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Secured Obligations

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Secured Obligations[22]

The scope of this discussion probably is best defined in the words of the act itself as appear in section 302 (1): "obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property, owned by a person in military service at the commencement of the period of military service"; and the problems herein discussed are those which arise under the act in connection with the sale, foreclosure, seizure, or repossession of property which is security for such obligations.[23]

Pertinent provisions of the act. Briefly stated, the act provides[24] that secured obligations, originating prior to military service, on real or personal property owned by a person when he entered military service, and which he still owns, cannot be legally foreclosed, and the property which is security therefor cannot be sold, seized or repossessed (whether under a power of sale, judgment entered upon warrant of at-

[22] BALDWIN AND CLARK, LEGAL EFFECTS OF MILITARY SERVICE (1942) contains a concise summary of Relief Acts, together with full text of the acts in amended form.

[23] Included within the broad language above quoted would seem to be all transactions in which a lien upon property is given as security for the payment of a debt. However, in § 301 the framers of the act have chosen to make special provisions for conditional sales contracts and bailment lease agreements, presumably on the ground that in such transactions title remains in the vendor and the property is not 'owned' by a person in military service.

[24] § 302 (1), (2), (3), (4) of article III entitled "Rents, Installment Contracts, Mortgages, Liens, Assignments, Leases," as amended by Act of 1942.

torney to confess judgment, or otherwise) during the period of military service or within three months thereafter, except pursuant to a written agreement of the parties,[25] unless upon order of the court. In any court proceeding commenced during the period of military service to enforce such obligations, arising out of nonpayment or any other breach, the court may, and upon application by the person in military service shall, stay the proceeding,[26] or make such other disposition of the case as may be equitable to conserve the interests of all parties, unless the court finds that the ability of the defendant to meet his obligations is not materially affected by his military service. Wrongful sale, foreclosure, seizure, or attempt so to do, knowingly done, is made a misdemeanor, punishable by fine and imprisonment. The act further provides in section 303 that where proceedings to foreclose a mortgage, repossess property, or terminate a contract to purchase personal property have been stayed, the court may, unless in its opinion undue hardship to dependents of such persons in military service would result, appoint three disinterested persons to appraise the property, and, based on their report, order payment of such sum as may be just to the person in military service or to his dependents, as a condition to the allowance of the foreclosure, repossession, or termination prayed for.[27] Under section 306 the benefits accorded to a person in military service under article III will be accorded to his dependents upon application to the court, unless the court finds that the ability to meet their obligations is not materially affected by the military service of the supporter. In the 1942 amendment a new article VII, entitled "Further Relief," was

[25] § 107, added by 1942 amendments, permits, inter alia, the modification of any obligation secured by mortgage, trust deed, lien, or other security in the nature of a mortgage, or the repossession, foreclosure, or sale of property which is security for any obligation, pursuant to a written agreement of the parties thereto, or their assignees, executed during or after the period of military service of the person concerned.

Under the provisions of this section, modification of F.H.A. mortgages is permitted, which provides for waiver of principal payments, but continued payment of interest, insurance and taxes. See "F.H.A. Loans and the Civil Relief Act," 7 INSURED MORTGAGE PORTFOLIO, No. 3, p. 18 (1943), setting forth letter of F.H.A. General Counsel of November 6, 1942, discussing the Civil Relief Act and F.H.A. rulings in respect thereto. Also, Russell and Bridewell, "The Soldiers' and Sailors' Civil Relief Act as Amended," 8 JOHN MARSHALL L. Q. 137 at 163-168 (1942), in reference to amendments of F.H.A. regulations to conform with Civil Relief Act.

[26] § 204 provides that stay of proceedings may be for the period of military service and three months thereafter. The matter of insurance under the act has been heretofore considered.

[27] Note that § 305, added by the 1942 amendments, provides that assignees of life insurance policies upon the life of a person in military service may not exercise any rights under the assignment unless upon leave of court; and further provides that liens for storage of household goods, etc., of a person in military service may not be foreclosed or enforced, unless upon order of the court.

added, under which application may be made by a person in military service at any time during his period of service or within six months thereafter for relief in respect to any obligation incurred prior to military service. Under this article the court may stay the enforcement of obligations for installment purchase of, or secured by mortgage on, *real estate*, for the duration of military service, plus the period of the remaining life of the contract, plus time equal to the period of military service, or for any part of such combined period, subject to the payment of balance of principal and interest in equal installments during such extended period; as to any *other obligation* a stay of enforcement thereof may be granted for the remainder of the period of military service, plus time equal to the period of military service, or any part of such period, subject to payment of balance of principal and interest in equal periodic installments during such extended period; in both instances the act provides that such further relief may be "subject to such other terms as may be just."

Nature of specific relief and when available. In this country the legislation which we have employed for the relief of men in military service, in 1918, in 1940, and, with a single exception, in the 1942 act, has been limited to the suspension of remedies for the enforcement of defaulted obligations, and has not been aimed at the direct relief (i.e. discharge) of the serviceman from his obligations.[28] The method employed in achieving this declared end has been to bring under the direct supervision of the court all those proceedings, summary and otherwise, theretofore available for the enforcement of obligations, and to make it a matter of the court's discretion whether under all of the circumstances enforcement of the remedy should be permitted.

In order to obtain relief under section 302 a person in military service must demonstrate to the court's satisfaction the following facts: (1) that the obligation, from the performance of which relief is asked, originated prior to such person's period of military service;[29] (2) that

[28] The exception in the 1942 act to which reference is made is found in § 304, under which a lessee in military service is permitted to terminate any lease covering premises occupied for dwelling, professional, business, agricultural or similar purposes by notice in writing, with provision for a pro rata computation of rent to the effective date of termination; and the lessor is permitted to apply to the court for such modification of and restrictions on the termination as justice and equity require.

[29] The term "period of military service" is defined in § 101 (2) as follows: "For persons in active service at the date of approval of this Act [October 17, 1940] it shall begin with the date of approval of this Act; for persons entering active service after the date of this Act, with the date of entering active service."

Sec. 106 was added by the 1942 amendments, which provides: "Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended, shall be entitled to the relief and benefits accorded persons in military service under articles I, II and III of this Act during the period beginning on

the property which is security for the obligation was owned by him at the commencement of his military service and is still so owned; and (3) that his ability to comply with the terms of his obligation is materially affected by reason of his military service.

(1) Section 302 of the Relief Act, as passed in 1940, was made expressly applicable only to "obligations originating prior to the date of approval of this Act [October 17, 1940]."[30] It is said that this provision was inserted for the alleged purpose of preventing the freezing of credit of men of draft age, inasmuch as business people would be unwilling thereafter to enter into credit transactions with such men if they were to be deprived of their legal remedies.[31] Such a provision had been satisfactory in the 1918 act; but it was deemed to be inadequate when it appeared that this war would last for a considerably longer period and that many men were being drafted into military service who had become liable on obligations contracted subsequent to October 17, 1940, on the assumption that the draft age would not be extended—hence the 1942 amendment making section 302 applicable to obligations *originating prior to period of military service.*

(2) Under the second requirement listed above the courts have given a rather liberal interpretation to the phrase "real or personal property owned by a person in military service," and have held that an equitable interest in such property is sufficient to bring such person within the scope of the section;[32] but relief under this section may be

the date of receipt of such order and ending on the date upon which such person reports for induction. . . ."

[30] Kendall v. Bolster, 239 Mass. 152, 131 N. E. 319 (1921), in which the 1918 act, containing a similar provision, was held inapplicable to a mortgage dated the day prior to approval of the act, but which was not delivered or the consideration paid until more than a month thereafter on the ground that—the "obligation" of the mortgage did not arise before effective date of the act. (This problem would arise under 1942 amendments only if the "obligation" arose after the beginning of the period of military service.) Also held, that the act was not applicable to a mortgage given during the period of military service in renewal of a prior mortgage. Cf. Olsen v. Gowan-Lenning Brown Co., 47 N. D. 544, 182 N. W. 929 (1921), holding the 1918 act inapplicable where the obligation under a mortgage was extinguished by foreclosure prior to the effective date of the act, even though the running of the period of redemption was suspended while the mortgagor was in military service.

[31] Senator Chan Gurney, S. D., 86 CONG. REC. 12837 (1940). See Bendetson, "A Discussion of the Soldiers' and Sailors Civil Relief Act of 1940," 2 WASH. & LEE L. REV. 1 at 31 (1940), where the economic reasoning behind the provision is attacked as being faulty; it is therein alleged that the possibility of such "freezing" resulted from the failure to treat separately the various classes of transactions covered in article III.

[32] In Twitchell v. Home Owners' Loan Corp., (Ariz. 1942) 122 P. (2d) 210, where prior to induction the mortgagor's son had made mortgage and tax payments in reliance on the mortgagor's promise to convey realty in consideration for such payments and support, it was held that the son "owned" an equitable interest in real property.

refused when it appears that defendant's equity will soon be eaten up by delinquent interest, taxes, and costs of foreclosure.[33] The act does not recognize the recording acts of the various states; [34] this of course adds to the confusion and increases the difficulty of establishing who are the "owners" of the property, to the satisfaction of subsequent title examiners.

(3) The fact of military service is not of itself sufficient to establish a right to relief under section 302—it must appear that the ability of the defendant to comply with the terms of the obligation is materially affected by his military service.[35] In this connection the latitude of discretion which the court may exercise appears to be extremely broad; in determining whether military service has had a "material effect" on dependent's ability to perform the court may grant relief under section 302 (1) (b) and "make such other disposition of the case as may be equitable to conserve the interests of all parties." [36] Of course this

[33] Jenkintown Bank & Trust Co. v. Greenspan, 44 D. & C. (Pa.) 507 (1942). Cf. Hunt v. Jacobson, 178 Misc. 201, 33 N. Y. S. (2d) 661 (1942); Dietz v. Treupel, 184 App. Div. 448, 170 N. Y. S. 108 (1918).

[34] There is nothing in § 302 "which limits its provision to owners of record or to cases where the mortgagee in fact knew or had reason to know who the owner of the property was." Hoffman v. Charlestown Five Cents Savings Bank, 231 Mass. 324, 121 N. E. 15 (1918); and cf. Morse v. Stober, 233 Mass. 223, 123 N. E. 780 (1919). But even though realty trust shareholders in service are "owners" within the meaning of § 302, they are not entitled to a stay of foreclosure proceedings when the trustees have appeared to defend. John Hancock Mutual Life Ins. Co. v. Lester, 234 Mass. 559, 125 N. E. 594 (1920).

[35] The burden of establishing such "material effect" apparently is upon the defendant who is requesting the stay of proceedings. Bare allegation of army service is insufficient—the court will take additional testimony to determine if a stay should be granted—Jamaica Savings Bank v. Bryan, 175 Misc. 978, 25 N. Y. S. (2d) 17 (1941). Cf. Dietz v. Treupel, 184 App. Div. 448, 170 N. Y. S. 108 (1918).

[36] Cortland Savings Bank v. Ivory, 27 N. Y. S. (2d) (1941), where the defendant's income was reduced from $203.80 to $177.30 per month by reason of military service, the court reduced monthly payments under an F.H.A. mortgage from $44.33 to $26.95; New York Life Ins. Co. v. Litke, —— Misc. ——, 41 N. Y. S. (2d) 526 (1943)—soldier's income reduced from $60 per week to $50 per month—stay granted, conditioned upon payment of $5 per month, to be applied on account of taxes, with provision that such conditions might be modified if soldier's financial position improved; Brooklyn Trust Co. v. Papa, 33 N. Y. S. (2d) 57 (1941), before the court would grant relief under § 302 it required a showing that receipts from property were less than cost of upkeep, where mortgagor claimed relief by reason of military service. Railroad Federal Savings & Loan Assn. v. Morrison, 179 Misc. 893, 40 N. Y. S. (2d) 319 (1943).

These minimum payments which are often required as condition for stay of proceedings are applied to payment of taxes, insurance, repairs, etc., so that no great prejudice results to the mortgagee from the delay.

In Davis v. Brown, 45 D. & C. (Pa.) 76 (1942), the Pennsylvania court exercised very wide discretion when it permitted stay of foreclosure proceedings on condition that the mortgagee be permitted to manage the property, collect the rents, and that the mortgagor deliver up possession of the storeroom and apartment he was occupying.

broad exercise of judicial discretion makes it very difficult for an attorney to advise his client as to just what effect the fact of military service will have upon his civil obligations, but we can be reasonably certain, as appears from the decisions, that the courts will attempt to weigh the equities carefully and to administer the act as an instrument to accomplish substantial justice for all parties.[37]

Considerable objection was made to section 302 (3) of the 1940 act, which prohibited sales "under a power of sale or under a judgment entered upon warrant of attorney to confess judgment" unless upon an order of sale previously granted by the court, because it was not broad enough to cover foreclosure by entry and possession, such as is allowed by many state statutes.[38] This situation was remedied, however, in the 1942 amendments, which prohibit, in the absence of a court order, any "sale, foreclosure, or seizure of property"; but the application thereof is limited to such acts done after the date of enactment of the 1942 amendments.[39] Thus the familiar trustee's sales so widely used in many states, with a saving of both time and expense, appear to be gone for the duration. If a record title is to be obtained which will not be open to subsequent successful attack by a person in military service alleging that he was prejudiced by the foreclosure,[40] or to objection by a subsequent purchaser that the title is not clear, the only safe course to pursue is to foreclose any mortgage under the order of a court of equity.[41] Such a procedure of course is open to the complaint that the foreclosure machinery is slowed up considerably, but in view of the risks one must run by pursuing an alternative course, it would seem to be the only advisable procedure in all cases; [42] and having to go into an equity court for

[37] Davis v. Brown, 45 D. & C. (Pa.) 76 (1942).

[38] Bell v. Buffington, 244 Mass. 294, 137 N. E. 287 (1923); Ebert v. Poston, 266 U. S. 548, 46 S. Ct. 188 (1925); Union Labor Life Ins. Co. v. Wendeborn, 19 N. J. Misc. 496, 21 A (2d) 317 (1941). In the last case the mortgagee, upon default under mortgage, exercised his right to demand possession, and, being refused, brought ejectment action against the wife, who was tenant by entireties with husband in service; it was held that the suit was merely for possession of the premises, not for enforcement of any obligation under the mortgage, and that therefore no relief could be had by the mortgagors. Furthermore, husband and wife were separated, and no application for stay had been made on husband's behalf.

[39] In Bendetson, "A Discussion of the Soldiers' and Sailors' Civil Relief Act of 1940," 2 WASH. & LEE L. REV. 1 at 25 (1940) the suggestion is made that even though under the 1940 provisions summary foreclosure proceedings did not come under § 302 (3), nevertheless such proceedings, when defendant obtained notice thereof, might be brought before the court by application for injunction pendente lite—thus bringing the matter within § 302 (2).

[40] Such an attack may be brought under § 200 (4).

[41] Morse v. Stober, 233 Mass. 223, 123 N. E. 780 (1919).

[42] As pointed out in Morse v. Stober, supra, a mortgagee who has foreclosed without such an order of court assumes a heavy burden of proof that no person in military service has any interest therein when he undertakes to enforce specific performance

such an order of sale, many attorneys feel that they might just as well continue the proceeding to completion in the equity court.

As set forth in the 1940 act, section 303 was very limited in its operation, it being expressly provided that proceedings to resume possession of a motor vehicle, tractor, or accessories of either, could not be stayed unless fifty percent or more of the purchase price had been paid; and because of its limited nature it was the object of much criticism.[43] In the 1942 act an entirely new section was substituted which was designed both for the relief of creditors and for the benefit of persons in military service who had an equitable interest in property which was being foreclosed or repossessed. As amended, section 303 now provides that in any action to foreclose a mortgage on, or to regain possession of, personal property the court may order an appraisal of the interest of the person in military service, and require payment of a sum equivalent to the value of such interest as a condition to foreclosing, provided that the retaking of such property does not put an undue hardship on the mortgagor's dependents. Because of the nature of chattels and their rapid rate of depreciation, such a provision was necessary in order to protect creditors from the terrific loss which an extended stay of foreclosure or repossession proceedings would entail without any material benefit to the debtor in military service. The new section 303 seems to be a very equitable solution of the problem.

Because of the modern widespread practice of borrowing money upon the cash value of life insurance policies and the fact that such policies may be converted into cash upon default of the loan without any court action, the drafters of the 1942 amendments deemed it wise to include in article III a new section 305, which prohibits the assignee of a life insurance policy on the life of a person in military service, which was assigned to secure payment of such person's obligations, from exercising, during the period of military service and for one year thereafter, any right or option given by such assignment, unless upon order of the court or written agreement of the parties or when the premiums are due

of his agreement to convey good title to such land, but, however difficult, it is not a burden of proof incapable as a matter of law of being sustained.

In Petition of Institution for Savings in Newburyport, 309 Mass. 12, 33 N. E. (2d) 526 (1941), the court held that there was no reason for refusing to issue a new title certificate to a purchaser at foreclosure sale where the land court, after investigation, found that there is no interested person in military service, even though such finding may be wrong and a person in military service might later come in and upset the foreclosure sale by showing an equitable interest in the property which was not apparent at the time of foreclosure.

[43] See Connor, "Section 303 of the Soldiers' and Sailors' Civil Relief Act," 17 IND. L. J. 285 (1942), containing criticisms of § 303 and suggested corrections, which were largely adopted in 1942 act.

and unpaid or on death of insured.[44] Provision is also made in this same section to prevent foreclosure of storage liens on household goods or personal effects stored for the period of military service. This situation is probably covered in section 302 (1) ("other security in the nature of a mortgage"), but by way of double precaution it was apparently deemed wise to enumerate the situation of a lien for storage charges and assure court supervision of any enforcement thereof.

A glaring inadequacy of the 1918 act, which was not remedied in the 1940 act, was demonstrated in the case of *Great Barrington Savings Bank v. Brown*,[45] where a stay of proceedings was denied to defendant, a widow entirely dependent on her sons in service for support and for funds for previous mortgage payments, because she was not "a person in military service." Section 306 of the 1942 act remedied this situation by extending to dependents of a person in service all the benefits under article III accorded to a person in military service. This amendment, together with section 300 (2) giving relief to landlords whose tenants have gone into military service, and article IV which extends government aid to insurance companies, indicates a considerable expansion of the scope of civil relief as heretofore understood by our legislators. Certainly there can be no contention that such an extension should not have been made; rather the question comes to one's mind as to whether it should not be extended still further—for example, the mortgagee who is largely dependent for support upon income from his mortgages should be entitled to apply for relief when he finds that his ability to meet his own obligations is impaired by his loss of income from mortgagors who have gone into military service, even as a landlord similarly situated now may obtain relief.

Passing mention also should be made of section 103 (1) of the act under which persons who have guaranteed the payment of secured obligations may obtain a stay of proceedings in instances where the persons primarily obligated on the instrument are persons in military service and have been granted a postponement.[46]

[44] Premiums guaranteed under article IV are not deemed to be due and unpaid during the period of military service or for two years thereafter.

[45] 239 Mass. 546, 132 N. E. 398 (1921).

[46] Under § 103 (1), as amended by the Act of 1942, relief may be granted to "sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily, subject to the obligation or liability. . . ."

Cf. In Jamaica Savings Bank v. Bryan, 175 Misc. 978, 25 N. Y. S. (2d) 17 (1941) in a foreclosure proceedings where wife was owner of the property and with her husband who was in military service was liable for the mortgage debt, the court said that a stay as to the husband would not necessarily involve a stay for the wife, but under § 103 (1), they being liable on the same obligation, it might be granted. Court required more evidence as to wife's income in order to determine whether as to her the proceeding should be stayed.

Further relief. Two of the major objections which were directed at the Relief Act in its 1940 form were: (1) that a debtor in military service must remain at the mercy of his creditor, and wait for him to take some affirmative action to enforce his claim before the debtor could obtain relief under the act; and (2) that all accrued indebtedness became due within ninety days after the termination of the period of service. Both of these objections seem to have been adequately taken care of in article VII, entitled "Further Relief," which was added in the 1942 amendments. Under the provisions of that article a conscientious obligor may now take the initiative at any time during the period of military service and within six months thereafter and secure a postponement of the enforcement of his obligations. The type of relief which the court may give under this article meets the second objection stated above—equal installments of the unpaid balance of principal and interest may be paid for the balance of the term of the contract plus a period equal to the term of military service. In effect, the court directs a reamortization of the obligation. The act does not indicate what procedure is to be employed by an applicant seeking relief under article VII, but it has been suggested that a declaratory judgment action would be an ideal remedy for a person seeking the protection of the act.[47] Without the relief which article VII affords, it would seem that the declared purpose of the act, "to relieve fighting men from financial worries," could not be fully achieved, so long as they knew that huge debts faced them upon their discharge from service, which required satisfaction within ninety days.[48]

General relief. The provisions of article III, in so far as they are intended to cover proceedings and actions instituted in a court, apparently contemplate that the procedure set forth in section 200 should be followed in cases where the defendant makes no appearance.[49] That

[47] Anderson, "The Soldiers' and Sailors' Civil Relief Act," 6 UNIV. DETROIT L. J. 163 at 167 (1943).

[48] It should be noted that the relief under § 700 added by amendments of 1942, is not available to dependents of persons in military service; it would seem that some such relief for reamortization of their (the dependents') obligations should also be available.

[49] The following cases are cited in ANDERSON, LEGAL STATUS OF SOLDIERS' AND SAILORS' CIVIL RELIEF ACTS, § 114, p. 140 (1941) as authority for saying that if there is a failure to file the affidavit required under § 200 (1) before the entry of default or failure to secure an order of court directing entry of the default, all the proceedings are void, and it is immaterial whether the defendant in military service has been prejudiced thereby or not: Bobkoff v. Chesticoff, 24 Haw. 447 (1918); Blume v. Battaglia, 28 Pa. Dist. 689 (1919). But the weight of authority is that such requirements of the act are not jurisdictional — Shroeder v. Levy, 222 Ill. App. 252 (1921); Howie Mining Co. v. McGary, (D. C. W. Va., 1919) 256 F. 38—but are merely voidable on a direct attack by the defendant in military service within ninety

section provides that default judgments shall not be entered until plaintiff files an affidavit stating facts showing whether defendant is or is not in military service, or that plaintiff cannot determine the same. If the affidavit does not show defendant not in military service, judgment shall not be entered without order of court, which shall not be made if defendant is in military service until the court appoints an attorney to represent his interests, who shall not have power to waive any of defendant's rights or bind him by his acts,[50] and the court may require a bond to indemnify such defendant from loss caused by the judgment should the same be thereafter set aside; and the court may make other orders necessary to protect defendant's interests. Further provision is made that a judgment rendered in any such proceeding against a defendant in military service may be opened on application to the court made within ninety days after termination of his military service, if he can show that he was prejudiced in making a defense in such suit and that he had a meritorious defense to such judgment.[51] However, the setting aside of any judgment under the act shall not impair any right or title acquired by a bona fide purchasor for value under the judgment.[52]

Section 202 of the act provides that fines and penalties shall not accrue during the stay of action on a contract; and that in any event the court may relieve against such fine or penalty if the person who would suffer thereby was in military service when the penalty was incurred. It would seem that this section would relieve a mortgagor in service from liability for "late charges" imposed for delay of payment, but probably would not exempt him from the payment of interest on any advances, as for insurance premiums or taxes, which the mortgagee may have been required to make.

days after termination of such service on a showing that the judgment is prejudicial and that he has a meritorious defense.

[50] Davison v. Lynch, 103 Misc. 311, 171 N. Y. S. 46 (1918).

[51] Combs v. Combs, 180 N. C. 381, 104 S. E. 656 (1920).

[52] In such a case the only recourse the person in military service would have would be against the plaintiff in the action in which the judgment was obtained, and upon his bond, if any had been required under § 200 (1).

See Taintor and Butts, "Soldiers' and Sailors' Civil Relief Act of 1940," 13 Miss L. J. 467 at 480-481 (1941), and reference therein to 9 Miss L. J. 157 at 171-172 (1936), as to persons properly qualifying as bona fide purchasers under § 200 (4); it is there suggested that "bona fide purchaser" should mean "stranger to the action."

Further discussion as to who is a bona fide purchaser under the act is found in "Soldiers' and Sailors' Civil Relief Act of 1940," 28 Iowa L. Rev. 14, at 23-26 (1942)—"by bona fide purchaser is meant one who purchases in good faith in reliance upon the *truth of the statements contained in the affidavit as to whether or not any defaulting defendant is in the service, and upon the regularity of subsequent proceedings.*"

Section 205 of the 1940 act provided merely that the period of military service should not be included in computing any limitation period prescribed by law for the bringing of actions, whether brought by or against the person in military service. The 1942 version of this section extends its applicability to include any "proceeding in any court, board, bureau, commission, department or other agency of government," and also makes provision that the period allowed by any law for redemption of real property shall be extended by that part of the period of military service which occurs after the effective date of the 1942 act. The specific inclusion in this section of the right of redemption was necessitated by the decision of the United States Supreme Court in *Ebert v. Poston*[53] that a right to redeem real property was a substantial right and not a right of action within the meaning of section 205 of the 1918 act (which was carried over into the 1940 act) providing for exclusion of period of military service from periods of limitation relating to "actions." It is to be noted that the applicability of this amendment to the extension of the period of redemption is limited to that part of the period of military service which occurs after October 6, 1942, the date of approval of the 1942 amendments; this limitation was necessary in order to avoid the constitutional objection of a taking of property without due process of law which would inhere in a legislative enactment which attempted to remove the bar of the redemption period after the bar had become complete by the running of the period and an indefeasible title had vested in the purchaser.[54]

It is the general concensus of opinion that the Civil Relief Act in its present form is adequate to meet the needs of the serviceman. Of course the real test of its adequacy will not come until after the end of the war; but there would seem to be little doubt that the servicemen will get fair and equitable treatment under the act in view of the very broad discretionary powers given to the courts. However, in order to

[53] 266 U. S. 548, 45 S. Ct. 188, (1925), reversing the Michigan Supreme Court in 221 Mich. 361, 191 N. W. 202 (1922). Cf. Wood v. Vogel, 204 Ala. 692, 87 So. 174 (1920), holding that the right of redemption is not a property right, but is "a mere personal privilege accorded by the statute, to be exercised in the manner and within the time prescribed by law."

[54] Campbell v. Holt, 115 U. S. 620 at 623, 6 S. Ct. 209 (1885); Stewart v. Keyes, 295 U.S. 403 at 417, 55 S.Ct. 807 (1934). It has been suggested in "The Soldiers' and Sailors' Civil Relief Act Amendments of 1942," 12 FORD. L. REV. 153 at 160 (1943) that "no apparent objection on constitutional grounds would have been present if the amendments had provided that the period of redemption would be extended by the entire period of military service so long as the period of redemption had not expired on the effective date of the amendment; this . . . would have had the added advantage that the treatment of the right of redemption of all persons in military service would be the same."

insure substantial justice, the government must inform such persons leaving military service as to their legal rights—to leave them in ignorance of their remedies would certainly defeat the purpose of the act.

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