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1933 AMENDMENT TO THE BANKRUPTCY ACT

By Ivar Wingren of the Denver Bar)

ON March 3, 1933, President Hoover signed the bill providing for amendments to the Bankruptcy Act. This amendment is composed of four sections:

Section 73—Granting the Bankruptcy Courts original jurisdiction in proceedings for the relief of debtors;

Section 74—Compositions and extensions;

Section 75—Agricultural compositions and extensions;

Section 76—Providing for extending the obligations of persons secondarily liable to those granted extensions under Sections 74 and 75.

Section 77—Reorganization of railroads engaged in interstate commerce.

Without attempting to go into too much detail, it may be said generally that Section 74 relating to compositions and extensions applies only to *persons* as distinguished from *corporations*.

Under Section 74 the procedure is generally as follows:

The individual files his petition for extension or composition, files his schedules, has a meeting called of his creditors, a custodian or receiver appointed; the custodian or receiver—not the Referee—promptly calls a first meeting of creditors—unless none is appointed, in which case it becomes the duty of the Court to do so—setting out in the notice a brief statement of the terms offered by the debtor to his creditors, and a list of the secured creditors and the names of 15 of the largest unsecured creditors; an examination of the debtor at the first meeting; an application for confirmation of the composition or extension offered; confirmation of the composition or extension or dismissal. Extensions under this Act may extend the time of payment on either or both secured and unsecured debts, the security for which is in the actual or constructive possession of the debtor or of the custodian or receiver; and may provide for a period of payment to be made during the period of extension as between secured and unsecured creditors. *Under this section a claim for future rent is a provable debt.*

In case the debtor fails to carry out the terms of the composition offered; or the extension granted, he is adjudicated a bankrupt. Except that no order of adjudication can be en-

tered against a wage-earner or farmer unless the wage-earner or farmer consents.

The Old Law as to the proceedings, except as otherwise provided, leaves the jurisdiction and powers of the Court, and the powers and duties of its officers, and their fees; and the duties of debtors, and the rights and liabilities of creditors, and the jurisdiction of the appellate courts, the same as though an adjudication was had under the Old Law.

It further provides that Judges of Courts of Bankruptcy shall appoint sufficient Referees to sit in convenient places to expedite the proceedings, which is a re-establishment of the Old Law, as found in Section 37, with slightly different wording.

Section 76, which is to remain in effect for five years, relates only to farmers—and to dirt farmers at that—the Act defines the term “farmer” to be any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations and includes the personal representatives of a deceased farmer and the farmer is deemed a resident of any county in which such farming operations occur. Under this section the procedure is as follows:

Fifteen farmers from a county must petition the Court for the appointment of “one or more referees, known as ‘Conciliating Commissioners’ or to designate for service in such county a ‘Conciliatory Commissioner,’ previously appointed for an adjacent county, with the privilege in the Court in each judicial district to appoint a ‘Supervising Conciliation Commissioner,’ ” who would seem to have jurisdiction within the judicial district, which, in this district, would be in the State of Colorado—and only one of whom could be appointed. His salary is fixed as not to exceed \$5 per day and expenses.

The 15 farmers who file the petition setting the law in motion, must each state that he wishes to file a petition under the section to get an extension or composition.

This law further provides that the “Conciliatory Commissioner” shall not be eligible to appointment unless he is *eligible for appointment as a Referee; and in addition, is a resident of the county, familiar with agricultural conditions therein; not engaged in the farm-mortgage business or the*

business of financing farms; nor transactions in agricultural commodities, or furnishing agricultural supplies.

When the farmer gets ready to file his individual petition, he pays a docket fee of \$10, which is paid to the Clerk of the Court and by him into the United States Treasury. No other fee is charged to the farmer unless he agrees to have his farming operations supervised. The object to be acquired by the farmer is a composition of debts or an extension of time for the payment on secured or unsecured debts, but the composition or extension cannot reduce the amount or impair the lien of any secured creditor, nor affect the allowances and exemptions permitted debtors. Where a composition is offered and accepted by the creditors, the money is distributed under the direction of the "Conciliation Commissioners," *all claimants who file proofs of claim must present proof that their claims are free of usury as defined by the laws of the place where the debts are contracted.*

The filing of a petition for relief under this section subjects the farmer and his property, wherever located, to the exclusive jurisdiction of the Court, and except upon a petition made and granted by the Judge, after a hearing and report by the "Conciliation Commissioner" the following proceedings may not be maintained in any Court or otherwise against the farmer or his property at any time after the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposed:

1. On any debt-demand or account;
2. Foreclosure on mortgage on land, cancellation of rescission of specific performance for sale of land, or for recovery of possession of land;
3. Proceedings to acquire tax titles;
4. Execution of attachments or garnishments;
5. To sell land under judgments or mechanics' liens;
6. Seizure, distress, sale or other proceedings under an execution, or under any lease, lien, chattel mortgage, conditional sales agreement, crop-payment agreement, or mortgage.

In view of the absence of farming land in Denver County, this Act will probably not apply to the City and County of Denver, as the residence of the farmer is presumed to be the location of his land.

There is no provision under Section 75 for calling a meeting of creditors, or for proceedings, except through the

“Conciliation Commissioner.” Referees in Bankruptcy do not fit into the scheme, although the provisions as to the confirmation of compositions under it are similar to the bankruptcy provisions; and the provisions as to confirmation are that no order shall be entered under Section 75 adjudicating a petitioner a bankrupt for non-compliance, except as provided “hereinafter in this section;” and as no provision of this kind is “hereinafter” contained, the farmer who takes advantage of this section cannot be adjudicated a bankrupt under any circumstances.

When this section is put into operation, this Court may have 63 Conciliators—and may have any number, with segregated jurisdictions in each county, under which the farmer, if he fails to comply with what he thinks he can do in the way of paying his debts under extensions, will have no remedy except to come back to the Old Bankruptcy Act which is in effect and file his petition and be adjudicated a bankrupt and be discharged from his debts, in the old-fashioned way.

Section 77 provides the means by which an insolvent railroad corporation may effect a reorganization through the Bankruptcy Court. The corporation itself may file a voluntary petition, setting out that it is insolvent and unable to meet its debts as they mature and it desires to effect a plan of reorganization. The petition is filed in the United States Court; a copy is sent to the Interstate Commerce Commission; a docket fee of \$100 more than the regular bankruptcy docket fee is paid and if it appears to the Court that the petition is properly filed in good faith, an order is entered approving the filing of that petition and thereafter the United States Court in which the petition is filed and which must be in the district where the principal executive office is, has exclusive jurisdiction over the railroad company and all its property, wherever situated.

An involuntary petition may be filed by creditors of the corporation holding claims or interests aggregating 5% of all the indebtedness of the railroad, but before the involuntary petition can be filed, permission must be obtained from the Interstate Commerce Commission. Provision is provided for the railroad company to file an answer and either admit or deny the allegations in the petition and if the railroad company admits the allegations of the petition, or after trial, the

Court finds that the petition is properly filed, proceedings are taken in the same manner as if the corporation had filed a voluntary petition.

Under this plan a reorganization may modify or alter rights of creditors generally, secured or unsecured; may modify or alter the rights of stockholders, generally, of any class; provide for the transfer or conveyance, with the consent of the Interstate Commerce Act, of all or any part of the property of the debtor to any other corporation or for consolidation with another railroad corporation or merger and for the issuance of securities.

Upon the approval of the petition, the judge of the United States Court may appoint, from a panel of standing trustees, who have been theretofore selected by the Interstate Commerce Commission, a trustee and any such trustee so appointed shall have the power to operate the railroad under the control of the judge. The compensation for the trustee or trustees shall be the amount allowed within a maximum, approved by the Interstate Commerce Commission.

In case there is any matter to be passed upon by a "Special Master," the matter may be referred, upon the motion of the court or request of the Interstate Commerce Commission, to one of several "Special Masters" who have been previously designated to act as "Special Masters" by order of the Circuit Court of Appeals. The Circuit Court of Appeals of each circuit designates three or more members of the bar to act as "Special Masters" to hear the matters referred to them under this section.

The Judge of any District Court, or the trustee having jurisdiction over railroads under this section, may not:

1. Change the wages or working conditions of railroad employees, except in accordance with the Railroad Labor Act, or as set forth in the agreement entered into January 21, 1932, between the executives of 21 standard labor organizations and the Committee of Nine, authorized to represent class one railroads.

2. Deny in any way or in any way question the right of employees to join the labor organization of their choice.

3. Use funds of the railroad to maintain so-called company unions or to influence or coerce employees in an effort

to induce them to join or remain members of such company unions.

4. Require any person seeking employment on any such railroad to sign any contract or agreement promising to join, or refusing to join a labor organization, or in the event any railroad has such contract in force, as soon as the matter is called to the attention of the judge, trustee or receiver, he shall notify the employees by appropriate order that the contract has been discarded and no longer binding on the employees.

This section is very complicated and has many provisions which would be practically impossible to discuss in an article of this length. It is interesting to note that the patronage has been divided up between the United States District Court, the Interstate Commerce Commission and the Circuit Court of Appeals.

DEBTOR'S EXEMPTIONS—BANKRUPTCY

Hon. Frank McLaughlin, referee in bankruptcy, recently held that where Section 6 of the Bankruptcy Act provides that the act shall not affect the right of a bankrupt to the exemptions prescribed by state law, under the doctrine of *Klug vs. Corder*, 82 Colo. 319, a bankrupt's truck used by him as a means of livelihood and for no other purpose, was exempt. Under the evidence the truck was held to be a farm wagon, hence, exempt no matter what its value was. The truck was of the value of \$600 and there was a mortgage against it sufficient to reduce this equity to about \$200, so that even if it had not been held to be a farm wagon and its status fixed as a tool or implement of trade, it probably would have been within the limitation of \$200 as fixed by our statute.

The decision was given in the case of Arthur Bruce Robbins, bankrupt, Court No. 7585, Referee No. 3208.

Dicta congratulates the Ohio Bar Association Report on the beginning of its sixth year. May it live long and prosper.