

*Bank*, 8 How. 586, 613. Yet none of these considerations is applicable here. The facts do not justify the invocation of estoppel against Downey's individual creditors. Respondent is neither a lien creditor nor an innocent grantee for value. At best it is in no more favorable position than a judgment creditor who has not levied execution. Furthermore, respondent had at least some knowledge as to the fraudulent character of Downey's corporation. Cf. *Goodwin v. Hammond*, 13 Cal. 168; *Bull v. Ford*, 66 Cal. 176; 4 P. 1175. And title to the property fraudulently conveyed has vested in the bankruptcy trustee of the grantor. We have not been referred to any state law or any equitable considerations which under these circumstances would accord respondent the priority which it seeks. It therefore is entitled only to *pari passu* participation with Downey's individual creditors. *Buffum v. Barceloux Co.*, 289 U. S. 227.

The judgment of the Circuit Court of Appeals is reversed and that of the District Court affirmed.

*Reversed.*

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## GELFERT, EXECUTOR, *v.* NATIONAL CITY BANK OF NEW YORK.

CERTIORARI TO THE SUPREME COURT OF NEW YORK.

No. 740. Argued April 3, 4, 1941.—Decided April 28, 1941.

1. A state statute (N. Y. Laws, 1938, c. 510, amending § 1083 Civil Prac. Act), directing that the amount of a deficiency judgment after foreclosure sale of mortgaged property shall be ascertained by deducting from the amount of the debt the fair and reasonable market value of the property (to be determined by the court upon affidavits or otherwise) or the sale price of the property, whichever is higher, is not invalid under the Contract Clause of the Federal Constitution as applied to the case of a mortgagee who bought in the property at the foreclosure sale for much less than the debt, and who, under the law as it existed when the mortgage was made, would have been entitled to a deficiency judgment for

the difference between the amount of the debt and the amount of the sale price. P. 231.

The fact that the later statute was not based on any declared public emergency and that it confined the determination of the right to a deficiency judgment to the foreclosure proceeding, leaving the mortgagee no alternative remedy substantially co-extensive with that afforded by the older statute, did not affect the validity of the later statute as applied to the mortgage.

2. It is quite uniformly the rule in this country, as in England, that while equity will not set aside a foreclosure sale for mere inadequacy of price, it will do so if the inadequacy is so great as to shock the conscience or if there are additional circumstances against its fairness, such as chilled bidding. P. 232.
3. There is no constitutional reason why, in lieu of the more restricted control by a court of equity, the legislature can not substitute a uniform rule designed to prevent mortgagees, bidding at foreclosure sales, from obtaining more than their just due. P. 233.

257 App. Div. 1076; 14 N. Y. S. 2d 995, reversed.

CERTIORARI, 312 U. S. 674, to review a judgment entered on remittitur from the Court of Appeals of New York, 284 N. Y. 13; 29 N. E. 2d 449, which, reversing a judgment of the Supreme Court, Appellate Division, affirmed and reinstated (1) an order at Special Term confirming a referee's report of a mortgage foreclosure sale and (2) a deficiency judgment entered pursuant to that order.

*Mr. George Link, Jr.* for petitioner.

*Mr. Barney B. Fensterstock* for respondent.

As applied to a mortgage executed prior to its enactment, the new § 1083 contravenes the prohibition of Art. I, § 10 of the Federal Constitution against the passage by a State of legislation impairing the obligation of contracts.

It is neither emergency nor temporary legislation. Cf. *Home Building & Loan Assn. v. Blaisdell*, 290 U. S. 398. It is a permanent statute applicable to foreclosures of all mortgages, regardless of date, amount or parties, and con-

tains no provisions apposite to the relief of any pressing public needs. *W. B. Worthen Co. v. Thomas*, 292 U. S. 426. The Court of Appeals found that it is not addressed to the general welfare of the State, but is directed solely to the private contractual rights of parties to an indebtedness secured by a mortgage on real property. Cf. *Veix v. Sixth Ward Assn.*, 310 U. S. 32.

The law which provides a remedy for the enforcement of a contract, as that law exists at the time of the making of the contract, enters into and becomes part of the contract as if fully set forth therein, *Farmers Bank v. Federal Reserve Bank*, 262 U. S. 649; *Bronson v. Kinzie*, 1 How. 311, and subsequent legislation may not constitutionally change such remedy in any material respect, at least unless a substantially co-extensive remedy remains or is furnished thereby. *Edwards v. Kearzey*, 96 U. S. 595; *McCracken v. Hayward*, 2 How. 608, 612; *Oshkosh Water Works Co. v. Oshkosh*, 187 U. S. 437, 439; *Home Building & Loan Assn. v. Blaisdell*, 290 U. S. 398, 434. See *Clark v. Reynolds*, 8 Wall. 318, 322.

No remedy substantially equivalent to that afforded by the old § 1083 remains to the mortgagee. The right to recover the mortgage debt at law, apart from the mortgage security, is circumscribed by a statutory prohibition against the levy of execution on the mortgagor's equity of redemption. New York Civil Practice Act, § 710. The maintenance of a second action, after foreclosure, to recover a deficiency resulting from the foreclosure sale is prohibited by statute except by leave of the court, New York Civil Practice Act, § 1078, but settled authority is against the granting of such leave in respect of a party who could have been made a defendant in the foreclosure action unless special circumstances are shown manifestly requiring that relief. *Equitable Life Assurance Society v. Stevens*, 63 N. Y. 341; *Scofield v. Doscher*, 72 N. Y. 491; *Vanderbilt v. Schreyer*, 91 N. Y.

Argument for Respondent.

313 U. S.

392; *Morrison v. Slater*, 128 App. Div. 467; *Darmstadt v. Manson*, 144 App. Div. 249; *Stehl v. Uris*, 210 App. Div. 444. Whether the new § 1083 has superseded § 1078 so as to forbid the granting of such leave in any case was left open by the Court of Appeals in its opinion, but some indication was given that such a holding was not improbable. See *Honeyman v. Hanan*, 275 N. Y. 382, 392.

State statutes similar in purpose and effect have been held unconstitutional as applied to contracts in existence at the time of their enactment. *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 608; *Gantly's Lessee v. Ewing*, 3 How. 707. Cf., *Jeffries v. Federal Land Bank*, 302 U. S. 708.

In recent years, numerous state courts of last resort have voided similar statutes as applied retroactively. *Bontag v. McCurdy*, 59 P. 2d 326 (Ariz.); *Adams v. Spillyards*, 61 S. W. 2d 686 (Ark.); *Hales v. Snowden*, 65 P. 2d 847 (Cal.); *Atlantic Loan Co. v. Peterson*, 181 Ga. 266; *Vanderbilt v. Brunton Piano Co.*, 111 N. J. L. 596; *Federal Land Bank v. Garrison*, 193 S. E. 308; cert. denied *sub nom. Jeffries v. Federal Land Bank*, *supra*; *Langever v. Miller*, 76 S. W. 2d 1025 (Tex.) Dist'g *Honeyman v. Jacobs*, 306 U. S. 539.

See *W. B. Worthen Co. v. Thomas*, 292 U. S. 426; *Worthen Co. v. Kavanaugh*, 295 U. S. 56.

So far as the opinion in the *Honeyman* case may have indicated that the act there considered was sustainable, apart from the existent emergency, on the ground that it merely codified a power which courts of equity in New York have always possessed to control the measure of deficiency judgments in foreclosure actions, the Court of Appeals, in an unbroken line of decisions from earliest times to the case at bar, has held that no such equitable jurisdiction in foreclosure suits ever existed or now exists, apart from statute, in New York. *Morris v. Morange*,

38 N. Y. 172; *Wager v. Link*, 134 N. Y. 122; *Feiber Realty Corp. v. Abel*, 265 N. Y. 94; *Frank v. Davis*, 135 N. Y. 275, 277-8; *Emigrant Industrial Savings Bank v. Van Bokkelen*, 269 N. Y. 110, 116; *Guaranteed Title & Mortgage Co. v. Scheffres*, 275 N. Y. 30.

Equity courts have always had and still have power to refuse confirmation of foreclosure sales upon equitable grounds,—fraud, collusion, inadequacy of price so gross as to shock the conscience of the court, etc. But the only relief which the court could grant the mortgagor would be to order a resale. *Emigrant Industrial Savings Bank v. Van Bokkelen*, 269 N. Y. 110, 115.

In respect of matters of local law, the pronouncements of the Court of Appeals are controlling and conclusive upon this Court. *Erie R. Co. v. Tompkins*, 304 U. S. 64; *Ruhlin v. New York Life Ins. Co.*, 304 U. S. 202.

Distinguishing *Richmond Mortgage & Loan Corp. v. Wachovia Bank & Trust Co.*, 300 U. S. 124.

The decision at bar is sustainable upon a further ground. At the time the mortgage herein was made and at the time the moneys secured thereby were advanced, mortgages executed on and after July 1, 1932 were, by express statutory exception, excluded from the coverage of the moratory deficiency judgment act. Laws of 1933, Chap. 794, § 4. The stimulation of business by the encouragement of new loans was an integral part of the legislative policy in dealing with the then existing emergency. In effect, therefore, there was direct legislative assurance to lenders that loans secured by mortgages made after July 1, 1932 would be enforceable in the manner provided by the then § 1083. While this assurance may not have the full contractual force of the government bonds involved in the "Gold Clause" cases, there is sufficient analogy in the legislative attempt, by the new § 1083, to revoke its pledge retroactively, to give appreciable aptness to the language of this Court in one

Argument for Respondent.

313 U.S.

of those cases. *Perry v. United States*, 294 U. S. 330, 351. See *Home Owners Loan Corp. v. Robinson*, 285 N. W. 768.

Upon the same analysis and for the same reasons the new § 1083, as applied to the mortgage at bar, is violative of § 6 of Article I of the Constitution of the State of New York and is also invalid thereunder. *Sliosberg v. New York Life Ins. Co.*, 217 App. Div. 67, 72; aff'd 244 N. Y. 482; *People v. Otis*, 90 N. Y. 48.

The judgment is sustainable apart from the constitutional question. The proceedings in the Supreme Court, Kings County, were, as a matter of local practice, a compliance with the requirements of new § 1083.

The loans secured by the guaranty of the appellant's testator, which was in turn secured by the mortgage at bar, were ordinary commercial loans to a business corporation. They were not advances made on the security of real estate, and neither by the agreement of the parties nor by any reasonable construction of their transaction was real estate to be the primary source of repayment. It would be neither "just" nor "equitable" to compel the Bank to credit upon the indebtedness thus incurred an amount in excess of the actual proceeds of the foreclosure sale of the property which, at most, was secondary security. In fact, any such requirement would be contrary to the public interest in the stability and liquidity of banks. *Rothschild v. Manufacturers Trust Co.*, 279 N. Y. 355, 359-361. The Bank could not have agreed at the inception of the transaction to accept land in repayment, for that would have been, in effect, an agreement to purchase real property, which is prohibited by the National Banking Act, 44 Stat. 1277, c. 191, § 3; 12 U. S. C. § 29. The public policy underlying this statute is the desirability of keeping the capital of banks liquid and of preventing the accumulation of real estate in their hands, *National Bank v. Matthew*, 98 U. S. 621,

626, and it would be a manifest frustration of that policy to permit a borrower to convert his obligation to repay his loan in cash into a right to repay it with real estate merely because the bank had taken a mortgage as additional security.

Nor is the instant decision unjust or inequitable to the appellant. The debt was contracted in 1937 and was to be repaid within a short time. The same general economic conditions prevailed throughout this period.

The judgment is sustainable on the ground that the price realized at the foreclosure sale was the fair and reasonable market value of the premises at the time of such sale.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This action was brought by respondent to foreclose a mortgage made in December, 1932, by Carpenter. At that time § 1083 of the New York Civil Practice Act provided that the amount of the deficiency judgment was to be measured by the residue of the debt remaining unsatisfied after a sale of the mortgaged property and the application of the proceeds pursuant to the directions contained in the judgment. In November, 1938, a judgment of foreclosure and sale was entered for \$18,401.25, and in December, 1938, the foreclosure sale was held at which the property was purchased by respondent's nominee for \$4,000. The referee, appointed by the court to sell, reported a deficiency which after the inclusion of taxes, fees and expenses was computed at \$16,162.12. Respondent moved to confirm the referee's report of sale and asked that a deficiency judgment be entered for that amount. Petitioner took exceptions to the report and made a cross-motion to have the court fix the value of the property for the purpose of determining the amount of the deficiency judgment on the ground that the sale

Opinion of the Court.

313 U.S.

price was "wholly inequitable and unconscionable." A new § 1083<sup>1</sup> (L. 1938, ch. 510), effective April 7, 1938, provides in substance that the court in determining the amount of a deficiency judgment should, on appropriate motion, "determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises" and should deduct from the amount of the debt the "market value as determined by the court or the sale price of the property whichever shall be the higher." The right to recover any deficiency is made de-

<sup>1</sup> That section provides:

"Judgment for deficiency; limitation. If a person who is liable to the plaintiff for the payment of the debt secured by the mortgage is made a defendant in the action, and has appeared or has been personally served with the summons, the final judgment may award payment by him of the whole residue, or so much thereof as the court may determine to be just and equitable, of the debt remaining unsatisfied, after a sale of the mortgaged property and the application of the proceeds, pursuant to the directions contained in such judgment, the amount thereof to be determined by the court as herein provided. Simultaneously with the making of a motion for an order confirming the sale provided such motion is made within ninety days after the date of the consummation of the sale by the delivery of the proper deed of conveyance to the purchaser in all cases where the sale is held after the date this section as hereby amended takes effect, and in all cases where the sale was held prior to the date this section as hereby amended takes effect and said sale has not heretofore been confirmed, then within ninety days from the date this section as hereby amended takes effect or within ninety days after the date of the consummation of the sale by delivery of the proper deed of conveyance to the purchaser, regardless of whether the sale was held prior or subsequent to or on the date this section as hereby amended takes effect, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears,

pendent on the making of such a motion. The court denied petitioner's cross-motion<sup>2</sup> and directed the entry of a deficiency judgment for \$16,162.12. The judgment of the Appellate Division denying respondent a deficiency judgment because it had not made a motion for one under the new § 1083 (257 App. Div. 465, 13 N. Y. S. 2d 600), was reversed by the Court of Appeals, which held, one judge dissenting, that the new § 1083, as applied to mortgage contracts previously made, violated the contract clause of the Federal Constitution. 284 N. Y. 13, 29 N. E. 2d 449. We granted the petition for certiorari because of the important constitutional question which was raised.

As noted by the Court of Appeals, the measure of a deficiency under the new § 1083 is in substance the same as that prescribed by the New York moratory deficiency

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shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date such premises were bid in at auction or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus the amount owing on all prior liens and encumbrances with interest, plus costs and disbursements of the action including the referee's fee and disbursements, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist. . . ."

<sup>2</sup> An affidavit of a real estate broker submitted by petitioner in support of his cross-motion stated that in his opinion the fair market value of the property was \$11,000. An affidavit of an appraiser submitted by respondent in opposition stated that in his view the fair market value of the property was \$6,500. The property was assessed by New York City for tax purposes at \$15,000.

Opinion of the Court.

313 U. S.

judgment act—§ 1083—a of the Civil Practice Act. The latter section was sustained by this Court under the contract clause of the Federal Constitution in *Honeyman v. Jacobs*, 306 U. S. 539. But the Court of Appeals said that the new § 1083, unlike the moratory deficiency judgment act, is not addressed to a declared public emergency, is unrestricted in its application,<sup>3</sup> “concerns merely the private contract relationship of the parties to a real property mortgage,” is not “designed for the relief of urgent public needs,” is not “conditioned upon any equitable factor,” leaves “no room for the play of any equitable consideration,” benefits “every mortgagor irrespective of the character or amount of his investment,” and burdens “every mortgagee no matter what his necessities.” The Court pointed out that, under previously existing statutes of New York, the liability for a deficiency was to be finally determined by a judgment of foreclosure and sale, that the “subsequent docketing of a deficiency judgment was a merely clerical act,” and that the deficiency was to be ascertained by a sale and “not by the estimates of witnesses or other less satisfactory evidence.” It held that that system of foreclosure “entered into the engagement of the present parties and created and defined the legal and equitable obligations of their contract.” It also pointed out that, unlike the situation in *Richmond Mortgage & Loan Corp. v. Wachovia Bank & Trust Co.*, 300 U. S. 124, there remained under the laws of New York no remedy available to the mortgagee which was “substantially coextensive” with that afforded by the old § 1083, since, though an action at law for the debt might lie, the judgment debtor’s equity of redemption could not be sold under an execution upon that judgment, and since the right to bring a second action to recover a defi-

<sup>3</sup> The moratory deficiency judgment act did not apply to mortgages or connected agreements dated on or after July 1, 1932. See 284 N. Y. 13, 16-17; 29 N. E. 2d 449.

ciency resulting on a foreclosure sale, if it existed at all under the new legislation, was drastically restricted. Accordingly, it held that in light of such cases as *Barnitz v. Beverly*, 163 U. S. 118, the new § 1083 could not be applied to mortgage contracts previously made, without violation of the contract clause of the Federal Constitution.

We take a different view.<sup>4</sup>

The formula which a legislature may adopt for determining the amount of a deficiency judgment is not fixed and invariable. That which exists at the date of the execution of the mortgage does not become so embedded in the contract between the parties that it cannot be constitutionally altered. As this Court said in *Home Building & Loan Assn. v. Blaisdell*, 290 U. S. 398, 435, "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order." And see *Voeller v. Neilston Warehouse Co.*, 311 U. S. 531. It is that reserved legislative power with which we are here concerned.

The control of judicial sales of realty by courts of equity and by legislatures in order to prevent sacrificial prices has a long history. Weiner, *Conflicting Functions of the Upset Price*, 27 Col. L. Rev. 132, 133, *et seq.* In chancery sales in England during the eighteenth century, there developed the practice of opening the bidding, prior to confirmation, on an offer to advance the price 10 per cent. *Graffam v. Burgess*, 117 U. S. 180, 191. That practice, much criticized by Lord Eldon, was gradually supplanted by reserved bidding—in the first instance by equity (*Jer-voise v. Clarke*, 1 Jac. & W. 388) and subsequently by stat-

<sup>4</sup> We are concerned here solely with the application of this statute to a situation where the mortgagee purchases the property at foreclosure sale. We intimate no opinion on its constitutionality as applied to the case where the mortgagee is not the purchaser.

Opinion of the Court.

313 U.S.

ute. Sale of Land by Auction Act, 1867, 30 & 31 Vict. c. 48, § 7; *Graffam v. Burgess*, *supra*, p. 191; 1 Daniell, Chancery Practice (7th ed. 1901) pp. 879-880. Though the early English rule of advance bidding found little foothold in this country, reserved bidding has its counterpart here in the occasional utilization by equity courts of the upset price in mortgage foreclosures. *Blair v. St. Louis, H. & K. R. Co.*, 25 F. 232; *Pewabic Mining Co. v. Mason*, 145 U.S. 349; 2 Bonbright, Valuation of Property, pp. 849, *et seq.*; Stetson *et al.*, Some Legal Phases of Corporate Financing, Reorganization and Regulation (1927), p. 202. And it is quite uniformly the rule in this country, as in England, that while equity will not set aside a sale for mere inadequacy of price,<sup>5</sup> it will do so if the inadequacy is so great as to shock the conscience or if there are additional circumstances against its fairness, such as chilled bidding. *Cocks v. Izard*, 7 Wall. 559; *Graffam v. Burgess*, *supra*; *Ballentyne v. Smith*, 205 U.S. 285. Beyond that, a number of states by statute have endeavored to prevent property going for a song at judicial sales. Provisions that the property shall not be sold at less than a designated percentage of its appraised value, and requirements that a stated percentage of the appraised value above the sales price must be credited on the debt, are illustrative. 3 Jones, Mortgages (8th ed. 1928) §§ 1695 *et seq.*, 2 Bonbright, Valuation of Property, pp. 839 *et seq.*

We mention these matters here because they indicate that for about two centuries there has been a rather continuous effort, either through general rule or by appeal to the chancellor in specific cases, to prevent the machinery of judicial sales from becoming an instrument of oppression. And, so far as mortgage foreclosures are con-

<sup>5</sup> But see *Suring State Bank v. Giese*, 210 Wis. 489; 246 N.W. 556; *Wilson v. Fouke*, 188 Ark. 811; 67 S.W. 2d 1030; *Teachers' Retirement Fund Assn. v. Pirie*, 150 Ore. 435; 46 P. 2d 105.

cerned, numerous devices have been employed to safeguard mortgagors from sales which will, or may, result in mortgagees collecting more than their due. The variety of formulae which has been employed to that end is ample evidence not only of the intrusion which advanced notions of fairness have made on the earlier concern for stability of judicial sales but also of the flexibility of the standards of fairness themselves. Underlying that change has been the realization that the price which property commands at a forced sale may be hardly even a rough measure of its value. The paralysis of real estate markets during periods of depression, the wide discrepancy between the money value of property to the mortgagee and the cash price which that property would receive at a forced sale, the fact that the price realized at such a sale may be a far cry from the price at which the property would be sold to a willing buyer by a willing seller, reflect the considerations which have motivated departures from the theory that competitive bidding in this field amply protects the debtor.

Mortgagees are constitutionally entitled to no more than payment in full.<sup>6</sup> *Honeyman v. Jacobs, supra.* They cannot be heard to complain on constitutional grounds if the legislature takes steps to see to it that they get no more than that. As we have seen, equity will intervene in individual cases where it is palpably apparent that gross unfairness is imminent. That is the law of New York. 284 N. Y. 13, 20; 29 N. E. 2d 449. And see *Fisher v. Hersey*, 78 N. Y. 387. But there is no constitutional reason why in lieu of the more restricted control by a court of equity the legislature cannot substitute a uniform comprehensive rule designed to reduce or to avoid, in the run of cases, the chance that the mort-

<sup>6</sup> As to the bankruptcy power see *Wright v. Union Central Life Ins. Co.*, 311 U. S. 273, and cases cited.

Opinion of the Court.

313 U. S.

gagee will be paid more than once. Cf. *Suring State Bank v. Giese*, 210 Wis. 489; 246 N. W. 556. Certainly under this statute it cannot be said that more than that was attempted. The "fair and reasonable market value" of the property has an obvious and direct relevancy to a determination of the amount of the mortgagee's prospective loss. In a given case the application of a specified criterion of value may not result in a determination of actual loss with mathematical certitude. But "incidental individual inequality" is not fatal. *Phelps v. Board of Education*, 300 U. S. 319, 324. The fact that men will differ in opinion as to the adequacy of any particular yardstick of value emphasizes that the appropriateness of any one formula is peculiarly a matter for legislative determination. Certainly, so far as mortgagees are concerned, the use of the criterion of "fair and reasonable market value" in cases where they obtain the property for a lesser amount holds promise of tempering the extremes of both inflated and depressed market prices. And so far as mortgagors are concerned, it offers some assurance that they will not be saddled with more than the amount of their obligations. To hold that mortgagees are entitled under the contract clause to retain the advantages of a forced sale would be to dignify into a constitutionally protected property right their chance to get more than the amount of their contracts. *Honeyman v. Jacobs, supra*. The contract clause does not protect such a strategical, procedural advantage.

In conclusion, the statute in question, like the one involved in *Richmond Mortgage & Loan Corp. v. Wachovia Bank & Trust Co., supra*, p. 130, "cannot fairly be said to do more than restrict the mortgagee to that for which he contracted, namely, payment in full." Here, as in that case, the obligation of the mortgagee's contract is recognized; the statute does no more than limit

"that right so as to prevent his obtaining more than his due." *Id.*, p. 130. To be sure, the mortgagee retained in that case an alternative remedy, while in the instant one the Court of Appeals has said that under New York law there remained no alternative remedy "substantially coextensive" with that which had been removed. But it is clear from *Honeyman v. Hanan*, 302 U. S. 375, that a requirement that the right to a deficiency judgment should be determined in the foreclosure proceeding, or that a mortgagee is not entitled to a deficiency judgment unless he moves for one, raises no substantial federal question. As stated by this Court in that case (302 U. S. at p. 378), the Federal Constitution does not prevent the states from determining, on due notice and opportunity to be heard, "by what process legal rights may be asserted or legal obligations" enforced. The principles of those cases are applicable here. The fact that an emergency was not declared to exist when this statute was passed does not bring within the protective scope of the contract clause rights which were denied such protection in *Honeyman v. Jacobs*, *supra*. See *Home Building & Loan Assn. v. Blaisdell*, *supra*.

Respondent points out that earlier decisions of this Court have struck down under the contract clause, as respects contracts previously made, a state statute requiring judicial sales to bring two-thirds of the amount of the appraised value of the property. *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 608. And see *Gantly's Lessee v. Ewing*, 3 How. 707. Those cases, however, have been confined to the special circumstances there involved. *Home Building & Loan Assn. v. Blaisdell*, *supra*, pp. 431-434. We cannot permit the broad language which those early decisions employed to force legislatures to be blind to the lessons which another century has taught.

Argument for Respondents.

313 U. S.

The judgment is reversed and the cause is remanded to the New York Supreme Court for proceedings not inconsistent with this opinion.

*Reversed.*

OLSEN, SECRETARY OF LABOR OF NEBRASKA, *v.* NEBRASKA EX REL. WESTERN REFERENCE & BOND ASSOCIATION, INC., ET AL.

CERTIORARI TO THE SUPREME COURT OF NEBRASKA.

No. 671. Argued April 8, 9, 1941.—Decided April 28, 1941.

1. A Nebraska statute limiting the amount of the fee which may be charged by private employment agencies, to ten per cent. of the first month's salary or wages of the person for whom employment was obtained, held consistent with due process of law. *Ribnik v. McBride*, 277 U. S. 350, overruled. P. 243.
2. The wisdom, need and appropriateness of this legislation are for the State to determine. P. 246.

138 Neb. 574; 293 N. W. 393, reversed.

CERTIORARI, 312 U. S. 673, to review a judgment for a peremptory writ of mandamus requiring the Secretary of Labor of the State of Nebraska to issue licenses for the operation of private employment agencies. The above-named association was the original relator. A number of other employment agencies, which sought and obtained the same relief by intervention, were also respondents in this court. Mr. Olsen was substituted for his predecessor in office, Mr. Kinney, *post*, p. 541.

*Mr. Don Kelley*, Assistant Attorney General of Nebraska, with whom *Mr. Walter R. Johnson*, Attorney General, was on the brief, for petitioner.

*Mr. Walter Gordon Merritt* for respondents.

The statute violates the due process clause of the Fourteenth Amendment. *Ribnik v. McBride*, 277 U. S. 350, 359.