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BANKRUPTCY - DISPOSITION OF SURPLUS ASSETS

RECENT DECISIONS

BANKRUPTCY — DISPOSITION OF SURPLUS ASSETS — The Virginia Oil & Refining Co., a Delaware corporation with all of its business in Texas, went into bankruptcy in 1923. In 1931 hitherto worthless property became valuable and it appeared that there would be a large surplus after all of the creditors were paid. Various receivers in both the state and federal courts of Delaware and Texas, representing groups claiming to be stockholders of the company (which had forfeited its charter) and others claiming to represent the company, sought control of the assets. The bankruptcy court appointed a receiver, to whom the trustee was to turn over the surplus, and a special master to take evidence and discover who was rightfully entitled to the proceeds. *Held*, such action was proper. The bankruptcy court had exclusive jurisdiction to determine as it saw fit the proper recipients of the surplus. *Berl v. Crutcher*, (C. C. A. 5th, 1932) 60 F. (2d) 440.

There is no direct authority in the Bankruptcy Act for such a decision. The Act does not contemplate or provide for the disposition of such a surplus.[1] The provisions in sec. 66b[2] concerning a return to the bankrupt of unclaimed dividends, and in sec. 70f[3] for a revesting on composition, form the closest analogies. The court, in *In re Antigo Screen Door Co.*,[4] allowed such proceedings under sec. 2(7),[5] but other courts have based such decisions on the broader ground that, while this is not strictly a proceeding in bankruptcy, the court has jurisdiction to decide who is rightfully entitled to surplus, under the inherent power in any court to make just disposition of a fund which has come properly into its hands.[6] Although most of the decisions are from state courts, it is well settled that the bankrupt is entitled to whatever surplus remains.[7] It would

[1] "In other words, insolvency, inability to pay his debts in full, is the basis of the whole proceeding, and the act of Congress in all its provisions has reference to that situation. The equitable distribution of all the insolvent's property among his creditors is the end and purpose of the law. The act did not contemplate, and therefore did not provide for the disposition of, a balance in the hands of the trustee after the payment of creditors in full. In such a situation, where in fact all the creditors are paid in full, every principle of equity would require the payment of such balance to the bankrupt, not because of any provision in the Bankruptcy Act, but because equity would clearly demand it." In re Lenox, (D. C. W. D. Pa. 1924) 2 F. (2d) 92. Johnson v. Norris, (C. C. A. 5th, 1911) 190 Fed. 459.

[2] "Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt."

[3] "Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him."

[4] (C. C. A. 7th, 1903) 123 Fed. 249.

[5] "(7) cause the estates of bankrupts to be collected, reduced to money and distributed and determine controversies in relation thereto. . . . "

[6] In re Goss, (D. C. N. D. Ga. 1930) 43 F. (2d) 746; see cases in n. 1, supra.

[7] Page v. Waring, 76 N. Y. 463 (1879); Boyd v. Olvey, 82 Ind. 294 (1882); Robertson v. Howard, 82 Kan. 588, 109 Pac. 696 (1910); Steevens v. Earles, 25

naturally follow that the bankruptcy court should have the power to decide, when necessary, who is the successor to the bankrupt's right; and the court, having the exclusive possession of the property in question, has the exclusive right to determine its disposition.[8] Courts have gone further and allowed decision, in the bankruptcy proceedings, of a disputed claim by a third party against the bankrupt in regard to the surplus.[9] There is certainly a strong policy of convenience favoring a settlement as complete and final as possible, even though it really amounts to deciding a second suit. If the court has the power to determine or direct a disposition of the surplus, there seems to be no valid ground of objection to the appointment, in the exercise of its equity powers,[10] of those not unusual instruments of equity, the receiver and special master.

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Mich. 40 (1872); Wade v. Goza, 78 Ark. 7, 96 S. W. 388 (1906); Hunter v. Hodgson, (Tex. Civ. App. 1906) 95 S. W. 637.

[8] In re Ohl, (D. C. N. D. N. Y. 1919) 260 Fed. 338; In re McGuire, (D. C. S. D. N. Y. 1876) Fed. Cas. No. 8813, and see cases supra, n. 6.

[9] In re McGuire, (D. C. S. D. N. Y. 1876) Fed. Cas. No. 8813.

[10] Harris v. M. F. Shafer & Co., (C. C. A. 8th, 1925) 10 F. (2d) 351; In re Young, (C. C. A. 4th, 1923) 294 Fed. 1; In re Concentrated Products Corp., (C. C. A. 3d, 1930) 38 F. (2d) 745; In re Association Dairy Co., (D. C. Conn. 1918) 251 Fed. 749.