THE SUPREME COURT OF MINNESOTA

ST. PAUL
May 1st, 1935.

Honorable Pierce Butler,
Associate Justice,
Supreme Court of the U. S.,
Washington, D. C.

My dear Mr. Justice Butler:-

I am not often in disagreement with the Supreme Court of the United States. When I am, I am not disposed to be critical. But when that tribunal in an important matter persists in going wrong on the facts I confess to what may be called a mild feeling of disappointment. That is particularly so when the error goes to a real basis of decision.

With the utmost deference, I submit that the majority opinion in the Minnesota Mortgage Moratorium Case (Home Building & Loan Asso. v. Blaisdell, 290 U. S. 398, 78 L. ed. 413) was erroneous in what seemed to be a decisive fact. It is said on page 425 of the report that "While the mortgagor remains in possession he must pay the rental value as that value has been determined, upon notice and hearing, by the court." The underscoring is mine.

The quoted statement is wrong because the statute in question is that the mortgagor or other applicant for relief is required to pay, not "the rental value", but rather "all or a reasonable part of such income or rental value * * * at such times and in such manner as shall be fixed and determined and ordered by the court." Minn. Laws, 1933, c. 339 § 4 (p. 518). In other words, instead of being guaranteed by the statute the rental value the mortgagee or assignee is given only such part of it as some district judge may consider reasonable. That very point on the facts was made in my dissent in the Blaisdell Case. Notwithstanding your brethren of the majority either mistook the language of the statute or construed it as already indicated. I submit that the statute will not bear that construction, if construction in fact was intended at this point. Incidentally, the statute offers not a word in attempt to set up any standard for the district judge to guide him in determining what is "a reasonable part of such income or rental value" to be paid to the mortgagee. In result then, the district judge is given uncontrolled discretion to cut down the rent to the mortgagee to, or almost to, the vanishing point in any case where he feels so inclined.

I would not be writing this letter if, in the Arkansas Moratorium Case (Worthen Co. v. Kavanaugh, No. 556, Decided April 1st), Mr. Justice Cardozo speaking for all of you had not copied from the Blaisdell Case the mistaken language above questioned.

Honorable Pierce Butler.

If all this is an intrusion, please forgive me on the ground of long acquaintance or something else that will give me the same absolution. I rather expect that you will agree with me. In any event, I can't escape the notion that the error is one that ought not to be perpetuated. Judges at least ought not make the same mistake twice.

With all good wishes to you and yours, I beg to remain

Yours sincerely,

Royal A. Stone.