for repairs. The mortgagee, in either case, has the benefit of having the property kept up, thereby protecting his security. The act does defer entry of deficiency judgments until the expiration of the redemption period, and does provide that the court may likewise extend the period of redemption from execution sales on judgments against mortgagors on the mortgage debt, under the same conditions as on foreclosure sales. The act, as I read it, does not prevent the mortgagee from bringing suit on the notes or other evidence of indebtedness at any time.

Section 8 of the act further provides that the act shall not in any way permit any stay, postponement or extension of time such that any rights of the mortgagee might be adversely affected by a statute of limitations. See also section 5 of part 2 of the act.

The law does extend the time within which a mortgagee [fol. 32] may enforce his security, but on conditions which would seem to protect the mortgagee from any loss, and which in the end may be as beneficial to him as to the mortgagor.

It is suggested that an emergency arising from a financial and business crisis does not authorize emergency laws in the exercise of the police power, or for the protection of the public welfare, because financial and business crises are recurring events and to be anticipated; that an emergency, for legislative purposes, must be one arising from some extraordinary and unexpected catastrophe, such as floods, earthquakes, and other disturbances in nature. 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 mil-

lions 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 peoples' 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, [fol. 33] 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. In so doing, the legislature had the power to impair the obligations of contracts to a reasonable extent, provided it did not deprive the contract holder of a reasonably adequate remedy or remedies for the enforcement of his contract. Whether this law does unreasonably impair the obligations of contracts, and whether it fails to provide or preserve to the contract holder a reasonably adequate remedy or remedies for the enforcement of his contract, are the questions here presented.

The case of Barnitz v. Beverly, 163 U. S. 118, is not in conflict with these views. There was no emergency and no question of police power or general welfare legislation considered in that case. The case supports the views herein [fol. 34] expressed that, to render a law unconstitutional on the ground that it impairs contract obligations, the law must seriously impair such obligations or leave to the contract holder no adequate remedy for the enforcement of his contract.

Olsen, J., by Wilson, C. J.

IN SUPREME COURT OF MINNESOTA

CONCURRING OPINION

LORING, Justice, Concurring:

As I see the problem presented, the sole question involved is whether the police power of the state is paramount to the constitutional prohibition against the impairment of the obligations of a contract. If this were a case of first impression I should take the view that it is not. But in the New York housing cases the Supreme Court has twice said that it is. With the wisdom of such a holding, though by a divided court, it is not our function to quarrel. As long as it stands we must follow it.

That an economic emergency exists no one can deny. Whether the legislature has adopted the wisest remedy is not our problem. We may say only whether there is occasion justifying this exercise of the police power. I therefore concur.

Loring, J.

[fol 35] IN SUPREME COURT OF MINNESOTA

DISSENTING OPINION

STONE, Justice, Dissenting:

I agree that Chapter 339, Laws 1933, is not constitutionally objectionable on account of anything contained, or not contained, in its title. But, in my judgment, as to preexisting mortgages and mortgages notes, it openly violates the due process and equal protection of law guaranties of both federal and state constitutions. All agree that it impairs the obligation of contracts. Its violation of both letter and spirit of constitutional guaranties being conceded, the effort to sustain it is based solely upon the assumption that it is, notwithstanding, legitimate exercise of police power in the emergency created by the present, long continued, world-wide depression.

The contract rights involved are the power of sale found in all Minnesota mortgages and the right to collect the debt by action. The power may be exercised through foreclosure by suit or by advertisement in the summary way provided by statute (§ 9602, et seq., Mason's Minn. St., 1927). In that connection, we have a line of decisions, establishing a rule of property, holding that the power to sell by advertisement, under the statute, is something more than mere matter of remedy. It is a substantive contract right protected by our constitutions against impairment. Heyward v. Judd, 4 Minn. 483 (Gil. 375); Goenen v. Schoeder, 8 Minn. 387 (Gil. 344); O'Brien v. Krenz, 36 Minn 136, all in accord with Barnitz v. Beverly. 163 U. S. 118, 41 L. ed. 93.

Against that background of fact stands Chapter 339, consisting of two parts, aside from its preamble reciting the well-known adverse economic conditions said to justify the law. The purpose in both parts is to permit mortgagors or their successors, in possession of mortgaged premises, to have both foreclosure and collection of judgment, if any, and for the debt (Part I, § 3.2) stayed until May 1, 1935, or for such shorter period as a court may direct. Section 4 even extends the period of redemption under mortgage foreclosures and execution sales already had. In any case, [fol 36] the moratorium may be "for such additional time as the court may deem just and equitable, but in no event beyond May 1, 1935" The law makes no attempt to fix

standards, or lay down rules, for the determination of what shall be "just and equitable." The only condition is that the applicant shall procure from the court "an order determining the reasonable value of the income on said property or, if the property has no income, then the reasonable rental value of the property involved in such sale, and directing and requiring such morgagor or judgment debtor to pay all *or a reasonable part* of such income or rental value in or toward the payment of taxes, insurance, interest, mortgage or judgment indebtedness at such times and in such manner as shall be fixed and determined and ordered by the court."

So, during the two year period ending May 1, 1935, the law authorizes judges to make new contracts and substitute the same for the originals. They shall be "just and equitable"; otherwise the whole matter is left to the untrammeled discretion of the judge. The mortgagee, no matter how indulgent he has been nor how long past due his debt, cannot even get all the income or rental value of the mortgaged property if some judge determines that it would be "reasonable" under the circumstances for him to do with less.

Toward the end of § 4 there is open invasion of judicial function by the law-making power, for it is declared that the time of redemption from recent foreclosures even though by action, and from recent execution sales, shall be "and the same hereby is extended to a date 30 days after the passage of this act," so that the debtor, if he wishes, may apply for and procure the legislative modification of a judicial decree which the law substantially directs Finally, § 4 suspends until May 1, 1935, the mortgagee's right to a deficiency judgment. At least that right is postponed "until the period or redemption * * * if extended under the provisions of this act, has expired."

The framers of the act, doubtless sensing that they were covering a dangerously wide extent of territory by part one, enacted part two. Without going into its details, it is similar to part one, except that it applies "only to real [fol. 37] estate occupied as a home exclusively by the person seeking relief or persons dependent upon him, and to farm lands (area not limited) used by the person seeking relief as his principal means of furnishing necessary support to such person, his family and dependents." It applies

only to cases not entitled to relief "under some valid provision of part one."

In the majority opinion no distinction is made between parts one and two. Part one sustained, there is small occasion to discuss part two. But so that I may not be misunderstood, let me say that my strong inclination would be to uphold a law, if we had such a one, and nothing more, subjecting for the period of the present emergency all sales of mortgaged property by advertisement to the closest judicial scrutiny, in order, as far as possible, to protect the equities of home owners, particularly the operating owners of farms, and temper the oppression and injustice some times perpetrated by mortgagees of the Shylock variety now as always ready to take advantage of the letter both of the law and their bond. But part two of the act goes far beyond that. Equally with part one, it makes the whole subject a matter of judicial grace rather than judicial duty.

Going back to part one, I cannot find ground for declaring that mortgaged real estate of all kinds, and whatever its condition or use, is affected by public interest, even in the present emergency, so as to justify the exercise of police power in the manner attempted. As it stands, the law applies with the same force to vacant, idle, and even "wild" land as it does to any other. It embraces the very large acreage in this state of mortgaged lands which have been for some time and will doubtless long remain the subject of speculation and in the own-rship, not of home owners or farmers, but of mere speculators. It applies as much to apartment-house properties, office buildings, and other like investment properties, not occupied or used by the owners, nor intended to be so used, but which are owned and dealt in as investment properties or for sheer speculation. How it comes that the public has any interest in staying fore- [fol. 38] closures on such properties is beyond my comprehension. In many instances, public interest would be better served by foreclosure, with the consequent squeezing out of speculative interests and inflated values.

It is no answer to say that, when a court is applied to in cases of mortgages on other than home, farm, or business property of the occupant, foreclosure may and doubtless will be permitted to proceed. That is possible, but the law does not demand it. Aside from its equivocal provisions concerning ascertainment of rent or rental value for benefit

of the mortgagee, the law requires nothing for the declaration that judges may, notwithstanding the law, decree foreclosure if, in their judgment, equitable. Constitutional guaranties are not satisfied by statutes which make compliance mere matter of grace rather than demandable right. "The constitutionality of a law is to be tested not by what has been done under it, but by what may by its authority be done." Stuart v. Palmer, 74 N. Y. 183. "The law itself must save the rights of the parties." Gove v. County of Murray, 147 Minn. 24, 179 N. W. 569.

The law permits outright repudiation for the time being and until May 31, 1935, of contract obligation The limitation is a suggestion by the legislature of 1933 to its successor of 1935 that the repudiation be extended for another two years or more, as the law makers may then decide.

Repudiation of private and public contract debts was the main factor, the most alarming manifestation of chaos and near anarchy, which prevailed increasingly in the American colonies from the end of the Revolution in 1781 to the going into effect of the constitution in 1788. It was the whole animus of Shays' Rebellion in Massachusetts, a disturbance which, although localized, was most alarming. It was distinctly a rebellion of militant debtors against their creditors, and against courts and the judges thereof sworn to enforce all law, including the law of contracts, "Against [fol. 39] lawyers and courts the strongest resentments were manifested; and to such a dangerous extent were these dispositions indulged, that, in many instances, tumultuous assemblages of people arrested the course of law, and restrained the judges from proceeding in the execution of their duty." (1 Beveridge, Marshall, 299, quoting 2 Marshall, Life of Washington, 117.) We need not go far in recent local experience for phenomena exactly parallel. Our constitutional system was the cure of the one condition. Surely its abandonment cannot remedy the other. Once the law breaks down, it becomes so much the easier to break it down in other cases where the plainest right requires its enforcement. That process does not continue long before all laws go to smash.

If, in economic emergency, the legislature may suspend constitutional guaranties, and the courts may sustain the suspension whenever they think there is reasonable ground and that the suspension does not go too far, we have at

once government by proclamation. There will be a pronouncement for each case instead of one law for all. The system will be none-the-less objectionable because the proclamation emanates from judicial rather than executive sources. It was government by proclamation that lost Charles I his head. It was one of the dangers that the framers of the constitution sought to save us from in perpetuity, in good times and bad, by inviolable, written guaranties we now hold may be set aside, whenever the legislature feels so inclined and the courts be persuaded to agree that the feeling is justified.

Economic arguments have been much stressed, and very properly, for the economic welfare of our people is the one desideratum of the law. But to my notion that welfare will be hindered ultimately rather than helped by such laws as Chapter 339. Our western country was largely built into what it is on money borrowed—some from our own people, but much from lenders in other states and overseas Just now we are sadly in need of rebuilding, and we must rebuild largely on borrowings to be secured by mortgages on our real estate. Just how or from whom can we borrow if we serve notice, as this law does, that foreclosure of mortgages may be deferred indefinitely at the pleasure of officials [fol. 40] owing their office to the favor of the debtors? In my judgment economic considerations alone forbid the debtors themselves to resort to repudiation. Such resort will be harmful in proportion as the repudiation takes the form of law and is confirmed by judicial action. That, indeed, would not only impair the obligations of the involved contracts; but would also destroy the confidence of people, even our own people, in the disposition of our community to perform its contracts. Confidence gone in the contract performing disposition of any community its prosperity is at an end, for it has divorced itself from that without which business cannot go on—the confidence of people generally in the disposition of people generally faithfully to perform their contractual obligations to the best of their ability. Compare Farrington v. Tennessee, 95 U. S. 679, 24 L. ed. 558.

Mortgages on real estate are held very largely by trustees and quasi-trustees. According to the best figures available, (those for all our states, of the U. S. Bureau of Agricultural Economics, as of January, 1928) 10.8 per centum

of them are held by commercial and savings banks, 19 1 per centum by the federal and joint Stock Land Banks, and 22.9 per centum by insurance companies. Both banks and insurance companies are quasi-trustees, handling in the latter case the savings of the people put aside for the protection of the insured and their dependents, and in the former the savings and working capital of business and the people generally. In 1928, 29 6 per centum of real estate mortgages were held by individuals, 14 2 per centum by farmers, and 10.6 per centum by retired farmers, that is, by the men and women who, to a very large degree, made our farms what they are and put into them by way of improvement and cultivation a goodly portion of whatever intrinsic value they have. Discrimination against them now would indeed be a poor sort of encouragement to farmers who naturally must and do look forward to the times when advancing years will compel retirement. Their ambition and their hope for the future will be reduced in proportion as their confidence in their ability to retire on the security, in part, of a mortgage on the home farm is diminished.
[fol. 41] In 1930 (Farm Mortgage Foreclosures in Minnesota, by E. C. Johnson, University Farm, St Paul, December, 1932) 53.8 per centum of Minnesota owner-operated farms were reported as mortgaged, leaving 46.2 per centum clear. A substantial portion of mortgaged farms have an incumbrance so well within the owner's capacity to pay that foreclosure is not threatened. Those owners, together with the owners of the clear farms, make up much more than half our farmers living on and operating their own farms. They are entitled to consideration. They are a highly important part of the public, in the interest of which this law professes to operate. That these farmers are economically safe shows that they, by and large, are the best farmers. But they need borrowing power, and what they had is greatly lessened by this law. Sooner or later most of them will desire to sell, but their ability to do so, and the value of their land are reduced by this law.

Ordinarily when a farm is sold a purchase-money mortgage is taken for a goodly proportion of the purchase price. To the extent that the right of the mortgagee to enforce such a mortgage is impaired, a serious obstacle is interposed to renewed movement and consequent increase in value of farm lands. The same consideration applies,

but in less degree, to urban real estate. It is no answer to say that lands may be sold on executory contract, the vendor retaining the legal title—no answer because if the legislature may impair the obligation of the covenants of a mortgage it may, by the same token and to the same extent, destroy those of the vendee in a contract of sale.

The District of Columbia and New York Housing Acts sustained in Block v. Hirsh, 256 U. S. 135, 65 L. ed. 865; Brown Holding Co. v. Feldman, 256 U. S. 170, 65 L. ed. 877; Levy Leasing Co. v. Siegel, 258 U. S. 242, 66 L. ed. 595; Chastleton Corp. v. Sinclair, 264 U. S. 543, 67 L. ed. 841, upon the authority of which the majority opinion stands, were laws providing for the fixing of reasonable rates for the public's use of property, its use of which was necessary at the time being. We have now no scarcity of human [fol 42] habitations, rural or urban. Our present difficulty is just the opposite. Everywhere there is vacancy, more of it probably in our cities than in the country

As said in a later case, the decisions of the Supreme Court in these rent cases went to the very verge of the law. Pa. Coal Co. v. Mahen 260 U. S. 393, 416, 67 L. ed. 322. It was suggested in Block v. Hirsh supra, that the United States, in the emergency which followed the World War, was doing only what other countries were doing to protect their people. That would have been apropos if the war powers of Congress or the states had been invoked. They were not. The constitutional guaranties against impairment of contract obligation, and of due process and equal protection, were simply contracted and the police power stretched, by a bare majority of the court, to sustain the laws. With the utmost deference, I submit that even to suggest that our governments may do anything that old world governments may do is to forget that with us all government (not the executive alone, as in England) is restrained by constitutions, the very purpose of which is to bar forever many things which formerly were done by governments, to the horror of mankind, the oppression of their people and the destruction of popular rights.

If, as is now contended, the police power may be used as a cover under which the legislative branch of government may, at its will, ignore constitutional guaranties, we have nothing left of our constitutions but parchments of mere historical interest; the Bill of Rights becomes a mere

scrap of paper. If a contract may be impaired, (directly and avowedly as the sole purpose, rather than incidentally as the result of accomplishing some other in the public interest as in the housing law cases) and due process or equal protection similarly denied, at the will of any legislature, it is just as logical to hold that, in great emergency, bills of attainder may be passed and citizens again hanged, drawn and quartered whenever the law-making power so wills. It is no answer to say that mankind has advanced beyond all that. There may be doubt on that point. Our constitutions were framed by men and adopted by people who knew (what so many are prone to forget) that the [fols 43-46] interests of the masses, particularly those least able to protect themselves, cannot safely be trusted to any government, even our own, unless restrained by the inhibitions which characterize all our constitutions, state and federal. Imprisonment for debt is explicitly prohibited by our state constitution (Art. 1, § 12). But in 1887 the legislature of this very state enacted such a measure. If it had not been for the decision here in Meyer v. Berlandi, 39 Minn. 438, many of those engaged in the building trades might have become victims of the law. It had not occurred to any one then that the police power doctrine was expansible to infinity

No thinking man, conscious of the changes wrought and yet to be wrought by progress, can consider our constitutions the ultimate of perfection. They too must change from time to time in adaptation to accomplished facts of evolution of peoples and government. However, they express some principles which promise to be the ultimate concepts for the restraint of government in the interests of the governed. While so restraining government as to leave a high degree of freedom to individualism, they yet leave in government enough power to prevent individualism from becoming too rugged for the welfare of the masses. They may be amended or entirely done away with if the people so desire. But so long as they stand, no higher duty rests upon government and citizens than obedience to them. To the extent that they need change, it should be brought about openly and honestly by amendment, rather than by nullification. There can be no more effective and dangerous cover for nullification than the acquiescence of courts in legislation plainly violative of constitutional guaranties.

Our experience under the eighteenth amendment demonstrates that the nation as a whole can find no better formula for prolific incubation of disregard of all law, social disorganization, and moral deterioration than the general disregard of constitutional mandates.

Considering as I do that Chapter 339, Laws 1933, is violative of constitutional guaranties in the respects indicated, and finding myself unable to come to any other conclusion, I respectfully dissent from the decision upholding it.

Stone, J.

[fol. 47] In District Court of Hennepin County

Statement of Evidence

The above entitled matter came on for hearing before the Hon. Mathias Baldwin, one of the judges of said court, on the morning of July 20, 1933. Messrs. Stiles & Stiles appeared in behalf of petitioners. Messrs. Strong, Myers & Covell appeared in behalf of respondent.

Thereupon the following proceedings were had:

Mr. Stiles: Petitioners offer in evidence Petitioners' Exhibit A.

Respondent's Objection to Evidence

Mr Covell: The respondent, Home Building and Loan Association, objects to the introduction of any evidence under the petition and under this proceeding, on the following grounds, to-wit:

1. That Chapter 339, Minnesota Laws 1933 is in violation of the contract clause of the Constitution of the United States, Art. I, Sec. 10: "No state shall * * * pass any * * * law impairing the obligation of contracts * * *."

2. That said law is in violation of the Amendment to the Constitution of the United States, Art. XIV, in that it violates.

(a) "* * * nor shall any state deprive any person of * * * property without due process of law," and

[fol. 48] (b) "* * * nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws."

That said claims were made by the respondent at the former hearing in this case and before the Supreme Court and notwithstanding the action of the Supreme Court of the State of Minnesota in reversing the order of the trial court sustaining said claims, that nevertheless and for the purpose of avoiding any doubt as to the respondent's claims of such unconstitutionality, or non-waiver thereof after such action by the Supreme Court, the respondent now reports and urges on this court his claims of the unconstitutionality of Chapter 339 of the Laws of 1933, as aforesaid.

The respondent claims further that said Chapter 339 of the Laws of 1933 is invalid and null and void for all purposes, because:

(a) Chapter 339 does not establish and define the standards or rules by which the Courts are to be guided in the application of the provisions of said Act to the cases which might arise under it, and that the Act is, therefore, too indefinite and uncertain and is impossible of uniform and equal application in the many cases which might arise throughout the State and before different judges; and

(b) Chapter 339 is an attempt by the Legislature to delegate legislative powers to the Courts; and

(c) Chapter 339 is an attempt by the Legislature to invade the province of the Courts.

[fols. 49-74] The objections were overruled.

Exception by respondent.

[fol. 75] Mr. Stiles: Petitioners rest.

Motion to Dismiss

Mr. Covell: The respondent moves to dismiss the petition, upon all of the grounds of unconstitutionality of the statute that were recited as grounds of objection to the introduction of any evidence at the commencement of the trial.

Mr. Stiles: I might perhaps add a statement or admission by way of consent in the record, on behalf of the petitioners, before technically and finally resting, which statement is to this effect, your Honor: that the petitioners, being solely interested in the preservation of their rights in their home, in this action, and being desirous of keeping within any construction that may fairly be placed upon the

[fols. 76-84] language of our Supreme Court in its opinion recently handed down in this case, (249 N. W. 334) do now consent to accept, and request the Court to find and make an order requiring payment by them, at such times and in such places as the Court may be advised, of such an amount as the Court shall find to be the full amount of the fair and reasonable rental value of the premises.

The Court: Are you going to offer evidence, Mr. Covell?

Mr. Covell: Yes, your Honor.

The Court: Then I think that after the evidence is all in is the proper time for that.

Mr. Covell: We move to dismiss the petition, on the grounds stated.

The Court: Regretfully, denied.

Exception by respondent.

[fols 85-88] MOTION TO DISMISS

Mr. Covell: I again move to dismiss the petition, on the ground that the statute under which the proceeding is brought is unconstitutional, for all the reasons stated in the objections to the introduction of any evidence; and on the additional ground that the petitioners have failed to make out a case for relief under Chapter 339 of the Session Laws of 1933.

The Court: Motion denied.

Exception by respondent.

[fol. 89] IN DISTRICT COURT OF HENNEPIN COUNTY

FINDINGS OF FACT

The above entitled matter came on for hearing and trial before the undersigned, one of the judges of said court, on Thursday, the 20th day of July, 1933, upon the application and petition of Rosella Blaisdell and John H. Blaisdell, to extend the period for redemption from the foreclosure of the mortgage, all as hereinafter described, and for and on motion for an order determining the reasonable value of the income on said property, or if the property has no income, then the reasonable rental value of the property involved in such foreclosure sale, and directing and requiring

such mortgagors, who are the said petitioners, to pay all or a reasonable part of such income or rental value in or toward the payment of taxes, insurance, interest and mortgage indebtedness, at such times and in such manner as may be fixed, determined and ordered by this court. Mr. George C. Stiles appeared in support of said petition, and Strong, Myers and Covell appeared in opposition thereto, and the Court having heard the evidence adduced by said parties and being fully advised in the premises, and on all the files, records and proceedings herein, makes the following:

FINDINGS OF FACT

1. That on and prior to August 1st, 1928, the said petitioners, John H. Blaisdell and Rosella Blaisdell, were the owners of the following described real estate situated in the County of Hennepin and State of Minnesota, to-wit:

Lot Eight (8), Block Twenty (20), Wilson, Bell and Wagner's Addition to Minneapolis, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said Hennepin County.

2. That at the times hereinafter mentioned, the Home Building and Loan Association was and now is a corporation organized and existing under and by virtue of the laws of the State of Minnesota.

3. That on August 1st, 1928, to secure a loan of money then made by the said Home Building and Loan Association, the said petitioners, Rosella Blaisdell and John H. Blaisdell, the said Rosella Blaisdell and John H. Blaisdell executed and delivered a written mortgage of said above [fol. 90] described real estate to said Home Building and Loan Association; that said mortgage contained a power of sale in the conventional form as used in the State of Minnesota which was by its terms operative in case of a default in the performance of the terms and conditions of said mortgage or in the payment of said loan by the said Blaisdells and entitled and authorized the said Home Building and Loan Association by its terms to exercise said power of sale in a foreclosure by advertisement pursuant to the statutes of Minnesota then and now in force and effect; that said mortgage was recorded in the office of the Register

of Deeds in Hennepin County, Minnesota, on the 2nd day of August, 1928, in Book 1590 of Mortgages, on Page 583.

4. That thereafter and on May 2nd, 1932, default existed in the performance of the terms and conditions of said mortgage and in the payment of the loan secured by said mortgage by the said Blaisdells and pursuant to said power of sale, the said Home Building and Loan Association did, on May 2nd, 1932, duly foreclose said mortgage by advertisement pursuant to the power of sale hereinbefore described and caused the said premises to be struck off and bid in by and sold to the said Home Building and Loan Association for the sum of Three thousand seven hundred and 98/100 ($3700.98) Dollars on said May 2nd, 1932, and that the Sheriff of Hennepin County thereupon issued, executed and delivered his certificate of sale of said premises pursuant to said mortgage foreclosure sale to the said Home Building and Loan Association for the sum of Thirty-seven hundred and 98/100 Dollars ($3700.98) covering all of said premises and which sheriff's certificate of sale was recorded May 2nd, 1932, in the office of the Register of Deeds in Book 1255 of Deeds, on Page 297.

5. That the said Home Building and Loan Association is still the owner and holder of said sheriff's certificate and that no part of the said debt evidenced thereby or the purchase price of the premises has ever been paid to the said Home Building and Loan Association by the said Blaisdells or by any person on their behalf or by any other person or in any other manner whatsoever and that said sheriff's certificate was valid and operative as a certificate of sale in the foreclosure of said mortgage by advertisement, all as provided by the statutes of the State of Minnesota.

[fol. 91] 6. That a true copy of said mortgage hereinbefore described is marked Exhibit "A" and made a part hereof as if fully set forth herein.

7. That said foreclosure sale was in all respects valid and legal and that the time to redeem therefrom would expire on May 2nd, 1933, under the laws of the State of Minnesota as in effect at the time of the making of said mortgage and at the time of said sale.

8. That within Thirty (30) days after April 18th, 1933, and before April 28th, 1933, the petitioners herein served

their notice of motion and petition on file in this proceeding for an extension of the time to redeem from said mortgage foreclosure sale and for an order fixing the terms upon which said extension should be granted, all as provided in Chapter 339 of the Session Laws of Minnesota for 1933 and that this proceeding is brought and maintained under said Chapter 339.

9. That at the time of the making of said mortgage and at the present time, the said premises consist of a plot of ground approximately Fifty by One hundred fifty feet in size in the closely built-up portions of the city of Minneapolis and was improved by a two-car garage, together with a building now approximately Eighteen (18) years old, of frame construction, two stories in height and with city water, sewer, electric light and gas connections, and that said building is divided into fourteen rooms; that the petitioners were in 1928 and still are husband and wife and still occupy the said premises as their homestead; that eleven rooms in said house were in 1928 and still are maintained by them for rental to others; that the petitioners occupy three rooms in said house and the balance of said rooms are offered for rental to others.

10 That the reasonable value of the income on said property and the reasonable rental value of the said property involved in said sale, is the sum of Forty Dollars ($40.00) per month

11. That the bid made by the said Home Building and Loan Association on said mortgage foreclosure sale and the purchase price for which said premises were sold by the sheriff in said sale were and are the full amount of the mortgage indebtedness due on said mortgage at the time of said sale and that no deficiency in said mortgage indebtedness existed after said sale.

[fol. 92] 12. That the reasonable present market value of said premises is Six thousand Dollars ($6,000.00).

13. That at the time of the making of said mortgage, the petitioner, John H. Blaisdell, was employed as a switchman at a salary of approximately Two hundred nine and no/100 Dollars ($209.00) per month; that at the present time the said John H. Blaisdell is employed as a policeman

by the City of Minneapolis, Minnesota, at a salary of One Hundred sixty-two and 80/100 Dollars ($162.80) per month.

14. That the taxes on said premises for 1928 and 1929 have never been paid by said petitioners and were paid by the said Home Building and Loan Association prior to said mortgage foreclosure sale and are included in the amount of its bid and the purchase price of said premises on said mortgage foreclosure sale; that said 1928 and 1929 taxes amounted to Five hundred eight and 97/100 Dollars ($508.97), with penalties and interest at the time of said foreclosure sale; that the taxes on said premises for 1931 in the sum of Two hundred six and 17/100 Dollars ($206.17) and for 1932 in the sum of Two hundred thirty-three and 05/100 Dollars ($233.05) have never been paid by the said petitioners and that the said Home Building and Loan Association has, since said foreclosure sale, paid the following amounts, which are additional liens against said premises in addition to the purchase price on said foreclosure sale, and interest thereon, to-wit:

1931 taxes	$206.17
First half 1932 taxes	116.53
Fire insurance premiums on said premises	45.25
Total	$367.95

and that the total of said items, including the purchase price at said mortgage foreclosure sale, but exclusive of interest thereon from said date, is the sum of Four thousand fifty-six and 39/100 Dollars ($4,056.39); that since January 1st, 1932, the petitioners have paid only the following amounts on said mortgage indebtedness, or for any other purpose, to the said Home Building and Loan Association, to-wit:

January 11th, 1932	$ 41.80
February 12th, 1932	41.80
February 29th, 1932	41.80
Total	$125.40

all in the year 1932, and all prior to said foreclosure sale, [fol. 93] and that no payments of any kind or nature what-

soever on account of said mortgage indebtedness or taxes thereon have been paid since said February 29th, 1932.

15. That in view of all of the circumstances, the order hereinafter made appears to the court to be just and equitable within the meaning of Chapter 339 of the Session Laws of Minnesota for 1933.

16. That since the beginning of the present depression, real estate rentals generally have depreciated and are now less than they were in 1929, and that there is no shortage of housing in the City of Minneapolis.

[fol. 94] IN DISTRICT COURT OF HENNEPIN COUNTY

JUDGMENT AND DECREE—July 27, 1933

The above entitled action having been regularly placed upon the calendar of the above named court for the September A. D. 1932 General Term thereof, came on for trial before the court on the 20th day of July A. D. 1933; and the court, after hearing the evidence adduced at said trial and being fully advised in the premises, did on the 21st day of July A. D. 1933 duly make and file its findings and order herein; and thereafter on the 27th day of July A. D. 1933 duly make and file its order amending said order.

Now, pursuant to said orders and on motion of Messrs. Strong, Myers & Covell, attorneys for respondent, it is hereby adjudged and decreed:

1. That the reasonable value of the income on the real estate situated in the County of Hennepin and State of Minnesota, described as follows, to-wit:

Lot Eight (8), Block Twenty (20), Wilson, Bell and Wagner's Addition to Minneapolis, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said Hennepin County,

and the reasonable rental value of the property involved in the mortgage foreclosure sale held on May 2nd, 1932, is the sum of Forty Dollars ($40.00) per month.

2. That the period of redemption from the mortgage foreclosure sale of the mortgage recorded in Book 1590 of Mort-

gages, at page 583, in the office of the Register of Deeds of Hennepin County, Minnesota, and the foreclosure record of which is recorded in the office of said Register of Deeds in Book 1255 of Deeds, on page 297, be and the same hereby is extended to May 1st, 1935, subject, however, to the terms and conditions hereinafter set forth and ordered.

3. That the petitioners, Rosella Blaisdell and John H. Blaisdell, are directed and required to pay to the Home Building and Loan Association the sum of Forty Dollars ($40.00) per month during such extended period of redemption from May 2nd, 1933, to May 1st, 1935, in the following manner and at the following times, to-wit:

Forty Dollars ($40.00) on August 2nd, 1933; Forty Dollars ($40.00) on August 16th, 1933; Forty Dollars ($40.00) on September 2nd, 1933; Forty Dollars ($40.00) on September 16th, 1933; Forty Dollars ($40.00) on October 2nd, [fols. 95 & 96] 1933; Forty Dollars ($40,00) on October 16th, 1933, and Forty Dollars ($40.00) on the 2nd day of each calendar month thereafter during such extended period of redemption, all to be paid toward the payment of taxes, insurance, interest and mortgage indebtedness on the premises involved in said mortgage foreclosure sale, and in case said Home Building and Loan Association shall fail or refuse to accept said sum or sums or any of them upon a tender thereof, then said petitioners shall deposit said sums with the Clerk of the District Court of Hennepin County, Minnesota, for the benefit of said Home Building and Loan Association and such deposit shall be deemed to be a compliance with the terms of this judgment and decree by the said Blaisdells.

By the Court:

Geo. H. Hemperley, Clerk of District Court. By —— ——, Deputy.

[fols. 97-100] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA, HENNEPIN COUNTY

Per Curiam

JOHN H. BLAISDELL et al., Respondents,

vs.

HOME BUILDING & LOAN ASSOCIATION, Appellant

Syllabus

Chap. 339 L. 1933 does not violate the constitution of the United States or of the state of Minnesota, and the appeal is ruled by the decision filed July 7, 1933, in a former appeal in this case.

OPINION—Filed July 27, 1933

Per CURIAM:

Defendant appeals from the judgment entered upon the finding of fact and conclusions of law. The case was here on an appeal by the plaintiffs, or petitioners, from the order denying a new trial wherein the decision was filed on July 7, 1933 (not yet reported). This appeal attacks Chap. 339 L. 1933 as violation of the same provisions of the Constitution of the United States and of the Constitution of this state as in the previous appeal, the parties having submitted the case on the same briefs. We are of the opinion that the decision in the first appeal rules this appeal and on the authority thereof the judgment is

Affirmed.

[fol. 101] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1933

[Title omitted]

ORDER ALLOWING APPEAL

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit (sub. nom. John H. Blaisdell and Rosella Blaisdell, his wife, Petitioners-Appellants,

vs. Home Building and Loan Association, Respondent, Nos. 29615 and 29711) by the Supreme Court of the State of Minnesota on the 28th day of July, 1933, and from each and every part thereof and having presented and filed its Petition for Appeal, Assignment of Errors, Prayer for Reversal, and Statement of Jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered, that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Minnesota in the above entitled cause, as provided by law, and

It is further ordered, that the clerk of the Supreme Court of the State of Minnesota shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the clerk of the Supreme [fols 102-115] Court of the United States, so that he shall have the same within forty (40) days of this date.

Dated August 11, 1933.

S. B. Wilson, Chief Justice, Supreme Court of Minnesota.

(Admission of Service.)

[fol. 116] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON, AND STIPULATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Aug. 21, 1933

Comes now the appellant in the above entitled case and states that the points upon which it intends to rely in this Court, in this case, are as follows:

Point I

The Supreme Court of Minnesota erred in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933, against the contention by appellant that the same is repugnant to the contract clause, Art. I, Sec. 10 of the United States Constitution.

Point II

The Supreme Court of Minnesota erred in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933,

against the contention by appellant that the same is repugnant to the due process clause of Amendment XIV of the United States Constitution.

Point III

The Supreme Court of Minnesota erred in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933, against the contention by appellant that the same is repugnant to the equal protection of the laws clause of Amend-
[fols. 117 & 118] ment XIV of the United States Constitution.

And the appellant further represents that the whole of the record as agreed between counsel in the stipulation as to the printing of record herein is necessary for the consideration of the case.

Dated Aug. 14th, 1933.

Alfred W. Bowen, Counsel for Appellant.

(Admission of Service.)

[fol. 119] Stipulation as to Printing Record

It is stipulated and agreed by and between Alfred W. Bowen, Esq., counsel for appellant, and George T. Simpson, Esq., counsel for appellees, that in order to save expense in the printing of the record herein, the following portions thereof, being sufficient to show the errors complained of, shall be printed, and no more, to-wit:

1. Amended Notice of Motion. (r. 1, 2.)
2. Amended Petition. (r. 3-5 inc.)
3. Bill of Exception—Objections to the Introduction of Evidence—and Motion to Dismiss. (r. 6, 7.)
4. Order (District Court) Sustaining Objections and Dismission Petition. (r. 8.)
5. Exhibit "A." (r. 9.)
6. Notice of Motion for New Trial. (r. 10.)
7. Order Denying New Trial and Memorandum (r. 11-16 inc.)
8. Transcript of Record, the following portions only to be printed:

All of page 47, except the title; all of page 48 and the first two lines of page 49; the last twelve lines on page 75 and the first fourteen lines on page 76; lines five to twelve,

inclusive, on page 85. (Note. These portions have been marked with red pencil in the certified transcript.)
[fols. 120 & 121] 9. Findings of Fact. (r. 89-93 inc.)
10. Judgment (District Court). (r. 94, 95.)
11 Judgment (Supreme Court). (r. 97.)
Dated August 14th, 1933.

Alfred W. Bowen, Counsel for Appellant. George T. Simpson, Counsel for Appellees.

O. K. Stiles.

[fol. 122] [File endorsement omitted.]

Endorsed on cover: File No. 37-973. Minnesota Supreme Court. Term No. 370. Home Building and Loan Association, Appellant, vs. John H. Blaisdell and Rosella Blaisdell, his wife. Filed August 21, 1933. No. 370 O. T. 1933.