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BANKRUPTCY - AMENABILITY OF FARMERS' MARKETING CO-OPERATIVES TO INVOLUNTARY PROCEEDINGS

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RECENT DECISIONS

BANKRUPTCY — AMENABILITY OF FARMERS' MARKETING CO-OPERATIVES TO INVOLUNTARY PROCEEDINGS — Creditors of the Wisconsin Co-operative Milk Pool filed a petition asking that the milk pool be adjudicated an involuntary bankrupt. This co-operative association was organized under Wisconsin statutes to operate on a nonstock, nonprofit basis as the exclusive marketing agent for its members. The pool also marketed the products of patrons who were not members of the pool; however, sixty-five per cent of its patrons were active members. *Held*, the association was not a "moneyed, business, or commercial corporation" and hence was not amenable to adjudication as an involuntary bankrupt,[1] despite the fact that it was engaged in business pursuits and received income from various sources. *In re Wisconsin Co-operative Milk Pool*, (D. C. Wis. 1940) 35 F. Supp. 787.

The perplexing problem of involuntary bankruptcy proceedings against co-operative marketing institutions established by farmer-producers has resulted in a complete divergence in opinion in the federal courts.[2] The terminology of the Bankruptcy Act in providing for involuntary proceedings against "moneyed, business, or commercial corporations" [3] is vague and indefinite, and therefore some courts have suggested that it must have been the intention of Congress to allow the states to exempt "twilight zone" business associations from involuntary bankruptcy.[4] This attitude has been reinforced by the rule of construction that the enumerated classes of corporations amenable to an involuntary proceeding should be narrowly construed.[5] Accordingly, it may be argued that the state of Wisconsin in providing for liquidation of such marketing co-operatives intended to take charge of their dissolution, and hence such groups should not be

[1] "Any natural person, except a wage earner or farmer, and any moneyed, business, or commercial corporation, except a building and loan association, a municipal, railroad, insurance, or banking corporation, owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt. . . ." 52 Stat. L. 845, § 4(b) (1938), 11 U. S. C. (Supp. 1939), § 22(b).

[2] Cases holding the same as the principal case are: In re Dairy Marketing Assn. of Fort Wayne, (D. C. Ind. 1925) 8 F. (2d) 626; In re Weeks Poultry Community, (D. C. Cal. 1931) 51 F. (2d) 122. Contra: Schuster v. Ohio Farmers' Co-operative Milk Assn., (C. C. A. 6th, 1932) 61 F. (2d) 337, noted in 31 MICH. L. REV. 982 (1933); In re South Shore Co-operative Assn., (D. C. N. Y. 1933) 4 F. Supp. 772.

[3] See note 1, supra. There was no question raised about the milk pool being a "corporation" under the quoted section of the act, the definition of "corporation" in § 1(8) being sufficiently broad to cover unincorporated associations of this type. 52 Stat. L. 840, § 1(8) (1938), 11 U. S. C. (Supp. 1939), § 1(8).

[4] See In re Union Guarantee & Mortgage Co., (C. C. A. 2d, 1935) 75 F. (2d) 984; 25 VA. L. REV. 731 (1939).

[5] In re New York & New Jersey Ice Lines, (C. C. A. 2d, 1906) 147 F. 214; In re Dairy Marketing Assn. of Fort Wayne, (D. C. Ind. 1925) 8 F. (2d) 626. But compare the statement: "The provisions of the Bankruptcy Act creating exempt classes are strictly construed, and corporations claiming such exempt status must clearly come within the descriptions used." In re Bay Cities Guaranty Building-Loan Assn., (D. C. Cal. 1931) 48 F. (2d) 623 at 624.

subjected to involuntary proceedings in bankruptcy. However, such an analysis would be insufficient without reference to the general interpretation which the courts have placed upon section 4(b) of the act. The term "moneyed, business, or commercial corporation" is generally held to embrace all corporations organized to transact business for a profit.[6] Thus, an incorporated social and recreational club is not subject to involuntary bankruptcy,[7] but a masonic lodge, which erected and operated for profit a building on land held by it, may be adjudged an involuntary bankrupt.[8] In determining the question whether a company is organized for pecuniary gain within this section, the decisions of the courts do not indicate any single, all-inclusive test, but at different times have used tests depending on the activities, the charter powers or the state classification of the corporation.[9] Looking realistically at marketing, it is in every sense a commercial and business activity, since it entails engagement in business pursuits and receipt of income from various sources. As one writer has stated: "If marketing is not commercial, nothing is." [10] The farmer, however, is an individual especially favored by both legislatures and courts.[11] The distribution and marketing of his produce is fraught with serious social and economic considerations. Since the individual farmer cannot be thrown into bankruptcy,[12] and since states have shown concern about the great disparity between the price paid to farmers for farm products and the cost to consumers, by enactment of legislation providing for co-operative marketing associations, it may be desirable that the co-operative marketing association should receive special treatment under the Bankruptcy Act. Nevertheless, "Calling coöperative marketing associations 'nonprofit' because the pecuniary benefits, which are the sole incentive to mem-

[6] In re Deauville, (D. C. Nev. 1931) 52 F. (2d) 963; In re R. L. Radke Co., (D. C. Cal. 1911) 193 F. 735.

[7] In re Elmsford Country Club, (D. C. N. Y. 1931) 50 F. (2d) 238.

[8] In re William McKinley Lodge No. 840, F. & A. M., (D. C. N. Y. 1933) 4 F. Supp. 280. But an "eleemosynary corporation," charitable and benevolent in character, and not operated for pecuniary gain, is not a "business corporation" amenable to provisions of the Bankruptcy Act on involuntary petition. In re Michigan Sanitarium & Benevolent Assn., (D. C. Mich. 1937) 20 F. Supp. 979.

[9] See discussion and cases cited in 1 PRENTICE-HALL, BANKRUPTCY SERVICE 705 et seq. (1938). In In re Roumanian Workers Educational Assn. of America, (C. C. A. 6th, 1940) 108 F. (2d) 782, it was held that where an association was organized under state law as a nonprofit corporation for propagation of socialism among workers, but subsequently bought a printing plant and devoted itself to commercial and business activities to an extent of at least 90%, it was a "business or commercial corporation" subject to involuntary bankruptcy proceedings.

[10] HANNA, THE LAW OF COOPERATIVE MARKETING ASSOCIATIONS, § 150 at p. 339 (1931).

[11] See Bankruptcy Act, § 4(b), quoted note 1, supra. Chapter eight of the same act provides for agricultural compositions and extensions. The Wisconsin Supreme Court has stated that agricultural co-operatives are favored in the law. State ex rel. Wisconsin Development Authority v. Dammann, 228 Wis. 147 at 189, 277 N. W. 278, 280 N. W. 698 (1938). The federal income tax law exempts them. Treas. Reg. 101, art. 101(12)-1 (1939).

[12] See § 4(b), quoted note 1, supra.

bership, accrue to the members as producers rather than as members, disguises but does not alter the inherent commercial nature of such associations." [13] An examination of these various considerations leads one to the conclusion that the co-operative marketing association with special state machinery provided for its liquidation should be excepted from bankruptcy administration in the same manner as municipal, railroad, insurance, and banking corporations. Instead of reaching this result by a strained construction of section 4(b), and to avoid conflict in the cases, it is submitted that the remedy lies in amendment of this section by Congress.

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[13] 46 HARV. L. REV. 326-327 (1932).