

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).

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**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

Brandeis, artfully ignoring patent facts, chose to regard the transaction as a real sale. The mortgagee *qua* purchaser buys the land by bidding the debt and pays himself *qua* creditor. In these terms the fact that the debt is discharged by means of a credit from the mortgagee rather than by the cash of an outsider was deemed to be immaterial by the court. But it does not necessarily follow that because the debt is discharged, the creditor has been fully paid. And for purposes of taxing the creditor, the emphasis should be on what he receives rather than on the manner of discharge.

If the double personality of the mortgagee as creditor-purchaser is disregarded, the transaction becomes merely the payment of a creditor in specie rather than money, and the bid becomes a mere device through which the mortgagee arbitrarily determines what amount to credit on the debt. Tefft, *The Myth of Strict Foreclosure*, 4 Univ. Chi. L. Rev. 575 (1937). Viewing the transaction in this light, the ordinary rules for taxing payment in specie should apply and the tax-payer would not realize any interest unless the fair market value of the property received exceeded the principal. *Appeal of Sunflower Packing Corp.* 2 B.T.A. 1104 (1925); *Scott v. Commissioner*, 6 B.T.A. 761 (1927); *California Delta Farms v. Commissioner*, 6 B.T.A. 1301 (1927); *Cooper-Brannan Naval Stores Co. v. Commissioner*, 9 B.T.A. 105 (1927); 48 Stat. 703 (1934); 26 U.S.C.A. §111 (1935). Further, the case would seem indistinguishable for taxing purposes from the cases in which the mortgagee in lieu of foreclosure releases the debt in exchange for the land. In fact the release case is stronger for tax purposes than the foreclosure since as a result of the release, the mortgagee receives a greater benefit in that he takes the land free of the possibility of redemption. See *Midland Life Ins. Co. v. Helvering*, 83 F. (2d) 629 (C.C.A. 6th 1936). In these cases the tax-payer has not been taxed unless the value of the land exceeded the principal. *Helvering v. Missouri State Life Ins. Co.*, 78 F. (2d) 778 (C.C.A. 8th 1934); *Heldt v. Commissioner* 16 B.T.A. 1035 (1929).

Since in the release case the mortgagee must bargain with the mortgagor while here he is, as a practical matter, completely free to set the price at which he will take the land, there is more basis for taking him at his word as to the value of the land. This would be in effect income by estoppel. But see *Helvering v. Walbridge*, 70 F. (2d) 683 (C.C.A. 2d 1934). This argument has been supplemented by the consideration that the mortgagee's high bid when he is free to bid less represents not a gratuity to the mortgagor but rather his desire for greater protection against redemption. But, while it is true that the mortgagee receives the benefit of additional protection, it does not follow that he values this protection at the cash value of his bid; rather he is weighing the protection against a deficiency judgment of dubious value. Here, then, the mistake is to fall back into the sale idiom and treat the mortgagee as bidding cash rather than a depreciated chose-in-action.

Apart from mortgage theory, the court found some justification for its decision in the stern practicalities of an efficient tax administration. It is true that it is easier to take the bid as conclusive of value than to require an appraisal for tax purposes. However the difficulties of valuation are lessened by the fact that foreclosure proceedings are a sign that the land is worth less than the debt and that the question is reduced from how much the land is worth to the simpler inquiry of whether it is worth the principal. A rebuttable presumption that the bid equalled the value might also be employed to facilitate administration. Further, the court has on occasion rejected the bid as conclusive of value. Perlman, *Mortgage Deficiency Judgments During an Economic*

Depression, 20 Va. L. Rev. 771 (1934); *Suring State Bank v. Giese*, 210 Wis. 489, 246 N.W. 556 (1933).

The practical implications of this decision should be noted. In the case of the ordinary tax-payer, the hardship of present payment of the tax may be mitigated by the possibility of introducing the bid in the year when he finally sells the property as a high cost figure either to establish a loss or to minimize his gain. But see *Suncrest Lumber Co. v. Commissioner*, 25 B.T.A. 375 (1932). But this possibility is not available to the tax-payer in the instant case since life insurance companies are not permitted to include capital gains and losses in their returns. 49 Stat. 1710 (1936); 26 U.S.C.A. § § 202, 203 (1935). Further, insofar as the decision tends to encourage low bids, it tends to defeat the policy of redemption statutes. *Durfee and Doddridge, Redemption from Foreclosure Sale—The Uniform Mortgage Act*, 23 Mich. L. Rev. 825 (1925). However, this danger is not too imminent since in most cases the mortgagee may still bid the value of the land and in the case of an insurance company may bid the full amount of the debt. This decision will very probably not change the practice of bidding less than the value of the land in cases of foreclosure of a bond issue pursuant to a bondholder's reorganization. *Katz, The Protection of Minority Bondholders in Foreclosures and Receiverships*, 3 Univ. Chi. L. Rev. 517 (1936). However to take the bid as conclusive of value will avail to the individual bondholders an unreal present loss with the possibility of an unreal future gain.

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**Practice—Federal Jurisdiction—Action for Patent Infringement and Unfair Competition—[Federal].**—The plaintiff seeks injunctive relief from infringement of his earmuff patent, and from unfair competition consisting in the advertisement and sale by the defendants of infringing articles. One of the defendants had been a partner of the plaintiff in the sale of the patented ear-muffs, and on dissolution of the partnership had agreed not to engage in the business of merchandising such articles in violation of the plaintiff's patent right. *Held*, the plaintiff's patent was not valid and consequently no infringement had occurred. It thus becomes unnecessary to decide the unfair competition charges, for in the absence of diversity of citizenship of the parties, federal jurisdiction is dependent upon the plaintiff's sustaining the patent infringement charges. *Atkins v. Gordon*, 86 F. (2d) 595 (C.C.A. 7th 1936).

Sending a plaintiff to a local court when the facts upon which his local claim is based are already before a federal court supporting his federal claim involves an unnecessary duplication of effort. It is widely asserted that once a federal court has obtained jurisdiction to decide a federal question, it may adjudicate all closely related questions involved in the case, even though not themselves federal questions. *Osborn v. Bank of the United States*, 9 Wheat. (U.S.) 737, 821 (1824); *Siler v. Louisville & Nashville R. Co.*, 213 U.S. 175, 191, 192 (1909); 1 Foster, Federal Practice 77 (5th ed. 1913). Application of this principle has led to much confusion, particularly where the same facts give rise to both a federal claim of patent, trade-mark, or copyright infringement and a local claim of unfair competition. See 40 Harv. L. Rev. 298 (1926). Some courts have summarily refused to decide the unfair competition claim in the absence of diversity of citizenship. *Schiebel v. Clark*, 217 Fed. 760 (C.C.A. 6th 1914) (patent invalid); *Planten v. Gedney*, 224 Fed. 382 (C.C.A. 2d 1915) (trade-mark valid and infringed);—*Fachndrich v. Riddle Cheese Co.*, 34 F. (2d) 43 (D.C. N.Y. 1929) (trade-mark valid, not infringed). In other cases courts have decided the unfair competition claim on the merits