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Mortgages - Foreclosure - Deficiency Judgments

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MORTGAGES—FORECLOSURE—DEFICIENCY JUDGMENTS. In the case of *Suring State Bank* v. *Giese* and others, ____Wis.____, ____NW____, the Suring State Bank held a real estate mortgage of $2,000 against Giese and others. The plaintiff bank began foreclosure by action and included a prayer for a deficiency judgment. At the sale the plaintiff bid in the land at $600 and the sheriff's report contained the report of a deficiency of $1,379.16. On plaintiff's motion to confirm the sale and for deficiency judgment the trial court found that the land was reasonably worth $2,000. It confirmed the sale but refused to grant a deficiency judgment. Plaintiff appealed from the order. The Supreme Court reversed the order on the ground that the lower court had erred in categorically denying the prayer for deficiency judgment without giving the plaintiff an option to accept or reject the condition.

The newspapers daily contain articles of real estate mortgage foreclosures in Wisconsin at a price far below the amount of the mortgage. A necessary consequence is the sinister shadow of the deficiency judgment. These newspapers also contain accounts of open revolt against the practice of foreclosing in these economically abnormal times. To the honor and credit of Wisconsin it can be said that our Supreme Court has recognized that the continuance of such practices must necessarily result in future problems of greater consequence. Economic and political revolution is no longer an empty warning. Let us hope that we can expect such affirmative action on the part of the other coordinate departments of our state government.

The court lays down in this decision the procedure that the trial courts may adopt during the continuance of this economic emergency. There are three courses open to the lower courts:

First: The trial court may refuse to confirm the sale where the bid is substantially inadequate. The court expressly recognizes the established equity rule that mere inadequacy of consideration is not a ground for granting a resale. See *Meehan* v. *Blodgett,* 86 Wis., 57 N.W. 291. But this rule was held to apply only where no other equitable facts appeared such as "mistake, misapprehension, or inadvertence on the part of interested partis or intending bidders" with the result that a fair and adequate price was not obtained. *Griswold* v. *Barden,* 146 Wis. 35, 130 N.W. 952; *Kramer* v. *Thwaits,* 105 Wis. 534, 81 N.W. 654; *Johnson* v. *Goult,* 106 Wis. 247, 82 N.W. 239. The court holds that this emergency has caused "the almost complete absence of a market for real estate. As a consequence there is no cash bidding at sales upon foreclosure." Would it not be almost hypocrisy to argue that equity should hold otherwise?

Second: The trial court may before ordering the sale or resale determine, after a proper hearing, the reasonable value of the property

as a minimum price at which the property must be bid in at the sale. If the sale price is less than that amount the court may refuse to confirm the sale. This practice has heretofore been followed in the forced sales of large corporate assets where it is impossible to arrive at a fair price by competitive bidding. See *Northern Pacific Railway Co.* v. *Boyd,* 228 U.S. 482, 33 Sup.Ct. 544. The theory is that there can be from the nature of the case no competitive bidding. The court in this case takes judicial notice that this economic emergency has rendered any semblance of competitive bidding at even a sale of a $2,000 mortgage solely a matter of abstract legal theory. This economic upheaval has exterminated that species of humanity commonly known as an auction bidder desiring to purchase, with money to back up his desires.

Third: The court may upon application for confirmation, if it has not theretofore established an upset price, determine such price before confirmation and then require such upset or fair price be credited upon the mortgage judgment. If such fair price discharges the judgment there is no need for a deficiency judgment. When this course is adopted the plaintiff should be given the option to accept or reject the arrnagement. If he rejects it a new sale should be ordered.

And so the relief that the oppressed farm and home owners of Wisconsin have hoped and prayed for has come to pass. Once again the people of Wisconsin can rest secure in the assurance that their supreme court is ever awake to the needs of the people of this state in their unceasing efforts to create on the shores of the Great Lakes a haven of political and economic freedom and equality.

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INHERITANCE TAX—GIFTS—DEED ABSOLUTE—In the case of *In re Ogden's Estate,* —— Wis. ——, 244 N.W. 571, a gift of real estate was made by a deed absolute from the father to his daughter. He died some 3 years 7 months later. There was an oral understanding that the father should enjoy all right to the income of the property. The trial court held that the gift of the real property in question was subject to a state inheritance tax because intended to take effect in possession and enjoyment at or after donor's death. An appeal resulted in an affirmation of the judgment, the Supreme Court holding—"The gift was not completed, and the use and enjoyment never passed to the donee until the donor died, and so long as this privilege could not be exercised by the donee, it is subject to the tax."

The Wisconsin court in so ruling follows innumerable cases decided likewise in the United States. In our analysis we must remember that there is a distinction between gifts made in contemplation of death and