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MORTGAGES - REFUSAL TO ALLOW FORECLOSURE OF MORTGAGE BY HOME OWNERS' LOAN CORPORATION

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MORTGAGES — REFUSAL TO ALLOW FORECLOSURE OF MORTGAGE BY HOME OWNERS' LOAN CORPORATION — After mortgaging his home to the Home Owners' Loan Corporation under the provisions of the Home Owners' Loan Corporation Act,¹ defendant, because of an accident which had incapacitated him, was unable to meet the payments provided for in the mortgage. His answer in the subsequent foreclosure proceedings alleged that the mortgaged real estate would produce income more than sufficient to meet the payments due each month and to liquidate his indebtedness to the mortgagee. He offered to convey the property to a trustee (to be appointed by the court) who should administer it, applying the income therefrom to the amortization of the mortgage. Upon motion to dismiss the answer, *held*, motion denied. Provision was made, however, for re-establishing the foreclosure proceedings if at any time the income was insufficient to meet current monthly payments and to retire the payments already due. *Home Owners' Loan Corporation v. Wilkes*, 11th Circuit Court in Chancery, Dade County, Florida, No. 46181-B (January 26, 1937).

To allow the foreclosure would bring about the very condition the HOLC was created to prevent; to grant the relief prayed for by defendant would accomplish the purpose of the HOLC without loss to it. Since the mortgage indebtedness remains and costs of the administration of the trust are to be paid out of the income of the property, the only adverse effect of this receivership procedure on the mortgagee will be to extend the time of amortization of the mortgage. Such an extension, however, is within the spirit of the act since (1) the act allows the period of amortization to extend to fifteen years and (2) the Corporation is authorized to grant an extension of time to home owners "for the payment of any installment of principal or interest owed by him to the Corporation if, in the judgment of the Corporation, the circumstances of the home owner and the condition of the security justify such extension."² In the instant case, no such extension of time was granted to the mortgagor. Although the act creating the HOLC does not expressly permit judicial review of the

¹ 48 Stat. L. 128, 12 U. S. C. A., § 1461 (1933).

² 48 Stat. L. 128 at 130-131, 12 U. S. C. A., § 1463d (1933).

discretion of the Corporation to grant an extension of time, nevertheless the purpose of the act justifies such an intervention when the discretion has been abused. The power of the court of equity to extend equitable principles to new conditions when to do otherwise would shock the conscience of the chancellor is the rationale upon which this decision is based.³ The result seems meritorious in view of the growing realization that special safeguards to home ownership are essential as a guaranty of social and economic stability.⁴ It should, however, be confined, as in the instant case, to situations where provision is made to protect the interest of the HOLC.

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³ Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398 at 446, 54 S. Ct. 231 (1933). However, see Pound, "The Decadence of Equity," 5 COL. L. REV. 20 (1905), deploring the loss of elasticity of equity.

⁴ See President Roosevelt's message to Congress of April 13, 1933, H. Doc. 19, 73rd Cong., 1st sess.; 77 CONG. REC. 1618.