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BANKRUPTCY — CORPORATE REORGANIZATION — LIMITATION ON THE RIGHT TO APPEAL FROM AN ORDER FOR THE ALLOWANCE OF COMPENSATION IN A CORPORATE REORGANIZATION UNDER THE CHANDLER ACT — A petition for reorganization was approved by the district court, and members of a bondholders' committee were granted an allowance for services. As the award was much less than the amount sought, the committee asked leave to appeal of the circuit court of appeals. Leave was granted and the allowance increased.[1] In the Supreme Court the petitioner claimed that the circuit court of appeals had no jurisdiction on the theory that the committee was confined to an appeal as of right,[2] which could only be taken by filing notice of appeal in the district court. *Held*, the circuit court of appeals properly allowed the petition for leave to appeal under section 250 of the Chandler Act[3] and section 24(a) was inapplicable. *Dickinson Industrial Site, Inc. v. Cowan*, 309 U. S. 382, 60 S. Ct. 595 (1940).

[1] In re Albert Dickinson Co., (C. C. A. 7th, 1939) 104 F. (2d) 771.
[2] 52 Stat. L. 854-855, § 24a (1938), 11 U. S. C. (Supp. 1939), § 47a.
[3] 52 Stat. L. 901 (1938), 11 U. S. C. (Supp. 1939), § 650.

Federal bankruptcy legislation governs appeals in matters peculiar to bankruptcy, as distinguished from the general federal appellate procedure,[4] and appeals in corporate reorganizations are taken in the same manner in the absence of special statutory provisions.[5] The old Bankruptcy Act distinguished between proceedings and controversies in bankruptcy,[6] and appeals of right involving the former were permitted only under special circumstances.[7] Separate provision was made for independent appeals from allowances,[8] but the provision for appeals from proceedings and controversies still controlled.[9] The federal courts agreed that allowances to attorneys or committeemen did not come within those "orders allowing a claim" which were proceedings appealable of right, for such "claims" were confined to prior debts against the bankrupt estate and did not include allowances for administrative expenses.[10] This ruling was upheld by the Supreme Court.[11] The 1938 revision of the bankruptcy law made all orders, decrees or judgments in bankruptcy appealable of right, subject to a $500 minimum limitation.[12] However, to the separate provision for appeals from orders granting or refusing allowances for compensation which provided that such appeals "may be taken to the circuit court of appeals" were added the controversial words "and allowed by"; so that it now reads "taken to and allowed by." [13] In inter-

[4] 6 AM. JUR. 836 (1937).

[5] "Since it is provided in division (k) that 'all other provisions of this act, except such as are inconsistent with the provisions of this section 77B, shall apply to proceedings instituted under this section,' appeals under § 77B would seem to be governed by the same provisions as appeals in ordinary bankruptcy proceedings." Annotation, 79 L. Ed. 1133 at 1195 (1935); Vitagraph, Inc. v. St. Louis Properties Corp., (C. C. A. 8th, 1935) 77 F. (2d) 590.

[6] Proceedings in bankruptcy concern those relations between the bankrupt and his creditors, but the issues raised between intervening parties, which involve substantial rights, are controversies. In re Prudential Lithograph Co., Inc., (C. C. A. 2d, 1920) 270 F. 469.

[7] ". . . appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States . . . in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over." 30 Stat. L. 553, § 25a (1898), 11 U. S. C. (1934), § 48(a).

[8] 48 Stat. L. 917, § 77B (c)(9) (1934), 11 U. S. C. (1934), § 207 (c) (9).

[9] Shulman v. Wilson-Sheridan Hotel Co., 301 U. S. 172, 57 S. Ct. 680 (1936).

[10] Wingert v. Smead, (C. C. A. 4th, 1934) 70 F. (2d) 351; In re New York Investors, Inc., (C. C. A. 2d, 1935) 79 F. (2d) 179.

[11] Shulman v. Wilson-Sheridan Hotel Co., 301 U. S. 172, 57 S. Ct. 680 (1936) (involving the allowance of fees in a foreclosure suit, disallowance in the district court in reorganization proceedings and denial of appeal by the circuit court of appeals).

[12] "The Circuit Courts of Appeals of the United States . . . are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy . . . and in controversies arising in proceedings in bankruptcy. . . . *Provided further*, That when any order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court." 52 Stat. L. 854, § 24a (1938), 11 U. S. C. (Supp. 1939), § 47a.

[13] 52 Stat. L. 901, § 250 (1938), 11 U. S. C. (Supp. 1939), § 650.

preting this provision one circuit court of appeals has held that appeals from allowances of $500 or more may be had as of right.[14] The ruling in the principal case that section 250 describes only one appellate procedure and that it is completely divorced from section 24(a) is clearly sound,[15] and its practicality is borne out by the previous history of appeals from allowances for compensation.[16] Nevertheless the Court had to supplement the wording of the statute in order to reach the desired restrictive interpretation. Section 24(a) would indicate that the allowance, as an order, was appealable as of right,[17] the history of such practice notwithstanding, and the argument of the Court that the disjunctive must be read into section 250 to sustain this contention is not compelling.[18] The stand of the Court is better explained by reference to the policy of the reorganization legislation,[19] which is calculated to put failing corporations on their feet as quickly as possible. The restricted allowance of appeals may be attributed to the self-declared duty of the Court to expedite proceedings under the statute.[20]

[14] London v. O'Dougherty, (C. C. A. 2d, 1939) 102 F. (2d) 524.

[15] "Unlike appeals from other orders, appeals from compensation orders therefore normally involve only one question of law—abuse of discretion. . . . To allow these appeals as a matter of right is to encourage an unseemly parade to the appellate courts and to add to the time and expense of administration." Principal case, 309 U. S. 382 at 389.

[16] Shulman v. Wilson-Sheridan Hotel Co., 301 U. S. 172, 57 S. Ct. 680 (1936); Wingert v. Smead, (C. C. A. 4th, 1934) 70 F. (2d) 351; In re New York Investors, Inc., (C. C. A. 2d, 1935) 79 F. (2d) 179; Meyer v. Kenmore Granville Hotel Co., 297 U. S. 160, 56 S. Ct. 405 (1936).

[17] London v. O'Dougherty, (C. C. A. 2d, 1939) 102 F. (2d) 524.

[18] (a) It is conceivable that the wording of the statute describes both an appeal as of right and a discretionary appeal, viz., "Appeals [from orders involving more than $500 and from orders involving less than $500] may . . . be taken to [appeals as of right from the former orders] and allowed by [discretionary appeals from the latter orders] the circuit court of appeals." 52 Stat. L. 901, § 250 (1938), 11 U. S. C (Supp. 1939), § 650.

(b) Section 77B (c) (9) of which section 250 is the successor looked to the old sections 24 and 25 for the determination of the manner of appeal. The new section 24 creates a distinction only between appeals from orders involving more than $500 and appeals from orders involving less than $500. So that this might be carried out in section 250 it would be proper to read in the word "or," since in the construction of statutes it is the duty of the court to ascertain the clear intention of the legislature. In order to do this the courts are often compelled to construe "or" as meaning "and," and "and" as meaning "or." United States v. Fisk, 70 U. S. 445 (1865).

[19] The delay and expense incident to railroad receivership and foreclosure sales being the chief reason for the passage of the reorganization sections of the Bankruptcy Act, to permit the perpetuation of either of those evils would be subversive of the spirit of the new legislation. Continental Illinois Nat. Bank & Trust Co. v. Chicago, R. I. & P. R. R., 294 U. S. 648, 55 S. Ct. 595 (1935).

[20] Annotation, 79 L. Ed. 1133 at 1196-1197 (1935); Credit Alliance Corp. v. Atlantic, Pacific & Gulf Ref. Co., (C. C. A. 8th, 1935) 77 F. (2d) 595.