

11-1-1938

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Recommended Citation

Leopold M. Stern, State Bar Journal, *Liquidation Under the Chandler Act: Bankruptcy Practice and Procedure Is Changed by Act of Congress Effective September 22, 1938*, 13 Wash. L. Rev. & St. B.J. 342 (1938).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol13/iss4/9>

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Liquidation Under the Chandler Act

Bankruptcy Practice and Procedure Is Changed by Act of Congress Effective September 22, 1938

By LEOPOLD M. STERN, *of the Seattle Bar*

The Bankruptcy Act of 1898, with a few minor amendments, remained unchanged in principle and general form until 1933. It dealt only with straight bankruptcy. Its purpose was: first, to accomplish an equitable distribution of an insolvent debtor's non-exempt property among his creditors, voluntarily upon his own application, or involuntarily upon the petition of his creditors; and second, to discharge or release the bankrupt from his debts.

In 1933 and subsequent years financial emergencies led Congress to pass several amendments setting up systems for the relief of individual debtors, farmers, interstate railroads, private corporations and municipal corporations, who were distressed but not necessarily insolvent, and who needed protection against forced and sacrificing liquidation.

In 1938 Congress enacted the Chandler Bill, which became effective September 22, 1938. Its purpose, among other things, as explained by the House Judiciary Committee report, was to clarify certain of the definitions and to add desirable new definitions, to straighten out certain overlapping provisions, to increase efficiency in administration, to make clearer certain ambiguous provisions, to improve the procedural sections of the act, and in general to modernize and bring up to date the bankruptcy law of our country. Congress went somewhat further than a mere modernization of the existing statute. It expanded the law by adding chapters on "Arrangements", which liberalize plans of debtors for settlement, satisfaction or extension of debts; on "Real Property Arrangements by Persons Other Than Corporations" which permit alteration or modification of debts secured by real property or chattels real; on "Wage Earners Plans" which enable individuals who work for wages or salary to compose or have extended the time for the payment of their debts; and on "Maritime Commission Liens" which facilitate the continued operation of established steamship lines facing financial difficulties.

The basic bankruptcy law, by which we mean the Act of 1898 and amendments prior to 1933, has an interest for the general practitioner. The so-called "New Deal amendments" are of import primarily to the bankruptcy specialist. This article is not intended as a concise exposition of the Chandler Bill, but, at the Editor's request, merely an explanation of the essential and important changes and additions affecting the straight act embraced in the seventy-two sections, enacted prior to 1933.

At the outset it should be emphasized that the new law, so far

as it pertains to these seventy-two sections, is not, strictly speaking, a revision. The former act was in many respects vague, uncertain, repetitious and prolix. The present law has aimed to re-write the prior law to remedy these defects and inadequacies, and in particular to make it conform with judicial decisions and interpretations accumulated over a period of forty years, which cleared up or settled many questions formerly disputed and uncertain.

The fundamentals of the former system have been preserved, but some material and substantive changes and additions were made, and the more important of these of interest to the bar in general may be summarized as follows:

Referees have been given a more inclusive jurisdiction. Sec. 1 (9).

Jurisdiction is conferred to determine and liquidate dower and curtesy interests in the bankrupt's property. Sec. 2 a (7).

The courts are authorized, upon their own motion, to remove receivers and trustees for cause. Sec. 2 a (17).

Ancillary courts are given supervision to collect and reduce to cash the assets in the ancillary district and to determine and pay liens thereon and to pay the expenses of the ancillary administration. Sec. 2 a (20).

The courts are given summary jurisdiction to determine the propriety and reasonableness of disbursements made in equity receiverships, assignments for the benefit of creditors and the like, supervened by bankruptcy proceedings within the four months' period. Sec. 2 a (21).

Exemptions allowed to a bankrupt have been extended to include those prescribed by the laws of the United States. No allowance may be made for exemptions out of property which is recovered after a preference or fraudulent transfer. Sec. 6.

The bankrupt must report to the trustee concerning the correctness of all proofs of claims filed against his estate. Sec. 7 a (3).

The time within which an involuntary bankrupt is to file his schedules is reduced to five days. A voluntary bankrupt shall file his schedules with his petition. In either case the court may grant further time. Sec. 7 a (8).

The bankrupt must file in triplicate a statement of his affairs in such form as may be prescribed by the Supreme Court, at least five days prior to the first meeting of his creditors. Sec. 7 a (9).

Another new duty imposed is the preparation and filing in duplicate, by the bankrupt, of a sworn inventory giving the cost of his merchandise or other property remaining as of the date of bankruptcy, when required by the court. Sec. 7 a (11).

The operation of federal and state statutes of limitations is suspended during certain specified periods. Sec. 11 f.

The adjudication of a bankrupt other than a corporation is made to operate automatically as an application for a discharge. A corporation may formally apply for a discharge within six months after adjudication. Sec. 14 a.

After the bankrupt has been examined, the court then makes an

order fixing the time for the filing of objections to the bankrupt's discharge, notice of which order must be given to all parties in interest. Sec. 14 b.

It is made the duty of the United States attorney to oppose the discharge of the bankrupt when requested by the court and public interest so warrants. Sec. 14 d.

The time for the return of service both by subpoena and publication is reduced. Sec. 18 a.

The right of a creditor to oppose an involuntary petition has been withdrawn. Sec. 18 b.

Federal Rules of Civil Procedure are made applicable to proceedings in bankruptcy. Sec. 21 k.

In turn-over proceedings the burden of proving that he sold his property below cost is placed upon the bankrupt. Sec. 21 l.

The judge may, at any stage of a proceeding, before as well as after an adjudication, refer the same to a Referee, either generally or specially. Sec. 22 a.

All appeals in cases involving \$500 or more are now as of right and cases involving less than that amount are within the discretion of the appellate court. Sec. 24 a.

The time for appeal has been extended to forty days from the entry of judgment when no notice of such entry is served. Sec. 25 a.

Referees have jurisdiction to grant, deny or revoke discharges. Sec. 38 (4).

Review of referee's orders must be taken within ten days but further time may be granted. A copy of the petition for review must be served upon the adverse parties. Sec. 39 c.

A witness may be required to attend before a referee at a place not more than one hundred miles from such person's residence. The state in which the witness resides is now immaterial. Sec. 41 a (4).

Relatives of a bankrupt, or if the bankrupt is a corporation, its stockholders, officers, directors are excluded from participating in the election of a trustee. Sec. 44 a.

Creditors at their first meeting may appoint a committee of not less than three creditors to act in a consulting and advisory capacity, in the administration of the estate. Sec. 44 b.

An attorney representing a general creditor is not thereby disqualified from acting as attorney for a receiver or trustee. Sec. 44 c.

The trustee now has the responsibility of opposing a bankrupt's discharge, at the estate's expense, in proper cases. Sec. 47 a (9).

The trustee, within ten days after his qualification, must record a certified copy of the order approving his bond in every County where the bankrupt owns real estate. Sec. 47 c.

In small cases where the maximum compensation allowable to a trustee under the normal scale would not equal \$100, the court may allow up to \$100 if funds are available. Sec. 48 c (1).

The time within which receivers and trustees are to give bond, has been reduced to five days. The court may extend the time not to exceed five days. Sec. 50 b.

The court may by summary proceedings enforce recovery on

bonds filed with it. Sec. 51 (n).

A no-asset case may be closed without the call of a final meeting. Sec. 55 e.

Claims of \$50 or less shall not be counted in computing the number of creditors voting or present at creditors' meetings, but shall be counted in computing the amount. Sec. 56 c.

Liquidation of unliquidated and the valuation of contingent claims is provided for under the court's direction for the purpose of allowance. Sec. 57 d.

The trustee is allowed the right to recover by a summary proceeding any excess dividend that has been paid. Sec. 57 l.

Federal and State claims must now be filed within six months after the first date set for the first meeting of creditors, but the court may grant a reasonable extension if timely application is made. Sec. 57 n.

Notice to creditors of proposed sales of property may be shortened or entirely dispensed with. Sec. 58 a (4).

Compromises involving \$1000 or less may now be ordered without notice to creditors. Sec. 58 a (6).

When a creditors' committee is functioning, notices of all examinations of the bankrupt, all proposed sales of property and proposed compromises of controversies involving exceeding \$1000, shall be sent only to the Committee. Sec. 58 a (8).

The clerk is now required to mail to the Commissioner of Internal Revenue a certified copy of every order of adjudication. Sec. 58 e.

Involuntary petitions must be filed in triplicate. Sec. 59 c.

In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition (three or more when all the creditors number twelve or more, one when less than twelve) there are excluded: persons interested in a bankruptcy corporation, creditors who have participated in the act of bankruptcy charged in the petition, fully secured creditors and creditors who have received voidable preference, liens or transfers. Sec. 59 e (2), (3), (4), (5).

A creditor is not estopped to act as a petitioning creditor because he had participated in an equity receivership or an assignment for creditors. Sec. 59 h.

Fee splitting between receivers, trustees and attorneys of either is prohibited. Sec. 62 c.

Proof of contingent debts and contingent contractual liabilities is permitted. Sec. 63 a (8).

Wages, salary or commission earned by salesmen, whether employed on whole or part time, either exclusively or not exclusively by the bankrupt, are entitled to priority. Sec. 64 a (2).

The salient provisions of the Uniform Fraudulent Conveyance Act have been enacted by which transfers made and obligations incurred within one year prior to the filing of a petition in bankruptcy, under certain circumstances, and prejudicial to existing and future creditors, are declared fraudulent and voidable. Sec. 67 d (2).

A non-bankruptcy receiver or trustee is made accountable to the

bankruptcy court for any action taken by him after the filing of the petition in bankruptcy and must file in such bankruptcy proceedings, a sworn summary of the assets, liabilities and his acts and doings in the administration of the estate. Sec. 69 d.

The title of the trustee is extended to cover certain interests such as contingent remainders, inheritances and possibilities of reversion vesting within six months after bankruptcy. Sec. 70 a (7).

Property which vests in a bankrupt within six months after bankruptcy by bequest, devise or inheritance, passes to the trustee. Sec. 70 a (8).

Within sixty days after the adjudication, the trustee must act with regard to executory contracts, including unexpired leases of real property. Sec. 70 b.

The court shall appoint only one appraiser but may appoint additional appraisers upon cause shown. Sec. 70 f.

In conclusion it may be stated that the Chandler Act is a distinct improvement over the former law, but many flaws and deficiencies still remain which in time will no doubt be remedied.

Judgments and Orders Under New Federal Rule

The United States District Court for the Western District of Washington, pursuant to order entered in both the Northern and Southern Divisions, has adopted the following rule:

"On and after November 1, 1938, in all civil causes requested judgments, decrees, findings of fact, conclusions of law and orders shall be presented in duplicate, one of which, in cases requiring their entry in the civil order book, may be bound and become a part of such book."

Three Thousand Dollar Prize Essay Contest

March 1, 1939, is announced as the last day for submitting essays in competition for the prize of \$3,000 under the terms of the will of the late Judge Erskine M. Ross on the subject "To What Extent Should Decisions of Administrative Bodies Be Reviewable by the Courts?"

The contest will be open to all members of the Association in good standing, except previous winners, members of the Board of Governors, officers, and employees of the Association.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted and the copyright thereof.

An essay shall be restricted to six thousand words, including quoted matter and citations in the text. Footnotes or notes following the essay will not be included in the computation of the number of words, but excessive documentation in notes may be penalized by the judges of the contest. Clearness and brevity of expression and the absence of iteration or undue prolixity will be taken into favorable consideration.

Anyone wishing to enter the contest shall communicate promptly with Executive Secretary, American Bar Association, 1140 North Dearborn Street, Chicago, Illinois, who will furnish further information and instructions.