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# Constitutional Law -- Impairment of Contract -- Mortgage Relief During the Depression

Jule McMichael

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Augustus Kleemeier, Jr., Harry Woodrow McGalliard, and Lucile Marshall Elliott.

The following students have been elected to the Order of the Coif: Hugh Lewis Lobdell, Irvin Elsworth Erb, and Joe Colin Eagles.

### Shepard's Citations and the North Carolina Law Review.

The publishers of Shepard's Citations have announced that, beginning with the June 1934 Cumulative Supplement, Shepard's North Carolina Citations will carry citations to the Articles and Notes and Comments in THE NORTH CAROLINA LAW REVIEW which deal with North Carolina cases, constitution and statutes and with the United States constitution and statutes. At first this service will cover only Volume XII of the REVIEW, being the issues of December 1933, and February, April, and June 1934, and subsequent issues. Later on it is planned to extend the citations to cover all of the previous eleven volumes of the REVIEW. It will not include reference to comments on North Carolina cases or statutes in other LAW REVIEWS. It is earnestly hoped that at some later time the service may thus be extended.

This new feature of Shepard's North Carolina Citations will greatly enlarge its usefulness and that of THE NORTH CAROLINA LAW REVIEW to the bench and bar.

## NOTES AND COMMENTS

### Constitutional Law—Impairment of Contract—Mortgage Relief During the Depression.

In an action under the North Carolina statute authorizing courts of equity to enjoin the consummation of sales under powers of sale contained in deeds of trust and mortgages solely on the ground that the highest bid at the sale does not represent the reasonable value of the property, the trial court, after finding that the bid of \$40,000 at the trustee's sale was only about half of the reasonable value of the land, issued a temporary restraining order, enjoining the trustee and purchaser from consummating the sale. On appeal, *held*, that the statute applies to sales under deeds of trust executed prior to its enactment, and being remedial only does not impair the obligation of contract nor deprive the parties of property without due process of law, nor confer upon mortgagors or trustors exclusive privileges.<sup>1</sup>

<sup>1</sup> Woltz v. Deposit Co., 206 N. C. 239 (1934).

In the recent case of *Home Building & Loan Ass'n v. Blaisdell*<sup>2</sup> the Supreme Court of the United States put its stamp of approval on legislative attempts to relieve mortgagors during the present economic depression. A Minnesota statute authorized the district courts to extend the period of redemption from mortgage foreclosure and execution sales for a just and equitable period, not beyond May 1, 1935, and during that time to withhold the right of deficiency judgments, contingent upon the mortgagor's paying a reasonable rental value to be applied to the interest, taxes, and mortgage indebtedness. The court by a five to four decision sustained the statute holding that it was not an unlawful impairment of the obligation of contract nor a violation of the due process or equal protection clauses of the Federal Constitution. In applying the principle of harmonizing the constitutional prohibition with the necessary residuum of state power the court said, "The economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts."

Among the many legal problems raised by the depression, perhaps none has attained more widespread importance than that of the defaulting mortgagor. The decisions seem to be unanimous in holding that in the absence of statute the existence of a financial depression and the fact that the property cannot be sold for a fair price are not sufficient grounds for enjoining a sale under a mortgage or deed of trust.<sup>3</sup> Also it has been generally held that in the absence of fraud and unfairness mere inadequacy of price will not invalidate a foreclosure sale.<sup>4</sup> Such sales, however, have been set aside when the price is so grossly inadequate as to shock the court's conscience or imply fraud.<sup>5</sup>

The Wisconsin court has held that in the light of the present emergency the equity courts may, independently of moratory stat-

<sup>2</sup> 78 L. ed. 251, 54 Sup. Ct. 231 (1934) commented upon (1934) 1 U. CHI. L. REV. 639 and (1934) 47 HARV. L. REV. 660.

<sup>3</sup> *Bolich v. Prudential Ins. Co.*, 202 N. C. 789, 164 S. E. 335 (1932) commented upon (1933) 11 N. C. L. REV. 172; note (1932) 82 A. L. R. 976; JONES, MORTGAGES (8th ed. 1928) §2354; WILTSIE, MORTGAGE FORECLOSURES (4th ed. 1927) §663.

<sup>4</sup> *Federal Land Bank of St. Louis v. Ballentine*, 186 Ark. 141, 52 S. W. (2d) 965 (1932); *Baldwin v. Brown*, 193 Cal. 345, 224 Pac. 462 (1924); *Springer v. Law*, 185 Ill. 542, 57 N. E. 435 (1900); *Roberson v. Mathews*, 200 N. C. 241, 156 S. E. 496 (1930); note (1920) 8 A. L. R. 1001; JONES, *op. cit. supra* note 3, §§2108, 2140, 2462; WILTSIE, *op. cit. supra* note 3, §§752, 759.

<sup>5</sup> *Ballentyne v. Smith*, 205 U. S. 285, 51 L. ed. 803, 27 Sup. Ct. 527 (1907); *Michigan Trust Co. v. Cody*, 249 N. W. 844 (Mich. 1933); *Hoffman v. McCracken*, 168 Mo. 337, 67 S. W. 878 (1902) note (1920) 8 A. L. R. 1001.

utes, take any one, two, or all of three steps: "(1) The court may decline to confirm the sale where the bid is substantially inadequate. . . . (2) The court in ordering a sale or resale, may, in its discretion, fix a minimum or upset price at which the premises must be bid in if the sale is to be confirmed. . . . (3) The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset price, conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment."<sup>6</sup>

In the last year, the legislatures of twenty-five states have passed various types of mortgage moratory statutes.<sup>7</sup> A majority of the courts which have considered such statutes have held them unconstitutional on the grounds that they impaired the obligation of contracts.<sup>8</sup> These courts in following the traditional<sup>9</sup> and logical view have taken the position that where the power of the legislature was specifically limited or denied, no power could be exercised, however great the emergency, and that the police power did not enable states

<sup>6</sup> *Suring State Bank v. Giese*, 210 Wis. 489, 246 N. W. 556 (1933) (in determining fair value potential or future value should be considered) commented upon (1933) 33 COL. L. REV. 744; (1933) 27 ILL. L. REV. 950; (1933) 81 U. PA. L. REV. 883; (1933) 8 WIS. L. REV. 286; note (1933) 85 A. L. R. 1480. Some courts have approved the requirement that fair value be credited on deficiency decrees. *Federal Title & Mortgage Guaranty Co. v. Lowenstein*, 113 N. J. Eq. 200, 166 Atl. 538 (1933). Others have refused to fix an upset price on the ground that competitive bidding might be further discouraged. *United Building & Loan Ass'n. of the City of Newark v. Neuman*, 113 N. J. Eq. 224, 166 Atl. 537 (1933); *Michigan Trust Co. v. Cody*, *supra* note 5.

<sup>7</sup> For a discussion of the statutes see notes: (1933) A. B. A. J. 474; (1934) 47 HARV. L. REV. 660; (1933) 42 YALE L. J. 1236.

<sup>8</sup> *Alliance Trust Co., Limited v. Hall*, 5 F. Supp. 285 (D. Idaho, 1933) (proclamation of governor of Idaho suspending foreclosure of real estate mortgages held not to apply to mortgages executed before legislative act authorizing the suspension because of unconstitutional impairment of contract); *Adams v. Spillyards*, 61 S. W. (2d) 686 (Ark. 1933) (statute in effect abolishing deficiency judgments) commented upon (1933) 20 VA. L. REV. 122; *State ex rel. Cleveringa v. Klein*, 249 N. W. 118 (N. D. 1933) (unconditional statutory extension in redemption period) noted in (1933) 86 A. L. R. 1539; *Life Ins. Co. of Va. v. Sanders*, 62 S. W. (2d) 348 (Tex. Civ. App. 1933) (provision for continuance of court until May 1, 1934, in foreclosure sales and for temporary injunction against foreclosure sales); *cf. Milkint v. McNeeley*, 169 S. E. 790 (W. Va. 1933) (statute extending time of redemption for tax sales held unconstitutional). Other state decisions have held such statutes valid. *Blaisdell v. Home Building and Loan Ass'n.*, 249 N. W. 334 (Minn. 1933); *Lingo Lumber Co. v. Hayes*, 64 S. W. (2d) 835 (Tex. Civ. App. 1933); *Beaumont Petroleum Syndicate v. Broussard*, 64 S. W. (2d) 993 (Tex. Civ. App. 1933).

<sup>9</sup> *Bronson v. Kinsie*, 1 How. 311, 11 L. ed. 397 (U. S. 1843); *Howard v. Bugbee*, 24 How. 461, 16 L. ed. 753 (U. S. 1860); *Barnitz v. Beverly*, 163 U. S. 118, 41 L. ed. 93, 16 Sup. Ct. 1042 (1896).

to impair the obligation of contracts.<sup>10</sup> This course of the state decisions tending toward holding the moratory statutes invalid was halted by the *Blaisdell case* which seems to establish the doctrine that the contract clause is subject to the police power of the states, and that laws altering contracts constitute an impairment within the meaning of the clause only if they are unreasonable.

The North Carolina statute in sections not involved in the principal case provides that where the mortgagee, payee, or other holder of the obligation secured becomes the purchaser at a sale not made pursuant to an order or decree of court and thereafter sues for a deficiency judgment, the defendant may defeat the deficiency judgment in whole or in part by showing that the property sold was fairly worth the amount of the debt at the time and place of sale, or that the amount bid was substantially less than its true value.<sup>11</sup> An Arkansas statute which in effect deprived the mortgagee of his deficiency judgment was held unconstitutional.<sup>12</sup> However, applying the principle laid down in the *Blaisdell case* it seems that the deprivation of a deficiency judgment to the extent of the fair value of the property received by the mortgagee might be sustained as a reasonable impairment of the obligation of contract within the police power of the state.

It is submitted that the principle of permitting a reasonable impairment of the obligation of contract is sound. Interpreted this way, the limitation of the contract clause is similar to that of the due process clause of the Fourteenth Amendment. The ultimate test of the power of the state is whether its exercise is reasonable. This is not new, but is a doctrine consistent with prior decisions.<sup>13</sup>

JULE MCMICHAEL.

<sup>10</sup> State *ex rel.* Cleveringa v. Klein, *supra* note 8. N. C. Laws, 1933, c. 275, §3, N. C. CODE ANN. (Michie, Supp. 1933) §2593 (d).

<sup>11</sup> N. C. LAWS 1933, c. 275, §3. By another statute the North Carolina Legislature has provided that no deficiency judgments shall be had in foreclosures of purchase money mortgages or deeds of trust executed after the enactment of the statute. N. C. Laws, 1933, c. 36; N. C. CODE ANN. (Michie, Supp. 1933) §2593 (f).

<sup>12</sup> Adams v. Spillyards, *supra* note 8.

<sup>13</sup> Beer Co. v. Mass., 97 U. S. 25, 24 L. ed. 989 (1878) (prohibition laws of Mass. impairing charter of Boston Beer Co. held valid); Stone v. Miss., 101 U. S. 814, 25 L. ed. 1079 (1879) (Miss. lottery laws held valid though charter of lottery company was impaired); Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548, 558, 58 L. ed. 721, 726, 34 Sup. Ct. 364, 368 (1914) ("For it is settled that neither the 'contract clause' nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor