

## Sec. 10—Powers Denied to the States

## Cl. 1—Treaties, Coining Money, Etc.

ready made,” said Justice Cardozo for the Court, “and moderate extensions of the time for pleading or for trial will ordinarily fall within the power so reserved. A different situation is presented when extensions are so piled up as to make the remedy a shadow. . . . What controls our judgment at such times is the underlying reality rather than the form or label. The changes of remedy now challenged as invalid are to be viewed in combination, with the cumulative significance that each imparts to all. So viewed they are seen to be an oppressive and unnecessary destruction of nearly all the incidents that give attractiveness and value to collateral security.”<sup>2099</sup> On the other hand, in the most recent of this category of cases, the Court gave its approval to an extension by the State of New York of its moratorium legislation. While recognizing that business conditions had improved, the Court found reason to believe that “the sudden termination of the legislation which has dammed up normal liquidation of these mortgages for more than eight years might well result in an emergency more acute than that which the original legislation was intended to alleviate.”<sup>2100</sup>

In the meantime, the Court had sustained New York State legislation under which a mortgagee of real property was denied a deficiency judgment in a foreclosure suit where the state court found that the value of the property purchased by the mortgagee at the foreclosure sale was equal to the debt secured by the mortgage.<sup>2101</sup> “Mortgagees,” the Court said, “are constitutionally entitled to no more than payment in full. . . . To hold that mortgagees are entitled under the contract clause to retain the advantages of a forced sale would be to dignify into a constitutionally protected property right their chance to get more than the amount of their contracts. . . . The contract clause does not protect such a strategical, procedural advantage.”<sup>2102</sup>

More important, the Court has been at pains most recently to reassert the vitality of the clause, although one may wonder whether application of the clause will be more than episodic.

“[T]he Contract Clause remains a part of our written Constitution.”<sup>2103</sup> So saying, the Court struck down state legislation in two

<sup>2099</sup> 295 U.S. at 62.

<sup>2100</sup> *East New York Bank v. Hahn*, 326 U.S. 230, 235 (1945), quoting New York Legislative Document (1942), No. 45, p. 25.

<sup>2101</sup> *Honeyman v. Jacobs*, 306 U.S. 539 (1939). See also *Gelfert v. National City Bank*, 313 U.S. 221 (1941).

<sup>2102</sup> 313 U.S. at 233–34.

<sup>2103</sup> *United States Trust Co. v. New Jersey*, 431 U.S. 1, 16 (1977). “It is not a dead letter.” *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241 (1978). A majority of the Court seems fully committed to using the clause. Only Justices Brennan, White, and Marshall dissented in both cases. Chief Justice Burger and Jus-