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CORPORATIONS-REORGANIZATION UNDER BANKRUPTCY ACT-JURISDICTION EXTENDING THROUGHOUT UNITED STATES AS SUBSTITUTE FOR ANCILLARY PROCEEDINGS

CORPORATIONS—REORGANIZATION UNDER BANKRUPTCY ACT—JURISDICTION EXTENDING THROUGHOUT UNITED STATES AS SUBSTITUTE FOR ANCILLARY PROCEEDINGS—On petition of debtor railroad seeking reorganization under Section 77, the District Court for the Northern District of Illinois, eastern division, enjoined non-resident pledgees from exercising their power of sale.[1] Extra-territorial jurisdiction was grounded on Section 77B, giving to the District Court "exclusive jurisdiction of the debtor and its property wherever located." [2] *Held*, that "exclusive jurisdiction" means control over the debtor's property wherever located within the United States, and to protect the property process may issue affecting persons anywhere within the United States. *Continental Illinois Nat. Bank v. Chicago, Rock Island & Pacific Ry.*, (U. S. 1935) 55 Sup. Ct. 595.

When contrasted with the rule in equity receiverships the case is pleasantly

[1] On the merits, the question was whether sale would hinder the preparation of an acceptable plan of reorganization.

[2] 48 Stat. 912, U. S. C. tit. 11, sec. 207(a), p. 123.

startling. Traditionally the equity court took custody only of property within a limited territory and its process was similarly confined. The receiver had no official status outside of the district. Ancillary receiverships were mandatory.[3] In this manner, but at an enormous cost and with loss of efficiency resulting from lack of centralized control, local creditors were protected.[4] Prompt action was well nigh impossible.[5] All this was well illustrated in the recent *Insull* cases [6] involving an attempt to restrain a sale, disastrous in effect, by non-resident pledgees of receivee's collateral on a *quasi in rem* theory with jurisdiction being based on the receivee's equity of redemption which was said to be within the jurisdiction of the District Court on some theory approximating the *mobilia sequentus personam* fiction common to taxation problems. The result was failure.[7] The rule in standard bankruptcy cases is intermediate. The trustee takes title to the bankrupt's properties wherever located, even though outside the federal district,[8] but the process of the bankruptcy court is confined within the district limits.[9] This arrangement changes the character of the ancillary aid necessary.[10] But, though an improvement over receivership practice, it was obviously

[3] Booth v. Clark, 17 How. (58 U. S.) 321 (1854); Great Western Mining Co. v. Harris, 198 U. S. 561, 25 Sup. Ct. 770 (1905).

[4] Ancillary receiverships in equity are independent of the principal receivership and all jurisdictional requirements have to be satisfied. Accordingly, a proceeding for the appointment of an ancillary receiver must be instituted by the creditor in that jurisdiction; the receiver appointed in the principal receivership cannot petition *ex parte* for an ancillary receivership. Moreover, the ancillary court is under no obligation to conform its proceedings to those of the principal court, and if it believes that such action would prejudice resident creditors within the jurisdiction, it will refuse to do so. It must be apparent, then, that ancillary receiverships in equity are really ancillary administrations, as distinguished from exercises of ancillary jurisdiction in aid of a single court administering all the assets.

[5] This is particularly emphasized on the fact set-up in the instant case. See also the need for speed in Guaranty Trust Co. v. Fentress, (C. C. A. 7th, 1932) 61 F. (2d) 329.

[6] Cherry v. Insull Utility Investments, (D. C. N. D. Ill. 1932), 58 F. (2d) 1022, reversed *sub nom* Guaranty Trust Co. v. Fentress, (C. C. A. 7th, 1932) 61 F. (2d) 329.

[7] The implication of the decision in the instant case is that Guaranty Trust Co. v. Fentress, (C. C. A. 7th, 1932) 61 F. (2d) 329, was rightly decided: not only was the equity conceded to be outside the district (see 55 Sup. Ct. 595 at 609) but nation-wide process was also found necessary—all to reach the results aimed at in Guaranty Trust Co. v. Fentress, supra.

[8] GLENN, LAW GOVERNING LIQUIDATION 314 (1935).

[9] Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300 at 310, 311, 32 Sup. Ct. 96 (1911).

[10] An ancillary proceeding in bankruptcy is in no sense an independent proceeding, as is the ancillary equity receivership, but is invoked by the trustee appointed by the bankruptcy court having the administration of the bankrupt's estate, and is strictly incidental to and in aid of the latter court. Whether such ancillary jurisdiction shall be invoked rests within the discretion of the bankruptcy court approving the petition in bankruptcy. In so far as a bankruptcy court wishes to assert jurisdiction *in personam* over persons outside its territorial limits, it may and must, through its trustee, invoke the ancillary jurisdiction of a court whose jurisdiction *in personam* reaches such person.

inadequate to reach the results of the instant case. Oddly enough, the provision in Section 77 approximates the provision in standard bankruptcy.[11] That a different interpretation was preferable is the only conclusion possible in light of the policy considerations underlying Section 77.[12] And yet, if this means that ancillary proceedings will never be used in railroad reorganizations the result will not always be a happy one. An ancillary proceeding may be highly desirable, and the best arrangement would seem to be one in which the whole matter is left to the sound discretion of the district court.[13] If that stage has been reached, then all is well and fortunately such is the implication of recent cases.[14]

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This, however, is said in no way to interfere with the exclusive control of the bankruptcy court.

[11] Compare Section 77a with Section 2.

[12] The purpose of the section, *inter alia*, was to extend the jurisdiction of the bankruptcy court territorially to avoid the necessity for bringing ancillary proceedings. See 76 Cong. Rec., pp. 2927, 4880 (1933); Billig, "Corporate Reorganization—Equity vs. Bankruptcy," 17 MINN. L. REV. 237 at 255 (1933).

[13] That San Francisco creditors must present their claims to a Chicago court seems a harsh proceeding. Some mitigating process will undoubtedly be worked out but, whatever it will be, it will be the handiwork of judges and not of Section 77.

[14] In Ex parte Baldwin, 291 U. S. 610, 54 Sup. Ct. 551 (1934), involving Section 77, the Court clearly indicated that ancillary proceedings, in aid of the primary court's administration, may be necessary (see 291 U. S. 610 at 614, 615). That, also, is the implication of the Court's statement in the instant case that the policy is to avoid ancillary administration "as far as possible." Continental Illinois Nat. Bank v. Chicago, Rock Island and Pacific Ry., (U. S. 1935) 55 Sup. Ct. 595 at 609.