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BANKRUPTCY AMENDMENTS OF 1933

The 72nd Congress passed during its closing hours a law constituting an eighth chapter to the Bankruptcy Act of 1898.[1] These amendments are considered by many legislators and others to be the most significant additions the bankruptcy law has received. While agitation for bankruptcy reform has been constant for several years,[2] the bankruptcy legislation just enacted is the consequence of the financial depression rather than the result of prior proposals for the simplification and improvement of bankruptcy procedure.

Four Bankruptcy Acts have been passed in accordance with the authority in Article I, Section 8 of the Constitution. The first Bankruptcy Act was adopted April 4, 1800, to be effective June 1st, 1800, for five years. The law was repealed December 19, 1803. The second bankruptcy law was directly the result of the acute distress resulting from the panic of 1837. In 1839 a bankruptcy bill passed the Senate. When the Whigs

[1] The appendix to this article, consisting of an outline of the new Act, has been prepared by my assistant, C. Rudolf Peterson, Esq., A.B. Princeton, 1928; LL.B., Columbia, 1931; member of the New York Bar.

[2] Three New York City bar associations during 1929-1930, with the assistance of Colonel William J. Donovan as Counsel, investigated the actual operation of bankruptcy machinery. The result of that investigation is embodied in Colonel Donovan's report, entitled "IN THE MATTER OF AN INQUIRY INTO THE ADMINISTRATION OF BANKRUPT ESTATES" submitted to the United States District Court for the Southern District of New York. Critical analysis of this report appears in the article entitled "BANKRUPTCY REFORM" by GRENVILLE CLARK of the New York Bar, 43 HARV. L. REV. 1189 (1930). See also GARRISON, DONOVAN BANKRUPTCY REPORT; A SUMMARY OF ITS FINDINGS AND A DISCUSSION OF CERTAIN CRITICISMS, 16 A. B. A. J. 493 (1930); see as well my "RECEIVER IN BANKRUPTCY—A STUDY IN BANKRUPTCY REFORM," 3 So. CAL. L. REV. 241 (1930). The New York inquiry was followed in 1930 and 1931 by a nation-wide inves-

came into power March 4, 1841, a Special Session of Congress was called to pass legislation for the relief of debtors. John Tyler, who succeeded to the Presidency on the death of William Henry Harrison, recommended in a special message July 1, 1841, the passage of a bankruptcy law. The Act was passed August 19, 1841. This was the first Act granting a discharge to debtors who had filed a voluntary petition in bankruptcy. This Act was repealed March 13, 1843. In the 18 months of its existence more than 28,000 debtors had been relieved of nearly $445,000,000 of obligations by the surrender of less than $45,000,000 in property.

The minor panic of 1853 and the major panic of 1857 followed by the economic crisis of the Civil War brought renewed agitation for a third bankruptcy law. Thousands of enterprises in the North were ruined by the impossibility of collecting Southern debts after 1860. The 37th Congress, which convened in 1861, received over 40,000 petitions for the enactment of a bankruptcy law. On several occasions thereafter a bill received a favorable vote in one of the Houses of Congress. The

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tigation "into the whole question of bankruptcy law and practice," authorized by President Hoover and conducted by Solicitor-General Thomas D. Thacher and Mr. Lloyd Garrison through the agency of the Department of Justice. Some of the findings of this investigation are set forth in an article by JUDGE THACHER, "PROPOSED CHANGE IN BANKRUPTCY ACT," 3 N. Y. STATE BAR ASSN. BULLETIN, 532 (1931). The complete findings of the investigation and a discussion of the proposed amendments to the Bankruptcy Act are contained in The Report of the Attorney General on Bankruptcy Law and Practice, Senate Document, No. 65, 72d Congress, 1st Session. Bankruptcy legislation in the United States has been largely the consequence of financial depression. Changes in our present bankruptcy statutes, designed partly to extend the jurisdiction of the bankruptcy courts, partly to simplify and improve bankruptcy procedure were proposed to Congress in 1932 by Senator Hastings and others. The bill of Senator Hastings was the outgrowth of a two years' study by the Department of Justice, embodied the conclusions of Solicitor General Thacher and Mr. Lloyd Garrison and was recommended by Attorney General Mitchell and President Hoover. The actual law which was passed March 3, 1933, contains few of the provisions of the original Hastings bill. All the administrative sections, the important sections dealing with corporate reorganizations, the detailed provisions bringing general assignments within the purview of bankruptcy, were omitted. The new law follows the Hastings bill in defining a class of debtors who are to have the benefit of the act although they are not to be called bankrupts. So far as it relates to individual debtors, what the Hastings bill says about compositions and extensions has been now enacted into law. In reality these provisions, as well as the rest of the new law, follow historical precedent in being derived out of the emergency of acute financial distress of a numerous and influential fraction of the population.

bill which was to become the Bankruptcy Act of 1867 was introduced in the House of Representatives on April 10, 1866, by Mr. Roscoe Conkling and passed the House on May 22 by a vote of 68 to 59. The Senate reached a favorable vote on the bill with certain amendments February 12, 1867. It became a law on March 3, 1867. The Act was of genuine utility in facilitating readjustment after the panic of 1873, but it was widely felt that as a result of the Act many individuals were ruined who, if they had received more consideration, could have worked out their difficulties. Dissatisfaction with the Act became so general that in 1878 it was repealed by a vote of 38 to 6 in the Senate and by 205 to 40 in the House. Four years after the repeal of the bankruptcy law of 1867 a similar bill passed the Senate and lacked only four votes of being carried in the House. In every succeeding Congress efforts were made more or less nearly approaching success to enact a federal bankruptcy law. Finally after the speculative boom between 1883 and 1889, over-stimulation was followed by reaction and the panic of 1893 ensued. Demand for federal relief measures became imperative. The Senate on June 24, 1898, passed the bill which, after being passed by the House on June 28 and being signed by President McKinley July 1st, became the bankruptcy law which, with subsequent amendments, is now on the statute books.[3]

The latest amendments add five sections (Sections 73 to 77 inclusive) to the bankruptcy law of 1898 without repealing any sections. The original bills which ultimately became the March 3, 1933, bankruptcy statute brought business corporations as well as individuals and partnerships under the provisions of the extension and composition sections of the law. The new law in consequence repealed the old composition Sections 12 and 13. So much difference of opinion developed regarding the business corporation section that it was finally eliminated.[4]

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[3] See NOEL, HISTORY OF THE BANKRUPTCY LAW (1919). A brief summary of the four United States bankruptcy laws may be found in my CASES AND MATERIALS ON CREDITORS' RIGHTS (1931) 527-537.

[4] There is a real need for a federal statute bringing corporate reorganizations under bankruptcy administration. This was originally proposed as Section 75 of the law adopted on March 3, 1933, but differences of opinion regarding the Section were so marked that insistence on the inclusion of the Section might have endangered the passage of the whole bill. As the law stands at present if a corporation is in bankruptcy, unless a composition can be effected under

In the haste to get the bill through Congress the repeal provi sion was retained when the Act was finally passed by the House and the Senate. The result would have been no composition privilege available to business corporations except railroads. The error was discovered in time to reinstate Sections 12 and 13 before the Session ended.[5]

Two of the new sections (Sections 73 and 76) are brief and general in scope. Section 73 gives to bankruptcy courts original jurisdiction for the relief of debtors as distinguished from bankrupts. Section 76 gives sureties corresponding bene fits when extensions have been made under Sections 73 and 74. Section 74 gives the bankruptcy courts the new function of dealing with petitions for extensions and liberalizes the com position sections of the prior law. It does not apply to corpora tions. Section 75 is an expansion of Section 74 for the benefit of farmers. Section 77 brings for the first time railroad cor porations under the jurisdiction of the bankruptcy courts. The Interstate Commerce Commission is definitely tied up with this new railroad jurisdicton.

The innovation in Section 73 and 74 is that bankruptcy courts are now open to persons whose liabilities are not neces sarily greater than their assets but who merely cannot pay their debts as they mature.[6] Persons who ask for extensions or offer compositions under this section are not to be called bankrupts but only debtors. Does this come within the constitutional

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the provision of Section 12, the corporation must be liquidated. As a practical matter if the corporation is to be reorganized, it is likely necessary for the reorganization to occur in equity receivership. If the corporation is a large one doing an interstate business the expense and complications of administration through the various ancillary receiverships which are essential, are so pre posterous that it seems incredible such a procedure can be long continued. There are also significant advantages of bankruptcy in the matter of reorganiza tion sales. An illuminating discussion of the corporate reorganization problem with helpful suggestions for bankruptcy legislation on the subject is found in the letter of Professors E. Merrick Dodd, Jr. and Ralph J. Baker of the Harvard University Law School to the Hon. David I. Walsh, Senator from Massachusetts. This letter dated February 7, 1933, is reprinted in 76 Cong. Rec. 3801 (72nd Cong. Second Session, Feb. 9, 1933).

[5] S. Con. Res. 45. This resolution also cured other inaccuracies in the bill as passed by both houses.

[6] Insolvency in the bankruptcy sense connotes excess of liabilities over assets. In equity and in many foreign bankruptcy laws insolvency is inability to meet maturing obligations.

authority in Congress to "establish uniform laws on the subject of bankruptcies throughout the United States"? On this point it is sufficient to say that before Section 74 was passed, Congress had the benefit of an extensive memorandum by Solicitor General Thacher in which the constitutionality of the section was fully sustained.[7] From the earliest times the Supreme Court has rejected attempts to narrow the authority of Congress in respect to bankruptcy legislation.[8] Perhaps one may assume the opinion of the Supreme Court to have been expressed by Story in his observation, "No distinction was ever practically, or even theoretically attempted to be made between bankruptcies and insolvencies."[9]

One interesting feature of Section 74 is that if a majority in number and amount of all creditors, secured and unsecured, approve a plan for an extension it is binding on the secured creditors. A secured creditor cannot be compelled to take any reduction in his claims without his consent.

The clauses in Section 74 which have caused the most debate are those relating to claims for future rent. Bankruptcy is an anticipatory breach of ordinary executory contracts and claims for damages for such breach may be allowed as provable claims.[10] In the case of leases, however, the decisions of the lower federal courts and certain *dicta* by the Supreme Court justify the assumption that claims for future rent are not provable claims in bankruptcy, at least in states where the common law conception of leases still prevails.[11] Subdivision (a) of

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[7] Solicitor General Thacher's memorandum is printed as Appendix A to Senate Report No. 1215, Calendar No. 1310, 72nd Congress, Second Session, Feb. 10, 1933.

[8] See Sturges v. Crowinshield, 4 Wheat. (U.S.) 122 (1819); Hanover National Bank v. Moyses, 186 U.S. 181, 22 Sup. Ct. 857 (1902); *In re* Klein, Fed. Cas. No. 7865; (the opinion of Mr. Justice Catron, who sat in the case as a circuit judge, is reprinted in 1 How. [U.S.] 277); Kunzler v. Kohaus, 5 Hill. 317; *In re* Reiman, Fed. Cas. No. 11673 (1874); *In re* Silverman, Fed. Cas. No. 12855 (1870); *In re* California P.R. Co., Fed. Cas. No. 2315 (1874).

[9] Quoted in Hanover National Bank v. Moyses, *supra*, from STORY, COMMENTARIES ON CONSTITUTION, (5 ed. 1891) c. XVI, §1111.

[10] Central Trust Company v. Chicago Auditorium Association, 240 U.S. 581, 36 Sup. Ct. 412 (1916).

[11] *In re* Roth & Appel, 181 F. 667 (C.C.A.2, 1910); Wells v. Twenty-First Street Realty Co., 12 F. (2d) 237 (C.C.A. 6th, 1926); Atkins v. Wilcox, 105 F. 595 (C.C.A. 5th, 1900); Gardiner v. Butler & Co., 245 U.S. 603, 38 Sup.

Section 74 states that "debt" for purposes of an extension proposal shall include among other claims one for future rent. Four sentences farther in the same subdivision again referring specifically to an extension proposal, the term "creditor" is made to include one who has a claim for future rent. Finally, the last sentence of the subdivision is the following: "A claim for future rent shall constitute a provable debt and shall be liquidated under Section (b) of this Act." Does this last sentence constitute a general amendment to the bankruptcy law? It will be observed that the definitions of "debt" and "creditor" apply solely to extension proposals although the subsection deals also with compositions. The inference seems to be therefore that the last sentence applies to compositions. Section 63 (b) provides that unliquidated claims may be liquidated in such manner as the court may direct and may thereafter be proved and allowed. Section 74 and especially its subsection (a) deal solely with compositions and extensions. If the last sentence were meant to be a general amendment to the bankruptcy act it would have said so specifically and would likely have been made a separate section. It is not even a separate subsection. The railroad section 77, subsection (b), includes as creditors those having claims for future rent. This would be unnecessary if the last sentence of 74 had general application. It is noted also that the future rent provision does not appear in the farm relief Section 75. Moreover it is known that Congress had decided definitely against a general revision of the bankruptcy statute.

The contrary argument is based first upon the broad and direct language of the sentence in question. It is supported to some extent by the legislative history, without taking account of the well-known fact that certain real estate interests were demanding such a general amendment. Senator Bratton on

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Ct. 214 (1918). *Cf.* Maynard v. Elliott, 283 U.S. 273, 51 Sup. Ct. 390 (1931). A provable claim for the landlord can apparently be created by appropriate provision in a lease. Filene's Sons Co. v. Weed, 245 U.S. 597, 38 Sup. Ct. 211 (1918) equity receiverships; Kothe v. Taylor Trust Co., 280 U.S. 224, 50 Sup. Ct. (1930). See for a thorough discussion of the general topic of rent claims, WOLFGANG S. SCHWABACHER AND SYDNEY C. WEINSTEIN, RENT CLAIMS IN BANKRUPTCY, (1933) 33 COL. L. R. 213. See also Charles A. Wyzanski, Jr., "The Effect of the 1933 Bankruptcy Legislation Upon the Rights of a Landlord," (1933) Journal of the Nat. Assn. of Refs. in Bankruptcy 107.

Monday, February 27, 1933, told the Senate that on the preceding Saturday he had offered an amendment in the words of the present last sentence of Section 74, subdivision (a).[12] Senator Hastings replied: "Mr. President, the Senator from New Mexico will recall that the only reason I objected to it was because I was afraid it would open the door to amendments to the general bankruptcy law. If we are now in a position where we are about to vote on the bill tonight and there is no danger of our getting into controversy by trying to amend the bankruptcy law generally, I will accept the amendment." Senator Bratton said: "I think, Mr. President, that such an amendment as I have offered is necessary in order to give the relief needed." The amendment was thereupon adopted by the Senate. The col loquy is ambiguous and has been urged by some as indicating an intention to accept this sentence as a general amendment. On the other hand, there is no definite statement to this effect. Senator Bratton offered it in connection with a subdivision of Section 74. It seems to me therefore that the fair inference is that this sentence governs only extensions and compositions and does not make future rent claims provable in bankruptcy proceedings generally and especially not in proceedings involving ordinary business corporations.[13]

Nothing is said in Sections 74 and 75 about discharge except that a debtor is not entitled to a confirmation of an extension or composition proposal if he has been guilty of acts which would bar a discharge. If an extension is proposed naturally no discharge is contemplated. If a composition is confirmed the debtor will be discharged as a result of Section 14 (c) of the Bankruptcy Act which provides that the confirmation of the composition shall discharge the bankrupt from his debts other than those agreed to be paid by the terms of the

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[12] 76 Cong. Rec. 5278 (72nd Cong., 2nd Session).

[13] The new bankruptcy amendments have been severely criticized because of a certain carelessness in phrasing due to the haste with which the legislation was rushed through Congress. One lawyer is said to have remarked that when he read the law his mind was one dark spot. It is likely, however, that careful study will make most of the meaning fairly clear. From the standpoint of draughtsmanship the bankruptcy law has been always one of the worst of the federal statutes. It is to be hoped that before further changes are made adequate time will suffice for textual criticism and clarification after the general outline of the measure has been determined.

composition and those not affected by the discharge. There is nothing in Sections 74 or 75 to indicate that compositions under these two Sections shall not be given the same effect as compositions under Section 12. In bankruptcy, except as a result of a confirmed composition, a bankrupt to be discharged must petition specifically for the discharge.

Farmers are eligible to file petitions under Section 74 but they are more likely to take advantage of Section 75 which is specifically concerned with agricultural compositions and extensions. In order to invoke this Section at least 15 farmers in a single county must certify that they intend to file petitions under this Section. The court will thereupon appoint one or more referees in the county, who are to be known as conciliation commissioners. A conciliation commissioner is to be paid by the government ten dollars as total compensation for each case, including all of his expenses. A farmer filing a petition must pay a fee of ten dollars. If the creditors wish any supervision over farming operations, not more than one-half of the cost of this supervision shall be charged to the farmer. A conciliation commissioner may be hired to do this supervising. Since the conciliation commissoner has considerable duties in respect to the calling of meetings of creditors, preparing lists of creditors, and the mailing of notices, it seems obvious that if this Section is to be made effective, conciliation commissioners must work on a volunteer basis. The compensation allowed will scarcely suffice for necessary expenses.[13a]

The general provisions for extension and composition follow similar provisions of Section 74. As under Section 74 if a majority in number and amount of all creditors including secured creditors vote for an extension, the extension is to be given effect although no lien of a secured creditor is to be reduced without the consent of the creditor himself.[14]

[13a] The benefits which will actually accrue to farmers under Sections 74 and 75 are at best dubious. In most instances if a farm owner is in financial difficulties the first mortgage on his land will itself constitute the majority in amount of his debts. That means the first mortgagee in fact can determine whether an extension proposal or composition offer shall be accepted. As has already been indicated Section 75 can have little significance to tenant farmers.

[14] The April 1933 issue of the AMERICAN BANKRUPTCY REVIEW (9:248) states that Albert K. Stebbins, Esq., of Milwaukee has written an article attack-

Section 75 is more drastic and detailed than Section 74 in its provisions for staying and prohibiting actions against farmers after a petition has been filed by a farmer under the Section. Substantially all legal proceedings and every sort of lien enforcement relating to farm and home property with the exception of proceedings for the collection of taxes are barred after the petition and unless and until the petition is dismissed.

One significant difference between Section 74 and Section 75 is that in Section 75 rent is not made a provable claim against a farmer. This omission operates on the whole to the disadvantage of tenant farmers. The general rule under the present bankruptcy law which, as has been stated, prevents the proof of future rent claims in bankruptcy, operates to the disadvantage of the landlord in corporate bankruptcy, but to the landlord's advantage in bankruptcies of individuals. If the future rent is not a provable claim, it is, of course, not discharged in bankruptcy. The result therefore is that an individual tenant may be liable during the life of the lease and thereafter until the obligation is barred by the statute of limitations. A corporation is also technically liable for future rent but since its bankruptcy almost inevitably results in its dissolution the continuing liability is of no comfort to the landlord. In its operation the farm section therefore will prevent a farm landlord from sharing in the distribution of the assets of a tenant who has obtained the confirmation of a composition while the tenant will be unable to obtain a liquidation and discharge of the covenants in his lease.

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ing the constitutionality of the new law. The grounds relied upon are not stated and his article is not available to me. The same magazine quotes (249-250) William R. Watkins, Esq., of Forth Worth, Texas, as of the opinion that the provisions of Section 74(e) and Section 75(g) requiring the approval of a majority in amount of creditors as a condition precedent to the confirmation of an extension or composition proposal makes these sections unconstitutional. Mr. Watkins had proposed that for proper cause the court might approve an extension proposal against the wishes of a majority of the creditors. It is understood the Attorney General advised the President that such a provision would be unconstitutional. Mr. Watkins writes that as the law now stands the court is divested of authority if a majority of creditors has voted for or against a proposal. It is true that approval of a majority in amount is a condition precedent to the confirmation of a proposal but it is scarcely the fact that the court is bound to confirm if such approval is given. By §74 (g) or §75(i) the court is to confirm only if satisfied that the proposal is feasible and equitable. Mr. Watkins cites Yick Wo v. Hopkins, 118 U.S. 356, 6 Sup. Ct. 1064, 30 L. ed.

One peculiar provision in the farm section is found in sub section (b) which authorizes the Supreme Court to make general orders to govern the office of conciliation commissioner and administration under the section generally, but stipulates that any United States District Court may, in the interest of justice, permit such general order to be waived.[15]

The railroad section (Section 77) was adopted in view of the undoubted emergency faced by the railroads as a result of the depression. The railroads owe the Reconstruction Finance Corporation approximately $300,000,000 and in addition $300,000,000 in railroad bonds and equipment notes mature in 1933. Under conditions which prevailed prior to the passage of the new bankruptcy law, if a railroad defaulted on a single bond issue, any bondholder might petition in a state or federal court to have the railroad placed in receivership. If the railroad did not consent, it would be relatively easy to have the petition filed by a judgment creditor. If the proceedings were in a state court ancillary administration would be necessary in every other state. The degree of cooperation among the ancillary receivers would depend wholly upon the attitude of each ancillary court. If, as would be more likely, the receivership was in a federal court independent ancillary administration would be necessary in every circuit in which the railroad had property. While a federal district court within a circuit where a receiver was already appointed would recognize the primary receiver, he would have to qualify in every district in which the railroad had any business existence. The result of such a system was great inefficiency and unbearable expense. One of the most im-

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220 (1886); Eubank v. City of Richmond, 226 U.S. 137, 33 Sup. Ct. 76, 57 L. ed. 156 (1912); Browning v. Hooper, 269 U.S. 396, 46 Sup. Ct. 141, 70 L. ed. 330 (1926); Tumey v. State of Ohio, 273 U.S. 510, 47 Sup. Ct. 437, 71 L. ed. 749 (1927). The last case deals with a statute which provides for a trial of liquor cases by the mayor, part of whose salary consisted of a share of any fine imposed. The statute was held unconstitutional. Mr. Watkins argues that §§74 and 75 delegate governmental power and cites the foregoing cases to support his contention that such delegation is unconstitutional.

[15] By an order dated April 17, 1933, the Supreme Court amended the following General Orders in Bankruptcy: 1, 3, 4, 5, 10, 12, 13, 14, 17, 18, 21, 24, 26, 28, 29, 30, 31, 32, 33, 36, 38, 39, 41, 42, 43, 44, 47. Three new orders, 48-50, were issued to cover the new sections 74, 77, and 75, in that order, of the Bankruptcy Act.

A large number of the changes made in the existing orders were for the

portant advantages of bankruptcy administration over railroads is that ancillary receiverships are avoided.[16]

Jurisdiction may be acquired by the bankruptcy court as a result of a petition by the railroad or with the approval of the Interstate Commerce Commission by a petition of creditors holding not less than 5% of all of the indebtedness of the railroad. Petitions may allege either insolvency in the bankruptcy sense or inability to meet debts as they mature. The section contemplates that the railroad will offer a plan of reorganization on which the commission will hold a public hearing. Creditors constituting not less than 10% in amount of any class may offer a competing plan. After the hearing the Commission has the duty of recommending a plan which may be different from any plan proposed. Before final approval of a plan it must be accepted by two-thirds in amount of creditors and stockholders of each class with certain exceptions indicated in the Act.

Before stating these exceptions attention is invited to the possible difficulty of determining the members of each class of security holders. In some instances this will be relatively easy, but in other cases where there are numerous bond issues secured by the senior divisional liens as well as junior liens on the whole property of a railroad system, the problem of classification is complex. This complexity is increased in the case of collateral trust bonds and short term borrowings which may be secured by the pledge of various underlying obligations of the railroad itself. This classification problem emphasizes the importance of the identification of the Interstate Commerce Commission with the bankruptcy administration.[17]

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purpose of bringing them into conformity with the new provisions of the Act. Frequently this amounts only to the addition of the phrase "or debtor" where the word "bankrupt" formerly appeared alone and a similar expansion of "composition" to "composition or extension." Other changes, however, entirely unrelated to the new legislation, have been made. Stricter accountability is laid upon administrative officers and they are more circumscribed in their choice and payment of attorneys. Two objects appear to have been kept in mind: the acceleration of bankruptcy administration and greater protection for creditors. Order 13 makes the trustee now removable by the referee as well as by the judge.

[16] See JOHN E. LAUGHLIN, JR. EXTRA-TERRITORIAL POWERS OF RECEIVERS (1932) 45 HARV. L. REV. 429. Section 77 does not eliminate the possibility of reorganization under an equity receivership but such proceedings if begun may be superseded by proceedings under 77.

[17] Reorganization may be in connection with merger or consolidation as well as merely involving a single company. Some of the details regarding the

A confirmed plan of reorganization is binding on the stock holders even without the consent of two-thirds of each class of stockholders if the judge shall have determined that the corporation is insolvent—that is, that its liabilities exceed its assets—or that the interests of stockholders will not be adversely affected by the plan or that the railroad pursuant to authorized corporate action accepted the plans under such circumstances that its stockholders are bound by such acceptance. If two-thirds of any class of creditors or stockholders whose acceptance is required do not accept a plan, the plan may nevertheless be put into effect if the interests of such creditors and stockholders are protected as stipulated in the act. If the class in question are creditors this protection may be assured to them either by selling the property subject to their liens, by the sale of the property free of such liens at not less than a fair upset price and the transfer of the liens to the proceeds, or by appraisal and payment in cash of either the value of the creditor's claims or at his election the value of the security allotted to such claims under the approved plan. If stockholders whose consent is necessary are involved they must be assured the value of their equity either by the sale of the property at a fair upset price or by appraisal and payment in cash either of the value of their stock or at the stockholders' election the value of such securities allotted to such stock under the plan. If two-thirds of any class of creditors or stockholders accept a plan it is binding upon the rest of the creditors or stockholders in that class.[18]

The confirmation of the plan discharges the railroad from its debts, except as provided in the plan.

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issue of securities under reorganization are not wholly clear but the general provisions of the Section are broad enough to invite a liberal judicial interpretation. With judicial cooperation there seems to be little doubt that the Commission will be able to develop a workable procedure. Such confidence in the Commission was felt among certain groups in Congress that had it been believed the courts could have been ousted of jurisdiction constitutionally a considerable group would have voted to give the Commission sole authority over railroad debtors in somewhat the same way that the Comptroller of the Currency has control over insolvent national banks.

[18] Claims which may be allowed against a railroad corporation constitute a much broader category than claims which are provable in bankruptcy. Under subsection (b) it seems obvious tort claims, which are not mentioned, are provable as well as rent claims, which are specifically included.

The act contains several sub-sections designed to protect the interests of railroad labor. Among these is a provision that the trustees shall not discriminate against workers because of their membership in labor organizations and shall release them from any contracts which they may have signed by which they have promised not to join a labor organization. This provision is of course a condemnation of the so-called yellow dog contract.[19]

The new bankruptcy jurisdiction over railroads is expected to be reassuring to investors in avoiding the use either of the term receiver or bankrupt. While the reorganization procedure adopted is not radically different to that which has prevailed in equity receiverships, with the exception of the increased signifi cance given to the Interstate Commerce Commission, the court officer in charge of the administration is called a trustee while the railroad itself is designated merely as a debtor.[20] Since the trustees are to be appointed from a panel previously qualified and selected by the Commission the administration should on the whole be more efficient than under a receivership even where the receivership has succeeded in bringing about a unified control.[21] The opportunity of creditors and stockholders to suggest

[19] The bill originally contained the expression "yellow dog" contract. The provision that the trustee may release workers from such contracts perhaps will be attacked under the rules of Adair v. United States, 208 U.S. 161 (1908) and Coppage v. Kansas, 236 U.S. 1 (1915). *Cf.* Opinion of Justices, 275 Mass. 580, 176 N.E. 649 (1931). See FRANKFURTER AND GREENE, CONGRESSIONAL POWER OVER THE LABOR INJUNCTION (1931) 31 COL. L. REV. 385; THE FEDERAL ANTI-INJUNCTION ACT, (1932) 16 MINN. L. REV. 658; SAYRE, LABOR AND THE COURTS, (1930) 39 YALE L. J. 682; CHRIST, FEDERAL ANTI-INJUNCTION BILL (1932) 26 ILL. L. REV. 515; CHAMBERLAIN, FEDERAL ANTI-INJUNCTION ACT, (1932) 18 AM. B. A. J. 477. Whatever happens to the particular provision the other labor sections would seem to be constitutional. The Railroad Labor Act has been upheld. Texas and N.O.R.R. Co. v. Brotherhood of Railway etc. Clerks, 281 U.S. 548 (1930).

[20] Space is not available in this limited review, even to indicate the various problems that may be raised under Section 77. In spite of the constitutional authority in bankruptcy and over interstate commerce the section as a whole and specific subdivisions are likely to be attacked as unconstitutional. It seems to me attacks on the section as a whole are bound to fail. See Canada Southern Railway Company v. Gebhard, 109 U.S. 527 (1883). See also address of then Circuit Judge W. H. Taft, 18 Am. Bar Assn. Reports 264 (1895); KRAFT, POWERS OF CONGRESS UNDER THE CONSTITUTION OVER DEBTOR AND CREDITOR AFFAIRS (1931) 6 JOUR. NAT. ASSN. REFEREES IN BANKRUPTCY 11; GARRISON, POWER OF CONGRESS OVER CORPORATE REORGANIZATIONS, 19 VA. L. REV. 343 (1933).

[21] It is unfortunate that the relative functions of the court and Interstate

and have considered a plan of reorganization and the authority given to the Interstate Commerce Commission not only to pass upon but to present plans of its own probably assures better protection for groups that otherwise would have difficulty in presenting their interests.[22] Since the law provides that the plan when adopted shall be binding upon dissenting stockholders and dissenting creditors it is hoped that reorganization can not only be expedited but can be accomplished without sale of the property.[23] While a class of non-accepting security holders may insist upon receiving cash instead of securities, the value of their interest may be determined by appraisal instead of by sale of the property. Since the Commission is given authority to pass upon reorganization expenses it is felt that the

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Commerce Commission are not more clearly defined, partly because in practice efficiency may be defeated and partly because the confusion may be the occasion of attack on the ground of unconstitutional mingling of functions. Perhaps it is not unfair to remark that the doctrine of separation of powers contains elements of delusion.

[22] These provisions if not administered skilfully may make proceedings interminable. At best a railroad reorganization cannot be consummated without considerable delay. On the other hand if operation under the jurisdiction of the bankruptcy court is efficient and economical, delay in effecting a plan of reorganization may not be of great significance.

[23] One of the most important advantages Section 77 has over receivership procedure is its diminishing the potency of the professional objector except to the extent that he may try to prolong the proceedings. The Supreme Court has never held that a dissenting creditor under an equity receivership could be compelled to take anything but cash, nor indeed that a reorganization could be conclusive against dissenting creditors without a judicial sale. Texas and Pacific Ry. Co. v. Bloom, 164 U.S. 636, 17 Sup. Ct. 216, 41 L. ed. 580 (1897). In Phipps v. Chicago, R.I. & Pac. Ry. Co., 284 Fed. 945 (C.C.A. 8th, 1922), and Chicago, R.I. & Pac. Ry. Co. v. Lincoln Horse and Mule Co., 284 Fed. 955 (C.C.A. 8th, 1922), the non-assenting creditor was required to accept preferred stock. Certiorari was granted in the Phipps case but was dismissed by stipulation, 262 U.S. 762 (1923). In Coriell v. Morris White, Inc., 54 F. (2d) 255 (C.C.A. 2d, 1931), the court held that the non-assenting creditors could not be required to take stock and notes, but that they could not require a sale. The value of their interests might be determined by appraisal. If paid them in cash the reorganization plan could stand. This case is now (April 21) before the Supreme Court. See as to what constitutes a fair offer in an equity receivership, Kansas City Terminal Ry. Co. v. Central Union Trust Co., 271 U.S. 445, 46 Sup. Ct. 549 (1926). See also ROSENBERG, REORGANIZATION—THE NEXT STEP, (1922) 22 COL. L. REV. 14; SWAINE, REORGANIZATION—THE NEXT STEP; A REPLY TO MR. JAMES N. ROSENBERG, (1922) 22 COL. L. REV. 121; ROSENBERG, PHIPPS V. CHICAGO, ROCK ISLAND & PAC. RY. CO., (1924) 24 COL. L. REV. 266; SWAINE, REORGANIZATIONS OF CORPORATIONS: CERTAIN DEVELOPMENTS OF THE LAST DECADE, (1927) 27 COL. L. REV. 901, 924-927; WALKER, REORGANIZATION BY DECREE: RECENT NOTEWORTHY INSTANCES, (1921) 6 CORN. L. Q. 154; Note CORIELL V. MORRIS WHITE, INC., A RECENT DEVELOPMENT IN THE LAW

new law assures reorganization with the least possible cost to the security holders.[24]

JOHN HANNA.

COLUMBIA UNIVERSITY.

OF CORPORATE REORGANIZATIONS, (1932) 45 HARV. L. REV. 697. Constitutional attack will be made no doubt on the provision which may possibly coerce a dissenting minority, but when one considers the stipulations the Section makes for the protection of all parties it is difficult to find any arbitrary spoliation or disregard of due process. The Commission after hearing must determine before approving a plan that the plan is equitable, financially advisable, compatible with the public interest, and that it will not discriminate unfairly in favor of any class of creditors or stockholders. If the plan is certified to the judge, he must determine after hearing that the plan is fair and equitable and that it conforms to the requirements of the Section in other particulars.

[24] The Missouri Pacific and the Chicago & Eastern Illinois are among the railroads which have already filed petitions under Section 77.

APPENDIX

SECTIONS ADDED TO THE BANKRUPTCY ACT, MARCH 3, 1933

Introduction: Enacting Clause:

"Section 73: General purpose: to provide relief for debtors in addition to bankruptcy.

"Section 74: Compositions and Extensions.

Subs. (a) 1. Any person except corporation may file petition or answer, subject to approval or dismissal by judge, accompanied by schedules stating

(1) that he is insolvent or unable to pay his debts as they mature;

(2) that he wishes a composition or extension of time to pay debts

(i) "Debt" shall include all claims, including future rent, regardless of whether otherwise provable.

2. If approval is given, there shall be no order of adjudication except in accordance with subdivision (1).

(1) *Provided* the court shall stay adjudication conditionally;

(2) In any other proceeding under this section the court may, as creditors direct, impose similar terms as conditions for delay in appointing trustee and liquidating estate.

3. "Debtor," means anyone by or against whom a petition is filed.

4. "Creditor," for the purpose of an extension proposal, shall signify all holders of claims of any character, including future rent, regardless of whether provable.

5. A claim for future rent shall constitute a provable debt and shall be liquidated under §63(b).

Subs. (b). After filing the court after notice may appoint receiver or custodian.

Subs. (c). 1. Custodian or receiver or, if none, the court shall promptly call first creditors' meeting.

(1) The notice shall state that debtor proposes composition or extension.

(2) Inclosed shall be a summary of inventory, a brief statement of debts, names and addresses of secured creditors and 15 largest unsecured creditors, with amounts.

2. Any creditor may appear and controvert the facts in the petition.

(1) Court shall decide without jury.

Subs. (d). At first meeting

(1) debtor may be examined;

(2) creditor may nominate trustee;

(3) reasonable time set within which application for confirmation shall be made.

Subs. (e) Application for confirmation may be filed after acceptance by majority in number and amount of the sum of all allowed unsecured claims and of all secured claims affected by proposal.

(1) Consideration necessary to pay prior claims and to carry out agreement must be deposited.

Subs. (f) Date and place shall be set for hearings on application.

Subs. (g) Court shall confirm proposal if satisfied that

(1) it is equitable and feasible as to secured creditors affected and as to debtor;

(2) it is for best interests of all creditors;

(3) debtor has done nothing to prevent discharge;
(4) offer and acceptance in good faith and not procured in a forbidden manner or except as provided.

In extensions proof shall be required of all creditors that their debts are free from usury.

Subs. (h) Extension proposal may
(1) Extend payment of unsecured and secured debts, security being in actual or constructive possession of custodian or receiver;
(2) provide for priority of payments during extension as between secured and unsecured creditors;
(3) include specific undertakings by debtor during extension, including payment on account;
(4) provide for control over debtor's business by creditors' committee or otherwise;
(5) provide for termination of period;
(6) not affect allowances and exemptions under title 11, ch. 3, §24, of the U. S. Code.

Subs. (i) A confirmed extension proposal shall bind the debtor and his unsecured and secured creditors affected thereby.
(1) Shall not reduce the amount or impair the lien of a secured creditor but shall affect only the time and method of liquidation.

Subs. (j) 1. Upon confirmation of a composition the consideration shall be distributed as the court directs and the case dismissed.
(1) Shall not affect priority of payment under title 11, ch. 7, §104, of U. S. Code.
2. Upon confirmation of an extension the court may retain jurisdiction of debtor and his property during the period.

Subs. (k) Extension or composition may be set aside within six months of confirmation for fraud discovered by petitioners since confirmation.

Subs. (l) 1. The court may appoint the trustee nominated by creditors at first meeting or, if none, any other qualified person to liquidate the estate if
(1) debtor fails to comply with terms required of him to protect estate;
(2) debtor has failed to make deposit required in composition;
(3) debtor's proposal has not been accepted by creditors;
(4) confirmation has been denied;
(5) debtor has without sufficient reason defaulted under terms of extension proposal, where jurisdiction has been retained by court.
2. Court shall in addition adjudge debtor a bankrupt if
(1) satisfied that proceedings were commenced or prolonged to delay creditors and avoid adjudication;
(2) confirmation has been denied.
3. No involuntary order of liquidation or adjudication shall be entered under this section against a wage earner or person chiefly engaged in farming or tillage of the soil.

Subs. (m) Filing of debtor's petition or answer under this section shall subject debtor and his property to the exclusive jurisdiction of the court approving.
(1) Jurisdiction, powers, etc. same as if voluntary petition for adjudication had been filed and a decree entered on the day of the filing. Any decree of adjudication subsequently entered shall be referred back to that day.

Subs. (n) In addition to the provision of §11 relative to the staying of pending suits, the court may enjoin secured creditors affected by an extension proposal from enforcing their claims until the proposal is confirmed or denied.

Subs. (o) Sufficient referees shall be appointed to expedite proceedings under this Section.

Subs. (p) Involuntary proceedings under this section shall not be taken against a wage earner.

"Section 75: Agriculture Compositions and Extensions.

Subs. (a) Upon petition of at least 15 farmers within any county who certify they intend to file petitions under this section, courts of bankruptcy may appoint referees to be known as conciliation commissioners or designate for such service a conciliation commissioner appointed in an adjoining county.

(1) Where more than one, each commissioner shall act separately and shall have such territorial jurisdiction as the court shall specify.

(2) Term one year and removable by the court if services no longer needed or for other reason.

(3) No person eligible unless eligible for appointment as referee and in addition is a resident of the county, familiar with its agricultural conditions, and not engaged in farm-mortgage business or allied activities.

(4) In each judicial district court may, if necessary or desirable, appoint a supervisory conciliation commissioner, to have such supervisory functions as the court may by order specify.

Subs. (b) 1. The filing of a petition by a farmer under this section shall be accompanied by a fee of $10.

2. Conciliation commissioner shall receive $10 for each case docketed and submitted to him.

3. Supervising conciliation commissioner shall receive not more than $5 per day plus expenses.

4. If creditors desire supervision of farmer's affairs, such costs shall be borne by agreement, no more than one-half by the farmer. Nothing above shall prevent conciliation commissioner from receiving the compensation so agreed upon.

5. Except as hereinbefore provided no costs etc. shall be taxed to farmer or his creditors.

6. Conciliation commissioner may avail himself of office space, equipment, etc. furnished him by other officials, state or federal.

7. Supreme Court may make such general orders as it finds necessary for administration, but any District Court, for good cause and in interests of justice, may permit any such general order to be waived.

Subs. (c) Within five years after this section takes effect a petition may be filed as in §74, subs. (a) 1 of this outline. On request of farmer or creditor the petition shall be received by the conciliation commissioner and transmitted to the clerk of the court for filing. No order of adjudication shall then be filed except as hereinafter provided.

Subs. (d) After such filing the farmer will file an inventory of his estate within such time and in such form as the rules provide.

Subs. (e) 1. The conciliation commissioner shall promptly call the first meeting of creditors.

(1) The notice shall state that the farmer proposes to offer terms of composition or extension.

(2) These shall be inclosed

(i) summary of the inventory;

(ii) farmer's indebtedness as shown by schedule;

(iii) names, addresses, and amounts as to secured and unsecured creditors.

2. Farmer may be examined at first meeting and creditors may appoint a committee to submit supplementary inventory to commissioner.

3. After hearing, commissioner shall fix reasonable time within which to apply for confirmation, and may later extend such time for cause.

4. After filing and before confirmation or other disposition the court shall exercise such control over the farmer's property as it deems in the

best interests of farmer and his creditors.

Subs. (f) A final inventory of the farmer's estate shall be prepared by or under the supervision of the commissioner.

Subs. (g) Application for confirmation of composition or extension proposal may be filed after:

(1) it has been accepted in writing by a majority in number and amount of all creditors whose claims have been allowed including secured creditors affected;

(2) the consideration necessary to cover all debts having priority unless waived and to pay creditors under the agreement has been deposited.

Subs. (h) A date and place for hearings on applications for confirmation shall be fixed.

Subs. (i) The court shall confirm the proposal if satisfied that

(1) it is equitable and feasible as to creditors and farmer;

(2) it is for the best interests of all creditors;

(3) the offer and acceptance are in good faith, and have been made and procured only as provided and in no forbidden manner.

In applications for extensions proof shall be required of each creditor that his claim is free from usury.

Subs. (j) Same as §74(h) except omit participial phrase in (I) and read *conciliation commissioners for creditors' committee or otherwise* in (4).

Subs. (k) Same as §74(i).

Subs. (l) Same as §74(j). Add that after hearing and for good cause shown the court may at any time during the period of an extension set it aside, reinstate the case, and modify the terms of the extension.

Subs. (m) Same as §74(k).

Subs. (n) Same as §74(m) except omit last sentence.

Subs. (o) Except on petition granted none of the following actions shall be instituted or maintained against a farmer after filing of petition and before confirmation or other disposition:

(1) Proceedings for any demand, debt, or account, including any money demands;

(2) Proceedings for foreclosure of real property mortgage, or for cancellation, rescission, or specific performance of agreement for sale of land or for recovery of possession of land;

(3) Proceedings to acquire title to land by virtue of any tax sale;

(4) Proceedings by way of execution, attachment, or garnishment;

(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

Subs. (p) Prohibitions of (o) shall not apply to proceedings for collection of taxes, or interest or penalties relative thereto, nor to proceedings solely against property other than that used in farming operations or comprising home or household effects of farmer and family.

Subs. (q) Commissioner shall upon request assist farmer in preparing and filing petition or in any other matters arising in proceedings. Farmers need not be represented by attorneys.

Subs. (r) For purposes of this and §74 "farmer" means one personally and bona fide engaged primarily in farming and whose income is principally derived from farming, and includes the personal representatives of a deceased farmer. A farmer shall be deemed a resident of any County in which such operations occur.

"Section 76: Extensions as above shall extend the obligations of persons secondarily liable.

'Section 77: Reorganization of Railroads Engaged in Interstate Commerce.

Subs. (a) 1. Any railroad corporation may file a petition stating insolvency and inability to pay debts as they mature and that it desires to effect a plan of reorganization.

2. If petition is approved the court in which the order is entered shall have exclusive jurisdiction under this section.

3. Subsidiaries of the petitioning corporation may file similar petitions in the same court asking for reorganization as part of or in connection with the parent reorganization. The court will then have the same jurisdiction.

4. Creditors representing not less than 5% of all indebtedness, with approval of I.C.C. after hearing, may file a petition similar to that which the corporation might have filed.

(1) If approved proceedings shall be as though the corporation had itself filed the petition.

Subs. (b) The plan of reorganization

(1) shall include proposal to alter rights of creditors generally or of any class in any way;

(2) may include provisions altering rights of stockholders generally.

(3) Shall provide adequate means for execution of plan, which may include

(i) Transfer of any or all of property to new corporation or corporations;

(ii) Consolidation;

(iii) Merger and issuance of securities.

(4) May deal with all or any part of debtor's property. The term "creditors" is defined as holders of all claims, interests, or securities whatever, including claims for future rent, regardless of whether provable under this Act.

Subs. (c) 1. Upon approval of petition or answer the judge

(1) May temporarily appoint a trustee from a panel previously chosen by the I.C.C.

(2) Shall fix the amount of the trustee's bond and require the debtor or trustee to give such notice as directed to creditors and stockholders:

(3) May for cause and with approval of I.C.C. authorize the trustee to issue certificates for cash, property or other consideration, lawful in equity receiverships.

(4) Shall require the debtor to file schedules and to supply other necessary information;

(5) Shall fix a time for filing of claims, the manner thereof and of allowance and proof, and division of creditors and stockholders into classes;

(6) Shall cause reasonable notice to be given creditors and stockholders of such determination, or of dismissal of proceedings, or of allowances of fees or expenses;

(7) May dismiss proceedings if a plan is not proposed and accepted or, if so, not confirmed.

(8) May make reasonable allowances for expenses;

(9) May refer any matters to special masters.

2. For purposes of this section claims which in equity receivership would have priority over existing mortgages shall maintain their priority. Where such issues have not already been tried the judge, without a jury, shall determine them as soon as may be.

3. Any claimant may be heard relative to permanent appointment of any trustee, recommendation, approval, or confirmation of any plan upon filing a petition.

4. The debtor or trustee(s) if appointed, shall within 15 days prepare
   (1) a list of bondholders, creditors, or claimants, the amounts and character of their claims, and their last known addresses.
   (2) a list of stockholders with their last known addresses.

Subs. (d) Before creditors and stockholders are required to decide on a plan of reorganization the I.C.C. shall hold a public hearing, at which debtor, trustee(s), and creditors representing 10% of amount of any class may present their plans. Commissioner shall submit a report with the recommendation of a plan which may differ from any submitted. This plan shall be submitted to creditors and stockholders. The commission may also submit for vote any other plans filed under this subdivision.

Subs. (e) 1. Commission shall not finally approve any plan until accepted in writing by ⅔ in amount of claims of each class affected and by the holders of ⅔ of the stock in each class.
   (1) If adequate provision is made for the protection of the interests, claims, and liens of any class of creditors or stockholders under clauses (5) and (6) of subdivision (g), the acceptance of such class is unnecessary.
   (2) Acceptance of stockholders not necessary if the judge shall have determined
      (i) that the corporation is insolvent;
      (ii) that the interests of stockholders will not be adversely affected;
      (iii) that the debtor by authorized corporate action has accepted the plan and the stockholders are bound.

Upon acceptance the commission may without further proceedings authorize the execution of the plan.

Subs. (f) If the commission's plan is accepted, the commission shall certify the plan to the court. If the plan differs from the recommended plan it shall upon acceptance be submitted to the commission and interested parties shall be heard. If the commission shall then approve of the plan it shall be certified to the court. The commission shall also after hearing fix the maximum compensation to be allowed under clause (8) of subdivision (c) of this section. Except for good reason no allowance to officers of corporations interested. No plan of reorganization shall be confirmed except with the approval of the I.C.C.

Subs. (g) Upon commission's approval and after hearing the court shall confirm if satisfied
   (1) that the approved plan complies with subdivision (b), is equitable, and does not discriminate unfairly in favor of any class of creditors or stockholders;
   (2) all amounts to be paid by debtor or by any corporation(s) acquiring assets for services, expenses, etc., are reasonable or subject to approval of judge;
   (3) the offer and acceptance are bona fide and have not been procured in a forbidden manner;
   (4) the plan provides for payment of all costs and allowances, except that items under subdivision (c) clause (8) may be paid in securities if acceptable and fair;
   (5) non-accepting stockholders are provided for;
   (6) that creditors not bound under (h) are adequately protected by provision for:
      (i) sale of property subject to liens;
      (ii) sale free of liens at not less than fair upset price with liens transferred to proceeds,
      (iii) by appraisal and payment in cash of value of liens or claims

or, at creditors' election, the securities allotted.

(7) the debtor and other corporations involved are authorized by charter to carry out the plan. The commission shall fix the upset price or appraisal under clauses (5) and (6).

Subs. (h) 1. Upon confirmation the plan shall be binding on

(1) the corporation;

(2) all stockholders if judge finds

(i) the corporation insolvent;

(ii) the interests of the stockholders will not be adversely affected; or

(iii) that the debtor has by authorized corporate action accepted the plan and in consequence stockholders are bound.

(3) all stockholders of each class of which ⅔ in amount have accepted the plan;

(4) all creditors whose claims are fully payable in cash under the plan;

(5) all creditors entitled to priority under (c), whose claims are not payable in full in cash, provided ⅔ in amount have given their approval;

(6) all other unsecured creditors provided ⅔ in amount have assented;

(7) all secured creditors of each class of which ⅔ in amount have given their consent.

2. The confirmation of the plan shall discharge the debtor from his debts except as provided in the plan.

Subs. (i) The provisions of §§721-725 of the 1932 Revenue Act shall not apply to the issuance, transfers, or exchange of securities or filing of conveyances necessary to effectuate a reorganization under this section.

Subs. (j) Upon confirmation of the plan property affected by it is discharged of all claims by debtor, its stockholders and creditors, except as provided in the plan.

Subs. (k) If a Federal or State receiver has been appointed either before or after this Act takes effect, a petition or answer may nevertheless be filed and, if approved, the property transferred to trustee and provisions made for paying the expenses of the previous proceedings. If a receiver has been appointed prior to dismissal under (c) (7) the judge may direct the transfer of debtor's property to the receiver upon such terms as he may stipulate.

Subs. (l) Pending suits against the debtor shall be stayed until after final decree.

Subs. (m) 1. A certified copy of an order of confirmation shall be evidence of the court's jurisdiction, the regularity of the proceedings, and the fact that the order was made.

2. A certified copy of an order directing a transfer and conveyance of property is evidence of such transfer and, if recorded, of the same effect as a recorded deed.

Subs. (n) In proceedings under this Section the jurisdiction and powers of the court, the duties of the debtor, the rights and liabilities of creditors, etc., shall be the same as though a voluntary petition for adjudication had been filed and a decree entered on the day the debtor's petition was filed.

Subs. (o) No judge or trustee shall change the wages or working conditions of railroad employees except in the manner prescribed in the Railroad Labor Act or as set forth in memorandum entered into January 31, 1932.

Subs. (p) No judge or trustee shall deny the right of an employee to join the union of his choice. May not interfere with them or use railroad funds to maintain company unions.

Subs. (q) No judge, trustee, or receiver shall require an applicant for employment to contract regarding labor organizations. If such contract is in force it shall be discarded.

Subs. (r) "Railroad Corporation" defined to exclude street, suburban, or interurban electric railway under certain conditions.

Subs. (s) Claims for personal injuries to employees or of personal representatives of deceased employees shall be preferred claims, subordinate only to costs of administration."

Section 2: In effect immediately upon approval and applicable to claims acquired prior as well as subsequent to approval.

Section 3: Bankrupt funds are authorized to be deposited in postal savings depositories.