

It would seem, however, that Section 75(r) and General Order 50(g), properly construed to respect the limits of bankruptcy jurisdiction on the one hand, and probate jurisdiction on the other, represent a constitutional exercise of the bankruptcy power. Federal courts, sitting in equity, have been reluctant to interfere with proceedings in probate courts because the probate courts are convenient tribunals for such proceedings and the relief afforded by them is generally adequate.⁴² But the reason for declaring personal representatives to be "farmers" under Section 75(r) seems to have been that, in the case of deceased farmers' insolvent estates, probate proceedings do not afford an adequate remedy. The probate court cannot, for example, modify the remedy of foreclosure provided under state law, in the interest of aiding embarrassed farm families. If it is a vital part of public policy to prevent the foreclosure of farm mortgages during the farmer's life, it is equally important to do so when foreclosure is threatened after his death.

Bankruptcy—Section 75(s) of the Bankruptcy Act—Right of Mortgagee to a Foreclosure Sale—[Federal].—A farmer-debtor was adjudicated a bankrupt under Section 75(s) of the Bankruptcy Act.¹ Later a mortgagee of the debtor petitioned the federal district court under the second proviso of Section 75(s)(3) for an immediate sale of the property,² on the ground that the debtor had no reasonable hope of financial rehabilitation and that he had failed to comply with certain court orders. The debtor by cross-petition, under the first proviso of Section 75(s)(3), sought permission to obtain the property by paying into court the appraised value.³ The mortgagee contested the latter petition, arguing that under Section 75(s)(3) its request for a sale took precedence over the debtor's claim to acquire the property by payment of the appraised value. The district court ordered a public sale upon finding that: (1) the fair value of the property was \$6,000; (2) the mortgage debt had increased to \$16,000; (3) there was no evidence of the ability of the debtor to refinance himself, even at the \$6,000 figure. On certiorari from the Supreme Court to review a judgment of the circuit court of appeals affirming the order, *held*, that the debtor's request for relief under the first proviso of Section 75(s)(3) cannot be defeated by a secured creditor's request for a public sale under the second proviso. Judgment modified and case remanded. *Wright v. Union Central Life Ins. Co.*⁴

The first Frazier-Lemke Act⁵ permitted the farmer-debtor who had been adjudicated a bankrupt either to purchase the property at its appraised value immediately after

⁴² Broderick's Will, 21 Wall. (U.S.) 503, 509 (1874). See in general, Federal Jurisdiction in Matters Relating to Probate and Administration, 43 Harv. L. Rev. 462 (1930).

¹ 49 Stat. 943 (1935), 11 U.S.C.A. § 203(s) (1939).

² ". . . upon request in writing by any secured creditor . . . the court shall order the property . . . to be sold at public auction." 49 Stat. 943 (1935), 11 U.S.C.A. § 203(s)(3) (1939).

³ ". . . upon request of the debtor the court shall cause a reappraisal of the debtor's property . . . and the debtor shall then pay the value so arrived at into court . . . for distribution to all . . . creditors . . . and thereupon the court shall . . . turn over full possession and title of said property, free and clear of encumbrances to the debtor." 49 Stat. 943 (1935), 11 U.S.C.A. § 203(s)(3) (1939).

⁴ 61 S. Ct. 196 (1940).

⁵ 48 Stat. 1289 (1934).

the appraisal and then make payments on the purchase over the course of six years, or, should the mortgagee not consent to this procedure, to require the bankruptcy court to stay all proceedings for five years, at the end of which period he could pay the appraised value of the property into court and be discharged. In *Louisville Joint Stock Bank v. Radford*⁶ the Supreme Court held that this provision violated the Fifth Amendment primarily because the statutory remedies, by permitting the debtor to refinance himself at an appraised valuation, denied the mortgagee certain of the important rights which were assured him under state law by his contract.⁷

In the wake of that case Congress passed a new Subsection 75(s),⁸ like the original in structure, but providing for a three-year moratorium. Under the second Frazier-Lemke Act (1935), the mortgagor was again given the power to request an appraisal and, upon payment of the appraised value into court, to obtain full title to the property and be discharged of the debt. To meet some of the constitutional limitations of the *Radford* case, however, it was expressly declared that, "upon request in writing by any secured creditor or creditors, the court shall order the property . . . sold at public auction." The Court upheld the new act in *Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke*.⁹ The constitutional difficulties of the *Radford* case, the court said, were met by the greater protection given the mortgagee under the new act. The opinion placed special emphasis on Section 75(s)(3), which provides that the mortgagee might in appropriate circumstances obtain a sale. After this decision the view was generally taken that the mortgagee's request for a sale under Section 75(s)(3) took precedence over a mortgagor's request under the same subsection to obtain the property by paying the appraised value into court.¹⁰ The instant case takes the contrary position that the mortgagor's power to take over the property by paying the appraised valuation is superior to the mortgagee's request for a sale because any other interpretation would be inconsistent with "the broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression."¹¹ Conse-

⁶ 295 U.S. 555 (1935).

⁷ *Ibid.*, at 594: "1. The right to retain the lien until the indebtedness thereby secured is paid. 2. The right to realize upon the security by a judicial public sale. 3. The right to determine when such sale shall be held, subject only to the discretion of the court. 4. The right to protect its interest in the property by bidding at such sale wherever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of a fair competitive sale or by taking the property itself. 5. The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt."

⁸ 49 Stat. 943 (1935), 11 U.S.C.A. § 203(s) (1939).

⁹ 300 U.S. 440 (1937).

¹⁰ *Roney v. Federal Land Bank of Louisville*, 115 F. (2d) 624 (C.C.A. 7th 1940); *Lowman v. Federal Land Bank of Louisville*, 107 F. (2d) 540 (C.C.A. 7th 1939); *In re Shenorhokian*, 22 F. Supp. 695 (Cal. 1938); see *Monjon v. Equitable Life Assurance Society of the United States*, 113 F. (2d) 535 (C.C.A. 7th 1940); *Gray v. Union Joint Stock Land Bank*, 105 F. (2d) 275 (C.C.A. 6th 1939); *Letzler, Bankruptcy Reorganizations for Farmers*, 40 Col. L. Rev. 1133, 1154 (1940); *Judicial Barriers to Farm Debt Relief*, 48 Yale L. J. 859 (1939).

¹¹ *Wright v. Union Central Life Ins. Co.*, 61 S. Ct. 196, 201 (1940). In *John Hancock Ins. Co. v. Bartels*, 308 U.S. 180 (1939), the Supreme Court held that a farmer's petition under § 75(s) could not be dismissed merely because the bankruptcy court was of the opinion that there was

quently, the mortgagee's request under the statute to obtain a sale becomes contingent upon the debtor's not exercising his power before a foreclosure sale. Thus should the debtor be able to refinance himself at the appraised valuation, the mortgagee loses his ability to obtain a foreclosure sale at which he can bid the amount of the debt.

The mortgagee's privilege of bidding at a foreclosure sale and his further privilege of paying part of the purchase price with his claim has meant, in cases where the land was worth less than the amount of the debt, that the mortgagee was reasonably assured of obtaining the land. Although Section 75(s)(3) provides a ninety-day period of redemption from the foreclosure sale at the sale price,¹² the debtor could not ordinarily raise the money to redeem, since the amount he can borrow is directly proportional to the present value of the land;¹³ consequently, the price upon sale to the creditor may be more than the present value. Because mortgagees of farms are frequently large institutional investors who are not in immediate need of cash and who desire to invest in farm land,¹⁴ the privilege of bidding at the sale with the debt, in effect, provides a means of taking over the land in the hope of an eventual restoration of its earning power. Insofar as the formal foreclosure sale is denied the mortgagee by the instant case, a mortgagee's privilege under state law of taking over possession of the land is not recognized in farmer-relief proceedings under the Bankruptcy Act.

This result may raise serious questions in the light of the *Radford* and *Vinton* cases. Admittedly the foreclosure sale was designed to mitigate the harshness to the mortgagor of strict foreclosure. The historical function of a foreclosure was to protect both parties against a sale of the land for less than its fair value;¹⁵ the mortgagee's privilege of bidding was recognized as a device for protecting his interest in the adequacy of the sale price. This interest of the mortgagee was protected in equity by a lien on the prop-

no possible chance of his paying off the full debt at the end of the three-year extension period. Since the debtor was almost sure to lose his property the decision in effect merely guaranteed a three-year respite. Now, however, the Bartels case takes on significance, since inability ever to pay off the debt does not necessarily indicate inability to redeem at the appraised valuation. Also in *Borchard v. California Bank*, 310 U.S. 311 (1940), it was held that an appraisal is a prerequisite to the beginning of the moratorium period. Even if the farmer was eventually to lose his land, an appraisal was necessary in order to determine the prescribed rental payments during the moratorium period. The requirement is now doubly significant, however, since the farmer can use the appraisal value in redeeming.

¹² 49 Stat. 943 (1935), 11 U.S.C.A. § 203(s) (1939).

¹³ The federal land banks under the United States Department of Agriculture can make loans on first mortgage bonds up to 50 per cent of the value of the land and 20 per cent of the value of the permanent improvements. 50 Stat. 704 (1937), 12 U.S.C.A. § 781 (Supp. 1940). Private insurance companies, big investors in farm mortgages, can make loans on a similar basis. See Ill. Rev. Stat. (1939) c. 73, § 737 (investment limited to 50 per cent of value of the land); N.Y. Cons. Laws (Cahill, Supp. 1940) c. 882, § 81 (investment permitted up to two-thirds of value of land).

¹⁴ The Metropolitan Life Insurance Company, for example, has over \$81,000,000 invested in about 13,000 farm mortgages. Metropolitan Life Ins. Co., advertisement in 37 *Time*, No. 9, at 9 (Mar. 3, 1941).

¹⁵ 3 Jones, Mortgages § 2010 (8th ed. 1928).

erty until the debt was paid in full.¹⁶ But this interest is suitably protected if the sale is made for not less than the present fair value of the property; surely an appraisal is as suitable a method for making this determination as a formal sale.¹⁷ Even though in most cases a deficiency judgment is valueless, the foreclosure sale gives the mortgagee at least the fair value of the security. And since the foreclosure sale is a device of the equity court, it would seem that the bankruptcy power of discharge and extension may alter this procedure so long as the creditor is not deprived of the fair value of the security. Under the first Frazier-Lemke Act, however, the payment of the appraisal value could be postponed five years, and it could be said that a fair value was denied the mortgagee where payment of the appraised value was postponed for such a long period, since the moratorium was three years longer than any of those recognized as valid under state laws.¹⁸ This view would explain why the instant case denied the mortgagee the ability to obtain an immediate foreclosure sale, since under the new act the mortgagor must pay the appraised value after a *three*-year moratorium. Thus it could be said that the minimum equivalent of a foreclosure sale, i.e., present value, is given the mortgagee.¹⁹ The difficulty with this explanation of the court's position, however, is that it may be contended that Congress, in the light of the *Radford* case, almost expressly gave the mortgagee in bankruptcy his traditional equity right to a foreclosure sale.²⁰ Yet the manifest desire to relieve overburdened farmers and the slight verbal

¹⁶ "No instance has been found, except under the Frazier-Lemke Act, of either a statute or decision compelling the mortgagee to relinquish the property to the mortgagor free of the lien unless the debt was paid in full." *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 579 (1935).

¹⁷ Since outside bidding is practically non-existent, the mortgage foreclosure "sale" has been termed "a device by which the mortgagee announces the amount of credit on the debt which he is willing to allow for the property which has been transferred to him under the foreclosure." Tefft, *The Myth of Strict Foreclosure*, 4 *Univ. Chi. L. Rev.* 575, 590 (1937). See also Sutherland, *Foreclosure and Sale*, 22 *Corn. L. Q.* 216 (1937).

¹⁸ The Minnesota statute declared constitutional in *Home Building and Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934), provided a two year moratorium. Any state action providing for a longer extension might possibly have been said to effect the "right" rather than the "remedy" and thus have been held invalid under the contracts clause. In all, twenty-eight states have passed mortgage moratorium laws; none provide for more than a two-year extension. See Poteat, *State Legislative Relief for the Mortgage Debtor during the Depression*, 5 *Law & Contemp. Prob.* 517 (1938), for a collection of the various state acts.

¹⁹ Because of the absence of the restricting force of the contracts clause, the power of Congress under the bankruptcy power to alter remedies of foreclosure seems greater than the power of the states under the police power to modify creditors' rights. Since § 75(s) applies only to farmers, whereas state moratorium legislation applies to all mortgagors, the year longer extension under the federal law may possibly be justified on the ground that the plight of the farmer-debtor requires more drastic action than that necessary to relieve mortgage debtors in general. See *Constitutionality of the Frazier-Lemke Act*, 44 *Yale L. J.* 651, 658 (1935).

²⁰ The opinion in *Wright v. Vinton Branch of Mountain Trust Bank of Roanoke*, 300 U.S. 440 (1937) at notes 2, 3, 4, and 9, gives a complete resumé of the discussion and consideration of the bill before both houses of Congress. When Subsection (s) was about to expire, the Senate included a provision to deprive the mortgagee of a public sale. S. Rep. 1045, 76th Cong. 1st Sess. (1939). The House Committee on Judiciary refused to concur in the amendment, which would have required the mortgagee to be satisfied with the appraised value of the property. H. Rep. 1658, 76th Cong. 3d Sess. (1940). Thereupon the bill was passed as an extension until 1944 of the existing Subsection (s). 54 Stat. 40 (1940), 11 U.S.C.A. § 203 (Supp. 1940).

change in the second Frazier-Lemke Act from the first act would suggest that Congress, without intending to allow the mortgagee a formal foreclosure sale, hoped for a more liberal interpretation by the Court which would effectuate, as far as permissible, the rehabilitation of farmer-debtors.²¹

Since the mortgagor is able to retain the land if he pays the appraised value within three years or before foreclosure sale, the treatment approved by the instant case of secured claims under Section 75 offers an interesting contrast to the rule of "strict priority" required in corporate reorganizations by *Case v. Los Angeles Lumber Products Co.*²² In that case a plan was held unfair which gave stockholders a present interest in the reorganized company where the present appraised value of the company was insufficient to satisfy the face amount of prior claims. Recent opinions in the Circuit Court of Appeals for the Sixth Circuit construing the *Los Angeles* case deny the stockholders any right to *future* gains.²³ Under the effect given Section 75(s) by the instant case, the debtor is permitted to retain the land by paying the mortgagee the appraised value. Thus it may be argued that the debtor is given the benefit of any future increment above the present value at a time when the creditor is not being paid in full—a result that is not in harmony with the "strict priority" rule.

It must be recognized that Section 75(s) and the corporate reorganization acts involve different policies and were intended to meet different problems. The corporate reorganization acts are intended to preserve the entity as a going concern through readjusting the debt and capital structure of the corporation and protecting contract rights against unjustifiable revision. The "strict priority" rule is intended to obviate the dangers of reorganization where stockholders in a dominant position seek to retain control of and obtain an equity in the business at the expense of corporate creditors. Section 75, on the other hand, is designed to protect the individual farmer, in a situation where the creditor ordinarily is dominant, from the overwhelming debt burden which would otherwise deprive him of the land.²⁴ Section 75(s) thus performs the socially desirable function of keeping the farmer the owner of the land,²⁵ a result which

²¹ See, for example, the explanation of the new act by Congressman Lemke shortly after its passage. Lemke, *Constitutionality of the New Frazier-Lemke Amendment to the Bankruptcy Act*, 4 Geo. Wash. L. Rev. 105 (1935).

²² 308 U.S. 106 (1939), noted in 7 Univ. Chi. L. Rev. 549 (1940).

²³ *Metropolitan Holding Co. v. Weadock*, 113 F. (2d) 207 (C.C.A. 6th 1940); *Whitmore Plaza Corp. v. Smith*, 113 F. (2d) 210 (C.C.A. 6th 1940); *Highland Towers Co. v. Bondholders' Protective Committee of Highland Towers*, 115 F. (2d) 58 (C.C.A. 6th 1940). There was a strong dissent, however, in all three cases. See 7 Univ. Chi. L. Rev. 549, 554 (1940), noting *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106 (1939).

²⁴ It is paradoxical to note, however, that Jerome Frank, in interpreting the *Boyd* case, justifies the exclusion of stockholders when creditors remain unpaid by analogizing the corporate reorganization proceedings to the case where a farm mortgagor attempts to purchase at the foreclosure sale. Such a purchase would be a fraudulent conveyance at common law. Frank, *Some Realistic Reflections on Some Aspects of Corporate Reorganization*, 19 Va. L. Rev. 541 (1933).

²⁵ The provisions of the Bankhead-Jones Farm Tenant Act, 50 Stat. 522 (1937), 7 U.S.C.A. § 1001 (1939), also directly aim at the promotion of farm ownership. Maddox, *The Bankhead-Jones Farm Tenant Act*, 4 Law & Contemp. Prob. 434 (1937). The necessity of meeting payments on an unduly burdensome mortgage has caused many farmers to specialize in crops that reduce soil fertility and permit erosion. U.S. Dept. of Agriculture, *Soils and Men* 158 (1938). To alleviate this condition, as well as to decrease the rate of farm tenancy, it has been sug-

cannot be achieved under state legislation because of the contracts clause of the Federal Constitution.²⁶

Constitutional Law—Equal Protection—Three-Year Residence Requirement for Poor Relief—[Illinois].—The Illinois Pauper's Act was amended in 1939 to provide that no local governmental unit shall provide relief to any person who did not "reside therein for a period of three years immediately preceding his application for relief and support."¹ The relators, most of whom had been in the state for the required period, but who were refused relief by the Chicago relief authorities because they could not meet the local residence requirement, sought a writ of mandamus to compel the authorities to give them relief. The relators challenged the constitutionality of the act under the due process and equal protection clauses of the state and federal constitutions as establishing an arbitrary classification. *Held*, that the classification is not arbitrary since it is a reasonable means to prevent the burden to the state relief system of a continued inflow of indigent families from other states. Writ denied. *People ex rel. Heydenreich v. Lyons*.²

The underlying justification for upholding the classification based on the three-year local residence requirement is that the state, being under no constitutional or common law duty to provide relief to indigents,³ has wide discretion in imposing conditions of eligibility for poor relief.⁴ In stating that the residence requirement bears a reasonable relation to the legislative intent of assuring relief to resident indigents by discouraging the immigration of indigents from other states,⁵ the court failed to distinguish the intrastate from the interstate aspects of the relief problem. A *state* residence requirement would have been sufficient to prevent an influx of non-residents; the *local* residence requirement, which is no greater protection against that danger, has the serious economic effect of restricting to local communities the area within which indigent families might freely move. The intrastate aspect of the statute was mentioned only with the brief remark that the amendment was simultaneously intended to relieve local

gested that mortgage payments be made adjustable to current incomes for large groups of borrowers. Wickens, *Adjusting the Mortgagor's Obligation to Economic Cycles*, 5 *Law & Contemp. Prob.* 617 (1938). The suggestion is similar to the proposal for "all equity" financing in the case of corporations.

²⁶ Even though many states have deficiency judgment acts which require the fair value of the mortgaged property to be applied in diminution of the debt (e.g., see the North Carolina statute upheld in *Richmond Mortgage & Loan Corp. v. Wachovia Bank and Trust Co.*, 300 U.S. 127 (1937)), in no state is it possible for the mortgagor to require a "scaling down" of the debt so as to prevent the mortgagee from taking over the land.

¹ Ill. Rev. Stat. (1939) c. 107, § 16.

² 374 Ill. 557, 30 N.E. (2d) 46 (1940). Rehearing den. Dec. 10, 1940.

³ *Holland v. Cedar Grove*, 230 Wis. 177, 282 N.W. 111 (1939); *Cerro Gordo v. Boone*, 152 Iowa 672, 133 N.W. 132 (1911).

⁴ The doctrine of unconstitutional conditions may possibly impose some limitations on this discretion. *Rottschaefer*, *Constitutional Law* 557 (1939).

⁵ 374 Ill. 557, 566, 30 N.E. (2d) 46, 52 (1940).