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The Effect of Recent Federal Cases on Suspension of the Washington General Assembly Law by Operation of the Federal Bankruptcy Act

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THE EFFECT OF RECENT FEDERAL CASES ON SUSPENSION OF THE WASHINGTON GENERAL ASSIGNMENT LAW BY OPERATION OF THE FEDERAL BANKRUPTCY ACT

Since *Armour & Co. v. Becker*[1] the Washington court has made clear its position on suspension of our general assignment law[2] by the Bankruptcy Act. In *Tacoma Grocery Co. v. Doersch*[3] on authority of the *Armour* case and *International Shoe Co. v. Pinkus*[4] a non-assenting creditor was permitted to garnishee the assigned property in the hands of the assignee. A few months later in *Anderson v. Zelensky*[5] a creditor who had not taken under a general assignment recovered judgment on his claim despite the debtor's discharge pursuant to Rem. Comp. Stat. sec. 1100.[6]

The only conclusion which can be drawn from the foregoing decisions is that so far as the Washington court is concerned both the discharge and regulatory sections of the Washington general assignment statute are no longer operative. That such a holding was required by the then exant United States Supreme Court decisions may be questioned. The Arkansas statute[7] which produced the *Pinkus* case can be distinguished from the Washington statute.[8] Howsoever that may be there are two later Supreme Court cases relating to suspension of state insolvency laws by the Bankruptcy Act which appear to change the entire complexion of the problem.

Much has been written elsewhere concerning these cases[9] and it is sufficient for our purposes to briefly summarize the holdings

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[1] 167 Wash. 245, 9 Pac. (2d) 63 (1932). See the comment on this case, 7 Wash. Law Rev. 289. In the decision of the *Armour* case *Boese v. King*, 108 U. S. 379, 27 L. ed. 760, 2 S. Ct. Rep. 765 (1883) *In re Tarnowski*, 191 Wis. 279, 210 N. W 836, 49 A. L. R. 686 (1926), and *International Shoe Co. v. Pinkus*, 278 U. S. 261, 73 L. ed. 318, 49 S. Ct. Rep. 108 (1928) were cited. The two former cases are certainly not authority for the proposition that a state liquidation statute is wholly bad because it contains a discharge section. In *Boese v. King* non-assenting creditors were held to be unable to levy on the assigned property under an assignment made pursuant to the New Jersey statute. That *In re Tarnowski* is authority only for the proposition that the discharge section of the Wisconsin statute is severable and suspended is indicated by *Hazelwood v. Olinger Bldg. Dept. Store*, 205 Wis. 85, 236 N. W 591 (1931). The *Pinkus* case held that the Arkansas insolvency statute, Chap. 93 Kirby & Castle Dig. (1916), was suspended *in toto*. In its decision the Supreme Court placed some emphasis on the fact that the plaintiff's claim was less than $500 thus precluding the possibility of an involuntary petition in bankruptcy by the plaintiff alone. This circumstance was pointed out by the court in the *Armour* case, where the plaintiff's claim was for $293.14. The point has not been discussed in later Supreme Court decisions.

[2] Rem. Rev. Stat. Title 7, chap. 5, sec. 1086 *et seq.*

[3] 168 Wash. 606, 12 Pac. (2d) 929 (1932)

[4] Note 1, *supra.*

[5] 170 Wash. 137, 15 Pac. (2d) 934 (1932).

[6] There was a second basis for the decision in *Anderson v. Zelensky.* Proper notice of the assignment proceedings was not given the creditor.

[7] Kirby & Castle Dig. (1916), chap. 93.

[8] The Arkansas statute was labelled by the legislature as an insolvency act. Creditors may share in the assigned estate only upon filing a certificate agreeing to discharge the debtor in full. Arkansas has a separate statute relating to general assignments. Chap. 93 sets up state machinery for liquidation of an insolvent estate upon petition of the debtor.

[9] 42 Yale L. Jour. 1140; 32 Mich. L. Rev. 93; 8 Wis. L. Rev. 282; 11 Tex. L. Rev. 381.

as follows *Pobreslo v. Boyd*[10] upheld the validity of the regulatory sections of the Wisconsin statute,[11] which statute is much similar to that of Washington.[12] *Johnson v. Star*[13] seems to indicate that the Supreme Court will adopt the interpretation given by the state court to the local law, if the state court holds that the local statute does not conflict with the Federal Act then the Supreme Court will so hold even though the statute in question provides for discharge of the debtor. The Texas statute was under consideration in the case, it provides for discharge only as to creditors who have shared in the distributions made under the assignment and who have received at least one-third of the amount of their claims.[14]

In view of the present wording of Rem. Rev Stat. sec. 1100[15] the significance of *Johnson v. Star* in so far as it relates to the possibility of sustaining statutes containing a discharge section not severed from the remainder of the statute may not be great in this state. But there is apparently nothing indicated in Title 7, chap. 5 of the code which militates against severance of sec. 1100 therefrom. With that section severed and suspended there is little doubt but what a decision upholding the regulatory sections of chapter 5 would now be affirmed on appeal to the Supreme Court.

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[10] 287 U. S. 518, 77 L. ed. 469, 53 S. Ct. Rep. 262 (1932). Here the facts are similar to those in *Tacoma Grocery Co. v. Doersch.* A non-assenting creditor sought to garnishee the assignee and the state court's holding that the garnishee action should be dismissed was affirmed. The Supreme Court stated: "In the case now before us the Wisconsin statutory provisions relating to discharge of insolvent debtors were not invoked. There is nothing in the assignment, the application to the circuit court to take jurisdiction, or its order thereon, to suggest that the discharge of the assignor was contemplated. The provisions regulating the administration of trusts created by voluntary assignments for the benefit of creditors apply whether the assignor is solvent or insolvent. They do not prevent creditors from bringing action against the debtor or require those seeking to participate in the distribution of the estate to stipulate for his discharge. And, quite in harmony with the purposes of the federal act, the provisions of c.128 that are regulatory of such voluntary assignments serve to protect creditors against each other and go to assure equality of distribution unaffected by any requirement or condition in respect to discharge."

[11] Wis. Stat. (1927) sec. 128.

[12] The discharge section of the Wisconsin statute has been held suspended by the state court. *In re Tarnowski*, note 1, *supra.*

[13] 287 U. S. 527, 77 L. ed. 473, 53 S. Ct. Rep. 265 (1932). The facts were similar to those in the *Pobreslo* case. The discharge section of the Texas statute involved has been held suspended by the state court. *Star v. Johnson*, 44 S. W (2d) 429 (Tex. 1931). The Supreme Court held that a non-assenting creditor could not garnishee the assignee, which holding did not of itself add anything to the decision in *Pobreslo v. Boyd.* But from the language employed inferences of considerable import may be drawn.

[14] Tex. Stat. (1928) Title 22, art. 261-274. It will be noted that such a discharge section in its practical effect achieves much the same result as would a voluntary composition of creditors—a circumstance of moment since the Texas statute must be considered in any attempt to evaluate *Johnson v. Star*

[15] This section reads in part: "The judge of the court having jurisdiction of the matter shall, upon the allowance of the final account of the assignee, make an order discharging the assignor or assignors as the case may be from any further liability on account of any indebted-