before the filing of the petition, the state court's order making the claims for fees "a prior lien upon the premises" must be considered equivalent to a "direction to pay." "Direction to pay" is a sensible concept only if it is limited to those cases in which the court in the prior proceeding intended its order to be executed before reorganization might ensue. Making a claim for fees a "lien upon the premises" can hardly be said to indicate an intention that the claim be paid in the immediate future. Thus if the "direction to pay" concept is to be retained, it should be limited to orders in which fees are to be paid out of cash on hand or the proceeds of a sale to be held at the same time. In approving the reduction of fees for "services to be rendered," the court in the principal case not only suggested a possible limitation on the "direction to pay" concept, but also indicated a possible loophole through which reorganization courts may find power to reduce prior allowances. As shown above, the court's order must be considered as a "direction to pay" to sustain its decision as to services already rendered. But to sustain the reduction of fees for "services to be rendered," it is necessary to hold that an allowance for future services cannot be a final order even if couched in terms constituting a "direction to pay." Furthermore, unless allowances in prior proceedings are clearly labeled as being for past services, reorganization courts may consider them as being for future services and therefore reducible.

Corporate Reorganization—Consideration of Plan in Conjunction with Foreclosure Sale—Statutory Redemption—[Illinois].—In a foreclosure proceeding brought by the trustee under a trust deed, a committee representing the majority bondholders bid in at the sale, and in addition bought the statutory redemption right of the mortgagor. The minority bondholders objected to the approval of the sale on the grounds that the price was too low and that the court had no jurisdiction to consider the reorganization plan submitted by the majority committee. On a certificate of importance to the supreme court, *held*, (1) The court has jurisdiction to consider the reorganization plan in order to avoid injustice to the parties concerned. The price was not too low when considered in conjunction with the plan, which was fair. (2) The sale of the redemption was valid, and by execution under the deficiency decree the trustee can recover the money paid to the stockholders of the mortgagor. *First Nat'l Bk. of Chi. v. Bryn Mawr Beach Bldg. Corp.*, 6 N.E. (2d) 654 (Ill. 1937).

In resolving a doubt which had culminated in two conflicting Illinois appellate decisions, this case approves a technique already established in the federal and many state courts by which injustice to majority as well as minority bondholders may be avoided. If the court will not scrutinize the plan, fairness to the minority compels the court to require a bid that will give the dissenter the full value of his interest, *i.e.*, a bid approximating the full going-concern value of the property. But if such a bid is required the premium on being a dissenter will be so great that it will be difficult to secure sufficient assenters to make reorganization financially possible. This dilemma of unfairness to the dissenter on the one hand, or the stagnation of property caused by the thwarting of reorganization on the other, can be resolved only if the court considers the fairness of the plan and bargains for as high a price as is consonant with the effectuation of the reorganization. For a fuller discussion of this problem see Katz, Protection of Minority Bondholders in Foreclosures and Receiverships, 3 Univ. Chi. L. Rev. 517 (1936) and especially pp. 524–32; see also, 1 Gerdes, Corporate Reorganization § 16 (1936).

The fact that the court will take jurisdiction of a reorganization plan in conjunction with foreclosure proceedings obviates the necessity for statutory redemption. The mortgagor's redemption right is ordinarily bought by the purchaser of the property (here the majority committee) in order to effect a "quick-redemption" and to enable the purchaser to go into possession free from the cloud of the mortgagor's statutory right of redemption. Conveyance of the redemption right to the purchaser may take one of the following forms: (1) a bribe to stockholders or directors to induce them to exert pressure on the corporation to convey to the purchaser; (2) a sale in which the purchase money is paid to the corporation which then distributes the money to the stockholders, or (3) a sale in which the purchase money is paid directly to the stockholders. If the first form is employed, the transfer of the right of redemption is fraudulent and voidable; if the third, the sale is absolutely void since the right belongs to the corporation and not to the stockholders; if the second, the payment to the stockholders is in fraud of creditors, since the corporation is insolvent. However, if a rule of law requiring the corporation to disgorge the proceeds to creditors is established, the corporation may be reluctant to sell redemption privileges in the future. Whichever construction is taken, then, the ultimate result may be the inability of the purchaser of the property to remove the redemption cloud.

The simplest solution would be to eliminate statutory redemption. The right was created: (1) to protect debtors from high personal obligations arising from high deficiency judgments; (2) to enable defaulting debtors to regain their properties; (3) to protect unsecured creditors from having to share in unencumbered assets with the holders of an oversized deficiency judgment; (4) to allow creditors to take advantage of an increase in value of foreclosed property. See Becker and Harbert, Redemptions from Judicial Sales under the Laws of Illinois, Chicago-Kent Rev., May 1929; Durfee and Doddridge, Redemption from Foreclosure Sale—the Uniform Mortgage Act, 23 Mich. L. Rev. 825, 835–41 (1925). But in reorganization cases, the insolvency of the debtor corporation leaves the shareholders unconcerned with the size of the deficiency judgment, and renders the corporation unable to buy back. And unsecured creditors may be taken care of either in the reorganization plan, or by judicial reduction of deficiency judgment to a fair amount regardless of the sale price. See Katz, Protection of Minority Bondholders in Foreclosures and Receiverships, 3 Univ. Chi. L. Rev. 517, 544–48 (1936).

Several ways in which to avoid redemption have been indicated. Some courts, in cases involving public or quasi-public corporations, have decreed that if the debtor's property consisted of both realty and personalty and if it were sold en masse, it should be sold free of any redemption privileges. See *Peoria & Springfield Ry. v. Thompson*, 103 Ill. 187 (1882); *Hammock v. Loan & Trust Co.*, 105 U.S. 77 (1881); *Beet Growers Sugar Co. v. Colum. Trust Co.*, 3 F. (2d) 755 (C.C.A. 9th 1925). Although this result is prompted by the conviction that this is the only possible way to get a respectable bid, it clearly runs counter to the redemption statutes. Other courts have held that consent to receivership proceedings or to joinder of foreclosure with receivership proceedings constitutes a waiver of the right of redemption by the consenting parties, or subjects them to any decree the court may issue in this regard. *Hewitt v. Walters*, 21 Idaho 1, 119 Pac. 705 (1911); *Beet Growers Sugar Co. v. Colum. Trust Co.*, 3 F.(2d) 755 (C.C.A. 9th 1925); *American Mine Equipment Co. v. Illinois Coal Corp.*, 31 F.(2d) 507 (C.C.A. 7th 1929). But the inferences allegedly drawn from such con-

sent or joinder are hardly justifiable and cannot be made when receiverships or foreclosures are involuntary. Numerous decisions have justified judicial sales free of the statutory redemption on the theory that the sales were part of dissolution proceedings. See *Blair v. Illinois Steel Co.*, 159 Ill. 350, 42 N.E. 895 (1896); *Watkins v. Minnesota Thresher Mfg. Co.*, 41 Minn. 150, 42 N.W. 862 (1889); *Home Mtg. Co. v. Sitka Spruce P. & P. Co.*, 148 Ore. 502, 36 P. (2d) 1038 (1934). In fact the dissolution tag has been stretched to cover a foreclosure under a trust deed joined with a proceeding under a creditor's bill. *American Mine Equipment Co. v. Ill. Coal Corp.*, 31 F.(2d) 507 (C.C.A. 7th 1929); *cf. Duparquet Huot, Moneuse Co. v. Evans*, 297 U.S. 216, 220–22 (1936). None of these decisions satisfactorily defines dissolution proceedings, or distinguishes them from those proceedings which come within the language of the redemption statutes. It would not be a long step from precedents in these three situations to deny rights of redemption whenever a judicial sale is incident to corporate reorganization. But *cf. Locey Coal Mines v. Chicago, Will. & Ver. Coal Co.*, 131 Ill. 9, 22 N.E. 503 (1889).

Since it is not certain that courts will take this further step, a statutory solution is desirable. The present Illinois statute allowing a corporate mortgagor to include a waiver of its redemption right in the mortgage or trust deed (Smith-Hurd's Ill. Rev. Stats. 1935, c. 77, § 18a) is unsatisfactory because (1) it affects only those mortgages executed after 1933; and (2) it expressly saves the redemption rights given creditors under the old redemption statute; thus to remove this redemption cloud, the purchaser at the sale must settle with all creditors having the right to redeem rather than, as before, settling with the mortgagor alone and effecting a "quick redemption." A statute, to be adequate should provide that the purchaser of the property of an insolvent corporate debtor takes free from all rights of redemption. For a discussion of the problems generally involved in redemption, see Durfee and Doddridge, Redemption from Foreclosure Sale—the Uniform Mortgage Act, 23 Mich. L. Rev. 825 (1925).

Income Tax—Nature of Income—Bid of Mortgagee at Foreclosures as Evidence of Value of Land—[United States].—The petitioning life insurance company foreclosed several mortgages on real estate given to secure loans which were in default. At the foreclosure sales the company was the only bidder, its bid at each sale being the full amount of the debt plus the accrued interest, irrespective of the value of the land. The Board of Tax Appeals sustained an income tax assessment as to the interest, refusing to consider the company's evidence that the land was not worth the amount due as principal. The Circuit Court of Appeals reversed. 83 F. (2d) 629 (C.C.A. 6th 1936). On *certiorari* to the Supreme Court, *held*, McReynolds, J., dissenting, reversed. For purposes of income tax, the bid is conclusive evidence that the principal and interest were paid. *Helvering v. Midland Mut. Life Ins. Co.*, 57 Sup. Ct. 423 (1937).

The decision in the instant case is a product of the arbitrariness of the American concept of income and of the peculiarity of the American foreclosure sale. In continuing to develop its notion of income, the Court once more adhered strictly to form—not as it did in the cases stemming from *Eisner v. Macomber* to find realization, but rather to find gain. The result is in accord with the practice of the Board of Appeals and with the litigation in the lower federal courts. *Helvering v. Missouri State Life Ins. Co.*, 78 F. (2d) 778 C.C.A. 8th (1934); *National Life Ins. Co. v. United States*, 4 F. Supp. 1000 (1933).

In finding an interest payment to the taxpayer in the instant case, Mr. Justice