the "early maturity" rule and substitute in its stead the *pro rata* rule. Particular cases in which assignees may require protection against a mortgagee or other assignees can more readily be disposed of by the application of general doctrines of equity.

Mortgages—Right of Mortgagor to Cancel Leases Subordinate to the Mortgage after Commencement of Foreclosure Proceedings—[Illinois].—The defendant was a tenant of mortgaged premises under a lease subordinate to the mortgage which provided for a monthly rental of $200 until its expiration in November, 1935. In March, 1934, while foreclosure proceedings were pending and after being notified that application for the appointment of a receiver in these proceedings had been made, the tenant and his lessor, the mortgagor, entered into the following agreement: (1) the mortgagor canceled the existing lease in return for the tenant's release of a debt owed it by the mortgagor; (2) the mortgagor agreed to lease the premises to the tenant for three months at a monthly rental of $50. The tenant vacated the premises at the end of this short period. The plaintiff, a receiver appointed April 6, 1934 in the above proceedings, sued for the entire rental under the former lease, amounting to $4,000. A master in chancery found that the reasonable rental value of the premises was $60 a month. *Held*, for the plaintiff. While the mortgagor and his tenants may enter into agreements without the consent of the mortgagee, they had no power thus to defeat the pledge of rents and profits contained in the mortgage. *First National Bank v. Gordon*, 4 N.E. (2d) 504 (Ill. App. 1936).

The situation presented in the instant case is one not covered by normal mortgagee protections. In the ordinary case the mortgagor's activities in milking the property through payment of rent in advance, etc. are adequately controlled by the appointment of a receiver early in the foreclosure proceedings. If the terms of existing leases are satisfactory, the receiver is authorized to collect all rents and profits thereunder. Tefft, Receivers and Leases Subordinate to the Mortgage, 2 Univ. Chi. L. Rev. 33, 37 (1934). On the other hand if the leases are unsatisfactory, the receiver may disaffirm them and sue for the reasonable value of the tenant's occupation of the mortgaged premises from the date of his appointment. *Greenebaum v. Kingsbury*, 248 Ill. App. 321 (1928); see 86 A.L.R. 366 (1933). The receiver is allowed to disaffirm and collect this reasonable rental even if the tenant has paid the mortgagor in advance. *Rohrer v. Deatherage*, 336 Ill. 450, 168 N.E. 266 (1929); *Henshaw v. Wells*, 9 Humph. (Tenn.) 568 (1848); *State ex rel. Coker v. District Court*, 159 Okla. 10, 11 P. (2d) 495 (1932); *cf. Prudence Co. v. 160 W. 73rd St. Corp.*, 260 N.Y. 205, 183 N.E. 365 (1932) ("lien" jurisdiction). Furthermore, the receiver is permitted to collect all rents accrued at the date of his appointment. 4 N.E. (2d) 504, 505; *Palmieri v. N.Y. Prep. School*, 233 App. Div. 694, 248 N.Y.S. 934 (1931); *contra, Stewart v. Fairchild-Baldwin Co.*, 91 N.J. Eq. 86, 108 Atl. 301 (1919). But since obtaining the appointment of a receiver involves proof of inadequacy of the security, insolvency of the mortgagor, and perhaps other proof of actual or threatened impairment of the security, receivership is probably not available until some considerable time after foreclosure has been commenced. The mortgagee requires the same protection in this period that he is offered by the receivership device; thus a resort to additional restrictions on the mortgagor's powers is necessary.

The mortgagor's most valuable right before the appointment of a receiver is his

right to keep all rents collected before that date. *Rider v. Bagley*, 84 N.Y. 461 (1881); 80 U. of Pa. L. Rev. 269 (1931). But since the mortgagee, in title jurisdictions, may obtain possession upon default by taking some action to enforce this right, it is clear that the mortgagor's rights after default can be made subordinate to those of the mortgagee. See 4 A.L.R. 1400, 1410 (1919); 55 A.L.R. 1020, 1022 (1928). In some older cases, a demand for possession followed by a bill in equity to enforce this demand has been held to entitle the mortgagee to rents and profits from the time of the original demand. *Dow v. Memphis Ry. Co.*, 124 U.S. 652 (1888); see *Sacramento Ry. v. Super Ct.*, 55 Cal. 453 (1880); *Shaw v. Norfolk Ry.*, 71 Mass. 162 (1855). A mortgagee has also been allowed to enjoin the mortgagor from further collection of rents, the injunction being issued "coincident with" the institution of foreclosure proceedings. *Howell v. Ripley*, 10 Paige (N.Y.) 43, 44 (1843); *Post v. Dorr*, 4 Edw. (N.Y.) 412 (1844). A mere suit for foreclosure, however, is not enough to deprive the mortgagor of his right to collect rents. *Gilman v. Ill. & Miss. Tel. Co.*, 91 U.S. 603 (1875); *cf. Johnston v. Riddle*, 70 Ala. 219, 225 (1881); see 4 A.L.R. 1400, 1414. Thus although the pending foreclosure in the instant case may have been insufficient action by the mortgagee, the application for a receiver may well be considered a sort of *lis pendens* operating to preclude the mortgagor from further dealing with the property. See *In re Banner*, 149 Fed. 936 (D.C. N.Y. 1907) (receiver allowed to collect rents from the date of the *application*). Thus the court correctly extended the protection of the mortgagee in disallowing the mortgagor's agreement with the tenant.

It has been pointed out that the purpose of most protections to the mortgagee flowing from receivership was to assure him a reasonable rental from the mortgaged premises. In the instant case there was a clear showing that the new agreement provided for an approximately reasonable rental. 4 N.E. (2d) 504, 505. Thus it might be argued that the court should not place new restrictions on the mortgagor's rights in order to give the mortgagee an exorbitant rental against the mortgagor's wishes. But if this agreement had been made after the appointment of a receiver, it would not have been binding as against the receiver. Therefore, the court in the principal case would more adequately have disposed of the case had it clearly held the mortgagor's rights terminated by application for appointment of a receiver where appointment actually follows, especially since the mortgagor had notice of the pending receivership.

Taxation—Constitutionality of State Tax Covering Costs of Railroad Inspection —Burden of Proving Constitutionality—[United States].—The state of Washington imposed a fee of one tenth of one percent of the gross revenue from intrastate operations on all public utility corporations subject to regulation by its department of public works, for the purpose of providing funds for the inspection and supervision of such companies under the public service commission law. 11 Remington's Rev. Wash. Stats. 1933, §§ 10417, 10418. This department supervised many kinds of public utilities. Some of its activities in connection with railroads were unrelated to the inspection and supervision thereof. The funds collected from the railroads, together with those collected from other utilities under the department's supervision, were paid into the department's general fund, and all expenses of the department were paid indiscriminately out of that fund, there being no appropriation from the state's general revenues for any of the department's activities. The state showed that disbursements charged to rail-