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CORPORATE REORGANIZATION UNDER SECTION 77B  
OF THE BANKRUPTCY ACT

Jacob J. Kaplan\*

IN the closing hours of its legislative life the 73rd Congress adopted the amendment to the Bankruptcy Act providing for the reorganization of corporations, and designated as Section 77B. The Act was approved by the President on June 7, 1934.<sup>1</sup> The statute had had a long and checkered history in Congress. Such legislation barely failed of enactment in the preceding session when Congress first gave to natural persons availing themselves of bankruptcy procedure the right to call themselves "debtors" rather than "bankrupts,"<sup>2</sup> and provided a substantially similar method of reorganization for railroad corporations engaged in interstate commerce.<sup>3</sup> The present statute nearly foundered several times during the session of 1934; the principal difficulty was the matter of the participation of landlords' claims in reorganization and in liquidation. The statute was saved from destruction only by a compromise on this question.<sup>4</sup> As it finally emerged, however, it represents an important forward step in the solution of vexing and intricate problems of corporate reorganizations; it brushes aside fictions and disguises under which lawyers have heretofore proceeded in this field, and introduces by legislative *fiat* a welcome air of reality and substance.

For years lawyers dealing with the subject have dealt in mystery, imagination and, at times, downright falsehood. The proceedings have been generally founded upon an ostensible suit by a creditor holding an unliquidated debt, to whose demands for a receiver the debtor immediately yields—a suit which resembles the famous debt action of *Toney Weller v. Samuel Weller*, reported by Dickens in *The Pickwick Papers*, upon which the defendant *volenti* was imprisoned for debt—

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<sup>1</sup> A further clarifying amendment with respect to the provability of landlords' claims in pending bankruptcies was passed and was approved by the President June 18, 1934.

<sup>2</sup> Sections 74 and 75.

<sup>3</sup> Section 77.

<sup>4</sup> See Conference Report, H. R. Rep. 1821, 73rd Cong., 2nd Sess. (May 29, 1934).

Landlords' claims are limited to proof for not exceeding one year's rent in liquidation (par. 4 of 77B) and not exceeding three years' rent in reorganization (par. 6).

and in the end the sought-for reorganization is attained by a fiction of judicial sale buried from common understanding or participation in pages of petitions and decrees, and in columns of newspaper advertisement.

Leading lawyers have for years hoped to bring about some reform in this procedure by action of the courts themselves.<sup>5</sup> But results were slow, meagre and uncertain. The present economic depression made it feasible to get action from Congress which, at other times, would have been impossible.

#### PROVISIONS OF SECTION 77B

The statute as finally enacted is somewhat involved in its language, and its arrangement is not entirely logical. This is due, doubtless, to efforts to compromise conflicting views in the haste of the closing hours of a busy Congress, as eminent counsel skilled in the field of corporate reorganization had a large part in drafting the statute.

A detailed outline of the procedure under the statute is hereafter set out (p. 82, *infra*). The principal provisions of the statute may be summarized as follows:

Jurisdiction is confined to corporations which could become bankrupt under the existing act, excepting railroad or other transportation corporations authorized to file a proceeding under Section 77, and except also certain railroad corporations municipally owned.

The proceedings are initiated by a petition filed either by the debtor corporation or three of its creditors (holders of provable claims in excess of \$1000), or by an answer filed by the corporation in a pending bankruptcy. The fundamental allegations are that the corporation is insolvent in the bankruptcy sense or is unable to meet its debts as they mature, i.e., is insolvent in the common law sense; and that it desires to effect a plan of reorganization, if the corporation initiates the proceeding, or that the petitioning creditors propose that it shall effect a reorganization, if the proceeding is begun by them. An act of bankruptcy must be alleged in the creditors' petition unless a prior proceeding in bankruptcy or receivership is already pending.

In any event, the petition or answer is presented to a district judge, who must be satisfied among other things that it is filed in good faith. If the proceeding is approved, the district court acquires exclusive

<sup>5</sup> Israels, "Reorganization Sales: Section 847 of the Judicial Code," 32 *COL. L. REV.* 668 (1932); Swaine, "Reorganization of Corporations: Certain Developments of the Last Decade," 27 *COL. L. REV.* 901 (1927); Walker, "Reorganization by Decree: Recent Noteworthy Instances," 6 *CORN. L. Q.* 154 (1921); Rosenberg, "Reorganization—the Next Step," 22 *COL. L. REV.* 14 (1922); 45 *HARV. L. REV.* 697 (1932).

jurisdiction for the purpose of the statute of the debtor and of its property wherever located; no order of adjudication in bankruptcy is thereafter to be entered. If the petition is dismissed or the answer dismissed, however, the fact of filing does not constitute an act of bankruptcy or admission of insolvency.

If the petition is approved, the court may appoint a trustee or trustees; or it may continue the debtor in possession. It may give either the trustees or the debtor the authority to continue the debtor's business. A time is fixed by the judge for proving claims and stock interests. For the purpose of reorganization, creditors include all holders of claims, whether provable or not, against the debtor or its property, such as claims under executory contracts, securities other than stock, and liens or other interests. Creditors and stockholders are to be divided into classes by the court.

A plan of reorganization is then prepared and proposed within such time as the court may fix.<sup>6</sup> Before it is proposed, the plan must, unless offered by the debtor itself, be approved by not less than 25 per cent in amount of at least one class of the creditors whose claims would be affected by the plan, and not less than 10 per cent in amount of all claims; or if the corporation has not been found to be insolvent in the bankruptcy sense it may, in lieu of approval by creditors, be approved by stockholders whose interests would be affected by the plan having not less than 10 per cent of one class of stock and not less than 5 per cent of the total number of shares of all classes of stock outstanding. If the debtor itself proposes the plan, no such preliminary approval is required.

The plan must provide for payment or other satisfaction of expenses of administration. If the court finds the corporation to be insolvent in the bankruptcy sense, no provision for stockholders need be made. Apart from such a finding the plan must receive, as to each class of stock whose interests are adversely affected thereby, the assent of a majority of such class; or it must provide in some adequate manner for the protection or realization of the value of the equity of such class of stock in the debtor's property by a sale of the property at not less than a fair upset price or by appraisal and payment in cash of the value, either of the stock in question or at the objecting stockholders' election of the value of the securities allotted to such stockholders

<sup>6</sup> If the proceedings are finally dismissed because no plan is proposed or accepted within the time fixed by the court, it may, unless the debtor is found to be solvent, direct that the estate be liquidated. There then follow proceedings like those under the old bankruptcy statute.

under the plan or by such other methods as will do substantial justice to such stockholders under the circumstances.

As to creditors, the plan of reorganization must either be accepted by two-thirds in amount of each such class affected by the plan, or the plan must provide for payment of the claims of such class in cash in full, or, in the alternative, it must make adequate provision for the realization by the creditors of the value of their claims or liens if the property affected by such claims or liens is dealt with by the plan. Such provision may be made by a transfer or sale of the property, subject to such claims or liens; or retention of the property by the debtor, subject to such claims or liens; or a sale of the property free of the claims or liens at not less than a fair upset price and the transfer of the claims or liens to the proceeds; or the appraisal and payment in cash of the value of the claims or liens; or at the objecting creditors' election, the value of the securities, if any, allotted to such claims or liens under the plan; or by such other method as will in the opinion of the judge equitably and fairly provide such protection.

The plan must provide adequate means for its execution either by retention by the debtor of its assets or by their distribution among any class of its creditors in whole or in part or transfer to a new corporation, or the consolidation or merger of the debtor with another corporation; the extension of maturity dates of outstanding securities, curing of waiver of defaults; the issue of securities of the debtor. The plan must provide for any necessary amendment of the debtor's charter. It may modify or alter the rights of stockholders.

Executory contracts, including leases, may be affirmed or rejected. Landlords' claims must be provided for, but claims of the landlord may not be admitted beyond three years' rent.

Priorities, as recognized in federal equity receivership proceedings, are treated as priorities in the reorganization proceedings.

After the necessary preliminaries and acceptances as provided in the statute, the judge must confirm the plan if he is satisfied that it is fair and equitable, that it does not discriminate unfairly in favor of any class of creditors or stockholders, that it is feasible, and that it complies with the provisions of the statute. All amounts to be paid as consideration by the debtor or any corporation acquiring the assets, or as compensation or expenses to any committee or reorganization managers must be fully disclosed and found to be reasonable, or are made subject to the approval of the judge. The judge must also find that the offer of the plan and its acceptance are in good faith and have not been made

or procured by any forbidden means or promises; and that the debtor or other corporation issuing securities has the requisite authority to carry out the plan.

It is to be noted that the statute does away with the fiction of a judicial sale. The statute provides that, upon the confirmation of the plan and its consummation, the provisions of the plan become binding upon the debtor, its stockholders and its creditors; the property dealt with by the plan when transferred and conveyed or retained by the debtor pursuant to the plan is held free of claims of the debtor, its stockholders and creditors, except such as may consistently with the plan be reserved in the order directing the transfer or retention. The final decree, except as provided therein or reserved in the order, discharges the debtor from its debts and liabilities, and terminates and ends all rights and interests of stockholders.

Properly administered, the statute will undoubtedly afford a straightforward, efficient and less expensive method of effecting an essential revision of debt structure without the stigma of "bankruptcy." It represents a genuine forward step.<sup>7</sup>

<sup>7</sup> A study of the constitutionality of the amendment is beyond the scope of this article. On this subject see Professor Garrison's article, "The Power of Congress over Corporate Reorganizations," 19 VA. L. REV. 343 (1933), and the discussion by Messrs. Swaine, Rosenberg and Battle in the same volume, pp. 316 and following; see also 32 MICH. L. REV. 221 at 231 (1933). While the amendment undertakes to deal with the debtor's property without an adjudication of bankruptcy, the proceedings, like an offer of composition before adjudication under previously existing law, may end in liquidation under ordinary bankruptcy proceedings if the debtor's efforts to make its peace with its creditors fails. The amendment would seem clearly to be reasonable legislation within the field of the "subject of bankruptcies" as that term used in section 8 of Article I of the Constitution must be construed in the light of modern conditions. Cf. *Sturges v. Crowninshield*, 4 Wheat. (17 U. S.) 122, 195, 4 L. ed. 529 (1819); *Hanover Nat. Bank v. Moyses*, 186 U. S. 181, 46 L. ed. 1113 (1901); *Nelson v. Carland*, 1 How. (42 U. S.) 265, 277 note, 11 L. ed. 126 (1843); *Wilmot v. Mudge*, 103 U. S. 217, 26 L. ed. 536 (1881); *Cumberland Glass Co. v. D. Witt*, 237 U. S. 447, 59 L. ed. 1042 (1915); *Nassau Works v. Brightwood Co.*, 265 U. S. 269, 68 L. ed. 1013 (1924).

OUTLINE OF PROCEDURE UNDER CORPORATE  
REORGANIZATION SECTION OF  
BANKRUPTCY ACT

I

*Right to File Petition and Requirements Thereof*

Petition (or answer in pending bankruptcy)—

A. If filed by corporation

1. *Must state* [77B (a)]

- a. Requisite jurisdictional facts.
- b. Nature of business.

Corporation must be one which could become bankrupt under existing act, except railroad or other transportation corporation authorized to file a petition or answer under the provisions of sec. 77 and except as hereinafter provided [77B (a)].

(Exception apparently applies to municipally owned or operated railroads [par. (n)]).

- c. Assets, liabilities, capital stock and financial condition.
- d. Name of court in which prior petition, if any, pending, and nature of proceedings.
- e. Facts showing need for relief under this section.
- f. Corporation is *insolvent* or unable to meet its debts as they mature.
- g. Corporation desires to effect a plan of reorganization.

2. *Place of filing* [77B (a)]

District in which it has during preceding six months or greater part thereof had its principal place of business or principal assets, or any territorial jurisdiction in the State in which it was incorporated.

Court upon petition shall transfer such proceedings to the territorial jurisdiction where interests of all the parties will be best subserved.

3. *Fees*

\$100 in addition to other fees under existing Act.

B. Petition by Creditors [77B (a)]

1. *Petitioners*. Three or more creditors having provable claims exceeding \$1000 in the aggregate.

2. *Jurisdiction*. If corporation has not filed a petition or answer.

3. *Place*. Filed in court in which corporation might file.

4. *Must allege*

a. Corporation is insolvent or unable to meet its debts as they mature.

b. If prior proceeding in bankruptcy or receivership pending.

If *not*, that corporation has committed an act of bankruptcy within four months.

c. That creditors propose it shall effect a reorganization.

5. *Fees* [77B (a)]

\$100 in addition to the fees required to be collected by the clerk under other sections of this Act. To be paid with petition. The Attorney General has ruled that the filing fee for a petition by creditors is only \$30 if no plan is included, and that when the plan is submitted an additional \$100 must be paid.

- C. Answer as above may be filed before adjudication in any involuntary bankruptcy proceeding pending, whether filed before or after enactment of amendment [77B (a)].
- D. Petition as above may be filed in any proceeding (filed before or after amendment) whether or not corporation has been adjudicated [77B (a)].
- E. Petition may be filed for participating intervention by subsidiary or controlled corporation [77B (a)].
1. *Conditions*
    - a. Majority of capital stock having power to vote for directors is owned either directly or indirectly through an intervening medium by the debtor, or
    - b. Substantially all of its properties are operated by the debtor under lease or operating agreement.
  2. *Place of filing*

In court in which debtor has filed its petition or answer and in the same proceeding.
  3. *Allegations*
    - a. That it is insolvent or unable to meet its debts as they mature.
    - b. Desires to effect a plan of reorganization in connection with or as a part of the plan of reorganization of principal debtor.
  4. *Procedure, on Petition by Subsidiary*

If court approves petition it has same jurisdiction with respect to the subsidiary corporation, its property and its creditors and stockholders, as it has with respect to principal debtor.

## II

### *Procedure upon Filing of Petition or Answer by Corporation [77B (c)]*

1. Judge enters order approving it as properly filed, if satisfied
  - a. That it complies with statute.
  - b. That it has been filed in good faith.
2. Or judge dismisses it.
3. If petition or answer is approved
  - a. Order of adjudication is not entered.
  - b. Court has exclusive jurisdiction of debtor and its property, wherever located, for purposes of statute.
  - c. Court may, subject to statute, exercise all the powers which a federal court would have had had it appointed a receiver in equity by reason of corporation's inability to pay its debts as they mature.

## III

### *Procedure on Creditor's Petition [77B (a)]*

Notice served on corporation by service of copy of petition.

- a. Answer within ten days.
- b. If answer admits
  - (1) Jurisdiction,
  - (2) Material allegations of petition,



- c. And court is satisfied that petition complies with statutes and has been filed in good faith,
- d. Court enters order approving petition.
- e. If not so satisfied, court dismisses petition.
- f. If answer denies any material allegation, judge determines issues summarily without jury. (Repetition of good faith condition.)
- g. If petition approved, proceedings continue with like effect as if corporation had itself filed a petition or answer.

*Effect of Dismissal [77B (a)]*

If petition or answer is dismissed, it does not constitute act of bankruptcy or an admission of insolvency, and is not admissible in evidence without debtor's consent in other proceedings then or thereafter pending in any court.

IV

*Right of Opposing Intervention [77B (a)]*

- a. By either, (1) three or more creditors with provable claims of over \$1000, or (2) stockholders holding five per cent in number of shares of any class of stock.
- b. Intervention may be at any time before hearing upon petition.
- c. Intervenors may controvert facts alleged in petition or answer.
- d. Judge determines issues on intervention summarily without a jury.
- e. Unless material allegations of petition or answer are sustained by proofs, proceedings are dismissed.

V

*Procedure if Petition or Answer Approved [77B (c)]*

- 1. After preliminary hearing upon notice to debtor and to such others as court determines, court either
  - a. Temporarily continues debtor in possession, or [par. (c), clause (1)]
  - b. Appoints a trustee or trustees of debtor's estate [par. (c), clause (1)].
- 2. Court orders hearing to be held within thirty days after said appointment, or, if no appointment, within thirty days after approval of petition or answer [par. (c), clause (1)].
  - a. Notice must be given as court directs to creditors and stockholders.
  - b. Notice must be published at least once a week for two successive weeks.
- 3. At hearing last referred to, or adjournment, or at any subsequent hearing after notice, the judge [par. (c), clause (1)]
  - a. May make any such appointment permanent, or
  - b. Terminate it and restore debtor to possession, or
  - c. If no trustee has been appointed, may appoint one or more trustees [clause (1)], or
  - d. Remove trustees and continue debtor in possession [clause (1)], or
  - e. Appoint a substitute or additional trustee or trustees [clause (1)].
  - f. Fixes trustee's bond [clause (2)].

- g. Determines trustee's powers [clause (2)]
  - (1) As receiver in equity.
  - (2) As to continuance of debtor's business.
- h. Authorizes trustee certificates [clause (3)]
  - (1) For cause shown.
  - (2) For cash, property or other consideration approved by judge.
  - (3) Their purposes, terms, conditions, security, priority over existing obligations (as may be lawful in particular case).
- i. Requires debtor or trustee to file, from time to time, schedules [clause (4)] giving
  - (1) Information necessary to disclose conduct of debtor's affairs and fairness of any proposed plan.
  - (2) *Judge may* [77B (c), clause (4) (a) (b)]  
 Direct debtor or trustees to prepare list of all known—  
     Bondholders,  
     Creditors,  
     Claimants,  
     Amounts and character of claims and securities and address,  
     Stockholders.  
 Foregoing lists open to inspection of any creditor or stockholder of debtor during reasonable business hours on application to debtor or trustees.
  - (3) Lists do not constitute admission by debtor or trustees [clause (4) (b)].
- j. *May* direct rejection of executory contracts [clause (5)].
- k. Shall determine time for proving claims and stock interest [clause (6).] (Time may be extended for cause shown.)
- l. Shall determine manner of making proof [clause (6)].
- m. Shall divide creditors and stockholders into classes for purpose of plan and its acceptance [clause (6)].  
     For purposes of such classification, unsecured balance of secured claim may be classified as unsecured, security being valued as in bankruptcy act.
- n. Shall cause reasonable notice to creditors and stockholders by publication or otherwise of determination under k, l, m, and of all hearings for consideration of any proposed plan or of dismissal of proceedings or liquidation of estate, or allowance of fees or expenses [clause (7)].
- o. *May* fix a reasonable time for proposing or accepting a plan [clause (8)].
- p. *May* take proceedings hereafter noted (XI) as to liquidation if no plan is proposed or if plan fails of acceptance [clause (8)].
- q. *May* fix compensation and reimbursement in connection with plan and proceedings [clause (9)]. Covers
  - Officers
  - Parties in interest
  - Depositaries
  - Reorganization managers

## Committees

Other representatives of creditors or stockholders

Attorneys or agents of any of foregoing and of the debtor.

Appeals from allowance may be taken directly and independently to C. C. A. and heard summarily.

- r. May enjoin litigation and stay pending suits temporarily or permanently—includes enjoining foreclosures of lien [clause (10)].
  - s. *May* refer any matters to a special master who may be referee [clause (11)].
  - t. Debtor has right to be heard on all questions [clause (11)].
  - u. Any creditor or stockholder has right to be heard [clause (11)] on question of
    - (1) Permanent appointment of trustee.
    - (2) Proposed confirmation of any reorganization plan.
  - v. On filing a petition for leave to intervene, creditor or stockholder may be heard on such other question arising in proceeding as judge determines [clause (11)].
4. If trustee is not appointed, debtor continues in possession for such period as judge prescribes—may be definite or indefinite [clause (11)].
    - a. If debtor in possession, it has power of trustee subject to control of judge.
    - b. If debtor in possession, officers receive only such reasonable compensation as judge from time to time approves.
    - c. If debtor in possession, no person may be elected or appointed to any office without prior approval of judge.
  5. Statutes of limitation suspended during pendency of proceedings [par. (b), last sentence].

## VI

*Plan of Reorganization—Preliminary Steps*

- A. Preliminary approval, before proposing by creditor or stockholder [par. (d)].
  1. Must be approved by creditors whose claims would be affected by the plan,
  2. And not less than 25 per cent in amount of any class,<sup>1</sup>
  3. And not less than 10 per cent in amount of all the claims;<sup>2</sup> or instead of 1, 2, 3.
  4. If debtor is not found by judge to be insolvent but is found unable to meet debts—may be approved by stockholders whose interests would be affected by plan being not less than 10 per cent of any class of stock and not less than 5 per cent of total number of shares of all classes outstanding.
- B. May be proposed by any creditor or stockholder with such approval.
- C. May be proposed by debtor without such approval.

<sup>1</sup> Classes are determined after hearing.

<sup>2</sup> Requires expiration of time for proving claims.

- D. In either event, proposal must be made at a hearing duly noticed for its consideration or for the consideration of any other plan of reorganization similarly proposed.

## VII

*Contents of Plan*

- A. *Shall include following terms [par. (b)]—*
1. Provisions modifying or altering rights of creditors generally or any class.
  2. Provision for payment in cash of all costs or other allowances made by court except that expenses in connection with plan or proceeding may be paid in securities provided for in the plan if those entitled thereto will accept such payment and court finds compensation to be reasonable.
  3. *As to stockholders*
    - a. If judge determines that debtor is insolvent, or
    - b. That interest of a particular class is not affected adversely by plan, such class of stockholders need not be provided for, otherwise
    - c. Majority of stock of class affected must accept plan, or
    - d. Plan must make adequate provision for protection or realization by such class of value of their equity if any in the debtor's property dealt with by the plan either
      - (1) By sale of property at not less than a fair upset price, or
      - (2) By appraisal and payment in cash of value either of (a) stock or (b) at objecting stockholders' election of the value of the securities allotted to such stockholders under the plan, or
      - (3) By such other methods as will do substantial justice to such stockholders under the circumstances.
  4. *As to Creditors*

Plan must provide either

    - a. Acceptance by two-thirds in amount by each class affected by the plan, or
    - b. Payment of claims of class affected in cash in full, or
    - c. Provide with respect to class affected adequate provision for realization by them of value of their claims or liens if the property affected by such claims or liens is dealt with by the plan. Such provision may be made
      - (1) By transfer or sale of property subject to such claims or liens, or
      - (2) Retention of property by debtor subject to such claims or liens, or
      - (3) Sale free of claims or liens at not less than fair upset price and transfer of claims or liens to proceeds, or
      - (4) Appraisal and payment in cash of value of claims or liens, or at objecting creditors' election of securities if any allotted to such claims or liens under plan, or
      - (5) By such other method as will in the opinion of the judge equitably and fairly provide such protection.
  5. Provision specifying what classes of creditors or stockholders are not affected by the plan, and include appropriate provisions with respect thereto.

In case of any controversy as to whether class of creditor or stockholder is affected, issue determined by judge after hearing on notice to parties interested.

6. Provision specifying what claims, if any, are to be paid in cash in full.
7. Provision of adequate means for execution of plan.

This may include

- a. Transfer of all or any part of debtor's property to other corporations.
- b. Consolidation of properties of debtor with those of another corporation.
- c. Merger or consolidation of debtor with or into another corporation.
- d. Retention of property by debtor.
- e. Distribution of assets among creditors or any class thereof.
- f. Satisfaction or modification of liens, indentures or other similar instruments.
- g. Curing or waiver of defaults.
- h. Extension of maturity dates of outstanding securities.
- i. Change in interest rates and other terms of such securities.
- j. Amendment of debtor's charter.
- k. Issue of securities of debtor or such corporation for cash—in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes.

B. Following provisions *may* be in the plan:

1. Provisions modifying or altering the rights of stockholders generally or any class.
2. Rejection of executory contracts—including unexpired leases, except contracts in the public authority.
3. Provision dealing with the debtor's property or other appropriate provisions not inconsistent with statute.

C. *Definitions* [par. (b)]

1. *Security*

Includes evidences of debt either secured or unsecured, stock, certificates of beneficial interest therein, and certificates of beneficial interest in property.

2. *Stockholder*

Includes holders of voting trust certificates.

3. *Creditor*

Includes, for purpose of reorganization, all holders of claims, whether provable or not, against debtor or its property (including claims under executory contracts).

4. *Claims*

Includes debts, securities other than stock, liens or other interests of whatever character.

D. *As to rights of creditors and stockholders* under proposed plan or with respect thereto [par. (b)].

1. No creditor or stockholder deemed affected by plan unless affected adversely, and materially.
2. Unsecured claims, which would have been entitled to priority over existing mortgages if a receiver in equity of the property of the debtor had

been appointed by a federal court on the day of the approval of the petition or answer under this section, are entitled to such priority and the holders of such claims, and of other claims, if any, of equal rank are to be treated as a separate class of creditors.

3. Landlord's claims and claims under executory contracts.
  - a. If any such was rejected by a trustee or receiver in bankruptcy or receiver in equity in proceeding pending prior to institution of proceeding under this section, or
  - b. Is rejected pursuant to the direction of the judge given in a proceeding instituted under this section,
  - c. Any person injured by such rejection is deemed a creditor for all purposes of the section, and of the reorganization plan.
  - d. The claim of a landlord for injury resulting from the rejection of an unexpired lease of real estate, or for damages or indemnity under a covenant contained in such lease, is treated as a claim which would be provable in bankruptcy, but limited to an amount not to exceed the rent without acceleration for the three years next succeeding the date of the surrender of the premises to the lessor or the date of re-entry, whichever first occurs, whether before or after the filing of the petition, plus unpaid rent accrued up to the date of such surrender or re-entry.
  - e. Court scrutinizes circumstances of any assignment in determining amount of damages allowed assignee hereunder.
4. Secured claims.

Excess of claims over security classified as an unsecured claim, value of security determined under Section 57 (h).
5. Provisions of section 60 apply.

These are the sections of the existing Bankruptcy Act dealing with the matter of recoverable preferences.
6. Creditors may act in person, by attorney, agent, or committee [par. (b)].

Court may scrutinize deposit agreements and trust indentures and authorization affecting any creditor and disregard or restrain provisions found to be unfair, and may limit any claims filed by such committee or agent to the actual consideration paid therefor.

## VIII

### *Confirmation of Plan* [Par. (e)]

(This follows allowance of claims)

- A. Requires acceptance in writing by two-thirds in amount of claims of each class whose claims have been allowed, and would be affected by the plan.
- B. By majority of stockholders of each class of stock.
- C. Acceptance may be before or after filing of petition or answer.
- D. Acceptance not required as to creditors or class of creditors if
  1. Claims are not affected by plan.
  2. Plan makes provision for payment of their claims in cash in full.
  3. Or if provision is made in the plan to protect interests or claim of such

creditor in manner provided above in provisions relating to contents of plan.

4. Acceptance by stockholders or class of stockholders is not required if
  - a. Judge has determined that debtor is insolvent, or
  - b. Has determined that the interests of such stockholder will not be (adversely) affected by the plan, or
  - c. Provision is made to protect the stockholders' interests as above provided.
  
- E. Must be accompanied by verified statement of what contracts are executory and what leases have been rejected or surrendered.
  
- F. Must be accompanied by verified statement showing what claims or shares have been purchased or transferred by those accepting the plan after the commencement or in contemplation of the proceeding and the circumstances of such purchase or transfer.
 

Unless judge directs, such statement not filed if extent of dealings so large that it would be impractical to require filing.
  
- G. Acceptance or rejection by United States as creditor or stockholder may be by Secretary of Treasury. In case of public utility subject to state regulation, plan must be submitted to commission. If utility is wholly intrastate, plan shall not be approved if state commission certifies public interest is affected unless the commission approves plan. Provision is made for order of notice to the commission [par. (e) (2)].
  
- H. Hearing on the plan and objections thereto is held [par. (f)].
  
- I. Judge shall confirm if satisfied [par. (f)]
  - a. The plan is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders,
  - b. Is feasible,
  - c. Complies with provisions of statute as to contents,
  - d. Has been accepted properly, and that
  - e. Requirements in case of public utility have been met, and
  - f. All amounts to be paid as consideration by the debtor or any corporation acquiring the assets or as compensation, or expenses to any committee or reorganization managers have been fully disclosed and are reasonable or are to be subject to the approval of the judge.
  - g. The offer of the plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Act.
  - h. The debtor and other corporations issuing securities have the requisite authority to carry out the plan.
  
- J. *Changes in the plan* [par. (f)]
  1. May be made before or after plan is confirmed.
  2. May be proposed by any party in interest.
  3. May be made with the approval of the judge after hearing upon notice to creditors and stockholders.
  4. If judge is of opinion change will materially and adversely affect the rights of any creditor or stockholder who has previously accepted, he shall issue notice to such creditors or stockholders giving period of time

within which to withdraw. If creditor or stockholder does not withdraw within time fixed he is deemed to have assented to the change.

5. Plan as changed must comply with other provisions of section. Requisite acceptances may be filed after the change.

## IX

### *Effect of Confirmation*

Upon confirmation of the plan by the judge—

- A. Debtor and other corporations organized for purpose of carrying out plan have full power and authority to put it into effect and carry out the plan and judge's orders relative thereto and shall do so under and subject to the supervision and control of the judge [pars. (f), (g) and (h)].
- B. No revenue stamps need be affixed on issuance, transfer or exchange of securities or making or delivery of conveyances to make effective the plan [par. (f)].
- C. Provisions of plan and order of confirmation are binding upon [par. (g)]
  1. The debtor.
  2. All its stockholders.
  3. All its creditors.
- D. Property dealt with by the plan when transferred and conveyed or retained by debtor pursuant to plan is free of all claims of debtor, its stockholders and creditors except such as may consistently with the plan be reserved in the order directing transfer or retention [par. (h)].
- E. Court may direct trustee, debtor, mortgagee, and all other proper and necessary parties to make any such transfer and may direct the debtor to join in any such transfer made by the trustee [par. (h)].
- F. Upon termination of proceedings, final decree shall be entered [par. (h)]
  1. Discharging the trustee.
  2. Making equitable provisions by injunction or otherwise.
  3. Closing the case.
- G. The final decree [par. (h)], except as provided therein or reserved in the order,
  1. Discharges the debtor from its debts and liabilities.
  2. Terminates and ends all rights and interests of its stockholders.
- H. Securities issued pursuant to the plan, including securities issued to raise working capital and trustee certificates to raise money (or the debtor's certificates) are exempt from Securities Act except subdivision 2 of sec. 12 and sec. 17, and sec. 24 as applied to wilful violation of sec. 17 [par. (h)]. These are the fraud sections.
- I. Certificates of deposit representing securities of or claims against debtor which it is proposed to deal with under a plan confirmed by court likewise exempt.

## X

### *Effect of Proceedings on Proceedings in State Court or Other Federal Courts [Par. (i)]*

- A. If a receiver or trustee of all or any part of the property of a corporation has been appointed by a federal or state court, whether before or after this



Act takes effect, the approval of a petition or answer removes the matter and all possession and rights to the Bankruptcy Court.

- B. Judge may make orders to protect obligations incurred by trustee or receiver and also for the payment of such reasonable administrative expenses and allowance as may be fixed by the court appointing said receiver or prior trustee.
- C. If the reorganization proceeding is dismissed, judge may include in order of dismissal appropriate orders directing trustee, or debtor if no trustee, to transfer possession of the property in the jurisdiction of the other court to the receiver or prior trustee so appointed upon such terms as the judge may deem equitable for the protection of obligations incurred by trustee under this section and payment of administrative expenses and allowance hereunder.

## XI

### *Effect of Dismissal of Petition or Answer*

- A. If plan is not proposed or accepted within time fixed by judge or is not confirmed, court may extend time, or dismiss proceeding, or the court may, unless the debtor is found to be solvent and if the debtor is not a railroad or public utility, direct the estate to be liquidated, or direct the trustees to liquidate, appointing a new trustee or trustees if there be none, or the property may be handed back to a prior receiver or trustee as above provided [par (c) (8), par. (i)].
- B. If an order is entered for liquidation [par. (k)]  
 The case may be referred to a referee as provided in section 12 of the Bankruptcy Act and then follow proceedings as in the existing law as to first meetings of creditors under sec. 55; notice under sec. 58; trustee under secs. 44 and 48. Claims provable under sec. 63 may be proved within six months after last publication of notice of first meeting; old priority rules apply under sec. 64; sales provisions under sec. 70; dividends under sec. 65.

## XII

### *General*

- A. None of the provisions as to liquidation under division XI apply unless order has been entered directing the trustee to liquidate [par. (k)].
- B. Otherwise other provisions of Bankruptcy Act, except as inconsistent with 77B, apply to reorganization provisions under that section [par. (k)].
- C. The date of the order approving the petition or answer shall be taken to be the date of adjudication, and such order shall have the same consequences and effect as an order of adjudication with same effect as if voluntary petition for adjudication had been filed [par. (k)].
- D. Labor is free to join unions or not as it sees fit and is not to be coerced otherwise, and provision waiving right to join union not permissible as condition of employment [par. (l)].
- E. Section does not apply to stockholders, officers or directors of municipal railroads [par. (n)].
- F. Section applies to pending cases, claims and debts; and proceedings may be taken in pending bankruptcy cases [par. (p)].

- G. Provable claims in general under 63a are extended to include certain awards, damage claims for negligence, claims for damages under executory contracts, including future rents. Limitation here is substantially like that in the reorganization section except that the maximum is one year's rent [sec. 4 of Amendment]. Amendment including executory contracts and landlords' claims does not apply to estates in which time for filing claims had expired on June 7, 1934. [Additional Act of June 18, 1934].
- H. Certified copies of final decree or court order of confirmation is evidence of court's jurisdiction, regularity of proceeding and fact that decree or order was made. Certified copy of order directing transfer of property dealt with by plan is evidence of transfer, and if recorded imparts same notice that a deed if recorded would impart [par. (j)].
- I. Trustees' Power.  
Subject to control of judge and consistently with statute, trustee has all the powers of trustee in bankruptcy and, if authorized by judge,  
a. Powers of receiver in equity.  
b. Subject to authorization and control of judge, power to operate business of debtor during such period fixed or indefinite as judge may from time to time prescribe.
- J. Appointments of Receivers and Trustees.  
Must be divided so as not to create monopoly. No near relative of judge may be appointed by him as receiver or trustee. Fees of trustees, receiver or their attorney must not be exorbitant [section 3 of Act].

JACOB J. KAPLAN