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The Recovery Program

North Dakota Law Review Associate Editors

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THE RECOVERY PROGRAM

We use, as editorial expression this month, the language of Dean Clark of the Yale Law School. It is the closing paragraph to a very fine statement by Dean Clark in the May issue of the American Bar Association Journal. In that same issue will be found three other articles dealing with the legal aspects underlying the national recovery legislation, expressing various points of view. The other articles are by Hal H. Smith, general counsel of the Michigan Manufacturers Association, David L. Podell, co-author of the National Recovery Act, and Frederick H. Wood, member of the New York Bar.

Dean Clark, after leaving the impression that he may not be in sympathy with such legislation, from the standpoint of its desirability, takes the ground that questions of constitutional validity should not be clouded by one's personal inclinations. We agree, not only on that point, but with the whole attitude of the Dean's article. It expresses, in more forceful, logical and finely reasoned order, what we have endeavored to express on several occasions when writing of the recovery legislation for these columns.

NORTH DAKOTA DECISIONS

Burrows vs. Paulson: (Mortgages, Deficiency, Remedy). In 1933 plaintiff agreed to sell and convey a quarter of land to defendant for \$4,000. \$500 was paid in cash, the remainder being evidenced by promissory notes, secured by mortgage on the conveyed premises. A clause in the mortgage made the mortgagor personally liable to the mortgagee and his assigns for the debt, a clause specifying same to be enforceable "by all remedies of law applicable to the collection of debt without respect to the sufficiency of the mortgage security to pay and discharge" the debt. The parties being in doubt as to the meaning and effect of N. D. mortgage laws, then on the books or to be enacted, added this further provision: that, in case the mortgagor could not be held personally liable, or held for the deficiency, the contract might be cancelled. With the passage of Chapter 155, 1933 Laws, which states, "and the court shall have no power to render a deficiency judgment . . . Nothing herein shall be construed to postpone or affect any remedy the creditor may have against any party personally liable for the mortgage debt other than the mortgagors and their grantees," plaintiff construed this to exempt the mortgagor from personal liability, gave notice of cancellation, tendered back the purchase money, and refused to accept the note and mortgage. HELD: This (Chapter 155) is a procedural statute; its whole effect is to relegate a mortgagee foreclosing to an action at law to recover any deficiency after sale; a mortgage is merely a lien; Chapter 155 refers only to the foreclosure proceedings; it does not affect the mortgagor's personal liability, nor the remedies of the mortgagee for any deficiency.

Baird, as Receiver, vs. Herr: (Notes, Extension, Waiver, Statute of Limitations). Defendant and one C. G. H. made a promissory note to the Bank in 1923, in sum of \$1,500. The note stated, "The several makers, signers, guarantors, and endorsers hereof hereby waive presentment, demand, notice of dishonor and protest, and consent that the time of payment may be extended or this note renewed without affecting their liability thereon." Defendant made no payments, but C. G. H. did, such payments continuing until some time in 1927. Thereafter C. G. H. died, and his administrators gave a new note for the balance due,