ingly make any false or fraudulent statement or report required for the purpose of this Act, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of receiving any award or payment under this Act shall be punished by a fine of not less than $100 nor more than $10,000 or by imprisonment not exceeding one year. False statements.

SEPARABILITY

SEC. 14. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act or application of such provision to other persons or circumstances shall not be affected thereby. Saving clause.

Approved, June 27, 1934.

[CHAPTER 869.]

AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

June 28, 1934.
[S. 3580.]
[Public, No. 486.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 75 of the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States", as amended, is amended as follows: In section 75, entitled "Agricultural Compositions and Extensions", after subsection (r) add a new subsection (s), to read as follows: Bankruptcy; agricultural compositions and extensions. Vol. 47, p. 1473, amended.

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal, or if he feels aggrieved by the composition or extension, may amend his petition or answer asking to be adjudged a bankrupt. Such farmer may, at the time of the first hearing, petition the court that all of his property, whether pledged, encumbered, or unencumbered, by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of any part or parcel or all of the remainder of his property and pay for same under the terms and conditions set forth in this subsection (s). Farmer; petition in bankruptcy. Appraisal of property. Exemptions.

"(1) Upon such a request being made in the petition or answer, at the time of the first hearing, appraisers shall be designated and appointed. Such appraisers shall appraise all the property of the debtor at its then fair and reasonable value, not necessarily the market value at the time of such appraisal. The appraisals shall be made in all other respects, with right of objections, exceptions, and appeal, in accordance with this Act: *Provided*, That in case of real estate either party may file objections, exceptions, and appeals within one year from date of order approving the appraisal. Appraisers, appointment. *Proviso.* Filing objections.

"(2) After the value of the debtor's property shall have been fixed by the appraisal as herein provided, the referee shall issue an order setting aside to such debtor his exemptions as prescribed by the State law, subject to any existing mortgages or liens upon any such exemptions to an amount equal to the value, as fixed by the appraisal, of the value of such exempt property as is covered by any mortgage or lien, and shall further order that the possession, under the control of the court, of any part or parcel or all of the remainder of the debtor's property, shall remain in the debtor subject to a general lien, as security for the payment of the value thereof to the trustee of the creditors, if a trustee is appointed, such a lien to be subject to and Exemptions of debtor; order setting aside. Possession of remaining property.

Prior liens, etc., to remain effective.

inferior to all prior liens, pledges, or encumbrances. Such prior liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such prior liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors holding such prior liens, pledges, or encumbrances up to the actual value of such property as fixed by the appraisal provided for herein. All liens herein on livestock shall cover all increase, and all liens on real property shall cover all rental received or crops grown thereon by the debtor, as security for the payment of any sum that may be due or past due under the terms and provisions of the next paragraph, until the full value of any such particular property has been paid.

Liens on livestock.

Sale of bankrupt estate to debtor.

"(3) Upon request of the debtor, and with the consent of the lien holder or lien holders, the trustee, after the order is made setting aside to the debtor his exemptions, shall agree to sell to the debtor any part, parcel, or all of the remainder of the bankrupt estate at the appraised value upon the following terms and conditions, and upon such other conditions as in the judgment of the trustee shall be fair and equitable:

Payments.

"a. Payment of 1 per centum interest upon the appraised price within one year from the date of said agreement.

"b. Payment of 2½ per centum of the appraised price within two years from the date of said agreement.

"c. Payment of an additional 2½ per centum of the appraised price within three years from the date of said agreement.

"d. Payment of an additional 5 per centum of the appraised price within four years from the date of said agreement.

"e. Payment of an additional 5 per centum of the appraised price within five years from the date of said agreement.

"f. Payment of the remaining unpaid balance of the appraised price within six years from the date of said agreement.

Interest.

"Interest shall be paid on the appraised price and unpaid balances of the appraised price yearly as it accrues at the rate of 1 per centum per annum and all taxes shall be paid by the debtor.

Proceeds, etc., to credit of lien holders.

"The proceeds of such payments on the appraised price and interest shall be paid to the lien holders as their interests may appear, and to the trustee of the unsecured creditors, as their interests may appear, if a trustee is appointed.

Disposal of property by debtor; payments required.

"(4) An agreement having been reached as provided in subsection (3), the debtor may consume or dispose of any part or parcel or all of said property whether covered by the general lien to the trustee, if a trustee is appointed, or subject to pledges or prior liens or encumbrances held by secured creditors, provided he pays the appraised value of such part or parcel or all, as the case may be, to the secured creditors, as their interests may appear, and the trustee of the unsecured creditors, as his interests may appear, if a trustee is appointed, or he may put up a bond approved by the referee in bankruptcy that he will make payments, as provided for herein, of any property so consumed or disposed of.

Bond.

Enforcement of pledge in case of default of payment.

"(5) In case the debtor fails to make any payments, as herein provided, to any or all of the secured creditors or to the trustee of the unsecured creditors, then such secured creditors or the trustee may proceed to enforce their pledge, lien, or encumbrances in accordance with law. It shall be the duty of the secured creditors and of the trustee of the unsecured creditors to discharge all liens of record in accordance with law, whenever the debtor has paid the appraised value of any part, parcel, or all of his property as herein provided.

Discharge upon completing obligation.

"(6) Having complied with the provisions of subsection (3), the debtor may apply for his discharge as provided in this Act.

"(7) If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as herein provided for, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided*, That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: *Provided, however*, That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.

Court to stay proceedings for 5 years upon creditors' objections to manner of payments, etc.

Debtor to retain possession upon payment of rental.

Payment by debtor.

Provisos.
Lien holder may ask reappraisal.

Existing debts only, affected.

"If the debtor fails to comply with the provisions of this subection [1] the court may order the trustee to sell the property as provided in this Act."

Court may order trustee to sell, if terms not complied with.

Approved, June 28, 1934.

[1] So in original.

ters such as these, there can be no "code" for it at all. This is clear from the provisions of section 7(a) of the act (15 USCA § 707(a), with its explicit disclosure of the statutory scheme. Wages and the hours of labor are essential features of the plan, its very bone and sinew. There is no opportunity in such circumstances for the severance of the infected parts in the hope of saving the remainder. A code collapses utterly with bone and sinew gone.

I am authorized to state that Mr. Justice STONE joins in this opinion.

295 U. S. 555

LOUISVILLE JOINT STOCK LAND BANK v. RADFORD.*

No. 717.

Argued May 6, 1935.

Decided May 27, 1935.

1. **Mortgages ⇐600(1)**

Generally, holder of equity of redemption can redeem only on paying entire mortgage debt, and such rule, unless waived by mortgagee, applies even where redeemer has interest in only part of mortgaged property.

2. **Mortgages ⇐600(1)**

Recognized exceptions to rule requiring holder of equity of redemption to pay entire mortgage debt in order to redeem are based on conduct of mortgagee in causing extinguishment of lien on part of mortgaged property or on right of eminent domain.

3. **Bankruptcy ⇐262(3)**

Sale free of liens will not be ordered by bankruptcy court if it appears that amount of incumbrance exceeds value of property to be sold; and in case of sale free of liens for less than amount of lien, bankrupt estate must bear costs of sale.

4. **Bankruptcy ⇐376**

"Composition," as concerns debtor, is an agreement with creditors in lieu of distribution of debtor's property in bankruptcy, and, as concerns dissenting creditors, composition is method of adjustment among creditors of rights of property in which all are interested.

"Composition" agreement originates in a voluntary offer by the bankrupt and results in the main from voluntary acceptance by his creditors, and bankruptcy court in ordering composition exercises power similar to that exercised by courts of law or admiralty, or by court of equity in compelling dissenting creditors to submit to a plan of reorganization.

[Ed. Note.—For other definitions of "Composition," see Words & Phrases.]

5. **Bankruptcy ⇐387**

Secured claim is not affected by composition between bankrupt and creditors except when holder of claim is a member of a class, and then only when composition is desired by requisite majority and approved by court.

6. **Bankruptcy ⇐1**

Scope of bankruptcy power conferred upon Congress is not necessarily limited to that which has been exercised (Const. art. 1, § 8; Amend. 10).

7. **Constitutional law ⇐306**

Bankruptcy power of Congress is subject to Fifth Amendment (Const. art. 1, § 8; Amend. 5).

8. **Constitutional law ⇐163**

Congress under bankruptcy power may discharge debtor's personal obligation, since Congress is not prohibited from impairing obligation of contracts (Const. art. 1, § 8).

9. **Mortgages ⇐380**

Under law of Kentucky, mortgage creates lien which may be foreclosed only by suit resulting in judicial sale of property (Civ. Code Prac. of Ky. §§ 374–376).

10. **Mortgages ⇐468(3)**

Mortgagee under Kentucky law is entitled as of right to have receiver appointed to collect rents for his benefit, where property is probably insufficient to discharge mortgage debt and mortgage contains pledge of rents and provision for appointment of receiver (Civ. Code Prac. Ky. § 299).

11. **Bankruptcy ⇐3**

Frazier-Lemke Act gives bankruptcy court no power to terminate farmer bankrupt's option to purchase encumbered farm within five-year moratorium period unless there has been a commission of waste or failure to pay prescribed rent (Bankr. Act § 75 (s), 11 USCA § 203 (s).

12. **Bankruptcy ⇐3**
Eminent domain ⇐2(1)

Frazier-Lemke Act providing for appraisal of property of farm debtors in bankruptcy,

*Motion for stay of mandate denied 55 S. Ct. 918, 79 L. Ed. —.

and for bankrupt's purchase of encumbered farm at appraised value with mortgagee's consent, or for bankrupt's retention of possession for five years with option to purchase at any time at appraised or re-appraised value subject to payment of reasonable rental fixed by court, *held* void as depriving mortgagee of property rights without compensation (Bankr. Act § 75 (s), 11 USCA § 203 (s); Civ. Code Prac. Ky. §§ 299, 374–376; Ky. St. 1930, §§ 2362, 2364; Const. U. S. art. 1, § 8, Amend. 5).

Frazier-Lemke Act, Bankr. Act § 75 (s), 11 USCA § 203 (s), was unconstitutional under Const. Amend. 5, because it deprived mortgagee of rights under Civ. Code Prac. Ky. §§ 299, 374–376; Ky. St. 1930, §§ 2362, 2364 to retain lien until indebtedness was paid, to realize upon security at judicial public sale, to determine when sale should be held, to bid at the sale, and to control property during period of default and have rents and profits collected by receiver.

13. Eminent domain ⇐2(1)

If public interest requires, and permits, taking of property of individual mortgagees to relieve necessities of individual mortgagors, resort must be had to proceedings by eminent domain (Const. Amend. 5).

On Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

In the matter of William W. Radford, Sr., bankrupt, wherein the Louisville Joint Stock Land Bank intervened attacking the constitutionality of the Frazier-Lemke Act. A decree upholding the bankruptcy proceeding and granting a five-year stay of proceedings against the bankrupt was affirmed by the Circuit Court of Appeals [74 F.(2d) 576], and intervener brings certiorari.

Reversed.

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*Messrs. John E. Tarrant, of Louisville, Ky., John W. Davis, of New York City, and William Marshall Bullitt, of Louisville, Ky., for petitioner.

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*Messrs. Harry H. Peterson, of St. Paul, Minn., and P. O. Sathre, of Finley, N. D., William Lemke, of Fargo, N. D., and Edwin A. Krauthoff, of Chicago, Ill. (Messrs. Frank Rives, of Hopkinsville, Ky., David A. Sachs, Jr., of Louisville, Ky., and Herbert C. Lust, of Fowler, Ind., on the briefs), for respondent.

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*Mr. Justice BRANDEIS delivered the opinion of the Court.

This case presents for decision the question whether subsection (s) added to section
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75 of the Bankruptcy Act[1] by *the Frazier-Lemke Act, June 28, 1934, c. 869, 48 Stat. 1289, 11 USCA § 203 (s), is consistent with the Federal Constitution. The federal court for Western Kentucky [In re Radford (D. C.) 8 F. Supp. 489] and the Circuit Court of Appeals for the Sixth Circuit [74 F.(2d) 576] held it valid in this case; and it has been sustained elsewhere.[2] In view of the novelty and importance of the question, we granted certiorari (294 U. S. 702, 55 S. Ct. 547, 79 L. Ed. —).

In 1922 (and in 1924) Radford mortgaged to the Louisville Joint Stock Land Bank a farm in Christian county, Kentucky, comprising 170 acres, then presumably of the appraised value of at least $18,000.[3] The mortgages were given to secure loans aggregating

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[1] Section 75 had been added to the Bankruptcy Act on March 3, 1933, by c. 204, 47 Stat. 1470 (see 11 USCA § 203).

[2] Bradford, Jr. v. Fahey, 76 F.(2d) 628 (4 C. C. A.); In re Cope (D. C. Colo.) 8 F. Supp. 778; In re Constitutionality of Frazier-Lemke Act (Galloway v. Union Trust Co.) (D. C. E. D. Ark.) 9 F. Supp. 575; In re Plumer (D. C. S. D. Cal.) 9 F. Supp. 923; In re Cyr (D. C. N. D. Ind.) 9 F. Supp. 697; In re Jones (D. C. W. Mo.) 10 F. Supp. 165. Compare In re Bradford (D. C.) 7 F. Supp. 665, reversed in Bradford, Jr. v. Fahey; In re Moore (D. C.) 8 F. Supp. 393; Paine v. Capitol Freehold Land & Trust Co. (D. C.) 8 F. Supp. 500; In re Miner (D. C.) 9 F. Supp. 1; In re Duffy (D. C.) 9 F. Supp. 166; In re Doty (D. C.) 10 F. Supp. 195; In re Payne (D. C. Tex., May 9, 1935) 10 F. Supp. 649 (holding the Act unconstitutional).

[3] The Bank was organized under the Federal Farm Loan Act of July 17, 1916, c. 245, 39 Stat. 360. Section 12 of the act (12 USCA § 771) provided that loans should not exceed 50 per cent of the value of the land mortgaged and 20 per

$9,000, to be repaid in instalments over the period of 34 years with interest at the rate of 6 per cent. Radford's wife joined in the mortgages and the notes. In 1931 and subsequent years, the Radfords made default in their covenant to pay the taxes. In 1932 and 1933, they made default in their promise to pay the instalments of interest and principal. *574 In 1933, *they made default, also, in their covenant to keep the buildings insured. The Bank urged the Radfords to endeavor to refinance the indebtedness pursuant to the provisions of the Emergency Farm Mortgage Act, May 12, 1933, c. 25, 48 Stat. 41.[4] After they declined to do so, the Bank having declared the entire indebtedness immediately payable, commenced, in June, 1933, a suit in the circuit court for Christian county against the Radfords and their tenant to foreclose the mortgages; and, invoking a covenant in the mortgage expressly providing therefor, sought the appointment of a receiver to take possession and control of the premises and to collect the rents and profits.

The application for the appointment of a receiver was denied, and all proceedings in the suit were stayed, upon request of the Conciliation Commissioner for Christian County appointed under section 75 of the Bankruptcy Act (see 11 USCA § 203), as he stated that Radford desired to avail himself of the provisions of that section. Proceeding under it, Radford filed, in the federal court for Western Kentucky, *575 a petition *praying that he be afforded an opportunity to effect a composition of his debts. The petition was promptly approved and a meeting of the creditors was held. But Radford failed to obtain the acceptance of the requisite majority in number and amount to the composition proposed. Then, the Bank offered to accept a deed of the mortgaged property in full satisfaction of the indebtedness to it and to assume the unpaid taxes. Radford refused to execute the deed; and on June 30, 1934, the state court entered judgment ordering a foreclosure sale.

Meanwhile, the Frazier-Lemke Act had been passed on June 28, 1934 (11 USCA § 203 (s); and on August 6, 1934, and again on November 10, 1934, Radford filed amended petitions for relief thereunder. The second amended petition prayed that Radford be adjudged a bankrupt; that his property, whether free or encumbered, be appraised; and that he have the relief provided for in paragraphs 3 and 7 of subsection (s) of the Frazier-Lemke Amendment, 11 USCA § 203 (s) (3, 7). That act provides, among other things, that a farmer who has failed to obtain the consents requisite to a composition under section 75 of the Bankruptcy Act, may, upon being adjudged a bankrupt, acquire alternative options in respect to mortgaged property:

1. By paragraph 3, the bankrupt may, if the mortgagee assents, purchase the property at its then appraised value, acquiring title thereto as well as immediate possession, by agreeing to make deferred payments as fol-

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cent of the value of permanent insured improvements thereon. The Bank loaned the Radfords $8,000 in 1922 and an additional $1,000 in 1924. The stocks and bonds of the Bank are privately owned. The bonds "being instrumentalities of the Government of the United States" are tax exempt. Compare Smith v. Kansas City Title Co., 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 577; Federal Land Bank of New Orleans v. Crosland, 261 U. S. 374, 43 S. Ct. 385, 67 L. Ed. 703, 29 A. L. R. 1; Act of May 12, 1933, c. 25, § 29, 48 Stat. 46 (12 USCA § 810).

[4] That Act empowered the Federal Land Banks and the Land Bank Commissioner to lend farmers 75 per cent. of the normal value of their land, at 4½ per cent. interest for the first five years and 5 per cent. thereafter; no repayment of principal to be required for five years. Act of May 12, 1933, c. 25, §§ 24, 32, 48 Stat. 43, 48 (12 USCA §§ 771, subd. 12, 1016); Act of June 16, 1933, c. 98, § 80, 48 Stat. 273 (12 USCA § 638); Act of Jan. 31, 1934, c. 7, § 10, 48 Stat. 347, 12 USCA § 1016 (b). Mortgage loans made to farmers by the institutions subject to the Farm Credit Administration outstanding June 30, 1934, aggregated $2,029,305,081. As of March 31, 1935, the loans had been increased to $2,661,558,017. Farm Credit Administration, Monthly Reports on Loans and Discounts, March, 1935. "The proceeds of the loans closed [in 1933–34] both by the land banks and by the Land Bank Commissioner were used principally to refinance existing indebtedness. Of the loans closed by the land banks, approximately 86.8 per cent were used for this purpose, and of those closed by the Commissioner, 92 per cent were so used." The Farm Real Estate Situation, 1933–34. Circular No. 354 of United States Department of Agriculture, April, 1935, p. 5.

lows: 2½ per cent. within two years; 2½ per cent. within three years; 5 per cent. within four years; 5 per cent. within five years; the balance within six years. All deferred payments to bear interest at the rate of 1 per cent. per annum.

2. By paragraph 7, the bankrupt may, if the mortgagee refuses his assent to the immediate purchase on the above basis, require the bankruptcy court to "stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or
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*any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act [title]. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: Provided, That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court, and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act [title]: Provided, however, That the provisions of this Act [subsection] shall apply only to debts existing at the time this Act becomes effective [on June 28, 1934]."

Answering the amended petition, the Bank duly claimed that the Frazier-Lemke Act is, and the relief sought would be, unconstitutional. It prayed that Radford's amended petition be dismissed; that the Bank be permitted to pursue its remedies in the state court; and that it be allowed to proceed with the foreclosure sale in accordance with the judgment of that court. It refused to accept the composition and extension proposal offered by Radford; declined to consent to the proposed sale of that property to Radford at the appraised value or any value on the terms set forth in paragraph 3; and also objected to his retaining possession thereof with the privilege of purchasing the same provided by paragraph 7. The federal court overruled the Bank's objections; denied its prayers; adjudged Radford a bankrupt within the meaning of the Frazier-Lemke Act; and ap-
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pointed a referee to take proceedings *thereunder. There was no claim that the farm was exempt as a homestead or otherwise.

The referee ordered an appraisal of all of Radford's property, encumbered and unencumbered. The appraisers found that "the fair and reasonable value of the property of the debtor on which Louisville Joint Stock Bank has a mortgage" and also the "market value of said land" was then $4,445.[5] The referee approved the appraisal, although the Bank offered in open court to pay $9,205.09 in cash for the mortgaged property; and counsel for the bankrupt admitted that the Bank had a valid lien upon it for the amount so offered to be paid, and that, under the law, if the Bank's offer to purchase the property were accepted, all the money paid in in cash would be immediately returned to it in satisfaction of the mortgage indebtedness.

The Bank refused to consent to a sale of the mortgaged property to Radford at the appraised value and filed written objections to such sale and to the manner of payments prescribed by paragraph 3 of subsection (s). Thereupon, the referee ordered that, for the period of five years, all proceedings for the enforcement of the mortgages be stayed; and that the possession of the mortgaged property, subject to liens, remain in Radford, under the control of the court, as provided in paragraph 7 of subsection (s). The referee fixed the rental for the first year at $325; and ordered that for each subsequent year the rental be fixed by the court. It was stipulated, that
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the *annual taxes and insurance premium amount to $105; and admitted that administration charges said to amount to $22.75 must be paid from the rental. All the orders of the referee were, upon a petition for a review, duly approved by the District Court;

[5] The appraisal dated December 1, 1934 recited originally that $4,445 was the "fair and reasonable value," without mentioning the market value. It was, by leave of court, amended on December 4, 1934, to read as stated in the text. Besides the mortgaged property, Radford had a one-half interest in a half-acre lot and house thereon appraised at $150; exempt personal property appraised at $568; and nonexempt personal property at $831.50. The amount of the indebtedness other than to the Bank, and the terms of the composition offered do not appear.

and its decree was affirmed by the Circuit Court of Appeals on February 11, 1935.

Since entry of the judgment of the Court of Appeals, this Court has held unconstitutional provisions of state legislation in some respects comparable to the Frazier-Lemke Act. W. B. Worthen Co. v. Kavanaugh, 295 U. S. 56, 55 S. Ct. 555, 557, 79 L. Ed. ——. There we said: "With studied indifference to the interests of the mortgagee or to his appropriate protection they have taken from the mortgage the quality of an acceptable investment for a rational investor," and, "So viewed they are seen to be an oppressive and unnecessary destruction of nearly all the incidents that give attractiveness and value to collateral security." The Bank insists, among other things, that the Frazier-Lemke Act has been here applied with like result; that the provisions of the act, even if applied solely to mortgages thereafter executed, would transcend the bankruptcy power; and that, in any event, to apply them to pre-existing mortgages violates the Fifth Amendment of the Federal Constitution. Radford contends that the Frazier-Lemke Act is valid because it is a proper exercise of the power conferred by article 1, § 8 of the Constitution, which declares: "Congress shall have Power * * * To establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." Before discussing these contentions, it will be helpful to consider the position occupied generally by mortgagees prior to the enactment here challenged.

First. For centuries efforts to protect necessitous mortgagors have been persistent. Gradually the mortgage of real estate was transformed from a conveyance upon condition into a lien; and failure of the mortgagor to pay on the day fixed ceased to effect

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an automatic foreclosure. *Courts of equity, applying their established jurisdiction to relieve against penalties and forfeitures, created the equity of redemption. Thus the mortgagor was given a reasonable time to cure the default and to require a reconveyance of the property. Legislation in many states carried this development further, and preserved the mortgagor's right to possession, even after default, until the conclusion of foreclosure proceedings.[6] But the statutory command that the mortgagor should not lose his property on default had always rested on the assumption that the mortgagee would be compensated for the default by a later payment, with interest, of the debt for which the security was given; and the protection afforded the mortgagor was, in effect, the granting of a stay. No instance has been found, except under the Frazier-Lemke Act (11 USCA § 203(s), of either a statute or decision compelling the mortgagee to relinquish the property to the mortgagor free of the lien unless the debt was paid in full.[7]

[1,2] [6] See Pomeroy's Equity Jurisprudence, §§ 162–3, 376, 381–2, 1180, 1186–1190, 1219; H. W. Chaplin, The Story of Mortgage Law, 4 Harv. Law Rev. 4; William F. Walsh, Development of the Title and Lien Theories of Mortgages, 9 New York University Law Quarterly Rev. 280.

[7] It is the general rule that a holder of the equity of redemption can redeem from the mortgagee only on paying the entire mortgage debt. Collins v. Riggs, 14 Wall. 491, 20 L. Ed. 723; Jones v. Van Doren, 130 U. S. 684, 692, 9 S. Ct. 685, 32 L. Ed. 1077; American Loan & Trust Co. v. Atlanta Electric Ry. Co. (C. C.) 99 F. 313, 315, 316; Lomas & Nettleton Co. v. Di Francesco, 116 Conn. 253, 258, 164 A. 495; Palk v. Lord Clinton, 12 Ves. Jr. 48, 58. The rule is for the protection of the mortgagee, and unless waived by him, applies even when the redeemer has an interest in only part of the mortgaged property. Bank of Luverne v. Turk, 222 Ala. 549, 133 So. 52 (1931); Quinn Plumbing Co. v. New Miami Shores Corp., 100 Fla. 413, 129 So. 690, 73 A. L. R. 600; Shinn v. Barrie, 182 Ark. 366, 31 S.W. (2d) 540. Recognized exceptions to the rule are based on the action of the mortgagee in himself causing the lien on a part of the mortgaged property to be extinguished, Dexter v. Arnold, Fed. Cas. No. 3,857, 1 Sumn. 109, 118; Welch v. Beers, 8 Allen (Mass.) 151; George v. Wood, 11 Allen (Mass.) 41; Meacham v. Steele, 93 Ill. 135; Coffin v. Parker, 127 N. Y. 117, 27 N. E. 814, or on the right of eminent domain, Dows v. Congdon, 16 How. Prac. (N. Y.) 571; Mutual Life Insurance Co. v. Easton & Amboy R. R., 38 N. J. Eq. 132. Where the right of redemption after foreclosure sale is based entirely on statute, a different rule may be prescribed. Compare Northwestern Mutual Life Ins. Co. v. Hansen, 205 Iowa, 789, 218 N. W. 502; Tuttle v. Dewey, 44 Iowa, 306; State v. Carpenter, 19 Wash. 378, 53 P. 342; see Dougherty v. Kubat, 67 Neb. 269, 273, 93 N. W. 317. For collections of cases, see 2 Jones, Mortgages (8th Ed. 1928) §§ 1370–1377; 2 Wiltsie, Mortgage Foreclosure (4th Ed. 1927) §§ 1196–1213, 1071.

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*This right of the mortgagee to insist upon full payment before giving up his security has been deemed of the essence of a mortgage. His position in this respect was not changed when foreclosure by public sale superseded strict foreclosure or when the Legislatures of many states created a right of redemption at the sale price. To protect his right to full payment or the mortgaged property, the mortgagee was allowed to bid at the judicial sale on foreclosure.[8] In many states
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other statutory changes were *made in the form and detail of foreclosure and redemption.[9] But practically always the measures adopted for the mortgagor's relief, including moratorium legislation enacted by the several states during the present depression,[10] resulted primarily in a stay; and the relief afforded rested, as theretofore, upon the assumption that no substantive right of the mortgagee was being impaired, since payment in full of the debt with interest would fully compensate him.

Statutes for the relief of mortgagors, when applied to pre-existing mortgages, have given rise, from time to time, to serious constitutional questions. The statutes were sustained by this court when, as in Home Building & Loan Association v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A. L. R. 1481, they were found to preserve substantially the right of the mortgagee to obtain, through application of the security, payment of the indebtedness. They were stricken down, as in W. B. Worthen Co. v. Kavanaugh, 295 U. S. 56, 55 S. Ct. 555, 79 L. Ed. ——, when it appeared that this substantive right was substantially abridged. Compare W. B. Worthen Co. v. Thomas, 292 U. S. 426, 54 S. Ct. 816, 78 L. Ed. 1344, 93 A. L. R. 173.

Second. Although each of our national bankruptcy acts followed a major or minor
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depression,[11] none had *prior to the Frazier-Lemke amendment, sought to compel the holder of a mortgage to surrender to the

[8] Compare Pewabic Mining Co. v. Mason, 145 U. S. 349, 361, 362, 12 S. Ct. 887, 36 L. Ed. 732; Easton v. German-American Bank, 127 U. S. 532, 8 S. Ct. 1297, 32 L. Ed. 210; Twin-Lick Oil Co. v. Marbury, 91 U. S. 587, 590, 23 L. Ed. 328; Buchler v. Black (C. C. A.) 226 F. 703; Caldwell v. Caldwell, 173 Ala. 216, 55 So. 515; Felton v. Le Breton, 92 Cal. 457, 28 P. 490; Chillicothe Paper Co. v. Wheeler, 68 Ill. App. 343; Kock v. Burgess, 176 Iowa 493, 156 N. W. 174, 158 N. W. 534; McNair v. Biddle, 8 Mo. 257; Stover v. Stark, 61 Neb. 374, 85 N. W. 286, 87 Am. St. Rep. 460; Paulson v. Oregon Surety & Cas. Co., 70 Or. 175, 138 P. 838; Blythe v. Richards, 10 Serg. & R. (Pa.) 261, 13 Am. Dec. 672; Archambault v. Pierce, 46 R. I. 295, 127 A. 146. Some states have abolished by statute the general rule that a mortgagee, exercising a power of sale conferred in the mortgage, may not purchase at his own sale. See Heighe v. Sale of Real Estate, 164 Md. 259, 164 A. 671, 676, 93 A. L. R. 81 (1933); Ten Eyck v. Craig, 62 N. Y. 406, 421; Galvin v. Newton, 19 R. I. 176, 178, 36 A. 3; 2 Wiltsie, Mortgage Foreclosure (4th Ed. 1927) § 869.

In England, the power conferred upon the court in foreclosure proceedings, to order a sale, instead of strict foreclosure (15 & 16 Vict., c. 86, § 48; 44 & 45 Vict., c. 41, § 25) will not be exercised over the mortgagee's objection, when the property is not likely to bring the full amount of the mortgage debt, Merchant Banking Co. v. London & Hanseatic Bank, 55 L. J. Ch. 479; Provident Clerks' Mutual Ass'n v. Lewis, 62 L. J. Ch. 89; at least, not unless security is put up to protect the objecting mortgagee; Cripps v. Wood, 51 L. J. Ch. 584; or a bidding reserved sufficient to cover the amount due the mortgagee, Whitfield v. Roberts, 5 Jur. N. S. 113. Compare Corsellis v. Patman, L. R. 4 Eq. 156; Wooley v. Colman, L. R. 21 Ch. Div. 169; Hurst v. Hurst, 16 Beav. 372.

[9] See 3 Jones, Mortgages (8th Ed. 1928) c. 30.

[10] See A. H. Feller, Moratory Legislation (1933), 46 Harv. Law Rev. 1061, 1081; Commerce Clearing House, Bank Law Federal Service—"L" Unit— 128 C. C. H., pp. 7802–7809.

[11] See John Hanna, Agriculture and the Bankruptcy Act (1934), 19 Minn. Law Review 1. The first Bankruptcy Act, April 4, 1800, c. 19, 2 Stat. 19, followed the minor depression of 1798. The second Bankruptcy Act, August 19, 1841, c. 9, 5 Stat. 440, followed the severe depression of 1837. The third Bankruptcy Act, March 3, 1867, c. 176, 14 Stat. 517, followed the financial disturbances incident to the Civil War. The fourth Bankruptcy Act, July 1, 1898, c. 541, 30 Stat. 544 (see 11 USCA) followed the depression of 1893. Farmers were first brought within the scope of our bankruptcy laws by the act of 1841, which made voluntary bankruptcy available to all. In the act of 1867, farmers were not, as in the act of 1898, excluded from involuntary bankruptcy.

bankrupt either the possession of the mortgaged property or the title, so long as any part of the debt thereby secured remained unpaid. The earlier bankruptcy acts created some exemptions of unencumbered property;[12] but none had attempted to enlarge the rights or privileges of the mortgagor as against the mortgagee. The provisions of the acts, so far as concerned the debtor, were aimed to "relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes," and to give him "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." Local Loan Co. v. Hunt, 292 U. S. 234, 244, 54 S. Ct. 695, 699, 78 L. Ed. 1230, 93 A. L. R. 195. No bankruptcy act had undertaken to supply him capital with which to engage in business in the future. Some states had granted to debtors extensive exemptions of unencumbered property from liability to seizure in satisfaction of debts; and these exemptions were recognized by the Bankruptcy Act of 1867, as well as that of 1898. But unless the mortgagee released his security, in order to prove in bankruptcy for the full

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amount of the debt, a *mortgage even of exempt property was not disturbed by bankruptcy proceedings. Long v. Bullard, 117 U. S. 617, 6 S. Ct. 917, 29 L. Ed. 1004.[13]

No bankruptcy act had undertaken to modify in the interest of either the debtor or other creditors any substantive right of the holder of a mortgage valid under federal law. Supervening bankruptcy had, in the interest of other creditors, affected in some respects the remedies available to lienholders. In Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry., 294 U. S. 648, 55 S. Ct. 595, 606, 79 L. Ed. —, where, in a proceeding for reorganization of a railroad under section 77 of the Bankruptcy Act (11 USCA § 205) the District Court was held to have the power to enjoin temporarily the sale of pledged securities, this court said: "The injunction here in no way impairs the lien, or disturbs the preferred rank of the pledgees. It does no more than suspend the enforcement of the lien by a sale of the collateral pending further action. It may be, as suggested, that during the period of restraint the collateral will decline in value; but the same may be said in respect of an injunction against the sale of real estate upon foreclosure of a mortgage; and such an injunction may issue in an ordinary proceeding in bankruptcy. Straton v. New, 283 U. S. 318, 321, 51 S. Ct. 465, 75 L. Ed. 1060, and cases cited." "The injunction here goes no further than to delay the enforcement of the contract. It affects only the remedy."

[3] Bankruptcy acts had, either expressly, or by implication, as was held in Van Huffel v. Harkelrode, 284 U. S. 225, 227, 52 S. Ct. 115, 116, 76 L. Ed. 256, 78 A. L. R. 453, authorized the court to direct, in the interest of other creditors, that all liens upon property forming a part of the bankrupt's estate be marshaled; that the property be sold free of encumbranc-

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es; and that *the rights of all lienholders be transferred to the proceeds of the sale—a power which "had long been exercised by federal courts sitting in equity when ordering sales by receivers or on foreclosure." First National Bank v. Shedd, 121 U. S. 74, 87, 7 S. Ct. 807, 30 L. Ed. 877, Mellen v. Moline Malleable Iron Works, 131 U. S. 352, 367, 9 S. Ct. 781, 33 L. Ed. 178. Compare Ray v. Norseworthy, 23 Wall. 128, 135, 23 L. Ed. 116. But there had been no suggestion that such a sale could be made to the prejudice of the lienor, in the interest of either the debtor or of other creditors. By the settled practice, a sale free of liens will not be ordered by the bankruptcy court if it appears that the amount of the encumbrance exceeds the value of the property.[14] And the sale is always made so as to

[12] Act of 1800, c. 19, §§ 34, 35, 2 Stat. 19, 30, 31; Act of 1841, c. 9, § 3, 5 Stat. 440, 443; Act of 1867, c. 176, § 14, 14 Stat. 517, 522.

[13] Compare Hook, Does the Frazier-Lemke Amendment Grant Relief as to Debts Secured by Liens on Exempt Property (1934), 11 American Bankruptcy Review 21.

[14] Federal Land Bank of Baltimore v. Kurtz (C. C. A.) 70 F.(2d) 46; New Liberty Loan & Savings Ass'n v. Nusbaum (C. C. A.) 70 F.(2d) 49; In re American Magnestone Co. (D. C.) 34 F.(2d) 681; In re Fayetteville Wagon-Wood & Lumber Co. (D. C.) 197 F. 180; In re Foster (D. C.) 181 F. 703; In re Gibbs (D. C.) 109 F. 627; In re Cogley (D. C.) 107 F. 73; In re Shaeffer (D. C.) 105 F. 352; In re Styer (D. C.) 98 F. 290; In re Taliafero, Fed. Cas. No. 13,736 (Chief Justice Waite); see Kimmel v. Crocker (C. C. A.) 72 F.(2d) 599, 601; In re National Grain Corp. (C. C. A.) 9 F.(2d) 802, 803; In re Franklin Brewing Co. (C. C. A.) 249 F. 333, 335;

obtain for the property the highest possible price. No court appears ever to have authorized a sale at a price less than that which the lien creditor offered to pay for the property
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in cash.[15] *Thus, a sale free of liens in no way impairs any substantive right of the mortgagor; and such a sale is not analogous to the sale to the bankrupt provided for by paragraph 7 of the Frazier-Lemke Act 11 USCA § 203 (s) (7).

[4, 5] Nor do the provisions of the bankruptcy acts concerning compositions afford any analogy to the provisions of paragraph 7. So far as concerns the debtor, the composition is an agreement with the creditors in lieu of a distribution of the property in bankruptcy—an agreement which "originates in a voluntary offer by the bankrupt, and results, in the main, from voluntary acceptance by his creditors." Nassau Smelting & Refining Works, Ltd. v. Brightwood Bronze Foundry Co., 265 U. S. 269, 271, 44 S. Ct. 506, 507, 68 L. Ed. 1013; Myers v. International Trust Co., 273 U. S. 380, 383, 47 S. Ct. 372, 71 L. Ed. 692. So far as concerns dissenting creditors, the composition is a method of adjusting among creditors rights in property in which all are interested. In ordering the adjustment, the bankruptcy court exercises a power similar to that long exercised by courts of law, Head v. Amoskeag Manufacturing Co., 113 U. S. 9, 21, 5 S. Ct. 441, 28 L. Ed. 889; and of admiralty, The Orleans v. Phoebus, 11 Pet. 175, 183, 9 L. Ed. 677. It is the same power which a court of equity exercises when it compels dissenting creditors, in effect, to submit to a plan of reorganization approved by it as beneficial and assented to by the requisite majority of the creditors. Shaw v. Railroad Co., 100 U. S. 605, 25 L. Ed. 757; Kansas City Terminal Ry. Co. v. Central Union Trust Co., 271 U. S. 445, 46 S. Ct. 549, 70 L. Ed. 1028. Compare National Surety Co. v. Coriell, 289 U. S. 426, 53 S. Ct. 678, 77 L. Ed. 1300, 88 A. L. R. 1231; First National Bank of Cincinnati v. Flershem, 290 U. S. 504, 54 S. Ct. 298, 78 L. Ed. 465, 90 A. L. R. 391. In no case of composition is a secured claim affected except when the holder is a member of a class;
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and then only when the composi*tion is desired by the requisite majority and is approved by the court.[16] Never, so far as appears, has any composition affected a secured claim held by a single creditor. Compositions are comparable to the voluntary adjustment with the mortgagee provided for in paragraph 3 of the Frazier-Lemke amendment (11 USCA § 203 (s) (3). They are not analogous to the so-called adjustment compelled by paragraph 7 (11 USCA § 203 (s) (7).

Third. The bank contends that the Frazier-Lemke Act is void, because it is not a law "on the subject of Bankruptcies"; that it does not deal with that subject; and hence, that it is in contravention of the Tenth Amendment, which declares: "The powers not delegated to

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In re Roger Brown & Co. (C. C. A.) 196 F. 758, 761; In re Pittelkow (D. C.) 92 F. 901, 903; Citizens' Savings Bank of Paducah v. City of Paducah, 159 Ky. 583, 585, 167 S. W. 870; Dugan v. Logan, 229 Ky. 5, 12, 16 S.W.(2d) 763. Compare In re Sloterbeck Chevrolet Co. (D. C.) 8 F. Supp. 1023; In re Carl (D. C.) 5 F. Supp. 215; In re Civic Center Realty Co. (D. C.) 26 F.(2d) 825. Where the mortgaged property is sold free of liens for less than the amount of the liens, the bankrupt estate and not the lienholders must bear the costs of the sale. In re Harralson (C. C. A.) 179 F. 490, 29 L. R. A. (N. S.) 737; In re Holmes Lumber Co. (D. C.) 189 F. 178, 181. Compare Rubenstein v. Nourse (C. C. A.) 70 F.(2d) 482; In re Dawkins (D. C.) 34 F.(2d) 581.

[15] In English bankruptcy proceedings, where mortgaged property is sold under order of the commissioners, the mortgagee is permitted to bid, to prevent a sacrifice of the property, sometimes even without previous leave of court. Ex parte Ashley, 3 Deac. & C. 510; Ex parte Pedder, 3 Deac. & C. 622; compare Ex parte Davis, 3 Deac. & C. 504; Ex parte Bacon, 2 Deac. & C. 181; Ex parte Du Cane, 1 Buck. 18; Ex parte Marsh, 1 Madd. 89.

[16] The principle of composition was first applied to the interests of secured creditors in their security, by section 74, added to the Bankruptcy Act, by Act of March 3, 1933, c. 204, § 1, 47 Stat. 1467, see 11 USCA § 202 (individual debtors); by section 75, Act of March 3, 1933, c. 204, § 1, 47 Stat. 1470, see 11 USCA § 203 (agricultural compositions); by section 77, Act of March 3, 1933, c. 204, § 1, 47 Stat. 1474, 11 USCA § 205 (railroads engaged in interstate commerce); by section 77B, Act of June 7, 1934, c. 424, § 1, 48 Stat. 912, 11 USCA § 207 (corporations); and by section 80, as added by Act of May 24, 1934, c. 345, 48 Stat. 798, 11 USCA § 303 (public debtors). The constitutionality of such provision in section 74 was considered in Re Landquist (C. C. A.) 70 F.(2d) 929, 933.

the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The argument is that the essential features of a bankruptcy law are these: The surrender by the debtor of his property for ratable distribution among his creditors, except so far as encumbered or exempt, and the discharge by his creditors of all claims against the debtor; that, on the other hand, the main purpose and the effect of the Frazier-Lemke Act is to prevent distribution of the farmer-mortgagor's property; to enable him to remain in possession despite persisting default; to scale down the mortgage debt; and to give the mortgagor the option to acquire the full title to the property upon paying the reduced amount. Thus, it is urged, the act effects a fundamental change in the relative rights of

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mortgagor and mortgagee *of real property as determined by the law of the state in which the property is located. The bank argues that, if the bankruptcy clause were construed to permit the making of such fundamental changes, Congress could deal with every phase of the relations between an insolvent or non-paying debtor and his creditors; that it might, among other things, divest state courts of jurisdiction over suits upon promissory notes between citizens of the same state; that commercial controversies arising from breach of contract might be brought under like control; that the obtaining of goods or credits by false pretenses, for example, could be made a crime against the United States, despite the rule declared in United States v. Fox, 95 U. S. 670, 24 L. Ed. 538; that the commercial and financial life of each state would be in large measure subject to federal regulation; and that the lines between state and federal government could thus be redrawn by Congress.

[6] It is true that the original purpose of our bankruptcy acts was the equal distribution of the debtor's property among his creditors; and that the aim of the legislation was to do this promptly.[17] But, the scope of the bankruptcy power conferred upon Congress is not necessarily limited to that which has been exercised. The first act provided only for compulsory proceedings against

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traders, *bankers, brokers, and underwriters. The operation of later ones has been gradually extended so as to include practically all insolvent debtors; to provide for voluntary petitions; and to permit compositions with creditors, even without an adjudication of bankruptcy. The discharge of the debtor has come to be an object of no less concern than the distribution of his property. Hanover National Bank v. Moyses, 186 U. S. 181, 22 S. Ct. 857, 46 L. Ed. 1113. As was said in Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co., 294 U. S. 648, 55 S. Ct. 595, 604, 79 L. Ed. ——: "The fundamental and radically progressive nature of these extensions becomes apparent upon their mere statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution." [18]

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[17] See Bailey v. Glover, 21 Wall. 342, 346, 22 L. Ed. 636; Mayer v. Hellman, 91 U. S. 496, 501, 23 L. Ed. 377; Wiswall v. Campbell, 93 U. S. 347, 350, 23 L. Ed. 923; Hanover National Bank v. Moyses, 186 U. S. 181, 186, 22 S. Ct. 857, 46 L. Ed. 1113; Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300, 307, 32 S. Ct. 96, 56 L. Ed. 208; Williams v. U. S. Fidelity & Guaranty Co., 236 U. S. 549, 554, 35 S. Ct. 289, 59 L. Ed. 713; Straton v. New, 283 U. S. 318, 320, 51 S. Ct. 465, 75 L. Ed. 1060. Also In re California Pacific R. R. Co., Fed. Cas. No. 2,315; In re Jordan, Fed. Cas. No. 7,514; In re Reiman, Fed. Cas. No. 11,673; In re Vogler, Fed. Cas. No. 16,986; Leidigh Carriage Co. v. Stengel (C. C. A.) 95 F. 637, 647; In re Swofford Bros. Dry-Goods Co. (D. C.) 180 F. 549, 556; Story on The Constitution (4th Ed.) § 1106; Olmstead, Bankruptcy, A Commercial Regulation, 15 Harv. Law Rev. 829; Levinthal, The Early History of Bankruptcy Law, 66 U. of Pa. Law Rev. 223, 225.

[18] The oft-quoted definitions of the bankruptcy power indicate its broad scope. When in Re Klein (reported in a note to Nelson v. Carland, 1 How. 265, 277, 11 L. Ed. 126), the constitutionality of the Bankruptcy Act of 1841 was challenged because it brought within its scope insolvent debtors other than traders and provided for voluntary proceeding, Mr. Justice Catron, sitting in Circuit said: "I hold, it [the bankruptcy power] extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest, is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress." Judge Blatchford,

It is true that the position of a secured creditor, who has rights in specific property, differs fundamentally from that of an unsecured creditor, who has none; and that *589 the *Frazier-Lemke Act (11 USCA § 203 (s) is the first instance of an attempt, by a bankruptcy act, to abridge, solely in the interest of the mortgagor, a substantive right of the mortgagee in specific property held as security. But we have no occasion to decide in this case whether the bankruptcy clause confers upon Congress generally the power to abridge the mortgagee's rights in specific property. Paragraph 7, 11 USCA § 203 (s) (7), declares that "the provisions of this Act [subsection] shall apply only to debts existing at the time this Act becomes effective [on June 28, 1934]." The power over property pledged as security after the date of the act may be greater than over property pledged before; and this act deals only with pre-existing mortgages. Because the act is retroactive, in terms, and, as here applied, purports to take away rights of the mortgagee in specific property, another provision of the Constitution is controlling.

[7, 8] Fourth. The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment.[19] Under the bankruptcy power Congress may discharge the debtor's personal obligation, because, unlike the states, it is not prohibited from impairing the obligations of contracts. Compare Mitchell v. Clark, 110 U. S. 633, 643, 4 S. Ct. 170, 312, 28 L. Ed. 279. But the effect of the act here complained of is not the discharge of Radford's personal obligation. *590 *It is the taking of substantive rights in specific property acquired by the bank prior to the act. In order to determine whether rights of that nature have been taken, we must ascertain what the mortgagee's rights were before the passage of the act. We turn, therefore, first to the law of the state.

[9, 10] Under the law of Kentucky, a mortgage creates a lien which may be foreclosed only by suit resulting in a judicial sale of the property. Civil Code of Practice, §§ 375, 376; Insurance Co. of North America v. Cheathem, 221 Ky. 668, 672, 299 S. W. 545. While mere default does not entitle the mortgagee to possession, Newport & Cincinnati Bridge Co. v. Douglass, 12 Bush (Ky.) 673, 705, section 299 of the Civil Code of Practice provides that, in an action for the sale of mortgaged property a receiver may be appointed if it appears "that the property is probably insufficient to discharge the mortgage debt," Mortgage Union of Penn v. King, 245 Ky. 691, 54 S.W.(2d) 49; and where there is (as here) a pledge in the mortgage of rents, issues, and profits, and provision for appointment of a receiver, the mortgagee is entitled as of right to have a receiver appointed to collect them for his benefit, Brasfield & Son v. Northwestern Mutual Life Insurance Co., 233 Ky. 94, 25 S.W.(2d) 72; Watt's Adm'r v. Smith, 250 Ky. 617, 630, 63 S.W.(2d) 796, 91 A. L. R. 1206. Under section 374 of the Civil Code of Practice a sale may be ordered at

when sustaining the provision for composition in Re Reiman, 20 Fed. Cas. 490, 496, No. 11,673, said that the subject of bankruptcy cannot properly be defined as "anything less than the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief." And Mr. Justice Hunt, sitting in that case, on appeal to the Circuit Court said that "whatever relates to the subject of bankruptcy is within the jurisdiction of congress." In re Reiman, 20 Fed. Cas. 500, 501, No. 11,675.

[19] For instance, the war power, Ex parte Milligan, 4 Wall. 2, 119, 18 L. Ed. 281; Ochoa v. Hernandez, 230 U. S. 139, 153, 154, 33 S. Ct. 1033, 57 L. Ed. 1427; Hamilton v. Kentucky Distilleries Co., 251 U. S. 146, 155, 40 S. Ct. 106, 64 L. Ed. 194. The power to tax, United States v. Railroad Co., 17 Wall. 322, 21 L. Ed. 579; Boyd v. United States, 116 U. S. 616, 6 S. Ct. 524, 29 L. Ed. 746; Nichols v. Coolidge, 274 U. S. 531, 542, 47 S. Ct. 710, 71 L. Ed. 1184, 52 A. L. R. 1081; Blodgett v. Holden, 275 U. S. 142, 147, 276 U. S. 594, 48 S. Ct. 105, 72 L. Ed. 206; Barclay & Co. v. Edwards, 267 U. S. 442, 450, 45 S. Ct. 348, 69 L. Ed. 703; Heiner v. Donnan, 285 U. S. 312, 326, 52 S. Ct. 358, 76 L. Ed. 772. The power to regulate commerce, Monongahela Navigation Co. v. United States, 148 U. S. 312, 336, 13 S. Ct. 622, 37 L. Ed. 463; United States v. Joint Traffic Association, 171 U. S. 505, 571, 19 S. Ct. 25, 43 L. Ed. 259; Carrol v. Greenwich Insurance Co., 199 U. S. 401, 410, 26 S. Ct. 66, 50 L. Ed. 246; United States v. Lynah, 188 U. S. 445, 471, 23 S. Ct. 349, 47 L. Ed. 539; United States v. Cress, 243 U. S. 316, 326, 37 S. Ct. 380, 61 L. Ed. 746. The power to exclude aliens, Wong Wing v. United States, 163 U. S. 228, 236, 237, 238, 16 S. Ct. 977, 41 L. Ed. 140. Compare Perry v. United States, 294 U. S. 330, 55 S. Ct. 432, 79 L. Ed. 912, 95 A. L. R. 1335.

any time after default. Under Carroll's Ky. St. (1930), §§ 2362, 2364, there must be an appraisal before the sale; and if the sale brings less than two-thirds of the appraised value, the mortgagor may redeem within a year by paying the original purchase money and interest at 10 per cent. But inadequacy of price is not alone ground for setting aside a sale. Kentucky Joint Land Bank of Lexington v. Fitzpatrick, 237 Ky. 624, 36 S.W. (2d) 25. No provision permits the mortgagor to obtain a release or surrender of the property before foreclosure without paying in full the indebtedness secured. Nor does any

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provision prohibit a mortgagee *from protecting his interest in the property by bidding at the foreclosure sale. Thus, the controlling purpose of the law of Kentucky was and is that mortgaged property shall be devoted primarily to the satisfaction of the debt secured; and the provisions of its law are appropriate to ensure that result.

[11] For the rights acquired and possessed by the mortgagee under the law of Kentucky, the act substituted only the following alternatives:

(A) Under paragraph 3, 11 USCA § 203 (s) (3), the mortgagee may, if the bankrupt so requests, assent to a so-called sale by the trustee to the bankrupt at a so-called appraised value; and upon such assent an implied promise arises to purchase the property on the terms prescribed in that paragraph. But, the transaction would not confer upon the mortgagee the ordinary fruits of an immediate sale; nor would the agreement of sale, if performed by the bankrupt, result in payment at the appraised value. The mortgagee would not get the ordinary fruits of an immediate sale on deferred payments; for the bankrupt would make no down payment at the time of taking possession and would give no other assurance that the payments promised would in fact be made. And, if all such payments were duly made, the sale would not be at the appraised value; for the value of money (even if there were no risk) is obviously more than one per cent.[20] By restricting, throughout the period of six years, the annual interest on the deferred payments to 1 per cent., a sale at much less than the appraised value is prescribed. The aggregate payments of principal and interest prescribed would in no year before the

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end of the sixth be as much *as 6 per cent. on the appraised value.[21] Moreover, before any deferred payment of the purchase price is made, there is serious danger that the bank's investment might be further impaired. The mortgaged property might be lessened in value by waste. It might become burdened with the liens for accruing unpaid taxes;[22] for, while interest at the rate of 1 per cent. of the appraised value of the Radford farm is $44.45, the present annual taxes (plus insurance premium) are, as stipulated, $105. Thus if the alternative offered by paragraph 3 were accepted, the transaction would result merely in a transfer of possession to the bankrupt for six years with an otherwise unsecured promise to purchase at the end of the period for a price less than the appraised value.

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[20] In no state of the Union, in 1921, was the maximum lawful rate of interest less than 6 per cent. per annum; and in only two states was the legal rate as low as 5 per cent. Ryan, Usury and Usury Laws (1924), pp. 28–31. In Kentucky, 6 per cent. is both the legal and the lawful rate. Carroll's Ky. St. §§ 2218, 2219.

[21] The prescribed payment (interest) for the first year is 1 per cent. on the appraised value. The prescribed payment for the second year is 3½ per cent. thereof (1 per cent. for interest, 2½ per cent. on account of principal). The prescribed payment for the third year is 2½ per cent. of the principal and as interest 1 per cent. on 97½ per cent. of the principal. The prescribed payment for the fourth year is 5 per cent. on account of the principal, and as interest, 1 per cent. on 95 per cent. of the principal. The prescribed payment for the fifth year is 5 per cent. on account of principal, and as interest, 1 per cent. on 90 per cent. of the principal. The prescribed payment at the end of the sixth year is 85 per cent. of the principal, and as interest 1 per cent. of 85 per cent. of the principal. The present value calculated on a 6 per cent. basis, of all deferred payments (principal and interest) would be only 76.6 per cent. of the appraised value. In other words, the agreement to sell if assented to by the mortgagee would require him to relinquish his security not for its appraised value in cash, but for deferred payments which, if met, would yield (on a 6 per cent. basis) only 76.6 per cent. of the appraised value.

[22] When the decree complained of was issued there had already been defaults in tax payments continuing more than two years. See page 1.

(B) If the mortgagee refuses to consent to the agreement to sell under paragraph 3, he is compelled, by paragraph 7, to surrender to the bankrupt possession of the property for the period of five years; and during those
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*years, the bankrupt's only monetary obligation is to pay a reasonable rental fixed by the court. There is no provision for the payment of insurance or taxes, save as these may be paid from the rental received. During that period the bankrupt has an option to purchase the farm at any time at its appraised, or reappraised, value.[23] The mortgagee is not only compelled to submit to the sale to the bankrupt, but to a sale made at such time as the latter may choose. Thus, the bankrupt may leave it uncertain for years whether he will purchase; and in the end he may decline to buy. Meanwhile the mortgagee may have had (and been obliged to decline) an offer from some other person to take the farm at a price sufficient to satisfy the full amount then due by the debtor. The mortgagee cannot require a reappraisal when, in its judgment, the time comes to sell; it may ask for a reappraisal only if and when the bankrupt requests a sale. Thus the mortgagee is afforded no protection if the request is made when values are depressed to a point lower than the original appraisal. While paragraph 7 declares that the bankrupt's possession is "under the control of the court," this clause gives merely supervisory power. Such control leaves the court powerless to terminate the option unless there has been the commission of waste or failure to pay the prescribed rent.

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[12] *Fifth. The controlling purpose of the act is to preserve to the mortgagor the ownership and enjoyment of the farm property. It does not seek primarily a discharge of all personal obligations; a function with which alone bankruptcy acts have heretofore dealt. Nor does it make provision of that nature by prohibiting, limiting, or postponing deficiency judgments, as do some state laws.[24] Its avowed object is to take from the mortgagee rights in the specific property held as security; and to that end "to scale down the indebtedness" to the present value of the property.[25] As here applied it has taken from the Bank the following property rights recognized by the law of Kentucky:

(1) The right to retain the lien until the indebtedness thereby secured is paid.

(2) The right to realize upon the security by a judicial public sale.

(3) The right to determine when such sale shall be held, subject only to the discretion of the court.

(4) The right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of
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the pro*ceeds of a fair competitive sale or by taking the property itself.

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[23] This is the construction given to paragraph 7 by both of the lower courts, by both of the parties in their briefs and oral arguments here, and, so far as appears, by all other courts and judges that have passed upon the act, except District Judge Lindley, who, in Re Miner (D. C.) 9 F. Supp. 1, held that paragraph 7, as well as paragraph 3, was conditioned upon the mortgagee's consent to a sale to the debtor at the appraised value. See, also, John Hanna, Agriculture and the Bankruptcy Act, 19 Minn. L. Rev. 1, 19, 20; Report of Judiciary Committee, No. 370, p. 2, 74th Congress, 1st Session, April 1, 1935 on H. R. 5452. We refrain from discussing this question of construction as well as some others raised which are deemed unfounded.

[24] This has been done by recent state legislation. Compare Arizona Laws, 1933, c. 88; Arkansas, Acts 1933, Act No. 57; see Adams v. Spillyards, 187 Ark. 641, 61 S.W.(2d) 686, 86 A. L. R. 1493; California St. 1933, c. 793, p. 2118; Idaho, Laws 1933, c. 150; Kansas, Laws 1935, H. B. 299; Louisiana, Act No. 28 of 1934; Minnesota, Laws 1933, c. 339; Montana, Laws 1935, H. B. 16; Nebraska, Laws 1933, c. 41; New Jersey, P. L., 1933, c. 82 (N. J. St. Annual 1933, §§ 134—48, 134—49); see Vanderbilt v. Brunton Piano Co., 111 N. J. Law, 596, 169 A. 177, 89 A. L. R. 1080; New York, Laws 1933, Ex. Sess., c. 794; 1934, c. 277; 1935, c. 2; North Carolina, Pub. Laws 1933, c. 36; North Dakota, Laws 1933, c. 155; South Carolina, Act May 2, 1933, Act No. 264 (38 St. at Large, p. 350); South Dakota, Laws 1933, c. 138; 1935, H. B. 109; Texas 1933, c. 92 (Vernon's Ann. Civ. St. arts. 2218, 2218a); see Langever v. Miller (Tex. Sup.) 76 S.W. (2d) 1025, 96 A. L. R. 836.

[25] See Senate Report No. 1215 on S. 3580, May 28, 1934, p. 3; House Report No. 1898 on H. R. 9865, June 4, 1934, p. 4, incorporating as a part thereof a memorandum of Representative Lemke.

(5) The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt.

Strong evidence that the taking of these rights from the mortgagee effects a substantial impairment of the security is furnished by the occurrences in the Senate which led to the adoption there of the amendment to the bill declaring that the act "shall apply only to debts existing at the time this Act becomes effective." The bill as passed by the House applied to both pre-existing and future mortgages. It was amended in the Senate so as to limit it to existing mortgages; and, as so amended, was adopted by both Houses pursuant to the report of the Conference Committee.[26] This was done because, in the Senate, it was pointed out that the bill, if made applicable to future mortgages, would destroy the farmer's future mortgage credit.[27]

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*Sixth. Radford contends that these changes in the position of the bank, wrought pursuant to the act, do not impair substantive rights, because the bank retains every right in the property to which it is entitled. The contention rests upon the unfounded assertion that its only substantive right under the mortgage is to have the value of the security applied to the satisfaction of the debt. It would be more accurate to say that the only right under the mortgage left to the bank is the right to retain its lien until the mortgagor, some time within the five-year period, chooses to release it by paying the appraised value of the property. A mortgage lien so limited in character and incident is of course legally conceivable. It might be created by contract under existing law.[28] If a part of the mortgaged property were taken by eminent domain, a mortgagee would receive payment on a similar basis.[29] But the Frazier-Lemke Act does not purport to exercise the right of eminent domain; and neither the law of Kentucky nor Radford's mortgages contain any provision conferring upon the mortgagor an option to compel, at any time within five years, a release of the farm upon payment of its appraised value and a right to retain meanwhile possession, upon paying a rental to be fixed by the bankruptcy courts.

Equally unfounded is the contention that the mortgagee is not injured by the denial

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of possession for the five years, *since it receives the rental value of the property.[30] It

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[26] See Conference Report, June 18, 1934, 73d Cong., 2d Sess., 78 Cong. Rec., pp. 12,376, 12,491.

[27] Senator Bankhead said: "If it applied only to existing mortgages, I should be glad to support it; but here is a program presented, not limited to existing mortgages, but a permanent program for the composition of mortgages. When a farmer goes to his advancing merchant, or goes to his banker, or applies to an insurance company for a loan under this bill, I want to know; and I am enquiring with earnest anxiety about it, what effect is it going to have upon those credit facilities for the farmers of this country." Id. p. 12,074.

Senator Fess: "It does seem to me that we might destroy the credit which he insists the farmers have, because everyone realizes that by the passage of this bill we may be making it impossible for the farmer in the future to borrow money." Id. p. 12,075.

Representative Peyser expressed the same view: "I believe that many of the Members are overlooking a very vital point in connection with this legislation—that is the fact that you are removing from the farmer the possibility of securing any mortgage assistance in the future. I believe in the enactment of this law and the scaling down of values you are going to take away the possibility of help that may be needed by these farmers in the future." Id. p. 12,137.

[28] Many instances can be found of mortgages which provide that parcels of the mortgaged property shall be released upon payment of fixed amounts or upon payment of their value upon an appraisal therein provided for. See 1 Jones, Mortgages (8th Ed. 1928), § 98. Compare Clarke v. Cowan, 206 Mass. 252, 92 N. E. 474, 138 Am. St. Rep. 388.

[29] See 2 Jones, Mortgages (8th Ed. 1928), § 843.

[30] Counsel for the debtor suggests that the reasonable rental provided for in paragraph 7, is more than the secured creditor ordinarily receives in bankruptcy, since interest on secured as well as unsecured claims ceases with the filing of the petition. But the rule relied upon applies only when the secured creditor, having realized upon his security, is seeking as a general creditor to prove for the deficiency against the bankrupt estate. Sexton v. Dreyfus, 219 U. S. 339, 31 S. Ct. 256, 55 L. Ed. 244. It has no application when the mortgagee has a preferred claim against proceeds realized by the trustee from a sale of the security free of liens.

is argued that experience has proved that five years is not unreasonably long, since a longer period is commonly required to complete a voluntary contract for the sale and purchase of a farm; or to close a bankruptcy estate; or to close a railroad receivership. And it is asserted that Radford is, in effect, acting as receiver for the bankruptcy court. Radford's argument ignores the fact that in ordinary bankruptcy proceedings and in equity receiverships, the court may in its discretion order an immediate sale and closing of the estate; and it ignores, also, the fundamental difference in purpose between the delay permitted in those proceedings and that prescribed by Congress. When a court of equity allows a receivership to continue, it does so to prevent a sacrifice of the creditor's interest. Under the act, the purpose of the delay in making a sale and of the prolonged possession accorded the mortgagor is to promote his interests at the expense of the mortgagee.

Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A. L. R. 1481, upon which Radford relies, lends no support to his contention. There the statute left the period of the extension of the right of redemption to be determined by the court within the maximum limit of two years.

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Even after the *period had been decided upon, it could, as was pointed out, "be reduced by the order of the court under the statute, in case of a change in circumstances. * * *" (290 U. S. 398, page 447, 54 S. Ct. 231, 243, 78 L. Ed. 413, 88 A. L. R. 1481); and at the close of the period, the mortgagee was free to apply the mortgaged property to the satisfaction of the mortgage debt. Here, the option and the possession would continue although the emergency which is relied upon as justifying the act ended before November 30, 1939.[31]

Seventh. Radford contends further that the changes in the mortgagee's rights in the property, even if substantial, are not arbitrary and unreasonable, because they were made for a permissible public purpose. That claim appears to rest primarily upon the following propositions: (1) The welfare of the nation demands that our farms be individually owned by those who operate them. (2) To permit widespread foreclosure of farm mortgages would result in transferring ownership, in large measure, to great corporations; would transform farmer owners into tenants or farm laborers; and would tend to create a peasant class. (3) There was grave danger at the time of the passage of the act that foreclosure of farms would become widespread. The persistent decline in the prices of agricultural products, as compared with the prices of articles which farmers are obliged to purchase, had been accentuated by the long continued depression and had made it impos-

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sible *for farmers to pay the charges accruing under existing mortgages. (4) Thus had arisen an emergency requiring congressional action. To avert the threatened calamity the act presented an appropriate remedy. Extensive economic data, of which in large part we may take judicial notice, were submitted in support of these propositions.

The bank calls attention, among other things, to the fact that the act is not limited to mortgages of farms operated by the owners; that the finding of the lower courts that Radford is a farmer within the meaning of the act does not necessarily imply that he operates his farm; and that at least part of it must have been rented to another, since a tenant is joined as defendant in the foreclosure suit. Section 75 of the Bankruptcy Act (to which this act is an amendment), provides, in sub-section (r), 11 USCA § 203 (r), that "the term 'farmer' means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations." Thus, the act affords relief not only

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Coder v. Arts, 213 U. S. 223, 228, 245, 29 S. Ct. 436, 53 L. Ed. 772, 16 Ann. Cas. 1008, affirming (C. C. A.) 152 F. 943, 950, 15 L. R. A. (N. S.) 372; People's Homestead Ass'n v. Bartlette (C. C. A.) 33 F.(2d) 561; Mortgage Loan Co. v. Livingston (C. C. A.) 45 F.(2d) 28, 34.

[31] As by section 75 the petition of the farmer mortgagor may be filed at any time within five years after March 3, 1933, and the period of the possession and of the option extends for five years, the provision might bar enforcement of an existing mortgage until 1943.

Counsel for Radford contends that the five-year provision of paragraph 7 is not inflexible, because, under the rule of Chastleton Corporation v. Sinclair, 264 U. S. 543, 44 S. Ct. 405, 68 L. Ed. 841, it would cease to be effective on the termination of the emergency which is relied upon to justify the act. But the act does not make the five-year option period dependent upon the continuance of a national emergency; and the options conferred upon the farmer owner show that it was the needs of the particular debtor to which consideration was given.

to those owners who operate their farms, but also to all individual landlords the "principal part of whose income is derived" from the "farming operations" of share croppers or other tenants; and, among these landlords, to persons who are merely capitalist absentees.[32]

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*It has been suggested that the number of farms operated by tenants was very large before the present depression;[33] that the increase of tenancy had been progressive for more than half a century;[34] that the increase has not been attributable, in the main,

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to foreclosures;[35] and that, *in some regions, the increase in tenancy has been marked during the period when farm incomes were large and farm values, farm taxes and farm mortgages were rising rapidly.[36]

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[32] In 1930, only 56 per cent. of the farm mortgage debt of the country rested on farms operated by their owners. The Farm Debt Problem, Letter from the Secretary of Agriculture, House Doc. No. 9, p. 9, 73d Cong., 1st Sess. Of the landlords of farms throughout United States: "More than a third are engaged in agricultural occupations, nearly another third are retired farmers, and the remaining third are in non-agricultural occupations, mostly country bankers, merchants and professional men in the country towns and villages who have either come into farm ownership through inheritance or marriage, or have purchased farms for purposes of investment or speculation." Yearbook of Agriculture (1923), p. 538. "Furthermore, the percentage of cases in which landlords were remote from their farms is higher in some of the more recently developed farming regions than in some of the older farming regions. Thus in eastern North Dakota 40 per cent of the tenant farms were owned by landlords not residing in the same county and the proportion is nearly as large in central Kansas and in Oklahoma." Id. p. 535.

[33] Of the 6,288,648 farms in 1930, 42.4 per cent. were operated by tenants. The percentage in Kentucky operated by tenants was 35.9 per cent.; in Iowa, 47.3 per cent.; in Georgia, 68.2 per cent. In the South, 1,790,783 families were working as tenant farmers. See Hearings, March 5, 1935, on S. 2367, the Bill to create the Farm Tenant Homes Corporation, pp. 6, 14, 15, 16, 18, 39, 70, 72, 75, and Sen. Rep. 446, 74th Cong., 1st Sess., April 11, 1935.

[34] During the half century prior to the present business depression, every decennial census recorded a progressive increase in farm tenancy. Of the 4,008,907 farms in the United States in 1880, 25.6 per cent. were operated by tenants; of the 6,448,343 farms in 1920, 38.1 per cent. were operated by tenants. Farm Tenure, Census of 1920, Agriculture, vol. V, p. 133, T. 11. The percentage of improved farm land operated by owners in 1920 was only 46.8. Farm Ownership & Tenancy, Yearbook of Agriculture (1923), p. 509.

[35] "Causes underlying this upward trend of tenancy are complex and obscure. The trend has apparently continued through the various shades of adversity and prosperity. Farms operated by managers are not classed with tenancy. As has been pointed out before, the best, most productive lands have the greatest tenancy. Apparently tenancy does not thrive on poor lands. It is hardly thinkable that high productiveness is a result of tenancy. It is a fact, however, that the largest uptrend in the yield of corn per acre is in the area of greatest tenancy." Iowa Year Book of Agriculture (1931), p. 349. In Iowa, 1927, tenant operated acres were 53.9 per cent. of the total acres in farms. In 1930, the percentage was 54.8; in 1931, it was 55.4. In 1932, it was 57.7; in 1933, 58.6. Id. (1932) p. 168; (1933) p. 213. See, also, Yearbook of Agriculture (1923), pp. 539–547; Turner, Ownership of Tenant Farms in the United States. Bull. No. 1432, and Ownership of Tenant Farms in North Central States, Bull. No. 1433, U. S. Dep't of Agriculture (1926).

[36] "The increase in tenancy in the West North Central States is without doubt the result of the price situation. Land bought in the period of high prices could not be paid for, with the result that it is now operated by tenants." Yearbook of Agriculture, 1932, p. 494. From 1910 to 1920, farm mortgage debt increased from $3,320,470,000 to $7,857,700,000. See The Farm Debt Problem, House Doc. No. 9, p. 5, 73d Cong., 1st Sess. In 1910, the total acreage of farm land was 878,798,325; in 1920, it was 955,883,715. Census of 1920, Agriculture, vol. V, p. 32, T. 3. The greatly increased local tax rate, in connection with increased land values, has been suggested as being an important cause of increasing farm tenancy. Hearings on S. 2367, p. 16. The average value of farm property per acre in 1880, was $22.72; in 1920, $81,52; in 1930, $58.01. Census of 1930, Agriculture, vol. II, p. 10, T. I. Farm property taxes in 1910 amounted to approximately $268 millions;

[13] We have no occasion to consider either the causes or the extent of farm tenancy; or whether its progressive increase would be arrested by the provisions of the act. Nor need we consider the occupations of the beneficiaries of the legislation. These are matters for the consideration of Congress; and the extensive provision for the refinancing of farm mortgages which Congress has already made, shows that the gravity of the situation has been appreciated.[37] The province of the Court is limited to deciding whether the Frazier-Lemke Act (11 USCA § 203 (s) as applied has taken from the bank without compensation, and given to Radford, rights in specific property which are of substantial value. Compare Ochoa v. Hernandez y Morales, 230 U. S. 139, 161, 33 S. Ct. 1033, 57 L. Ed. 1427; Citizens' Savings & Loan Association v. Topeka, 20 Wall. 655, 662, 664, 22 L. Ed. 455; In re Dillard, 7 Fed. Cas. page 706, No. 3,912. As we conclude that the act as applied has

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done so, we must *hold it void; for the Fifth Amendment commands that, however great the nation's need, private property shall not be thus taken even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public.

Reversed.

295 U. S. 602

HUMPHREY'S EX'R v. UNITED STATES. RATHBUN v. SAME.

No. 667.

Argued May 1, 1935.

Decided May 27, 1935.

1. United States ⇐35

Power of President to remove members of Federal Trade Commission is limited to removal for specific causes enumerated in statute permitting removal for inefficiency, neglect of duty, or malfeasance in office (Federal Trade Commission Act, § 1, 15 USCA § 41).

2. Statutes ⇐216

Debates in houses of Congress, though generally not considered to explain meaning of words of statute, may be considered as reflecting light upon general purposes of statute and evils sought to be remedied.

3. Courts ⇐92

Expressions of court which are beyond point involved in opinion do not come within rule of stare decisis, and dicta, though they may be followed if sufficiently persuasive, are not controlling in subsequent case.

4. Trade-marks and trade-names and unfair competition ⇐80½

Federal Trade Commission acts in part as legislative agency and in part as judicial agency, and exercises quasi legislative and quasi judicial functions, and must be free from executive control (Federal Trade Commission Act, §§ 1, 5, 6, 7, 15 USCA §§ 41, 45, 46, 47).

5. Constitutional law ⇐58

Congress has authority to require quasi legislative and quasi judicial agencies to discharge their duties independently of executive control, and to fix period of holding office and to forbid removal by President of members thereof during their term of office except for cause.

6. Constitutional law ⇐50

Each of three general departments of government must be maintained entirely free from control or coercive influence, direct or indirect, of either of others.

7. United States ⇐35

Whether President has power to remove officer in spite of congressional limitation on power of removal depends on character of office, and whether officer exercises quasi legislative or quasi judicial functions.

8. United States ⇐35

Statute permitting President to remove members of Federal Trade Commission for inefficiency, neglect of duty, or malfeasance in office, when construed to limit President's power to removal for causes thus enumerated, *held* valid restriction on authority of executive (Federal Trade Commission Act, §§ 1, 5, 6, 7, 15 USCA §§ 41, 45, 46, 47).

On Certificate from the Court of Claims.

Suit by Samuel F. Rathbun, as executor of the estate of William E. Humphrey, deceased, against the United States, in which

in 1920, to $452 millions; in 1932, to $629 millions. See The Farm Debt Problem, supra, p. 21.

[37] See note 4.

[CHAPTER 792.]

August 28, 1935.
[S. 3002.]
[Public, No. 384.]

AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

Bankruptcy Act of 1898; amendment.
Vol. 30, p. 544; Vol. 47, p. 1470; Vol. 48, p. 925; U. S. C., p. 335.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 75 of said Act, as amended, be further amended by amending the second sentence of subsection (b), so as to read as follows: "The conciliation commissioner shall receive as compensation for his services a fee of $25 for each case submitted to him, and when docketed, to be paid out of the Treasury."

Fee of conciliation commissioner; amount and payment.

Vol. 47, p. 1472; U. S. C., p. 335.

SEC. 2. That section 75 of said Act, as amended, be further amended by amending subsection (g) to read as follows:

Application for confirmation of a composition or extension proposal; filing.

"(g) An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing, by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims."

Vol. 47, p. 1472; U. S. C., p. 336.

SEC. 3. That section 75 of said Act, as amended, be further amended by amending subsection (k) to read as follows:

Effect of confirmation.

"(k) Upon its confirmation, a composition or extension proposal shall be binding upon the farmer and his secured and unsecured creditors affected thereby: *Provided, however*, That such extension and/or composition shall not reduce the amount of or impair the lien of any secured creditor below the fair and reasonable market value of the property securing any such lien at the time that the extension and/or composition is accepted, but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured."

Proviso.
Secured creditors.

Vol. 47, p. 1473; U. S. C., p. 336.

SEC. 4. That section 75 of said Act, as amended, be further amended by amending subsection (n) to read as follows:

Jurisdiction of court over farmer and his property when petition filed.

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

Period of redemption or confirmation of sale; extensions authorized.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers

"Period of redemption" construed.

Jurisdiction and powers of court hereunder.

of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

Vol. 47, p. 1473; U. S. C., p. 336.

SEC. 5. That section 75 of said Act, as amended, be further amended by amending subsection (p) to read as follows:

Application of enumerated prohibitions.

"(p) The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

SEC. 6. That section 75 of said Act, as amended, be further amended by adding a new subsection (s), after subsection (r), to read as follows:

Amendment of petition or answer.

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: *Provided*, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

Petition for appraisal of property.

Appointment of appraisers.

Duties.

Proviso.
Time for filing objections, exceptions, etc.

"(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

Order setting aside unencumbered exemptions.

Property to remain in debtor.

Status of existing mortgages, liens, etc.

Stay of proceedings against debtor.

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.

Rental payments.

Time of making.

Manner of payment; distribution.

Sale of unexempt perishable property.

Payments on principal.

Payment of appraised value.

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: *Provided*, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.

Provisos.
Reappraisals.

Payment of amount determined by reappraisal.

Sale of property at public auction upon request of secured creditor.

Redemption.

Limitation.

"(4) The conciliation commissioner, appointed under subsection (a) of section 75 of this Act, as amended, shall continue to act, and act as referee, when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of subsection (s) of section 75 of this Act, and continue so to act until the case has been finally disposed of. The conciliation commissioner, as such referee, shall receive such an additional fee for his services as may be allowed by the court, not to exceed $35 in any case, to be paid out of the bankrupt's estate. No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt, under subsection (s) of section 75 of this Act, but all such additional filing fees or costs of administration or supervision shall be charged against the bankrupt's estate. Conciliation commissioners and referees appointed under section 75 of this Act shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices to creditors. If, at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession, and the property returned to the possession of such farmer, under the provisions of this Act. The provisions of this Act shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition.

Conciliation commissioner; authority.

Fee.

Restriction on additional costs to farmer.

Franking privilege.

Status of receiver when petition or answer amended.

Application of provisions.

"(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act, as well as to future cases; and all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection (s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this Act shall not be grounds for denying him the benefits of this section.

Application of Act to pending cases.

Vol. 48, p. 1279.

"(6) This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate.

Emergency nature of Act.

Approved, August 28, 1935.

[CHAPTER 793.]

AN ACT

To provide for the appointment of an additional district judge in the United States District Court for the Eastern District of New York.

August 28, 1935.
[S. 3414.]
[Public, No. 385.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized and directed to appoint, by and with the advice and consent of the Senate, an additional district judge in the United States District Court for the Eastern District of New York.

U. S. District Court, Eastern District of New York.
Appointment of additional judge.

Approved, August 28, 1935.

a tax is not any the less a tax because it has a regulatory effect, United States v. Doremus, supra, 249 U.S. 86, 93, 94, 39 S.Ct. 214, 63 L.Ed. 493; Nigro v. United States, 276 U.S. 332, 353, 354, 48 S.Ct. 388, 394, 395, 72 L.Ed. 600; License Tax Cases, supra; see Child Labor Tax Cases, supra, 259 U.S. 20, 38, 42 S.Ct. 449, 451, 66 L.Ed. 817, 21 A.L.R. 1432; and it has long been established that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed. Veazie Bank v. Fenno, 8 Wall. 533, 548, 19 L.Ed. 482; McCray v. United States, 195 U.S. 27, 60, 61, 24 S.Ct. 769, 49 L.Ed. 78, 1 Ann.Cas. 561; cf. Alaska Fish Company v. Smith, 255 U.S. 44, 48, 41 S.Ct. 219, 220, 65 L.Ed. 489.

[4, 5] Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon

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it

is beyond the competency of courts. Veazie Bank v. Fenno, supra; McCray v. United States, supra, 195 U.S. 27, 56–59, 24 S.Ct. 769, 49 L.Ed. 78, 1 Ann.Cas. 561; United States v. Doremus, supra, 249 U.S. 86, 93, 94, 39 S.Ct. 214, 63 L.Ed. 493; see Magnano Co. v. Hamilton, 292 U.S. 40, 44, 45, 54 S.Ct. 599, 601, 78 L.Ed. 1109; cf. Arizona v. California, 283 U.S. 423, 455, 51 S.Ct. 522, 526, 75 L.Ed. 1154; Smith v. Kansas City Title Co., 255 U.S. 180, 210, 41 S.Ct. 243, 248, 65 L.Ed. 577; Weber v. Freed, 239 U.S. 325, 329, 330, 36 S. Ct. 131, 60 L.Ed. 308, Ann.Cas.1916C, 317; Fletcher v. Peck, 6 Cranch, 87, 130, 3 L. Ed. 162. They will not undertake, by collateral inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Federal Constitution. McCray v. United States, supra; cf. Magnano Co. v. Hamilton, supra, 292 U.S. 40, 45, 54 S.Ct. 599, 601, 78 L.Ed. 1109.

[6, 7] Here the annual tax of $200 is productive of some revenue.[1] We are not free to speculate as to the motives which moved Congress to impose it, or as to the extent to which it may operate to restrict the activities taxed. As it is not attended by an offensive regulation, and since it operates as a tax, it is within the national taxing power. Alston v. United States, 274 U.S. 289, 294, 47 S.Ct. 634, 71 L.Ed. 1052; Nigro v. United States, supra, 276 U.S. 332, 352, 353, 48 S.Ct. 388, 394, 72 L.Ed. 600; Hampton & Co. v. United States, 276 U.S. 394, 411, 413, 48 S.Ct. 348, 352, 353, 72 L.Ed. 624.

[8] We do not discuss petitioner's contentions which he failed to assign as error below.

Affirmed.

300 U.S. 440

WRIGHT v. VINTON BRANCH OF MOUNTAIN TRUST BANK OF ROANOKE, VA., et al.*

No. 530.

Argued March 3, 4, 1937.

Decided March 29, 1937.

1. Bankruptcy ⇐48
Constitutional law ⇐42

Where, in proceeding by farmer under Frazier-Lemke Act upon failure to obtain composition with creditors, order of reference had been entered which initiated proceedings designed to bring about a stay of proceedings to enforce a deed of trust without further affirmative action by petitioner, mortgagee was entitled to move to dismiss the proceeding on ground of alleged invalidity of statute, though no stay had yet been granted (Bankr.Act § 75(s), as amended by Frazier-Lemke Act of Aug. 28, 1935, 11 U.S.C.A. § 203(s).

2. Bankruptcy ⇐3
Constitutional law ⇐308

New Frazier-Lemke Act relative to proceedings in bankruptcy court by farmer after failure to obtain composition with creditors adequately protects mortgagee's rights, under due process clause, to retain lien until indebtedness thereby secured is paid, to realize upon the security by judicial public sale, and to protect its interest in property

* Opinion of Supreme Court conformed to in Nichols v. Kemp, 88 F.(2d) 1015.

[1] The $200 tax was paid by 27 dealers in 1934, and by 22 dealers in 1935. Annual Report of the Commissioner of Internal Revenue, Fiscal Year Ended June 30, 1935, pp. 129–131; Id., Fiscal Year Ended June 30, 1936, pp. 139–141.

by bidding at such sale (Bankr.Act § 75(s), as amended by Frazier-Lemke Act of Aug. 28, 1935, 11 U.S.C.A. § 203(s); Const. Amend. 5).

3. Constitutional law ⇐308

New Frazier-Lemke Act relative to proceedings in bankruptcy court by farmer after failure to obtain composition with creditors does not provide for absolute stay for three years of proceedings to enforce deed of trust, but provides, sufficiently to satisfy requirement of due process, for earlier termination of the stay and sale of the property in the discretion of the court (Bankr.Act § 75(s)(2, 3), as amended by Frazier-Lemke Act of Aug. 28, 1935, 11 U.S.C.A. § 203(s)(2, 3); Const. Amend. 5).

4. Constitutional law ⇐46(1)

When the validity of an act of Congress is drawn in question, and even if a serious doubt of constitutionality is raised, the court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.

5. Bankruptcy ⇐3

Provision of new Frazier-Lemke Act declaring the act to be an emergency measure and providing that, if in the judgment of the court the emergency ceases to exist in its locality, the court in its discretion may shorten the stay of proceedings therein provided for and proceed to liquidate the estate, is not inconsistent with constitutional requirement that bankruptcy laws shall be uniform throughout the United States (Bankr.Act § 75(s)(6), as amended by Frazier-Lemke Act of Aug. 28, 1935, 11 U.S.C.A. § 203(s)(6); Const. art. 1, § 8, cl. 4).

6. Statutes ⇐217

Where language of statute is not free from doubt, court is justified in seeking enlightenment from reports of congressional committees and explanations given on the floor of the Senate and House by those in charge of the measure.

7. Constitutional law ⇐308

Provision of new Frazier-Lemke Act relative to proceedings in bankruptcy court by farmer, permitting bankrupt to retain possession during period of stay of proceedings subject to supervision and control of court and subject to payment of reasonable rental, is not unconstitutional as against mortgagee under due process provision on theory that possession by mortgagor during stay is necessarily less favorable to mortgagee than possession by receiver or trustee (Bankr.Act § 75(s), as amended by Frazier-Lemke Act of Aug. 28, 1935, 11 U.S.C.A. § 203(s); Const. Amend. 5).

8. Bankruptcy ⇐3, 38

Provision of new Frazier-Lemke Act relative to proceedings by farmer in bankruptcy court for payment of reasonable rental by bankrupt while retaining possession and that first payment of rental shall be made within one year from date of order staying proceedings does not mean that payment may not be required before the close of the year, but that payment may not be postponed beyond one year, and as so construed is neither arbitrary nor unreasonable (Bankr.Act § 75(s)(2), as amended by Frazier-Lemke Act of Aug. 28, 1935, 11 U.S.C.A. § 203(s)(2).

9. Constitutional law ⇐308

Provision of new Frazier-Lemke Act, that rental to be paid by farmer retaining possession during bankruptcy proceedings shall be used first for payment of taxes and upkeep of property and remainder distributed among creditors as their interests may appear, is not unconstitutional denial of mortgagee's rights under due process clause in view of further provision for re-appraisal and sale at public auction at which mortgagee may protect his interest (Bankr.Act § 75 (s), as amended by Frazier-Lemke Act of Aug. 28, 1935, 11 U.S.C.A. § 203(s); Const Amend. 5).

10. Constitutional law ⇐308

Section of new Frazier-Lemke Act relative to proceedings in bankruptcy court by farmer after failure to obtain composition with creditors does not unreasonably modify mortgagee's rights under due process clause (Bankr.Act § 75(s), as amended by Frazier-Lemke Act of Aug. 28, 1935, 11 U.S.C.A. § 203(s); Const. art. 1, § 8, cl. 4; Amend. 5).

On Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

Bankruptcy proceeding by Robert Page Wright, bankrupt, against Vinton Branch of the Mountain Trust Bank of Roanoke, Virginia, and others. An order dismissing the petition was affirmed by the Circuit

Court of Appeals [85 F.(2d) 973], and the bankrupt brings certiorari.

Reversed.

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Messrs. Samuel S. Lambeth, Jr., of Bedford, Va., Elmer McClain and William Lemke, of Washington, D. C., for petitioner.

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Mr. John Strickler, of Roanoke, Va., pro hac vice, by special leave of Court.

Mr. T. X. Parsons, of Roanoke, Va., for respondents.

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Mr. Justice BRANDEIS delivered the opinion of the Court.

The question for decision is whether section 75, subsection (s), of the Bankruptcy Act, as amended by the new

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Frazier-Lemke Act, August 28, 1935, c. 792, 49 Stat. 943–945, 11 U.S.C.A. § 203(s), is constitutional. In this case, the federal court for Western Virginia [see In re Sherman [D.C.] 12 F. Supp. 297] and the Circuit Court of Appeals for the Fourth Circuit [85 F.(2d) 973] held it invalid. Like decisions have been rendered in other circuits. Lafayette Life Insurance Co. v. Lowmon, 79 F.(2d) 887 (C.C.A.Seventh Circuit); United States National Bank of Omaha v. Pamp, 83 F.(2d) 493 (C.C.A.Eighth Circuit). In the Fifth Circuit the legislation was sustained. Dallas Joint Stock Land Bank v. Davis (C.C.A.) 83 F.(2d) 322. Because of this conflict and the importance of the question, we granted certiorari. 299 U.S. 537, 57 S.Ct. 312, 81 L.Ed. —.[1]

Wright, a Virginia farmer, gave in 1929 a mortgage deed of trust of his farm to secure a debt now held by the Vinton Branch of the Mountain Trust Bank. In March, 1935, he filed a petition under section 75 of the Bankruptcy Act as amended June 28, 1934, c. 869, 48 Stat. 1289.

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When the proceedings were begun, the debt secured by the deed of trust had matured and was in default, and the trustee, at the request of the beneficiary, had advertised the property for sale pursuant to the terms of the deed of trust and the provisions of the Virginia Code. The debtor's petition prayed, among other things, "that all proceedings against him by way of pending and advertised foreclosures of his farming lands, or by other methods contrary to the provisions" of the Act be stayed. The petition, "appearing to be in proper form and to have been filed in good faith," was referred to the Conciliation Commissioner as required by section 75, 11 U.S.C.A. § 203. On July 27, 1935, the debtor made a proposal for composition; but it was not accepted by the mortgage creditor. On October 8, 1935, Wright filed an amended petition under subsection (s) of section 75 as amended by the new Frazier-Lemke Act, 11 U.S.C.A. § 203(s); and asked to be adjudged a bankrupt and to have all the benefits of the provisions of said subsection (s) as so amended and approved August 28, 1935.

An order was entered adjudging Wright a bankrupt and again referring the matter to the Conciliation Commissioner. Thereafter, the Vinton Branch of the Mountain Trust Bank moved in the District Court that the proceedings before the Commissioner be terminated and "that this case be dismissed upon the ground that subsection (s) of said Act is unconstitutional in that it deprives said creditor of its property without due process of law and that the debtor is not entitled to pursue the remedies and privileges granted therein." On Jan-

[1] See, also, Steverson v. Clark, 86 F. (2d) 330, and Knotts v. First Carolinas Joint Stock Land Bank, 86 F.(2d) 551 (C.C.A. Fourth Circuit), applying the decision in the instant case; McWilliams v. Blackard, 86 F.(2d) 328, and Phœnix Joint Stock Land Bank v. Ledwidge, 86 F.(2d) 355 (C.C.A. Eighth Circuit), applying the decision in United States National Bank of Omaha v. Pamp, supra; and Schauer v. Producers Wool & Mohair Co., 86 F.(2d) 576 (C.C.A. Fifth Circuit), applying the decision in Dallas Joint Stock Land Bank v. Davis, supra. The cases in the District Courts are also conflicting. The legislation was sustained in Re Slaughter, 12 F.Supp. 206 (N.D.Tex.); In re Reichert, 13 F.Supp. 1 (W.D.Ky.); In re Cole, 13 F.Supp. 283 (S.D.Ohio); In re Bennett, 13 F.Supp. 353 (W.D.Mo.), and In re Chilton, 16 F.Supp. 14 (D. Colo.). Compare In re Paul, 13 F.Supp. 645 (S.D.Iowa); In re Slaughter, 13 F. Supp. 893 (N.D.Tex.). It was held invalid in Re Young, 12 F.Supp. 30 (S.D.Ill.); In re Lindsay, 12 F.Supp. 625 (N.D. Iowa); In re Weise, 12 F.Supp. 871 (W. D.N.Y.); In re Davis, 13 F.Supp. 221 (E.D.N.Y.); In re Diller, 13 F.Supp. 249 (S.D.Cal.); In re Tschoepe, 13 F.Supp. 371 (S.D.Tex.); In re Schoenleber, 13 F.Supp. 375 (D.Neb.); In re Wogstad, 14 F.Supp. 72 (D.Wyo.), and In re Maynard, 15 F.Supp. 809 (D.Idaho). Compare In re Shonkwiler, 17 F.Supp. 697, 699 (E.D.Ill.).

uary 8, 1936, that motion was granted; all proceedings on the bankrupt's petition were terminated; and his petition was dismissed. It is that order, affirmed by the Court of Appeals, which is here for review. Both of the lower courts held that, since the applicable rights of a mortgagee in Kentucky and of the beneficiary under a mortgage deed of trust in

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Virginia are substantially the same, our decision in Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 55 S.Ct. 854, 79 L.Ed. 1593, 97 A.L.R. 1106, required that subsection (s) be held unconstitutional.

[1] First. The mortgagee claims that the legislation is void on its face. It challenges the power of Congress to confer upon courts authority to grant to a mortgagor, under any circumstances, any of the relief provided for in subsection (s) of the new Frazier-Lemke Act. There has been no order granting a stay under paragraph 2 of subsection (s). But the suit is not premature; for the fact that no stay order has been entered does not imply that an actual constitutional controversy is not presented. The petitioner asserts a right to pursue proceedings provided by a federal statute, and that right has been denied him on grounds of the alleged invalidity of the statute. Before the motion to dismiss was made, the District Court had entered its order adjudging petitioner a bankrupt, and referring the matter to the Conciliation Commissioner for further proceedings under section 75(s). The entry of the order of reference initiated proceedings designed to move, through the appointment of appraisers, the appraisal, and the referee's order recognizing the debtor's right to possession, to the grant of the stay by the court. Under the Act no further affirmative action by petitioner precedent to his obtaining the stay was necessary. The mortgagee was not obliged to delay his challenge to the validity of the stay and its essential incidents until these officials had complied with the mandatory provisions of the Act. But while we must decide whether the challenged sub-section is constitutional, we refrain from deciding questions suggested which may arise later in the course of its administration.

Second. The decision in the Radford Case did not question the power of Congress to offer to distressed farmers the aid of a means of rehabilitation under the bankruptcy clause. The original Frazier-Lemke Act was there held invalid solely on the ground that the bankruptcy power of

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Congress, like its other great powers, is subject to the Fifth Amendment; and that, as applied to mortgages given before its enactment, the statute violated that Amendment, since it effected a substantial impairment of the mortgagee's security. The opinion enumerates five important substantive rights in specific property which had been taken. It was not held that the deprivation of any one of these rights would have rendered the Act invalid, but that the effect of the statute in its entirety was to deprive the mortgagee of his property without due process of law. The rights enumerated were (295 U.S. 555, at pages 594, 595, 55 S.Ct. 854, 865, 79 L.Ed. 1593, 97 A.L.R. 1106):

"(1) The right to retain the lien until the indebtedness thereby secured is paid.

"(2) The right to realize upon the security by a judicial public sale.

"(3) The right to determine when such sale shall be held, subject only to the discretion of the court.

"(4) The right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of a fair competitive sale or by taking the property itself.

"(5) The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt."

In drafting the new Frazier-Lemke Act, its framers sought to preserve to the mortgagee all of these rights so far as essential to the enjoyment of his security. The measure received careful consideration before the committees of the House and the Senate. Amendments were made there with a view to ensuring the constitutionality of the legislation recommended. The Congress concluded, after full discussion, that the bill, as enacted, was free from the objectionable features which had been held fatal to the original Act.

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Third. It is not denied that the new Act adequately preserves three of the five above enumerated rights of a mortgagee. "The right to retain the lien until the indebtedness thereby secured is paid" is spe-

cifically covered by the provisions in paragraph 1, that the debtor's possession, "under the supervision and control of the court," shall be "subject to all existing mortgages, liens, pledges, or encumbrances," and that: "All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear."[2]

"The right to realize upon the security by a judicial public sale" is covered by the provision in paragraph 3 that at the termination of the stay:

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"* * * upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction."[3]

The new Act does not in terms provide for "The right to protect its [the mortgagee's] interest in the property by bidding at such sale whenever held." But the committee reports and the explanations given in Congress make it plain that the mortgagee was intended to have this right.[4] We accept this view of the statute.

[3]

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Fourth. The claim that subsection (s) is unconstitutional rests mainly upon the contention that the Act denies to

[2] Amendments to the bill subsequent to its introduction plainly demonstrate careful intention to leave the lien wholly unimpaired. As introduced, the measure provided for retention of the lien "up to the actual value of such property, as fixed by the appraisals provided for in this section," S. 3002, § 6, p. 6 (Compare Act of June 28, 1934, c. 869, subsec. (s), (2), 48 Stat. 1290); and there was no provision for a public sale at the request of the secured creditor. As reported out of the Senate Committee on the Judiciary, and as subsequently enacted, the measure provided for retention of the lien unqualified by reference to the appraisal value of the property. See S. 3002, as reported, § 6, p. 6; Sen. Rep. No. 985, 74th Cong., 1st Sess., p. 3. As reported by the committee, the bill provided for a public sale in the discretion of the court, upon request of the secured creditor, and limited the lienholder's bid at such sale to "the appraised value or the original principal, whichever is the higher." S. 3002, supra, § 6, p. 9; Sen. Rep. No. 985, supra, pp. 4, 6. Since the latter qualification was thought to raise some constitutional doubt, it was eliminated during the Senate's consideration of the measure. See statements of Senators Ashurst and Borah, of the Committee on the Judiciary, and of Senator Frazier, 79 Cong. Rec. 13413, 13633, 13634, 13641. The House Committee on the Judiciary reported the bill with this change. H. R. Rep. No. 1808, 74th Cong., 1st Sess., pp. 1, 4, 6.

[3] As introduced, S. 3002 contained the provision of the Act by which the mortgagor might purchase at the appraised value, subject to the mortgagee's right to require a re-appraisal; but it did not provide that the mortgagee might, in lieu of a re-appraisal, have a public sale. The bill as reported by the Senate Committee on the Judiciary inserted after the provision for appraisal a clause providing, "That upon request in writing by any secured creditor or creditors, the court, in its discretion, if it deems it for the best interests of the secured creditors and debtor, may order the property upon which such secured creditors have a lien, to be sold at public auction; * * *" S. 3002, as reported, § 6, p. 9; see Sen. Rep. No. 985, 74th Cong., 1st Sess., p. 4. "To remove a question as to the constitutionality of the bill," this provision was altered in the course of the bill's passage through the House to deprive the court of discretion in the matter and to give the secured creditor an unqualified right to a public sale as the alternative to a transfer of the property to the debtor at the re-appraised value. See remarks of Representative Sumners, of the House Committee on the Judiciary, 79 Cong. Rec. 14332, 14333.

[4] As reported by the Senate Committee on the Judiciary, S. 3002, § 6, p. 9, recognized a right in the mortgagee to bid at the sale not in excess "of the appraised value or the original principal, whichever is the higher." See Sen. Rep. No. 985, 74th Cong., 1st Sess., pp. 4, 6. In striking out this qualification for the express purpose of avoiding a constitutional doubt, Senators responsible for the measure plainly showed that they had no intention of raising a further constitutional controversy by questioning the mortgagee's unqualified right to bid. See statements of Senators Ashurst, Borah, and Frazier, 79 Cong. Rec. 13413, 13633, 13634, 13641, 13642. H. R. Rep. No. 1808, 74th Cong., 1st Sess., pp. 1, 5, 6, unequivocally declared that under the Act the secured creditors have the right to bid at the sale; and this was made clear on the floor of the House by Representative

a mortgagee the "right to determine when such sale shall be held, subject only to the discretion of the court." The assertion is that the new Act in effect gives to the mortgagor the absolute right to a three-year stay; and that a three-year moratorium cannot be justified. The three-year stay is specified in the following provisions:

"When the conditions set forth in this section [Section 75] have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years." Par. 2.

"At the end of three years, or prior thereto, the debtor may pay into court, the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal." Par. 3.[5]

Whether, in view of the emergency, an absolute stay of three years would have been justified under the bankruptcy power, we have no occasion to decide. There are

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other provisions in the statute affecting the mortgagor's right to possession. Their phraseology is lacking in clarity. But we are of opinion that, while the Act affords the debtor, ordinarily, a three-year period of rehabilitation, the stay provided for is not an absolute one; and that the court may terminate the stay and order a sale earlier.

[4] If we were in doubt as to the intention of Congress, we should still be led to that construction by a well-settled rule: "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Crowell v. Benson, 285 U.S. 22, 62, 52 S.Ct. 285, 296, 76 L.Ed. 598.

The mortgagor's right to retain possession during the stay is specifically limited by paragraph 3, which provides: "If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act [title]."

Thus, for example, the debtor's tenure under the stay is subject to the requirement that he pay "a reasonable rental semiannually for that part of the property of which he retains possession." Paragraph 2. Under the last-quoted provision of paragraph 3, if the debtor defaults in this obligation "at any time," the court may thereupon order the property sold. Likewise, the property while in the debtor's possession is kept, according to paragraph 2, at all times "in the custody and under the supervision and control of the court"; and, also under paragraph 2: "The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to

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conserve the security, * * * may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act [title], and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation."

Paragraph 3 authorizes the court to have the property sold if "at any time" the debtor should fail to comply with orders of the court issued under its power to require interim payments on principal, or

Sumners, of the Committee on the Judiciary. See 79 Cong. Rec. 14333.

The beneficiary under a mortgage deed of trust in Virginia is permitted to bid in the property at the sale. See, e. g., Ashworth v. Tramwell, 102 Va. 852, 858, 47 S.E. 1011; Title Insurance Co. of Richmond, Inc., v. Industrial Bank of Richmond, Inc., 156 Va. 322, 327, 157 S.E. 710; Everette v. Woodward, 162 Va. 419, 174 S.E. 864. Compare Easton v. German-American Bank, 127 U.S. 532, 538, 8 S.Ct. 1297, 32 L.Ed. 210.

[5] This clause is qualified by alternative provisos, one for payment at a reappraised value, the other for a public sale to be held upon the mortgagee's request at the time when the stay expires, whether by lapse of time or by the mortgagor's payment into court of the appraised or reappraised value. See Note 3, supra.

otherwise in the course of its "supervision and control" of his possession. Paragraph 3 also provides that "if * * * the debtor at any time * * * is unable to refinance himself within three years," the court may close the proceedings by selling the property. This clause must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three-year period.[6]

[5] Finally, the intention of Congress to make the

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stay terminable by the court within the three years is shown also by paragraph 6, which declares the Act (11 U.S.C.A. § 203(s) (6) an emergency measure, and provides that: "if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate."[7]

[6] Since the language of the Act is not free from doubt in the particulars mentioned, we are justified in seeking enlightenment from reports of Congressional committees and explanations given on the floor of the Senate and House by those in charge of the measure.[8] When the leg

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islative history of

[6] This construction is in harmony with the requirement of good faith in the initiation of proceedings under section 75. Relief under section 75 (s) may be obtained only by one who has made a bona fide attempt, and has failed, to effect a composition under section 75, (a) to (r), 11 U.S.C.A. § 203 (a–r). The offer of composition must be in good faith [section 75, (c), (i), 47 Stat. 1471, 1472], and if the debtor is beyond all reasonable hope of financial rehabilitation, and the proceedings under section 75 cannot be expected to have any effect beyond postponing inevitable liquidation, the proceedings will be halted at the outset. The practical administration of section 75 in the lower courts already affords ample evidence of the substantial protection afforded the creditor by this requirement of good faith in the initiation of proceedings under subsections (a)-(r). See In re Borgelt (C.C.A.) 79 F.(2d) 929; Dallas Joint Stock Land Bank v. Davis (C.C.A.) 83 F.(2d) 322, 323; Steverson v. Clark (C.C.A.) 86 F.(2d) 330; Knotts v. First Carolinas Joint Stock Land Bank (C. C.A.) 86 F.(2d) 551; In re Reichert (D. C.) 13 F.Supp. 1, 4, 5; In re Paul (D.C.) 13 F.Supp. 645, 647; In re Buxton's Estate (D.C.) 14 F.Supp. 616; In re Vater (D.C.) 14 F.Supp. 631; In re Schaeffer (D.C.) 14 F.Supp. 807; In re Duvall (D. C.) 14 F.Supp. 799; In re Byrd (D.C.) 15 F.Supp. 453; In re Wylie (D.C.) 16 F. F.Supp. 193, 194; In re Price (D.C.) 16 F.Supp. 836, 837. Compare In re Chilton (D.C.) 16 F.Supp. 14, 17; In re Davis (D.C.) 16 F.Supp. 960. It must be assumed that the situation of the present debtor was not beyond all reasonable hope of rehabilitation, else he could not have qualified to file his petition at the outset. Compare Tennessee Publishing Co. v. American National Bank, 299 U.S. 18, 22, 57 S.Ct. 85, 87 L.Ed. 13.

[7] This provision is not inconsistent with the constitutional requirement that laws established by Congress on the subject of bankruptcies shall be uniform throughout the United States. Article 1, § 8, cl. 4. The problem dealt with may present significant variations in different parts of the country. By paragraph 6 the Bankruptcy Act adjusts its operation to these variations, as under other provisions it has adjusted its operation to the differing laws of the several States affecting dower, exemptions, and other property rights. Compare Hanover National Bank v. Moyses, 186 U.S. 181, 189, 22 S. Ct. 857, 46 L.Ed. 1113; Stellwagen v. Clum, 245 U.S. 605, 613, 38 S.Ct. 215, 62 L.Ed. 507. The authority granted by paragraph 6 does not exceed limits of authority familiarly exercised by courts. See Standard Oil Co. of New Jersey v. United States, 221 U.S. 1, 69, 31 S.Ct. 502, 55 L.Ed. 619, 34 L.R.A.(N.S.) 834, Ann.Cas.1912D, 734; compare Chastleton Corporation v. Sinclair, 264 U.S. 543, 44 S.Ct. 405, 68 L.Ed. 841.

[8] Where the meaning of legislation is doubtful or obscure, resort may be had in its interpretation to reports of Congressional committees which have considered the measure (McLean v. United States, 226 U.S. 374, 380, 33 S.Ct. 122, 57 L.Ed. 260; Tagg Bros. & Moorhead v. United States, 280 U.S. 420, 435, 50 S.Ct. 220, 223, 74 L.Ed. 524); to exposition of the bill on the floor of Congress by those in charge of or sponsoring the legislation (Duplex Printing Press Co. v. Deering, 254 U.S. 443, 475, 41 S.Ct. 172, 179, 65 L.Ed. 349, 16 A.L.R. 196; Richbourg Motor Co. v. United States, 281 U.S. 528, 536, 50 S.Ct. 385, 388, 74 L.Ed. 1016, 73 A.L.R. 1081); to comparison of successive drafts or amendments of the measure (United States v. Pfitsch, 256 U.S. 547, 551, 41 S.Ct. 569, 570, 65 L.Ed. 1084;

the bill is thus surveyed, it becomes clear that to construe the Act otherwise than as giving the courts broad power to curtail the stay for the protection of the mortgagee would be inconsistent not only with provisions of the Act, but with the committee reports and with the exposition of the bill made in both Houses by its authors and those in charge of the bill and accepted by the Congress without dissent.[9] We construe it as giving the courts such power.

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Fifth. It is urged that subsection (s) is unconstitutional because there is taken from the mortgagee "the right to control meanwhile the property during the period of default, subject only to the discretion of the court,

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and to have the rents and profits collected by a receiver for the satisfaction of the debt."

United States v. Great Northern Railway Co., 287 U.S. 144, 155, 53 S.Ct. 28, 32, 77 L.Ed. 223); and to the debates in general in order to show common agreement on purpose as distinguished from interpretation of particular phraseology (Federal Trade Commission v. Raladam Co., 283 U.S. 643, 650, 51 S.Ct. 587, 590, 75 L.Ed. 1324, 79 A.L.R. 1191; Humphrey's Executor v. United States, 295 U.S. 602, 625, 55 S.Ct. 869, 872, 79 L.Ed. 1611).

[9] Emphasis upon the deliberate intention to meet the constitutional objections raised in Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 55 S.Ct. 854, 79 L.Ed. 1593, 97 A.L.R. 1106, dominated the consideration of the bill in all stages. See, e. g., Sen.Rep. No. 985, 74th Cong., 1st Sess., pp. 1, 3; H.R. Rep. No. 1808, id., pp. 1, 3; statements of Senator McCarran, 79 Cong.Rec. 11971; Senator Ashurst, ibid.; Senator Borah, id., 13411, 13632, 13642; Representative Lemke, id., 14331, 14332; and Representative Sumners, id., 14333. There was no dissent on constitutional grounds apart from the doubts which were disposed of as described in notes 2, 3, and 4, supra. Comparing the present measure with the former section 75 (s), Sen.Rep. No. 985, 74th Cong., 1st Sess., p. 5, pointed out that: "The amended subsection (s) shortens the time of the stay of proceedings from 5 to 3 years, and * * * gives the court power to shorten that stay. It gives the court complete jurisdiction and custody of the property, with authority to fix the rental annually, and to sell perishable property and personal property that is not necessary for the debtor's farming operations. It will also be noticed that the court can require payments over and above the rental value. In other words, in the amended subsection (s), the property is virtually in the complete custody and control of the court, for all purposes of liquidation. * * *" Likewise, it was said in H.R.Rep. No. 1808, 74th Cong., 1st Sess., p. 5, that: "The new subsection (s) shortens the time of the stay of proceedings from 5 to 3 years, and in addition gives the court power to shorten that period. * * * Under the new subsection (s) the property of the bankrupt is in the complete custody and control of the court, for all the purposes of liquidation." And at page 6: "The Supreme Court intimated that in the original subsection, the district court did not have sufficient discretion. In this subsection, the district court is given complete control and discretion."

Discussion of the bill in the Senate is reported in 79 Cong.Rec. 11970, 11971, 13348, 13349, 13411, 13413, 13632, 13645.

In the Senate discussion there occurred the following (79 Cong.Rec. 13633):

"Mr. Borah. The court is given power in the bill to make sale of the property whenever the court deems it in the interest of all parties to do so.

"Mr. Hastings. During the 3 years?

"Mr. Borah. Yes. In the case of perishable property, or property which is not bringing in any income, or anything of that kind, the court has power to make sale of it.

"* * *

"Mr. Frazier. The bill gives the court authority to sell the property, if it deems it advisable, at any time. The court may sell any part of it or all of it at any time before or during or after the 3 years."

Discussion of the bill in the House is reported in 79 Cong.Rec. 13831, 14331, 14334. Presenting the bill, as reported from committee, Representative Lloyd explained: "We have in no way reduced the security of the mortgagee. We have left his security intact, but we have made it possible for the bankruptcy court to retain jurisdiction for a period not to exceed 3 years." 79 Cong.Rec. 13831.

There also occurred in the House the following (79 Cong.Rec. 14332):

"Mr. Ford of California. Is it not designed to give to the farmer a breathing

(a) The argument is that possession by the mortgagor during the stay is necessarily less favorable to the mortgagee than possession by a receiver or trustee would be. This is not true. The mortgagor is in default, but it is not therefore to be assumed that he is a wrongdoer, or incompetent to conduct farming operations. The legislation is designed to aid victims of the general economic depression. The mortgagor is familiar with the property, and presumably vitally interested in preserving ownership thereof and ready to exert himself to the uttermost to that end. It is not unreasonable to assume that, under these circumstances, the interests of all concerned will be better served by leaving him in possession than by installing a disinterested receiver or trustee. For the mortgagor holds possession charged with obligations imposed for the benefit of the mortgagee as fully as if the property were in the possession of a receiver or trustee, and there is probably a saving of expense. In order to protect the creditor's interests, the possession is at all times subject to the supervision and control of the court; and, if the debtor, "at any time," fails to comply with orders of the

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court issued in the exercise of its supervisory power to protect the mortgagee against waste or other abuse of his possession by the mortgagor, the court may order the property sold. The farmer's proceeding in bankruptcy for rehabilitation, resembles that of a corporation for reorganization. As to the latter it is expressly provided that the debtor may, to some extent, be left in possession, U.S.Code, Title 11, § 207 (c), 11 U.S.C.A. § 207 (c); and it is common practice to appoint as receivers one of the officials of the corporation.

[8] (b) It is complained that the mortgagor is not required to pay the first instalment of rent until the end of one year. The phraseology of the applicable provision is not clear. Paragraph 2, section 75 (s), provides: "During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning capacity of the property."

The clause providing that "the first payment of such rental shall be made within one year" is obviously capable of either of two constructions: One, that the mortgagor may not be required by the court to pay before the close of the year. The other, that the court may not postpone the payment beyond one year. In view of the requirement of semi-annual rental, the latter seems to us more reasonable. We intimate no opinion as to the validity of this provision under the first construction. As here construed, the clause cannot be deemed arbitrary or unreasonable.

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(c) The disposition of the rental required to be made is said to involve denial of the mortgagee's rights. Paragraph 2 provides: "Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear."

It is suggested that payment of taxes and keeping the property in repair takes the income from the mortgagee, and that the mortgagor alone may be benefited thereby; that if the mortgagor exercises the option to purchase the property at its appraised value, he will secure the property free of tax liens which otherwise might have accrued against it. But it must be assumed that the mortgagor will not get the property for less than its actual value.

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spell so that he may orient himself in such a way as to get out of his present difficulties without in the least jeopardizing the lien of his creditors?

"Mr. Lemke. Absolutely, and the district judge has complete control all the time of the farmer's property.

"* * *

"Mr. Andresen. All it does is to give a 3-year extension for the time of the redemption if the court so directs.

"Mr. Lemke. Under the supervision and control of the court."

Despite some apparent similarity of language, the remarks quoted from the discussion in the Senate do not seem to have been addressed to the second proviso of paragraph 3 as it then stood, but to have been intended more generally, expressing the plan embodied in the last sentence of paragraph 3. See S. 3002, as reported from committee, § 6, p. 9.

The Act provides that upon the creditor's request the property must be reappraised, or sold at public auction; and the mortgagee may by bidding at such sale fully protect his interest. Nonpayment of taxes may imperil the title. Payments for upkeep are essential to the preservation of the property. These payments prescribed by the Act are in accordance with the common practice in foreclosure proceedings where the property is in the hands of receivers.[10]

[10] Sixth. In support of the contention that the legislation is unconstitutional, it is pointed out that the delay in the enforcement of the mortgage under section 75 of the Bankruptcy Act as amended by subsection (s) may exceed the term of three years; that months may be consumed in

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the effort to obtain a composition or extension of the debtor's obligations with the consent of the creditors; that when a petition is filed praying for the relief outlined in subsection (s) a further period of months may be consumed in having the property appraised and putting the debtor in the position which he must occupy before the stay is granted; that "four months from the date that the referee approves the appraisal" is given within which "either party may file objections, exceptions, and take appeals" from the appraisal; and that upon a sale of the property under paragraph 3: "The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court." It is pointed out, also, that the mortgage here in question is in the form of a deed of trust.[11] It is claimed that the rights to enforce payment by sale of the mortgage property, conferred by the law of Virginia upon the creditor under such a deed, are more peremptory than those under the law of Kentucky discussed in the Radford Case.[12] And it is urged that the limitations here placed upon the enforcement of the mortgage are not merely a modification of the remedy recognized as permissible. Compare Home Building & Loan Association v. Blaisdell, 290 U.S. 398, 434, 54 S.Ct. 231, 238, 78 L.Ed. 413, 88 A.L.R. 1481.

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But the question here involved is not one of state action under the police power alleged to violate the contract clause. The power here exerted by Congress is the broad power "To establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." (Const. art. 1, § 8, cl. 4.) The question which the objections raise is not whether the Act does more than modify remedial rights. It is whether the legislation modifies the secured creditor's rights, remedial or substantive, to such an extent as to deny the due process of law guaranteed by the Fifth Amendment. A court of bankruptcy may affect the interests of lienholders in many ways. To carry out the purposes of the Bankruptcy Act, it may direct that all liens upon property forming part of a bankrupt's estate be marshaled; or that the property be sold free of encumbrances and the rights of all lienholders be transferred to the proceeds of the sale. Van Huffel v. Harkelrode, 284 U.S. 225, 227, 52 S.Ct. 115, 116, 76 L.Ed. 256, 78 A.L.R. 453. Despite the peremptory terms of a pledge, it may enjoin sale of the collateral, if it finds that the sale would hinder or delay preparation or consummation of a plan of reorganization. Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co., 294 U. S. 648, 680, 681, 55 S.Ct. 595, 608, 79 L.

[10] See Shepherd v. Pepper, 133 U.S. 626, 652, 10 S.Ct. 438, 33 L.Ed. 706; Thompson v. Phenix Insurance Co., 136 U.S. 287, 293, 10 S.Ct. 1019, 34 L.Ed. 408; Cake v. Mohun, 164 U.S. 311, 316, 17 S.Ct. 100, 41 L.Ed. 447; 1 Clark, Law and Practice of Receivers (2d Ed.1929) § 670; High, Law of Receivers (4th Ed. 1910) § 643; 1 Wiltsie, Mortgage Foreclosure (4th Ed.1927) § 616. Compare Atlantic Trust Co. v. Chapman, 208 U. S. 360, 371, 28 S.Ct. 406, 52 L.Ed. 528, 13 Ann.Cas. 1155.

[11] See Franklin Plant Farm, Inc., v. Nash, 118 Va. 98, 111, 86 S.E. 836, 840; Dillard v. Serpell, 138 Va. 694, 697, 123 S.E. 343; 3 Jones, Law of Mortgages (8th Ed., Rev.1928) §§ 1742, 2276.

[12] See Code of Va., 1918 (Michie 1924) § 5167, as amended, Acts 1926, c. 324, § 1, subsecs. (1)–(6), (13); In re Sherman (D.C.) 12 F.Supp. 297, 298, 299; compare Hogan v. Duke, 20 Grat.(Va.) 244, 256, 259; Muller's Administrator v. Stone, 84 Va. 834, 837, 6 S.E. 223, 10 Am.St.Rep. 889; Hudson v. Barham, 101 Va. 63, 67, 68, 43 S.E. 189, 99 Am.St.Rep. 849. See, also, Ashworth v. Tramwell, 102 Va. 852, 858, 47 S.E. 1011; Peterson v. Haynes, 145 Va. 653, 661, 134 S. E. 675; Neff's Administrator v. Newman, 150 Va. 203, 210, 142 S.E. 389.

Ed. 1110. It may enjoin like action by a mortgagee which would defeat the purpose of subsection (s) to effect rehabilitation of the farmer mortgagor. For the reasons stated, we are of opinion that the provisions of subsection (s) make no unreasonable modification of the mortgagee's rights; and hence are valid.

Reversed.

300 U.S. 500

UNITED STATES v. MADIGAN.

No. 562.

Argued March 10, 1937.

Decided March 29, 1937.

1. Army and navy ⇐51½(23)

Statute providing for revival of lapsed, canceled, or reduced insurance did not relate to converted policies, and insured who converted war risk policy into life policy at time when he was entitled to disability compensation from government was entitled, under statute, to have unpaid compensation applied to revival of lapsed life policy, but not to revival of converted war risk policy (World War Veterans' Act 1924, § 305, as amended by Act July 2, 1926, 38 U.S.C.A. § 516).

2. Statutes ⇐219

Administrative construction by Veterans' Bureau of statute providing for revival of lapsed policies *held* of persuasive force in suit involving rights under statute (World War Veterans' Act 1924, § 305, as amended by Act July 2, 1926, 38 U.S.C.A. § 516).

3. Army and navy ⇐51½(14)

Statute permitting totally disabled veterans who had converted war risk policies to make claims under such policies *held* not to entitle veteran who had converted war risk policy into life policy at time when he was suffering from a compensable disability, to total disability benefits under war risk policy, where total disability did not occur until after conversion of policy (World War Veterans' Act 1924, § 307, as amended by Act July 3, 1930, 38 U.S.C.A. § 518).

4. Army and navy ⇐51½(22)

Statute permitting totally disabled veterans who had converted war risk policies to make claims under such policies *held* not to extend to converted policies privileges of statute providing for revival of lapsed policies (World War Veterans' Act 1924, § 305, as amended by Act July 2, 1926, and § 307, as amended by Act July 3, 1930, 38 U.S.C.A. §§ 516, 518).

5. Statutes ⇐142

Modification of settled construction of section of statute by implication of a subsequent section is not favored.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

Action by Harry J. Madigan against the United States of America. To review a judgment of the United States Circuit Court of Appeals, for the Ninth Circuit [85 F.(2d) 609], affirming a judgment for plaintiff, defendant brings certiorari.

Reversed.

Messrs. Homer S. Cummings, Atty. Gen., and Wilbur C. Pickett, of Washington, D. C., for petitioner.

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Mr. Jordan R. Bentley, of Washington, D. C., for respondent.

Mr. Justice STONE delivered the opinion of the Court.

Respondent brought this suit in the District Court for Southern California to recover total permanent disability benefits under a contract of war risk term insurance. While in the military service of the United States in the World War, he acquired a term policy of war risk insurance. On November 1, 1919, availing himself of the benefits of section 404 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 398, 410, he converted his term insurance into a twenty-payment life policy of United States government insurance. He paid premiums on this policy until January 31, 1920, when it was allowed to lapse for nonpayment of premiums. On the date of the conversion of his first policy, he was suffering from a "compensable disability," and, after the lapse of the second, on June 6, 1925, he was rated by the Veterans' Bureau as totally and permanently disabled. At that time he was entitled to disability compensation from the government in the sum of $312.25.