November, 1942

University of Pennsylvania Law Review

And American Law Register

FOUNDED 1852

Copyright 1942, by the University of Pennsylvania

VOL. 91

NOVEMBER, 1942

NUMBER 3

THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 AND THE AMENDMENTS OF 1942

ROBERT H. SKILTON †

Upon induction into the armed forces, the soldier or sailor leaves behind him a civilian life of property relationships, most of which he has not had time to solve. These property relationships had been of deep concern to him; they involved the security that he was trying to build up for himself and his family, the financial obligations he owed his creditors, and his good reputation in the community. To preserve them intact, continuing payments were required: rent, interest, principal, taxes, premiums. When he is inducted, in all probability his income is reduced drastically; he can no longer preserve by his individual effort these property relationships unimpaired. But if he is forced to sacrifice his property and the security of his dependents, it does not require much imagination to foresee that his morale will be shaken and he will cease to be a useful member of the armed forces. A solution is required, not only in fairness to the soldier or sailor involved, but also as a matter of national necessity.

There are two possible solutions the government might offer to a soldier's financial problems. The first solution is to increase his pay to a point where he could meet his obligations. The second is to suspend the enforcement of claims against him during the period of his service.

Although the soldiers' pay has been increased and an allotment system introduced to provide subsistence for his dependents, the total amount of income involved is hardly sufficient to take care of past

† A. B., 1930, M. A., 1931, LL. B., 1934, University of Pennsylvania; Assistant Professor of Business Law in the Wharton School of the University of Pennsylvania; member of the Philadelphia Bar; author of *The Rights of Successive Beneficiaries in Unproductive Trust Assets* (1941) 15 TEMP. L. Q. 241, 378; *Proposed Uniform Mortgage Legislation* (1941) 9 AM. L. SCHOOL REV. 1128; *Assessing the Mortgage Debtor's Personal Liability* (1942) 90 U. OF PA. L. REV. 440, and other articles in legal periodicals.

obligations and pay insurance premiums, mortgage principal and interest; in fact, anything beyond bare subsistence.¹ Under the terms of the Selective Training and Service Act, private employers are permitted to make supplementary payments to their former employees,² but the number of employers responding to the invitation would not seem to be large.³ Because of the inadequacy of direct relief to soldiers and sailors, moratory legislation suspending their accrued obligations was virtually inevitable. The Soldiers' and Sailors' Civil Relief Act of 1940—providing for a moratorium to be granted members of the armed forces in the discretion of a court—was passed as an integral part of the induction program.⁴

From the earliest periods of recorded history, moratoria have been decreed by governments in unusual times. Natural catastrophes—drought, pestilence, and fire—wars, and, in recent times, the economic disturbances of business cycles, have all furnished occasions for moratoria. Of all the causes for moratoria, war appears to be the most frequent. There were moratoria in Europe during the Thirty Years' War, the Napoleonic Wars, the War of 1870, and the First World War.⁵ The experiences of this country with moratory legislation have also been considerable. State legislatures granted moratoria for soldiers in the Civil War and the First World War.⁶ The late depression (and indeed all previous major depressions) produced many notable examples of governmentally imposed stays upon civil obligations, beginning with the Banking Holiday of 1933 and including a

1. Servicemen's Dependents Allowance Act of 1942: PUB. L. No. 625, 77th Cong., 2d Sess. (June 23, 1942), as amended by PUB. L. No. 705, 77th Cong., 2d Sess. (Aug. 20, 1942). In England, the allowance system appears to be more elastic. Provision is made for additional allotments or temporary advances in cases deserving special consideration. See *Allowances for Dependents of Men Serving in His Majesty's Forces* (1940) 104 JUST. P. 146.

2. Section 3 (f) of Selective Training and Service Act: "Nothing contained in this or any other Act shall be construed as forbidding the payment of compensation by any person, firm, or corporation to persons inducted into the land or naval forces of the United States for training and service under this Act, or to members of the reserve components of such forces now or hereafter on any type of active duty, who, prior to their induction or commencement of active duty, were receiving compensation from such person, firm, or corporation. . . ." 54 STAT. 885 (1940), 50 U. S. C. A. 88 (Supp. 1941). Where employers adopt such a policy, care should be taken in framing their statements so that they may not be construed as an offer, capable of acceptance and resulting in a binding contract. See *Serving Soldiers and their Civil Pay* (1940) 104 JUST. P. 427.

3. 7 LAB. REL. REP. 201, 202 (1940).

4. 54 STAT. 1178 (1940), 50 U. S. C. A. app. §§ 501-585 (Supp. 1941). It was introduced while hearings were taking place on the Selective Service Act, and hearings were held on it in that connection. It was the War Department's response to the proposed Overton Amendment. See *House Hearings on Selective Service and Training Act* (1940) 491 et seq.

5. Feller, *Moratory Legislation: A Comparative Study* (1933) 46 HARV. L. REV. 1061.

6. DUNHAM, *MORATORY LEGISLATION IN THE UNITED STATES* (1917), an address delivered before the Association of Life Insurance Counsel.

variety of moratoria on mortgage foreclosures.⁷ It is, therefore, by no means uncharacteristic of our nation that the present response to the problems of inducted men should be provision for a moratorium.

The purpose of the device is to preserve an existing social pattern during a period which is believed to be unusual and temporary in character. A moratorium is effective if the period of the emergency is short, and the subsequent time is sufficiently prosperous in comparison with the time preceding the emergency to enable the parties protected to repay the suspended obligations. Where, however, the period of the emergency proves to be long (as was the case in the depression of 1929-1939) the tendency will be to renew the moratorium and to postpone the final solution to the debtor's problems. In the meantime, unless interest is currently paid in full, the obligations will increase, and the chances of an eventual successful outcome from the debtor's viewpoint will diminish steadily. And if the subsequent economic rise does not reach the level of that existing previous to the emergency, the value of the assets protected probably will not then be sufficient to repay the obligations involved. Only a few drastic solutions remain available: bankruptcy for the debtors involved, more painful because protracted, or governmental intervention in a huge refinancing or subsidy program which will not add to the real wealth of the country as a whole.

Nevertheless, it must be recognized that the moratorium may serve a valuable purpose, though temporary, if it is necessary to the country to postpone wholesale and immediate liquidation. The necessities of the case, from the standpoint of morale, would seem to justify a moratorium to soldiers even though it is no final solution to a problem.

The Soldiers' and Sailors' Civil Relief Act of 1940 was virtually a reenactment of the earlier Soldiers' and Sailors' Civil Relief Act of 1918.⁸ This earlier Act was adopted in the late stages of the nation's effort in the First World War. At the time it was passed there were already in existence in many of the states moratory laws attempting to protect soldiers and sailors.⁹ These Acts, as were their predecessors of the Civil War, were absolute in character—they closed the courts to creditors of the inductee for the duration of his service. This type of legislation seemed unfair, since there were many cases where the staying of a suit against a soldier could result in little good to him and great hardship to the creditor. On the other hand, the practice of viewing a moratorium as a matter for the exercise of judicial discre-

7. *State Measures for the Relief of Agricultural Indebtedness in the United States, 1933 and 1934*, compiled by Olcott and Berlow, U. S. Dept. of Agric., Bur. of Agric. Ec. Bibliography No. 53.

8. 40 STAT. 440 (1918), 50 U. S. C. A. 65 (Supp. 1941).

9. See note 6 *supra*.

tion had been adopted in Europe.¹⁰ This latter approach was chosen. Two polar considerations motivated the draftsmen: (1) to protect the soldiers wherever protection would be of real benefit to him; (2) to give the creditor of the soldier as much protection as possible under the circumstances. The solution was to throw the entire matter upon the courts, by giving them discretion to decide upon the grant of moratoria in individual cases, subject to certain guides defined in the statute.¹¹ This type of moratorium necessitated a review of each case upon its merits. It had both the advantages and disadvantages of elasticity.

Briefly, the 1940 Act limited the right of a creditor to the help of the court and to self-help in certain cases. A creditor was forbidden to obtain judgment for want of appearance against a member of the armed forces.¹² Appearance having been entered on behalf of the inductee, the creditor could obtain trial and judgment only in cases where the court was satisfied that the soldier's defense (if any existed) would not be impaired by his absence from court.¹³ If the creditor succeeded in obtaining judgment by court consent, he could nevertheless be prevented from obtaining execution on the judgment, in the discretion of the court, unless the court found that the soldier's ability to pay was not impaired by his presence in the armed forces.¹⁴

In its provisions for judicial process, the 1940 Act attempted to find a delicate balance between conflicting claims of soldier and creditor to social protection. It permitted the creditor to proceed with his case as far as it was possible to go without impairment of a soldier's legitimate interest as determined in each case. If the creditor could not have execution, at least he could be permitted to obtain judgment and place himself in a strategic position for action at the end of the moratorium. Soldiers whose cases did not appear to the court to be meritorious did not obtain protection. The court had complete power to order any disposition of the case, including execution, which would seem to fit the best interests of both parties concerned.

10. See note 5 *supra*.

11. See Ferry, Rosenbaum and Wigmore, *The History of the Soldiers' and Sailors' Civil Relief Act* (1918) 3 MASS. L. Q. 204.

12. 54 STAT. 1180 (1940), 50 U. S. C. A. app. § 520 (Supp. 1941).

13. *Ibid.* For illustrative cases recently decided, see *Swiderski v. Moodenbaugh*, 44 F. Supp. 687 (D. C. Ore. 1942) (trial ordered in automobile accident case where defendant soldier was insured, depositions taken, and plaintiff had agreed to limit his claim to amount of insurance); *Charles Tolmas, Inc. v. Streiffer*, 5 So. (2d) 372 (La. 1941) (stay set aside where lease sued upon revealed no ambiguities which would call for soldier's testimony and breach was clear); *Korsch v. Lambing*, 28 N. Y. S. (2d) 167 (Sup. Ct. 1941) (stay ordered where defendant was a necessary witness and was stationed in another state).

14. Note 12 *supra*. Illustrative cases recently decided are *Cortland Sav. Bank v. Ivory*, 27 N. Y. S. (2d) 313 (Sup. Ct. 1941) (described in text *infra*); *The Sylph*, 42 F. Supp. 354 (E. D. N. Y. 1941) (execution allowed where chattel involved was depreciating, on condition that plaintiff waive personal claim against defendant).

In certain cases, restrictions were also placed upon the creditor's rights to action out of court. The landlord's right to eviction and distress, the mortgagee's right to exercise his power of sale, the conditional vendor's right to retake possession of the property, were powers that could not validly be used against a soldier without court approval.

In its policy and purpose, the Soldiers' and Sailors' Civil Relief Act of 1940 received wide approval. But it was not beyond reproach and criticism in its precise treatment of many particular problems. Possibly much of the criticism arose from changed circumstances. At the time it was passed, it seemed adequate to meet the needs of men who were expected (by some Congressmen, at least) to remain in the services for one year of peaceful training. The actualities of war have destroyed these pleasant illusions. The army must be held intact, and it must grow. More married men, and older men, whose financial problems demand a broad and comprehensive program of moratory relief, are being inducted. The conflict may be protracted; it became obvious that the short period originally provided for payment by the soldier of his obligations upon his return from service, would not be enough. In addition, there were ambiguities in the Act which required correction.

The developing criticism of the original Act was evidenced by the fact that in the last two years, many bills were introduced into Congress.¹⁵ Some of these measures were sponsored by governmental departments, and represented their considered judgment as to particular matters requiring revision; others were sponsored by individual members or public groups. A few bills managed to pass one house; but with a single exception, none resulted in the amendment of the original act.

The reason for the failure of any amending bill to pass both houses appears to have been the decision of a subcommittee of the House Committee on Military Affairs to incorporate all acceptable proposals into a single amending act. With this in view, H. R. 7029 was introduced into the House by Representative Sparkman.¹⁶ Hearings were held,¹⁷ and as a result, the bill was redrafted and reintroduced

15. S. 1372, introduced November 10, 1941 (House Bill 4546), providing for changes in insurance provisions; S. 1569, introduced May 26, 1941 (House Bill 4936), providing for termination of leases; H. R. 5233, introduced July 3, 1941, providing for stay of foreclosures of storage liens and government guarantee; H. R. 4610, introduced May 2, 1941, providing for limitation on interest rates to 6 per cent.; H. R. 4686, introduced May 8, 1941, providing for relief from personal property taxes; H. R. 4930, introduced June 2, 1941, extending the protection of Section 302 (1) to obligations originating prior to termination of Selective Training and Service Act.

16. Introduced April 30, 1942.

17. May 22 and 25, 1942.

as H. R. 7164.¹⁸ This bill, entitled the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, was passed by the House on June 18, 1942; amended by the Senate, and passed on July 30, 1942. A joint committee, appointed to iron out matters in dispute and find a mutually acceptable Act, reported on September 24, 1942. Its report was accepted by both Houses, and the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 became law by Presidential signature on October 6, 1942.¹⁹

The coverage of these Amendments is extensive. The Act is about as long as the original Soldiers' and Sailors' Civil Relief Act of 1940, and does much to clarify and strengthen it. Briefly, the Act includes within its protection accommodation co-makers,²⁰ persons serving in the armed forces of our allies, and sureties on criminal bonds.²¹ It provides that the Secretaries of War and Navy shall give notice of the benefits of the Act to men in service. It limits the amount of interest that may accrue during the period of service to 6 per cent., unless the soldier's ability to pay is not affected. It grants relief to landlords against mortgages, taxes and conditional sales, where relief has been granted against them. Mortgages and contracts for the sale of real and personal property are protected if executed before entry into service. The lessee is given a statutory right to terminate his lease when called into military service. Life insurance policies assigned as collateral may be protected by the soldier. Extra-judicial enforcement of storage liens is forbidden. A soldier's dependents are given the benefits of Article III (relief against rent, mortgages, and conditional sales). There are provisions for "FURTHER RELIEF", entitling the soldier to ask a court to reamortize contracts, by extending the period of the life of the contract by the period of service, and spreading the accrued payments equally over the extended period. Modifications are also made in the insurance protection provisions of the original Act.

The appearance of these Amendments furnishes a proper time for a short review of some of the problems raised by the original act and the solutions adopted by the 1942 version. The approach that will be taken will be to consider the scope of the 1940 Act with regard to certain important property rights, and then to consider the Amendments and their adequacy to meet the problems involved.

18. Introduced June 1, 1942.

19. PUB. LAW NO. 732, 77th Cong., 2d Sess. (Oct. 6, 1942).

20. This seemed to be necessary because of the decision of Judge Pecora in *In re Itzkowitz*, 30 N. Y. S. (2d) 336 (Sup. Ct. 1941). However, that decision has been contradicted by *Modern Industrial Bk. v. Zaentz et al.*, 29 N. Y. S. (2d) 969 (Mun. Ct. 1941).

21. See Note (1941) 130 A. L. R. 779.

Leases

The Soldiers' and Sailors' Civil Relief Act of 1940 provided:

"No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed \$80 per month occupied chiefly for dwelling purposes by the wife, child, or other dependents of a person in military service, except upon leave of court granted upon application therefore or granted in an action or proceeding affecting the right of possession. . . . On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, as provided in this act or it may make such other order as may be just."²²

Criminal penalties were attached to violation of these provisions.²³ To some extent the landlord was compensated by provision that the Secretaries of War, Navy, or Treasury, as the case may be, may order an allotment of the pay of the person in military service to discharge the rent.²⁴ Compensation, however, could hardly be sufficient to discharge rent in the case of premises renting for \$80 a month, occupied by the dependents of a soldier inducted as a private.

Except for the fact that the maximum rental for protected leases was changed from \$50 to \$80 a month, the provision of the 1940 Act was the same as that of the 1918 Act. The change was made because it was believed that the average level of rent had risen.²⁵ The figure actually fixed was not determined by statistical method; it was selected arbitrarily. Leases on business properties (regardless of the amount of rental) and leases on residential properties above \$80 a month, were excluded from the protection.

The 1940 provision was vague. Furthermore, it did not discriminate between cases. The landlord had to go into court for permission to evict the dependents of a soldier, regardless of the length of time during which he permitted them to remain in default. It is one thing to require a landlord to obtain court permission for eviction during the first month of default; it is another to ask him to obtain court permission for eviction after he has exercised forbearance and allowed the dependents to remain in default for a considerably longer period. The court was empowered to grant at least three months' delay before

22. Section 300 (1) and (2), 54 STAT. 1181 (1940), 50 U. S. C. A. app. § 530 (Supp. 1941).

23. Section 300 (3), 54 STAT. 1181 (1940), 50 U. S. C. A. app. § 530 (Supp. 1941).

24. Section 300 (4), 54 STAT. 1181 (1940), 50 U. S. C. A. app. § 530 (Supp. 1941).

25. See note 4 *supra*.

eviction, again regardless of the length of period of default. Even more important, however, is the fact that it was by no means clear for how long a court may order a stay of eviction. The phrase "for not longer than three months", taken by itself, was quite clear; but it was followed by the additional phrase "or it may make such other order as may be just". Did this additional language give a court the alternative of granting a three months' order or of granting an order for a longer period of time? In two cases decided under the 1918 Act, the courts of different states took contrary views.²⁶ In a recent New York lower court decision, the court granted a continuance of a three months' stay upon payment by the dependent of one month's back rent, although the tenant remained in default for other months.²⁷

This lack of clarity was called to the attention of the House Committee on Military Affairs, in considering the proposed 1942 Amendment.²⁸ Unfortunately, however, no action was taken to clarify the language of the Act. It is well to give a court discretion in handling matters of this kind; but if boundaries to that discretion are intended, they should be stated clearly, and not ambiguously.

That it may have been the intention of the House Committee to confer upon the courts power to grant stay of eviction for periods of time longer than three months, is indicated by the fact that the Amendments include a new provision, giving a landlord adversely affected by a moratorium power to ask the court for relief against tax, conditional sale, and mortgage claims.²⁹ Here we have an instance of the relief of creditors: an attempt to distribute the financial burdens of a moratorium. Obviously the solution is not a perfect one. It is illogical to make provision for the relief of one particular class of creditors at the expense of another class. Why should the relief granted stop with the landlord? Why should not relief be granted to the landlord's mortgagee as well?

The provision illustrates the tendency of one moratorium to lead to another. If one class of debtors is excused from payment, demands are made for relief by their creditors, and so on, until the eventual outcome may be a general moratorium. In the last depression, a banking holiday moratorium led in many states to insurance and mortgage moratoria. In Great Britain the benefits of a judicial stay of proceedings are available to all persons adversely affected by war, and not

26. *Riordan v. Zube*, 50 Cal. App. 22, 195 Pac. 65 (1920); *Gilluly v. Hawkins*, 107 Wash. 79, 182 Pac. 958 (1919).

27. *Jonda Realty Corp. v. Marabotto*, 34 N. Y. S. (2d) 301 (Mun. Ct. 1942).

28. *Hearings before Committee on Military Affairs on H. R. 7029*, 77th Cong., 2d Sess. (1942) 15.

29. PUB. LAW No. 732, 77th Cong., 2d Sess. (Oct. 6, 1942) § 8.

merely to soldiers.³⁰ The increasing impact of the tax burden upon many people in this country has caused Mr. J. Randolph Paul to suggest the possibility of a general moratorium available to all classes.

The Soldiers' and Sailors' Civil Relief Act of 1940 contained no reference to the right of a lessee to terminate his lease upon induction into the armed forces. That this right existed, however, as a principle of common law independent of statute, was indicated by a lower court New York case decided in 1920,³¹ and another decided recently.³² In both of these cases the lessee occupied premises for business purposes and upon being drafted into the armed forces abandoned the premises. In the first case, the lessee himself was sued upon his return from service. In the second case, the guarantor of the lessee was sued immediately. In both cases, the defendants were held to be relieved of liability on the ground that the induction of the lessee into the Army amounted to a frustration of the purpose of the lease and created a discharge.

These decisions raise more questions than they answer. How far does this asserted application of the doctrine of impossibility of performance extend? Does it excuse a lessee for business purposes who can, upon his induction, obtain a manager to carry on the business for him? Does it excuse a lessee of a long-term lease, who may be held to have foreseen the contingencies of war? Does it excuse a lessee of a dwelling whose dependents can still use the premises if they so desire? Does it excuse a lessee who signed as head of a large business which was the real occupant of the premises? To attempt to answer these questions would be to depart from decided cases into speculation.

The matter was obviously one for statutory definition. Under the sponsorship of the War Department, a Bill had been introduced into the Senate³³ which provided that an inductee would be entitled to terminate his lease by written notice delivered to the lessor at any time following the date of his military service: the termination to be effective after thirty days from the date of the next monthly rental payment. This Bill purported to confer upon the lessee an absolute right to terminate any lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes.

30. See Rogers, *The Courts (Emergency Powers) Acts 1939 and 1940—A Review in Retrospect* (1940) 5 CONVEYANCE AND REAL PROPERTY LAWYER 4. The English Liabilities (War-time Adjustment) Act of 1941 provides a further step toward solving the problems of debtors distressed by war. This statute provides a mode of reorganization of debtor's business with the object of enabling him to discharge his debts and possibly keep some of his property and his business. For a discussion of the Act, see Rogers, *The Liabilities—War-time Adjustment Act of 1940 (1941)* 6 CONVEYANCE AND REAL PROPERTY LAWYER 31.

31. *State Realty Co. v. Greenfield*, 110 Misc. 270, 181 N. Y. Supp. 511 (1920).

32. *Jefferson Estates, Inc. v. Jacob Wilson*, Mun. Ct. of City of N. Y., Bor. of Man., 3d Dist., decided May 28, 1942.

33. S. 1569, cited note 15 *supra*.

The Bill, after passage by the Senate,³⁴ was incorporated into H. R. 7029 and eventually into H. R. 7164. Objections were made at the hearing on H. R. 7029,³⁵ by a member of the subcommittee, that the Bill was too broad in scope—that it allowed termination in cases where the lessee's ability to use the premises and continue payments was not affected by his presence in the armed forces. In consequence, the proviso was added to H. R. 7164 that "upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require".³⁶

This additional provision is so broad as to suggest that the entire section now is virtually meaningless. Termination by the lessee is not made a matter of right in any case: it is subject to court review. The principles which will govern the court in determining the equities of the case may still be the principles which governed courts in determining the right to a discharge on the ground of impossibility where no statute existed. If the section is to have a real meaning, it would seem advisable to place limits upon the court's power of review by describing certain exceptional cases where the lessor would be permitted to apply to the court for review.

Real Estate Mortgages

The 1940 Act dealt specifically with the problem of mortgages against real and personal property owned by men in the armed forces.³⁷ The court was empowered to stay foreclosure proceedings for the duration of service and three months thereafter, in cases of default in the payment of sums accruing before service, or during service. Sales out of court were forbidden. The broad discretion conferred upon the court enabled it to postpone foreclosure for any length of time up to the maximum; to order current payment of interest as a condition to postponement; or to decree immediate foreclosure when the equities seemed to require it.

An example of the purely discretionary character of the judicial action provided is the case of *Cortland Sav. Bank v. Ivory*.³⁸ An FHA mortgage was involved: created in 1936, and calling for payments of principal, interest, taxes, etc., of \$44.33 a month. Payments were

34. July 14, 1941.

35. *Hearings before Committee on Military Affairs on H. R. 7029*, 77th Cong., 2d Sess. (1942) 26.

36. See PUB. LAW No. 732, 77th Cong., 2d Sess. (Oct. 6, 1942) § 12.

37. Section 302, 54 STAT. 1182 (1940), 50 U. S. C. A. app. § 532 (Supp. 1941).

38. 27 N. Y. S. (2d) 313 (Sup. Ct. 1941).

regularly made until the mortgagor's entry into the armed forces. His income, which was \$203.80 a month before his induction, was reduced to \$154 a month for some months thereafter and then raised to \$177.30 a month. The court ordered payment of \$26.95 a month for interest and taxes as a condition of stay.

It became clear that the mortgage provisions of the 1940 Act required amendment in certain respects. For example, all accrued indebtedness had to be paid, according to the terms of the Act, within three months after the mortgagor left service. This provision seemed proper at a time when a one year period of induction was contemplated. But it hardly afforded adequate relief when the period of service is protracted and the indebtedness grows in the meantime. As an act of grace, rather than compulsion, the FHA permitted mortgagees, insured under the terms of the National Housing Act, before instituting foreclosure proceedings, to allow a returning soldier one year in which to cure his default.³⁹ The Soldiers' and Sailors' Civil Relief Act Amendments of 1942 provide a way for extending the time within which the default must be made good: in effect, reamortization is required; the mortgage must be recast by extending it by the length of the period of service.⁴⁰

The protection of this section is further extended. The prior limitation to mortgages created up to October 17, 1940, has been stricken out, and relief provided in the case of any mortgage created before entry into service.⁴¹ Some mortgagees may think this bad manners on the part of Congress: for the purpose of the limitation in the original act (and of a similar limitation on protected contracts of conditional sale) appears to have been to prevent the freezing of credit. The credit having been given, the moratorium is extended. But from the soldiers' viewpoint, the amendment seems just and necessary. Another change prolongs periods of redemption after foreclosure by the length of the service.⁴² Failure to include such provision in the original act was apparently an error in draftsmanship rather than a matter of policy.

The repercussion of the relief granted upon mortgagee's rights will grow as the number of inducted men increases. The time may come when it will seem necessary to relieve mortgagees from many of their own obligations, in cases where relief is granted against them. The mortgagee's hardship is increased by the fact that he is not assured of eventual repayment of the accrued indebtedness, except where he is

39. See Regulations printed 14 C. C. H. War Law Serv. ¶ 19,111.

40. PUB. LAW NO. 732, 77th Cong., 2d Sess. (Oct 6, 1942) § 18.

41. *Id.* § 9.

42. *Id.* § 10.

insured by the Federal Housing Administration. What reasonable distinction can be made between the cases of policies held by insurance companies, where the premium is guaranteed by the Federal Government, and the cases of mortgages held by insurance companies or other savings institutions and individual mortgagees, where the Federal Government requires the entire risk to be borne by the private creditor? What reasonable distinction can be made between lessors and mortgagees, that one should be allowed to obtain relief and the other not, under the Amendments? It seems to be a case where expediency rather than logic has governed.

Conditional Sales and Mortgages of Personal Property

Change in events has likewise called for reconsideration of the special provisions in the 1940 Act dealing with conditional sales and mortgages of personal property. By Section 301 it was provided that no person who sold conditionally real or personal property and received a deposit on account should resume possession of property by extra-judicial action for non-payment of installments falling due during the period of the vendee's military service, except where a later agreement in writing was entered into with the vendee. At a hearing the court was empowered to order a stay of proceedings if in its opinion defendant's ability to comply was materially affected by reason of service and it was to the best interests of the defendant so to do.⁴³ Section 303 limited the court's power by providing that it is not entitled to stay proceedings to resume possession of a motor vehicle or tractor unless the court found that 50 per cent. or more of the purchase price was paid. As a condition to an order of sale, the court could require the entry by the plaintiff of a bond to indemnify the defendant against damage.⁴⁴

Such provisions allowing a moratorium with respect to personal property under a conditional sales agreement (as well as those governing chattel mortgages) have been outmoded. In most cases today it would no longer be to the best interests of the defendant to grant a stay of proceedings, where deteriorating chattels (except furniture) were involved. For example, in the case of *Associates Discount Corporation v. Armstrong*,⁴⁵ the defendant had purchased an automobile in June, 1940, by paying part of the purchase price and agreeing to pay the balance in monthly installments. He continued his payments until his induction into the army in February, 1941. No further payments

43. 54 STAT. 1181 (1940), 50 U. S. C. A. app. § 531 (Supp. 1941).

44. 54 STAT. 1183 (1940), 50 U. S. C. A. app. § 533 (Supp. 1941).

45. 33 N. Y. S. (2d) 36 (City Ct. 1942).

were made until his release from the army in October, 1941; thereafter he made two additional payments. In January, 1942, he was reintroduced, and the plaintiff brought an action of replevin. The defendant invoked the protection of the Soldiers' and Sailors' Civil Relief Act. The court refused a stay of proceeding, and ordered that the defendant should be paid the difference between the value of the car and the balance due. It was said:

"A stay of proceedings herein will work an unnecessary, unexpected, and unjustifiable hardship on plaintiff without bringing any benefit to defendant. The term of his present service is indefinite. In the meantime, the automobile is in storage, the expense of which is increasing daily; the car is depreciating in value and the future holds only uncertainty as to the possibility of obtaining materials necessary for repairs or replacements to the car if it should be put to use again. It seems, therefore, that the rights of the parties should be determined in accordance with Section 310, subdivision 3—or it [the court] may make such other disposition of the case as may be equitable to conserve the interests of all parties'." ⁴⁶

The example set by the New York Court in dealing with a conditional sales contract has received the approval of the Amendments of 1942. Section 303 is thereby repealed. Article III of the 1940 Act is amended by four new sections,⁴⁷ giving the court power to appoint three disinterested parties to appraise personal property which is the subject of a conditional sale or chattel mortgage, and in accordance with such appraisal to award the difference between the debt due and the appraised value of the property to the person in military service or his dependents. By the terms of these provisions, stay is still possible; but the court is thus encouraged to order the surrender of the chattel. In the words of Major Partlow:

"The object of this section is to allow foreclosure or repossession on an equitable basis in those cases where no hardship will result to the dependents of those persons involved in military service, thereby eliminating to some extent the objectionable deprivation of the use of the property which is the subject of the stay under the Act.

"Although courts now have authority to accomplish the purpose of this act, nevertheless, this provision will serve as a guide, and has been suggested by financial interests." ⁴⁸

46. *Id.* at 38.

47. PUB. LAW NO. 732, 77th Cong., 2d Sess. (Oct. 6, 1942) §§ 11, 12.

48. *Hearings before Committee on Military Affairs on H. R. 7020*, 77th Cong., 2d Sess. (1942) 19.

Insurance

By the terms of Article IV of the 1940 Act, a member of the armed forces was entitled to secure the protection of life insurance policies owned by him, up to a total face value of \$5,000. This protection was in addition to the privilege given the soldier to obtain \$10,000 worth of National Service Life Insurance. The Federal Government, acting as guarantor, undertook to reimburse the insurance company involved for premiums not paid by the soldier during the period of protection.

Not all insurance policies owned by the inductee could thus receive protection. The inductee would not be fully protected if he had any more than \$5,000 face value in insurance policies. The act did not protect life insurance policies where there was an outstanding loan in excess of 50% of the cash surrender value, nor policies whose premiums had been due and unpaid for more than one year. In addition, the Veterans' Administration ruled that policies with war risk clauses and group insurance policies were not included in the protection of the Act.⁴⁹ Oddly enough, however, term insurance—with no cash surrender value at all—could be protected.

The act was also incomplete in certain other respects. Policies assigned by the insured as collateral were not protected. If the insured failed to cure the default on a protected policy within one year after leaving service, the policy was to be surrendered—unless the insured prior thereto had effected a settlement.

To correct certain features of the insurance provisions of the 1940 Act, the Veterans' Administration, charged with the administration of the provisions, sponsored a bill which eventually passed the Senate, as S. 1372. The bill was sidetracked in the House, and another provision was incorporated into H. R. 7164. Both bills provided for a simplified system of administration which relieved the Veterans' Administration of much clerical work. H. R. 7164, however, was much more liberal to the inductee. The differences between the provisions of S. 1372 and H. R. 7164 may be briefly summarized: (1) H. R. 7164 raised the amount of protected insurance to \$10,000—S. 1372 retained the \$5,000 limit. (2) H. R. 7164 included term insurance and fraternal society policies within its benefits; S. 1372 excluded them. (3) Both acts eliminated the provision that protection should not be extended in cases where there was an outstanding loan equal to or greater than 50% of the cash surrender value; but S. 1372 substituted the provision that the policy should have been in force at least one year and that a reserve equal to one year's pre-

49. Regulations printed 1 C. C. H. War Law Serv. § 19.114 *et seq.*

mium should be vested in the policy a year after the time when the policy came under the coverage of the act. In effect, this would have made it necessary for a policy to be in force for three or four years before it could qualify. H. R. 7164 simply required that the policy be in force on the date of the act or for thirty days before entry into service. (4) S. 1372 continued the requirement of the original act that the default must be made good within one year after service; but, where no settlement had been made by the soldier in that time, permitted a running on of the policy in the form of extended insurance, rather than surrender of the policy, if the government was relieved of liability. H. R. 7164 extended the period within which the soldier must make good his default to three years after leaving service, provided one-third of the default was paid successively at the end of the first and second years. (5) H. R. 7164 limited the interest chargeable during the moratorium to 4 per cent.; S. 1372 allowed the insured to change the policy rate. (6) S. 1372 provided that any premiums paid by the United States would become a claim against the soldier; H. R. 7164 did not.

When H. R. 7164 was submitted to the consideration of the Senate Committee on Military Affairs, that committee was chagrined at the fact that S. 1372 had been tampered with. Their opposition to the changes introduced in the insurance provisions by this bill was doubtless encouraged by the fact that the Veterans' Administration was on record against the proposal to increase the coverage to \$10,000 and various other proposals of H. R. 7164. The Senate Committee struck out the insurance provisions of the House bill and substituted S. 1372 as the insurance section. In this form H. R. 7164 passed the Senate.⁵⁰ The House sponsors of the bill, however, regarded the changes as radical in character,⁵¹ and the dispute over the insurance provisions delayed agreement upon the precise language of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 for some time. Finally, on September 24, the managers appointed by House and Senate reported agreement.⁵²

The agreement favored the House version for the most part. The protection was placed at \$10,000; term policies and fraternal benefits were included; the policy need be in force only thirty days or before the act to qualify. The insured was given two years, instead of one or three, within which to settle his accrued premiums upon his return from service. The insurer was allowed to charge the policy interest rates. Premiums paid by the United States Government became a personal claim against the insured. This agreement having been reached,

50. July 30, 1942.

51. 77 CONG. REC., Aug. 31, 1942, at 7240.

52. See PUB. LAW No. 732, 77th Cong., 2d Sess. (Oct. 6, 1942) § 13.

the way was clear for swift approval of the report of the joint committee. This took place in the Senate on September 24, and in the House on September 28, and the Act was ready for Presidential signature.

Readjustment Problems

The most important provisions of the Amendments of 1942, however, excited little controversy: These have to do with the problem of readjusting the soldier to civilian life upon the termination of his service. Section 18 of the Amendments adds a new article to the Soldiers' and Sailors' Civil Relief Act, which entitles the man in service to petition a court, while in service or within six months after his return, for a rewriting of his obligations. In the case of a contract for the purchase of real estate, or a mortgage on real estate, the court is empowered to stay enforcement of the obligation and reamortize payments accruing by extending the obligation's remaining life by the length of service involved. In the case of all other obligations, the stay may be extended for a period of time equal to the period of service, and the accrued debt amortized over that time.

From the soldier's viewpoint, this section seems to be much more realistic than its predecessor, which required insurance premiums to be made good in one year, taxes in six months, and all other obligations in three months. But the new provision is, of course, merely an extension of the moratory principle, and merely grants a more realistic deferment of the problems of the soldier. It does not solve them.⁵³

Since the Soldiers' and Sailors' Civil Relief Act and its Amendments are thus purely moratory in character, they merely furnish a breathing space in which the nation can develop a coordinated plan for solving the problems of the returning soldier.

The reemployment provisions of the Selective Service Act, in this regard, are useful, but of course they cannot be an entire solution to the problem.⁵⁴ The employer is under no duty to re-hire his returning

53. Unfortunately, this provision adds an incongruity to the Act which apparently came in by accident. As originally introduced in H. R. 7029, the provision required application for relief by the soldier within three months after leaving service. This time limit was in keeping with other sections, forbidding creditors to exercise self-help until three months after service, and requiring them to go into court. That section was entitled "General Relief After Period of Service" and contemplated application within the three months' time after discharge. At the suggestion of Mr. Monsman, however, the soldier was accorded a right to apply for relief during service as well as after, and the three months' additional period was changed to six months, to give the soldier more time. But the draftsmen neglected to defer the right of creditors to self-help for the additional three months' period. A lamentable confusion has been introduced.

54. First appearing in National Guard Act, Section 3 of S. J. Res. 286, signed by the President, Aug. 28, 1940. This is Section 8 of the Selective Service Act, 54 STAT. 890 (1940), 50 U. S. C. A. app. § 308 (Supp. 1941). The reinstatement provisions appear to have been suggested by the English prototype. The National Service (Armed

ex-employee if the soldier is not physically capable of performing his former functions, or if the employee was merely a temporary employee, or if it would be "unreasonable" to require the employer to re-hire him in view of changed economic conditions. In any event, the difficulty of any legal compulsion upon the employer is evident.

If, however, jobs are not readily available, we may expect demands from returning soldiers for payments to meet obligations that have been deferred under the moratorium, and to get started in a new enterprise. The nation should lay some plans for this eventuality. A system of compulsory savings, by the purchase of war bonds, even though it involved raising the soldier's pay to accomplish this, might be a better plan than a bonus. A program for vocational education of disabled soldiers to fit them for new civilian jobs should be undertaken immediately. Present planning of a coordinated program covering all problems of the returning soldier is urgent.

Forces) Act, 1939, 2 & 3 GEO. VI, c. 81, § 14; The Reserve and Auxiliary Forces Act, 1939, 2 & 3 GEO. VI, c. 24, § 2. In England, regulations have been issued to prevent the evasion of reinstatement provisions by dismissal of employees before entry into service. 3 BUTTERWORTH, EMERGENCY LEGISLATION, No. 35, at p. 74 (1940). Private employment acts have been passed by some states to reinforce federal provisions. ILL. LAWS 1941, p. 1202, ILL. ANN. STAT. (Smith-Hurd, Supp. 1942) c. 126½, §§ 29-35; MONT. LAWS 1941, c. 150; NEV. LAWS 1941, p. 37; N. Y. LAWS 1941, p. 1552, N. Y. CONS. LAWS (Cahill, Supp. 1941) art. 13, § 316; OKLA. LAWS 1941, p. 438, OKLA. STAT. ANN. (Harlowe, 1942) § 12018b; WASH. LAWS 1941, p. 592, WASH. REV. STAT. ANN. (Remington, Supp. 1941) §§ 10758-3 to 10758-9.

Certain state acts require reemployment of inducted state and local employees under certain conditions: ALA. CODE ANN. (Michie, Supp. 1941) tit. 55, c. 9, § 361; ILL. LAWS 1941, p. 402, ILL. ANN. STAT. (Smith-Hurd, Supp. 1942) c. 24½, §§ 150-153; 10 MASS. ANN. LAWS (Supp. 1941) p. 38; OKLA. LAWS 1941, p. 438; OKLA. STAT. ANN. (Harlowe, 1942) § 12018a; ORE. LAWS 1941, p. 508, 7 ORE. COMP. LAWS ANN. (Supp. 1941) § 104-7a04; PA. LAWS 1941, p. 744, PA. STAT. ANN. (Purdon, Supp. 1941) tit. 24, § 2731.3; WIS. LAWS 1941, c. 102, 171.

Reinstatement after war service has also been made the subject of collective bargaining agreements in many cases. Some clauses adopted merely repeat the statutory language; in other cases, however, additional clauses are added, protecting temporary employees, or returned service men who are not physically acceptable within the period set for application but who become well thereafter. For typical clauses, see 9 LAB. REL. REP. 86, 89 (1941); 9 LAB. REL. REP. 110, 131 (1941); 9 LAB. REL. REP. 397, 399 (1941); 10 LAB. REL. REP. 77, 80 (1942); 10 LAB. REL. REP. 311, 312 (1942).