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BANKRUPTCY - SUSPENSION OF STATE STATUTES REGULATING GENERAL ASSIGNMENTS

BANKRUPTCY — SUSPENSION OF STATE STATUTES REGULATING GENERAL ASSIGNMENTS — An insolvent debtor made a voluntary assignment of all his property to the defendants for the benefit of his creditors. The plaintiff, a non-assenting creditor, brought garnishment proceedings against the defendants, contending that the state statute governing general assignments had been suspended by the National Bankruptcy Act. The Wisconsin Supreme Court was of the opinion that only that portion of the Act which provides for a discharge of the assignor from his debts was suspended.[1] On appeal to the United States Supreme Court the decision was *affirmed. Pobreslo v. Joseph M. Boyd Co.*, 287 U. S. 518, 53 Sup. Ct. 262, 77 L. ed. 343 (1933).

A similar situation arose in Texas. The Texas statute provided for a discharge of the debtor as to all consenting creditors who received payment of

[1] Pobreslo v. Guaranty Mortgage Corp., (Wis. 1932) 242 N. W. 725.

one-third of their claim. The Texas Supreme Court [2] held that the statute was not an insolvent law but merely prescribed a mode of administration under assignments which would be good at the common law unaided by the statute. Upon appeal to the United States Supreme Court the decision was *affirmed. Johnson v. Starr*, 287 U. S. 527, 53 Sup. Ct. 265, 77 L. ed. 346 (1933).

The Federal Bankruptcy Act was passed by Congress pursuant to the power delegated by the Constitution to establish "uniform Laws on the subject of Bankruptcies throughout the United States." [3] It follows that state legislation amounting to insolvency and bankrupt laws, at least where it overlaps the field covered by the national Act, has been suspended, even though no proceedings have been taken under the national Act.[4] Hence, the status of a statute governing general assignments becomes very important where, as in the instant cases, proceedings thereunder are subjected to collateral attack. If the statute is an insolvency law the proceedings are void.[5] Unfortunately the courts have not laid down any well-defined rules as to what constitutes an insolvency law. The three principal characteristics of the National Bankruptcy Act are the provisions for involuntary proceedings, equitable distribution of the assets, and the discharge of the debtor. Logically a state insolvency law should possess the same three features. Statutes governing general assignments do not call for involuntary proceedings. For this reason it has been argued that they should not be classified as insolvency laws.[6] However, the courts have refused to follow this argument and have held that if the statute provides for a discharge of the debtor it is an insolvency law.[7] The decision of the court on the Texas statute is more liberal. A discharge provision is valid if the act of the creditor in choosing to come in under the assignment, and not the mandate of the statute, effects the discharge.[8] The decision on the Wisconsin statute definitely overrules several lower federal court decisions to the effect that not even discharge is an essential element of an insolvency law.[9] The suspension of only that part of the Wis-

[2] Johnson v. Starr, (Tex. 1932) 47 S. W. (2d) 608.

[3] Article 1, sec. 8 of the Constitution of the United States.

[4] 5 REMINGTON, BANKRUPTCY, 3d ed., sec. 2106 (1923). See 11 MICH. L. REV. 60 (1912) and 15 MICH. L. REV. 68 (1916).

[5] 5 REMINGTON, BANKRUPTCY, 3d ed., sec. 2106 (1923). See 29 COL. L. REV. 519 (1929) and 42 HARV. L. REV. 823 (1929).

[6] 5 REMINGTON, BANKRUPTCY, 3d ed., sec. 2110 (1923).

[7] Closser v. Strawn, (D. C. W. D. Pa. 1915) 227 Fed. 139; In re F. A. Hall Co., (D. C. Conn. 1903), 121 Fed. 992; Ketcham v. McNamara, 72 Conn. 709, 46 Atl. 146 (1900); Pelton v. Sheridan, 74 Or. 176, 144 Pac. 410 (1914); Capital Lumber Co. v. Saunders, 26 Idaho 408, 143 Pac. 1178 (1914); Hasbrouck v. La Febre, 23 Wyo. 367, 152 Pac. 168 (1915). See Williston, "The Effect of a National Bankruptcy Law Upon State Laws," 22 HARV. L. REV. 547 (1909) and 41 YALE L. J. 603 (1932).

[8] This same method of reasoning was applied by the court in In re McElwain, (C. C. A. 3d, 1924) 296 Fed. 112. For a criticism of this case see 35 DICK. L. REV. 78 (1931).

[9] In re Smith, (D. C. Ind. 1899) 92 Fed. 135; In re Salmon & Salmon, (D. C. W. D. Mo. 1906) 143 Fed. 395; In re Weedman Stove Co., (D. C. E. D. Ark. 1912) 199 Fed. 948; Hammond v. Lyon Realty Co., (C. C. A. 4th, 1932) 59 F. (2d) 592.

consin statute which is in conflict with the national Act is contrary to the procedure of several state courts, which have suspended the whole statute.[10]

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[10] A Maine statute providing for discharge was held suspended in Moody v. Port Clyde Development Co., 102 Me. 365, 66 Atl. 967 (1907). The legislature later amended the statute by repealing the discharge provision and in Carter, Carter Meigs Co. v. Steward Drug Co., 115 Me. 289, 98 Atl. 809 (1916), the statute was upheld. See 16 MICH. L. REV. 540 (1918), noting the leading case of Stellwagen v. Clum, 245 U. S. 605, 38 Sup. Ct. 215, 62 L. ed. 507 (1918).