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Edward A. Roster

extinguished. Thus there is no need for the government's joinder in the exercise of this power in order that their lien be removed.

The decision in the principle case may lead to at least two undesirable consequences. The court's interpretation of the requirements for clearing title under 28 U.S.C. § 2410 (1958) would seem to nullify its basic purpose. Since the right to bring an action to clear title was a later addition to the statute, the inference would appear to be that Congress sought to facilitate title clearance.[10] However, a holding that a prior judicial determination of the validity of the federal lien is a prerequisite to bringing an action to clear title would tend to be directly opposed to this. The opinion was raised in at least one case that to so require would tend to drive all foreclosures of land subject to a federal lien into the courts.[11] It would not appear likely that such a consequence was intended.

A second possible consequence of this holding would be a diminution of the use of the contractual power of sale and a resulting decrease in its economic value. The basic purpose of the power of sale is to allow the mortgagee to dispose of the property by a nonjudicial sale rather than requiring judicial foreclosure proceedings.[12] However, this advantage is decreased when a federal lien attaches, since the mortgagee then cannot exercise the power effectively without first seeking a judicial determination of the validity of the government's claim. This possibility has been criticized on the ground that it might amount to an impairment of a contract right by a subsequent act of sovereignty.[13]

EDWARD F. HENNESSEY

Mortgages—Pre-emption of State Law by Federal Statute when Government is a Mortgagee.—*John Hancock Mutual Life Ins. Co. v. Hetzel.*[1]—The United States became a second mortgagee under an F.H.A. loan on property of which the Plaintiff was first mortgagee. Plaintiff obtained a foreclosure order at a proceeding in a Kansas District Court at which the United States was made a party. At the foreclosure sale the plaintiff was the sole bidder and bid in for an amount equivalent to its interest. The District Court confirmed the sale and issued an 18 month exclusive redemption certificate to the mortgagor. The United States then commenced an action in the same court pursuant to Title 28 U.S.C. 2410(c)[2] to obtain a

[10] See United States v. Bank of America Trust & Sav. Ass'n, supra note 1, at 869, footnote 3.

[11] United States v. Boyd, supra note 5.

[12] 1 Glenn, Mortgages 607-614 (1943).

[13] United States v. Boyd, supra note 5; Minnesota Mutual Life Ins. Co. v. United States, 47 F.2d 942 (N.D. Tex. 1931).

[1] 185 Kan. 274, 341 P.2d 1002 (1959).

[2] "A judicial sale in such action or suit shall have the same effect respecting the discharge of property from liens and encumbrances held by the United States as may be provided with respect to such matters by local law of the place where the property is situated. Where such a sale of real estate is made to satisfy a lien prior to that of the

certificate of redemption giving it the right to redeem within 12 months of the date of the foreclosure sale. This action was dismissed by the District Court and the government appealed. While the appeal was pending before the Kansas Supreme Court, the mortgagor redeemed.[3] The Supreme Court affirming the District Court's opinion held: (1) Section 2410(c) did not supersede local law or give the United States any additional rights over a private party and (2) Section 2410(a)[4] merely waived the United State's sovereign immunity to suit in state courts.

This case illustrates one of the inequitable results which may befall the Federal Government if state law be held controlling in this area. Kansas strictly denies the doctrine of estoppel by deed.[5] The possible result of this, as shown by this case, is that a mortgagor may buy back from a purchaser at a judicial sale and the liens do not revive against the property despite warranties of title in any mortgage prior to the sale.[6]

In reaching the result in the instant case the court relied heavily on *United States v. Cless*[7] in which the United States Court of Appeals for the Third Circuit determining the effect of subsections (a) and (c) of Section 2410 in a similar factual situation concluded that subsection (a) merely waived sovereign immunity to suit and did not make the United States an indispensable party to a foreclosure and subsection (c) did not give the United States rights prior to antecedent mortgages. The reasoning underlying this decision was: "In the absence of express Congressional action to the contrary, we think it is not asking too much from a federal agency, which has embarked upon the business of lending money in competition with private firms and individuals simply to be governed by the same local law which controls the rights of private citizens in a similar endeavor."[8]

Subsequent to the decision in the *Cless* case the Ninth Circuit was presented with basically the same issue but reached the opposite conclusion in *United States v. Bank of America*.[9] This case specifically rejecting the holding of *Cless* decided that under Sec. 2410(c) property in which the United States has an interest may not be proceeded against to the detriment of the government except in accordance with the provisions of that section.[10]

United States, the United States shall have one year from the date of sale to redeem." 28 U.S.C. § 2410(c).

[3] Kan. Gen. Stat. 1949, § 60-3440.

[4] "Under the conditions prescribed in this section, the United States may be named a party in any civil action or suit in any district court or in any state court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien." 28 U.S.C. § 2410(a).

[5] Schultz v. Cities Service Co., 149 Kan. 148, 86 P.2d 533 (1939).

[6] Criticized, in light of Hanlon v. McClain, 206 Okla. 227, 242 P.2d 732 (1952). Case Comment, 52 Harv. L. Rev. 1177 (1938-1939).

[7] 254 F.2d 590 (3d Cir. 1958).

[8] Id. at 594.

[9] 265 F.2d 862 (9th Cir. 1959).

[10] "This [§ 2410(c)] requires a judicial proceeding in which the government may assert its lien and the right of redemption within one year from the date of the sale." Id. at 869. See also, Glenn, Mortgages, § 80.1 (Rev. ed. 1943).

The ultimate resolution of this controversy now rests with the United States Supreme Court which has granted certiorari to the decision of the Ninth Circuit in the *Bank of America* case[11] and the principal case, having been appealed, has been placed on the summary calendar of that same court.[12]

Several areas of conflicting federal-state interests which will have to be resolved by the court in deciding these two cases are: (1) To what extent is the federal government to be governed by state law when it loans money in competition with local agencies and individuals? (2) To what extent has the federal government submitted itself to state law by Sec. 2410 of Title 28 U.S.C.? (3) Does the federal statute requiring joinder of, and a period of redemption for the United States imperil the efficacy of state judicial foreclosure sales and consequently imperil extension of credit by private agencies?[13]

It is submitted that Section 2410 can not be interpreted other than to pre-empt state law and to require that the federal government be allowed its statutory 12 month redemption period. Such an interpretation would give adequate notice to those who would foreclose on property of which the government has a lien. If the antecedent lien be perfected it will be satisfied from the sale prior to the claims of the government.[14] For these reasons it would appear that the Supreme Court should affirm the decision of the Ninth Circuit in *United States v. Bank of America* and reverse the holding of the instant decision.

EDWARD A. ROSTER

Negotiable Instruments—Forged Indorsements—Statute of Limitations. —*Edgerly v. Schuyler.*[1]—The plaintiffs drew a check payable to a named payee. The drawee bank paid the check despite a forged indorsement and upon discovery of the forgery refused to credit plaintiffs' account since the drawer depositors had failed to give notice of the forgery[2] or to commence

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[11] 361 U.S. 811 (1959).

[12] Appeal Docketed, No. 565, Kan. Sup. Ct., Dec. 15, 1959. Placed on Summary Calendar, Feb. 23, 1960, 28 U.S.L. Week 3245.

[13] See MacLachlan, Improving the Laws of Federal Liens and Priorities, 1 B.C. Com. & Ind. L. Rev. 73 (1959).

[14] It has been held that the United States must in its redemption tender an amount sufficient to pay off all antecedent liens or suffer its redemptive offer to be adjudged insufficient. United States v. Brosnan, 264 F.2d 762 (3d Cir. 1959), First National Bank & Trust Co. v. McGarrie, 22 N.J. 539, 126 A.2d 880 (1956).

[1] 113 So. 2d 737 (Fla. 1959).

[2] § 659.37, Fla. Stat., provides as follows: "No bank or trust company, which has paid and charged to the account of a depositor any money on a forged or raised check issued in the name of said depositor, shall be liable to said depositor for the amount paid thereon, unless said depositor shall notify the bank or trust company that the check so paid is forged or raised . . . within one year after the return to said depositor of the voucher representing such payment . . . ." 41 States and District of Columbia have similar statutes.