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.

Practice—Federal Jurisdiction—Action for Patent Infringement and Unfair Competition—[Federal].—The plaintiff seeks injunctive relief from infringement of his ear-muff 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);—*Faehndrich 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

without regard to the outcome of the federal claim. *Vogue Co. v. Vogue Hat Co.*, 12 F. (2d) 991 (C.C.A. 6th 1926); *Chanel, Inc. v. Riviere Perfumes*, 8 Fed. Supp. 473 (N.Y. 1934); *L. E. Waterman Co. v. Gordon*, 8 F. Supp. 351 (N.Y. 1934). A third group of cases permits consideration of the local claim only in computing damages for the federal claim. *Wilson Mfg. Co. v. Myers*, 25 F. (2d) 659 (C.C.A. 6th 1928); *Swanfeldt v. Waldman*, 50 F. (2d) 445 (D.C. Cal. 1931).

The Supreme Court has held that the unfair competition claim may be adjudicated on the merits irrespective of the decision on the federal claim and of the absence of diversity of citizenship. *Hurn v. Oursler*, 289 U.S. 238 (1933); 46 Harv. L. Rev. 1339 (1933); 32 Mich. L. Rev. 412 (1934); see also, 1 Univ. Chi. L. Rev. 480 (1934). The only distinction between the *Hurn* and the principal case is that in the former the Court decided that the copyright although valid had not been infringed, whereas in the latter the patent was held invalid; a distinction which the Supreme Court itself considered immaterial. *Hurn v. Oursler*, 289 U.S. 238, 244–45 (1933). The holding in the *Hurn* case provides a desirable solution since much evidence and argument relevant to the federal issue will also be relevant to the unfair competition claim; thus making expedient a decision of the local question, precluding the defendant from raising jurisdictional questions for dilatory purposes, and saving the plaintiff from a burdensome duplication of suits. Probably, however, the Court will require the federal claim to have been prosecuted in good faith.

The same result could be reached by a broad construction of "cause of action." Since substantially the same evidence and argument are used to support the infringement and unfair competition claims, the plaintiff may well be considered to have set out one cause of action which can be disposed of on either or both of two grounds. See *Hurn v. Oursler*, 289 U.S. 238, 246, 247 (1933); *Vogue Co. v. Vogue Hat Co.*, 12 F. (2d) 991, 994, 995 (C.C.A. 6th 1926); *Waterman v. Gordon*, 8 F. Supp. 351, 353 (N.Y. 1934). Such a definition of "cause of action" would emphasize evidential convenience rather than traditional analyses of theories of recovery. Clark, Code Pleading 83, 84 (1928). In view of the general controversy over the scope of "cause of action," however, the solution previously suggested provides a less dangerous method of reaching a desirable result.

Real Property—Ownership of Caves—Subterranean Limits of Land Ownership— [Indiana].—The mouth of Marengo cave was discovered in 1883 on the property of the defendant's predecessor in title. Shortly thereafter the cave was explored and since that time, it has been exhibited for profit by the owners of its mouth. The plaintiff purchased a neighboring tract of land in 1908, and in 1929 brought suit to secure a survey of the cave and to quiet title to that portion which should be found to extend under his land. The defendant filed a cross-complaint to quiet title to the whole cave in his favor. The survey was ordered by the lower court and the plaintiff's claim to the portion of the cave under his land was sustained. *Held*, reversed. The defendant has acquired title by adverse possession. *Marengo Cave Co. v. Ross*, 7 N.E. (2d) 59 (Ind. App. 1937).

Apparently assuming that the rights of ownership in a cave are necessarily in the owner of the land above it, the court disposed of the adverse possession point according to accepted authority when it found fulfillment of the orthodox requirements that adverse possession be actual, open, notorious, exclusive, hostile, continuous, and under a claim of right. See 2 Tiffany, Real Property §§ 500–504 (2d ed. 1920). The ignorance