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SECTION 77B, THE CHANDLER BILL AND OTHER PROPOSED REVISIONS

John Gerdes*

SECTION 77B of the Bankruptcy Act has been in effect since June 7, 1934. Its novelty and recognized importance in the field of corporate reorganizations have aroused great interest and wide discussion. The attention which it has received has brought to the fore criticisms of many aspects of the statute.

The Securities and Exchange Commission, indicating its belief that Section 77B requires revision, recently announced that it will propose an “integrated legislative program dealing with all phases of the reorganization problem.” The Sabath Committee of the House of Representatives has been investigating reorganizations, and proposes to submit legislative recommendations. Representative Sabath has already introduced legislation which undertakes partial revision and additions to Section 77B.

Percival E. Jackson, counsel to the McAdoo Committee of the United States Senate, has published an exhaustive report dealing with corporate reorganizations and has suggested new legislation, but has not as yet formulated specific legislation incorporating his recommendations.

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2 S. E. C. REPORT ON PROTECTIVE AND REORGANIZATION COMMITTEES, Part VI, p. iii (June 18, 1936).
3 See H. Rep. No. 35 (74th Cong., 1st Sess.) of the Select Committee to Investigate Real Estate Bondholders' Reorganizations. Hearings and examinations are still being conducted by the investigators of the committee.
4 H. R. 10634, 74th Cong., 2d sess.
5 REPORT OF COUNSEL TO SENATE COMMITTEE ON INVESTIGATION OF RECEIVERSHIP AND BANKRUPTCY PROCEEDINGS, 74th Cong., 2d sess., reprint begun in 3 CORP. REORG. 91 and 135 (1936), hereinafter referred to as Jackson Report.
The National Bankruptcy Conference has prepared a complete revision of Section 77B which is incorporated in H. R. 12889, known as the Chandler Bill. This bill, introduced at the last session of Congress by Representative Chandler of Tennessee, contains a revision of the entire Bankruptcy Act. It embodies in Subsection II of Section 12 of the rewritten act all of the corporate reorganization provisions which it proposes to substitute for Section 77B. The Chandler Bill will be reintroduced in the opening session of the new Congress and public hearings will commence before the House Subcommittee on Bankruptcy immediately.

**IMPROVEMENTS EFFECTED BY SECTION 77B**

As stated by the United States Supreme Court, Section 77B was born of a demand for a reorganization “practice more open, more responsible, more efficiently and closely regulated, and withal more surely valid, under the supervision of a court of bankruptcy,” than the equity receivership.

Whatever the criticism leveled at Section 77B as a procedure for reorganization, few deny its superiority over the equity receivership, which was the only vehicle for the reorganization of corporations prior to the enactment of Section 77B. In contrast with equity receiverships, Section 77B offers a simple and non-collusive method for the initiation of reorganization proceedings by a debtor corporation.

Even when successfully initiated, an attempted reorganization in equity was always in danger of being defeated by the institution of involuntary proceedings in bankruptcy. If the corporation was insolvent, three creditors with claims totaling one thousand dollars could file a bankruptcy petition based on the appointment of the receiver

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6 The Conference is a nationwide organization of referees in bankruptcy, law professors, and representatives of national and local bar associations, and credit associations, and has been engaged since 1932 in a revision of the entire Bankruptcy Act.


8 While proceedings under Section 77B may be initiated by the debtor by the filing of an appropriate petition [Bankruptcy Act, § 77B(a), 48 Stat. L. 912, 11 U. S. C., § 207(a)], equity receivership proceedings must be initiated by a creditor. In order to assure the institution of equity proceedings at the time and place deemed desirable by the debtor it became a common practice for the debtor to obtain the cooperation of a friendly creditor for the purpose of filing a creditor’s bill seeking the appointment of a receiver. See Gerdes, Corporate Reorganizations, § 13 (1936).
as an act of bankruptcy. A liquidation destructive of the interests of debtors and creditors alike could thus be forced. Section 77B not only eliminates the fear of supervening bankruptcy, except in cases where liquidation is the only remedy, but also provides for supplanting pending bankruptcy proceedings by proceedings instituted under the section.

In the administration of the reorganization proceedings, cumbersome and wasteful ancillary receiverships are unnecessary, because the trustee appointed under Section 77B acquires legal title to the debtor's assets in all parts of the United States. The resulting unity of control tends toward celerity in administration and reduction of administration expenses, and removes the likelihood of dissension and lack of cooperation between receivers in the different districts.

An innovation introduced by Section 77B is the provision permitting the judge to continue the debtor corporation in possession instead of appointing a trustee. Where the circumstances justify this procedure, a debtor may frequently consummate the reorganization without marked effect upon its ordinary operations. Under the supervision of the court, officers familiar with the corporation's business may continue to function, thereby insuring uninterrupted operation and conserving the good will of the business, while at the same time minimizing the cost of reorganization.

Perhaps the outstanding contribution of Section 77B is its provisions dealing with the plan of reorganization. The judge is given complete jurisdiction to determine whether the plan is fair and equitable. The acceptance of a plan by two-thirds of a class of creditors, or by a majority of a class of stockholders, binds the remaining members of the class if the court finds the plan to be fair and equitable. The necessity for paying cash to dissenting minorities is thus elimi-

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10 Proceedings under Section 77B may be initiated despite the pendency of bankruptcy proceedings. Upon approval of the petition or answer initiating the reorganization proceedings the court obtains exclusive jurisdiction over the debtor and its property, and it is provided that an adjudication in bankruptcy shall not be entered. Bankruptcy Act, § 77B(a), (i), 48 Stat. L. 912 at 920 (1934), 11 U. S. C., § 207 (a), (i). See I GERDES, CORPORATE REORGANIZATIONS, § 325 (1936).
nated. Finally, the court’s jurisdiction over property in the possession of secured creditors frequently enables the parties to effect a reorganization which would otherwise be futile.

Despite the enactment of Section 77B during the recent “emergency legislation” period, its conceded merits and the general recognition of its superiority over all other reorganization devices insures the retention of the section, or of legislation retaining its outstanding features, as a permanent part of the debtor relief legislation. Attention is today centered upon demands for clarification and improvement rather than upon repeal.

CRITICISMS OF SECTION 77B AND ITS ACCOMPLISHMENTS

The most cursory examination of Section 77B reveals poor draftsmanship. The subdivisions of the section are not arranged in logical order. The materials within subdivisions cover unrelated topics. In some cases the meaning of a single term can be found only by consulting a number of subdivisions. Numerous ambiguities exist. One group of critics, alleging that the statute is unnecessarily verbose, has gone so far as to suggest an amendment to Section 12 of less than fifty words which it is claimed includes the important and necessary innovations of Section 77B.

Section 77B has not been altogether effective in discouraging “strike” proceedings. Any three creditors with claims aggregating one


\[16\] For example, provisions for the initiation of proceedings may be found in subdivisions (a) and (i). Subdivision (b) enumerates the contents of a plan of reorganization. It is followed by the subdivision dealing with the jurisdiction and powers of the court. The next subdivision [(d)] also deals with the plan of reorganization, while other provisions dealing with the jurisdiction and powers of the court are contained in subdivision (o).

\[17\] Subdivision (b), for example, covers the following subjects: provisions of a plan of reorganization, a number of definitions, provisions for priorities, limitations upon rent claims, valuation of security, a specific provision making Section 60 applicable to proceedings under Section 77B, provisions giving the judge certain supervisory powers over committees and deposit agreements, and provisions for the suspension of statutes of limitations.

\[18\] In order to determine what corporations are amenable to the provisions of Section 77B it is necessary to refer to subdivisions (a) and (n), and to provisions in other parts of the Bankruptcy Act.

thousand dollars may file a petition against a corporation. Possible abuses connected with the initiation of the proceedings may be frustrated by the court's refusal to approve the petition on the ground that the court has not been satisfied that the petition was filed in "good faith." It must be admitted, however, that there is little to prevent the filing of a creditors' "strike" petition. The resultant litigation may prove expensive and injurious to the debtor's credit.

A defect connected with initiating reorganization proceedings which has been clearly brought out in practice is the almost unrestricted availability of Section 77B to debtors with little or no prospect for successful reorganization. Hopelessly insolvent corporations and small corporations with simple capital structures have, with varied motives, resorted to proceedings under Section 77B.

There is doubt as to whether the statute gives the court jurisdiction over the property of the debtor prior to the approval of the petition. Abuses have arisen in connection with permitting the debtor to remain in possession of its assets. In some instances a corrupt or inefficient management has been continued in control. In such cases it is unlikely that the debtor's claims against its officers or directors for misconduct will be properly prosecuted.

The power of the court to issue process outside of its district is open to doubt. The provisions dealing with rent claims are ambigu-
ous. These provisions have given rise to extensive litigation, some of which has now reached the United States Supreme Court.

In addition, uncertainty exists as to the priority of claims, and as to whether “six months” claims have priority over mortgages in the case of corporations which are not quasi public in nature.

The provisions covering administration costs and allowances have been challenged as not authorizing allowances to be made for services rendered prior to the initiation of the reorganization proceedings, or for services rendered in the course of proceedings which end in liquidation or dismissal rather than reorganization. The Supreme Court has held that they do not give the court power to provide for adequate compensation in prior bankruptcy proceedings. The compensation provisions of Section 77B have also been criticized as failing to preserve the spirit of economy which characterizes the Bankruptcy Act.

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30 Section 77B does not contain any provisions, similar to those contained in Section 64 of the Bankruptcy Act, specifically setting forth the claims entitled to priority and their order of priority. It has been said that the apparent purpose of Congress in rendering Section 64 inapplicable to proceedings under Section 77B was to leave to the courts the determination of the priorities to be granted in individual cases. In re Central Public Service Corp., (D. C. Md. 1935) C. C. H. Bankr. Serv., par. 3723.


31 See 2 Gerdes, Corporate Reorganizations, § 675 (1936).

32 See In re Sheridan-Melrose Building Co., (C. C. A. 7th, 1936) C. C. H. Bankr. Serv., par. 4220, where a district court decision holding that the court did not have jurisdiction to allow compensation for services rendered prior to the filing of the reorganization petition was reversed.


Section 77B makes no specific provision for appellate practice and procedure. Ordinary bankruptcy practice is adopted without any recognition of the peculiar problems arising in corporate reorganization. Doubt has therefore arisen as to the proper appeal practice in connection with orders confirming plans and other orders peculiar to the proceedings.

There has been much criticism of the inability to secure proper representation for the interests of creditors and stockholders and of failure to protect such interests in plans of reorganization.

Doubt exists as to whether creditors may be compelled to take securities under a plan of reorganization which has not been approved by two-thirds of their class; also as to the constitutionality of the provisions under which secured creditors may be compelled to accept the appraised value of their interests in cash if less than two-thirds of their class consent to the plan.

Whether a taxable profit results to the corporation when its obligations are reduced by reorganization through proceedings under Section 77B, is uncertain.

37 Except that it is provided that appeals from orders fixing allowances may be taken to the Circuit Court of Appeals independently of other appeals and are to be heard summarily. Bankruptcy Act, § 77B(c)(9), 48 Stat. L. 917, 11 U. S. C., § 207(c)(9).
38 See April, "Review of Orders Made in Corporate Reorganization Proceedings Under Section 77B," 2 Corp. Reorg. 396 (1936); 3 Gerdes, Corporate Reorganizations, § 1185 (1936).
41 See Jackson Report, p. 28, 3 Corp. Reorg. 146 (1936); 35 Col. L. Rev. 391, 549 at 562-565 (1935).
43 "Article 22(a)-14. Cancellation of indebtedness.—The cancellation of indebtedness, in whole or in part, may result in the realization of income. . . . Income is not realized by a taxpayer by virtue of the discharge of his indebtedness as the result of adjudication in bankruptcy, or by virtue of a composition agreement among his creditors if immediately thereafter the taxpayer's liabilities exceed the value of his assets." Federal Income Tax Regulations 86 (1934) (italics inserted). There is a plain implication that taxable income may be realized if after the proceedings the taxpayer's assets are in excess of its liabilities. Every effective reorganization ought to leave the debtor in this condition.
Finally, serious concern exists over the inability of the judges in some districts to find the time properly to perform the greatly increased duties which Section 77B has thrust upon them.\(^{44}\)

**Recommendations of the Securities and Exchange Commission, Sabath Committee, and McAdoo Committee**

The Securities and Exchange Commission, the Sabath Committee, and the McAdoo Committee have largely concerned themselves with what is perhaps the most acute problem in reorganization—provision of a procedure which will insure adequate representation for all classes of creditors and stockholders and the promulgation of fair and equitable plans. Representative Sabath has already submitted legislative proposals.\(^{45}\) The Securities and Exchange Commission and the McAdoo Committee have not yet submitted specific legislation.

The most important object of any reorganization vehicle is the effectuation of a "fair" plan of reorganization. Reorganization legislation may assure a sound and honest administration of the debtor estate, it may provide a procedure for the consummation of a reorganization in speedy and economic fashion, it may be perfect in draftsmanship, but all these advantages are of little avail if the legislation does not at the same time contain adequate restrictions against the perpetration of an unfair plan of reorganization. It is the failure of Section 77B to improve upon prior methods of reorganization in this respect which furnishes the source for the most serious criticism of the section.

A plan of reorganization which recognizes the priorities to which various claims may be entitled and which affords to each creditor and

\(^{44}\) Jackson Report, p. 11, note 56, 3 CORP. REORG. 91 at 106 (1936).

\(^{45}\) See supra, note 4.
stockholder the value of his interest in the debtor estate is said to be "fair." Application of this principle to all but the most simple financial structures is, however, fraught with great difficulty. In the administration of a bankrupt estate the assets are converted into cash and the amounts due to creditors are determined. Since a definite order of priority is fixed by the Bankruptcy Act, it then becomes a relatively simple matter to determine the exact amount to which each creditor is lawfully entitled. In reorganization cases, however, such mathematical accuracy is virtually impossible to achieve. A determination of the fairness of a plan of reorganization depends upon a determination of the interest of each creditor and stockholder in the debtor corporation and its assets, and upon a valuation of the assets of the debtor and of each type of security issued under the plan. Such estimates are required in order to determine whether the value of the interest of each creditor and stockholder in the estate of the debtor has been fairly recognized in the plan.

The problem of valuation is not new, nor is it peculiar to reorganization. It has been the subject of extensive discussion and experimentation but no satisfactory formula for estimating values has yet been devised. Section 77B contains no provision which even suggests a method to be followed in fixing values. Assurance of the effectuation of a "fair" plan of reorganization is attempted by providing that the judge may confirm a plan only if he finds it to be "fair and equitable" after the plan has received the approvals of specified majorities of each class of creditors and stockholders. The section thus provides two safeguards against exploitation of creditors and stockholders by the consummation of an unfair plan. The judge is required to make an independent finding of fairness, and, on the ordinarily valid assumption that the majority may be trusted to protect its own interests and thereby necessarily afford the same protection to the minority, the approval of a specified percentage of creditors and stockholders is required.

Unfortunately, however, these safeguards are in many cases more apparent than real. An intelligent decision upon the question of fairness can be made by the judge only if he is in possession of all the facts. It is of course impractical for the judge to make an independent investigation. Even if the already overburdened district court judges

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had the time, it would not be a judicial function. Only where objection is filed and all the parties in interest are properly represented and present proof in support of their respective contentions may the judge adequately pass upon the merits of the plan. Where no objection is made, the judge must rely chiefly upon the conclusion of fairness implied from the existence of the requisite acceptances and from the failure to interpose objections.49

Although the inadequacy of the protection afforded by requiring the judge’s approval is thus generally acknowledged, the ineffectiveness of the safeguard provided by requiring the acceptances of specified percentages of creditors and stockholders is not as readily recognized. If the requisite approvals are honestly given as the result of intelligent consideration based on adequate information, it is true that this requirement would be sufficient to assure a “fair” plan of reorganization. In the reorganization of any large corporation, however, it is not to be expected that individual creditors or stockholders will give proper consideration to the plan before making their decisions.50 The average individual has too small an interest at stake to warrant his active participation in the proceedings. Frequently, he resides at a distance from the court in which the proceedings are pending. Even if he desires to participate actively in the reorganization, his intervention is discouraged.

Individual creditors or stockholders are rarely permitted to intervene.51 Generally, therefore, the individual is compelled to maintain a purely negative attitude of watchful waiting or to ally himself with a protective committee. If he elects the former alternative, his final decision upon the plan will be based more upon hope than upon any well considered judgment. Since he has no substitute to offer, he is likely to accept the plan proposed. If he elects the latter course of action, his position is virtually the same. He sometimes has an opportunity to choose between a number of committees, but this is rare. Just as intervention by an individual is opposed, intervention by additional committees for the same class of creditors or stockholders is not countenanced.

In recent decisions, opposition to additional committees has, in the absence of special circumstances, received the approval of the courts.52

49 See 35 Col. L. Rev. 391, 549 at 562 (1935).
The individual must therefore join the first committee of his class which has appeared in the proceedings. Ordinarily, this committee is sponsored by the debtor, the debtor's bankers, or other parties connected with the debtor.

The committee members are generally persons of prominence selected in order to gain confidence. Frequently they have only a nominal interest in the class of securities they represent. Their primary interest is not the protection of their class, but the effectuation of a plan deemed desirable by their sponsors. The abuses resulting from this practice are too familiar to require repetition here. They did much to discredit the equity receivership, and there is little indication of a change in tactics in proceedings under Section 77B.

The defects of Section 77B in this respect have been and still are the subject of extensive study. The investigation undertaken by the Securities and Exchange Commission appears to be widest in scope, and its recommendations, which have not yet appeared, will carry much weight. The reports already issued indicate that these recommendations will, in most respects, be similar to those proposed by other bodies. It may suggest that the Securities and Exchange Commission itself, or a separate body similar to the Interstate Commerce Commission, relieve the court of the burden of passing upon the fairness of plans of reorganization. Such a body would face an almost impossible task—a task much greater than that of the Interstate Commerce Commission. That commission deals with a comparatively small number of large units, all engaged in the same business—interstate railroading. The proposed organization would be faced with the problem of analyzing the financial affairs and business prospects of numerous corporations, large and small, engaged in every conceivable type of business and industry, in small communities and in large cities in all parts of the country.


"There is no discernible difference between the method of selecting majority committees in equity and foreclosure, in the past, and that presently pursued under section 77B. The mere fact that a banker organizes, finances, and mans a committee does not necessarily mean that its purpose is not wholly honest, but the equity practices of the past indicate that security holders can look to many of these committees for little, if anything, in the way of investigation and pursuit of wrongdoing. They are organized to get a reorganization plan through." Jackson Report, p. 25, 3 CORP. REORG. 142-143 (1936).
Representative Sabath has introduced a bill with a similar purpose to be known as the "Conservator in Bankruptcy Act."\(^{55}\) This bill proposes the creation of the office of conservator in bankruptcy. It is provided that the conservator shall be appointed as sole trustee, custodian, or receiver in every proceeding under Section 77B, and shall in all cases be deemed a party in interest.\(^{56}\) Extensive powers to conduct investigations and examinations are conferred.\(^{57}\) The conservator is directed to conduct an independent investigation as to the fairness of the plan, and must be given an opportunity to be heard and to make recommendations before the court may approve the plan.\(^{58}\) In addition, curbs on the conduct of protective committees are set forth, and the conservator is given specific supervisory powers over committees and deposit agreements.\(^{59}\)

The report of counsel to the McAdoo Committee also contains specific recommendations dealing with this problem. Here, the creation of an independent factual investigating agency is proposed.\(^{60}\) The agency suggested is an auditor, of appropriate qualifications, to be selected by the district judges. The auditor is to investigate independently and on his own initiative. He is to make complete reports and recommendations to the court, and is to be given broad powers to examine and inquire in public or in private. The court is not to be bound by the auditor's report, nor is the judge's responsibility to protect the interests of the minority to be lessened. Where the work of the district is insufficient to justify the designation of a standing auditor with a trained staff of assistants, the court may be permitted to appoint an auditor for each specific case. The appointment of special masters, having knowledge of local business conditions and possessing special experience and skill in making valuations and passing upon the fairness of plans of reorganization, has also been suggested.\(^{61}\)

Revision of Section 77B to include some provisions to meet this problem seems inevitable. A more general discussion of the question is required and legislation should be carefully drafted only after thorough consideration of all suggestions and objections. It should be noted that the revision of Section 77B embodied in the Chandler Bill

\(^{55}\) H. R. 10634, 74th Cong., 2d sess.
\(^{56}\) Ibid., § 77C(b), (e).
\(^{57}\) Ibid., § 77C(a)(2), (a)(3).
\(^{58}\) Ibid., § 77C(c)(2), (d).
\(^{59}\) Ibid., § 77C(g).
\(^{60}\) See Jackson Report, pp. 30-32, 3 Corp. Reorg. 149-151 (1936).
contains no provisions dealing with this question. If adopted, further revision would be required in the near future to incorporate some solution of the problem.

**The Chandler Bill**

The Chandler Bill contains the only pending proposal for a complete revision of Section 77B. In this bill, all the corporate reorganization provisions appear in subsection II of section 12 of the proposed revision of the Bankruptcy Act.

The comments of the revisers indicate that no important changes in substance were intended by the revision and that attention was devoted chiefly to a more orderly and less ambiguous statement of the principles of Section 77B. It is clear, however, that the revisers were aware of the difficulties and problems which have arisen in the administration of reorganization proceedings under Section 77B and that they have taken advantage of the opportunity to recast Section 77B to alter and omit certain provisions and to incorporate new provisions in an effort to overcome some of these difficulties.

If a scientific and thorough revision of Section 77B is ultimately to result, it is important that attention should be directed to some of the material changes which the Chandler Bill proposes. The subject matter of these proposed changes deserves careful consideration and intelligent debate on the part of those who are interested in reorganization problems.

It is therefore the aim of the writer to inquire into the extent to which the framers of the Chandler Bill have been successful in their efforts to clarify Section 77B and to improve upon its draftsmanship, and also to examine and analyze some of the substantive changes which it has been thought advisable to incorporate in the revision. It should be borne in mind, however, that such a discussion, both because of its purpose and because of space limitations, is bound to reveal an emphasis upon the deficiencies of the proposals and will necessarily skim over and omit phases of the revision which have been so satisfactorily

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treated as to invite no extended comment. But while a complete picture cannot be drawn, it is believed that the essential materials upon which an evaluation of the Chandler Bill should be based can be presented.

A. DRAFTSMANSHIP AND ARRANGEMENT

The change of designation from Section 77B to subsection II of section 12 is wholly undesirable. Judges, lawyers, and even laymen are familiar with the fact that Section 77B is the federal statute which deals with corporate reorganizations. Many law review articles and hundreds of judicial opinions dealing with Section 77B have been written. Reference to them in construing a new section will create confusion.

The designation "Section 77B" should be abandoned only when a complete revision is accomplished in a scientifically prepared statute, subdivided, for ease of reference, into many sections. There is no need for such abandonment in a revision which retains all the corporate reorganization provisions in a single section or subsection. Even if "Section 77B" were less well known, it would be preferable, because of its brevity, to the designation "Subsection II of Section 12."

There is neither merit nor logic in placing the corporate reorganization provisions in a subsection of a section dealing with other and different procedures; nor in placing four different, inconsistent, and involved reorganization procedures in one section in the middle of a large number of smaller sections dealing with details relating to ordinary bankruptcy proceedings. At the present time the new and separate procedures governing reorganizations are contained in separate sections following the sections which relate to ordinary bankruptcy. Adequate reasons for the change proposed in the Chandler Bill are not apparent.

It is difficult to understand why the revisers have relegated the complicated and important corporate reorganization provisions to the status of a subsection. Section 12 of the Chandler Bill now occupies almost as much space as all the remaining portions of the Bankruptcy Act. This is not only awkward but confusing. The various subsections

63 Subsection I of section 12 of the proposed revision is entitled "Arrangements"; subsection II, "Corporate Reorganizations"; subsection III, "Real Property Arrangements by Unincorporated Persons"; and subsection IV, "Amortization of Debts of Wage Earners."

64 The bill containing over 70 sections occupies 184 pages in print. Section 12 takes over 72 pages.
of section 12 may easily be confused. Reference to specific provisions is cumbersome—almost embarrassing. Witness, for example, a reference to one of the methods for the protection of dissenters: section 12, subsection II, subdivision (c), paragraph (7), clause (A) of the Bankruptcy Act.

If it is deemed advisable to change the designation from Section 77B, at least a separate section might be selected. It would also seem preferable to place such a section at the end of the Bankruptcy Act. It does not have a logical place in the middle of the act.

Section 77B violated the canons of good draftsmanship by incorporating all of the many and complicated provisions relating to corporate reorganizations in one section. It is even worse draftsmanship to embody such provisions in a subdivision of a section, as is proposed by the Chandler Bill.

Any complete revision of the provisions now in Section 77B should utilize the best modern thought in the preparation of statutes. The provisions should be placed in a separate chapter of the Bankruptcy Act, subdivided into articles and sections. An expansible numbering system should be employed, under which the first section of the chapter would be numbered 101, or 201, etc. Each different reorganization procedure would appear in a separate chapter to which a separate series of 100 section numbers would be allotted. Practitioners and judges could then identify any section from 101 to 199, or 201 to 299, etc., as relating to corporate reorganizations, and could similarly identify the sections relating to other forms of reorganization. Sections not numbered in the hundreds would relate to ordinary bankruptcy proceedings.

A set of ten or twenty section numbers would be allotted to each article, the number in each case being in excess of the number actually used when the statute is adopted. New sections could then be added in any article from time to time without renumbering any of the existing sections.

Every section should be short and concise; separate propositions should be placed in separate sections.66 As Dean Wigmore said recent-

65 In addition to dealing with corporate reorganizations, Section 12 of the Chandler Bill deals with three other reorganization procedures. See supra, note 63. The revisers have not considered Section 77, dealing with interstate railroad reorganizations, and have made no recommendations concerning it. H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 234.

66 The Drafting Rules prepared by the Committee on Legislative Drafting of the National Conference of Commissioners on Uniform State Laws provide [Hand-
ly, this rule "makes for accuracy and speed and lucidity in citing and discussing each separate proposition of law. Failure to observe this rule leads to intolerable waste of time and labor and to constant misunderstanding." 67

Section 12 of the Chandler Bill occupies seventy-two pages of solid printed matter, without including comments or annotations! A comparison of Section 12 of the Chandler Bill with the other portions of the revision of the Bankruptcy Act, which are divided into chapters and are subdivided into carefully drawn sections, clearly reveals the atrocity committed by the draftsmanship of Section 12.

Although the material on corporate reorganizations in subsection II of section 12 of the Chandler Bill is a complete rearrangement of Section 77B, an entirely satisfactory division, upon the basis either of a chronological or of any other orderly system, has not been devised. Subdivision (b) is entitled "Filing of Petition and Proceedings Prior to Filing of Plan." A later subdivision, subdivision (d), is entitled "Proceedings Subsequent to Approval of Petition." There is an obvious overlapping here as to matters occurring between the approval of the petition and the filing of the plan.

Provisions for appearances by interested parties are included in subdivision (d), which is apparently limited to proceedings subsequent to the approval of the petition, although the provisions for appearances are clearly applicable prior to approval. 68 Other provisions expressly applicable after the approval of the petition are contained in the preceding subdivision. 69

At least one subdivision has a misleading title. Subdivision (e) is entitled "Confirmation or Dismissal of Plan." There is no provision for a "dismissal" of a plan of reorganization. The subdivision deals with confirmation of plans, alterations and modifications in plans, dismissal of proceedings, orders of liquidation, consummation of plans, and discharge of debtors.

An improvement over Section 77B has been effected in collecting book 318 (1935):

"3. Length of Sections.—(1) Long sections should be avoided. (2) Each proposition that is separable from other propositions should be placed in a separate section.

"4. Detaching of clauses.—Where one section covers a number of contingencies, alternatives, requirements or conditions, it is desirable to break up the section into detached paragraphs or lines distinguished by figures or letters."

68 H. R. 12889, 74th Cong., 2d sess., § 12 (II) (d) (4).
69 Subdivision (c) deals with provisions of a plan of reorganization.
more carefully considered definitions in one subdivision at the beginning of the subsection. But here, too, the draftsmen have not exhausted the possibilities for improvement. The definitions are not arranged in alphabetical or other logical fashion, and are lumped in a single paragraph. The draftsmanship employed compares unfavorably with that utilized in section I of the Chandler Bill, containing the definitions for the remaining portions of the Bankruptcy Act. The definitions in section I are arranged alphabetically and carefully observe an elementary rule of legislative draftsmanship—a separate paragraph is devoted to each definition.

Nor has sufficient care been employed in the preparation of definitions. The term “party in interest” is used frequently in the subsection, but nowhere is it defined. Parties in interest are given important substantive rights under the statute and the question immediately arises as to what persons are included. The term “claims” is defined to “include all claims.” In other words, “a claim is a claim.” A “debtor” is defined as a corporation by or against which a petition has already been filed. Elsewhere it is provided that a petition may be filed by the “debtor” or three or more creditors. Literally, therefore, a corporation may file a voluntary petition only after a creditors’ petition has been filed against it. A “stockholder” is defined as including the holder of a beneficial interest in property. This definition is clearly intended to make the provisions as to stockholders applicable to those holding shares in a Massachusetts trust. The definition, however, is too broad for its purpose. It makes a stockholder of every beneficiary of a trust holding a mortgage on the property of the debtor. The holder of an ordinary secured bond would be in this class and therefore classified as a stockholder rather than a creditor.

The Chandler Bill provides that the “court” may refer matters
to a "referee." As "court" includes both "referee" and "judge," 77 it is apparent that this provision should be eliminated from the paragraph enumerating the powers of the "court." It is clearly not intended that referees be permitted to refer matters to other referees.

Although the revisers elsewhere properly criticize the use in Section 77B of the term "provable" in connection with the claims of petitioning creditors, 78 the Chandler Bill limits the tolling of the statute of limitations to "provable" claims. 79 All claims are provable. 80

The statement of exceptions and provisos by attaching a clause beginning with "provided, that" or "provided, however" is generally considered objectionable. 81 Its use in Section 77B has been a source of confusion and ambiguity. The revisers have availed themselves of this terminology at least nine times in the space of the subsection. 82

Finally, no constitutional severability clause has been included. Since doubt has been cast upon the constitutionality of some of the provisions of Section 77B which have been retained in the Chandler revision, 83 such a clause would seem desirable. 84

applications for allowances of compensation and of reimbursement of costs and expenses, but may refer any such applications for hearing and report . . . ." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(f)(2)(G).

77 "'Court' shall mean the judge or the referee of the court of bankruptcy in which the proceedings are pending." H. R. 12889, 74th Cong., 2d sess., § 1(a)(9).

78 H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 60, note 1.

79 "All statutes of limitations affecting claims provable under this subsection, and the running of all periods of time prescribed by this Act in respect to the commission of acts of bankruptcy, the recovery of preferences, and the avoidance of liens and transfers, shall be suspended during the pendency of a proceeding under this subsection and until it is finally dismissed." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(e)(4).

80 "'debt' or 'claims' shall include all claims, and 'creditors' shall include the holders of all claims of whatever character, whether or not provable under section 63 of this Act, and whether secured or unsecured, liquidated or unliquidated, fixed or contingent, against the debtor or its property, except stock; . . . ." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(a)(2)(D).

81 See paragraph "6" of Drafting Rules, HANDBOOK NAT. CONF. COMMRS. ON UNIFORM STATE LAWS 319 (1935).


84 The following clause is suggested in paragraph "7" of the Drafting Rules, HANDBOOK NAT. CONF. COMMRS. ON UNIFORM STATE LAWS 319 (1935):

"If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."
B. Analysis of Specific Proposals

District for Initiating Proceedings

A proceeding under Section 77B which is initiated by an original petition may be instituted in any one of three districts: (1) the district in which the debtor corporation had its principal place of business during the greater part of the preceding six months; (2) the district in which the principal assets of the debtor corporation were located during the greater part of the preceding six months; or (3) any district in the state in which the debtor was incorporated.85 The Chandler Bill proposes to eliminate the third of these electives and to confine the place where the petition in corporate reorganization may be filed to the principal place of business or the place where the principal assets are located, although it permits a bankruptcy petition to be filed in the district of incorporation and permits a reorganization petition to be filed in such bankruptcy proceeding.88

Transfer of Proceedings to Another District

A proceeding under Section 77B may, upon petition, be transferred by the court to the territorial jurisdiction where the interests of all the parties will be best subserved.89 Several cases, all decided in the same district, have declared that under this provision the proceedings may be transferred only to one of the jurisdictions in which the debtor corporation could originally have filed a petition.90 This interpretation seems reasonable, for it is unlikely that Congress intended debtor estates to be administered in districts in which the proceedings could not be initiated. The Chandler Bill, however, expressly provides that the court "may upon petition transfer a proceeding under this subsection to

86 H. R. 12889, 74th Cong., 2d sess., § 12 (II)(b)(1)(B): "A debtor, or three or more creditors . . . may file, if no other petition is pending under this subsection . . . (B) if no bankruptcy proceeding is pending, an original petition with the court in whose territorial jurisdiction such debtor within the preceding six months or the greater portion thereof has had its principal place of business or its principal assets."
87 H. R. 12889, 74th Cong., 2d sess., § 2(a)(1).
88 H. R. 12889, 74th Cong., 2d sess., § 12(II)(b)(1)(A): "A debtor, or three or more creditors . . . may file if no other petition is pending under this subsection, (A) a petition in a pending bankruptcy proceeding, either before or after the adjudication of the debtor. . . ."
a court of bankruptcy in any other district, regardless of the location
of the property of the debtor or its principal place of business, if the
interests of all parties will be best served by such transfer.\textsuperscript{91} The rea-
son assigned for this expansion of the provision is that it will permit
the transfer of proceedings pending against a debtor to any district
where independent proceedings are pending against a subsidiary or
parent corporation of the debtor.\textsuperscript{92}

Corporations Which May Be Reorganized.\textsuperscript{93}

The Chandler Bill eliminates the provision of Section 77B\textsuperscript{94} which
makes the section inapplicable to the creditors of any corporation under
a mortgage insured pursuant to the National Housing Act. This change
is desirable.

Initiation of Proceeding by the Debtor

A debtor corporation may initiate a proceeding under Section 77B
by filing an original petition, or by filing a petition in a pending bank-
ruptcy proceeding, or by filing an answer in a pending involuntary
bankruptcy proceeding in which no order of adjudication has been
made.\textsuperscript{95} The Chandler Bill omits the provision for the initiation of the
proceedings by an “answer.”\textsuperscript{96}

Section 77B provides that a creditors’ petition may not be filed if
the debtor has already filed a petition under the section.\textsuperscript{97} The Chand-

\textsuperscript{91} H. R. 12889, 74th Cong., 2nd sess., § 12(II)(f)(2)(H).
\textsuperscript{92} H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 87, note 9.
\textsuperscript{93} The Chandler Bill [H. R. 12889, 74th Cong., 2d sess., § 12(II)(a)(2)(A)]
provides: “‘corporation’ shall mean a corporation as defined in this Act, which could
be adjudged a bankrupt under this Act, and any railroad corporation, except a rail-
road corporation authorized to file a petition under section 77 of this Act, and except
a corporation operating a railroad or railway owned or operated, or owned and operated
in whole or in part by any municipality, either under a contract with such municipality
by or on its behalf, or in conjunction with such municipality under a contract, lease,
agreement, certificate, or in any other manner provided by law for such operation,
unless such corporation derives from such operation not more than 20 per centum of
its gross operating revenues, or unless such municipality shall give its duly authorized
written consent to the filing of a petition by such corporation under this sub-
section.”
\textsuperscript{94} Bankruptcy Act, § 77B(n), 48 Stat. L. 922 (1934), as amended by 49 Stat. L.
664 (1935), 11 U. S. C., § 207(n).
\textsuperscript{95} Bankruptcy Act, § 77B(a), 48 Stat. L. 912, 11 U. S. C., § 207(a).
\textsuperscript{96} See supra, note 88. The revisers state that the provision for an answer was
deleted as unnecessary. H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 61,
note 6.
\textsuperscript{97} Bankruptcy Act, § 77B(a), 48 Stat. L. 912, 11 U. S. C., § 207(a).
The Chandler Bill makes the same rule applicable to the debtor. This will nullify the decisions under Section 77B which have permitted debtors to file and secure the approval of petitions after the filing of creditors’ petitions but before the approval of such petitions.

Reorganization of Subsidiary

A petition by or against a subsidiary (as defined in the Chandler Bill) of a corporation which is being reorganized may be filed in proceedings under Section 77B in its own district or in the district in which its parent corporation is being reorganized. The Chandler Bill restates the substance of these provisions without material change, except that it requires the petition of the parent corporation to be approved before the subsidiary may file in its district.

It would be less confusing if all reference to subsidiaries were eliminated from the Chandler Bill, and if reliance were placed on the broad provisions for the transfer of proceedings to other districts to take care of situations in which it seems desirable to have the subsidiary’s reorganization administered in the same district as that of its parent. The Chandler Bill makes no provision for a reorganization of the parent in the district of the subsidiary, although in many cases this may be desirable. Nor is provision made for reorganization in the district of another subsidiary of the same parent corporation. These situations can all be met under the provision for the transfer of proceedings.

Initiation of Proceedings by Creditors

An involuntary petition under Section 77B may be filed by three or more creditors having provable claims aggregating $1,000 in

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98 H. R. 12889, 74th Cong., 2d sess., § 12(II)(b)(i): “A debtor, or three or more creditors... may file, if no other petition is pending under this subsection... a petition....”


100 “subsidiary” shall mean a corporation which could become a debtor under this subsection, substantially all of whose properties are operated by a debtor under lease or operating agreement, or the majority of whose stock, having power to vote for the election of directors or trustees, or other similar controlling bodies, is owned by a debtor (parent corporation) either directly or indirectly through an intervening corporation or other medium...” H. R. 12889, 74th Cong., 2d sess., § 12 (11)(a)(2)(C).


102 “A subsidiary, or three or more creditors... may file a petition in the court in which the petition by or against its parent corporation has been approved....” H. R. 12889, 74th Cong., 2d sess., § 12(II)(b)(2).

103 See supra, note 91.
amount in excess of the value of any securities held by them.\textsuperscript{104} The Chandler Bill introduces several material changes in this provision.\textsuperscript{105}

The fact that creditors having claims totaling only $1,000 in amount may initiate a reorganization proceeding against even the largest of corporations has met with some dissatisfaction. An attempt has been made to amend Section 77B so that the claims of the petitioning creditors shall equal at least five per cent of the debtor's total indebtedness.\textsuperscript{106} It has been pointed out, however, that such a provision might, in the case of a corporation having a very large indebtedness, prove to be a practical obstacle to the filing of any creditors' petition.\textsuperscript{107} As a compromise\textsuperscript{108} between this suggestion and the existing requirement in Section 77B, the Chandler Bill provides that the claims of the petitioners must equal $5,000.\textsuperscript{109} Since the debtors for whom reorganization is a useful remedy are generally large corporations, no hardship would seem to be imposed by increasing the requirement in this fashion.

The provision in Section 77B as to petitioning creditors in possession of security for their claims\textsuperscript{110} has also been the subject of attempted revision. Under it, the claim of a secured creditor who desires to be a petitioner may be counted only to the extent that it is unsecured.\textsuperscript{111} If the value of the creditor's security equals or exceeds the amount of his claim, he cannot join in the petition.\textsuperscript{112} In the event that a secured creditor does join in the petition, upon an allegation that the value of his security does not equal the amount of his claim, an issue may be raised as to whether or not the security has been fairly evaluated. The determination of this issue necessarily delays the court's action on the petition. For this reason several bills have been introduced in Congress for the purpose of permitting certain classes of secured creditors to count their claims for the full amount of the debts

\textsuperscript{104} Bankruptcy Act, § 77B(a), 48 Stat. L. 912, 11 U. S. C., § 207(a).
\textsuperscript{105} "three or more creditors who have claims, liquidated as to amount and not contingent as to liability, against the debtor or its property, which amount in the aggregate to $5,000 or over, may file . . . a petition. . . ." H. R. 12889, 74th Cong., 2d sess., § 12(II)(b).
\textsuperscript{106} H. R. 8940, 74th Cong., 2d sess.
\textsuperscript{107} H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 60, note 1.
\textsuperscript{108} Ibid. at p. 61, note 4.
\textsuperscript{109} See supra, note 105.
owing to them without regard to the value of their securities. The Chandler Bill has adopted this type of proposal, but has made it applicable to every kind of a secured creditor. Under the provisions of the Chandler Bill, a secured creditor may be a petitioner even though his claim is well secured and even though there has been no default on the obligation to him. It is undesirable that a secured creditor be permitted to join in the petition unless there has been a default in the obligation which he holds. A stockholder, having much greater need for protection, may not join in the filing of a petition.

A restriction upon petitioners' claims which the Chandler Bill does propose is that the claims must be "liquidated as to amount and not contingent as to liability." Similar language is also proposed for insertion in the section dealing with the persons who may file petitions in ordinary bankruptcy proceedings. The restriction seems desirable in order to avoid preliminary contests as to the amount for which an unliquidated claim may be counted and as to whether a contingency upon which the debtor's liability depends is likely to occur.

The Chandler Bill expressly provides that the claims of the petitioning creditors may be against the debtor or the debtor's property. Cases decided under Section 77B have held that persons who have claims against the debtor's property, but not against the debtor, are "creditors" but may not be petitioning creditors.

Essential Allegations of Petition

Under the provisions of the Chandler Bill, the essential allegations of a petition initiating the proceedings are, aside from specified exceptions, the same whether the petition is filed by the debtor, by creditors, or by a subsidiary debtor. Uniformity as to the necessary allegations

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118 H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 60, note 1.
114 See supra, note 105.
115 See supra, note 105.
116 H. R. 12889, 74th Cong., 2d sess., § 59(b).
117 See supra, note 105.
119 "Every such petition shall state the applicable jurisdictional facts requisite under this subsection, the nature of the business of the debtor or subsidiary, as the case may be, its assets, liabilities, capital stock, and financial condition, its insolvency or inability to pay its debts as they mature, if a prior proceeding is pending the nature of such proceeding and the court in which it is pending, the specific facts showing the need for relief under this subsection and why adequate relief cannot be obtained.
of the petition does not exist under Section 77B and in some instances it is necessary to infer that certain allegations which are obviously essential ought to be included. By making provision for the essential allegations of a debtor's, creditors', and subsidiary's petition in a single subdivision, the Chandler Bill effects a needed improvement.

A debtor's petition under Section 77B must contain a statement of "facts showing the need for relief under this section." The Chandler Bill proposes to require a statement of "the specific facts showing the need for relief under this subsection and why adequate relief cannot be obtained under subsection I of this section." The reference to "subsection I of this section" is to the Chandler provisions for "arrangements" or bankruptcy compositions. The purpose of this requirement is to prevent the use of the reorganization procedure by or against corporations when the use of the composition procedure will produce satisfactory results. The rules of some of the district courts require the petitioners, in an affidavit furnished prior to the approval of the petition, to state facts showing why relief under the composition section of the Bankruptcy Act is not adequate. It seems desirable to incorporate this requirement in the Bankruptcy Act itself in order to insure uniformity among all the districts.

As a substitute for an act of bankruptcy, a creditors' petition under Section 77B may allege that a prior proceeding in bankruptcy or equity receivership is pending against the debtor corporation. The United

under subsection I of this section, and the desire of the petitioner, in the case of a debtor, that a plan be effected, or in the case of a subsidiary, that a plan of the subsidiary be effected in connection with or as a part of the plan of its parent corporation; a creditors' petition shall state further that the debtor or subsidiary, as the case may be, was adjudged a bankrupt in a pending proceeding in bankruptcy, or that a receiver or trustee has been appointed for, or has taken charge of, all or the greater portion of its property in a pending mortgage foreclosure or equity receivership proceeding, or that a trustee under a deed of trust or trust agreement or a mortgagee under a mortgage is in possession of all or the greater portion of its property, or that it has committed an act of bankruptcy within four months prior to the filing of the petition."

H. R. 12889, 74th Cong., 2d sess., § 12(II)(b)(3).


121 See 1 GERDES, CORPORATE REORGANIZATIONS, §§ 133, 144 (1936).


123 See supra, note 119.

124 See the comments of the revisers, H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 62, note 1.

125 See Rules Relating to Proceedings under Section 77B of the Bankruptcy Act, S. D. N. Y., Rule 77B-2(i); E. D. N. Y., Rule 77B-2(j).

States Supreme Court has held that a mortgage foreclosure receivership is not included in the term "equity receivership." To overcome the effect of this decision, the Chandler Bill provides that a creditors' petition may allege, as a substitute for an act of bankruptcy, "that a receiver or trustee has been appointed for, or has taken charge of, all or the greater portion of its property in a pending mortgage foreclosure or equity receivership proceeding." It seems desirable that a corporation against whose property a mortgage foreclosure has been instituted should be amenable to involuntary proceedings for reorganization. The requirement that the foreclosure involve the greater portion of the debtor's property serves to protect a debtor which has not been subjected to a general foreclosure or receivership proceeding. If a receiver has been appointed for only a small portion of the debtor's property, there would seem to be no reason why creditors should be permitted to initiate reorganization proceedings unless an act of bankruptcy has been committed.

It is also doubtful under Section 77B whether the mere filing of a petition in bankruptcy or the mere filing of an equity bill for a receiver is sufficient to create a "pending" bankruptcy or equity receivership proceeding. To clarify this question, and to insure against possible abuses, the Chandler Bill provides that an adjudication must have been entered in the prior proceeding in bankruptcy, or that a receiver must have been appointed in the prior equity or mortgage foreclosure receivership.

Filing Fees

Section 77B provides: "The petition or answer shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this Act." Some clerks have interpreted this provision to mean that they are required to collect the total sum of $130, consisting of $100 for which Section 77B expressly provides, plus an additional $30 which is required to be paid when ordinary bankruptcy proceedings are initiated. The bankruptcy fee of $30 is distributed in this
way: $10 to the clerk of the court; $15 to the referee; and $5 to the trustee. Since referees play no part in proceedings under Section 77B and since the sections dealing with these fees for trustees and referees are expressly inapplicable to proceedings under Section 77B, it would seem that only a fee of $110 should be collected. It is possible, however, that the clerks have been requiring a fee of $130 in order to provide for the contingency that an order of liquidation may be entered in the reorganization proceedings, in which event the sections dealing with the fees of the trustee and the referee would become applicable. In cases where liquidation is not ordered, it would seem that $20 of the $130 has not been used and should be returned to the parties paying the fee when the proceedings are terminated.

While the provision for filing fees under Section 77B refers directly to a debtor's voluntary petition or answer, it has not been doubted that it was meant to apply to creditors' petitions as well. The Attorney General's office, however, has advised the clerks of the district courts that when a petition under Section 77B is filed by creditors, the filing fee of $100 need not be paid unless the petition is accompanied by a plan of reorganization; and that if no plan is filed with the petition, the fee of $100 is not to be collected until a plan is filed.

The fees are reduced in amount, and the confusion as to the fees required under Section 77B appears to be eliminated, by the provision in the Chandler Bill:

"The filing of a petition under this subsection shall be accompanied by payment to the clerk of a filing fee of $100 if no bankruptcy proceeding is pending, otherwise $70. Where $100 has been paid and an adjudication is entered, $30 thereof shall be distributed by the clerk in the case of a bankruptcy proceeding, or, if no such order is entered, refunded to the person paying it."

Service of Subpoena and Creditors' Petition

Section 77B contains no express provision for the service of a subpoena or other form of process upon the debtor corporation. Since the

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135 See 2 GERDES, CORPORATE REORGANIZATIONS, § 958 (1936).
137 Attorney General's Circular No. 2579, July 9, 1934.
service of some form of process, such as a subpoena, must be issued and served in order to acquire jurisdiction over the debtor; it has been assumed that the practice which prevails in ordinary bankruptcy proceedings is applicable to proceedings under Section 77B. The Chandler Bill expressly adopts this practice in the reorganization subsection.\(^{139}\) A copy of the creditors’ petition, together with a subpoena returnable within ten days from the date of the filing of the petition, must be served upon the debtor corporation at least five days prior to the return day. The court may, for cause shown, provide for a return day of longer duration. The petition and the subpoena must be served in the same manner as a bankruptcy petition and subpoena are served.

Subdivision II of section 12 of the Chandler Bill contains no provision as to the number of copies of a petition which must be filed. It is obvious that as a copy of the petition must be served on the debtor in the case of involuntary proceedings, more than one copy must be filed. Section 59(c) of the Bankruptcy Act provides that petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.\(^{140}\) The Chandler Bill proposes to amend this subdivision to provide that petitions shall be filed in triplicate, one copy for the clerk, one for service on the bankrupt, and one for the referee.\(^{141}\) As a matter of practice, the clerks in some districts have been requiring bankruptcy petitions to be filed in triplicate.

Since section 59(c) refers to the service of a copy of the petition upon the bankrupt, it has been assumed that it applies only to involuntary proceedings. The Chandler Bill does not attempt to clarify this aspect of the problem. Nor is it entirely clear that section 59(c), with amendments as proposed by the Chandler Bill, is applicable to reorganization proceedings. A specific provision as to the number of copies of the petition which must be filed should be included in the subsection dealing with reorganization.

**Right of Creditors or Stockholders to Oppose Petition**

Three or more creditors who have provable claims which amount in the aggregate in excess of the value of securities held by them, if

\(^{139}\) “Upon the filing of a petition against a debtor or subsidiary, a copy thereof, together with a subpoena returnable within ten days, or such longer time as the court for cause shown may have fixed, shall be served upon the debtor or subsidiary, as the case may be, at least five days prior to such return day, in the same manner as provided in subdivision (a) of section 18 of this Act for service of a petition and subpoena for involuntary bankruptcy.” H. R. 12889, 74th Cong., 2d sess., § 12 (II) (b) (6).

\(^{140}\) Bankruptcy Act, § 59(c), 30 Stat. L. 561 (1898), 11 U. S. C., § 95(c).

\(^{141}\) H. R. 12889, 74th Cong., 2d sess., § 59(c).
any, to $1,000, or over, or stockholders holding five per cent in num-
ber of all shares of stock of any class of the debtor outstanding, may
appear and controvert the facts alleged in a petition initiating pro-
ceedings under Section 77B. 142 The Chandler Bill proposes to revise
this provision so that an answer controverting the allegations of a pe-
tition may be filed by any creditor, or, if the debtor is not insolvent, by
any stockholder. 143

The elimination of the requirement as to the percentage of stock-
holders and the number of creditors who may controvert a petition is
attributed to the belief that the right to question the court’s jurisdi-
tion, or the allegations of a petition upon which its jurisdiction depends,
should not be hampered by the necessity of obtaining cooperation from
other creditors and stockholders. 144 While this viewpoint has merit, the
danger of removing the restrictions which Section 77B imposes should
not be overlooked. The proposal contained in the Chandler Bill would
put it within the power of any creditor, no matter how small his claim,
to delay the proceedings by interposing an answer controverting the al-
legations of the petition. This is likely to invite unscrupulous persons to
purchase a small amount of the debtor’s securities and create a nuisance
value for their activities by filing “strike” answers.

The requirement of the Chandler Bill provision that the debtor
must be solvent before any stockholder may file an appearance and
controversion 145 is likely to result in preliminary controversies as to the
debtor’s solvency which will be productive of still further delay.

Appointment of Temporary Trustee or Temporary Continuance of
Debtor in Possession

The procedure for the appointment of a temporary trustee or for
the temporary continuance of the debtor in possession has been retained
by the Chandler Bill. 146 One limitation, however, has been imposed

143 "Prior to the first date set for the hearing provided in clause (1) of subdivision
(d) of this subsection, an answer controverting the allegations of a petition may be
filed (A) to a petition by or against a debtor, by any creditor, or, if the debtor is not
insolvent, by any stockholder of the debtor, and (B) to a petition by or against
a subsidiary, by the debtor, or by any creditor, or, if the subsidiary is not insolvent, by
any stockholder of the subsidiary." H. R. 12889, 74th Cong., 2d sess., § 12
(II) (b) (8).
144 H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 65, note 1.
145 See supra, note 143.
146 "After the approval of a petition and upon notice to the debtor and such
parties in interest as the court shall designate, the court may, if no trustee in a pending
upon the court’s discretion in the appointment of a temporary trustee. If a trustee has been appointed in a prior pending bankruptcy proceeding, the same trustee continues to serve in the reorganization proceedings and the reorganization court is deprived of the power of substituting a temporary trustee of its own selection or of placing the debtor in possession.\(^{147}\)

This provision of the Chandler revision may have undesirable effects. In bankruptcy proceedings, the trustee is appointed by the creditors,\(^ {148}\) generally for the purpose of supervising the liquidation of the debtor estate. In reorganization proceedings, the trustee is selected by the court for the purpose of operating the debtor’s business during the pendency of the proceedings. It will be seen, therefore, that the functions of a bankruptcy trustee and of a reorganization trustee are quite different and cannot always be effectively exercised by the same individual. In cases where the bankruptcy trustee is qualified to undertake the duties of a reorganization trustee, there is little doubt that he will be continued in office by the reorganization court, but situations may arise when it will be desirable to substitute a new trustee or to restore the debtor to possession. The problem should be left to the discretion of the court.

**Permanent Appointment of Trustee or Continuance of Debtor in Possession**

As in the case of the appointment of a temporary trustee, the Chandler Bill provides that upon the hearing for the appointment of a permanent trustee the court may not substitute another trustee or restore the debtor to possession where a trustee in a pending bankruptcy proceeding has been appointed. It is provided, however, that an additional trustee or trustees may be appointed, if necessary.\(^ {149}\)

\(^{147}\) The revisers state: “Where a bankruptcy trustee is actually functioning, we deem it inadvisable to remove such trustee merely because of a supervening reorganization proceeding. The policy of this provision is obvious.” H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 66.


\(^{149}\) “The court shall fix a time and place of hearing, of which at least thirty days' notice shall be given to all parties in interest, in manner as the court may direct, at which hearing, or at any adjournment thereof, the court . . . (B) may, if no trustee has previously been appointed, continue the debtor in possession of its property or ap-
All permanent trustees may be removed by the judge for cause after a hearing upon notice. The Chandler Bill seems to provide, however, that if a trustee who has been appointed in a prior bankruptcy proceeding is removed for cause, a substitute trustee may be appointed but the debtor may not be restored to possession. It may be restored to possession, however, if the substitute trustee is removed for cause.\textsuperscript{150} This result was probably not intended. To ascribe a logical reason for the discrimination seems impossible.

It also seems undesirable to deprive the court of the power to remove a trustee except for cause. The trustee is an “arm of the court,” and the court should have full power to remove him without going through the formalities incidental to a removal for cause.

The duty of fixing a time and place for the hearing upon the permanent appointment of a trustee is placed upon the court,\textsuperscript{151} instead of upon the temporary trustee as under Section 77B.\textsuperscript{152} While Section 77B provides that the judge shall determine the type of notice to be given of this hearing and also provides that the notice shall be published,\textsuperscript{153} the Chandler Bill merely provides that “at least thirty days’ notice shall be given to all parties in interest.”\textsuperscript{154} Under Section 77B, the hearing must be held within thirty days after the appointment of the temporary trustee or within thirty days after the approval of the petition;\textsuperscript{155} the Chandler Bill does not specify how soon the hearing must be held.

point a trustee or trustees of its estate; or, if a trustee or trustees have been appointed in a pending bankruptcy proceeding, appoint an additional trustee or trustees, if necessary; or, if a temporary trustee or trustees have been appointed in a proceeding under this subsection, terminate the appointment and restore the debtor to the possession of its property, or make the appointment permanent, or appoint an additional trustee or trustees, or a substitute trustee or trustees.” H. R. 12889, 74th Cong., 2d sess., § 12 (II)(d)(1).

\textsuperscript{150} “... the court ... (C) may, at any time after the hearing prescribed in subdivision (d), clause (1), of this subsection, upon hearing after notice, remove for cause any trustee and appoint a substitute, or, if necessary, either appoint a trustee or trustees, if none was previously appointed, or appoint an additional trustee or trustees, or terminate the appointment of a trustee or trustees made under this subsection and restore the debtor to possession of its property; ...” H. R. 12889, 74th Cong., 2d sess., § 12 (II)(f)(2).

\textsuperscript{151} See supra, note 149.

\textsuperscript{152} Bankruptcy Act, § 77B(c)(1), 48 Stat. L. 915, 11 U. S. C., § 207(c)(1).

\textsuperscript{153} Ibid.

\textsuperscript{154} See supra, note 149.

\textsuperscript{155} Bankruptcy Act, § 77B(c)(1), 48 Stat. L. 915, 11 U. S. C., § 207(c)(1).
Debtors Continued in Possession

The Chandler Bill has retained the provision of Section 77B that in case a trustee is not appointed, the debtor continues in possession of its property. The debtor may also be continued in possession, either temporarily or permanently, by specific order of the court. Among the consequences of continuance in possession, Section 77B provides that no person shall be elected or appointed to any office in the debtor corporation, to fill a vacancy or otherwise, without the prior approval of the judge. This provision has been omitted from the Chandler Bill upon the theory that such supervision imposes an unnecessary burden upon the court and constitutes an unwarranted interference with the internal affairs of the debtor corporation. Whenever the court is dissatisfied with the officers elected by the debtor, it may appoint a trustee to displace the debtor's possession.

Schedules and Lists of Creditors and Stockholders

The provisions of Section 77B dealing with schedules and lists have been altered and elaborated in several respects by the framers of the Chandler Bill. Under Section 77B the judge is empowered to require the debtor, or the trustee or trustees if appointed, to file schedules and submit such other information as may be necessary to disclose the conduct of the debtor's affairs and the fairness of any proposed plan of reorganization. The judge may also direct the preparation of a list of all known bondholders and other creditors with their addresses, and the amount and character of their debts, claims and securities, and of a list of the stockholders of each class with their addresses. Upon application to the debtor or trustee any creditor or stockholder is entitled to inspect such lists during reasonable business hours.

Recognizing the necessity for authentic information in reorganization proceedings, the revisers have directed their efforts towards rendering adequate information more generally available to parties concerned with the proceeding. Instead of requiring a showing of necessity for the filing of schedules, the Chandler Bill, adopting a practice

158 See supra, note 146.
159 See supra, note 149.
161 H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 88, note 5.
162 See supra, note 150.
more closely resembling that prevailing in ordinary bankruptcy proceedings, requires complete schedules in quadruplicate to be filed by the debtor in all cases except where cause is shown for dispensing with full information. Where such cause is shown the court may "permit the debtor or require the trustee" to file such schedules or other information as may be deemed by the court to be sufficient. In all cases the expenses involved are charged to the debtor estate.

An apparently harmless change from the provisions of Section 77B may serve as the source of some confusion. Instead of providing that the schedules shall be available to "creditors" and "stockholders" for inspection, the term "party in interest," which is not defined, is used.

The Chandler Bill omits the provision of Section 77B that the contents of the lists filed shall not constitute admissions by the debtor or the trustees. This omission appears to be justified. Where the facts are known, there is no reason for encouraging their concealment. In


165 H. R. 12889, 74th Cong., 2d sess., § 12 (II)(b)(13): "The debtor, at the expense of the estate, shall prepare, make oath to, and file in court, within such time as the court shall fix, a schedule of its property, showing the location, quantity, and money value thereof; a schedule of its creditors of each class, showing the amounts and character of their claims and securities and, so far as known, the name and the post-office address or place of business of each creditor; and a schedule of its stockholders of each class, showing the number and kind of shares registered in the name of each stockholder, and the last known post-office address or place of business of each stockholder; which schedules shall be filed in quadruplicate, one copy for the clerk, one for the referee or special master, if any, one for the trustee, and one to be kept at the place of business of the debtor, and shall be open to the inspection of any party in interest: Provided, however, That in lieu of such schedules, the court may, for cause shown, permit the debtor or require the trustee to file from time to time such schedules and submit such other information as the court may deem sufficient to disclose the property and the creditors and stockholders of the debtor, the conduct of its affairs, and the fairness of any proposed plan. If in any case it appears that a person, other than the debtor or its trustee, has in his possession or under his control a list of the bondholders or other creditors of the debtor or information in respect to their names, addresses, and the bonds or claims held by each of them, and such list or information is necessary in order to prepare or complete the schedules required to be filed under this paragraph, the court may direct such person to produce such list or a true and correct copy thereof, or to submit such information in regard thereto as may be deemed by the court necessary for the foregoing purposes: And provided further, That if it is made to appear to the court that such person is entitled to keep such list or information in confidence, the court may direct that such list, copy, or information be impounded, and shall permit its inspection or use, upon such terms as the court may prescribe, only by a party in interest."

166 Ibid.
cases of uncertainty or dispute such fact may be indicated in the
schedules. 167

So far as the contents of the schedules are concerned, there is little
change from the provisions of Section 77B. In order to meet the prob-
lem created by holders of bearer bond issues and other unregistered
creditors, the schedule of creditors is required to list the names and
addresses of creditors only "so far as known." 168

A more important problem created by the existence of bearer bond
issues is also met by the Chandler Bill. In the case of such issues, com-
mittees of "insiders" are frequently the only parties in possession of a
reasonably complete list of the bondholders. The possession of these
lists places such committees in a favored position in contacting bond-
holders. 169 The Chandler Bill empowers the court to direct any person
in possession of a list of bondholders or creditors to produce the list or
any information in regard to such list which is deemed necessary in or-
der to prepare or complete the necessary schedules. Where the person
in possession of the list or information is entitled to keep it in con-
fidence, the court may direct the material to be impounded, and may
permit its inspection or use by a party in interest upon terms to be
prescribed by the court. 170

References to Referees and Special Masters

The judge may refer any matter arising in a proceeding under Sec-
tion 77B to a special master, who may be a referee in bankruptcy, only
for consideration and recommendation. 171 The Chandler Bill permits
references to referees in bankruptcy with power to act in the capacity
of judges and make orders. 172 This much-needed reform will relieve
judges of the burden of passing upon many administrative details in
corporate reorganizations. Even under the Chandler Bill, however, a
judge must act upon the confirmation of plans of reorganization and
upon applications for allowances for compensation, costs, and ex-
penses. 173

167 See comments of the revisers, H. R. 12889, 74th Cong., 2d sess., Committee
Print, p. 68.
168 Ibid.
169 See 2 GERDES, CORPORATE REORGANIZATIONS, § 992 (1936).
170 See supra, note 165.
172 See supra, note 76.
173 See supra, note 76.
Jurisdiction of the Court

The Chandler Bill provides that the reorganization court shall have exclusive jurisdiction over the debtor and its property, wherever located, from the moment the petition initiating the proceedings is filed.\textsuperscript{174} Under Section 77B, this jurisdiction does not attach until the petition is approved.\textsuperscript{175} The commendable change in the Chandler Bill will give the court jurisdiction over the debtor's property outside of its district as soon as the petition is filed.\textsuperscript{176}

The Chandler Bill also provides that the jurisdiction, powers, and duties of the court, so far as consistent, shall be the same, before the approval of the petition, as in a bankruptcy proceeding before adjudication.\textsuperscript{177} One of the desirable consequences of this change is to remove doubt as to the availability in reorganization proceedings of the provisional remedies which are customarily utilized in ordinary bankruptcy proceedings.\textsuperscript{178}

The powers of a federal court which has appointed a receiver in equity are also bestowed upon the reorganization court,\textsuperscript{179} but both under Section 77B\textsuperscript{180} and under the Chandler Bill\textsuperscript{181} these powers date from the approval of the petition. The Chandler Bill does not clear up existing doubts as to the power of the court, either before or after approval of the petition, to issue process outside of its district.\textsuperscript{181}

\textsuperscript{174} "In a proceeding under this subsection (A) the court in which the petition is filed shall have exclusive jurisdiction of the debtor and its property, wherever located. . . ." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(f)(1).
\textsuperscript{175} Bankruptcy Act, § 77B(a), 48 Stat. L. 912, 11 U. S. C., § 207(a).
\textsuperscript{176} See 2 Gerdes, Corporate Reorganizations, § 852 (1936).
\textsuperscript{177} "In a proceeding under this subsection . . . (B) where not inconsistent with the provisions of this subsection the jurisdiction, powers, and duties of the court. . . . shall, before the approval of the petition, be the same as in a bankruptcy proceeding before adjudication. . . ." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(f)(1)(B). Cf. Bankruptcy Act, § 77B(o), 48 Stat. L. 922, 11 U. S. C., § 207(o).
\textsuperscript{179} Bankruptcy Act, § 77B(a), 48 Stat. L. 912, 11 U. S. C., § 207(a).
\textsuperscript{180} "In addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this subsection conferred and imposed upon the court, the court (A) shall have and may, upon the approval of the petition, exercise all the powers, not inconsistent with this subsection, which a United States court would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to pay its debts as they mature. . . ." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(f)(2)(A).
\textsuperscript{181} See supra, note 27.
Title of the Trustee

Under the provisions of the Chandler Bill, the trustee, both in ordinary bankruptcy and in reorganization proceedings, is vested with title "as of the date of the filing of the petition." These provisions introduce a radical revision in the present provisions governing the date when the trustee's title vests. Section 70 of the Bankruptcy Act now provides that the trustee's title vests as of the date when the debtor was adjudged a bankrupt, and Section 77B(c)(2) provides that the reorganization trustee shall have all the title of the bankruptcy trustee.

Under the Bankruptcy Act of 1867, as under the proposed provisions in the Chandler Bill, the title of the assignee or trustee related back to the date of the filing of the petition. Title to property transferred by the bankrupt after the filing of the petition therefore became defeasible as soon as he was adjudged a bankrupt. As a result, the bankrupt found himself unable to transact any business after the filing of the petition, regardless of the merits of the petition filed against him. It was recognized that this consequence of the provision in the Bankruptcy Act of 1867 was undesirable, and, to remedy the situation, the Bankruptcy Act of 1898 provides that the trustee shall be vested with the title of the bankrupt as of the date he was adjudged.

182 "The trustee of the estate of a bankrupt, upon his appointment and qualification . . . shall . . . be vested by operation of the law with the title of the bankrupt, as of the date of the filing of the petition in bankruptcy, or of the original petition for an arrangement under this Act . . ." H. R. 12889, 74th Cong., 2d sess., § 70(a).

"Where not inconsistent with the provisions of this subsection, the trustee or trustees, temporary or permanent, appointed under this subsection, upon the filing of a bond, shall be vested with the title and rights, be subject to the duties and exercise all the powers, of a trustee appointed under section 44 of this Act . . ." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(f)(3)(A).


185 "As soon as said assignee is appointed and qualified, the judge, or where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt . . . and such assignment shall relate back to the commencement of the proceedings in bankruptcy, and by operation of law shall vest the title to all such property and estate . . . in the assignee. . . ." Bankruptcy Act of 1867, § 14, 14 Stat. 517 (1867), Rev. Stat. § 5044 (1878).

a bankrupt. The intention to effect a change, and the motive for the change, was clearly expressed prior to the enactment of the Bankruptcy Act of 1898 in a House report on the proposed revision. After the enactment of the Bankruptcy Act of 1898, this intent was recognized by the courts and enforced by them.

Under the Bankruptcy Act of 1898, the courts have held that the trustee acquires title to all property owned by the bankrupt at the time of the filing of the petition which is still owned by him at the time of adjudication. The trustee also acquires title to the proceeds of property owned by the bankrupt when the petition was filed and sold by the bankrupt after the filing of the petition and before adjudication. The trustee does not obtain title to property validly transferred by the bankrupt after the filing of the petition and before adjudication, even though owned by the bankrupt when the petition was filed.

The Chandler Bill seeks to mitigate the effect of its provision as to title by providing that transfers by the debtor are valid if it has received the "present fair equivalent value for such transfer." The burden, however, of proving such present fair equivalent value is

188 "Under section 70 an important change has been made from the former laws as well as from proposed legislation. Under the act of 1867, as interpreted by the courts, it was held that the title to the bankrupt's property vested by operation of law as of the date of the filing of the petition. By the proposed bill it is provided that the trustees shall be vested with the title of the bankrupt as of the date he was adjudged a bankrupt. By this change the alleged bankrupt can sell and convey a perfect title up to the date of adjudication, and the purchaser does not buy at his own risk and in danger of having secured an imperfect title by reason of an adjudication which may be made subsequent to the purchase. It does not follow that because a petition is filed against a person in a bankruptcy court he will be adjudged a bankrupt, and it seems but proper that the public in dealing with him should deal without fear of loss or danger as to title." H. R. 1228, 54th Cong., on Section 70 of House Bill 8110, the provision which later became Section 70(a) of the Bankruptcy Act of 1898.
189 "The theory [of the Bankruptcy Act of 1898] appears to have been that ordinarily the filing of the petition against a man would not interrupt his affairs; it was like any other pleading by which suit was commenced. Only upon adjudication was the control of the property to pass to the court. . . ." Childs v. Empire Trust Co., (C. C. A. 2d, 1932) 54 F. (2d) 981 at 982, certiorari denied, 286 U. S. 554, 52 S. Ct. 579 (1932). See also In re Mertens, (C. C. A. 2d, 1906) 144 F. 818.
191 See 1 GERDES, CORPORATE REORGANIZATIONS, §§ 360, 448 (1936).
192 H. R. 12889, 74th Cong., 2d sess., § 70 (d).
thrown upon the transferee. This seems undesirable as a burden upon the conduct of the debtor’s business after a petition has been filed.

**Stay of Mortgage Foreclosures**

The Chandler Bill provides: “An order approving a petition shall operate as a stay of a prior pending bankruptcy or mortgage foreclosure or equity receivership proceeding. . . .”

While it is clear that bankruptcy and equity receivership proceedings should not be permitted to continue when reorganization proceedings are pending, it does not necessarily follow that all mortgage foreclosures should be automatically stayed. The reference to “mortgage foreclosures” in this provision was undoubtedly included in order to overcome the decision of Duparquet, Huot & Moneuse Co. v. Evans194 that mortgage foreclosure receiverships are not included in the term “equity receiverships” as used in Section 77B. If it is thought necessary to include mortgage foreclosures in this provision, it should be made clear that the court may, in its discretion, permit the foreclosure to proceed.

The Chandler Bill also provides that prior to the approval of the petition, the court may, for cause shown, grant a stay of a pending bankruptcy, mortgage foreclosure, or equity receivership proceeding.196 Section 77B grants this power only after the petition under the section has been approved.198

**Leases and Executory Contracts**

Although the revisers have declared197 that the restatement of the rent provisions has not effected any material changes in substance, the Chandler Bill omits the following sentence in Section 77B:

“In case an executory contract or unexpired lease of real estate shall be rejected pursuant to direction of the judge given in a proceeding instituted under this section, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity in a

193 H. R. 12889, 74th Cong., 2d sess., § 12 (II)(b)(g).
195 “. . . prior to the approval of such petition the court may, upon cause shown, grant a temporary stay of such proceeding until the petition is approved or dismissed.” H. R. 12889, 74th Cong., 2d sess., § 12 (II)(b)(g).
196 See Bankruptcy Act, § 77B(c)(10), 48 Stat. L. 917 (1934), 11 U. S. C., § 207(c)(10); I GERDES, CORPORATE REORGANIZATIONS, §§ 244, 247 (1936).
197 H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 85.
proceeding pending prior to the institution of a proceeding under this section, any person injured by such rejection shall, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, be deemed to be a creditor." 198

This is the provision in Section 77B which seems to give the landlord a claim for the rejection of his lease if no claim exists under applicable state law.

Whether Section 77B gives such a claim is now before the United States Supreme Court for decision. 199 If the Court holds that Section 77B does give the claim, the Chandler Bill's omission of this sentence will cause great uncertainty regarding the extent to which the decision is applicable to the changed language of the Chandler Bill. It would probably take some years to obtain another determination by the Supreme Court.

The Supreme Court is also considering in a pending case the constitutionality of the provision of Section 77B limiting claims under rejected leases to not more than three years rent if the debtor is solvent and stockholders are permitted to participate in the plan of reorganization. 200 The existing provision in the Chandler Bill will need to be modified if the Court fails to sustain the constitutionality of the limitation in the amount of the landlord's claim.

Section 77B provides that the plan of reorganization may reject executory contracts of the debtor, "except contracts in the public authority." 201 The reference to "contracts in the public authority" has been removed by the Chandler Bill. Its elimination should be justified on the ground of public policy rather than by the explanation offered by the framers of the bill that "the court would have the power to deny such rejection." 202 If the interests of the debtor's estate make it desirable, the court would have no power under the Chandler Bill to deny the rejection because it involves a contract "in the public authority."

202 H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 72.
Proof of Claims

The Chandler Bill provides that distribution in accordance with the provisions of the plan shall be made

"to the creditors and stockholders whose claims or interests (1) have been filed or evidenced prior to the date of confirmation, and are allowed, or (2) if not so filed or evidenced, have been scheduled by the debtor as fixed claims or interests, liquidated in amount, and not disputed: *Provided, however, That where such claims or interests are objected to by any party in interest, the objection shall be heard and summarily determined by the court...*" 203

This provision, which has no exact parallel in Section 77B, has the desirable effect of permitting creditors or stockholders who have not filed claims or given evidence of their interests to participate in the reorganization, provided that their claims or interests have been scheduled by the debtor. The reference to the hearing and determination of objections to claims and interests is likewise a desirable addition to the reorganization section.

Trustee under Bond Issue

A provision of the Chandler Bill which has no parallel in Section 77B, and which appears to be a statement of existing case law, 204 reads as follows:

"A trustee of an issue of bonds, notes, or other evidences of indebtedness of the debtor may file claims and appear for all holders of such obligations, known or unknown, but, unless expressly authorized, he may not accept or reject a plan in behalf of any such holder." 205

It is assumed that this provision will not prevent individual bondholders from filing proof of claims in their own names if they so desire. If this assumption is not correct, the provision would, in that respect, constitute a modification of the present practice—an undesirable and perhaps unconstitutional modification.

United States as a Creditor

Section 77B was amended in 1935 206 to provide that if the United States is a creditor on claims for taxes or customs duties, a plan of re-
organization which does not provide for the payment of such claims may not be confirmed unless the Secretary of the Treasury certifies his acceptance of a lesser amount, or unless his consent is conclusively presumed as a result of his failure to accept or reject the plan within ninety days after receipt of written notice so to do. It was also provided that if the United States is a creditor or stockholder, its claims or interests shall be deemed to be affected by the plan. These provisions are not included in the Chandler Bill.

The provision in Section 77B authorizing the Secretary of the Treasury to accept a plan on behalf of the interests or claims of the United States has been retained by the Chandler Bill in a subdivision which also empowers the Secretary to file any claim or evidence any interest of the United States in cases where the United States or any of its instrumentalities are creditors or stockholders of the debtor.

Provisions of a Plan of Reorganization

Only minor modifications in the requirements of a plan of reorganization are proposed by the Chandler Bill. The following provision in the Chandler Bill, however, is entirely new:

"(c) . . . A plan of reorganization under this subsection . . . (2) Shall include, where any indebtedness is created or extended under the plan for a period of more than five years, provisions for the retirement of such indebtedness by stated payments out of a sinking fund or otherwise, (A) if secured, within the expected useful life of the security therefor, or (B) if unsecured, or if the expected useful life of the security is not fairly ascertainable, then within a specified reasonable time, not to exceed thirty years. . . ."^209

The framers of the Chandler Bill have inserted this provision for the amortization of long-term indebtednesses because they believe that failure to make provision for such amortization often results in recurrent reorganizations. It is questionable, however, whether these provisions may not themselves force reorganization because of inability of

^207 Ibid.
^208 "If the United States of America or any instrumentality thereof is a creditor or stockholder, the Secretary of the Treasury or his duly authorized deputy is hereby empowered to file any claim or evidence any interest of the United States of America, to accept or reject a plan in respect thereof and to exercise any other right accorded to a creditor or stockholder in a proceeding under this subsection." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(d)(5).
^210 Ibid., Committee Print, p. 69.
the reorganized corporation to meet their requirements. It is doubtful, too, whether a reorganization statute ought to contain mandatory requirements as to the purely financial aspects of a plan of reorganization. Varying conditions require different treatment.

Three of the methods provided by Section 77B for the protection of dissenting classes of creditors have been retained by the Chandler Bill, and one of the methods retained has been modified. The provisions for the protection of dissenting classes by a transfer, sale or retention of the debtor's property subject to the claims of the dissenting classes, and by a judicial sale of the property at a fair upset price, have not been altered in substance. The third method of protection specified by Section 77B authorizes an appraisal and payment in cash of the value of the claims of the dissenting creditors, or, at the creditors' election, of the value of the securities allotted to them under the plan. The Chandler Bill confines the third method of protection to the appraisal and cash payment of the value of the dissenters' claims against the debtor's property.

The fourth device prescribed by Section 77B for the protection of dissenting classes of creditors is "such method as will in the opinion of the judge, under and consistent with the circumstances of the particular case, equitably and fairly provide" adequate protection for the realization of the value of their claims. The elimination of this provision by the Chandler Bill, on the ground that it nullifies the first three methods of protection, seems desirable. The revisers state that the Circuit Court of Appeals in In re Tennessee Publishing Co. declared the fourth device to be unconstitutional. This case, however, was concerned primarily with the third device—the appraisal and cash pay-

211 The provisions of Section 77B are included in subdivision (b)(5).
212 The Chandler Bill [§ 12 (II)(c)(7)] provides: "A plan of reorganization under this subsection . . . (7) Shall provide for a class of creditors, which is affected by the plan and does not accept the plan by the two-thirds majority in amount required under this subsection, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either, as provided in the plan or in the order confirming the plan, (A) by the transfer or sale, or by the retention by the debtor, of such property subject to such claims; or (B) by a sale of such property free of such claims, at not less than a fair upset price, and the transfer of such claims to the proceeds of such sale; or (C) by appraisal and payment in cash of the fair and equitable value of such claims ..."
214 H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 71, note 7.
ment of the value of the dissenters' claims—and the Court's declaration of unconstitutionality appears to have been directed to that device.

Proposal of Plan of Reorganization

A plan of reorganization under Section 77B may be proposed at a hearing noticed for its consideration or at a hearing for the consideration of any other plan.\textsuperscript{216} This hearing for the consideration of a plan of reorganization has been omitted from the procedure prescribed by the Chandler Bill. A proposed plan of reorganization is merely filed in the proceedings.\textsuperscript{217} This is followed by the filing of an application for the confirmation of the plan, but this application cannot be made until the required acceptances of creditors and stockholders have been filed.\textsuperscript{218} The first opportunity for voicing and considering objections to the plan is at the hearing to confirm a plan which has been accepted.\textsuperscript{219} This change is undesirable.

The hearing to consider a proposed plan of reorganization under Section 77B is intended to provide a forum at which the parties in interest may discuss proposed plans and at which amendments and modifications may be considered before efforts are made to secure the required statutory acceptances. The procedure which the Chandler Bill proposes to substitute would require creditors or stockholders to give

\textsuperscript{216} Bankruptcy Act, § 77B(d), 48 Stat. L. 917 (1934), 11 U. S. C., § 207(d).
\textsuperscript{217} "After the approval of the petition, the court shall fix a reasonable time within which a plan or plans may be filed (A) by the debtor; or (B) by any creditor if the plan proposed has been previously approved by creditors holding claims which, in amount, aggregate 25 per centum or more of the claims of some class of the creditors and 10 per centum or more of the claims of all creditors affected by such plan; or (C) by any stockholder, if the debtor is not insolvent, and if the plan proposed has been previously approved by stockholders holding shares of the debtor, which in number total 25 per centum or more of the shares outstanding of some class of stockholders, and 10 per centum or more of the total shares outstanding of all stockholders affected by such plan." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(b)(12).
\textsuperscript{218} "An application for the confirmation of a plan shall be filed within such reasonable time as the court shall fix, and after, but not before, a plan has been accepted in writing, filed in court, by or on behalf of creditors holding two-thirds in amount of the claims allowed of each class, and, if the debtor is not found to be insolvent, by or on behalf of stockholders holding the majority of stock interests allowed of each class, exclusive of creditors or stockholders, or any class of creditors or stockholders, who are not affected by the plan, or for whom protection is not required, as prescribed in subdivision (c), clauses (7) and (8), of this subsection." H. R. 12889, 74th Cong., 2d sess., § 12(II) (d)(8).
\textsuperscript{219} "Upon the filing of an application for confirmation of the plan, the court shall fix a hearing, upon reasonable notice, for the consideration of the application and such objections as may be made to the confirmation." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(d)(10).
their acceptances to plans of reorganization without the opportunity of learning what objections, if any, other creditors and stockholders, the debtor, or the judge have to the plan. If material changes are then made as a result of the hearing, new acceptances will be necessary. The new procedure will exert undue pressure on judges to confirm undesirable plans in order to avoid the necessity of securing new acceptances.

The Chandler Bill has increased the percentage of stockholders whose approvals must be obtained before a plan may be proposed.\(^2\)

Acceptance of the Plan

The express language in Section 77B authorizing the acceptance of a plan of reorganization prior to the institution of the reorganization proceedings\(^2\) has been omitted in the Chandler Bill. No explanation is given for the omission.

Section 77B provides that the acceptance must be accompanied by a statement showing what claims or shares the acceptors purchased or transferred after the institution, or in contemplation, of the proceeding, and the circumstances surrounding the purchase or transfer. This requirement may be waived by the judge if the circumstances are such that the preparation of such a statement would be impractical.\(^2\) The Chandler Bill does not require the filing of such a statement under any circumstances. The revisers state that any improper conduct in connection with the purchase or transfer of the debtor's obligations may be brought to the attention of the court as an objection to the confirmation of the plan on the ground that it has not been accepted in good faith.\(^2\) This argument, however, overlooks the fact that neither court nor interested parties will have knowledge of such purchases or transfers unless the statement required by Section 77B is given.

Fairness of Plan

In the Chandler Bill the court may confirm the plan if “the plan is equitable and feasible”;\(^2\) in Section 77B, if “it is fair and equitable

\(^{220}\) See supra, note 217. The revisers state that “To discourage a multiplicity and confusion of proposals, we have increased the required percentage in respect to stockholders, so as to make it the same as in the case of creditors.” H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 67.


\(^{222}\) Ibid.

\(^{223}\) H. R. 12889, 74th Cong., 2d sess., Committee Print, p. 77, note.

and does not discriminate unfairly in favor of any class of creditors or stockholders, and is feasible." The new language is more concise, but whether the courts will give it the same construction as the old language is not free from doubt.

The doctrine of the *Boyd* case is believed to be based on the law of fraudulent conveyances. It originated in our courts of equity, and is "equitable." It prohibits giving anything to stockholders until all creditors have received the value of their interests. It does not prevent discrimination among classes of creditors; neither does it prevent discrimination among classes of stockholders. The language of Section 77B was carefully selected to broaden the protection afforded by the doctrine of the *Boyd* case and to prevent discrimination among classes of creditors and classes of stockholders. A circuit court of appeals has held that the *Boyd* case has no application to the fairness of a plan of reorganization under Section 77B.

Uncertainty regarding the fairness of plans should be eliminated by retaining the language now in Section 77B.

**Modifications of the Plan**

The Chandler Bill, like Section 77B, provides that a plan of reorganization may be altered or modified either before or after its confirmation. In connection with the proposal of a modification, the Chandler Bill states that "the requirements as to the provisions of the proposal, the notice of and hearing upon the same, the acceptance thereof by the parties affected thereby, the filing and hearing of objections to confirmation, and the confirmation thereof, shall be the same, so far as applicable, as prescribed in this subsection with respect to the original plan." It will be noticed, however, that the Chandler Bill eliminates the provision of Section 77B for the "proposal" of a plan and for a hearing to consider a plan prior to the hearing on its confirmation. The inconsistency in the provisions relating to original plans and modifications should be rectified.

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227 See 2 Gerdes, Corporate Reorganizations, § 1083 (1936).
229 H. R. 12889, 74th Cong., 2d sess., § 12 (II)(e)(2).
231 H. R. 12889, 74th Cong., 2d sess., § 12 (II)(e)(2).
Of more importance is the fact that the Chandler Bill provides that a plan cannot be considered by the court until a hearing for its confirmation is held after all the required acceptances have been filed. This change in the procedure provided by Section 77B is highly undesirable in so far as it relates to original plans. It is totally impractical in its application to modifications of plans. The provision of Section 77B that a modification may be effected "with the approval of the judge after hearing upon notice to creditors and stockholders" is much to be preferred.

**Dismissal or Liquidation**

The Chandler Bill drops the use of the term "liquidation" to conform to bankruptcy terminology, i.e. "adjudication" in bankruptcy.

Where the petition has been filed in a pending bankruptcy proceeding, the Chandler Bill does not leave the court an option to dismiss the proceedings or to direct liquidation; the former only may be ordered. In such event, the original bankruptcy proceeding is restored.

In the event that liquidation is ordered in a case in which an original petition for reorganization has been filed, the Chandler Bill provides that the proceedings are to continue as if a voluntary petition for adjudication had been filed, and a decree of adjudication had been entered on the day when the original petition for reorganization had been filed. This provision is likely to lead to much confusion and

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233 Jbid.
235 "If a plan is not proposed or is not accepted, or if its confirmation is not applied for within the time fixed by the court, or if the plan is withdrawn, abandoned, or not confirmed, or, if confirmed, is not consummated, the court shall (A) where the petition has been filed in a pending bankruptcy proceeding, enter an order dismissing the proceeding under this subsection, and directing that the bankruptcy be proceeded with pursuant to the provisions of this Act. . . ." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(e)(3).

Section 77B gives the judge the option of directing either liquidation or a dismissal of the proceedings. Bankruptcy Act, § 77B(c)(8), 48 Stat. L. 917 (1934), 11 U. S. C., § 207 (c)(8).
236 "Upon the entry of an order directing that bankruptcy be proceeded with: (A) in the case of a petition under this subsection filed in a pending bankruptcy proceeding, such proceeding shall be deemed reinstated and be thereafter conducted, so far as possible, as if such petition under this subsection had not been filed. . . ." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(e)(8)(A).
237 "Upon the entry of an order directing that bankruptcy be proceeded with (A) . . . in the case of an original petition under this subsection, the bankruptcy shall be
litigation. In bankruptcy, the trustee acquires title as of the date of ad-
judication. If effect is given to the adjudication as of the date of the filing of the original petition in the reorganization proceedings, what effect will be given to the transfers of property and other acts of the debtor and the trustees in reorganization after the filing of such reor-
ganization petition and before the election of the liquidation trustee
under Section 44? Are they effective? May they be re-examined and questioned? The statute should clearly specify the effect to be given to such transfers and other acts.

Upon the entry of an order to liquidate, the Chandler Bill (clear-
ing up an ambiguity in Section 77B) provides that a trustee shall be
elected by creditors pursuant to section 44. The wisdom of this pro-
vision is debatable. It seems preferable to give the court power to con-
tinue the trustee who acted in the reorganization proceedings and who
is familiar with the affairs of the debtor estate, rather than to compel
the court to accept a new trustee selected by the creditors. No provision
is made even for a continuance of the old trustee until the election of
the new trustee, and under the language of the bill it may be necessary
to appoint a temporary receiver or redeliver the property to the debtor.

Costs of Administration

One of the principal reasons for the enactment of Section 77B was
the desire to reduce the costs of reorganization. With this object in
mind, the judge was invested with exclusive power to make allowances
for fees and expenses. The large number of appeals from denials

proceeded with, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered, on the day when such original petition under this subsection was filed. ... H. R. 12889, 74th Cong., 2d sess., § 12 (II)(e)(8)(A).

Bankruptcy Act, § 70(a), 30 Stat. L. 565 (1898), as amended, 44 Stat. L. 667 (1926), 11 U. S. C., § 110(a). The Chandler Bill proposes to change this provision to give the bankruptcy trustee title as of the date of the filing of the petition. H. R. 12889, 74th Cong., 2d sess., § 70(a).

It is not at all certain that the courts will hold that transfers by bankrupts covered by section 70 (d) of the Chandler Bill include transfers by trustees in the reorganization proceedings prior to the adjudication in bankruptcy. See also, supra, notes 185-189.

See 3 Gerdes, Corporate Reorganizations, § 1155 (1936).

"Upon the entry of an order directing that bankruptcy shall be proceeded with ... (B) a trustee shall be appointed pursuant to section 44 of this Act ...." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(e)(8) (B).


and reductions of allowances would appear to indicate that the judges have carefully exercised their power in the spirit of economy which characterizes ordinary bankruptcy proceedings. In a number of cases the extraordinary caution of the district judges in denying allowances has resulted in reversal on appeal. On the other hand, the compensation provisions of Section 77B have been criticized as incorporating a policy of extravagance since they authorize reasonable compensation to be made to any party, and his attorneys or agents, who may have rendered services in connection with the proceeding or the plan of reorganization; the suggestion has been made that maximum rates of compensation be fixed and that allowances be restricted to a smaller group in conformity with the compensation provisions in ordinary bankruptcy proceedings.

The Chandler Bill contains no changes limiting the power of the court in connection with allowances. On the contrary, the changes are intended to assure the payment of adequate compensation in cases where the ambiguities or defects of Section 77B have resulted in what are deemed unfortunate denials or restrictions upon allowances. In addition to authorizing compensation to any party in interest, the enumerated persons entitled to compensation are increased so that the list of such persons now reads: "referees or special masters, trustees and other officers, appraisers, accountants, depositaries, reorganization managers and committees, or other representatives of creditors or of stockholders, ... and the counsel, attorneys or agents of any of the foregoing and of the debtor."

Specific provision is also made to compensate services rendered in a pending bankruptcy proceeding which is superseded by a reorganization proceeding; and in order to nullify the effect of the decision of the United States Supreme Court in Callaghan v. Reconstruction Finance Corporation, it is provided that the compensation in such cases shall not be limited by the compensation provisions governing ordinary bankruptcy proceedings.

See, for example, In re Milwaukee Lodge No. 46 of B. P. O. E., (C. C. A. 7th, 1936) 83 F. (2d) 662; In re Paramount Publix Corp., (C. C. A. 2d, 1936) 83 F. (2d) 406.


... (B) where a petition under this subsection is filed in a pending bankruptcy proceeding, the judge shall, after hearing upon notice to all parties in interest, allow reasonable compensation for services rendered and reimbursement for proper
In view of doubts expressed as to whether Section 77B authorizes the court to grant allowances in cases where the proceeding is dismissed or liquidation is ordered, it is provided that compensation may be granted "whether or not the plan is confirmed." Although this provision appears to make it clear that compensation may be granted where the proceedings are dismissed, it is not equally clear that a case in which liquidation is directed is covered, since the Chandler Bill, like Section 77B, provides for the applicability of Section 64 of the Bankruptcy Act when liquidation is ordered.

The provisions of Section 77B for the protection of obligations incurred in prior proceedings and for the protection of obligations incurred in the reorganization proceedings when prior proceedings are reinstated, and for the payment of the costs and expenses of these proceedings, have been rephrased in the Chandler Bill and retained in substance. An omission noted in Section 77B has been remedied by providing for the protection of obligations incurred by a debtor retained in possession when the proceedings are dismissed.

The somewhat ambiguous provision of Section 77B relating to appeals on questions of allowances has been amplified to provide

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252 It has been held that after liquidation is ordered allowances for services rendered in the reorganization proceedings are governed by Section 64. The claims of creditors' committees, their employees and attorneys, were therefore disallowed as not within the scope of the services contemplated by Section 64. In re Manhattan Music Hall, (D. C. N. Y. 1936) 14 F. Supp. 48.
254 "(3) The court shall make such provisions as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding, and for the payment of the reasonable costs and expenses incurred therein as may be approved or allowed by the court in which such prior proceeding is pending.

“(4) Upon the dismissal of a proceeding under this subsection, such prior proceeding shall become reinstated, and the court shall allow the reasonable costs and expenses of the proceeding under this subsection, and shall make appropriate provision for the retransfer of such property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred by the debtor or trustee in the proceeding under this subsection, and for the payment of the costs and expenses thereof." H. R. 12889, 74th Cong., 2d sess., § 12 (II)(g).
that such appeals may be taken as to matters of law and fact.\textsuperscript{258} In order to clarify the evident purpose of Section 77B to have such appeals heard speedily and independently of other appeals in the proceedings, the new provision dispenses with the necessity for a printed record in these cases by providing that the appeal shall be heard "upon the original papers."

\textit{Transfer or Issuance Tax on Securities}

The issuance, transfer, or exchange of securities in connection with the effectuation of a plan of reorganization are exempted by the Chandler Bill from "any stamp taxes now or hereafter imposed under the laws of the United States."\textsuperscript{257} No attempt, however, is made to define "stamp taxes." The parallel provision in Section 77B makes specific reference to the sections of the Revenue Acts which impose federal stamp taxes.\textsuperscript{258} In any event, the language of the Chandler Bill is too broad. No Congress may prevent the imposition of such tax by a future Congress.

\textit{Profits and Income Taxes in Connection with Reorganization}

The Chandler Bill introduces the following provision into the reorganization section:

"(4) No income or profit, taxable under any law of the United States or of any state now in force or which may hereafter be enacted, shall be deemed to have accrued to the debtor by reason of a modification in, or liquidation in whole or in part of, any indebtedness of the debtor in a plan of reorganization consummated under this subsection."\textsuperscript{259}

This provision will eliminate all doubt on this important phase of a reorganization.\textsuperscript{260}

\textbf{Conclusions}

1. The fundamental principles of Section 77B are sound and have a permanent place in the law of corporate reorganization.
2. Section 77B is poor in draftsmanship, and it does not solve all of the problems of corporate reorganization.

3. The Chandler Bill, which includes a complete revision of Section 77B in one subsection, is an improvement on Section 77B, but its defects do not permit it to be adopted in its present form. The draftsmanship and arrangement of the corporate reorganization subsection are intolerable for a statute of such importance. Its provisions should be completely rearranged into short sections in accordance with best modern thought on the draftsmanship of statutes. Solutions to some of the problems with which it makes no attempt to cope should be included.

4. The corporate reorganization provisions in the Chandler Bill should not be adopted *en bloc* with all the other revised portions of the entire Bankruptcy Act. The reorganization provisions ought to be severed and considered separately and in detail.

5. The Chandler Bill is rich in suggested improvements of Section 77B. No revision of Section 77B should be attempted without giving full consideration to these suggestions.

6. The National Bankruptcy Conference, the Securities and Exchange Commission, the McAdoo Committee, the Sabath Committee, and other groups interested in corporate reorganizations, should cooperate in an effort to agree upon a solution to the problem of the adequate representation of creditors and stockholders in corporate reorganization proceedings and of proper protection of their interests in plans of reorganization, and upon solutions to some of the other problems to which attention has been directed.

7. The solutions agreed upon should be incorporated, with such of the changes proposed in the Chandler Bill as are approved after further examination, in a complete revision of Section 77B contained in a statute which is carefully and scientifically constructed, and which will permit of further amendment without confusion.

8. Temporarily, and until agreement has been reached on the solution of most of the existing problems, Section 77B should be amended only in connection with specific problems. A premature attempt at a complete revision can only result in a temporary statute which will require further amendment almost immediately. The Bankruptcy Act, adopted in 1898, was drawn so well that only minor changes have been made in it during its life of almost forty years. A complete revision of Section 77B should be drawn with equal care and skill.