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BANKRUPTCY-BANKRUPT'S PETITION TO REOPEN ESTATE

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RECENT DECISIONS

BANKRUPTCY—BANKRUPT'S PETITION TO REOPEN ESTATE—Petitioner's no-asset estate in bankruptcy was closed and a discharge was granted in 1942. In 1945 a judgment creditor of the bankrupt sued in a Connecticut court on a judgment which antedated the bankruptcy proceeding and the existence of which was unknown to the bankrupt at the time he filed his schedules. It appeared that the bankruptcy proceeding was likewise unknown to the judgment creditor. Petitioner sought an order reopening the estate for the purpose of amending schedules to include the judgment inadvertently omitted; and the district court entered such an order over the objection of the judgment creditor. On appeal, *held*, reversed. Once the six month period for filing claims has expired, the district court in bankruptcy lacks power to reopen an estate at the request of a bankrupt who failed to schedule a then-existing judgment. *Milando v. Perrone*, (C.C.A. 2d, 1946) 157 F. (2d) 1002.

Although the bankruptcy court has power to reopen an estate for "cause shown," [1] no "cause" appears here unless it could be shown that the creditor's claim could be barred by amending the schedules to include within the discharge the judgment previously omitted.[2] Unless the creditor has notice or actual knowledge of the proceedings in bankruptcy, the act specifies that a provable debt which has not been duly scheduled is not discharged.[3] The act is unambiguous in the requirement it imposes on a creditor—he must file his claim within six months after the first date set for the first meeting of creditors or his claim will be disallowed.[4] An exception to this rule exists which permits the court to extend the statutory time limit at the request of a creditor "in order to prevent a fraud or an injustice"; [5] but this narrowed exception is inapplicable here because the petitioning party is the bankrupt and no fraud or injustice appears. The instant case is further plagued with the difficulty that the Connecticut court would determine the effect of any relief which might be granted; [6] and it is at

[1] "What constitutes 'cause' is not defined and lies primarily within the discretion of the district judge; only for plain abuse of discretion should his decision be reversed." In re Perlman, (C.C.A. 2d, 1940) 116 F. (2d) 49 at 50; 1 COLLIER, BANKRUPTCY, 14th ed., §§ 2.49, 2.50 (1940) and 1945 Cum. Supp.; Bankruptcy Act, § 2a(8), 11 U.S.C. (1940) § 11(a) (8).

[2] In re Hawk, (C.C.A. 8th, 1902) 114 F. 916; In re Dunn, (D.C. Wash. 1941) 38 F. Supp. 1017; Phillips v. Tarrier Co. of Del., (C.C.A. 5th, 1938) 93 F. (2d) 674; In re Perlman, (C.C.A. 2d, 1940) 116 F. (2d) 49.

[3] Bankruptcy Act, § 17a(3), 11 U.S.C. (1940) § 35 (a)(3); Birkett v. Columbia Bank, 195 U.S. 345 at 350, 25 S. Ct. 38 (1904); In re Spicer, (D.C. N.Y. 1906) 145 F. 431 at 433.

[4] Bankruptcy Act, § 57n, 11 U.S.C. (1940) § 93 (n); In re Harmack Produce Co., (D.C. N.Y. 1942) 44 F. Supp. 1; In re Silk, (C.C.A. 2d, 1932) 55 F. (2d) 917; Hill v. Smith, 260 U.S. 592 at 595, 43 S. Ct. 219 (1923).

[5] This "exception" was first stated by way of dictum in Pepper v. Litton, 308 U.S. 295 at 304, 60 S. Ct. 238 (1939), prior to the amendments of 1938 to § 57 n, 11 U.S.C. (1940) § 93 (n). For analysis of the scope of the exception see: In re Harmack Produce Co., Inc., (D.C. N.Y. 1942) 44 F. Supp. 1, and 3 COLLIER, BANKRUPTCY, 14th ed., § 57.27 (1941).

[6] In re Innis, (C.C.A. 7th, 1944) 140 F. (2d) 479; In re Blumberg, (D.C. Tenn. 1899) 94 F. 476; 1 COLLIER, BANKRUPTCY, 14th ed., § 17.28 (1940).

least doubtful whether the "ancillary jurisdiction" proclaimed in *Local Loan Co. v. Hunt*,[7] viz., injunction against suit in state courts where the discharged bankrupt's state court remedy is inadequate protection, would extend to cover a situation such as that presented here because of the incongruous result which would follow if the bankruptcy court enjoined a state court from following the clear direction contained in section 17 a (3) of the Chandler Act.[8] No compelling equity is apparent in the bankrupt who fails to schedule an existing judgment, and later complains in the very teeth of the section of the act governing discharge that he should be relieved of the consequences of his own inadvertence in order to render immune from creditors his after-acquired assets. The alternative is certainly undesirable. A rule which would give the bankrupt a right to reopen the proceeding in order to bring within the discharge creditors he omitted, either purposely or inadvertently, would render the order closing the estate illusory and nullify the bankrupt's statutory duty to schedule debts promptly. The bankrupt in the instant case overlooked an elementary principle, to wit, that one who seeks the protection of a statutory remedy must bring himself within the provisions of the statutory grant.

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[7] 292 U.S. 234, 54 S. Ct. 695 (1934). Broad language of the case cited has been refined to authorize injunction against state court action only under unusual circumstances, Ciavarella v. Salituri, (C.C.A. 2d, 1946) 153 F. (2d) 343; but is a recognized exception to the prohibition against injunction contained in Judicial Code, § 265, 28 U.S.C. (1940) § 379, Toucey v. New York Life Ins. Co., 314 U.S. 118, 62 S. Ct. 139 (1941), 1 COLLIER, BANKRUPTCY, (Cum. Supp. 1945) pp. 65-68.

[8] 11 U.S.C. (1940) § 35 (a): "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as . . . (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy. . . ."