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Bankruptcy--Statutory Bar to Habitual Discharge Not Applicable to Chapter XIII Wage Earner Plan

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While it is accepted by both views that a search made incidental to a lawful arrest is reasonable, the difference between the two turns upon the meaning which has been given by each to the word "incidental." Under the first view if the search is made prior to the arrest, the search is not "incidental," as this view requires the search to follow the arrest. The second view, as adopted in the principal case is that even if the search precedes the arrest, it may be incidental.

The decision of the principal case is not justified. The facts and circumstances which prompted the search clearly indicated that the defendant had present intention to commit a criminal act. Thus, the officers had sufficient reason to effect an arrest of the defendant prior to the search. While it might be advantageous to permit a search prior to an arrest to avoid unnecessary arrests, this advantage is greatly outweighed by the restriction that such a rule places on the citizen's rights of security and privacy. An analysis of the decisions rendered since adoption of the constitutional guarantees against unreasonable searches and seizures reveals an ever increasing area of "reasonable" searches accompanied by increasing restrictions on the rights of security and privacy. The ultimate test for the necessity of the rule in the principal case is a test of public utility. Therefore, since the view requiring the arrest to precede the search meets present law enforcement needs, there are no social or economic values which warrant courts adopting the broader rule.

Joe Harrison

BANKRUPTCY—STATUTORY BAR TO HABITUAL DISCHARGE NOT APPLICABLE TO CHAPTER XIII WAGE EARNER PLAN.—Debtor filed a wage earner plan under chapter XIII of the Bankruptcy Act[1] seeking an extension of time to pay his debts in full. The proceeding was dismissed by the referee in bankruptcy because the debtor had received confirmation of an extension within six years preceding the filing of his present plan. The referee held that chapter III, section 14, (c) (5)[2] barred a subsequent confirmation within a six year period. The United States District Court for the District of Kansas affirmed. Debtor appealed to the court of appeals for the tenth circuit. *Held:*

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[1] 52 Stat. 930 (1938), 11 U.S.C. §§ 1001-1086 (1958).

[2] 30 Stat. 550 (1898), as amended, 11 U.S.C. § 32 (c) (1952) provides:
"The court shall grant a discharge unless satisfied that the bankrupt . . . in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy had been granted a discharge, or had a composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this title. . . ."

Reversed. The statutory bar to discharge for those who too frequently invoke the discharge provisions of the Bankruptcy Act was not intended to apply to those seeking to pay their debts in full over an extended period. Because section 14, (c) (5) specifically included wage earner plans by way of composition, but was silent as to plans by way of extension, the court concluded that Congress had not intended the statutory bar to apply to chapter XIII proceedings by way of extension. *In re Holmes,* 309 F.2d 748 (10th Cir. 1962).

Three situations may arise involving the application of section 14 (c) (5) to wage earner plans by way of extension. A debtor, within a six year period, may apply for (1) two extensions, (2) a straight bankruptcy proceeding and subsequent extension, or (3) an extension and subsequent straight bankruptcy proceeding.

Only two reported cases involve the application of the six-year discharge bar to the first situation; *i.e.,* two wage earners plans by way of extension. In the first of these cases a federal district court, in the case of *In re Bingham,*[3] applied the statutory bar to chapter XIII proceedings by way of extension. Less than two years later, in the case of *In re Autry,*[4] the same court held that a confirmation of extension under a wage earner plan was not a bar to a subsequent confirmation of extension within a six year period. The district judge attempted to reconcile these two cases, assuming that the first confirmation in the *Bingham* case was by way of composition in the absence of specic language calling it an extension.[5] This reconciliation was made in the fact of specific language in the *Bingham* case that there was no ". . . need to create a class of wage earner users, going through life interest free, converting credit risks desirable for one year to extensions of credit over three or four years, with resultant loss."[6] It would seem the court in the Bingham case was speaking of a wage earner plan by way of extension and that basically the two cases are in conflict.

The *Holmes* case has the effect of settling the conflict within the tenth circuit and presents persuasive authority for other jurisdictions. Within the tenth circuit, at least, referees in bankruptcy and district judges will no longer be able to apply their individual views regarding the merit of the wage earner plan to a proceeding under chapter XIII.

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[3] 190 F. Supp. 219 (D. Kan. 1960), *appeal dismissed,* Bingham v. Yingling Chevrolet Co., 297 F.2d 341 (10th Cir. 1961).

[4] 204 F. Supp. 820 (D. Kan. 1962).

[5] In re Autry, *supra* note 4, at 821, quoting from the *Bingham* case, stated: "The question to be determined is whether a debtor is barred from procuring confirmation of a wage earner plan within six years of a prior confirmation."

[6] 190 F. Supp. 219, 221 (1960).

The court in the *Holmes* case made a significant distinction between "compositions" and "extensions," in order to arrive at its decision limiting the applicability of the statutory bar. In either bankruptcy proceedings or a plan by way of a composition the debt is not fully paid, but wholly or partially discharged, while in a proceeding by way of an extension the debtor proposes to pay his debts in full. This distinction goes to the very purpose of section 14 (c) (5), which is to prevent the habitual bankrupt from escaping his responsibilities. The court in the *Holmes* case cited several cases[7] from other federal court districts supporting this distinction. These cases involve either a wage earner plan by way of extension and then a subsequent straight bankruptcy within a six year period, or the reverse, a straight bankruptcy and subsequent extension. In all of the cases an extension was distinguished from a discharge or a composition, and it appears that there is now authority within five of the nation's ten circuits for the adoption of the rule in the *Holmes* case.

Chapter XIII was enacted to relieve wage earners from attachment and garnishment proceedings for a period of time to enable them to meet their obligations in full without the stigma attached to being adjudged a bankrupt. In view of the increasing tendency toward credit buying among low income groups, chapter XIII was intended to protect wage earners and salaried people within these groups.[8]

The act is not designed to *discharge* a person's debts when he finds himself burdened through an over extension of his credit, an illness, or other economic failures. Instead, he is to meet his debts out of his future earnings, paid in to a trustee and distributed to his creditors. He is given the protection of the court to accomplish this end. "It is not a moratorium for debtors. . . . It is amortization."[9]

The creditors are also protected by the court. In numerous cases a portion of the debtor's wages are paid directly into court by his employer. This offers the debtor less opportunity to weaken while in the process of completing his plan. Secondly, prior to the passage of

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[7] In re Verlin, 148 F. Supp. 660 (E.D.N.Y. 1957), *aff'd*, Fishman v. Verlin, 255 F.2d 682 (2d Cir. 1958); In re Sharp, 205 F. Supp. 786 (W.D. Mo. 1962); In re Mahaley, 187 F. Supp. 229 (S.D. Calif. 1960); In re Thompson, 51 F. Supp. 12 (W.D. Va. 1943), in which the court stated, at 14: "[T]he difference is between a proceeding wherein a debtor settles his indebtedness in an agreed amount less than the amount owed [composition] and a proceeding wherein he merely obtains an extension of time within which to pay in full [extension]."

[8] Chandler, *The Wage Earners' Plan: Its Purpose*, 15 Vand. L. Rev. 169 (1961). The author, Mr. Walter Chandler, a former member of the House of Representatives, was the sponsor of chapter XIII of the Bankruptcy Act. In re Mahaley, *supra* note 7, at 231.

[9] Chandler, *The Wage Earners' Plan: Its Purpose*, 15 Vand. L. Rev. 169, 170 (1961).

chapter XIII, a debtor could only resort to voluntary bankruptcy, and millions of dollars were being lost annually by creditors.[10] Now much of this can be recovered from a debtor's future earnings.

The purpose of section 14 (c) (5) is to prevent the creation of a class of habitual bankrupts who might use the discharge element of straight bankruptcy or composition plans at frequent intervals to escape paying their debts in full.[11] The bar to habitual discharge section was enacted in 1903.[12] At that time there was no provision for extensions. Normally, bankruptcy cases ended in the complete discharge of a greater portion of the debt. As stated in *In re Thompson*,[13] "the reasons why a debtor should not be allowed to accomplish this result as frequently as he chooses have no application to the situation where the debtor offers to and does pay his debts in full."[14] In a composition a debtor does not pay his debts in full, but receives a partial discharge. Section 14 (c) (5) specifically bars a debtor from resorting to this provision by arrangement or wage earner plan by way of composition more than once within six years. The purposes of the statutory bar have no application to extensions, since an extension contemplates the full payment of debts. The *Holmes* case reaches the proper result in view of the purposes of both chapter XIII and chapter III, section 14 (c) (5).

Joseph T. Burch

CONSTITUTIONAL LAW—PROBABLE CAUSE FOR SEARCH AND SEIZURE.—An automobile riding low in the rear crossed a state line. Officers, on the lookout for another vehicle suspected of carrying untaxed liquor, stopped the automobile, searched it without a warrant, and found untaxed liquor. The officers could not detect the liquor in any manner before the search and had no information pertaining to this particular automobile. The automobile was apparently being driven in a legal manner. The trial court dismissed a forfeiture action against the automobile on the ground of an unreasonable search. *Held*: Reversed. The superior court found the search was reasonable on the basis of probable cause and added: "A state should have the right to stop a traveler coming into the state and to search his belongings to ascertain whether he is bringing into the state any property upon which a tax

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[10] *Ibid.*
[11] In re Thompson, 51 F. Supp. 12, 13 (W.D. Va. 1943).
[12] 30 Stat. 550 (1898), as amended, 32 Stat. 797 (1903).
[13] 51 F. Supp. 12 (W.D. Va. 1943).
[14] *Id.* at 13.