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search. Generally, under this rule one must claim some lawful interest in the subject being seized before he can object to the reasonableness and legality of the search.

Let us suppose that a defendant, who is objecting to the introduction into evndence of certain personal property, denies any right, title, or interest in the property seized, and further, that he was not on the premises at the time the allegedly illegal search and seizure took place. Under the California view, he would have standing to object if he could prove that someone's constitutional guarantees were violated in procurement of the evidence. However, under the Jones or Federal viewpoint, he would not have standing to object because the right is limited to those people who were *on the premises* at the time the search and seizure took place.

The view of the United States Supreme Court that the right to object should be limited to those people on the premises at the time of the search regardless of whether they are there as guests, invitees or licensees, is a desirable limitation. The Martin or California view seems impractical because it gives the defendant standing to object no matter what his proximity or relation to the case, as long as some one's constitutional guarantees have been violated. There is no logical reason why a guest should not have standing. It seems safe to predict that most states, including Wyoming, will fall in line with the Jones viewpoint.

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EFFECT OF SATISFYING A JUNIOR LIEN ON STATUTORY RIGHT OF REDEMPTION

This article deals with the question of whether a purchaser at a foreclosure or execution sale can prevent "statutory redemption" by a junior lien holder by tendering payment of the debt which the lien secures.[1]

Because our concern is with the statutory right of redemption,[2] it is felt that equity of redemption should be distinguished; and that any

1. The principal question, so far as the author has been able to ascertain, has never been decided by a court of record.
2. The redemption statutes of the several states which have them are sufficiently similar, for purposes of this article, so that Wyoming's statutes will suffice as adequate refernce.

   § 1-480, W.S. 1957, provides that, "It shall be lawful for any person, his heirs, executors, administrators, assigns, or guarantors, whose lands or tenenments have been sold by virute of an execution, decree of foreclosure, or foreclosure by advertisement and sale, within six months from the date of sale to redeem. . . ."

   § 1-481, W.S. 1957, provides that, "After the expiration of six months and at any time before the expiration of nine months from date of sale . . . it shall be lawful for any judgment creditor of the person whose lands have been sold, or for any grantee or mortgagee of said lands and tenements so sold, to redeem the same. . . . If no redemption be made within nine months of the date of sale, the purchaser or his assignee is entitled to a sheriff's deed to the property, or if so redeemed, whenever thirty days has elapsed and no other redemption has been made, the last redemption or his assignee shall be entitled to a sheriff's deed."

possible bearing the equitable right might appear to have on the problem at hand be discussed at the outset.

Stated simply, equity of redemption is the right of a defaulting mortgagor to preserve his interest in land by paying the amount of the mortgage, or it is the right of an owner of an incumbrance to preserve his interest in land by paying senior incumbrances. A redemption suit may take the form of defaulting mortgagor versus mortgagee, junior incumbrancer verus senior encumbrancer, or junior incumbrancer verus purchaser at foreclosure or execution sale. The legal consequences of equitable redemption are succintly stated by the court in *Pardee v. Van Anden*:

> The owner of the fee of the equity of redemption redeems the land itself, and the decree in such case directs the mortgagee to convey all his right and title to the premises to the redeeming party. . . . The owner of a junior incumbrance redeems not the premises, strictly speaking, but the senior incumbrance; and then he is entitled not to a conveyance of the premises, but to an assignment of the security.[3]

Although a decree of foreclosure cuts off the equity of redemption of a mortgagor and of a junior lien holder who is made a party defendant to the foreclosure proceeding, the courts are generally agreed that the junior lienor who is not made a party to a foreclosure proceeding retains his equity of redemption.[4]

Statutory redemption varies from equity of redemption in two respects. First, the statute provides separate fixed periods of time after foreclosure or execution sale during which the owner in fee, all incumbrancers and certain others may redeem.[5] Second, the last incumbrancer to redeem prior to the expiration of the applicable statutory period will receive title to the premises free of the liens of those joined in the foreclosure or execution proceedings.[6]

> . . . the [statutory] right of redemption arises only upon a sale and exists for the period fixed by law. It is not a property in any sense of the term, but a bare personal privilege. It is purely of statutory origin, and can only be exercised by the persons named in the statute, in the instances mentioned therein, and within the time and upon the conditions prescribed.[7]

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3. 3 Barb. 537, as quoted in Renard v. Brown, 7 Neb. 449, 454 (1878).

4. Whitney v. Higgins, 10 Cal. 547, 70 AmDec. 748 (1858); Spurgin v. Adamson, 62 Iowa 661, 18 N.W. 293 (1883); Sellwood v. Gray, 11 Ore. 534, 5 Pac. 196 (1884); contra, Hummel v. Citizens Bldg. & Loan Ass'n., 38 Ariz. 54, 296 Pac. 1014 (1931).
   For the safe of brevity, reference to execution proceedings and the articles thereto has been omitted throughout most of the article. Suffice it to say that execution creditors and debtors stand in the same shoes as mortgagees and mortgagors respectively so far as this article is concerned.

5. §§ 1-480, 1-481, W.S. 1957.

6. § 1-48-, W.S. 1957.
   It should be noted that some states' redemption statutes provide for two periods during which the owner of the fee, his heirs, executors, etc., may redeem; the second period coming after that time during which incumbrancers are entitled to redeem. Under such a statute, the last incumbrancer to redeem would be entitled to a sheriff's deed only after the expiration of such second period.

7. Banking Corp. of Montana v. Hein, 52 Mont. 238, 156 Pac. 1085, 1086 (1916).

Because all junior lienholders may redeem under the statute at some time after foreclosure sale, a prospective purchaser at such sale who desires to retain the property for his own use is faced with a dilemma. If he buys because the realty is particularly suited to his needs, and it is later redeemed, he may loose valuable time, opportunities for the purchase of other property, or business opportunities for which the foreclosed property was needed. At least a good deal of inconvenience will be endured for nothing. On the other hand, he may suffer by not purchasing, unless other suitable real estate is readily available for private sale.[8]

The prospective purchaser could obviate any possibility of redemption by junior lien holders by obtaining assignments of their respective inerests. However, if the purchaser has no assurance that he will be able to secure such assignments, there appears to be but one other possible solution to his problem: i.e., tender of the debt which the junior lien secures, thereby discharging the junior lienor's statutory right of redemption.

The question of whether a purchaser can prevent redemption by a junior lienor by "paying off" his lien has arisen in two reported cases;[9] but in each, unfortunately for our purposes, the decision turned on the court's holding that the junior lienor had only an equity of redemption, the statute being held not available.[10] The Court in *Portland Mortgage Co. v. Creditors' Protective Ass'n.* said,

> Since the sheriff's deed to the plaintiff conveyed all the interests in the property except the judgment lien held by the defendant, the plaintiff acquired an owner's interest in the property entitling it to pay off the judgment of defendant and free the land of the lien.[11]

In *Parcells v. Nelson,* it was said that,

> The purpose of preserving to a lienholder an equity of redemption is to protect him from loss, and if such a one receives all that he is entitled to, his lien is extinguished and, with it, his equity of redemption. . . . On the other hand, these defendants [purchasers at foreclosure sale] acquired the legal title to the premises [sheriff's deed] subject to the lien of the plaintiff's mortgage, and the equity of redemption with respect to it was available to them for the purpose of clearing their title. . . . The party, or parties making the tender and depositing the money in court may sue to compel an acceptance and the satisfaction of the mortgage.[12]

It is readily discernible that the reasoning in these cases is of no value

8. As most persons whose property is sold at foreclosure are insolvent, the purchaser who pays a reasonable price for the land would seem to be sale from redemption by such persons. This area will be dealt with in more detail later in the article.
9. Parcells v. Nelson, 103 Mont. 412, 63 P.2d 131 (1936); Portland Mortgage Co. v. Creditors' Protective Ass'n., 199 Ore. 432, 262 P.2d 918 (1935).
10. In Parcells v. Nelson, ibid., the statute was held not to be available because the statutory period for redemption had expired. In the Portland Mortgage case, ibid., the court said a party not joined could not take advantage of the statute; however, this appears to be a minority view, compare Whitney v. Higgins, 10 Cal. 547, 70 AmDec. 748 (1858); Newell v. Pennick, 62 Iowa 123, 17 N.W. 432 (1883); Culver v. Lincoln Sav. & Bldg. Assn., 271 Ill. App. 91 (1933).
11. 199 Ore. 432, 262 P.2d 918, 924 (1953).
12. 103 Mont. 412, 63 P.2d 131, 135 (1936).

if a junior lien holder has a statutory right of redemption which has not expired. Under such circumstances, the purchaser at foreclosure would not have a sheriff's deed; and if the junior lienor redeems, he would not be entitled merely to the security interest of the senior encumbrance, but to a deed to the premises should there be no "re-demption" by another lienor.[13]

By proceeding on the premise that the law applicable to equity of redemption is of no consequence to the person redeeming by statutory authority, we are necessarily confronted with the question of what the statute was meant to accomplish or prevent. Although the reasons for passage are obscure, a review of the probable effects of the statue leaves little doubt as to its purpose. These effects can be simply stated: (1) The mortgagor is granted more time and another chance to redeem; (2) a measure of protection is provided to one who might refinance the mortgagar; (3) ". . . [the statute benefits] the debtor through the satisfaction of as many of his debts as possible, and, equally [it benefits] creditors by affording them an opportunity to obtain payment of their judgment,"[14] and (4) the mortgagee at the sale is encouraged to bid the property to its fair value.[15] Should less desirable results obtain by allowing a purchaser at foreclosure the privilge of paying off junior lienors, arguments in favor of the "pay off" are considerably weakened.

The first three "effects" can be disposed of summarily. As relations between a purchaser and a junior lienor cannot shorten the mortgagor's redemption period, (1) and (2) would be unaffected by allowing the "pay off." The third "effect" would be accomplished as well, if not better, by payment of junior liens by the purchaser.[16]

A more detailed analysis of number four is necessary in order to determine whether different results would obtain in the face of a "pay off" privilege.

The mortgagee is most often the purchaser at sale, as he can bid the amount of his debt without an outlay of cash. Although he maintains an enviable position, the possibility of redemption by junior lienors will supposedly cause him to bid the value of the land, or the amount of his lien, whichever is less. The mortgagee should do this because upon redemption ". . . he would get nothing out of his real security except the amount of his bid."[17]

To discover what effect the "pay off" would have on the mortgagee at foreclosure, it is helpful to step into his shoes at the time of sale. If he feels he can safely profit by bidding the land below its fair value, there is every reason to believe that he will do just that. But the right to "pay

13. § 1-481, W.S. 1957.
14. Hruby v. Steinman, 374 Ill. 465, 30 N.E.2d 7, 10 (1940).
15. Durfee and Doddridge treat the proposition at some length in 23 Mich. L. Rev. 825.
16. Infra note 19.
17. 23 Mich. L. Rev. 825, 840.

off" provides the mortgagee with "insurance" against redemption by junior lienors only if payment of all junior liens is actually tendered. If he fails to tender payment, and redemption occurs, the mortgagee is left holding the bag (he will receive from the redemptioner only the amount he bid at sale).[18]

The mortgagee who desires to capitalize on his mortgagor's misfortune appears to be in no better position by having a right to "pay off" than he would be without it. Such would be a happy situation indeed. This article was not written with the thought that some means should exist whereby a mortgagee might safely purchase at an unfair price. Its purpose is rather to determine whether a purchaser with honest intentions (if he be mortgagee or third party) might have some assurance that he can take advantage of his investment – that he can retain the purchased property as against junior lien holders. If the "pay off" accomplishes this without inviting sacrifice sales, still other desirable reuslts are obtained: The junior liens, which would noramly remain outstanding,[19] would be satisfied, thus benefitting both the lien holder and the mortgagor (or judgment debtor); and the maketability of land foreclosed upon would be improved, thereby encouraging competitive bidding.

The foregoing would seem to leave no room for the courts to hold that because the statute does not contemplate the "pay off," it cannot be allowed. But let us assume a situation in which the sale price at foreclosure plus the amount of money required to satisfy all junior liens is less than the value of the land. If there is no redemption by the mortgagor and the "pay off" prevents redemption by the junior lien holders, the purchaser will receive title to the land at a bargain price and, in addition, will hold a deficiency judgment against the mortgagor.

Thus, the threat of redemption by the junior lienor is defeated by allowing the "pay off." However, there are two "threats" with which we have not dealt, that may or may not preclude the need of a "threat" by the junior lienor. One of these is the mortgagor's right of redemption, which is most certainly not an adequate "threat" under any circumstances. It has little effect upon the mortgagee if there are no junior liens because upon redemption the land will become full security for the mortgagee's deficiency. If there are junior lien holders, the mortgagor will be discouraged from redeeming because upon redemption the land will be subject to the mortgagee's deficiency judgment and the other liens.[20] Another, and by no means unimportant, reason the mortgagor's "threat" means so

18. § 1-481, W.S. 1957.
19. If the threat of redemption causes the full value of the land to be bid, most junior lienors will have no reason to redeem. Should a junior lien holder redeem, it would seem that there would be no satisfaction of his debt until "re-redemption" by another lienor. However, two courts have gone so far as to hold that redemption extinguished the debt to the extent that the value of the land exceeded the amount paid to redeem, Sprague v. Martin, 29 Minn. 226, 13 N.W. 34 (1882); Work v. Braun, 19 S. Dak. 437, 103 N.W. 764 (1905).
20. What liens revive varies between jurisdictions. There is a great deal of confusion in the area of restoration of liens on redemption, but such is without the purview of this article. Refer to Mich. L. Rev. 825.

little is the fact that most persons whose property has been foreclosed against are not finacially able to redeem.

The "threat" that remains to be considered is one which arises if a court should hold that a grantee from the mortgagor takes free of any deficiency judgment, thereby precluding a resale after redemption to satisfy the deficiency.[21] In *Moody v. Funk,* the court said:

> It is the policy of the law to secure to the debtor, as nearly as is practicable, the full value of his property sold on execution. If the execution creditor fail to bid for the land sold a just amount, the debtor should be permitted to transfer his interest to another for a fair consideration; and, if his grantee redeem, the execution creditor has no right to complain, for he might have bid for the land a larger sum.[22]

In *Ogle v. Koerner,* the court said:

> When the redemption is made by a party primarily liable on the mortgage debt, it may be that the same property may be resorted to again for the purpose of subjecting it to the payment of an unpaid balance due on the mortgage, but that is not because of any right to enforce the mortgage lien against the same property a second time, but because of the rule of law which subjects all the property of a debtor to the payment of his debts until they are satisfied in full. But where the redemption is made by a party not liable upon the mortgage debt, the mortgage lien having been exhausted, the property cannot be subjected a second time to the satisfaction of the same lien.[23]

This "threat" must exist if the statute is to discourage sacrifice sales in all instances; e.g., situations in which there is only one lien upon the land.

In addition to making the statute accomplish its intended primary purpose, the "threat" under consideration prevents any adverse effects of the "pay off" by obviating the "threat" of the junior lienor. The benefits which would result from the "pay off" appear to provide yet another reason for holding an assignment by the mortgagor to be free of any deficiency judgment.

Unfortunately, there are two valid arguments which will undoubtedly prevent the court from upholding the "pay off." The "assignee's threat" is not a threat at all unless there is general knowledge of its existance. In those states where it has been held that a deficiency judgment "follows the assignment," and in those states whose courts have not ruled on the question, the threat of the junior lienor, so far as the purchaser is concerned, is the only one that exists. Even if the "assignee's threat" should prevail, we are not out of the woods. To reiterate, the statute for redemption by junior lienors; the primary purpose of such provision being the creation

21. The following cases support the proposition: Simpson v. Castle, 52 Cal. 644 (1878); Mackibben v. Arnt, 88 Ky. 180, 10 S.W. 642 (1889); Moody v. Funk, 82 Iowa 1, 47 N.W. 1008 (1891); McQueeney v. Toomey, 36 Mont. 282, 92 Pac. 561 (1907); contra, Titus v. Lewis, 3 Barb. 70; Flanders v. Aumack, 32 Ore. 19, 51 Pac. 447 (1897); Todd v. Oglebay, 158 Ind. 595, 64 N.E. 32 (1902).

22. 82 Lowa 1, 47 N.W. 1008, 1009 (1891).

of a threat to the mortgagee or judgment creditor at foreclosure sale. As the "pay off' tends to defeat that purpose of the statute, it cannot be upheld.

> The right of redemption is purely statutory, "and cannot be enlarged, abridged or defeated by the court in the foreclosure decree or otherwise."[24]

However admirable the "pay off" might be, we must necessarily conclude that legislation is the only means by which it can be implemented. As we have seen, statutory redemption in its present accepted form is grossly inadequate as a deterrent to sacrifice sales. It can only be hoped that when new statutes are passed, the legislatures of the different states will recognize the value of the "pay off" and make it a part of the law.

H. W. DEL MONTE

THE UNIFORM SIMULTANEOUS DEATH ACT AND ITS EFFECT ON JOINTLY OWNED PROPERTY

Under the common law when two or more persons perish in a common disaster or under circumstances which make it impossible to determine the sequence of death, there is no presumption as to survivorship and anyone claiming property through one of the victims whose ownership depended on his surviving the other victims, has the burden of proving such survivorship. If this party cannot sustain the burden of proof, his claim fails.[1] To correct the difficulties of the common law rule, some states enacted statutes providing a presumption of survivorship based upon age and sex. Such a statute exists in Wyoming[2] but those portions in conflict with the Uniform Simultaneous Death Act are no longer effective.[3] A problem then arises concerning estate planning. What provisions should a husband and wife make in their wills to cover the possibility of simultaneous death? Under the former statute[4] one could utilize the presumption for estate planning purposes.

One of the problems which arises in estate planning under the Act is how to have all of the property of husband and wife in one estate if both perish simultaneously. One reason for having all property in one estate is to minimize administration and probate costs. While it is also important to have all of the property in one estate, usually that of the wife, for purposes of utilizing the marital deduction, that subject is covered in the Internal Revenue regulations which state:

23. 140 Ill. 170, 29 N.E. 563, 565 (1892).
24. Ulhich v. Lincoln Realty Co., 180 Ore. 380, 168 P.2d 582, 587 (1946), quoting 3 Wiltsie on Mortgage Foreclosure, 5th Ed., 1665, § 1062.

1. Cowman v. Rogers, 73 Md. 403, 21 Atl. 64 (1891).
2. Wyo. Stat. § 1-189 (1957).
3. § 9, ch. 94, Laws 1941.
4. Wyo. Stat. § 1-189 (1957).