

Opinion No. 506

**Mortgages—Foreclosures—Sheriff's
Certificate and Deed—Bankruptcy.**

HELD: The Federal Statute, providing for jurisdiction in Bankruptcy Courts of agricultural compositions and extensions, is intended to include a moratorium for farmers pending and

during these proceedings; therefore, said Act forbids the issuance of a sheriff's certificate and deed upon foreclosure while such proceedings are pending.

April 9, 1934.

You inquire as to your duty in the following case: On March 3, 1933, there became effective 47 Stat. 1470, 11 U. S. C. A., Sec. 203; Sec. 75 Bankruptcy Act, a law authorizing Courts of Bankruptcy to take jurisdiction of agricultural compositions and extensions. On March 21 a party filed a petition for composition and extension under this Act. On March 27 the sheriff sold real estate belonging to the same party under a decree of foreclosure. Except for such Federal Act a sheriff's deed would issue on March 27, 1934. You inquire whether or not you are prohibited from issuing such sheriff's deed by reason of this Federal statute.

The general Bankruptcy Law has been upheld and the filing of a petition in Bankruptcy has been held, generally, to be a caveat to the whole world. The Act in question provides:

"n. The filing of a petition pleading for relief under this section shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court. * * *"

"o. Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court: * * *

"2. Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;".

The only authority we have on the subject is the law. It has never been construed so far as we have been able to ascertain. In 22 American Bar Association Journal, January, 1934, pp.

9-11, 36, cited in Legal Periodical Digest, 1934, Sec. 513, by Professor John Hanna, the Act is discussed generally.

As stated by Professor Hanna, this law is intended to include a moratorium for farmers pending and during these proceedings. In the absence of any authorities on the question we will adopt the conclusions reached by the courts in similar questions on the Bankruptcy Law and hold that the Federal Statute forbade the issuance of the sheriff's certificate as issued in this case and that, as such certificate was wrongfully issued, no sheriff's deed should issue in this case.

This Federal Law does not deprive the holder of a mortgage or other lien of his mortgage or lien. It does permit fifteen farmers in any county to petition for the appointment of a conciliation commissioner. The commissioner is appointed by the Bankruptcy Court. Thereafter an insolvent farmer may file a petition to effect a composition or an extension of time to pay his debts. The filing of this petition stays all levies, attachments, mortgage foreclosures or similar proceedings. The further proceedings are explained in the Act.