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Federal Bankruptcy Act--Its History and Operation

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FEDERAL BANKRUPTCY ACT—ITS HISTORY AND OPERATION.*

If we were to look for the earliest indication of a bankruptcy law, we would turn back more than three thousand years to the Mosaic Law and find in the Fifteenth Chapter of Deuteronomy this statement

"At the end of every seven years thou shalt make a release. Every creditor that lendeth aught to his neighbor shall release it. He shall not exact it of his neighbor or his brother because it is called the Lord's release."

This release from debt was common only to the Jewish law, and we find no forerunner of the modern bankruptcy law until in the reign of Julius Cæsar the Roman law created its *cessio bonorum,* the effect of which under our modern practice would be an assignment for the benefit of creditors. This law provided that the insolvent debtor might surrender up all of his property and present himself for examination, and upon his full compliance with the provisions of the law he was released not from the payment of his debts, but from imprisonment, slavery or even capital punishment, which was provided in some instances for the nonpayment of debts.

It will be seen that the first real Bankruptcy Law was in its nature one to release the bankrupt from criminal liability, and in no wise affected the debts which he owed.

Our modern bankruptcy owes its origin to England, and strangely enough to the commerce of that Empire. Foreign merchants, particularly the Lombards from Italy, flocked into London and developed the system of exchange and gave the name "Bankrupt" to the trader who failed because the table or banque of the broker who failed became broken or rupt as a symbol of his failure.

The purpose of the Early English Bankruptcy Acts was to protect commerce against inroads upon it by scheming and dishonest traders, and it carried with it that part of the old Roman law which dealt with the criminal features attached to a debtor.

* Radio address delivered by Mr. R. P Hobson over WLAP, August 19, 1932.

The first English Bankruptcy Act passed in 1542 provided for the seizure, sale and distribution of an insolvent debtor's estate, and for punishment to him in the event that he absconded from the realm or failed to comply with the provisions of the Act. This Act did not provide for a discharge of the debts owing by the bankrupt. Both this Act and the subsequent Act of 1570 limited their application to merchants, brokers and traders, and neither of them provided that a debtor could voluntarily go into bankruptcy In 1705 for the first time the English Parliament passed an Act which granted to the insolvent debtor a discharge from all his debts, provided that he surrendered all his assets to his creditors and made a full disclosure of them. Thus the law stood at the time of the American Revolution, and the adoption of the Constitution of the United States.

In the United States, the regulation of bankruptcy is committed entirely to the Federal Government under Section 8 of the Constitution which provides that the Congress shall have power to establish uniform laws on the subject of bankruptcies. In conformity with that power, Congress passed the first Bankruptcy Act in 1800, which followed the English law, and was directed against debtors to prevent fraudulent concealment of property and to insure a fair distribution of insolvent estates. This law was repealed in 1803, and we had no Bankruptcy Act until 1841 when an Act was passed which for the first time recognized the right of an insolvent debtor voluntarily to surrender his property to his creditors and take the benefits of the Act. In other words, all previous Bankruptcy Acts were enacted solely for the benefit of creditors, and they alone could take advantage of them, but by this Act the debtor himself was given the benefits of the Act, and for the first time in the history of all Bankruptcy Acts the debtor was entitled to a discharge from all of his debts upon his compliance with the terms of the Act. This Act, however, was short-lived and was repealed in three years, and the country was again without a Bankruptcy Statute until 1867 when a new Act was passed which remained in force until 1878, and was substantially the same as the Act of 1841.

In 1898 our present Bankruptcy Statute was passed which endeavored to meet the shortcomings of the previous Statutes in that it provided for the administration of the law by Referees who should be conveniently located, and thus make the adminis-

tration of the Act both economical and accessible. This Act has been amended several times, and further amendments are now being proposed.

The operation of the present Bankruptcy Act may be divided into two classifications first, the placing of the insolvent debtor in bankruptcy, second, the administration of his estate.

Bankruptcies are either voluntary or involuntary Any person who owes debts which he is unable to pay may surrender up his property to his creditors and obtain a discharge from his debts. An inventory proceeding may be instituted by three creditors holding claims against the alleged bankrupt aggregating $500.00, provided the alleged bankrupt has committed an act of bankruptcy within the definition of the Act, the most usual of which is that he has within four months past and while insolvent paid some creditor in preference to another. Upon the filing of this petition, the bankrupt may either confess the act of bankruptcy and thereupon be adjudicated a bankrupt, in which event his status reverts at once to that of the voluntary bankrupt, or he may deny the act of bankruptcy and have a trial upon the merits of the case before the Federal Judge or a Jury, if he so elects, and that case is tried just as any other disputed question.

The administration of the estate of the bankrupt is accomplished through a Referee who sits in the place of the District Judge, conducts all the hearings, allows or disallows all claims which are presented, and determines the controversies incident to administration except the granting of a discharge to the bankrupt. The bankrupt's application for discharge is filed with the Referee and transmitted by him to the District Judge, who conducts the hearing, and in the absence of a showing to the contrary grants the discharge.

The administration of bankrupt estates in this country has been freely and in many instances unjustly criticized, upon the ground of excessive expense, and its failure to compel a dishonest bankrupt to surrender property concealed by him. An analysis of the comparative costs of bankruptcies and equitable receiverships will reveal that the former is much cheaper and in final returns pays to creditors far more than the latter. With respect to the second criticism, it may be said that under the general law of this country criminals of all classes are unduly

protected, and not more so in bankruptcy than in other branches. Unfortunately the Bankruptcy Act does furnish to dishonest debtors an opportunity to evade the payment of debts, but not without incurring criminal responsibility, and so long as the criminal laws of the country are adequately enforced we need have no fear of great imposition by dishonest bankrupts.

On the whole, it may be said that the bankruptcy administration in this State is fairly and equitably carried out, and that creditors of insolvent debtors receive from bankruptcy administration a far greater return than they would receive either in equitable receiverships or voluntary assignments for the benefit of creditors.