

MORTGAGES

CHAPTER 164

S. B. No. 226—(Whelan)

PERMITTING CROP MORTGAGES CERTAIN CASES

An act to amend and re-enact Section 2 of that certain initiated law entitled "An act declaring mortgages on growing and unharvested crops to be against the public policy of the State, and abolishing the same," approved and adopted by the electors at the June 29th, 1932 primary election; as amended by Chapter 150 of the Session Laws of North Dakota for the Year 1933, repealing all acts or parts of acts in conflict and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 2 of said initiated law as amended by Chapter 150 of the Session Laws of the State of North Dakota for the year 1933, be amended and re-enacted to read as follows:

§ 2. That all mortgages on growing and unharvested crops are abolished, and that any and all mortgages on growing and unharvested crops hereafter taken shall be held null and void and of no effect; provided, however, that the provisions of this act shall not apply to any mortgage or lien in favor of the United States, the State, any county or any department or agency of either thereof, including the bank of North Dakota; nor to any mortgage taken or given as security for money advanced or loaned, for the purpose of paying government crop insurance premiums.

§ 2. All acts or parts of acts in conflict herewith are hereby repealed.

§ 3. EMERGENCY.] This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 15, 1939.

CHAPTER 165

S. B. No. 40—(Thatcher, Young, Guthrie, Lemke and Morrison)

MORATORIUM FROM FORECLOSURES AND EVICTIONS

An act providing for relief in certain cases during the emergency declared to exist, from foreclosure of mortgages or other liens on real estate, and execution sales of real estate, and cancellation of contracts for the sale of real property, eviction of tenants from real estate, and for postponing certain sales and extending the period of redemption from certain sales, and relating to the jurisdiction and procedure for such relief, and for the right to possession during the extended period, and limiting the right to emergency actions for deficiency judgment, and for extending the expiration of certain periods of redemption to thirty days after the passage of this act; and providing that the act shall not be applicable in certain cases set forth in this act; repealing all acts inconsistent herewith and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. In any proceeding for the foreclosure of any mortgage or other lien upon real property, or the cancellation of any contract for the sale of real estate by advertisement or publication of notice, the mortgagor, lienee or assignee of either, or the owner in possession of such property, or any one claiming under said mortgage or lienor, or any one liable for the mortgage debt, or the vendee or his assignee of such contract for the sale of said premises, may, at any time after the publication of notice for the foreclosure of such mortgage or other lien, or the cancellation of a contract, apply to the court of the county wherein such proceedings are being had, or are pending, by filing with the court his affidavit, setting forth such reasons, consistent with the provisions of this act, as the party applying for such order may have for postponement thereof, with a prayer that the foreclosure or cancellation, if any, shall be had by action in the court. If it appears to the court that granting of the relief, as prayed for in such affidavit, would be equitable and just, then and in that event the foreclosure or cancellation proceedings by advertisement or publication of notice may be postponed by the court by ex parte order, which may be served upon the attorney or agent of the mortgagee or assignee, or vendor or assignee, or upon the party foreclosing or cancelling said contract, and the party seeking to foreclose such mortgage or other lien, or cancel such contract, shall proceed, if at all, to foreclose such mortgage or other lien, or cancel said contract, by action in the court of the county having jurisdiction thereof and shall tax as a part of the costs in said action the expense incurred in publishing such notice.

§ 2. When any mortgage or other lien has been foreclosed by action, the court shall, on the coming in of the report of sale, on the request of any party who has been personally served with a

summons or who has appeared, cause notice of hearing thereon to be served on the parties to the action, who have appeared, and fix the time and place for hearing on said report. Before granting an order confirming said sale, the court shall, if it appears upon due examination that the sale price is unreasonable and unfairly inadequate, or that justice has otherwise not been done, order a re-sale. If the sale is confirmed, the sheriff or his deputy shall forthwith execute and deliver the proper certificate of sale, which shall be recorded within twenty days after such confirmation. Upon the hearing of the motion for an order confirming the sale of the premises involved in the foreclosure of mortgages or other liens by action, in case the evidence is insufficient to establish a fair and reasonable market or rental value of such property, the court shall receive any competent evidence, including evidence tending to establish the actual value of the property involved in such mortgage foreclosure proceedings for the purpose or purposes for which said property is or can be used. The court shall also receive any evidence tending to show to what extent, if any, the property has decreased in actual or market value by reason of the economic conditions existing at the time, or prior to such sale.

§ 3. When any judgment has been entered for the cancellation of a contract for the sale of real estate, or eviction or ejection of any tenant from the possession of real estate, the court having jurisdiction thereof shall, at the request of any party to the action, cause notice of hearing to be served upon the parties thereto, who have appeared therein, to show cause, if any they have, why a stay of execution should not be granted. Before granting such request on the part of any party to said action, the court having jurisdiction thereof shall receive any competent evidence of the reasonable rental value of said property, taxes levied and assessed against the same, the interest on the indebtedness, if any, due thereon, and the purpose or purposes for which said property is or can be used.

§ 4. (a) In case the parties to any such foreclosure action, or other action heretofore set forth in this act, shall agree in writing upon terms of compromise settlement thereof, or of composition of the mortgage or other indebtedness, or both, the court shall have jurisdiction and may by its order confirm and approve such settlement or composition, or both, as the case may be.

(b) The court shall have the same jurisdiction to postpone the enforcement of judgment by execution sale, or to order re-sale, or give other relief where such judgment is rendered in an action to collect a debt or obligation secured by real estate mortgage or other lien, the foreclosure of which might be effected under the terms of this act, as is conferred by this act, with regard to the mortgage or other lien, or the cancellation of a contract, or the enforcement of an obligation for rent.

§ 5. Where any mortgage or other lien upon real estate has

been foreclosed and the period of redemption has not yet expired, or where sale is hereafter had in the case of real estate mortgage or other lien foreclosure proceedings, now pending, or which may hereafter be instituted, prior to the expiration of two years from and after the passage and approval of this act, or upon the sale of any real property under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter within two years from and after the passage and approval of this act, the period of redemption may be extended for such additional time as the court may deem just and equitable, but in no event beyond July 1, 1941; or where stay of execution has been granted against the cancellation of a contract or the ejectment of a tenant from premises, for such additional time as the court may deem just and equitable, but in no event beyond July 1, 1941. Provided that the mortgagor or the owner in possession of said property in the case of mortgage foreclosure proceedings, or the lienor or person in possession of said property in the case of foreclosure of such a lien, or the judgment debtor in the case of sale under judgment or execution, or the tenant in case of judgment of eviction, or the vendee in case of a contract of sale of real property, shall, prior to the expiration of the period of redemption, or in case of judgment or eviction or cancellation of land contract within the period of time described in Section 4 hereof, apply to the court having jurisdiction of the matter, on not less than ten days written notice to the mortgagee, the lienee, judgment creditor or plaintiff, or the attorney of either as the case may be, for an order determining the reasonable value of the income of said property, or if the property has no income then the reasonable rental value of the property involved in such sale, cancellation or eviction, and directing and requiring such mortgagor, lienor, vendee, tenant or other judgment debtor to pay all or a reasonable part of such income or rental value in or toward the payment of taxes, insurance, interest, mortgage, or judgment indebtedness, at such time and in such manner as shall be fixed and determined and ordered by the court; provided, however, that in fixing the rental value of farm lands, the court shall thereupon hear said application and after such hearing shall make and file its order directing the payment by such mortgagor, lienor, vendee, tenant or judgment debtor of such an amount, at such times and in such manner as to the court shall, under all circumstances, appear just and equitable, and provided that upon the service of notice or demand aforesaid, that the running of the period of redemption shall be tolled until the court shall make its order upon such application. Provided, further, however, that if such mortgagor, lienor, vendee, tenant, or judgment debtor or personal representative shall default in the payments, or any of them, in such order required on his part to be done, or commits waste, his right of redemption from said sale shall terminate thirty days after such default, and holders of subse-

quent liens may redeem in the order and manner now provided by law beginning thirty days after the filing of notice of such default with the clerk of court, and his right to possession shall cease, and the party acquiring title to such real estate shall then be entitled to immediate possession of said premises. If default is claimed by allowance of waste, such thirty day period shall not begin to run until the filing of an order of the court finding such waste. Provided, further, that the time of redemption from any real estate mortgage or other lien foreclosure, or judgment, or execution sale heretofore made which otherwise cannot expire less than thirty days after the passage and approval of this act, shall be, and the same hereby is extended to a date thirty days after the passage and approval of this act, and in such case the mortgagor, lienor, vendee, tenant or judgment debtor, or the assignee or personal representative of either, as the case may be, or the owner in possession of the real property may, prior to said date, apply to said court for, and the court may thereupon grant, the relief as hereinbefore and in this section provided. Provided, further, that prior to July 1, 1941, no action shall be maintained in this State for a deficiency judgment until the period of redemption, as allowed by existing laws or as extended under the provisions of this act, has expired; provided, however, that the provisions of the act shall not be construed as a repeal of Chapter 155 of the Session Laws of 1933 or any other similar enactment.

§ 6. Upon application of either party, prior to the expiration of the extended period of redemption as provided for in this act, and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise and alter said terms in such manner as the changed circumstances and conditions may require.

§ 7. The trial of any action, hearing or proceedings mentioned in this act shall be held within twenty days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during vacation of the court, and the order of the court shall be filed within five days after trial or hearing. No more than five days' stay shall be granted, and review by the Supreme Court may be had by certiorari, if application for the writ shall be made within 15 days after the filing of such order.

§ 8. Every law and all the provisions thereof now in force insofar as inconsistent with the provisions of this act, are hereby suspended until July 1, 1941. No extension of the period for redemption, nor any postponement of sale judgment on execution shall be ordered or allowed under this act which would have the effect of extending the period of redemption or enforcement of judgment beyond July 1st, 1941.

§ 9. This act as to mortgage or other lien foreclosures shall apply only to mortgages or contracts or liens made prior to the passage and approval of this act, but shall not apply to mortgages, liens, contracts or leases made prior to the passage of this act which shall hereafter be renewed or extended for a period ending more than one year after the passage of this act. Neither shall this act apply in any way which would allow a re-sale, stay, postponement, or extension to such time that any right might be adversely affected by the statute of limitations.

§ 10. The provisions of this act shall not apply to any mortgage, lien, contract or lease while such mortgage is held by the United States or any agency, department, bureau, board, instrumentality or commission thereof, as security or pledge of the maker, its executors or assigns, nor shall the provisions of this act apply to any mortgage holder as security or pledge to secure payment of a public debt, or to secure payment of the deposit of public funds, nor shall the provisions of this act apply to notes and obligations incurred under Title I and to insure mortgages issued under Title II of the National Housing Act, including the Land Bank Commissioner, a Federal Land Bank, a Federal Intermediate Credit Bank, a Production Credit Association, a Bank for Co-operatives, and a Regional Agricultural Credit Corporation.

§ 11. It is hereby declared that if any of the provisions of this act in any manner contravenes the provisions of the Constitution, the remaining provisions would have been enacted by this Legislative Assembly even though such provisions had been eliminated from the act. Hence, if any of the provisions are found to be violative of the Constitution, the remaining provisions shall not be affected by such invalidity, but shall remain in full force and effect.

§ 12. This act is declared to be an emergency measure and shall take effect from and after its passage and approval.

Approved March 15, 1939.