University of Pennsylvania Law Review

And American Law Register

FOUNDED 1852

Published Monthly, November to June, by the University of Pennsylvania Law School. Copyright 1939, by the University of Pennsylvania.

$4.50 PER ANNUM FOREIGN, $5.00 CURRENT COPIES, 75 CENTS

LEGISLATION

Compositions and Extensions Under the Chandler Act

The Bankruptcy Act of 1898[1] included provisions for a composition between a debtor and his creditor, but Section 12, in which these provisions were found never proved to be particularly popular due to its cumbersome and slow proceedings.[2] In 1933 the Act was amended by the

1. 30 STAT. 544 (1898), 11 U. S. C. A. 1 *et seq.* (1927).
2. Weinstein, *The Debtor Relief Chapters of the Chandler Act* (1938) 5 PITTS. L. REV. 1, 14; Mulder and Solomon, *Effect of the Chandler Act on General Assignments and Compositions* (1939) 87 U. OF PA. L. REV. 763, 787.

addition of Section 74 [3] which was designed to speed up composition proceedings and meet some of the procedural and substantive difficulties present under Section 12 and also to provide for an extension of secured claims as well as a composition of unsecured claims.[4] Unfortunately, however, many ambiguities were present in Section 74.[5] These led to litigation which delayed the proceedings considerably and led to a reluctance on the part of debtors to avail themselves of the section. The presence of both Sections 74 and 12 necessarily caused some conflict which merely increased the confusion.[6] The new Chandler Act [7] is an attempt to clarify this complicated situation and provide an adequate method for the debtor to obtain relief. There are two new Chapters, XI and XII, designed expressly to replace Sections 12 and 74, and to simplify and speed up the procedure and at the same time to provide an inexpensive and attractive method for the debtor to rehabilitate himself. With this aim in mind many changes have been made from the old Sections 12 and 74, making it worthwhile to examine the more important innovations to see if an adequate replacement for the common-law composition and statutory assignment has at last been found.

WHO MAY EFFECT AN ARRANGEMENT [8]

In proceedings under Chapter XI it is possible for any debtor who might become a bankrupt under the general terms of the Act [9] to effect an arrangement with his creditors as to his unsecured debts only.[10] Corporations may avail themselves of this Chapter,[11] but have been forbidden the use of Chapter XII,[12] dealing with arrangements concerning secured as well as unsecured debts and providing for an extension or a scaling down of these debts. The primary reason for this is that Chapter X, which has replaced Section 77B, provides an adequate solution for corporate financial problems in relation to secured debts in that it provides for reorganization which is not contemplated by Chapter XII. Apparently it was felt that in the case of unsecured debts there would be no need

3. 47 STAT. 1467 (1933), 11 U. S. C. A. 201 (1937).

4. § 12 had dealt only with unsecured claims.

5. For extended analysis and criticism of § 74 see Garrison, *The New Bankruptcy Amendments: Some Problems of Construction* (1933) 8 WIS. L. REV. 291; Hanna, *Recent Additions to the Bankruptcy Act* (1933) 1 GEO. WASHINGTON L. REV. 448; Kinnane, *Some Aspects of Section 74 of the Bankruptcy Act* (1934) 9 NOTRE DAME LAWYER 291; Mulder and Solomon, *Effect of the Chandler Act Upon General Assignments and Compositions* (1939) 87 U. OF PA. L. REV. 763; Notes (1933) 33 COL. L. REV. 704; (1934) 43 YALE L. J. 1285.

6. See Mulder and Solomon, *supra* note 5, at 788.

7. 52 STAT. 840, 11 U. S. C. A. 1 *et seq.* (Supp. 1938). For a survey of the various aspects of the Chandler Act see Wilde, *The Chandler Act* (1938) 14 INDIANA L. J. 93; Levi, *Corporate Reorganization* (1938) 23 MINN. L. REV. 1; Gerdes, *Corporate Reorganizations: Changes Effected by Chapter X of the Bankruptcy Act* (1938) 52 HARV. L. REV. 1; Heuston, *Corporate Reorganizations under the Chandler Act* (1938) 38 COL. L. REV. 1199; Note (1938) 87 U. OF PA. L. REV. 105. See also Notes (1937) 23 VA. L. REV. 74; 46 YALE L. J. 1177, 1181, both of which were written prior to the passing of the Act. For a detailed discussion and comparative analysis of the new act see WEINSTEIN, THE BANKRUPTCY LAW OF 1938 (1938).

8. As will be explained *infra* "arrangement" is the term now used in the place of "composition" and "extension".

9. § 306 (3).

10. § 306 (1).

11. §§ 4 (a), 146 (2), unlike Section 74 of the old Act which expressly excluded them from its scope (§ 74 (a); *In re* Collins, 75 F. (2d) 62 (C. C. A. 8th, 1934)) thus forcing them either to come under Section 77B or the antiquated provisions of Section 12.

12. § 406 (6).

in many cases for corporations to go through the extensive formalities of reorganization; hence Chapter XI was made available in that situation. However, in this connection several problems are posed by the Act. While it has been assumed *supra* that a corporation will not attempt to affect a reorganization under Chapter XI, that possibility is not precluded by the Chapter which might be interpreted as providing a method of reorganization. Chapter XI makes no provision for stockholders of the corporation and their status is open to some doubt.[18] Settlement of this problem by litigation will result in delay and expense.

Under both Chapters XI and XII, as under the Act of 1898,[14] the proceedings are voluntary only.[15] It would be illogical to have involuntary petitions under these chapters, for the debtor may desire to liquidate the business in straight bankruptcy whereas an arrangement would contemplate its continuation. Thus an involuntary petition would be an impossibility, since a debtor could not be forced to remain in business. However, at least one subsidiary problem is raised by the voluntary nature of the proceedings. Under Chapter X a petition on the part of the creditors is deemed not to be filed in good faith if adequate relief could be obtained by a debtor's petition under Chapter XI.[16] *Quaere* whether if the debtor refuses to bring a petition under Chapter XI this would be sufficient to show that the creditor could not get adequate relief under this Chapter?[17]

When an Arrangement May Be Affected

Under both Chapters a debtor may file a petition when he is insolvent in the equity sense,[18] i. e., unable to pay his debts as they mature. Accordingly, he may file an involuntary petition at any time without waiting for straight bankruptcy proceedings to be instituted.[19] This was likewise true under Section 74,[20] but under Section 12 only a bankrupt could offer terms of composition.[21] Thus, a corporation wishing to affect a composition could do so only after adjudication, since it could proceed only under Section 12.[22] In many cases this might be too late for rehabilitation. The new Chapter XI is in accord with the trend toward rehabilitation rather than liquidation.

---

13. See Mulder and Solomon, *supra* note 5, at 790.

14. See *In re* Brooks Sample Furniture Co., 4 F. Supp. 858, 859 (D. Conn. 1933).

15. XI, § 306 (5); XII, § 406 (9).

16. § 146 (2).

17. See Heuston, *supra* note 7, at 1208. It is to be noted that Chapter XII provides that a creditor may submit a counterplan to the debtor (§ 466). The creditor's proposal must be approved by creditors holding 25 per cent. of the debts of a class of creditors and 10 per cent. of all debts to be affected before it can be submitted to the debtor. If the debtor accepts and the other requirements of the Act are met, the plan becomes effective. This is probably what, as a practical matter, would ensue even absent any such express provision, if a creditor suggests a feasible plan.

18. XI, § 323; XII, § 423. Insolvency is made a jurisdictional requirement by these sections and must be averred in the debtor's petition.

19. XI, § 322; XII, § 422. These sections also specify the venue in the case of an original petition to be in that court which would have jurisdiction of a bankruptcy petition for the debtor's adjudication. § 74 (a) had failed to specify the venue in such a case.

20. § 74 (a). Brunn v. Wichser, 75 F. (2d) 25 (C. C. A. 3d, 1934).

21. § 12 (a).

22. See *supra* note 11.

Chapter XI permits a debtor to file a petition thereunder after he is adjudicated a bankrupt.[23] Chapter XII, copying the old Section 74,[24] provides that a petition may not be filed after adjudication.[25] The reason for this distinction is not apparent and its soundness is open to question. It would seem that the "going concern" value of the debtor's business would enable him to pay bigger dividends than if he were forced into liquidation.

What May Be Done by an Arrangement

The Act of 1898 permitted a composition as to unsecured debts only.[26] Failure to define expressly "composition" raised few, if any, administrative difficulties. This was so because under Section 12 it was possible to offer a certain consideration for the release of a claim; on acceptance by the required number of creditors[27] and confirmation by the court[28] the debtor was discharged from the balance.[29] Thus the common-law definition of composition, an offer to pay a certain percentage of a claim in return for a full release,[30] was preserved. Under Section 74 (a) a plan for either an extension or a composition could be filed; while certain distinctions were attempted between these terms, they nowhere were actually defined. However, Section 74 (h), providing that the terms of an extension proposal could affect secured as well as unsecured debts, but silent as to a composition, apparently meant that only an extension could affect secured debts. This is further borne out by the fact that under Section 12 secured debts could not be affected.[31] However 74 (i) provided that confirmation of a proposal should be binding, "Provided however, that such extension or composition shall not reduce the amount or impair the lien of any secured creditor, but shall affect only the time and method of liquidation." This unfortunate choice of words led some writers[32] to believe that a composition or an extension could affect the time and method of liquidation of a secured creditor.[33] Whatever confusion may have been caused by the apparent overlapping of compositions and extensions has been alleviated by the Chandler Act. For these vexatious terms the all-inclusive "arrangement" is substituted. This term is defined in Chapter XI to mean any "plan of a debtor for the settlement, satisfaction, or extension

---

23. § 321. Under § 12 terms of composition could be offered before or after adjudication. *In re* Moyer's Home Store, Inc., 26 F. (2d) 146, 147 (E. D. Pa. 1927).

24. § 74 (a).

25. § 421. It is interesting to note that Chapter X, which has replaced § 77B and is restricted to corporations, also provides that a petition may be filed before or after adjudication. See § 127.

26. § 67 (d).

27. § 12 (b).

28. § 12 (d).

29. § 14.

30. Continental Nat'l Bank of Chicago v. McGeoch, 92 Wis. 286, 66 N. W. 606 (1896); Rockville Nat'l Bank v. Holt, 58 Conn. 526, 20 Atl. 669 (1890). Note (1933) 11 N. Carolina L. Rev. 310.

31. § 67 (d).

32. See Weinstein, *Section 74: Compositions and Extensions* (1933) 7 J. of Nat'l Ass'n of Ref. in Bktcy. 140. See also Garrison, *op. cit. supra* note 5, at 292, 299, 300.

33. While this interpretation has been adopted by reputable authorities (*supra* note 32) it is submitted that it is obtained by a mere quibbling with words. While the section is poorly drafted, the Congressional intent to exclude secured debts is shown by the explanation of extension proposals in the four subsections preceding § 74 (i) and the fact that they are expressly excluded from § 12, the composition section. If the common-law definition of composition had been followed and extension had been interpreted literally, i. e., a proposal to extend the time of payment *in full*, much needless confusion would have been eliminated.

of time for the payment of his unsecured debts upon any terms".[34] Substantially the same definition is used in Chapter XII except that it is there provided that an arrangement shall affect secured debts [35] and may affect unsecured debts.[36] This latter provision is designed merely to permit a debtor to save time by including in the same proceeding both his secured and unsecured debts. Consequently, an arrangement under Chapter XII may contemplate either an extension or a composition as to both secured and unsecured debts. This removes much confusion caused by the attempt in the former Act to preserve a distinction between composition and extension proposals.

An important innovation in Chapter XII permits scaling down of secured debts by means of an arrangement.[37] Heretofore secured debts could be affected only as to time of payment. They could not be reduced in amount;[38] hence the necessity for "compositions" and "extensions". Now the debtor may reduce his secured debts and thus modify or alter rights of the lienholders. Although the constitutionality of thus affecting secured claims has been questioned,[39] an analogous provision in 77B has been upheld.[40] The provision in Chapter XII is designed to aid those debtors, excepting corporations, who own realty encumbered by a mortgage. By utilizing Chapter XII they may reduce the amount of their secured indebtedness and retain their property.[41] Under the new plan the social policy of rehabilitation is carried one step further. Perhaps this result may be criticized on the ground that any plan which affects a creditor's security will have the effect of impairing credit.[42]

One of the major difficulties under Section 74 in connection with mortgage proposals seems but partially cured. It was there a prerequisite that an extension proposal affecting both secured and unsecured claims be accepted in writing by a majority in number and amount of such claims before it could become effective.[43] Since both secured and unsecured creditors voted as one class,[44] it was possible for one large unsecured creditor to control the whole proceedings.[45] This defect, if it be so considered,[46] has been partially corrected by the provision that the debtor may deal with his cred-

---

34. § 306 (1).
35. §§ 406 (1), 461 (1).
36. § 461 (3).
37. §§ 406 (1), 461 (1).
38. § 74 (i). See Cotton v. Etheridge, 84 F. (2d) 129 (C. C. A. 4th, 1936); *In re* Iverson, 85 F. (2d) 159 (C. C. A. 7th, 1936). *Cf. In re* Mouton, 17 F. Supp. 81 (W. D. La. 1936).
39. Note (1937) 46 YALE L. J. 1177, 1183 and n. 29 thereunder.
40. *In re* Los Angeles Lumber Products Co., 24 F. Supp. 501 (S. D. Cal. 1938). The authorities cited by this court indicate that the Circuit Courts of Appeals of the 2d, 4th, 7th and 8th Circuits have held § 77B to be constitutional. The Supreme Court has never directly passed upon the question.
41. This result was not attainable under Section 74, the extension provisions of which were of little help to the average debtor.
42. Weinstein, *op. cit. supra* note 32, at 142. If a creditor felt that his security was about to be reduced he would hesitate to lend money to anyone who he felt was either in straitened circumstances or might be in the near future. On the other hand, the resulting cautiousness in lenders might have the desirable prophylactic effect of reducing the amount of over-mortgaged property, thereby preventing false credit. See WEINSTEIN, THE BANKRUPTCY LAW OF 1938 (1938) 260.
43. § 74 (e).
44. *In re* Sterba, 74 F. (2d) 413 (C. C. A. 7th, 1935).
45. WEINSTEIN, *loc. cit. supra* note 42.
46. It must be admitted that this creditor has the most invested and stands to lose the most, so perhaps it is only just that he control the proceedings.

itors by classes and that the vote shall be by classes.[47] Thus a debtor may possibly place a recalcitrant secured creditor in a special class. However, adequate protection must be given this creditor either by payment of the value of his debt in cash or by sale of the property affected by his lien, the proceeds being transferred to him.[48] If the property is sold, the debtor loses what is probably his biggest asset; and he will be unable to pay cash or else he would not be trying to affect an arrangement. Where the debtor is dealing with a recalcitrant unsecured creditor he is likewise faced with a problem. If, for example, there are five mercantile creditors, four of whom are willing to accept the plan, but the fifth is not and his claim is sufficiently large to be a bar to the proceedings if he does not accept, it would seem a violation of "due process" to arbitrarily place this creditor in a class composed only of his claim unless it is provided that he be paid in full. Such a provision might naturally react unfavorably on the assenting creditors. Perhaps the court should be given the drastic power of confirming a fair and equitable arrangement whether or not the requisite number of creditors accept.[49] Such a power if wielded properly would do much for rehabilitation and avoidance of straight bankruptcy.

The provision for dealing with the creditors by classes seems to be entirely new to bankruptcy legislation. Previously all creditors were required to be dealt with on a parity,[50] but under both chapters of the new Act it is now provided that the arrangement may deal with the debts on a parity *or* may divide the debts into classes and deal with the classes in different ways or upon different terms.[51] This is a useful provision; by its use small claims may be paid in full [52] and thus eliminated while larger claims may be classified according to their nature, i. e., mercantile claims, loans, etc. Unfortunately no limits are set by the Act to aid in determining what types of classifications are permissible. As has been previously suggested it would seem that certain arbitrary and unreasonable classifications, such as the division of the same types of creditors into different classes, would be violative of the "due process" clause. It seems almost certain that disputes concerning classifications will arise, causing delay and

47. XI, § 362; XII, § 468.

48. § 461 (11) states that the debtor must provide adequate protection for an affected class of creditors which does not accept the arrangement by the required two-thirds majority and enumerates the ways in which this protection may be given.

49. It was thought that under Section 74 the court had that power with reference to an extension proposal, under the provision that if the debtor failed to obtain the acceptances of a majority of creditors he could submit a proposal which was to the best interests of all the creditors. § 74 (e). If this be read in connection with § 74 (g) it would seem that the court could confirm the proposal if it were satisfied that (1) the plan was equitable and feasible, (2) for the best interest of the creditors, (3) the debtor was not guilty of any acts which would bar a discharge, and (4) that the offer and acceptance are in good faith.

Then it would appear that the court could confirm the proposal over the "vociferous objections of 100% of the creditors" provided, in the court's opinion, the plan was feasible and equitable. See Adams, *Practice and Procedure Under Section 74* (1936) 11 J. OF NAT'L ASS'N OF REF. IN BKTCY. 45; Note (1937) 46 YALE L. J. 1177, 1181. But see MOORE AND LEVI, GILBERT'S COLLIER ON BANKRUPTCY (4th ed. 1937) 1335, intimating that § 74 (e) is probably unconstitutional. However, this summary power of the court never seems to have been successfully invoked. See, for example, *In re* Nordseth, 79 F. (2d) 645 (C. C. A. 7th, 1935); *In re* Entler, 97 F. (2d) 708 (C. C. A. 9th, 1938), where there is an inference that had the requirements of § 74 (g) been met, the court could have confirmed the proposal, even though a majority of the creditors did not accept.

50. Adams, *loc. cit. supra* note 49, at 46.

51. XI, § 357 (1); XII, § 461 (1).

52. This was part of the Congressional intent. See *Analysis of H. R. 12889*, 74th Congress, 2d Sess. (1936) 42.

expense. It is to be hoped that the courts will be liberal in their interpretation of this section of the Act and permit the debtor to divide his creditors into classes as he may wish, absent of course any fraud or illegal intent to prefer a favored creditor.

Under Chapter XI the arrangement may affect only those debts which would be provable under the general terms of the Act.[53] However, when there is an extension of time for the payment of debts in full, debts are defined to "include all unsecured debts, demands or claims of whatever character against a debtor, whether or not provable as debts under Section 63, and whether liquidated or unliquidated, fixed or contingent".[54] Apparently the reason for this distinction is that it is not desired to release debts not provable under the general terms of the Act by payment of less than the full amount. This distinction appears clearly here, but Chapter XII may present a problem in construction. By Section 406 (2) it is provided that " 'Claims' shall include claims of every character against a debtor or his property, secured or unsecured, liquidated or unliquidated, fixed or contingent, and whether or not provable under Section 63 of the Act."; by Section 406 (7) it is provided that "Debts shall include all claims", so that in effect the definition *supra* is one of debts. If we read this definition with Section 461 (3) which provides that an arrangement may not only deal with secured debts but "May provide for treatment of unsecured debts . . .", it would seem that under Chapter XII debts which are not provable under the Act may still be settled for less than the full amount. Thus we reach a result contrary to that obtained in Chapter XI. This seems to afford a loophole—but only if the courts permit it—for the debtors who have both secured and unsecured claims and so can avail themselves of Chapter XII and effect a composition of debts not provable under the general terms of the Act.

Provisions for Acceptance by the Creditors and Confirmation by the Court

In order to speed up procedure two important new features have been added by the Chandler Act. The first is that acceptances may be obtained by the debtor before or after the filing of a petition.[55] The apparent purpose of this provision is to enable the debtor to sound out his creditors on the arrangement proposal prior to the filing of his petition, and if he gets their acceptances in writing to use them without having again to get acceptances after the filing of the petition.[56] The new

53. § 63 enumerates provable debts.

54. § 307.

55. XI, § 336 (4); XII, § 436 (4).

56. Under Section 12 of the old Act it was impossible for the debtor to obtain acceptances before he was examined at the creditors' meeting. Examination was mandatory under § 12 (a). The purpose was to discover all assets and liabilities of the debtor and to prevent fraud on his part. Under the Chandler Act the same end is reached by requiring the debtor's petition to be accompanied by a schedule and a statement of affairs and of the debtor's executory contracts. (§ 324.) It has been held under § 12 that if the debtor made an offer of composition before examination there could be no confirmation because the debtor did not act in good faith. Sheehan & Egan v. North Eastern Shoe Co., 54 F. (2d) 50 (C. C. A. 1st, 1931); see *In re* Jablow, 15 F. (2d) 131, 132 (C. C. A. 2d, 1926). For other examples of what the courts consider good faith see Platt v. Schmidt, 87 F. (2d) 437 (C. C. A. 8th, 1937); *In re* Augustyn, 87 F. (2d) 577 (C. C. A. 7th, 1937). Under Section 74 it was not mandatory that the debtor be examined at a creditors' meeting before he could make an offer of an extension or a composition. § 74 (d) provided that "the debtor may be examined" at the first creditors' meeting. (This provision has been criticized on the ground that examination should be mandatory. See Weinstein, *loc. cit. supra* note 32, at 142.) But neither was there a provision for the use of acceptances obtained prior to the filing of the petition.

procedure will enable the debtor to save time in getting acceptances to his proposal. In line with this time saving device the second new important feature provides for an informal proceeding if there has been 100 per cent. prior acceptance by the creditors. All that is then necessary is that the debtor informally present the arrangement to the court and absent any bad faith or fraud the court must confirm the proposal.[57] At first this seems to react both to the benefit of the creditors and the debtor, but upon analysis it would seem that these provisions give the debtor a powerful weapon. If any creditor refuses to accept the arrangement prior to the filing of the petition, the debtor may either threaten to go into straight bankruptcy or else to file proceedings anyway under Chapter XI or Chapter XII and take a chance on securing the requisite number of acceptances in the absence of 100 per cent. accord. The effect of this may be to bring the common-law composition back into its own. The debtor may attempt a common-law composition with his creditors; if they are reluctant to accept his offer he may threaten to file proceedings under the Chandler Act, using the acceptances he has already obtained. If he receives 100 per cent. acceptance to the plan then there would seem to be little use for the Act since the plan will probably include a provision for discharge.[58] This situation is not necessarily undesirable; if the debtor's plan is entirely inequitable and unfeasible probably none of the creditors will accept even in the face of a threat of proceedings under the Chandler Act; and if 90 per cent. in amount of the creditors are satisfied with the plan there would seem to be no great harm in "bulldozing" the remaining 10 per cent. into accepting. It is also to be remembered that even if some creditors do accept, the plan will not be approved by the court unless feasible.[59] There are certain advantages to be derived from proceeding under the Act. First, the debtor will be granted a judicial discharge which he would not obtain by virtue of a common-law composition. Second, the plan will be binding on dissenting creditors, which is not true in the case of a common-law composition. Furthermore, if the debtor chooses to use a statutory assignment there is considerable doubt notwithstanding the case of *Johnson v. Star* [60] whether a release provision in the assignment is valid. Thus it would seem likely that the average debtor would prefer to come under the Act, provided he is assured that the proceedings will be speedy and that he will not be subjected to protracted litigation due to ambiguities in the various sections.

In the absence of 100 per cent. approval Chapter XI provides that a debtor may submit an arrangement for confirmation by the court when "it has been accepted in writing by a majority in number and amount of all affected creditors of each class, whose claims have been approved and allowed before the conclusion of the (creditor's) meeting".[61] This section is patterned after Sections 12 (b) and 74 (e) of the Act of 1898 as amended and the only change is that permitting a vote by classes.[62] This

57. XI, § 361; XII, § 467.

58. See Mulder and Solomon, *supra* note 5, at 789, 791.

59. §§ 366, 467.

60. 287 U. S. 527 (1933).

61. § 362 (1).

62. Therefore many of the cases under the old Act with reference to voting will still be good law. See, for example, *In re* Messengill, 113 Fed. 366 (E. D. N. C. 1902) holding that an assignee of claims of a number of creditors counts only as one creditor in reference to voting; Miller's Apparel v. Siminoff, 29 F. (2d) 507 (C. C. A. 1st, 1928), holding that in determining whether there is a majority, creditors whose claims have not been filed until after a meeting to consider an offer of composition cannot be

is, of course, simply an outcome of the new procedure which permits the debts to be divided and dealt with by classes.[63] Chapter XII contains much the same requirements except that it is there provided that the arrangement must be accepted by two-thirds of the amount of the debts of such class.[64] It is interesting to note that Chapter X,[65] providing for corporate reorganization, contains the same two-thirds requirement as Chapter XII. The reason for the distinction between these latter chapters and Chapter XI is not easily seen. It may be that it was felt that in the case of secured debts there was greater danger of the holder of one large debt being overridden by the holders of numerous small debts than there would be in the case of unsecured debts. However, unless this is factually correct the provision seems to react unfavorably to the debtor. It will be more difficult for him to secure the consent of two-thirds of his creditors than it would be to secure the consent of a bare majority, and such effort will be time-consuming.

Under both chapters the confirmation of an arrangement grants the debtor a discharge from all debts provided for therein except as provided in the arrangement that he shall not be discharged.[66] Under Section 12 there had never been any doubt that the effect of a confirmation was a discharge,[67] but this was not true under Section 74. The problem there arose in the case of a composition and it was thought that a strict interpretation of the Act barred a discharge.[68] Under the Chandler Act, each Chapter expressly provides for a discharge upon confirmation by the court.[69]

One other procedural change may be here considered. Under Section 12 a referee had only the limited powers of a special master.[70] The resultant shuttling back and forth of questions between referee and judge consumed an unnecessary amount of time.[71] This evil was attempted to be corrected by Section 74 which provided for original jurisdiction to be vested in the "Court" as distinguished from the "Judge".[72] Under Section 1 (7) "Court" was defined to include referee [73] and thus he was given

---

considered. But such cases as Matter of Sterba, 74 F. (2d) 413 (C. C. A. 7th, 1935), holding that both secured and unsecured creditors must vote as one class under § 74 (e) are no longer good law.

63. XI, § 357 (1); XII, § 461 (1).

64. § 468. § 74 (e) had provided that an extension had to be accepted by a majority in number and amount of the secured claims affected by the proposal.

65. § 179.

66. XI, § 371; XII, § 476.

67. *In re* Kornbluth, 65 F. (2d) 400 (C. C. A. 2d, 1933).

68. This was worked out by the rather unique argument that since there were expressly reserved under Section 74 only certain bankruptcy privileges, then Congress must have intended not to confer any additional rights and privileges conferred under the other sections of the Act. Therefore Congress must not have intended Section 14 (c) governing discharges to apply to compositions affected under § 74. Weinstein, *loc. cit. supra* note 32, at 144. But see Garrison, *loc. cit. supra* note 5, at 308. See also Hanna, *loc. cit. supra* note 5, at 454, 455. However, the courts, unimpressed by such reasoning, granted discharges upon confirmation of a composition. *In re* Greenman, 10 F. Supp. 452 (S. D. Me. 1935); *cf. In re* Feifer, 22 F. Supp. 541 (S. D. N. Y. 1937), where a discharge in bankruptcy was refused because the debtor had affected a composition under § 74 within six years preceding this action.

69. *Supra* note 66.

70. *In re* Youtie, 44 F. (2d) 56 (C. C. A. 3d, 1930); *In re* Lichtenstein, 1 Fed. Supp. 383 (W. D. Pa. 1932).

71. STURGES, CASES ON DEBTORS ESTATES (2d ed. 1937) 254-258.

72. § 74 (b) (c).

73. *In re* Weissbaum, 2 F. Supp. 967, 968 (N. D. Cal. 1933). This proviso would eliminate problems such as those in *In re* J. B. Pollak Co., 86 F. (2d) 99 (C. C. A. 2d,

original jurisdiction. It was hoped that this would speed up the proceedings, but unfortunately much use does not seem to have been made of this provision.[74] The Chandler Act retains this definition of "Court" [75] and both Chapter XI and XII provide for original jurisdiction to be vested in the court. Thus enlarging the judicial powers of a referee should expedite the proceeding,[76] especially in view of the fact that a referee is a specialist in bankruptcy matters.

If for any reason the arrangement fails of confirmation, the debtor may be adjudged a bankrupt.[77] If the arrangement petition was filed in a pending bankruptcy proceeding, the reinstituted bankruptcy proceeding is a mere continuation of the one previously initiated, and dates from the time the original bankruptcy petition was filed.[78] Thus fraudulent transfers and preferences, voidable as of that date, remain voidable.[79] The "statutes of limitations" are tolled during the period of the attempted arrangement. This was not true under the former Act.[80]

Conclusion

It may safely be assumed that the Chandler Act will meet with a warmer reception than the Bankruptcy Act of 1898. The new Act evidences careful draftsmanship and forethought. However, as has been pointed out there are portions of the chapters devoted to a debtor's petition for relief that are vague and ambiguous. Resultant litigation means only delay. If this proves too burdensome, new life may be given to common-law compositions and general assignments. Such a result would be unfortunate; there are numerous portions of Chapters XI and XII that will give the debtor a greater advantage than if he attempts to act outside the bankruptcy legislation. For example, the provisions that the debtor may divide his creditors into classes, that secured debts may be decreased, that acceptances obtained prior to the filing of the petition may be used, all react to the debtor's benefit and help him to obtain speedy relief at a minimum of cost. Combined with these features is the fact that if the debtor succeeds in effecting an arrangement under the Act he will be given a judicial release. It is desirable that all ambiguities be speedily clarified, whether by litigation or legislative amendment, in order that the arrangement chapters may achieve their purpose.

W. E. K., Jr.

1936), where it was held that the referee had no power to allow the claim of any creditor for the purpose of establishing his right to share in a composition fund under § 12.

74. For example, see *In re* Bowman, 24 F. Supp. 381, 383 (S. D. Cal. 1938). Here proceedings under § 74 were instituted on May 23, 1935, and shuttled back and forth between the referee and the District Judge until the middle of 1937 when the debtor's petition was finally denied by the Judge.

75. § 1 (9).

76. XI, § 331; XII, § 431.

77. If the arrangement petition was original, the court may either adjudge the debtor a bankrupt or may dismiss the proceedings "as in the court's opinion may be in the interest of the creditors". XI, § 376; XII, § 482 (2). Under § 74 the court could for enumerated reasons "adjudicate the debtor a bankrupt". § 74 (1).

If the arrangement petition is filed in a pending bankruptcy proceeding, the court must dismiss the arrangement petition and direct that the bankruptcy petition proceed. §§ 376 (1), 481 (1).

78. XI, § 378; XII, § 483 (1).

79. See Weinstein, The Bankruptcy Law of 1938 (1938) 243, 248, 249, 321.

80. Garrison, *loc. cit. supra* note 5, at 310; see *In re* Adamson, 83 F. (2d) 211 (C. C. A. 2d, 1937); *cf.* Conden Corp. v. Williams, 93 F. (2d) 758 (C. C. A. 9th, 1937). For the effect on creditors filing claims within six months of the adjudication, but six months after the filing of the petition, see § 57 (n).