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THE RIGHTS OF CREDITORS IN REORGANIZATION

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This discussion is intended to consider the development of the rights of creditors in reorganizations. Such development is to be shown by the cases which foreshadowed the Boyd case;[1] the Boyd case itself; the cases following that decision; the limitations upon the doctrine; and the present status of the law. The development which may be expected in the future will also be considered.

In practically all reorganizations, one of the major problems facing counsel has been that of the Boyd case,[2] and it has been in connection with the decision of the Supreme Court in that case, that an important development in the law affecting the reorganization of corporations has occurred.

The Boyd case[3] was foreshadowed by the Monon case in 1899.[4] In that case, a creditor had intervened in the foreclosure proceedings prior to decree, and the Supreme Court held that a sale should not be confirmed to bondholders who had purchased pursuant to an arrangement with the stockholders that the property should be purchased by the bondholders, cutting off unsecured creditors, but giving the stockholders an interest in the purchase. After indicating that the amounts involved in the foreclosure of railroad mortgages are usually so large that only the bondholders can be considered as probable purchasers, Mr. Justice Brewer said:

"* * * no such proceedings can be rightfully carried to consummation which recognize and preserve any interest in the stockholders without also recognizing and preserving the interests, not merely of the mortgagee, but of every creditor of the corporation. In other words, if the bondholder wishes to foreclose and exclude inferior lienholders or general unsecured creditors and stockholders he may do so, but a foreclosure which attempts to preserve any interest or right of the mortgagor in the property after the sale must necessarily secure and preserve the prior rights of general creditors thereof. This is based upon the familiar rule that the stockholders' interest in the property is subordinate to the rights of creditors; first of secured and then of unsecured creditors. And any arrangement of the parties by which the subordinate rights and interests of the stockholders are attempted to be secured at the expense of the prior rights of either class of creditors comes within judicial denunciation."[5]

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1 Northern Pacific Rwy. v. Boyd, 228 U. S. 482 (1913).

2 Northern Pacific Rwy. v. Boyd, 228 U. S. 482 (1913).

3 Northern Pacific Rwy. v. Boyd, 228 U. S. 482 (1913).

4 Louisville Trust Co. v. Louisville, New Albany & Chicago Rwy. Co., 174 U. S. 674 (1899).

5 See 174 U. S. 674, 683-4 (1899).

The Trust Fund doctrine is the presumed basis for the Boyd case,[6] and was announced by Justice Story in the case of Wood v. Dummer[7] in 1824. Since that time it has been followed by so many cases that only a few will be cited.[8] These cited cases and practically all the others decided under the Trust Fund doctrine reach the correct result since they protect the creditor where the stockholder has been given a preference. However, the reasoning is fallacious. If the assets of a corporation were held as a trust fund for the benefit of creditors, the corporation could not do any act without the assent of the creditors. A trustee is responsible to the cestui for any acts inconsistent with the trust. Thus, even though the corporation be a solvent one, if the corporation did any act without the consent of the creditors which involved the assets of the corporation, it would be violating the duties of the trust; and, in effect, diverting the trust assets. So, it can easily be seen that the assets of a corporation cannot be correctly referred to as a trust fund for the benefit of creditors.

The facts of the Boyd case[9] were these: the representatives of the bondholders of the old company bought in the road for some $61,000,000 which was paid almost wholly in bonds and which was less than the amount of the mortgage debts of $157,000,000. They planned to raise $11,000,000 in cash for the new company by allowing the stockholders in the old company a chance to buy the new stock by assessment of $10 or $15 on their old shares. Before the mortgage was foreclosed a suit had been brought by Paton, an unsecured creditor, alleging that the foreclosure was a conspiracy between the bondholders and the stockholders. The Circuit Court held against these creditors on the ground that, the assets being insufficient to pay the mortgage debt, there was no equity from which the unsecured creditors could be paid and no reason why the bondholders should not make any arrangement they chose with the old stockholders. No appeal was taken in that case. But this was not binding on Boyd. The road was sold for $61,000,000 and the new company immediately issued $190,000,000 in bonds and $155,000,000 in stock on property which had been bought a month before for $61,000,000 and agreed to be worth $345,000,000.

Boyd was a creditor of the old company. No provision was made for unsecured creditors, such as Boyd, on the assumption that any equity in the assets which they could have reached would be cut off by the foreclosure sale. Boyd brought a creditor's bill against the new company ten years after the foreclosure sale, seeking to subject the assets acquired by the new company to the payment of his judgment against the old company. He attacked the reorganization plan because it made no provision for the payment of unsecured creditors, although the stockholders retained an interest by receiving new shares partly in consideration of the old shares.

The Supreme Court, by a five to four vote, held that the foreclosure sale was not necessarily final in cutting off unsecured creditors where the stockholders share in the reorganized enterprise in consideration of the old stock.

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[6] 228 U. S. 482 (1913).

[7] 3 Mason 308.

[8] Hollins v. Brierfield Coal & Iron Co., 150 U. S. 371 (1893); Scammon v. Kimball, 92 U. S. 362 (1875); Chicago Ry. v. Howard, 7 Wallace 392 (1868); Okmulgee Window Glass Co. v. Frink, 260 Fed. 159 (C. C. A. 8th 1918); Central of Ga. Ry. v. Paul, 93 Fed. 878 (C. C. A. 5th 1899); McVicker v. American Opera Co., 40 Fed. 861 (C. C. N. D. Ill. 1889); Arlington Hotel Co. v. Rector, 124 Ark. 90, 186 S. W. 622 (1916); Blanc v. Paymaster Mining Co., 95 Calif. 524, 30 Pac. 765 (1892); Barber v. Morgan, 89 Conn. 583, 94 Atl. 984 (1915); Donnally v. Hearndon, 41 W. Va. 519, 23 S. E. 646 (1895); Goddard v. Fishel-Schlicten Importing Co., 9 Colo. A. 306, 48 Pac. 279 (1897).

[9] Northern Pac. Rwy. Co. v. Boyd, 228 U. S. 482.

A transfer which preserves to a stockholder an interest in the new corporation in consideration of his interest in the old is fraudulent as against creditors unless the reorganization plan gives them a fair offer of securities in the reorganized company superior to the offer made to the old stockholders.

However, the Supreme Court did recognize the frequent necessity for allowing stockholders to retain their interest in a reorganized company, and the validity of such plans if they include the preservation to all the creditors of interests in the reorganized concern which, all the circumstances considered, are fair and equitable. Mr. Justice Lamar, delivering the majority opinion, said:

"* * * it is now settled that such reorganizations are not necessarily illegal, and, as proceedings to subject the property must usually be in a court where those who ask equity must do equity, such reorganizations may even have an effect more extensive than those made without judicial sale, and bind creditors who do not accept fair terms offered. The enormous value of corporate property often makes it impossible for one, or a score, or a hundred bondholders to purchase, and equally so for stockholders to protect their interests. A combination is necessary to secure a bidder and to prevent a sacrifice. Cooperation being essential, there is no reason why the stockholders should not unite with the bondholders to buy in the property.

"That was done in the present case. And while the agreement contained no provision as to the payment of unsecured creditors, yet the Railway Company purchased unsecured claims aggregating $14,000,000. Whether they were acquired because of their value, to avoid litigation, or in recognition of the fact that such claims were superior to the rights of stockholders, does not appear, nor is it material. For if purposely or unintentionally a single creditor was not paid, or provided for in the reorganization, he could assert his superior rights against the subordinate interests of the old stockholders in the property transferred to the new company. They were in the position of insolvent debtors who could not reserve an interest as against creditors. Their original contribution to the capital stock was subject to the payment of debts. The property was a trust fund charged primarily with the payment of corporate liabilities. Any device, whether by private contract or judicial sale under consent decree, whereby stockholders were preferred before the creditor was invalid. Being bound for the debts, the purchase of their property, by the new company, for their benefit, put the stockholders in the position of a mortgagor buying at his own sale * * *."[10]

Then to show that the invalidity in the case arose only out of the fact that Boyd was excluded from any interest in the property, the court said:

"This conclusion does not, as claimed, require the impossible and make it necessary to pay an unsecured creditor in cash as a condition of stockholders retaining an interest in the reorganized company. His interest can be preserved by the issuance, on equitable terms, of income bonds or preferred stock. If he declines a fair offer he is left to protect himself as any other creditor of a judgment debtor, and having refused to come into a just reorganization, could not be heard in a court of equity to attack it. If, however, no such tender was made and kept good he retains the right to subject the interest of the old stockholders in the property to the payment

[10] See 228 U. S. 482, 503-4.

of his debt. If their interest is valueless, he gets nothing. If it be valuable, he merely subjects that which the law had originally and continuously made liable for the payment of corporate liabilities."[11]

The Boyd case has been followed in both Federal and state courts.[12] In Mountain States Power Co. v. Jordan Lumber Co.[13] the measure of recovery by the unsecured creditor was limited to the value of the property in excess of the secured indebtedness. But when considered in the light of the language used in the Boyd case where it is said:

"The invalidity of the sale flowed from the character of the reorganization agreement regardless of the value of the property, for in cases like this, the question must be decided according to a fixed principle, not leaving the rights of the creditors to depend upon the balancing of evidence as to whether, on the day of sale the property was insufficient to pay prior encumbrances * * *."[14]

it seems that this is an unwarranted limitation of the case.

Where former stockholders of the old corporation purchase stock in the new corporation, paying full value for the stock, the principle of the Boyd case does not apply.[15] In such a case, the stockholder receives nothing by virtue of his stock in the old corporation.

As the Boyd case involved the claim of an unsecured creditor in a large railroad reorganization, the doctrine was erroneously limited to unsecured creditors and to a railroad reorganization for a time. But it is not so limited and it has been frequently applied to cases involving industrial corporations.[16]

The Boyd case requires that fair or equitable terms in the reorganization plan must be offered to the unsecured creditor.[17]

In March, 1916, the first large railroad reorganization following the Boyd case (that of St. Louis & San Francisco Railroad Co.) came on for final decree before Judge Sanborn.[18] There was inserted in the foreclosure decree[19] a provision that no sale should be confirmed to any corporation organized pursuant to a reorganization plan admitting stockholders of the old company to any interest, unless a fair and timely offer of cash, or a fair and timely offer of participation through stocks, bonds or otherwise, had been made to all creditors who had filed their claims and whose claims were subordinate to the junior mortgages.

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[11] See 228 U. S. 482, 508.

[12] Kansas City So. Ry. Co. v. Guardian Trust Co., 240 U. S. 166 (1916); approving Central Improvement Co. v. Cambria Steel Co., 210 Fed. 696 (1913); Howard v. Maxwell Motor Co., 269 Fed. 292 (1920) aff'd. in 275 Fed. 53; Western Union Telegraph Co. v. U. S. etc. Trust Co., 221 Fed. 545 (1915); Wabash Ry. Co. v. Marshall, (Mich.) 195 N. W. 134 (1923); Pittsmont Copper Co. v. O'Rourke, 49 Mount. 281, 141 Pac. 849 (1914); Sweeney v. O'Brien Mining Co., 194 Mo. A. 140, 186 S. W. 739 (1916).

[13] 293 Fed. 502, 507 (1923).

[14] See 228 U. S. 482, 507.

[15] Oehring v. Fox Typewriter Co. (1921), 272 Fed. 833; Sebree v. Cassville & W. R. Co. (Mo. 1919), 212 S. W. 11, 16.

[16] Howard v. Maxwell Motor Co., 269 Fed. 292 (S. D. N. Y. 1920); Okmulgee Window Glass Co. v. Frink, 260 Fed. 159, 166 (C. C. A. 8th, 1919); Safety Car Heating Co. v. U. S. Light & Heat Co., 2 Fed. (2d) 384, 386 (W. D. N. Y. 1924).

[17] See 228 U. S. 482, 508.

[18] No. Am. Co. v. St. Louis & San Francisco Ry., U. S. D. C., E. D., Mo., Cons. Cause Eq. No. 4174, final decree entered 1916 (not reported).

[19] St. Louis & San Francisco Ry. v. McElvain, 253 Fed. 123, 126, E. D. Mo. 1918, a case arising out of the same reorganization.

The problem of the court in such cases is not whether the plan proposed is the best plan which could be drawn, or is the plan which the court would draw if left to its own devices, but whether there is anything in the plan so inequitable to any class of security holders that the court should withhold confirmation of the sale.[20]

Mathematical exactness is not required and is not possible. Every reorganization plan is a compromise from necessity. The court therefore is in a position to do no more than see that the respective priorities of the security holders are substantially maintained or that such adjustments thereof as may be made are not inequitable. It does not attempt to pass on questions of business judgment as to which the opinions of different groups of security holders may properly differ.

A common basis of attack upon reorganization plans is the claim that stockholders are being too liberally treated. The objectors concede that stockholders may be admitted to some interest in the new company, they urge that the fair value of this participation must not be in excess of the amount of the stockholders' assessment. When it appears, as it did in the Missouri Pacific case,[21] that junior bondholders and unsecured creditors are to receive preferred stock which is selling at 53, while common stockholders upon payment of $17 per share, are to get stock selling at 30, it is argued that the difference here $13 per share of common stock represents a "substantial equity" in the property which has been unlawfully diverted from the creditors for the benefit of the stockholders. The Boyd case is cited to prove the consequent illegality of the reorganization. If this argument could be maintained, successful corporate reorganizations would be impossible because stockholders constitute the best, and often the only, available source of new money, and their participation is essential. Such participation can be obtained only by a plan which gives the stockholders something of definite value, over and above what they pay for. The answer to the argument that this constitutes an appropriation to the stockholders of a substantial equity in the property is that this equity is largely attributable to the fact that the stockholders are willing to put more money into the property; and if they were not willing to do this,—if the plan were not made reasonably attractive to them,—the "substantial equity" would disappear.[22] However, it must be kept in mind that the unsecured creditor has to be treated fairly.

Some writers have found support in the Boyd case for the theory that a court of equity may, without judicial sale, impose upon all security holders and creditors a reorganization plan found by the court to be equitable and enjoin them forever from attacking it.[23] Square support for the doctrine is found in two cases arising out of the Rock Island receivership.[24] Judge Carpenter found that the plan for reorganization for the Rock Island road was fair to the creditors and stockholders, and turned the property back to the company without a sale, enjoining all creditors from pursuing their

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20 Guaranty Trust Co. v. International Steam Pump Co., 231 Fed. 594 (C. C. A. 2nd, 1916); Conley v. International Pump Co., 237 Fed. 286 (S. D. N. Y. 1915).

21 Guaranty Trust Co. of N. Y. v. Missouri Pacific Ry. Co., 238 Fed. 812 (U. S. D. C., E. D. Mo. 1916).

22 No. Am. Co. v. St. Louis & San Francisco Ry., U. S. D. C., E. D. Mo., E. Div. Cons. Cause Eq. No. 4174, Aug. 29, 1916 (not reported).

23 See Rosenberg, Reorganization—The Next Step (1922), 22 Col. L. R. 14.

24 Phipps v. Chicago, R. I. & P. Ry., 284 Fed. 945 (C. C. A. 8th, 1922); Chicago, R. I. & P. Ry. v. Lincoln Horse & M. Com'n. Co., 284 Fed. 955 (C. C. A. 8th, 1922).

claims against the company.[25] There had been deposited under the plan more than 95% of the debt and 99% of the stock. No appeal was taken from the decree, but non-assenting creditors attempted to attach property of the new company in other jurisdictions. The company sought to enjoin them, on the ground that such attachments were in violation of Judge Carpenter's decree in the receivership proceedings. The Circuit Court of Appeals for the Eighth Circuit sustained such injunctions. Judge Sanborn, in his opinion, said that the reorganization constituted a method of administering the trust estate which was within the power of the court; and that the terms of the reorganization were binding upon creditors, both those who had filed their claims but refused to accept the terms of the plan, and those whose claims had not been filed.[26]

The decision is justified on the theory that the Supreme Court in the Boyd case had demonstrated the futility of judicial sales where the reorganization was unfair to the creditor. The vice of the reorganization in the Boyd case was the inequitable exclusion of the creditor and not the lack of judicial sale. The holding that the creditor so treated was not cut off by the sale, was considered persuasive authority for dispensing with the sale where the reorganization was fair. It is submitted that there is no legal foundation for such a proposition. The vice in the Boyd case could not be the lack of a judicial sale because there the property had been offered for sale in the recognized fashion. It seems clear that the voidability of the sale as to such a creditor does not demonstrate the futility of judicial sales in general.

The question presents itself again in the Coriell v. Morris White Inc.[27] where the court ordered an appraisal by a master to ascertain what the proceeds of a sale would have been as a substitute for the conventional sale itself. The creditors were not forced to take stock in the reorganized company but were given a chance to accept a cash alternative based on an appraisal. This is without doubt a desirable development because a public sale entails a considerable waste of the assets of the debtor corporation. Such sales also give a dissenting creditor an excellent opportunity to unduly delay the reorganization. But, it is doubtful whether the court has jurisdiction to put such a plan into effect. That such change might be proper by statute has been pointed out by the Supreme Court,[28] and such a method of conferring jurisdiction upon the court would be the surest way to obtain the desired result.

The dissenting creditors in the Morris White reorganization brought a writ of certiorari to review the decree of the Circuit Court of Appeals.[29] The petitioners contend that the court had no power to deprive the dissenting creditors of a cash share in the assets; and that the amount of this share should have been determined by public sale. The Supreme Court reversed the decree approving the plan because the procedure was improper. Mr. Justice Brandeis said:

"The non-assenting creditors were entitled to have the plan and their objections considered in an orderly way, and to a decree based on adequate

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[25] Am. Steel Foundries v. Chicago, R. I. & P. Ry., U. S. D. C. N. D. Ill., E. Div. Cons. Cause Eq. No. 445 1917 (not reported).

[26] Phipps v. Chicago, R. I. & P. Ry., 284 Fed. 945 (C. C. A. 8th, 1922); Chicago, R. I. & P. Ry. v. Lincoln Horse & M. Com'n. Co., 284 Fed. 955 (C. C. A. 8th, 1922).

[27] 54 Fed. (2d) 255 (C. C. A. 2nd, 1931), reversed 53 Sp. Ct. Rep. 678.

[28] Canada Southern Ry. v. Gebhard, 109 U. S. 527 (1883) (to be discussed later.)

[29] Nat. Surety Co. v. Coriell, 53 Sp. Ct. Rep. 678 (1933).

data. The District Court had before it, in support of the plan only informal, inadequate, and conflicting ex parte assertions unsupported by testimony. It undertook to pass upon the wisdom and fairness of the plan of reorganization and the rights of non-assenting creditors. For the proper disposition of these questions, definite, detailed, and authentic information was essential. Such information was wholly lacking."

The court failed to discuss the question whether the dissenting creditors were entitled to a cash share in the assets. Thus, it is seen that at the last opportunity which the Supreme Court had to decide the question, it refused to do so, and in this evasion lies the importance of the case. It indicates that the court will evade the question until it is squarely confronted with it. Also, when a court is so reluctant to decide a question there is the possibility that it is going to change its position. There is no doubt that it would be highly desirable to extinguish the claims of dissenting creditors against the property of the insolvent with something other than cash if they fail to accept the terms of a fair reorganization plan.

The Kansas City Railway case[30] approaches this view. It held that a plan was fair and binding on unsecured creditors which offered them securities of the same grade, but in a larger amount, than offered to the stockholders.

The court said:

"* * * unsecured creditors may be protected through other arrangements which distinctly recognize their equitable right to be preferred to stockholders against the full value of all property belonging to the debtor corporation, and afford each of them fair opportunity measured by the existing circumstances, to avail himself of this right.

"If creditors decline a fair offer based upon the principles above stated, they are left to protect themselves, and cannot attack the reorganization in a court of equity."

This decision does force the creditors to take securities to which they objected, but it is not shown that the creditors made a demand for cash payment. They were insisting that their claim be preferred in its entirety to the stockholders.

It is to be regretted that the question of alternative cash payment was not presented by the creditors. If such had been done, we would have had a decision on the point. In fact, the case came up on reserved questions, and the court only answered these questions. Therefore, the case is not an authority for the proposition that unsecured creditors can be made to accept something other than cash.

One writer[31] argues that such can be done and cites as authority the following dictum in the Boyd case:[32]

"This conclusion does not, as claimed, require the impossible and make it necessary to pay an unsecured creditor in cash as a condition of stockholders retaining an interest in the reorganized company. His interest can be preserved by the issuance, on equitable terms, of income bonds or preferred stock. If he declines a fair offer he is left to protect himself as any

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30 Kansas City Terminal Ry. Co. v. Central Union Trust Co., 271 U. S. 445 (1926).

31 Rosenberg. Reorganization—The Next Step (1922), 22 Col. L. R. 14.

32 228 U. S. 482, 506 (1913).

other creditor of a judgment debtor, and, having refused to come into a just reorganization, could not thereafter be heard in a court of equity to attack it."

It is the only declaration by the Supreme Court upon the point, and although it is sheer dictum, it has some weight. For one reason, the statement was made to answer an argument of the counsel for the railway, which seems to have bothered the court a great deal, that recognition of Boyd's claim would mean the adoption of a principle requiring payment of cash to creditors and that such a principle would prevent the possibility of reorganization.

As to the result to be reached if this dictum is followed, the writer says:

"If the words of the dictum are to be given effect, full provision can be made for unsecured creditors by offering them income bonds or preferred stock on a basis found fair by the court. If the creditors do not choose to accept these securities, they are relegated to the position of a judgment creditor of the defendant company without resort to the new company which, as a part of the reorganization, takes over the property. If the new company tenders securities deemed fair by the court, and keeps good its tender, it receives a good and secure title to the property. The creditor who does not like his preferred stock or his income bond has the empty relief of a worthless judgment against the old company."[33]

In considering the rights of the secured creditor, which question was not before the court in the Boyd case, the writer continues:[34]

"The question of due process immediately presents itself. But such question also arises in connection with the claims of unsecured creditors. An unsecured creditor who holds a promissory note owns property, and has the vested constitutional right to bring suit, to get judgment and to issue execution against the debtor's entire assets. Yet this property right has been brushed aside in an equitable receivership suit.[35] To enjoin him from action, from putting his claim into judgment, and from issuing execution are matters of common daily practice. If such a property right may be so treated, why should not secured creditors be subordinated to the new money which makes a reorganization possible and which in fact preserves the very rights of the secured creditor?"

The Gebhard case[36] is frequently cited as an authority for the proposition that legislation enacting the desired result would be constitutional. But the decision of the case is not on that point. The plaintiffs were United States citizens who owned bonds in a Canadian corporation. Parliament passed an act which bound the minority bondholders to the reorganization plan. The Supreme Court held that the due process clause of the Federal Constitution did not apply to such a situation because they were conclusively presumed to have contracted with the view that such laws might be passed, and had waived any protection under the due process clause.

However, in its opinion, the court does say:[37]

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[33] Rosenberg, 22 Col. L. R. 16, 17.
[34] Rosenberg, 22 Col. L. R. 16.
[35] Re. Metropolitan Ry. Receivership, 208 U. S. 90 (1908).
[36] 109 U. S. 527.
[37] 109 U. S. 527, 535, 36.

"Hence it seems to be eminently proper that where the legislative power exists some statutory provision should be made for binding the minority in a reasonable way by the will of the majority; and unless as is the case in the States of the United States, the passage of laws impairing the obligation of contracts is forbidden, we see no good reason why such provision may not be made in respect to existing as well as prospective obligations. The nature of the securities of this class is such that the right of legislative supervision for the good of all, unless restrained by some constitutional prohibition seems almost necessarily to form one of their ingredients, and when insolvency is threatened, and the interests of the public, as well as creditors, are imperiled by the financial embarrassments of the corporation, a reasonable scheme of arrangement may, in our opinion, as well be legalized as an ordinary composition in bankruptcy."

This is mere dictum because United States legislation was not before the court, but it does indicate that the court thought such legislation would be constitutional.

"It is clear that such legislation would not be invalid as a law impairing the obligation of contracts since that constitutional inhibition is directed against the states only, not against the Federal government in any of its functions, judicial, legislative, or executive.[38] Thus, a bankruptcy statute though impairing contract rights is none the less constitutional,[39] and compositions in bankruptcy, though requiring dissenting minorities to accept in discharge of their claims money, or even notes, for less than par can legally be accomplished.[40] The due process clause of fifth amendment contains the crux of the question, since this limitation voids confiscatory acts by any branch of the Federal government."[41]

Of course, the writer does not mean that a majority of the bondholders can not insist upon a foreclosure if they wish to do so. His intention was to state that if a substantial majority are in favor of a plan, a minority should be bound by such majority's judgment.

No writer has been found who denies that such legislation would be constitutional because a denial of due process of law. If such legislation is due process of law, it would seem that the same acts, if done by a court, would be due process also. Due process of law merely requires a reasonable regulation, and it cannot be doubted after considering the interest of the public in corporate reorganizations that such regulation would be reasonable.

The acts of the Federal courts are no more curtailed by "the impairment of contract obligation" than is the Federal Congress.[42]

It is not doubted that the proper method whereby unsecured creditors could be provided for with something other than cash would be by an Act of Congress. However, in the absence of such an act, it is hoped that the courts will exercise this power. It can be argued that the courts are not prepared to handle those financial problems inherent in corporate reorganizations. But, the problems of the courts are generally reduced to passing upon differences between the classes of security holders as to what is fair to them respectively. These are problems of equities, rather than finance—

[38] Gilfillan v. Union Canal Co., 109 U. S. 401 (1883).

[39] Sturges v. Crowninshield, 17 U. S. 122 (1819).

[40] In re Kinnane Co. (D. C. 1914), 33 Am. Br. 234; In re McNab and H. Mfg. Co. (D. C. 1878), 16 Fed. Cas. No. 8906.

[41] Rosenberg, 22 Col. L. R. 14, 17.

[42] Gilfillan v. Union Canal Co., 109 U. S. 401 (1883).

problems which experienced and disinterested judges are better qualified to solve than anyone else. This does not mean that the courts should have the power to devise a plan of its own, but only the power to pass upon the fairness of the plan, and, if reasonable, to accept it. The courts might be given a slight power of amendment, but it can be argued that if a plan were amended under such power it should be submitted and passed upon by the majority.