

for delivery on payment of the charges, the right to hold the goods does not cease until the storage charge is paid or tendered, and until then the lienor may charge for storage and have the benefit of a lien for such charges. *Reidenbach v. Tuck* (1904) 88 N. Y. S. 366 is in accord. In *Folsom v. Barrett* (1901) 180 Mass. 439, 62 N. E. 723, the court held that the lien holder may enforce the payment of such expenses on the theory that in reality he was holding the chattel for the owner's benefit. In Texas it was held that where a garage holding an automobile on which it claims a lien is sued by the owner for possession of the car, and after a writ of sequestration has been issued, replevies the car, the garage cannot claim storage charges for the time it held the car after its replevy. *White v. Texas Motorcar and Supply Co.* (Tex. Civ. App. 1918) 203 S. W. 441, *Hudson v. Breeding* (Tex. Civ. App. 1920) 224 S. W. 718. J. H., '35.

MORTGAGES—RIGHT TO DEFICIENCY JUDGMENT.—The plaintiff brought foreclosure proceedings upon a mortgage of land. The sale left a deficiency of \$1,379.16 on the original loan of \$2,000. The trial court confirmed the sale upon the express condition that the plaintiff consent to the denial of a motion for a deficiency judgment. *Held:* Upon application for confirmation of a foreclosure sale the court may establish a fair value of the property and as a condition to confirmation require it to be credited on the foreclosure judgment. The mortgagee should be given the option to accept or reject the confirmation on such terms. Since the plaintiff was not given this option the cause was remanded. *Suring State Bank v. Giese* (Wis. 1933) 246 N. W. 556.

The first step in the procedure for the mortgagee after the sale is to secure the court's confirmation thereof. There are several grounds upon which this may be refused. Mere inadequacy of price is insufficient, but if the accompanying circumstances show unfairness or fraud, confirmation may be denied. *Schroeder v. Young* (1896) 161 U. S. 334; *Union & Planters' Bank & Trust Co. v. Pope* (1928) 176 Ark. 1023, 5 S. W. (2d) 330; *Garitee v. Popplein* (1891) 73 Md. 322, 20 Atl. 1070; *Frensley v. American Nat. Bank* (1928) 129 Okla. 164, 264 Pac. 188. If the price is so inadequate as to shock the conscience or moral sense of the court, the sale will be set aside. *House v. Clarke* (Mo. 1916) 187 S. W. 57; *Donaho v. Bales* (Tenn. Ch. App. 1900) 59 S. W. 409. If mistake or inadvertence accompanies inadequacy of price, there may be no confirmation. *Rohrer v. Strickland* (1914) 116 Va. 755, 82 S. E. 711; *Kremer v. Rudolph* (1900) 105 Wis. 534, 81 N. W. 654. The same is true if there has been an agreement between the parties that the mortgagor will not contest the foreclosure if the mortgagee will take the property in satisfaction of the debt. *Mutual Life Insurance Co. v. O'Donnell* (1895) 146 N. Y. 275, 40 N. E. 787; *Silver v. Berger* (1930) 228 App. Div. 592, 240 N. Y. S. 468. Some courts suggest that the question is to be left to the discretion of the trial judge. *Jacksonville Loan & Insurance Co. v. National Mercantile Realty Co.* (1919) 77 Fla. 825, 82 So. 292; *Williams v. Taylor* (1902) 63 Neb. 717, 89 N. W. 261; *State v. Campbell* (1894) 5 S. D. 636, 60 N. W. 32; *Griswold v. Bardon* (1911) 146 Wis. 35, 130 N. W. 954.

If the sale is confirmed the mortgagor may still persuade the court to refuse a deficiency judgment. On the question of non-statutory equitable jurisdiction to render a deficiency judgment see: *Sacramento Bank v. Copsey* (1901) 133 Cal. 663, 66 Pac. 8; *Voorhis v. Crutcher* (1929) 98 Fla. 259, 123 So. 742; *Dunkley v. Van Buren* (N. Y. 1818) 3 Johns. Ch. 330; *Young v. Vail* (1924) 29 N. M. 324, 222 Pac. 912; 3 Jones, Mortgages (8th ed. 1928) 712, 725. Here as in the setting aside of a sale inadequacy of price is no defense unless accompanied by fraud or misconduct on the part of the plaintiff. *Pfeiffer v. Missouri State Life Insurance Co.* (1928) 177 Ark. 1013, 8 S. W. (2d) 505; *Anderson v. Walsh* (1923) 109 Neb. 759, 192 N. W. 328; *Mahoney v. Kurth* (1916) 163 Wis. 56, 157 N. W. 539; 3 Wiltsie, Mortgage Foreclosure (4th ed. 1927) 1217. In Florida the granting of a deficiency judgment is made discretionary with the court. *Taylor v. Prime* (1931) 101 Fla. 967, 132 So. 464; G. L. Fla. (1927) sec. 5751.

The principal case has gone beyond the accepted theories. General economic prostration has not heretofore been held to be a circumstance which, with inadequacy of price, will justify a denial of deficiency judgment. The trial court, influenced by local opinion, merely refused to render the personal judgment. The appellate court practically confirms the result but refuses to be so blunt. N. P. '34.

PHYSICIANS AND SURGEONS—MALPRACTICE—LACK OF SKILL.—Plaintiff sued for damages caused by the alleged failure of the defendant surgeon to exercise proper care and skill in treating her which resulted in serious illness and much physical and mental suffering. The trial court instructed the jury that the defendant was required to "possess and use that degree of knowledge, skill, and care ordinarily possessed and used by competent and skillful surgeons in St. Louis or similar communities". On appeal this instruction was held correct. *Sennert v. McKay* (Mo. 1933) 56 S. W. (2d) 105.

That a physician or surgeon must possess and use knowledge, skill and care, etc., is not new in Missouri. *Vanhooser v. Berghoff* (1886) 90 Mo. 487; *Krinard v. Westerman* (1919) 279 Mo. 680, 216 S. W. 938; *Trask v. Dumnigan* (Mo. 1927) 299 S. W. 116. However this has not been construed to mean that the physician is liable if he did not possess the required knowledge, skill and care if damage occurred from that cause alone, but rather that he is liable only when he fails to use the required knowledge, skill and care and thereby causes injury to the plaintiff. *Grainger v. Still* (1904) 187 Mo. 213; *MacDonald v. Crider* (Mo. 1925) 272 S. W. 980; *Hill v. Jackson* (1924) 218 Mo. App. 210, 265 S. W. 859. This is also the federal view. *Kallock v. Hoagland* (C. C. A. 6, 1917) 239 F. 252. Other states concur in this construction, and it appears that it is the weight of authority in America. *Talley v. Whitlock* (1917) 199 Ala. 28, 73 So. 976; *Markart v. Zeimer* (1925) 70 Cal. App. 52, 232 Pac. 715; *Wood v. Vromann* (1921) 215 Mich. 449, 184 N. W. 520; *Lollé v. Gray* (1925) 101 N. J. L. 337, 128 Atl. 256. The importance of *Sennert v. McKay* nevertheless will be far reaching if the dictum which it ex-