listed upon the Exchanges as negotiable securities. If they are thus listed any innocent purchaser is always taking the risk that the true owner will some day reclaim them.

P. A. M. '36.

CONSTITUTIONAL LAW—IMPAIRMENT OF THE OBLIGATION OF CONTRACTS—MORATORIUM LEGISLATION.—In *Home Building and Loan Association v. Blaisdell*[1] the Supreme Court held that a provision of the Minnesota Mortgage Act of 1933[2] for a two-year moratorium on mortgages was not an impairment of the obligation of a contract under the contract clause of the Constitution nor an infringement of the due process provision of the Fourteenth Amendment. The law applied to mortgages existing at the effective date of the law and provided that mortgagors, by judicial proceedings, might secure a stay of foreclosures for a period not extending beyond May, 1935, and varying according to the circumstances of each case. The act further provided that in the proceedings which it authorized an order might be had upon notice "determining the reasonable value of the income on said property, or, if the property has no income, then the reasonable rental value of the property. . . ., and directing and requiring such mortgagor or judgment debtor, to pay all or a reasonable part of such income, or rental value, in or toward the payment of taxes, insurance, interest, mortgage, or judgment indebtedness at such times and in such manner as shall be fixed and determined and ordered by the court." The act recited an emergency, occasioned by the depression.

Since the Minnesota Mortgage case three decisions have clarified the position of the Supreme Court on the general subject of retroactive legislation applied to debts. In *W. B. Worthen Company v. Thomas*[3] the Court declared unconstitutional an Arkansas statute which exempted the benefit payments on life, sickness, and accident insurance policies from legal process for the satisfaction of any indebtedness existing at the time the act was passed.[4] Just before the law became effective the plaintiff company had garnished a payment to a beneficiary by an insurance company, thus acquiring a lien under the Arkansas law.[5] The statute was upheld by the State supreme court,[6] but was reversed in the Supreme Court of the United States on the ground that it impaired the obligation of contracts. The Arkansas legislature, unlike that of Minnesota, made no attempt to discriminate on the basis of need on the part of debtors or classes of debtors

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[1] (1934) 290 U. S. 398.
[2] Laws of Minnesota, 1933, p. 514.
[3] (1934) 292 U. S. 426.
[4] Laws of Arkansas, 1933, p. 321.
[5] Desha v. Baker (1840) 3 Ark. 509, 520, 521; Martin v. Foreman (1856) 18 Ark. 249, 251; Smith v. Butler (1904) 72 Ark. 350, 351, 80 S. W. 580; St. Louis Southwestern Ry. Co. v. Vanderberg (1909) 91 Ark. 252, 255, 120 S. W. 993; Foster v. Pollack Co. (1927) 173 Ark. 48, 51, 291 S. W. 989.
[6] (1933) 65 S. W. (2d) 917.

and made no attempt to limit the resultant sacrifice of contractual rights. The Court distinguished the *Blaisdell* case as follows: "We held that when the exercise of the reserved power of the State, in order to meet public need because of a pressing public disaster, relates to the enforcement of existing contracts, that action must be limited by reasonable conditions appropriate to the emergency. . . . Accordingly, in the case of Blaisdell, we sustained the Minnesota mortgage moratorium law in the light of the temporary and conditional relief which the legislation granted. . . . In the instant case, the relief sought to be afforded is neither temporary or conditional. In placing insurance moneys beyond the reach of existing creditors, the act contains no limitations as to time, amount, circumstances, or need."[7]

In *W. B. Worthen Company v. Kavanaugh*[8] a series of acts of the legislature of Arkansas, virtually empowering special improvement districts to repudiate their bonds was also held unconstitutional. This act, in addition to reducing interest and penalties on unpaid benefit assessments, prolonged the minimum time within which property might be sold for their non-payment from sixty-five days to two and one-half years and provided for a further four-year period of redemption during which the landowner might remain in possession without payment of any kind.[9] The constitutionality of the law was defended upon the grounds of an emergency which the act declared to exist, and because the changes wrought by the act merely altered the remedy under the law, not the substance of the contract. But the Supreme Court held that although the dividing line between changes of substance and changes of remedy is obscure,[10] "not even changes of remedy may be pressed so far as to cut down the security of the mortgage without moderation or reason or in the spirit of oppression. Even where the public welfare is involved these bounds must be respected."[11] After stating that the act had taken from the mortgage "the quality of an acceptable investment for a rational investor,"[12] the court distinguished this statute from

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[7] W. B. Worthen Co. v. Thomas, supra, n. 3, l. c. 433.

[8] (1935) 55 Sup. Ct. 555.

[9] Laws of Arkansas, 1933, p. 375, 790, 868.

[10] "The distinction between the obligations of a contract and the remedy given by the legislature to enforce the obligation, has been taken at the bar, and exists in the nature of things. Without impairing the obligations of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct." Marshall, C. J. in Sturges v. Crowninshield (1819) 4 Wheat. 200, 4 L. Ed. 529. In Von Hoffman v. Quincy (1866) 4 Wall. 553, 18 L. Ed. 403, Swayne, J. said: "It is competent for the states to change the form of the remedy or to modify it otherwise as they see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are deemed legitimate, and those which under the form of modifying the remedy, impair substantial rights. Every case must be determined on its own circumstances." Waite C. J. in Antoni v. Greenhow (1882) 107 U. S. 769, 2 Sup. Ct. 91, 27 L. Ed. 468, added: "In all such cases therefore the question becomes one of reasonableness and of that the legislature is primarily the judge."

[11] 55 Sup. Ct. at 557 per Cardozo, J.

[12] Ibid.

the one at issue in the *Blaisdell* case by noting the absence of the restrictions approved in the latter case. "None of these restrictions or anything approaching them is present in this case. There has not been even an attempt to assimilate what was done by this decree to the discretionary action of a chancellor in subjecting an equitable remedy to an equitable condition."[13]

The two Worthen Company cases proved the basis for the decision of the court in the more recent case of *Louisville Joint Stock Land Bank v. Radford*[14] in which the Frazier-Lemke Act[15] was declared unconstitutional. Radford had given a mortgage to the Louisville Bank to secure a note for nine thousand dollars which he was to repay in installments. He defaulted in 1932 and after long negotiations in an effort to reach a settlement the bank declared the indebtedness immediately payable and began a suit to foreclose. Radford then filed in bankruptcy under the Frazier-Lemke Act.

It was provided in paragraph three of the Act that the bankrupt may, if the mortgagee assents, purchase the property at the present appraised value, acquiring title thereto as well as immediate possession, by agreeing to make deferred payments for six years at a very low rate of interest, beginning with one percent for the first year. By paragraph seven the bankrupt might, if the mortgagee refused assent to immediate purchase on the above terms, require the bankruptcy court to stay all proceedings for five years, during which time the debtor might retain possession of all or any part of his property under the control of the court upon payment of a reasonable annual rental. The first rental payments were due in six months, payments to be distributed to ALL creditors. At the end of five years the debtor may pay into court the appraised price of the property of which he has retained possession. Lienholder may request a reappraisal which debtor will have to pay. The act applies only to indebtedness incurred before its passage.

The bank contended that the Act extended the bankruptcy power of Congress beyond its proper scope and that the Act violated the due process provision of the Fifth Amendment. The court held upon the latter ground that "statutes for the relief of mortgagors are sustained when they are found to preserve substantially the right of the mortgagee to obtain through application of the security, payment of the indebtedness. The same statutes are invalid when it appears that this substantive right has been substantially abridged."[16] The Blaisdell case was further distinguished because it specifically limited the emergency period and even provided for a further limitation at the discretion of the court.[17] Finally the court held the Frazier-Lemke Act unconstitutional because it deprived the mortgagee of rights under the Kentucky laws which permitted retention until the indebtedness

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[13] 55 Sup. Ct. at 558 per Cardozo, J.
[14] (1935) 55 Sup. Ct. 854.
[15] 48 Stat. 1289, 11 USCA 203 (s).
[16] Per Brandeis, J. citing Home Building and Loan Co. v. Blaisdell, supra, note 1, and W. B. Worthen Co. v. Kavanaugh, supra, note 8.
[17] Louisville Joint Stock Land Bank v. Radford, supra, n. 14, l. c. 867.

was paid, realization upon the security at a public sale, determination of when the sale should be held, the right to bid at the sale, and the right to control the property during the period of default.[18] The Court added by way of dictum that the scope of the Congressional bankruptcy power was not limited by the power that Congress had exercised under it in the past but only by the Fifth Amendment.[19]

W. R. E. '37.

CONSTITUTIONAL LAW—JURY TRIAL—NEW TRIAL FOR DIRECTION OF VERDICT.—At a time when most courts are far behind in their dockets and any prolongation of litigation adds considerably to its cost, both the legal profession and its clients should welcome any decision sustaining the validity of a method of procedure by which a large number of new trials can be avoided. The Supreme Court of the United States has recently made such a decision in the case of *Baltimore & Carolina Line, Inc. v. Redman* (1935) 55 S. Ct. 890. Plaintiff brought an action in the Federal District Court in New York to recover damages for personal injuries caused by the negligence of defendant. At the conclusion of the evidence defendant moved for a directed verdict on the ground that the evidence could not support a verdict for the plaintiff. The court expressly reserving the legal issue whether it should direct a verdict for defendant, submitted the case to the jury, which found for the plaintiff. The court then ruled for the plaintiff on the point of law reserved and defendant appealed. The Court of Appeals held that upon the evidence the trial court should have granted defendant's motion, and ordered a new trial, denying defendant's motion for dismissal of the complaint. The Court of Appeals stated that a new trial was required by the decision of the Supreme Court in *Slocum v. N. Y. Life Ins. Co. (1912) 228 U. S.* 364. Defendant then obtained a writ of certiorari from the Supreme Court which granted his motion for dismissal of the complaint and held that a new trial was unnecessary.

Before considering the grounds of the present decision it is well to recall the opinion in the *Slocum* case, which the Supreme Court held inapplicable. That was an action in the Federal District Court in Pennsylvania upon a life insurance policy. The defendant's motion for a directed verdict was denied, and the jury found for the plaintiff. The defendant then asked for judgment notwithstanding the verdict, allowed by a Pennsylvania statute, on the ground that his motion should have been granted. His request was denied by the trial court, but on appeal the Court of Appeals sustained his contention and entered judgment for him. Plaintiff took the issue to the Supreme Court insisting that his constitutional right to jury trial had been violated. A bare majority of the judges held that the Court of Appeals was right in reversing the judgment but that it should have granted a new trial. It was decided that the Seventh Amendment preserved the right to

[18] Ibid., l. c. 865-66.
[19] Ibid., l. c. 862-3.