

The Beginnings to Reform of the Bankruptcy Act of 1898 Argued in ‘DONOVAN Report’ of 1931 — As a Part of Research of the Enactment Process in U.S. Bankruptcy Law [1]

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In bankruptcy law history of the United States, the Bankruptcy Act of 1898 is the first enacted permanent bankruptcy law. While 30 years had passed since its enactment, some important problems, such as some delay and cost of bankruptcy procedure under the Bankruptcy Act of 1898, were found in practice in the 1920s.

‘WILLIAM J. DONOVAN, ADMINISTRATION OF BANKRUPT ESTATES, 71st Cong. (House Comm. Print 1931)’, referred to as ‘DONOVAN report’ in this article, published, and presented to the 71st Congress in 1931, is the most valuable and substantial material which had analyzed such administration under the Act of 1898 from multifaceted viewpoints of theory and practice in those days. Various legal issues which the report pointed out is analyzed in this article.

It is cleared by the author’s analysis in this article how the theoretical conflict and the practical conflict between creditors’ control (approach that creditors should control bankruptcy procedure for their equitable satisfactions) and debtor relief (approach that bankruptcy discharge should relieve debtors of heavy debts, and, debtors should be refreshed) on each stage of bankruptcy procedure were understood in the report, and, how such

issues presented in the report would influence on the enactment of the Bankruptcy Reform Act of 1978.

This article concludes that the conflict was being kept up in administration of procedure provided by the Act of 1898, and can be found further in the 2005 amendment of the present Act of 1978. Also this article proposes, as a subject of amendment, in the near future in Japan, the balance of such two thoughts should be kept well by introducing a system between creditor control and debtor relief that adjustment of debts of an individual with regular income or small debts adjustment of an individual should be required before bankruptcy adjudication.