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Phelps F. Darby
Member, Evansville Bar

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DEFICIENCY JUDGMENTS

By PHELPS F DARBY*

This discussion concerning deficiency judgments relates only to those arising out of real estate mortgage foreclosures. Mention will be made of the rights and liabilities of mortgagors and of mortgagees and of purchasers of mortgaged property. No complete collection of court decisions will be attempted. A few leading decisions in Indiana and other states will be cited.

Questions relating to deficiency judgments naturally have arisen more frequently during the depression years, chiefly because all sections of the country have experienced unprecedented fluctuations in real estate values. As to some of the questions arising in deficiency judgment cases, the court decisions in the various States are in serious conflict. The comments here will be confined largely to the statutes and decisions in Indiana. The Legislature of Indiana, during the depression years, has not deemed it necessary to enact an emergency moratorium statute such as was passed in nine or ten other States. In the year 1931, the Indiana Legislature changed the procedure for the foreclosure of real estate mortgages; and as a result no foreclosure sale can be had and consequently no deficiency judgment can be computed until more than thirteen months after the filing of the foreclosure complaint. The full one year period for redemption now expires before the sheriff's sale. This change applies only as to mortgages executed after June, 1931.

*Of the Evansville Bar.

Our Indiana statute, since the Revision of 1852, has protected the maker of a mortgage against personal liability upon any *implied* promise to pay the mortgage debt. The statute of 1852 which is now Section 56-702, Burns 1933, provides—

> "No mortgage shall be construed as implying a covenant for the payment of the sum intended to be secured, * * * and where there is no express covenant contained in the mortgage for such payment, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage."

A similar section was incorporated in the 1881 Code.

Under the old common law, it was necessary to institute separate actions to enforce a mortgage lien, one at law for the judgment on the bond or note, one in chancery to foreclose the lien against the mortgaged premises. Since the Revision of 1852 the two remedies (one for a personal judgment and one for foreclosure) can be united in one action. The statute as re-enacted in 1881 which is now Section 3-1814, Burns 1933, provides—

> "In rendering judgment of foreclosure, the court shall give personal judgment against any party to the suit liable upon any agreement or agreements for the payment of any sum or sums of money secured by the mortgage, and shall order the mortgaged premises, or so much thereof as may be necessary to satisfy the mortgage and judgment and costs of the action, to be first sold, before levy of execution upon other property of the defendant."

When Personal Judgment May Be Rendered Against Mortgagor

It is clearly provided in the statute above quoted that, as a part of the foreclosure proceeding, a personal judgment may be taken against the mortgagor and also against any subsequent purchaser who assumes the mortgage debt. The personal judgment thus obtained frequently becomes a deficiency judgment following the sale of the mortgaged real estate, this by reason of the provision which the court must embrace in the decree and order of sale that "the balance due on the mortgage and costs which remain unsatisfied after the sale of the mortgaged premises shall be levied on any property of the mortgage-debtor." The execution thus issued to enforce the deficiency judgment forthwith becomes a lien on the personal property of the mortgage debtor.

If the suit is only for a foreclosure of the mortgage, it is settled that a mere recital that the mortgage is to secure the unpaid part of the purchase money is not sufficient to create a personal liability. The holder of the mortgage may, if he chooses, first by separate action take a personal judgment against the maker of the mortgage note and enforce it by execution against the mortgagor's other property, without a waiver of the mortgage lien. A prior personal judgment on a mortgage note and partial enforcement thereon will not preclude a second personal judgment on the same mortgage note in connection with the decree in foreclosure.

A suit for the foreclosure of a real estate mortgage must be brought in the county where the real estate is located. It is essentially an action *in rem*. If the mortgagor or other party liable for the mortgage debt is in court only by constructive service, the court has no power to render a personal judgment or any judgment concerning the excess remaining unpaid after a sheriff's sale. As said in *Lipperd v. Edwards,* 39 Ind. 165:

> "A mere judgment of foreclosure, without any personal judgment, after applying the proceeds of the sale, is exhausted by the sale of the mortgaged premises, and cannot become the foundation of another action, for the purpose of making the balance of the debt secured by the mortgage. It is merely a judgment *in rem,* and when the property has been sold, the judgment has no more vitality."

If the mortgage or mortgage note provides for attorney's fees, then this item becomes a part of the general judgment, and in computing the amount which shall constitute the deficiency judgment (or judgment over) the total of the judgment consists of principal, interest, court costs and attorney's fees.

A personal judgment against the mortgagor can not be obtained in a foreclosure suit unless prayed for in the complaint. The statute (Section 3-1814, Burns 1933) directs the court to give personal judgment against any party to the suit who is liable for the mortgage debt; and the statute also requires the court to order the mortgaged premises to be sold first; and the sheriff's sale must precede the levy of execution upon other property of the defendant. A personal judgment can not be rendered for any portion of the mortgage debt not due. Therefore if the mortgage debt matures in several instalments, a so-called acceleration clause in the mortgage adds to the practical value of the mortgage instrument.

If in a foreclosure proceeding, a personal judgment is rendered in favor of a junior mortgagee and the mortgaged real estate is exhausted to satisfy the senior mortgage, execution may issue forthwith against mortgagor's personal property to satisfy the judgment in favor of the junior mortgagee.[1]

A purchaser who assumes the mortgage debt becomes as to the mortgagor the principal debtor, and the mortgagor becomes a surety; but the mortgagee, unless he has assented to such an arrangement, may treat both as principal debtors, and may have a personal judgment against both.[2]

When Mortgagor Is Released From Personal Liability

If the mortgaged real estate is sold and conveyed by the mortgagor to one who assumes and agrees to pay the mortgage debt, and then the mortgagee subsequently releases the grantee from personal liability without mortgagor's consent, the legal effect of such release is to release also the mortgagor from all personal liability. Likewise if the holder of the mortgage grants an extension of time to the purchaser who has assumed the mortgage debt, and it is done without mortgagor's consent, the holder of the mortgage thereby releases the mortgagor from all personal liability.

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1 Nix v. Williams, 110 Ind. 234.

2 Jones on Mortgages (8th Ed.), Sec. 920.

If the purchaser of mortgaged real estate merely takes a conveyance *subject to the mortgage,* then the relation is not strictly one of principal and surety. The land itself stands in the relation of a principal and is the primary source of payment, but there is no personal liability against the grantee. There is a conflict of authority on the question of the effect on the liability of the original mortgagor of an extension of time granted by the holder of a mortgage to a purchaser of mortgaged real estate who took subject to, but without assuming, the mortgage. In Maryland and New Jersey, it is held that the rights of the mortgagee against the mortgagor are not in any manner affected by such an extension. In California it is held that the mortgagor is released entirely. Our Appellate Court of Indiana in a recent well-considered case adopted what is undoubtedly the better rule and the one supported by the weight of authority; that where the grantee of mortgaged real estate does not assume the mortgage, but merely takes subject to it, the grantor occupies, *to the extent of the value of the land,* the position of a surety; and if the owner of the mortgage by a valid contract with the owner of the real estate extends the time for the payment of the mortgage debt, the effect of such agreement is to release the grantor and original mortgagor from liability to the extent of the value of the mortgaged property at the time of the extension.[3]

An interesting phase of the question as to when a mortgagor is released arises when the mortgaged real estate has been sold to one who assumes and agrees to pay the mortgage debt, and at the grantee's request and without the mortgagor's consent a portion of the real estate is released from the mortgage lien.

Under the English rule (followed by the Connecticut Supreme Court) there remains no personal liability against the mortgagor. Almost all of the courts in other jurisdictions hold that the English rule goes further than is necessary for the protection of the mortgagor. The sound and reasonable

[3] Mutual Benefit Life Insurance Co. v. Lindley (1933), 97 Ind. App. 575, 585.

rule seems to be that the personal liability of the mortgagor is released to the extent only to which he is injured. One of the leading cases[4] announced this latter rule and good reasons supporting it as follows

> "It is certainly the duty of the mortgagee not to release any security which he may hold, if the mortgagor is thereby exposed to personal liability for the debt secured, which he would not otherwise incur. Where the mortgagor conveys the equity of redemption, upon the contract that the purchaser shall pay the mortgage debt, or under such circumstances that the purchaser must pay it if he would protect his property, the mortgagor has the right to have the mortgaged property applied to its payment. If there are several parcels of land included in one mortgage, the mortgagor cannot complain if the mortgagee release one or more of them for the benefit of those who may own the equities of redemption therein, if the mortgagee is satisfied to rest upon the security thus diminished, but the mortgagor is entitled to complain, if, having provided the mortgagee with sufficient security, such security is released, if thereby a personal liability to pay the debt is permitted to remain upon him, while the means which he has provided for meeting it have been disposed of. But it is not easy to see why he has any just ground of complaint beyond the extent to which he is thus injured. * * * But he should not be further discharged than this, as he thus receives full indemnity for all the injury he can sustain."

Bearing in mind that our Indiana decisions clearly adhere to the principle that when the grantee of mortgaged real estate expressly assumes and agrees to pay the mortgage debt, the grantee becomes the principal debtor and the mortgagor becomes his surety, it is easy to see that the rule stated in the Massachusetts case, supra, is the correct rule in Indiana. In the case of *Southern Surety Company v. Merchants &c. Bank* (1931) 203 Ind. 173, the court at page 199 restates and applies the well-established rule that, —"The surety is discharged where collateral securities held by the creditor are voluntarily returned without the consent of the surety, at least to the value of such collateral securities." Applying this rule which obtains in the principal-surety relationship to the set of facts relating to the sale of mortgaged real estate, it seems to be a sound conclusion to say that when an original mortgagor

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4 Worchester Savings Bank v. Thayer, 136 Mass. 458.

of real estate has conveyed the real estate to a third person who assumes and agrees to pay the indebtedness secured by the mortgage and then the mortgagee releases a part of the real estate from the lien of the mortgage without the consent of the original mortgagor, the effect on the personal liability of the original mortgagor is that he is discharged from such personal liability to the extent of his injury, that is, to the extent of the value of the land released from the mortgage lien.

With the coming of the Uniform Negotiable Instruments Act a few courts which had formerly held that the mortgagor was completely discharged from personal liability where the mortgagee entered into a valid contract of extension of time for the payment of the mortgage with the assuming grantee, and without the mortgagor's consent, reversed their position because of their interpretation of the provisions of Sections 119 and 120 of the Act. They did this upon the theory that Section 119 of the Act provides five instances in which a negotiable instrument is discharged and that the extension of time for payment was not included. However, these decisions are severely criticized by other courts which hold that Section 119 is not all inclusive but merely sets forth five additional ways in which a negotiable instrument may be discharged. This criticism is justified, particularly in view of the language of Section 196 of the Uniform Act which provides that "in any case not provided for in this Act the rules of the law merchant shall govern." By the law merchant a discharge of the mortgagor from personal liability on the obligation is allowed where there occurs a valid extension of time by the mortgagee to the assuming grantee, where the mortgagee knows of the assumption and the mortgagor does not consent thereto.

In the recent decision from our Indiana Appellate Court which we have mentioned (*Mutual Benefit Life Insurance Co. v. Lindley,* 97 Ind. App. 575), the appellant contended that the question of discharge from liability should be governed by the Uniform Negotiable Instruments Act and that the Section 119 of the Act provides the only methods by which appellee (the mortgagor) could be discharged. Our court in commenting upon that contention does not refer to the significance of

Section 196 but refused to consider the Negotiable Instruments Act as pertinent, saying,—

> "This contention can not prevail where the facts are such as are disclosed by the complaint herein, as the obligations and rights of the parties are controlled by the principles of equity heretofore discussed in this opinion, and not by the provisions of the act sought to be invoked."

WHEN PERSONAL JUDGMENT MAY BE RENDERED AGAINST PURCHASER OF MORTGAGED REAL ESTATE

The acceptance of a deed which states that the conveyance is *subject* to a mortgage held by a third party does not render the grantee personally liable for the mortgage debt. It is competent, however, to establish by evidence that a grantee who has taken title *subject* to a mortgage is nevertheless personally liable for the payment of the mortgage debt. The personal liability may be established by proof of a collateral agreement, verbal or written, which the purchaser has made with his vendor, the mortgagor. It is held proper to prove such a collateral agreement, and particularly when the consideration recited in the deed is "one dollar and other valuable considerations."[5]

The proof required to establish a collateral parol agreement to assume the mortgage debt must be clear and convincing. It is noted in this connection that by the strong weight of authority the admission of this proof does not violate the parol evidence rule nor the statute of frauds. The real consideration for a deed of conveyance may be shown by parol evidence, although different from that stated in the deed.[6]

If the words used in the deed are such as to leave doubt as to whether the grantee has assumed the mortgage debt, evidence is admissible to aid in construing the deed; and to that end evidence may be introduced to show the value of the real

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[5] Enns-Halbe Co. v. Templeton (1931), 101 Fla. 601, 135 So. 135; Dickman v. Wasler (1933), 114 N. J. Eq. 382, 168 A. 582; Clark v. Henderson (1932), 62 N. D. 503, 244 N. W 314.

[6] Gregory v. Arms (1911), 48 Ind. App. 562, 574.

estate, the real consideration, and what amount if any the grantee has retained to pay the debt. If the purchaser of mortgaged real estate as a part of the purchase consideration has verbally promised the grantor to pay the mortgage debt, and the grantor continues personally liable for the debt, it is well settled that the holder of the mortgage can sue the grantee to enforce the latter's personal liability and in that event the grantee's promise is not within the Statue of frauds.[7]

There is conflict of authority in the various jurisdictions as to whether a grantee assuming a mortgage debt can be held personally liable when the grantor is no longer personally liable. The Indiana rule is that the purchaser assuming the mortgage is personally liable regardless of whether his grantor is personally liable or not, this being on the basis that the personal liability of the grantee depends upon his own contract, and not upon the liability of his grantor.[8]

Indiana is one of several States adhering positively to the soundness of the principle known as the third party beneficiary doctrine. However, in applying the rule, our Supreme Court holds that a contract cannot be sued upon by a third person unless the contract clearly evidences a distinct intention to benefit such third person.[9]

In view of the very strict test applying when the effort is made to apply the third party beneficiary doctrine, it follows that only in rare instances can it be shown that a purchaser assumed a mortgage debt with intent to benefit primarily the holder of the mortgage. The real estate deed is usually prepared by the grantor or by some one for him. The assumption covenant is usually inserted to relieve the grantor, so far as possible, from his own personal liability. Consequently, in actual experience it is seldom that the practitioner is called upon to draft an assumption clause to evidence an intention to primarily benefit the holder of the mortgage. The mere fact

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7 Hauser v. George (1934), 100 Ind. App. 346; Harvey v. Lowry (1932), 204 Ind. 93, 97.

8 Birke v. Abbott, 103 Ind. 1.

9 Irwin's Bank v. Fletcher Trust Co., Receiver, 195 Ind. 669, 692; Reynolds v. Louisville &c. Ry. Co., 143 Ind. 579, 629.

that the third party (holder of the mortgage) derives an incidental benefit from the performance of the promisor, does not give the third party the right to sue upon the contract resulting when a purchaser of real estate has assumed an existing mortgage.[10]

In view of the fact that it is so seldom that a deed conveying mortgaged real estate is so written as to show definitely a purpose on the part of the purchaser to make his assumption of the mortgage as a benefit expressly for the holder of the mortgage, it follows that the practical method of determining the purchaser's personal liability is to apply the equitable subrogation doctrine. This is to measure the rights of the parties according to the principal-surety relationship of the parties. When mortgaged real estate is being sold, the vendor who has signed the mortgage and note generally wants his purchaser to expressly assume the mortgage debt. In this manner, as stated before, the purchaser becomes primarily liable as principal and the mortgagor only a surety for the payment of the debt. The mortgaged property, however, as between them is the primary fund for the payment of the debt. If the purchaser fails to pay the debt when it matures, the mortgagor can himself pay it and then be subrogated to all the rights of the mortgagee and may hold it and enforce it as against the rights of the purchaser. If the real estate encumbered by the mortgage is re-sold by the first purchaser or is acquired by successive grantees, the same rights of subrogation are granted by law to the party who pays the debt in discharge of his personal obligation to do so. It is held, however, that there is no personal liability against a remote grantor if there has been a break in the continuous chain of the principal-surety relation.[11]

WHEN PURCHASER OF MORTGAGED PROPERTY IS RELEASED FROM PERSONAL LIABILITY

If the mortgagee voluntarily discharge the mortgagor from personal liability, his lien upon the mortgaged premises is not

[10] Harvey v. Lowry, 204 Ind. 93, 101.
[11] Harvey v. Lowry, 204 Ind. 93, 101.

affected, nor does he discharge the mortgage as against a subsequent grantee assuming the debt.

Such a release of personal liability is sometimes made when the mortgagor has sold the real estate to another who has assumed the payment of the debt, and the mortgagee is willing to look to the latter and the property for the satisfaction of his claim. It is important of course to use words in the release indicating clearly that it is the personal liability only which is being released. If the release is general in its terms and without limitation it may be a complete discharge of the mortgage debt.

As between the original parties, the release of a part of the mortgaged real estate does not affect the mortgagee's lien upon the residue. This is bound for the whole debt. But as against others who have liens upon portions of the mortgaged premises, a mortgagee with notice of such liens has no right to release any portion of the mortgaged real estate to the injury of the owners of such liens. The release or transfer to the mortgagee must take place at some time subsequent to the execution of the mortgage and not contemporaneously therewith. The mortgagee in such a case occupies a position similar to that of a purchaser at a foreclosure sale. Such a transaction although binding between the parties, can not affect the rights of a subsequent lien holder who has the privilege of redeeming. It is certainly always more advisable for a mortgagee to acquire the mortgagor's interest by deed of conveyance rather than by release. Some courts hold that the mortgagee can not acquire a fee simple title except when it is conveyed by a formal deed of conveyance and without any condition permitting redemption.

A question sometimes arises following a mortgage foreclosure as to whether the mortgagee can maintain an action and recover judgment against the mortgagor for taxes or insurance previously advanced by the mortgagee to protect his interest in the real estate. The authorities hold that such an independent action can not be maintained. The rule is that any such payment if enforceable at all against the real estate must be collected only in connection with and because of the mortgage and can not be maintained against the mortgagor independent of the mortgage. Pennsylvania holds to the contrary.

In Indiana our Appellate Court has held that the holder of a sheriff's certificate of sale can not during the year of redemption pay the accruing taxes on the land sold at sheriff's sale and thereby obtain a lien on the land for the amount of the taxes paid.[12]

RECENT STATE STATUTES CONCERNING DEFICIENCY JUDGMENTS

Throughout the States generally the recent moratorium statutes have been either sustained or rejected, according to the reasonableness of the particular statute in regard to the period of extension granted. The principal case involving the validity of such a statute is the Minnesota case decided by the U. S. Supreme Court in January, 1934.[13] One of the provisions of the Minnesota statute was that "no action shall be maintained in this State for a deficiency judgment until the period of redemption as allowed by existing law or as extended under the provisions of this Act, has expired." The majority opinion by Chief Justice Hughes upholds the constitutionality of the statute upon five grounds—(1) An emergency existed in Minnesota which furnished a proper occasion for the exercise of the reserved power of the State to protect the vital interests of the community. (2) The legislation was addressed to a legitimate end, not for the mere advantage of particular individuals, but for the protection of a basic interest of society. (3) The mortgage was of unquestioned validity and the relief afforded by the statute was justified by the emergency and did not contravene the contract impairment provision of the Constitution. (4) The equity of redemption is the creature of equity and the legislation permits the courts to alter or extend the statutory period of redemption within reasonable limits and upon equitable terms; and the contract clause is not an absolute and utterly unqualified restriction of

12 Government Building & Loan Institution v. Richards, 32 Ind. App. 24.

13 Home Building & Loan Association v. Blaisdell, 290 U. S. 398.

the State's protective powers. (5) The legislation is temporarily in operation and is definitely limited to the exigency which called it forth; one provision of the statute being that the extended period for redemption may be reduced if a change in circumstances should develop.

Moratorium statutes in the several States in which they have been enacted contain various provisions respecting deficiency judgments. Statutes of this nature have been upheld in New York and Alabama upon the authority of the U. S. Supreme Court decision in the Minnesota case. Similar moratorium statutes have been held invalid in Arkansas, California, New Jersey, Texas, Georgia and Arizona.

A statute in Arkansas provided that in foreclosure proceedings the mortgaged property should be considered to be of the value of the loan, irrespective of the amount which might be realized at the sale, thus in effect abolishing deficiency judgments. It was held to violate the obligations of pre-existing mortgage contracts.[14]

A statute in California limited recovery to the difference between the amount of the debt and the fair market value of the real estate at the time of the sale. The Act was declared to be unconstitutional.[15]

An Act of the same State precluding the right to a deficiency judgment on a mortgage obligation unless notice of breach and an election to sell was recorded one year before the sale was held invalid if retroactively applied.[16]

An Act of New Jersey which provided for the deduction of the fair market value from the debt, was invalidated as to pre-existing contracts.[17]

A later statute of New Jersey provided for similar relief to mortgagors, but limited its operation to July 1, 1938, and declared that a serious public emergency existed. Nevertheless it also was held to be invalid.[18]

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[14] Adams v. Spillyards, 187 Ark. 641, 61 S. W (2d) 686, 86 A. L. R. 1492.

[15] Bennett v. Superior Court of Los Angeles County, 5 Cal. App. (2d) 13, 42 P. (2d) 80.

[16] Brown v. Ferdon, 5 Cal. App. (2d) 226, 42 P. (2d) 712.

[17] Vanderbilt v. Brunton Piano Co., 111 N. J. Law 596, 169 A. 177, 89 A. L. R. 1080.

[18] Sayre v. Duffy, 13 N. J. Misc. 458, 179 A. 459.

A statute in Texas provided that where the mortgagor could show that the property was sold on foreclosure for less than its actual value there should be allowed on the deficiency judgment a credit of the difference between the actual value and the sale price. The court declared it unconstitutional.[20]

Georgia enacted a law precluding the entry of a deficiency judgment unless the foreclosure sale was confirmed on a finding that the property brought its true market value. As to mortgages executed before its passage, the Act was held invalid.[21]

An Act of Arizona took away the right to a deficiency judgment unless the mortgagee was able to prove that the value of the property when the mortgage was executed was not in excess of the amount remaining due on the debt after the foreclosure sale, or that the depreciation in value was caused by some act of the mortgagor; in other words, if he established such proof he could recover a deficiency judgment for the difference between the value of the property when the mortgage was given and the amount due on the debt. This Act was declared unconstitutional.[22]

In New York the Act provided for a stay of foreclosure suits for about a year, conditioned on interest and taxes being paid. It also provided for a deficiency judgment to be fixed at the time of confirmation of the sale, allowing a credit for the market value of the property as determined by the court, or the sale price, whichever might be the higher.[23]

In Conclusion

During these recent years that have brought the enormous increase in the number of mortgage foreclosures and in many instances burdensome deficiency judgments, numerous and varied ideas have been advanced to protect against misfortunes of this nature. The opinion by Chief Justice Hughes in the Minnesota case establishes the validity of a moratorium statute which is based solely upon the power of the legislature

20 Langever v. Miller, 124 Tex. 80, 76 S. W (2d) 1025, 96 A. L. R. 836.
21 Atlantic Loan Co. v. Peterson, 181 Ga. 266, 182 S. E. 15.
22 Kresos v. White, Supt. of Banks, — Ariz. —, 54 P (2d) 800.
23 Klinke v. Samuels, 264 N. Y. 144, 190 N. E. 324.

to afford relief of a temporary nature in an emergency period of economic stress. The great importance of the principle involved in the Minnesota case was aptly stated by Justice Sutherland at the outset of his dissenting opinion when he said: "Few questions of greater moment than that just decided have been submitted for judicial inquiry during this generation."

Aside from the legal phase of the deficiency judgment question and the constitutional question presented when the Legislature of a State undertakes to restrict or limit the right to recover such a judgment, a suggestion now advanced by some writers is that parties to a real estate mortgage transaction should themselves in the instrument itself agree that the recovery in event of default be limited to the real estate security. Parties of course have the right to enter voluntarily into such a contract, but as a practical business matter this could hardly be expected. The inevitable result, even if such an altruistic plan could be widely adopted, would be the slowing down of business transactions of this nature which in any manner depend upon real estate mortgage loans. There is little likelihood that many individuals and corporations engaged in the business of loaning money on real estate security would feel justified in agreeing to waive the right to enforce judgments for deficiencies.

Our statutory procedure in Indiana relating to real estate foreclosures is a model in some respects, but in the opinion of the writer the statute could be improved by the addition of at least one further protection to the mortgage-debtor. Inasmuch as the present 1931 statute provides that there shall be no redemption after the foreclosure sale, it would be a reasonable safeguard to require a written report and confirmation of every sheriff's sale *in which the purchase price is less than the total of the mortgage debt.* This would give the debtor one last opportunity to prevent a confirmation of the sale by proving to the court's satisfaction inadequacy of price or other sufficient reasons for disapproval of the sale. Such a change would necessarily eliminate the present provision of the statute requiring the foreclosure sale to be without relief from valuation or appraisement laws; and such a change in the statute might perhaps have the effect of discouraging bidding at the sale.

The purpose of this paper, however, is not so much to advocate this amendment of the statute as it is to suggest to fellow practitioners the care that should be exercised in advising parties to a real estate mortgage transaction of their rights and liabilities, many of which are not usually well known to the clients who participate.