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**The Law of Hard Times: Debtor and Farmer
Relief Actions of the 1933 North
Dakota Legislative Session**

by

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THE LAW OF HARD TIMES: DEBTOR AND FARMER RELIEF ACTIONS OF THE 1933 NORTH DAKOTA LEGISLATIVE SESSION

SARAH M. VOGEL*

I. INTRODUCTION

The 1930's were not only times of economic, political, and social upheaval; they were also times of legal upheaval. Pushed by the chaotic conditions of the economy, state legislatures throughout the country tried dramatic new approaches in the area of debtor-creditor relations. In particular, states focused upon the exceptionally severe problems in the agricultural sector.¹ A large number of the states adopted some kind of foreclosure moratorium relief in 1933.² North Dakota, an intensely agricultural state, was

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1. Comment, *Governmental Action on Farm Mortgage Foreclosures*, 1 GEO. WASH. L. REV. 500, 500-01 (1933).

2. Comment, *Mortgage Moratoria Statute Sustained by Supreme Court*, 2 GEO. WASH. L. REV. 486, 487 (1934). States passing some type of moratorium relief included: Arizona (*see* Act of Mar. 4, 1933, ch. 29, 1933 Ariz. Sess. Laws 57 (repealed 1937)); Arkansas (*see* Act of Feb. 9, 1933, No. 21, 1933 Ark. Acts 47 (codified as amended at ARK. STAT. ANN. §§ 51-1115 to -1119 (1971))); California (*see, e.g.*, Act of Mar. 10, 1933, ch. 30, 1933 Cal. Stat. 307 (repealed 1955)); Idaho (*see* Act of Mar. 2, 1933, ch. 124, 1933 Idaho Sess. Laws 192); Illinois (*see* Act of Apr. 11, 1933, 1933 Ill. Laws 717); Iowa (*see* Act of Feb. 8, 1933, ch. 192, 1933 Iowa Acts 211); Kansas (*see* Act of Mar. 20, 1933, ch. 232, 1933 Kan. Sess. Laws 357); Michigan (*see* Act of June 2, 1933, No. 98, 1933 Mich. Pub. Acts 134); Minnesota (*see* Act of Apr. 18, 1933, ch. 339, 1933 Minn. Laws 514); Montana (*see* Act of Mar. 14, 1933, ch. 116, 1933 Mont. Laws 250); Nebraska (*see* Act of Mar. 2, 1933, § 20-21, 159, 1933 Neb. Laws 79); New Hampshire (*see* Act of June 15, 1933, ch. 161, 1933 N.H. Laws 227); New

hit harder by the Depression than most other states.³ Due to a unique combination of political and economic forces, North Dakota had perhaps the most unusual legislative session of any state in 1933.

In the fall of 1932, the voters of North Dakota elected a group of impoverished farmers⁴ to the state house of representatives and senate and elected William Langer⁵ as governor. This Article concerns the actions proposed and taken in 1933 by the house, senate, and Governor Langer to deal with the crushing impact of the economy on the agricultural sector. Part II describes the economic and political situation in 1933. It also lists the various bills that were proposed and sometimes adopted to deal with the issues of foreclosure, debt, and low farm prices. Parts III, IV, V, and VI concern a discussion of four of the more significant bills that were enacted. Those bills included the authorization of a grain embargo, extension of the right of redemption, authorization of the courts to delay foreclosures while farm prices were below the cost of production, and a law prohibiting deficiency judgments. Part VII

Jersey (*see* Act of Mar. 29, 1933, ch. 82, 1933 N.J. Laws 172); New York (*see* Act of Aug. 26, 1933, ch. 793, 1933 N.Y. Laws 1615); North Carolina (*see* Act of Apr. 18, 1933, ch. 275, 1933 N.C. Sess. Laws 401 (codified as amended at N.C. GEN. STAT. §§ 45-21.34 to -21.37 (1976))); Ohio (*see* Act of May 15, 1933, No. 87, 1933 Ohio Laws 227); Oklahoma (*see* Act of Mar. 7, 1933, ch. 56, 1933 Okla. Sess. Laws 198); Pennsylvania (*see* Act of May 18, 1933, No. 137, 1933 Pa. Laws 826); South Carolina (*see* Federal Land Bank of Columbia v. Garrison, 185 S.C. 255, 258, 193 S.E. 308, 310 (1937) (citing Act of May 2, 1933, 1933 S.C. Acts 350)); South Dakota (*see* Act of Mar. 11, 1933, ch. 135, 1933 S.D. Sess. Laws 132 (codified as amended at S.D. CODIF. LAWS ANN. §§ 21-48-1; 21-48-9 (1979))); Texas (*see, e.g.*, Act of Mar. 4, 1933, ch. 17, 1933 Tex. Gen. Laws 37); Vermont (*see* Act of Mar. 24, 1933, ch. 98, 1933 Vt. Acts 420); West Virginia (*see* Act of Feb. 14, 1934, ch. 45, 1933 W. Va. Acts 2d Spec. Sess. 84); Wisconsin (*see* Act of Feb. 14, 1933, ch. 11, 1933 Wis. Laws 167).

3. *See* E. ROBINSON, HISTORY OF NORTH DAKOTA 400 (1966). In 1933, per capita income for the United States was \$375, but in North Dakota it was only \$145. By 1938, per capita income for the United States was \$527, but in North Dakota it was only \$278. *Id.*

4. *See* Preface to 1933 N.D. HOUSE JOUR. In the house, there were 80 members whose sole occupation was "farmer" or "rancher," but only two practicing lawyers. *Id.* (listing occupations of members of the house). The house set precedent by electing its only woman member, Minnie D. Craig, a housewife from Esmond, to be Speaker. The vote electing her was 101 to 11. *Id.* at 4-8.

5. Anhalt & Smith, *He Saved the Farm? Governor Langer and the Mortgage Moratoria*, N.D.Q., Autumn 1976, at 7. Langer was one of only two Republican governors elected west of the Hudson River in 1932. *Id.* at 7. Langer's career in North Dakota public office spanned forty-five years. He was Morton County state's attorney (1915-16), North Dakota attorney general (1917-21), governor (1933-34; 1937-38), and United States senator (1941-59). Larson, *United States v. Langer, et al.: The United States Attorney's Files*, NORTH DAKOTA HISTORY, Spring 1984, at 5.

Langer's terms as governor were particularly tumultuous. During the early summer of 1934, for example, Langer and certain co-defendants (including the author's grandfather, Frank A. Vogel) were charged with a conspiracy to defraud the federal government of \$469.50 by soliciting subscriptions to the Non-Partisan League newspaper, *The Leader*, from federally paid employees. E. ROBINSON, *supra* note 3, at 410. The jury convicted Langer, and he was sentenced to 18 months in the federal penitentiary and fined \$10,000. *Id.* Nevertheless, the voters nominated him for reelection by a vote of 113,000 to 47,000 only 10 days after his conviction. A. GEELAN, THE DAKOTA MAVERICK (1975). Lieutenant Governor Ole Olson successfully sued to force Langer from office because he was a felon. *See* State *ex rel.* Olson v. Langer, 65 N.D. 68, 256 N.W. 377 (1934). Langer appealed to the Eighth Circuit Court of Appeals where the conviction was overturned on May 7, 1935, due to lack of evidence. *See* Langer v. U.S., 76 F.2d 817 (8th Cir. 1935). Langer faced two more federal trials. In the first trial, there was a hung jury. At the second trial, he was acquitted. A. GEELAN, *supra*, at 77-78. He was reelected to the governorship in November 1936. E. ROBINSON, *supra* note 3, at 409-13.

examines Governor Langer's famous foreclosure moratorium proclamation.

An unfortunate resemblance between the farm economy of 1984 and the farm economy of a half century ago is now emerging. It is the author's hope that this Article will help to elucidate the general principles of law that govern debtor relief legislation as well as provide insight into a fascinating period of North Dakota history.

II. OVERVIEW OF THE 1933 SESSION

The mood in North Dakota in 1933 was radical.⁶ North Dakota had already suffered through ten years of farm depression.⁷ Total land values plummeted from \$1.5 billion in 1920, to \$1.02 billion in 1925, to \$951 million in 1930, and to \$688 million in 1935.⁸ Many North Dakota farmers owed more than their property was worth.⁹ Despite the drop in land values, many farmers might have been able to make payments on their debts had prices remained stable and weather allowed for normal crops. The prices fell, however, from \$2.96 a bushel for wheat in 1920 to an average of between 97 cents and \$1.20 a bushel throughout the rest of the decade.¹⁰ The first years of the 1930's showed further declines in crop prices: in 1932, wheat sold for thirty-six cents a bushel.¹¹ In addition, crop yields were low due to drought and grasshoppers. Nine of the eleven years from 1929 to 1939 had less than average rainfall.¹² A grasshopper plague began in 1931 and soon spread throughout the state.¹³

Farm income inadequate to pay the principal and interest on farm debt was the net result of the dilemmas that plagued the farmers. Most of the farm loans had become delinquent by 1933. For example, seventy-eight percent of all Federal Land Bank loans

6. Anhalt & Smith, *supra* note 5, at 6.

7. E. ROBINSON, *supra* note 3, at 374. Between 1921 and 1929, 32.7% of North Dakota's farmers had already lost their land through foreclosure. J. GILLETTE, SOCIAL ECONOMICS OF NORTH DAKOTA 113 (1942). While the number of farms rose from 74,360 in 1910 to 77,976 in 1930, the number of farms operated by an individual owner fell during the same period from 44,667 to 23,807. The number of farms operated by tenants grew from 10,664 in 1910 to 27,400 in 1930. BUREAU OF THE CENSUS, UNITED STATES CENSUS OF AGRICULTURE 289 (1936).

8. UNIVERSITY OF NORTH DAKOTA, BUREAU OF BUS. AND ECON. RESEARCH, STATISTICAL ABSTRACT OF NORTH DAKOTA 238 (2d ed. 1983).

9. Larson, A History of Farm Mortgage Indebtedness and Direct Farm Mortgage Relief in North Dakota from 1920-1950, at 55 (1963) (unpublished Masters thesis, available in Chester Fritz Library, University of North Dakota).

10. D. TWETON & D. RYLANCE, THE YEARS OF DESPAIR: NORTH DAKOTA IN THE DEPRESSION 4 (1973).

11. E. ROBINSON, *supra* note 3, at 399.

12. *Id.* at 398.

13. *Id.*

were delinquent in 1933.¹⁴ During 1931 and 1932, delinquencies on Bank of North Dakota debts were sixty-six percent of the total due.¹⁵ Foreclosures and forced sales and liquidations became increasingly common. In North Dakota there were 37.7 forced sales per thousand farms in 1930, 50 per thousand in 1931, and 76 per thousand in 1932.¹⁶ In 1933, forced sales peaked at 93 per thousand farms.¹⁷ Dr. Elwyn Robinson estimates that one-third of North Dakota farm families lost their farms between 1930 and 1944.¹⁸

The early 1930's saw a growing farm activism. Farm activists organized the Farmers Holiday Association in May 1932, at Des Moines, Iowa. The Association's members pledged to declare a "holiday" by refusing to sell agricultural products below the cost of production and to stop foreclosures and evictions by any means that they could devise.¹⁹ The North Dakota Farmers Union (NDFU) supported and promoted the farm holiday movement in North Dakota.²⁰ At meetings of the NDFU in July and August of 1932, members established the aim of having "Committees of Defense" in each of North Dakota's fifty-three counties. Under North Dakota Farm Holiday Association (NDFHA) President Usher L. Burdick, membership in the NDFHA rose to 46,000 within six months and to almost 70,000 by the fall of 1933.²¹ The November 1932 North Dakota state election swept the farmer dominated Non-Partisan League (NPL) into control of both the

14. *Id.* at 400.

15. Address by George F. Shafer, outgoing governor, before the North Dakota Legislature (Jan. 5, 1933) reprinted in 1933 N.D. HOUSE JOUR. 30, 42.

16. Larson, *supra* note 9, at 48. See also STATISTICAL ABSTRACT, *supra* note 8, at 238.

17. *Id.*

18. E. ROBINSON, *supra* note 3, at 400. Over one-third of all North Dakota farm families were the victims of forced sales, but not all sales were for entire tracts, and some debtors later reacquired their land. *Id.* The number of farms actually increased during the mid-1930's. In 1930, North Dakota had roughly 78,000 farms; in 1935, 85,600 farms; in 1940, 75,000 farms; and in 1945, 69,500 farms. In subsequent years there has been a steady decline in the number of farms in North Dakota. In 1978, only 40,357 farms remained. STATISTICAL ABSTRACT, *supra* note 8, at 238. The most recent census figures show a decline of 3921 farms between 1978 and 1982 with only 36,436 farms remaining in 1982. *Fargo Forum*, Apr. 6, 1984, at B1 (quoting 1982 Census of Agriculture Preliminary Report).

19. Anhalt & Smith, *supra* note 5, at 6. The Farm Holiday Manifesto, adopted in Des Moines, stated as follows:

Self-preservation is still the first law of nature and we agree to keep all of our products which can be kept on the farms and hold same until the time shall have arrived when farm products shall bring a market price equal to cost of production.

We pledge ourselves to protect one another in actual possession of our necessary homes, livestock, and machinery as against all claimants.

Murphy, *The Farmers Go on Strike*, NEW REPUBLIC, Aug. 31, 1932, at 66.

20. Anhalt & Smith, *supra* note 5, at 6.

21. *Id.* Usher L. Burdick later became a United States representative. His son, Quentin Burdick, is presently United States senator from North Dakota.

house and the senate. The voters elected William Langer to the governorship on the Republican-NPL ticket.²²

When the legislature convened in January of 1933, it was clear that citizens demanded immediate action to help the staggering farm economy. On January 19, 1933, the NDFHA stated that it would use force if necessary to stop farm foreclosures.²³ Other farm groups later made similar statements.²⁴ These were not idle words: on February 21, 1933, 1000 farmers forcibly stopped a sheriff's sale on a farm near Finley, North Dakota; on March 3, 1933, a group of reportedly armed men grabbed foreclosure papers from the sheriff and stopped a sale. Further actions occurred at other locations, and fear of violence arose.²⁵

Shortly after his election as governor, Langer made it clear that the plight of the farmer was a primary concern. In his first message to the legislature, Governor Langer stated:

The thought that is uppermost in every man's mind
is of the devastating effect of this depressed condition.

22. *Id.* at 7.

23. *Id.* The purpose of the Committees of Defense, as NDFHA members declared in a February 1933 meeting, stated as follows:

[T]o prevent foreclosure, and any attempt to dispossess those against whom foreclosures are pending if started; and to retire to our farms, and there barricade ourselves to see the battle through until we either see cost of production or relief from the unjust and unfair conditions existing at present; and we hereby state our intention to pay no existing debts, except for taxes and the necessities of life, unless satisfactory reductions are made on such debts.

T. SALOUTOS & J. HICKS, AGRICULTURAL DISCONTENT IN THE MIDDLE WEST 446-47 (1951).

24. *See, e.g.*, Resolution and Demands of the North Dakota Farmers Relief Conference, reprinted in 1933 N.D. HOUSE JOUR. 1742-47. The Resolutions and Demands stated, in pertinent part: "In this emergency, we expect the legislature of North Dakota to sweep aside all obstacles and take action on these demands. . . . If the legislature fails, we must take action ourselves to protect the homes and lives of all farmers and workers. . . ." *Id.* at 1743. Among the demands were cash relief for clothes, fuel, and house repair; direct distribution of food (no middlemen) from farm to city; no deficiency judgments, no evictions, and the immediate release of the Scottsboro boys. *Id.* at 1743-44. The Scottsboro boys, a group of young Negroes accused of raping two white women in Alabama, became a 1930's *cause celebre* of the black community and the Communists. *See* van Doren, *Eight Who Must Not Die*, 132 NATION 608, 608-09 (1931).

25. Anhalt & Smith, *supra* note 5, at 7-8. The NDFHA also took action against tax sales. In September 1933, for example, the NDHFA took over a Sheridan County tax sale, to the dismay of State's Attorney E.J. McIlraith, who sent a telegram of protest to Langer. The telegram states as follows:

Sale of Victor J. Nielson property was held up and controlled by twenty or thirty farmers led by individuals from Sheridan County. Seven hundred dollars of property was sold for two dollars forty-four cents. Representative of Minot credit company was not assaulted physically but was made to stand to one side. . . . A sale was held immediately after in the name of the Holiday Association and the property was sold for between six and seven hundred dollars. Money taken by Holiday Association. Such is result of vicious teaching by Burdick.

Telegram from E.J. McIlraith, state's attorney, to Gov. William Langer, Sept. 30, 1933 (on file with Special Collections, William Langer papers, Chester Fritz Library, University of North Dakota).

Statesmen and scholars are earnestly striving to find a solution. Is it reasonable for us to think that we cannot in some measure aid in that solution? We must face the problem as it confronts us in North Dakota. *There can be no return to prosperity in North Dakota that does not begin with the farmer.*²⁶

The 1933 North Dakota legislative session saw a flurry of activity pertaining to farm debt, farm debtor relief, and improvement of farm prices. In retrospect, some of these bills seem visionary; others seem bizarre.

The North Dakota Senate introduced and enacted into law a number of bills designed to aid the farmer. In one bill the senate intended to extend the right of redemption from tax sales.²⁸ Another extended the right of redemption from foreclosure and execution sales.²⁹ Another bill prohibited deficiency judgments;³⁰ one prohibited attempts to evade the ban on crop mortgages that had been adopted by a voter-initiated measure in 1932.³¹ Other bills the senate passed included one that required that chattel mortgages be signed by husband and wife to be enforceable;³² one

26. Address by William Langer, incoming governor, before the North Dakota Legislature (Jan. 5, 1933) *reprinted in* 1933 N.D. HOUSE JOUR. 56, 56 (emphasis added).

27. The following discussion of bills introduced in the North Dakota Senate is based on the author's review of the Senate Journal's Record of Bills. See 1933 N.D. SEN. JOUR. index.

28. See Sen. Bill 1 (see Act of Feb. 27, 1933, ch. 257, 1933 N.D. Sess. Laws 394); Sen. Bill 31 (see Act of Jan. 20, 1933, ch. 264, 1933 N.D. Sess. Laws 417); Sen. Bill 288 (see Act of Mar. 3, 1933, ch. 265, 1933 N.D. Sess. Laws 481). The large number of bills relating to tax relief was due to the crushing tax burden of the 1930's caused by high expenditures for relief and road building coupled with land devaluation and low income. Taxes were \$1.70 per \$100 of farm real estate value in 1930 compared to \$.48 per \$100 of farm real estate value in 1982. STATISTICAL ABSTRACT, *supra* note 8, at 272. In 1924, taxes were 6.7% of gross cash income. Address by William Langer, *supra* note 26, at 57.

29. See Sen. Bill 3 (see Act of Feb. 21, 1933, ch. 157, 1933 N.D. Sess. Laws 226). For a discussion of chapter 157, see *infra* notes 69-123 and accompanying text.

30. See Sen. Bill 2 (see Act of Mar. 7, 1933, ch. 155, 1933 N.D. Sess. Laws 223).

31. See Sen. Bill 25 (see Act of Mar. 4, 1933, ch. 151, 1933 N.D. Sess. Laws 220). In one of the more fascinating moves of the farmer rebellion, the voters in June 1932, passed a series of initiated measures that, *inter alia*, outlawed crop mortgages, banned corporate farming, reduced valuation of all property by 50% (except for farm buildings and improvements which were declared totally exempt), and reduced the salaries of district court and supreme court judges, the governor, attorney general, and other state officials. See Initiated Measures, 1933 N.D. Sess. Laws 493-506.

With respect to crop mortgages the voters declared, by a vote of 102,149 to 98,135, that crop mortgages were a "public nuisance" and a "menace to the public health, welfare, and well-being" and therefore against public policy. Initiated Measure of June 29, 1932, 1933 N.D. Sess. Laws 497. The voters also declared 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." *Id.* This ringing declaration did not long survive harsh financial realities. Gov. Shafer recommended amendment, pointing out that the United States would not extend crop production loans without security. Address by George F. Shafer, outgoing governor, before the North Dakota Legislature (Jan. 5, 1933) *reprinted in* 1933 N.D. HOUSE JOUR. at 50. The legislature passed an exemption March 4, 1933, permitting countries and the United States government and its agencies, and the Bank of North Dakota to obtain crop production liens. See Act of Mar. 4, 1933, ch. 150, 1933 N.D. Sess. Law 220. North Dakota law still prohibits crop mortgages, but additional exemptions to the prohibition over the years have virtually cancelled the intent of the 1933 initiated measure. See N.D. CENT. CODE § 35-05-01 (1980).

32. See Sen. Bill 86 (see Act of Feb. 14, 1933, ch. 154, 1933 N.D. Sess. Laws 222).

that banned foreclosure by advertisement and required foreclosure by action (except for the Bank of North Dakota and the State Board of University and School Lands);³³ and another that allowed debtors in conditional sales contracts a reasonable time to cure defaults.³⁴

One of the senate's more radical expressions of discontent with farm economic conditions came in the form of Senate Resolution A-2.³⁵ In exceptionally strong language, the resolution, sponsored by Senator W.E. Martin of Morton County, resolved that North Dakota and thirty-eight other "producer" states secede from the Union.³⁶ The resolution did not pass, and an apparently

33. See Sen. Bill 170 (see Act of Mar. 4, 1933, ch. 158, 1933 N.D. Sess. Laws 227).

34. See Sen. Bill 186 (see Act of Mar. 6, 1933, ch. 222, 1933 N.D. Sess. Laws 343).

The senators introduced a number of other bills, but they were defeated. They included a bill allowing foreclosed debtors to remove fixtures such as buildings, fences, and windmills that had been added to the property after execution of the mortgage (Sen. Bill 8); a bill prohibiting after acquired property clauses in chattel mortgages (Sen. Bill 228); a bill prohibiting lawyers from serving in the legislature (Sen. Bill 234); a bill requiring the State of North Dakota to purchase and withhold from the market 100,000,000 bushels of wheat and prohibiting the planting of wheat in 1933 (Sen. Bill 256); a bill preventing farm workers' wages from being seized by their employer's creditors (Sen. Bill 281); and a bill establishing a small claims court procedure (Sen. Bill 301).

35. 1933 N.D. SEN. JOUR. 139, 139-40.

36. *Id.* Resolution A-2 provided as follows:

Whereas, ever since the close of the civil war, the states of Maine, New Hampshire, Vermont, Massachusetts, New York, Pennsylvania, Connecticut, Rhode Island, and New Jersey, because of their dense population and consequent dominant power of Congress, have so manipulated Congress and congressional legislation that said states have become rich at the expense of the rest of the Union, and

Whereas, through the manipulation of tariff laws said eastern states have protected their manufacturing industries at the expense of the cotton, tobacco, corn, hog, wheat, cattle and fruit growers of the nation, which said producing states have been struggling ever since the Civil War without any actual protection under tariff laws, and

Whereas, through such manipulated unjust and discriminatory measures there has grown up in said eastern states a financial oligarchy, with Wall Street as the centre of the financial power of the Union, and

Whereas said Wall Street interests are now seeking to reach out through the chain banking system to obtain absolute control of the balance of the nation, which they have already looted through the Tariff System, and with the purpose in view, evidently, of making the people of thirty nine other states financial peons, and

Whereas, in addition to the unjust, discriminatory and grasping attitude of said states, detailed in this resolution, said financial east, through the New York Stock Exchange and the House of Morgan, and with the accumulation of the peoples money flowing to the east under the system described, their field of operations has been extended to foreign countries, and huge, unnecessary, and uncollectable loans have been made to every country on earth, and the bonds of said countries sold to the people of this country to their loss and damage, and

Whereas, said financial interests of said eastern states have influenced the administration of our Government to loan money to foreign governments which were then and are now unable to pay, and

Whereas, in each and every instance of such government loans the said financial interests have influenced this government to either cancel said foreign loans or discount them at an unreasonable rate and defer payments until the net returns, when paid, if ever, will not be equivalent to the interest on the debt, and

Whereas, in case of disturbances or war in foreign countries said, [sic] financial interest, [sic] desiring to protect their said loans to foreign governments are the first in this country to talk war, and demand that our young men offer their lives to protect their money, and

embarrassed senate later voted to expunge all reference to it from the record.³⁷

The North Dakota House of Representatives was no less active and no less imaginative than the senate. The representatives introduced a long series of bills proposing various legislative solutions to economic hardships plaguing the state.³⁸ Among the bills that passed were bills extending the period for tax sale redemption,³⁹ establishing procedures for the defense of wage garnishment,⁴⁰ allowing for redemption of personal property after a foreclosure sale,⁴¹ prohibiting discriminatory pricing in agricultural products,⁴² lowering the usury rate,⁴³ prohibiting mortgages on personal property unless signed by both husband and wife,⁴⁴ authorizing the governor to impose an embargo on shipment of agricultural products whenever prices became confiscatory,⁴⁵ authorizing the courts to take judicial notice of confiscatory prices of agricultural products and to stay entry of judgment upon grounds of public policy,⁴⁶ authorizing use of "self-liquidating tax certificates" in lieu of United States currency,⁴⁷ and

Whereas, said financial interests maintain in their metropolis and place known as the "Stock Exchange" where securities are gambled daily, and the markets of our products caused to rise and fall with the turn of their gambling wheel, and

Whereas, we are now fully and unalterably convinced that said states have had [sic] and will never have the best interest of the rest of the nation at heart, or ever intend to live in the Union under a plan of justice to all, we therefore

Recommend that we, the remaining thirty-nine states secede from the above named states, carrying with us the Star Spangled Banner, and leaving them the stripes, which they so richly deserve; let them continue to prey upon their own people; give them a free hand but they must keep off us. All we will demand is that our remaining territory have no treaty, or trade relations, no agreements or understanding whatsoever, no business or social connections, and we can then proceed to build anew and carry out the principles of Democratic government as founded by the immortals Washington and Jefferson.

Be it further resolved that this resolution be duly authenticated, and sufficient copies thereof forwarded to our Senators and Representatives in Congress, for the information of Congress and the press of the country.

Id.

37. See 1933 N.D. SEN. JOUR. 1420, 1420-21. The vote to expunge was 29 in favor, 14 against with six members absent. *Id.* Since the text survives, the vote to expunge was apparently disregarded by the senate clerk.

38. The following discussion of house bills is based on the author's review of the House Journal's Record of Bills. See 1933 N.D. HOUSE JOUR. index at I to CII.

39. See House Bill 101 (see Act of Mar. 3, 1933, ch. 262, 1933 N.D. Sess. Laws 412); House Bill 102 (see Act of Mar. 10, 1933, ch. 211, 1933 N.D. Sess. Laws 331); House Bill 275 (see Act of Mar. 3, 1933, ch. 258, 1933 N.D. Sess. Laws 395).

40. See House Bill 45 (see Act of Mar. 1, 1933, ch. 209, 1933 N.D. Sess. Laws 330).

41. See House Bill 56 (see Act of Mar. 1, 1933, ch. 152, 1933 N.D. Sess. Laws 221).

42. See House Bill 81 (see Act of Mar. 9, 1933, ch. 3, 1933 N.D. Sess. Laws 3).

43. See House Bill 93 (see Act of Mar. 6, 1933, ch. 140, 1933 N.D. Sess. Laws 207).

44. See House Bill 119 (see Act of Mar. 17, 1933, ch. 205, 1933 N.D. Sess. Laws 322).

45. See House Bill 177 (see Act of Mar. 3, 1933, ch. 1, 1933 N.D. Sess. Laws 1). For a discussion of this bill, see *infra* notes 49-68 and accompanying text.

46. See House Bill 182 (see Act of Mar. 6, 1933, ch. 99, 1933 N.D. Sess. Laws 145).

47. See House Bill 265 (see Act of Mar. 7, 1933, ch. 263, 1933 N.D. Sess. Laws 413). This was a radically creative measure designed to deal with the crushing burden of delinquent state and county taxes. See Act of Mar. 7, 1933, ch. 263, 1933 N.D. Sess. Laws 413. In essence, the law called on

allowing liens for the purpose of seed and crop production loans.⁴⁸

The legal drama of 1933 did not abate when the twenty-third legislative session adjourned. Both the judiciary and the executive branch continued to wrestle with debt and price issues throughout the rest of 1933 and in later years. The next five sections of this Article examine some of these later developments.

III. THE WHEAT EMBARGO

The title of chapter 1 of the 1933 North Dakota Session Laws made plain the purpose of the act. The title proclaimed that chapter 1 was:

An act authorizing the Governor to declare and maintain an embargo on the shipment out of this state of any agricultural product produced within the state, when the market price thereof reaches a point where the returns are confiscatory, and declaring that agricultural products taken from the soil constitute a drain upon the natural resources of this state, and that the disposition thereof at confiscatory prices becomes a matter of public concern warranting an executive order to prevent the same. . . .⁴⁹

Section 2 of the Act provided Governor Langer with the basic authority to declare and enforce an embargo if the price of agricultural products became confiscatory.⁵⁰

North Dakotans to use state-printed "self-liquidating tax certificates" in lieu of money. *Id.* Each county, as well as the state treasurer, could issue certificates in \$1 and \$5 denominations up to the amount of delinquent taxes. *Id.* §§ 1, 6. At least 15% of all salaries of non-constitutional officers and at least 15% of all expenditures had to be paid with tax certificates. *Id.* § 4. Statewide elected officers were not subject to the 15% requirement, but were told it was their "patriotic duty" to accept 15% of their salaries in certificates. *Id.* County relief payments could be paid entirely by certificates. *Id.* § 5. The law required merchants to accept the certificates at face value and forbade discounting. *Id.* § 17. Each time a \$1 certificate was negotiated, a two-cent state printed revenue stamp had to be purchased and affixed; each time a \$5 certificate was negotiated, a 10-cent revenue stamp had to be purchased and affixed. *Id.* § 6. Certificates could be redeemed in one of three ways: to pay taxes at face value after one year, or after 50 revenue stamps had been affixed, or after two years from issuance. *Id.* § 13. The penalties for violation were stiff: a mandatory one year penitentiary sentence was imposed for general violations of the law, and a mandatory five year penitentiary sentence was imposed for counterfeiting certificates or stamps. *Id.* § 20.

48. See House Bill 320 (see Act of Mar. 7, 1933, ch. 145, 1933 N.D. Sess. Laws 214). The representatives introduced a number of other bills, but they were defeated. They included a bill redefining usury (House Bill 10), a bill prohibiting buying grain on margin without intention of future delivery (House Bill 35); a bill requiring the licensing and regulating of collection agencies (House Bill 49); a bill prohibiting after acquired property clauses in chattel mortgages and prohibiting attachment of any property not specifically described in the security document (House Bill 75); and a bill to issue North Dakota money ("script") to inflate the currency (House Bill 122).

49. Act of Mar. 3, 1933, ch. 1, 1933 N.D. Sess. Laws 1. The bill passed the house by a vote of 58 in favor, 46 opposed, and nine absent on Feb. 21, 1933. 1933 N.D. HOUSE JOUR. 1018-19. It passed the senate by a vote of 26 in favor, 18 opposed, and 5 absent on Feb. 28, 1933. 1933 N.D. SEN. JOUR. 1064-65.

50. Act of Mar. 3, 1933, ch. 1, § 2, 1933 N.D. Sess. Laws 1, 1. Section 2 stated as follows:

Governor Langer exercised his embargo power on October 18, 1933, declaring an embargo on wheat immediately after the 1933 harvest.⁵¹ Prices rose immediately,⁵² especially with respect to durum wheat: North Dakota produced seventy-five percent of the national crop.⁵³ Langer's attempts to involve other producer states in the embargo were unsuccessful.⁵⁴

The challenge to the wheat embargo came in the case of *Grandin Farmers' Coop. Elev. v. Langer*.⁵⁵ The case was argued to separate sessions of a three judge court on December 28, 1933, and January 10, 1934.⁵⁶ The court rendered its decision on January 15, 1934,⁵⁷ one month after the embargo had been withdrawn.⁵⁸

The reasoning of the court in declaring the embargo unconstitutional was simple. First, the court declared that the buying and selling of wheat was an integral part of interstate commerce.⁵⁹ Second, no state had *any* authority to regulate or interfere in interstate commerce.⁶⁰ Third, the existence of an emergency did not create power in a state to regulate interstate commerce: only Congress had such power.⁶¹

Whenever the price of agricultural products, produced from the soil in this state reaches a point where the sale and returns thereon become confiscatory, leaving to the producers, after the deduction of freight, commissions, and expenses, an amount which practically confiscates the commodity or brings a price unconscionable with the cost of production and becomes an unwarranted drain upon the natural resources of the State, the Governor may, by executive order, issue an embargo or proclamation, commanding that none of such commodities shall be shipped, trucked, or driven out of the state for the purpose of sale, and that said order shall continue until revoked. For the purpose of making such order effective, the same shall be published at least once in the daily newspapers, published in this state, and served upon every common carrier authorized to do business within the state. To further enforce the said executive order, the Governor may use the military forces of the state to enforce the same.

Id.

51. T. SOLOUTOS & J. HICKS, *supra* note 23, at 482. The wheat embargo proclamation was dated October 16, 1933, but became effective October 18, 1933. Copies were served on the state's newspapers, President Roosevelt, Secretary of Agriculture Wallace, and others. *Id.* Langer also declared a livestock embargo on December 3, 1933. *The Leader*, Dec. 7, 1933, at 1.

52. E. ROBINSON, *supra* note 3, at 405. The price rose five cents a bushel on the first day of the embargo and increased by 23 cents a bushel by the time Langer lifted the embargo on December 5. *Id.* Langer lifted the embargo on durum wheat on November 16, 1933, because Canadian producers discovered that even with a 42-cent tariff they could sell Canadian grain for a profit in Minneapolis. J. HOLZWORTH, *THE FIGHTING GOVERNOR* 40 (1938).

53. E. ROBINSON, *supra* note 3, at 249.

54. J. HOLZWORTH, *supra* note 52, at 40. Langer asked the governors of Minnesota, Montana, Iowa, Nebraska, and Kansas to join the embargo. All declined. *Id.*

55. 5 F. Supp. 425 (D.N.D. 1933), *aff'd*, 292 U.S. 605 (1934).

56. *Grandin Farmers' Coop. Elev. Co. v. Langer*, 5 F. Supp. 425, 426 (D.N.D. 1933), *aff'd*, 292 U.S. 605 (1934).

57. *Id.*

58. *See* E. ROBINSON, *supra* note 3, at 405. Langer withdrew the wheat embargo on December 5, 1933. *Id.*

59. 5 F. Supp. at 428. The court relied on *Shafer v. Farmer's Grain Co.*, 268 U.S. 50 (1925), and *Lemke v. Farmers Grain Co.*, 258 U.S. 50 (1922), both arising out of North Dakota, to establish that the wheat trade was an integral part of interstate commerce. 5 F. Supp. at 428.

60. *Id.* at 427-28.

61. *Id.* at 428-29.

Langer appealed this decision to the United States Supreme Court, where it was affirmed only six days after oral argument.⁶²

The rulings of the district court and the North Dakota Supreme Court were probably not a total surprise to Langer. As early as October 1932, P.O. Sathre, the North Dakota attorney general, had issued a very guarded opinion on the constitutionality of the embargo law.⁶³ Mr. Sathre believed it was constitutional, "insofar, at least, as it affects citizens of the state who are not involved in interstate commerce."⁶⁴

It is also fairly clear that Langer did not particularly care if the embargo was constitutional. He had foreseen that "the processes of the law were slow but the rules of supply and demand were quick and constant."⁶⁵ As Langer later said, "What if it was unconstitutional? It worked, didn't it?"⁶⁶

In summary, while the embargo law was unsuccessful, the embargo itself succeeded. It provided a crucial measure of relief for hard-pressed North Dakota farmers at a critical time. In subsequent years, neither the legislature nor the governor again attempted an embargo. Governor Langer, however, fought back economically. He forced the price of wheat upward by having the North Dakota State Mill and Elevator Association purchase grain for thirty-five cents greater than the depressed market price in 1936 and for seventeen cents greater than the depressed market price in 1938.⁶⁷ In both instances, the rest of the grain trade rose to meet the State Mill and Elevator Association price. Langer estimated that the 1936 price increase saved North Dakota wheat farmers \$12,000,000.⁶⁸

IV. THE EXTENSION OF THE RIGHT OF REDEMPTION

At the primaries in July and November 1932, the voters defeated attempts to declare three- and five-year moratoria on non corporate debts.⁶⁹ Despite the defeat of those measures, one of the

62. *Langer v. Grandin Farmers' Coop. Elev. Co.*, 292 U.S. 605 (1934) (per curiam).

63. *See* 1932-1934 ATT'Y GEN. REP. 131.

64. *Id.* at 132. The purpose of the opinion appears to have been to establish immunity from damage suits for Langer and members of the militia who enforced the embargo. *See id.*

65. T. SALOUTOS & J. HICKS, *supra* note 23, at 484.

66. Lunde, *The Attitudes of Senator William Langer on Major Issues of Agricultural Policy, 1941-1958*, at 18 (1959) (unpublished masters thesis, South Dakota State University).

67. E. ROBINSON, *supra* note 3, at 412. The State Mill and Elevator Association is one of the state-owned industries that the legislature established during the NPL controlled legislative session in 1919. *Id.* at 342. The legality of this and other state-owned industries was unsuccessfully challenged in the North Dakota courts and the United States Supreme Court. *See Green v. Frazier*, 44 N.D. 395, 176 N.W. 11, *aff'd*, 253 U.S. 233 (1920); *Scott v. Frazier*, 258 F. 699 (1919), *aff'd*, 253 U.S. 243 (1920).

68. E. ROBINSON, *supra* note 3, at 412.

69. *Anhalt & Smith*, *supra* note 5, at 7. Both measures were sponsored by the North Dakota

first bills the legislature passed allowed persons whose homes or farms had been sold at foreclosure or execution sale to remain in possession for periods of at least two years.⁷⁰ The legislature passed the measure under the authority of the police power of the state and mandated that the courts construe all of its provisions liberally.⁷¹

The impact of this law was that persons whose real property had been sold on or after February 21, 1932, would be allowed to redeem the property at any time until February 21, 1935.⁷² Moreover, foreclosure and execution sales that took place after February 21, 1933, and before February 21, 1935, would have a two year period within which to be redeemed. Since prior law had allowed only a one year redemption period, the additional year or more was of benefit to debtors, especially because existing North Dakota law provided that the debtor would be able to reside on the property and have the rents and profits from the property during the redemption period.⁷³

This new law appeared to be the action of a desperate legislature, hoping to relieve a condition of crisis. While only three

Farmers Union. *Id.* Although they both failed, the votes were surprisingly close: 92,266 in favor, 111,745 opposed in June; 103,156 in favor, 142,562 opposed in November. 1933 N.D. Sess. Laws 506.

70. Act of Feb. 21, 1933, ch. 157, 1933 N.D. Sess. Laws 506.

71. *Id.* at 226-27. The bill provided as follows:

§ 1. That whereas a public emergency and crisis exists throughout this state endangering the public health, welfare and morals, in that agricultural crops and products have been sold on an average below the cost of production since 1922, and all agricultural land values have virtually disappeared, due to the nation-wide depression, which caused under-consumption and produced starving millions throughout the nation; and whereas taxes have been steadily increasing in spite of the deplorable condition of agriculture, and whereas agriculture is the principal industry in this state and all other industries are solely dependent for their existence upon agriculture; and whereas there is at present no means whatsoever by which existing mortgages and judgments can be refinanced, and such debtors are at the absolute mercy of their creditors; and whereas hundreds and thousands of families have already lost their homes through mortgage foreclosures or other judicial proceedings; and whereas hundreds and thousands more will lose their homes unless some relief is given, therefore, in order to prevent the utter ruin and destruction of agriculture, commerce and industry and the collapse of civil government, and in order to maintain the integrity of the family and the home, and the public health, welfare, and morals of the people of this state, the period within which a mortgagor or judgment debtor may redeem from a foreclosure sale or an execution sale of real estate, hereafter made, is hereby extended from one year to two years from the date of such sale.

§ 2. That the period within which a mortgagor or judgment debtor may redeem from a mortgage foreclosure or execution sale of real estate, but for which deed has not been issued, is hereby extended for a period of two years from the date of the passage and approval of this Act.

Id.

72. *See id.* The number of previously sold properties was not inconsiderable. The number of farms in 1930 was 78,000. Larson, *supra* note 9, at 16. In 1932, there were 76.6 foreclosures per 1000 farms, or roughly 5835 farm foreclosures during 1932, even without considering foreclosures and execution sales of homes. *Id.* at 48.

73. Act of Feb. 18, 1919, ch. 132, 1919 N.D. Sess. Laws 169 (codified at N.D. CENT. CODE § 28-24-11 (1974)).

members of the senate voted against the act,⁷⁴ others voted in favor of it although they expressed significant doubts as to its constitutionality.⁷⁵ The expected constitutional challenge to the new law came quickly. The North Dakota Supreme Court, in *State ex rel. Cleveringa v. Klein*,⁷⁶ held the law to be unconstitutional as to mortgages executed prior to February 21, 1933.⁷⁷

In *Klein*, the sheriff sold a quarter of land at foreclosure sale on February 27, 1932, for breaches of a mortgage executed in 1928.⁷⁸ The buyer requested the sheriff's deed at the expiration of the one year redemption period. The sheriff refused to issue the deed, relying on the new law.⁷⁹ The buyer successfully sued for mandamus in the district court, and the sheriff appealed.⁸⁰

On appeal, a unanimous supreme court fully conceded the existence of the economic emergency on which the legislature had based its exercise of the police power.⁸¹ Nevertheless, the court found that the economic emergency was not sufficient to justify the impairment of contracts caused by the new law.⁸² The court first found that the laws on right of redemption that existed at the time of execution were an integral part of the mortgage contract even though they were not explicitly a part of the contract.⁸³ Therefore, a law that would change the contract after its execution constituted

74. 1933 N.D. SEN. JOUR. 299.

75. *Id.* Four senators explained their "aye" votes as follows: Sen. J.P. Cain, Stark County: "I am satisfied that the greater portion of Senate Bill No. 2 is unconstitutional. I realize, however, that there might be a portion of that bill which is held constitutional and that small portion might be of some relief to the farmers of this State and for that reason I vote 'aye.'" *Id.*

Sen. W.D. Lynch, LaMoure County: "I am voting 'aye' on this bill though I believe, as applying to existing mortgages, the bill is unconstitutional, and will not help those in need of help at this time." *Id.* at 299-300.

Sen. Charles G. Bangert, Ransom County: "I realize the act is unconstitutional. At the same time if there is any good in it, I think we are entitled to it and to any assistance that there may be if the emergency clause carries. I shall vote 'aye.'" *Id.* at 300.

Sen. A.F. Bonzer, Jr., Richland County: "I believe, like the lawyers, that the bill is unconstitutional but inasmuch as this legislation is enacted perhaps for the people who are in dire need of it, I am voting 'aye.'" *Id.*

76. 63 N.D. 514, 249 N.W. 118 (1933).

77. *State ex rel. Cleveringa v. Klein*, 63 N.D. 514, 522-23, 537, 249 N.W. 118, 122-23, 128-29 (1933).

78. *Id.* at 517, 249 N.W. at 120.

79. *Id.* at 516-17, 249 N.W. at 120.

80. *Id.* at 517-18, 249 N.W. at 120.

81. *Id.* at 526, 294 N.W. at 124. Recognizing the emergency that existed, the court stated as follows:

This Court takes judicial notice of the situation which confronted the state at the time of the enactment of this law; the effect upon the integrity of the family and the home, upon the basic industry of the state, and even upon the integrity of the state itself through the tendency to resistance, the loss of revenue for the maintenance of government and other factors which are essential to peace and order.

Id.

82. *Id.* at 532, 249 N.W. at 126.

83. *Id.* at 520, 249 N.W. at 122.

an unconstitutional impairment of contract.⁸⁴ The court added that the legislature could change the state's contract enforcement and remedy laws and that such changes would not compel a finding of unconstitutional impairment. The court determined, however, that the new statute, providing for a two year period of redemption, did not qualify as such a law.⁸⁵ The court noted that the purchaser "is deprived of his property during the years 1933 and 1934; he is denied the use, benefit, and income therefrom and the rents and profits for this additional *two* years. The present occupant is not required to pay rent, interest, or taxes."⁸⁶ The court therefore concluded that "there can be no question but what the owner is deprived of his property without due process of law if this law is applicable to foreclosure of mortgages made prior to its enactment."⁸⁷

Because of the law's complete failure to afford any recompense or protection to the mortgagee, the court distinguished the United States Supreme Court's New York rent cases.⁸⁸ In those cases, the Court held the exercise of the police power sufficient to justify a law prohibiting eviction of hold-over tenants.⁸⁹ The New York Legislature had passed the law to relieve the post-World War I housing shortage.⁹⁰ The apparent basis for the Supreme Court's holding in the cases was that the New York law required the tenant to pay a reasonable rental and allowed the landlord to evict the tenant when the tenant was "objectionable" or the landlord sought to occupy the premises.⁹¹

The crux of the North Dakota Supreme Court's reasoning in *Klein* appears to be that the North Dakota law simply failed to afford the mortgagee or judgment creditor any redress whatsoever for the value of its investment during the extended period of redemption. The law, therefore, did not fit into a modification of remedy exemption from the impairment clause,⁹² nor did it strike an appropriate balance between exercise of the police power in

84. *Id.* at 521-22, 249 N.W. at 122. The court relied on a series of United States Supreme Court contract clause cases that the Supreme Court later distinguished. See *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934). For a discussion of *Blaisdell*, see *infra* notes 103-08 and accompanying text. The North Dakota Supreme Court also relied upon the North Dakota Constitution, article 1, § 18, which provides, "[N]o . . . law impairing the obligations of contracts shall ever be passed." *Klein*, 63 N.D. at 525, 249 N.W. at 123. See N.D. CONST. art. 1, § 18.

85. *Klein*, 63 N.D. at 523, 249 N.W. at 122-23.

86. *Id.* at 522-23, 249 N.W. at 122 (emphasis in original).

87. *Id.* at 523, 249 N.W. at 122.

88. See *id.* at 526, 249 N.W. at 124 (citing *Levy Leasing Co. v. Siegel*, 528 U.S. 242 (1922); *Marcus Brown Co. v. Feldman*, 256 U.S. 170 (1921)).

89. 63 N.D. at 527, 249 N.W. at 124.

90. *Id.*

91. *Id.*

92. See *Klein*, 63 N.D. at 523, 249 N.W. at 122-23. For the text of the North Dakota Constitution's impairment clause, see *supra* note 84.

times of emergency and the constitutional prohibition against taking property without due process of law.⁹³

It is interesting that the *Klein* court did protect farmers who had planted crops in 1934 in good faith reliance on the validity of the law. Taking judicial notice that spring planting had already taken place and of the "grave consequences" that could follow should farmers be unable to harvest those crops, the supreme court stated that the courts of North Dakota had authority to protect the equitable rights that farmers had in their 1934 crops and in their labor in planting those crops.⁹⁴ The court thus held that the hold-over farmers were not trespassers.⁹⁵ The statute, therefore, was not a total loss, despite its unconstitutionality.

While North Dakota's right of redemption statute was unconstitutional, neighboring Minnesota enacted a similar law in 1933.⁹⁶ The Minnesota Supreme Court upheld the law⁹⁷ and, to the surprise of many,⁹⁸ so did the United States Supreme Court.⁹⁹

Minnesota's statute differed from North Dakota's in one important respect. It required, as a condition of the extension, payment of a reasonable rental to the holder of the sheriff's certificate.¹⁰⁰ The reasonable income or rental value of the property was to be determined by a court after notice to the mortgagee or judgment creditor and opportunity for a hearing.¹⁰¹ If the debtor defaulted in the payment, the right to redeem terminated thirty days thereafter.¹⁰²

The United States Supreme Court reviewed the Minnesota statute in *Home Building & Loan Association v. Blaisdell*.¹⁰³ In *Blaisdell*, the Court found the statute constitutional as a reasonable exercise of the police power in times of economic hardship.¹⁰⁴ The Court first found that the existence of an emergency was "beyond cavil" and was "potent cause" for the enactment of the statute.¹⁰⁵ Second, the Court indicated that the legislation was for the protection of a basic interest of society, not the narrow private

93. See *Klein*, 63 N.D. at 526-27, 530-31, 249 N.W. at 124, 126.

94. *Id.* at 528-29, 249 N.W. at 125.

95. *Id.* at 529, 249 N.W. at 125.

96. Act of Apr. 18, 1933, ch. 339, 1933 Minn. Sess. Laws 514 (codified as amended in scattered sections of MINN. STAT. ANN. § 582 app. 2 (1947)).

97. See *Blaisdell v. Home Bldg. & Loan Ass'n*, 189 Minn. 422, 249 N.W. 334 (1933), *aff'd*, 290 U.S. 398 (1934).

98. See Comment, *supra* note 2, at 486.

99. See *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934).

100. See Act of Apr. 18, 1933, ch. 339, part 1, § 4, 1933 Minn. Sess. Laws 514, 517.

101. *Id.*

102. *Id.*

103. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934).

104. *Id.* at 444-45.

105. *Id.*

interests of a few.¹⁰⁶ Third, the Court noted that the conditions of relief were not unreasonable.¹⁰⁷ Fourth, the Court concluded that the act was "limited to the exigency which called it forth."¹⁰⁸

In 1935, the North Dakota Legislature convened again and passed a redemption statute similar to the Minnesota law upheld in *Blaisdell*.¹⁰⁹ The legislature passed similar laws in 1937,¹¹⁰ 1939,¹¹¹ and 1941,¹¹² each enduring two years.¹¹³

The North Dakota Supreme Court described this application of the North Dakota redemption statutes in *Peterson v. Points*.¹¹⁴ In *Points*, a 1920 contract for deed fell into default.¹¹⁵ On June 29, 1935, the lower court entered an interlocutory order under chapter 99 of the 1933 North Dakota Session Laws,¹¹⁶ providing for a one year right of redemption.¹¹⁷ A year later, the owner applied for a further extension pursuant to chapter 242 of the 1933 North Dakota Session Laws.¹¹⁸ The court granted an extension up to July 1, 1937, conditioned upon payment of a reasonable rental.¹¹⁹ The court thereafter granted a further extension until July 1, 1939, pursuant to chapter 161 of the 1937 session laws, again conditioned upon payment of a reasonable rental.¹²⁰ Thus, the debtor, who would have lost his property by cancellation of the deed in 1935, was allowed four additional years to repay or refinance.

106. *Id.* at 445.

107. *Id.* Important equitable factors as to reasonability were that the integrity of the indebtedness was not impaired; interest continued to run; the mortgagor had to pay reasonable rental as determined by the court; most of the mortgagors were corporations, which could not occupy premises themselves, and mortgagors whose goal was the protection of their investment rather than occupying the home or farming. *Id.* at 446. In fact, the court found the statute beneficial to both parties: "The legislation seeks to prevent the impending ruin of both [mortgagors and mortgagees] by a considerate measure of relief." *Id.*

108. *Id.*

109. Act of Mar. 9, 1935, ch. 242, 1935 N.D. Sess. Laws 341 (relief from foreclosure of real estate mortgages).

110. See Act of Feb. 15, 1937, ch. 161, 1937 N.D. Sess. Laws 299 (moratorium from foreclosures and evictions).

111. See Act of Mar. 15, 1939, ch. 165, 1939 N.D. Sess. Laws 255 (moratorium from foreclosures and evictions).

112. See Act of Mar. 17, 1941, ch. 190, 1941 N.D. Sess. Laws 281 (moratorium from foreclosures and evictions).

113. No successful challenges to the constitutionality of these laws are reported. In contrast, other states' attempts to extend moratoria laws were declared unconstitutional due to improvements in those states' economies. See, e.g., *Pouquette v. O'Brien*, 55 Ariz. 248, 100 P.2d 979 (1940) (extensions of moratorium act were unconstitutional because legislature failed to declare that an emergency existed); *Jefferson Standard Life Ins. Co. v. Noble*, 185 Miss. 360, 188 So. 289 (1939) (emergency condition did not exist in 1938 so mortgage moratorium act of the same year was unconstitutional). Recovery from the Depression came later to North Dakota than the country at large, explaining in part the lack of successful challenges to that state's extensions of the moratorium statute.

114. 67 N.D. 631, 275 N.W. 867 (1937).

115. *Peterson v. Points*, 67 N.D. 631, 632, 275 N.W. 867, 868 (1937).

116. See Act of Mar. 6, 1933, ch. 99, 1933 N.D. Sess. Laws 145 (judicial notice of confiscatory prices). See also *infra*, notes 124-137 and accompanying text.

117. *Points*, 67 N.D. at 632, 275 N.W. at 868.

118. *Id.*

119. *Id.*

120. *Id.* at 633, 275 N.W. at 868. See Act of Feb. 15, 1937, ch. 161, 1937 N.D. Sess. Laws 299.

One reason why the law worked may have been that the attorney general had advised all sheriffs to notify debtors of their right to apply for an extension of the right of redemption and to give mortgagors a "reasonable time" to apply for the extension.¹²¹ While conceding that the strict construction of the statute did not require notice prior to issuance of the deed, the attorney general advised that the notice should be given "as a matter of fairness and to allow that law to give the full protection that it is intended to give to debtors. . . ." ¹²²

Despite the passage of a half century, the rules of law announced in *Blaisdell* are still the leading principles regulating the interplay between the police power of the state in times of emergency and the prohibition of a state's power to pass a law impairing the obligation of contract.¹²³

V. THE CONFISCATORY PRICE LAW

Chapter 99 of the 1933 North Dakota Session Laws¹²⁴ provided North Dakota courts with special equitable powers to protect debtors when the prices of agricultural products were below the cost of production or when the debtor would lose his equity in a home to foreclosure or execution.¹²⁵ In addition, the law provided that courts could stay proceedings upon public policy grounds.¹²⁶

Unlike many of the Depression era laws, chapter 99 has never been repealed.¹²⁷ Although the law had been rarely used in the last half century, the North Dakota Supreme Court did apply it recently in *Folmer v. State*.¹²⁸

Folmer involved a foreclosure by advertisement by the State.¹²⁹ The Folmers sought to enjoin the foreclosure by advertisement by submitting an affidavit pursuant to the special injunction procedure set forth in section 35-22-04 of the North Dakota Century Code.¹³⁰ The affidavit set forth a "confiscatory price" defense to the foreclosure, based upon sections 28-29-04 and 28-29-05 of the

121. See 1934-1936 N.D. ATT'Y GEN. REP. 152.

122. *Id.*

123. See, e.g., L. TRIBE, AMERICAN CONSTITUTIONAL LAW 468 (1978); J. NOWAK, R. ROTUNDA & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 425-26 (1978).

124. See Act of Mar. 6, 1933, ch. 99, 1933 N.D. Sess. Laws 145 (judicial notice of confiscatory prices) (codified at N.D. CENT. CODE §§ 28-29-04, -05, -06 (1974)).

125. *Id.* §§ 1, 2.

126. *Id.* § 3.

127. See N.D. CENT. CODE §§ 28-29-04, -05, -06 (1974). The text has not been changed since the original bill was passed.

128. 346 N.W.2d 731 (N.D. 1984).

129. *Folmer v. State*, 346 N.W.2d 731, 732 (N.D. 1984).

130. *Id.* at 732.

North Dakota Century Code.¹³¹ The lower court denied the application for an injunction¹³² and the North Dakota Supreme Court reversed.¹³³

With respect to the "confiscatory price" defense the Folmers raised in the affidavit,¹³⁴ the supreme court first found that section 28-29-04 was applicable to land foreclosures as well as other causes of action.¹³⁵ The court then found that "[t]he 'confiscatory price defense,' if pleaded in an action to foreclose the mortgage, could 'defeat. . . in part the . . . judicial proceeding,' in that the court may, in its discretion, temporarily prevent the mortgagee from obtaining the relief sought."¹³⁶ The court was careful, however, to point out that the "confiscatory price defense" is not an absolute defense against payment or foreclosure; the statutes merely give the court discretionary power.¹³⁷

VI. THE ANTI DEFICIENCY JUDGMENT RULE

Chapter 155 of the 1933 North Dakota Session Laws added the phrase "and the Court shall have no power to render a deficiency

131. *Id.* See N.D. CENT. CODE §§ 28-29-04, -05 (1974) (courts' powers regarding confiscatory prices for foreclosures).

132. *Id.*

133. *Id.* at 736.

134. *Id.* at 732. The court found "there is no dispute that the affidavit sets forth in detail facts sufficient to raise a defense under Section 28-29-04, 28-29-05 and 28-29-06, N.D.C.C." *Id.* at 736.

135. *Id.* at 733. The court interpreted § 28-29-04 as follows:

Section 28-29-04 is divided into two distinct sentences. The first sentence allows the court to extend the time for serving and filing papers in "any cause" when farm prices are confiscatory. This would clearly include real estate mortgage foreclosures. The second sentence provides that the court may stay the entry of judgment or execution thereon, or defer terms of court or the signing of an order for judgment, whenever such procedures "in any cause" would "confiscate or tend to confiscate the property of any litigant by forcing the sale of agricultural products upon a ruinous market." By its terms, this provision applies to "any cause." We will not speculate about the various factual situations which might arise to make application of this provision appropriate in a particular mortgage foreclosure. The statute's application is not limited to cases dealing specifically with the sale of agricultural products, as the State contends. Rather, it is applicable "in any cause" when the factors enumerated in the statute are present.

Id.

136. *Id.* at 734-35.

137. *Id.* at 735. The court stated as follows:

These statutes merely give the court the power, in its discretion, to delay foreclosure proceedings during times of economic hardship. Invocation of this "defense" does not, however, ultimately relieve the mortgagor of his obligations under his contract. In applying the "confiscatory price defense," the court cannot force the mortgagee to accept less than the amount due under the mortgage or declare that the mortgagor is freed from making any further payments.

Id.

judgment” to a previously enacted law dealing with the foreclosure authority of the courts.¹³⁸ The law stated that it was not intended 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.”¹³⁹

The mortgage case that reached the North Dakota Supreme Court challenging this law, *Burrows v. Paulson*,¹⁴⁰ involved an unusual fact pattern. The mortgagee/creditor contended that deficiency judgments were not permitted.¹⁴¹ The mortgagor/debtor argued that deficiency judgments were permitted.¹⁴² The parties had signed the mortgage in May 1933, subsequent to the passage of the new deficiency judgment law.¹⁴³ The parties carefully stated in the underlying mortgage that the mortgagor was fully personally liable and that, in the event that the courts held the law to prohibit personal liability, the parties could cancel the transaction.¹⁴⁴ The mortgagee, who apparently wanted his land back, returned the down payment to the mortgagor and sought to cancel the transaction.¹⁴⁵ The mortgagor refused, so the mortgagee sued to cancel the transaction on the ground that the law prevented a deficiency judgment.¹⁴⁶ The mortgagor countersued for delivery of the deed.¹⁴⁷ The court ruled in favor of the mortgagor, holding that chapter 155 forbade the court in a foreclosure action from rendering a deficiency judgment while allowing mortgagees to bring separate actions at law to recover the deficiency.¹⁴⁸

138. See Act of Mar. 7, 1933, ch. 155, 1933 N.D. Sess. Laws 223-24 (detailing which judgments may be entered in a foreclosure action).

139. *Id.* at 224 (emphasis added).

140. 64 N.D. 557, 254 N.W. 471 (1934).

141. *Burrows v. Paulson*, 64 N.D. 557, 560, 254 N.W. 471, 473 (1934).

142. *Id.* The mortgagor, Paulson, argued that the statute merely deprived the court of its power to enter a deficiency judgment as part of the foreclosure action and did not prevent a subsequent suit at law to recover that part of the debt not recovered at the foreclosure sale. *Id.*

143. *Id.* at 558, 254 N.W. at 472.

144. *Id.*

145. *Id.* at 559, 254 N.W. at 472. The contract provided in part as follows:

[S]ince the parties thereto were “in doubt as to the meaning or legal effect of the mortgage law of the state of North Dakota” the contract should be terminated if it should be ascertained that a mortgagor in such a mortgage might not be held personally liable for the mortgage debt or that he might not be held for the payment of any unpaid deficiency after foreclosure, and that in such event the contract of sale might at once be cancelled by notice by either party to the other; the vendor repaying all moneys paid and returning and releasing the note and mortgage and the vendee reinvesting the vendor with the title to the land conveyed.

Id. at 568, 254 N.W. at 472.

146. *Id.* at 559, 254 N.W. at 472.

147. *Id.*

148. *Id.* at 563-64, 254 N.W. at 475. The supreme court’s reasoning stated as follows:

The wording of chapter 155 is, “And the court shall have no power to render a

To the Non-Partisan League legislators, this result must have been upsetting. As a reaction to the case, the legislature adopted a new anti deficiency statute in 1937.¹⁴⁹ The language of the statute makes it plain that the 1937 legislature did not intend to allow the supreme court to again misconstrue the legislature's intent. In section 1 of chapter 159 of the 1937 session laws, the legislature stated that "the Court shall under no circumstances have power to render a deficiency judgment for any sum whatever."¹⁵⁰ Sections 2, 3, and 4 of the statute reemphasized that point.¹⁵¹

In a 1974 opinion, the supreme court stated that sections 3 and 4 of the 1937 anti deficiency statute are unique in expression of legislative dissatisfaction with a supreme court ruling,¹⁵² and stated that the language of section 4 was plainly invalid.¹⁵³ Despite the invalidity of the 1937 legislature's instructions to the supreme court on how to interpret its enactment, the 1937 legislature apparently accomplished its objective, since the law was not challenged in the

deficiency judgment." It seems to us that this provision refers only to the foreclosure proceeding and has no reference to an action at law. This is borne out by the succeeding sentence, which provides that, "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." The words here used are "postpone or affect any remedy." And, while they are used with respect to those liable other than the mortgagor and his grantee, nevertheless the clear implication is that the statute recognizing the mortgagor's personal liability over, merely affects the remedy and postpones it so far as the foreclosure proceeding is concerned, without going the length of precluding or attempting to preclude the mortgagee from proceeding at law for any deficiency.

Id.

149. See Act of Mar. 1, 1937, ch. 159, 1937 N.D. Sess. Laws 296-97.

150. See *id.* For a discussion of chapter 159, see *First State Bank of Cooperstown v. Ihringer*, 217 N.W.2d 857, 858 (N.D. 1974). *Ihringer* considered the applicability of the foreclosure statutes when the mortgagee sues on the debt, but does not seek foreclosure. 217 N.W.2d at 858. The court stated that the statutes are applicable, but the mortgagee may recover only the "difference between the amount due on the note plus costs and the fair value of the property determined by a jury." *Id.* at 864.

151. See Act of Mar. 1, 1937, ch. 159, §§ 2, 3, 4, 1937 N.D. Sess. Laws 296-97. Sections 2, 3, and 4 of the act state as follows:

§ 2. That neither before nor after the rendition of the judgment and decree herein provided for, shall the mortgagee or contract holder, or their successors interest [sic], be authorized or permitted to bring any action in any Court in this State for the recovery of any part of the debt secured by said mortgage or contract so foreclosed.

§ 3. It is the intent of the legislature to provide by this Act that hereafter there shall be no deficiency judgments rendered upon notes, mortgages, or contracts given to secure the payment of money loaned upon real estate or given to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall only be entitled to a foreclosure or a cancellation of the mortgage or contract and no Court shall place any other construction upon this Act.

§ 4. If the Courts declare this Act unconstitutional in so far as it relates to mortgages or contracts in existence at the time of taking effect of the Act, they shall never consider its constitutionality with reference to mortgages or contracts entered into after the date when this Act becomes effective.

Id. §§ 2, 3, 4.

152. *First State Bank of Cooperstown v. Ihringer*, 217 N.W.2d 857, 859 (N.D. 1974).

153. *Id.* Both §§ 3 and 4 of the 1937 statute were omitted as surplusage in the Revised North Dakota Code of 1943. *Id.*

courts¹⁵⁴ and survived until 1951, when it was amended to permit deficiency judgments under limited circumstances.¹⁵⁵

VII. THE LANGER MORATORIUM

The most dramatic and radical development of the 1933 battle against farm foreclosures and execution sales was not a law; it was Governor William Langer's Mortgage Proclamation. The Proclamation, which is notable for its brevity as well as its breadth, read as follows:

WHEREAS, the prevailing financial conditions in this State are such that many of our citizens are threatened through real and personal property mortgage foreclosure and execution sales with the loss of their homes and of their livestock and farm machinery necessary for the pursuit of their usual occupation; and

WHEREAS, adequate protection against the sacrifice by our citizens of their homes and personal property necessary for the farming of their land cannot be secured under those conditions except through the temporary suspension under reasonable conditions and in certain cases of forced sales of such homes and property until such time as the prevailing crisis has subsided; and

WHEREAS, the emergency is such that the public health, welfare and morals of the citizens of this State are greatly endangered by those conditions, and forced sales of homes and of personal property needed for farming purposes can only lead to disorder and disrespect for laws affording no adequate protection to debtors in such an emergency,

NOW, THEREFORE, I William Langer, as Governor of the State of North Dakota, under authority in me vested by law, do hereby proclaim and declare that hereafter, and until this proclamation is by me revoked, no mortgage foreclosure or execution sale of livestock and other personal property used by an actual farmer of this State in the operation of his farm, and of real property occupied by the owner thereof as a home, and in cases of

¹⁵⁴. *Id.*

¹⁵⁵. *Id.* at 859-60. The legislature passed the 1951 amendments primarily because the Federal Land Bank would not make loans in North Dakota unless deficiency judgments were allowed. *Id.* at 859.

farm lands, of real property which is a part of the farm occupied and tilled by the owner thereof, shall be held unless the owner of said property consents in writing thereto, or unless the officer or person designated to hold said sale knows or ascertains that the debtor is not as to all or part of said property entitled to the benefits of this proclamation. Subject to the foregoing provisions, all State, County and Township officers are hereby commanded to perform no official act which will, in any degree, accomplish, aid or assist in the foreclosure or forced sale of any home, or in the forced sale of property necessary and indispensable to the livelihood of such occupant, or in the dispossession of home owners who may have lost their homes by foreclosure since 1932, or in the obtaining of tax titles to homes where the same may be now subject to a tax deed.

The general purpose and object of this proclamation is to preserve the homes of citizens in this State and retain them in a position of status quo until a change in the financial conditions shall release our people from a helpless situation.¹⁵⁶

Langer's enforcement of the proclamation was unusual, to say the least. Shortly after the proclamation, all but four of the state's fifteen district court judges cooperated with Langer by issuing county wide blanket stays on foreclosures.¹⁵⁷ With respect to the four judges who would not do so, Langer requested the assistance of Usher Burdick and the NDFHA.¹⁵⁸ The NDFHA persuaded at least one judge to change his mind.¹⁵⁹ Another judge, who failed to change his position, was later the subject of a recall election sponsored by the NDFHA.¹⁶⁰ With respect to individual

156. Exec. Order No. 2 (Mar. 22, 1933) reprinted in Grand Forks Herald, Mar. 24, 1933, at 2, col. 5. Langer declared the first of a series of moratorium proclamations on March 4. That initial proclamation barred all foreclosures and executions sales. Anhalt & Smith, *supra* note 5, at 8. Following a survey that showed that many foreclosure cases involved land mortgaged by corporations and absentee investors, Gov. Langer amended the proclamation on March 23 to protect only owner-occupied property. *Id.* at 9. Langer reluctantly made a final amendment on April 17. *Id.* at 10. Langer had heard on April 8 that the Regional Agricultural Credit Corporation was refusing to lend crop and seed money, which was crucial for destitute farmers to spring planting. *Id.* at 9-10. Langer telegraphed Sen. Gerald P. Nye to raise the matter with President Roosevelt. *Id.* at 10. On April 17, Langer received a telegram from the entire congressional delegation advising him to exempt from the proclamation the Regional Agricultural Credit Corporation, the Reconstruction Finance Company, and the Department of Agriculture. *Id.* Langer amended the proclamation the same day, thus enabling the crop to be planted. *Id.*

157. Anhalt & Smith, *supra* note 5, at 10.

158. *Id.* at 11. For a discussion of the NDFHA, see *supra* notes 19-21 and accompanying text.

159. Anhalt & Smith, *supra* note 5, at 11.

160. *Id.* at 10-11.

foreclosure cases, Langer would send telegrams or letters to presiding judges, referring to the case and usually saying, "I do hope you can take care of this matter."¹⁶¹

The opinions of the attorney general during this period are illuminating. On April 25, 1933, Attorney General P.O. Sathre issued an opinion with respect to executions.¹⁶² He stated that "it is equally the duty of all the officers including the clerk of court as well as judges, to observe the mandates of the proclamation. It would hardly seem fair to throw the entire responsibility upon the office of the sheriff."¹⁶³ Therefore, he suggested that if all officers worked together, including judges who were considering issuing executions, a more satisfactory result would occur.¹⁶⁴

By December 1933, the attorney general, and presumably the governor, became more aware of the governor's limited authority over the judicial branch of state government. On December 1, 1933, the attorney general stated that "the proclamation must yield to a direct order of the court, and if the court allows the special execution to be issued after the mortgagor has claimed the benefits of the proclamations, the Sheriff must comply with the special execution."¹⁶⁵ Since courts had the power to stay execution, the attorney general reasoned, the courts would allow executions only "for good reasons."¹⁶⁶ The proclamation could not stand in the way of these "good reason" executions.¹⁶⁷

In the beginning phases of the moratorium, the sheriffs were faced with a conflict between their obligation to carry forward previously ordered sales and the directive of the proclamation.¹⁶⁸ While most sheriffs were sympathetic to the proclamation, they feared liability should they fail to obey a court order.¹⁶⁹ On March 16, 1933, Langer wrote to all the sheriffs asking them to advise him of conflicts with court orders and promising to protect them from legal responsibility for following the proclamation.¹⁷⁰ Since a sheriff's liability for failing to sell property was suspended if the failure was due to an "act of war," Langer called out the National Guard¹⁷¹ to create the necessary "act of war."¹⁷² During 1933,

161. *Id.* at 11.

162. 1932-1934 N.D. ATT'Y GEN. REP. 187-88.

163. *Id.*

164. *Id.* at 188.

165. *Id.*

166. *Id.*

167. *Id.*

168. Anhalt & Smith, *supra* note 5, at 11.

169. *Id.* at 11-12.

170. *Id.* at 12.

171. *Id.* There was no state police force at the time. The National Guard was led by Adjutant General Herman Brocupp and comprised 78 officers and 1106 enlisted men throughout the state who were under the direct control of the governor. *Id.*

172. *Id.*

National Guardsmen were used thirty-one times to prevent foreclosures.¹⁷³ Of these, thirty took place between April 15 and June 21; the last occurred on October 27, 1933.¹⁷⁴

Governor Langer accorded hardship cases special treatment, becoming personally involved and often acting as the judge in the matter.¹⁷⁵ If a creditor sought to be exempted from the proclamation and permitted to collect the debt owed him, Langer would allow the foreclosure, if the circumstances justified it.¹⁷⁶

Interestingly, no challenge to the proclamation ever reached the supreme court. Apparently, Langer deflected many legal challenges by the prudent use of his ad hoc hardship exception. Also, there was an apparently broad base of support for the proclamation that would have made any challenges to it unpopular.

VIII. CONCLUSION

The legal developments of the 1930's are no longer simply of academic or historical interest. The farm economy today shows several distressing parallels to trends evident a half century ago: farmers are experiencing a negative cash flow,¹⁷⁷ land values are

173. *Id.* at 13.

174. *Id.* Langer was advised of pending foreclosures by letters from owners and also by reports of the adjutant general, who on March 18 had ordered all newspapers to provide copies of each paper or at least all foreclosure clippings on a recurring basis. *Id.* at 12.

175. *Id.* at 14. For a discussion of Langer's willingness to personally intervene in the enforcement process of the moratorium, see *id.* at 14-16.

176. *Id.* Attorney General Sathre described the governor's involvement as follows:

The procedure followed in the application of the proclamation has been that the debtor and creditor are given an equal opportunity to submit to the Governor all facts attending each deal, and if the Governor feels that the debtor is entitled to the protection of that proclamation it is immediately given. We cannot state, however, that in all cases without any exception a debtor will be protected in his property. That protection is given in every case where the facts show that the debtor has done the best he could and has treated the creditor fairly, but if the facts on the other hand disclose that the debtor is attempting to take advantage of the proclamation to dodge a fair obligation and has made no attempt to settle that obligation when he was well able to do so, then the proclamation does not apply.

If any attempt is made by the creditor in this case to take your property you may report the matter to the Governor and it shall be investigated and decided according to the facts shown by the investigation.

1934-1936 ATT'Y GEN. REP. 151.

177. See ECONOMIC RESEARCH SERVICE, U.S. DEP'T OF AGRIC., ECONOMIC INDICATORS OF THE FARM SECTOR: INCOME AND BALANCE SHEET STATISTICS 10, 14 (1982). In 1982, North Dakota farmers showed a \$67.1 million negative cash flow between the cost of production and gross farm marketings. ECONOMIC RESEARCH SERVICE, U.S. DEP'T OF AGRIC., ECONOMIC INDICATORS OF THE FARM SECTOR: STATE INCOME AND BALANCE SHEET STATISTICS 77 (1982). As the following table indicates, this is considerably worse than any other year in recent times:

Cash Receipts from All Farm Production (in millions)

Year	Farm Marketings	Expenses	Difference
1962	617.3	545.2	72.1
1972	1132.9	808.1	324.8
1982	2710.4	2777.5	-67.1

Id.

declining,¹⁷⁸ delinquency rates are rising,¹⁷⁹ and there are increasing numbers of foreclosure avoidance sales and transfers.¹⁸⁰ Researchers at North Dakota State University's Department of Agricultural Economics recently estimated that 7000 of the state's farmers are in a condition of moderate to severe financial difficulty.¹⁸¹ The future economic, legal, and social implications of any continuation of the farm depression of the 1980's are clear:

First, farm attrition through foreclosure or voluntary liquidation will likely increase, especially among the indebted operator group, if 1979-84 economic conditions continue. Second, farm lenders will realize the financial impacts of expanded delinquency and insolvency. Both trends reduce the profitability of farm loans. Third, forced liquidations place farm assets (land and machinery) on markets which are already weak. Fourth, rural communities and businesses will continue to experience the secondary effects of reduced farm profitability. Potential impacts include lower retail sales, reduced provision of public services, and out-migration of rural residents.¹⁸²

The 1933 North Dakota Legislature proposed unprecedented solutions to unprecedented problems. In 1984, we may turn back to the precedents developed a half century ago and benefit legally and economically from the often bitter experiences of those who fought the legal battles of the "dirty thirties."

When governmental payments and other income is considered, the real net farm income from 1979 to 1982 was about \$245 million, well below the \$261 million earned in 1970. Pederson, Bertelsen, & Jahnke, *A Financial Profile of North Dakota's Farm Sector*, 42 NORTH DAKOTA FARM RESEARCH 15 (1984).

178. See Johnson, *Downward Adjustment in Farmland Values Continued in 1983*, 41 N.D. FARM RESEARCH 3 (1984). The statewide average land value loss in nominal terms between 1981 and 1983 was 7.5%. *Id.*

179. NORTH DAKOTA FARMERS UNION, SURVEY OF RURAL AND ECONOMIC CONDITIONS 3 (1982). Interest paid claimed about 30 percent of net cash flow in 1980-82, significantly higher than the 20 percent claimed by interest during the 1977-79 period. The higher interest bill represents higher farm indebtedness and sharply higher interest rates. Pederson, Bertelsen, & Jahnke, *supra* note 177, at 17-18.

180. See Johnson, *supra* note 178. Foreclosure or debt reduction accounted for 37% of farmland sales in 1983, the greatest single motive for sales for that year. *Id.*

181. Pederson, Bertelsen, & Jahnke, *supra* note 177, at 120.

182. *Id.*