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THE CHANDLER ACT

By CARL WILDE*

Except for comparatively minor amendments designed to adapt it to changing conditions or to meet decisions which seemed to divert some of its provisions from their original purpose, the Bankruptcy Act of 1898 remained unchanged until 1933. In that year, and in the two years immediately following, the various provisions for the relief of debtors were added. That part of the Act, however, which relates to what are generally called "straight bankruptcy proceedings" remained substantially unchanged until the present. On June 22, 1938, the Chandler Act, which amends nearly all sections of the original Act, as well as a large part of the depression-prompted additions for the relief of debtors, was approved. The amendments brought about by the Chandler Act become fully effective on and after three months from the date of its approval. The effective date, therefore, is September 22, 1938. There is a provision, however, that, except as otherwise provided therein, the provisions of the Chandler Act shall govern proceedings so far as practicable in cases pending when it takes effect; but where the provisions of the Chandler Act are not applicable, pending proceedings shall be disposed of in conformance with the provisions of the Act approved July 21, 1898, and the acts

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amendatory thereof and supplementary thereto. In view of the immediacy of the effective date of the Chandler Act, it will be assumed in this discussion, for the purpose of simplifying references to the Bankruptcy Act before amendment, that the Chandler Act is already in effect.

It is truly remarkable that a statute embodying an entire system of jurisprudence could endure over a period of forty years with so little substantial change. Only the excellence of the draftsmanship and the soundness of the structure of the original Act can account for this remarkable record. It is to be noted also that in so far as straight bankruptcies are concerned, the Chandler Act does not change the essential theory or structure of the 1898 Act. It is not a new bankruptcy act. It is merely amendatory of the old Act, intended to meet the changes in economic conditions and in business practices which have developed since its original enactment. Those of us who have need frequently to refer to the Acts of Congress relating to bankruptcy, will probably continue to refer in the future as we have in the past, to the Bankruptcy Act of 1898, as amended.

It is manifestly impossible within the compass of this paper to do more than to point out the changes wrought by the Chandler Act, with perhaps some brief comment concerning the reason for or the effect of some of the more important alterations. A treatise attempting to set forth in any detail the changes in the chapter governing the reorganization of corporations alone would require at least twice the time allotted for this discussion.

It has been assumed that most of those present are not specialists in bankruptcy practice, and that the most helpful discussion will be a general one which will apprise those who only practice in bankruptcy matters occasionally, of the principal changes in the law governing that practice. Lawyers who practice extensively in the bankruptcy courts will require a much more intensive detailed study obviously impossible of compression within the limits of this paper.

The Bankruptcy Act, as amended by the Chandler Act, is arranged in fourteen chapters. The first seven chapters cover
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the subject of ordinary bankruptcies. Chapter VIII contains the provisions for agricultural compositions and extensions, and for the reorganization of railroads; Chapter IX contains the provisions relating to the readjustment of debts of taxing districts; Chapter X corresponds to former Section 77B and regulates corporate reorganizations; Chapter XI contains the provisions relating to "arrangements," taking the place of the former provisions for compositions and extensions appearing in Sections 12, 13 and 74 of the Act prior to amendment; Chapter XII makes provision for real property arrangements by persons other than corporations; Chapter XIII contains new provisions for wage earners' plans; and Chapter XIV relates to Maritime Commission Liens. The expansive system of numbering has been adopted. This will permit extensive future amendment without the necessity of renumbering the sections.

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CHAPTER I

DEFINITIONS

Section 1 restores the alphabetical order of definitions which had been disarranged as new definitions had been added. Some of the old definitions have been clarified and new ones have been supplied. Reference need be made to only a few of the changes. The old definition of "court" that it "shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee," has been changed to read: "'court' shall mean the judge or referee of the court of bankruptcy in which the proceedings are pending." There was formerly no definition of farmer in the first section, but in Section 75r there is a definition for the purposes of that section, Section 4(b) and Section 74. The Chandler Act adds a definition in Section 1, as follows: "'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or the production of poultry, livestock, or poultry or livestock products in their
unmanufactured state, if the principal part of his income is derived from any one or more of such operations.” The definition in Section 75r, which was made applicable to Section 4(b), did away with much of the uncertainty which arose when an individual against whom an involuntary petition in bankruptcy had been filed claimed to be exempt from involuntary proceedings by reason of being a farmer, and the new definition provided by the Chandler Act should go still farther in clearing up such uncertainties.

The definition of the word “transfer” has been enlarged so as to make it clear that the term as used in the Act refers to every conceivable method of transferring property or any interest therein or the possession thereof, voluntarily or involuntarily.

CHAPTER II

COURTS OF BANKRUPTCY

In Section 2 creating courts of bankruptcy and defining their jurisdiction and powers, the Chandler Act clarifies and expands the provisions of the old Act. Some of the changes are of particular interest. Under the old Act the court might adjudge a person bankrupt who had had his principal place of business, or resided, or had his domicile within the territorial jurisdiction for the previous six months or the greater portion thereof. This was held to mean “more than three months,” and that no adjudication may be had where three months have not elapsed since the alleged bankrupt acquired a domicile, residence or place of business within the territorial jurisdiction. The Chandler Act amends this provision so that the court may adjudge a person bankrupt who has had his principal place of business, residence or domicile within its territorial jurisdiction for the preceding six months or for a longer portion thereof in such jurisdiction than in any other jurisdiction. This meets the problem which arises when a person has not resided the greater part of the six months period preceding the filing of a bankruptcy petition in any one jurisdiction.

Section 2, as amended by the Chandler Act, enables the
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court to authorize a receiver to institute or defend suits on behalf of the estate. It also authorizes the court to determine and liquidate, when permitted to creditors by applicable state law, dower, curtesy, or community interest in the property of the bankrupt. It authorizes the court to close estates even if not fully administered, and thus to dispose of inactive estates. A provision is added reserving to the judge only the right to issue an injunction to restrain a court. This provision is made necessary by the comprehensive definition of "court" in the first section, where it is made to include a referee, and enacts in statutory form a provision of General Order XII to the same effect. The language of the Chandler Act in respect to the appointment of trustees in bankruptcy conforms to the actual practice, that is that the court has authority to approve the appointment of trustees by creditors, while the language of the old Act refers to the appointment of trustees by the court.

The old Act gave the court the power, upon complaints of creditors, to remove trustees for cause, upon hearings and after notices to them. This provision is amended enabling the court, on its own motion, to remove trustees or receivers for cause, upon hearing, after notice.

Considerable confusion has existed in respect to ancillary administration. The Chandler Act provides that the ancillary court shall not extend its jurisdiction beyond preserving the bankrupt's property within its territorial limits, but empowers it, within its jurisdiction and where necessary, to authorize the conduct of the bankrupt's business and the reduction to money of the property, paying out of the proceeds the valid liens, if any, and the expenses of the ancillary proceeding, and transmitting the property and/or proceeds remaining, to the court of original jurisdiction. There is a provision in the Chandler Act conferring upon the bankruptcy court the power to direct a delivery of the bankrupt's property to the receiver or trustee in bankruptcy by a non-bankruptcy receiver or trustee, an assignee for the benefit of creditors, or any agent authorized by a debtor to take possession of or to liquidate his property, thus making statutory a power which
the decided cases have long since recognized as existing. There is a further provision that the delivery over and the accounting for property in the hands of non-bankruptcy officers or fiduciaries shall not be required if the non-bankruptcy receiver or trustee was appointed, or the assignment was made, or the agent was authorized to take possession of or to liquidate the debtor's property, more than four months before the filing of the proceeding under the act, except in the case of corporate reorganization proceedings under Chapter X or a real property arrangement under Chapter XII. The Chandler Act vests in the bankruptcy court the power to re-examine and determine the propriety and reasonableness of all disbursements made out of the property by the non-bankruptcy receiver or trustee or by the assignee or agent, and provides that unless, before the date of the filing of a proceeding under the Act, such disbursements have been approved by a court of competent jurisdiction, after notice to creditors and parties in interest, the bankruptcy court shall surcharge such non-bankruptcy receiver or trustee, or such assignee or agent, with the amount of any disbursements found by it to have been improper or excessive. This would appear greatly to enlarge the summary power of the bankruptcy court in respect to disbursements made by state court receivers.

Chapter III

Bankrupts

The acts of bankruptcy are defined in Section 3. The first two acts, fraudulent transfer and preferential transfer, are unchanged. The third act of bankruptcy defined in the Chandler Act merges the third and fourth acts of bankruptcy defined in the old Act. The fourth act of bankruptcy defined in the Chandler Act is the making of a general assignment for the benefit of creditors, and the fifth act is the procuring, permitting, or suffering the appointment of a receiver or trustee, separating the two distinct acts incorporated in one definition of an act of bankruptcy in the old Act. The sixth
The admission in writing of inability to pay debts and willingness to be adjudged a bankrupt on that ground is retained unchanged.

There is an important change effected by the Chandler Act in respect to the appointment of a receiver as an act of bankruptcy. It was formerly necessary that the alleged bankrupt be insolvent at the time of the appointment of a receiver. The Chandler Act makes the appointment of a receiver, where the alleged bankrupt is insolvent or unable to pay his debts as they mature, an act of bankruptcy. Under this provision it would seem that it would be almost impossible for an equity receiver to be appointed in the State Court or in the Federal Court without it being an act of bankruptcy. From the discussions before the congressional committees during the consideration of the Chandler Act, it appears that this provision was intended to curb the abuses of equity receivers as they have existed in some jurisdictions.

It is provided that an involuntary petition may be filed within four months after the commission of an act of bankruptcy. A definite rule for computing the period of four months is prescribed. The intent of the alleged bankrupt to hinder, delay or defraud creditors under the first act of bankruptcy, or his intent to prefer a creditor or his insolvency, under the second act of bankruptcy, may exist either at the time of the actual transfer or at the time when it becomes perfected, there being a provision that the period of four months begins to run from the date when the debtor has done everything required by him under the state law in order to make the transfer or assignment to complete that no bona fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property superior to those of the transferee or assignee.

The changes in Section 4, defining who may become bankrupts, are not extensive. In the definition of persons who could be adjudged an involuntary bankrupt, "an unincorporated company" has been eliminated. Ambiguities formerly existing as to the time when the status of a person claiming to be a wage earner or farmer and thus exempt from an
involuntary proceeding was to be determined, have been cleared up, the amendment providing that the status as of the date of the commission of the act of bankruptcy shall govern.

Important changes have been effected in Section 5 dealing with proceedings by or against a partnership and its members, and the procedure in respect to bankruptcies of this class has been greatly clarified.

The provisions of this section now relate to limited partnerships, formerly included in the definition of "corporation."

Provision is made for the filing of voluntary petitions by any of the general partners in behalf of the partnership alone or jointly in behalf of the partnership and the general partner or partners filing the same. Where the petition is filed by less than all of the partners, it must allege the insolvency of the partnership. An involuntary petition may be filed either against the partnership alone or jointly against any of its general partners.

Under the old Act the trustee of the partnership estate acted as trustee of the individual estates of the partners. The Chandler Act contains a provision that where a general partner has been adjudicated a bankrupt, his creditors may, if cause is shown, appoint a separate trustee for his estate.

The Chandler Act provides that where all the general partners have been individually adjudged bankrupt, the partnership is also adjudged a bankrupt. It has not changed the provision of the old Act that where some, but not all, of the partners are adjudged bankrupt, those not adjudged, unless consenting to the administration of the property by the Bankruptcy Court, shall expeditiously settle the partnership business and account to the court for the interest of the general partner or partners who have been adjudged bankrupt. It is provided that the discharge of a partnership shall not discharge the liability of the individual general partners for the partnership debt, but a general partner, who is adjudged bankrupt, either in a joint or separate proceeding, may obtain a discharge from his partnership and individual debts. Limited partnerships have been included in this section and there are
appropriate provisions respecting the distribution of surplus and extending the benefits of the Act to limited partners.

Section 6, relating to exemptions of bankrupts, extends its provisions to include applicable Federal exemption laws. It is made clear that the exemptions allowed by the state in which the bankrupt had his domicile for six months before the filing of the petition, or for the longer part of such period as compared with the period of his domicile in any other state, are to be those to which he is entitled; and it is provided that where a bankrupt has transferred and concealed any of his property, which is recovered and the transfer of which is avoided for the benefit of the estate, no exemption shall be allowed out of such property, but where the transfer was made to secure a debt, and the property recovered by the trustee exceeds the amount of the debt secured, the bankrupt may be allowed his exemption out of such excess.

The duties of bankrupts are defined in Section 7, the provisions of the old Act being strengthened and expanded. The bankrupt is now required to attend the first meeting of his creditors whether or not directed by the Court to do so. In the Indiana districts it has been customary to require the bankrupt to attend the first meeting.

Under the old Act the schedules were required to be filed within ten days after adjudication in an involuntary case and within ten days after the filing of the petition in a voluntary proceeding, unless in either case further time was allowed. These provisions were supplemented by the requirement of General Order V that every voluntary bankrupt whose petition is not accompanied by schedules shall file with his petition, unless further time not exceeding ten days is granted by the court, for cause shown, a verified list of the names and addresses of his creditors. The Chandler Act requires the filing of schedules by the bankrupt within five days after adjudication in an involuntary case, and with the petition in a voluntary case, providing that the court may extend the time for filing schedules but shall not do so unless a list of creditors with their addresses is filed with the petition by a voluntary bankrupt or with the application for extension of
time by an involuntary bankrupt. A new duty is added in that the bankrupt is required to file in triplicate, at least five days before the first meeting of creditors, a statement of his affairs in such form as may be prescribed by the Supreme Court. Such statement will doubtlessly aid the creditors in their examination of the bankrupt at the first meeting. The clause of the old Act forbidding the bankrupt's testimony to be offered against him in any criminal proceeding is qualified, testimony at the hearing upon objections to a discharge being excepted. The provision of the old Act relieving the bankrupt from the obligation to attend meetings of his creditors or to attend for examinations at a place more than one hundred and fifty miles distant from his home or principal place of business, except on order after cause shown, is omitted from the Chandler Act but it is provided that except for attendance at the first meeting of creditors or at the hearing upon objections to his discharge, the bankrupt shall be paid his travelling expenses for any distance which he may travel in excess of one hundred miles from his place of residence at the time of his bankruptcy. The Chandler Act requires the bankrupt, upon order of Court, to prepare and file a sworn inventory giving the cost of the merchandise or other property remaining as of the date of bankruptcy. This provision is apparently intended to be in aid of the provision in Section 21 that it shall be presumed, in proceedings against a bankrupt for an accounting of his property or its disposition or for a turnover order, that such property was sold by him at not less than cost if his records fail to disclose the actual cost of the property sold. There is a further provision making clear what has always generally been taken for granted, that in the case of a corporate bankrupt, its officers, directors, stockholders or members, or such of them as may be designated by the court, shall perform the duties imposed upon the bankrupt under the Act.

There has been added to Section 8, which provides that the death or insanity of a bankrupt shall not abate the proceedings, the provision that in case of the death of a bankrupt the right to his exemption shall be preserved for the
benefit of the spouse or dependent children of the bankrupt to the exclusion of his personal representatives.

The provisions of Section 9(a) exempting the bankrupt from arrest upon civil process except in certain cases have been retained unchanged, but the provisions of 9(b) concerning the detention of bankrupts, have been omitted from this section and added to the next.

Section 10 deals with the apprehension and extradition of bankrupts and the provisions of the Act in this regard have been simplified and a more effective procedure is provided. Formerly the judge only could issue a warrant to the marshal directing him to bring the bankrupt forthwith before the court for examination. The Chandler Act substitutes the word "court," which includes the referee, for the word "judge." A new provision is added that where the bankrupt is a corporation, "bankrupt," for the purposes of the section, shall include its officers and directors or trustees.

Important changes have been made in Section 11 which concerns suits by and against bankrupts. As before, a suit founded upon a claim dischargeable in bankruptcy shall be stayed until the adjudication or the dismissal of the petition and, upon adjudication, the action shall be further stayed until the matter of the bankrupt's discharge has been determined by the court, but it is now provided that the court shall vacate the stay if, within six months before the filing of the petition, the debtor has been adjudged a bankrupt or has been granted a discharge in a prior bankruptcy proceeding or has obtained a composition under the old Act or an arrangement or wage earners' plan, by way of composition, under the Chandler Act. Thus the practice of filing petitions upon which discharges cannot be granted by reason of prior discharges within six years, and thereby obtaining stays, is sought to be curbed.

Under the Chandler Act the court may order a receiver, as well as a trustee, to defend any suit pending against the bankrupt and to prosecute a suit commenced by the bankrupt before adjudication. Under the old Act suits could not be brought by or against a trustee in bankruptcy subsequent to
two years after the closing of the estate. The Chandler Act provides that suits shall not be brought against persons acting as receivers or trustees upon any matter arising in connection with the administration of the bankruptcy estate, subsequent to two years after the estate has been closed. It provides that a receiver or trustee may proceed upon a claim of the estate, if not outlawed at the date of bankruptcy, within two years after the date of adjudication or later, if applicable Federal or State laws extend the period of limitations beyond that time. There is a new provision giving a receiver or trustee sixty days after the date of adjudication to proceed upon a claim even though by agreement a limited time expiring sooner had been fixed or where, in any proceeding, judicial or otherwise, a time had been fixed for the filing of a claim or pleading, which had not expired at the date of bankruptcy. Thus in all cases a receiver or trustee in bankruptcy will have sixty days after the date of adjudication in which to take action in pending litigation.

The Chandler Act has a new provision suspending the operation of statutes of limitations affecting the provable debts of a bankrupt during the period from the date of the filing of the petition in bankruptcy, (1) until the expiration of thirty days after the date of the entry of an order denying discharge, or, (2) if the right to discharge has been waived or lost, until the expiration of thirty days after the filing of such waiver or loss of such right (in the case of a corporation, if no application for discharge is filed within six months after adjudication, until the expiration of thirty days after the end of such period), or, (3) until thirty days after the dismissal of the bankruptcy proceedings; whichever may first occur. This new provision is intended to protect creditors against the running of statutes of limitations in cases where discharge is denied or the right to discharge waived or lost, or the bankruptcy proceedings dismissed.

Sections 12 and 13, relating to compositions, have been omitted, the provisions for compositions being incorporated in Chapters XI, XII and XIII, governing arrangements, real property arrangements, and wage earners' plans.
Procedure respecting the discharge of bankrupts has been greatly changed by the Chandler Act. Under the provisions of Section 14, as amended, it is no longer necessary for a bankrupt, except in case of a corporation, to file a formal application for discharge. The adjudication operates as an application for discharge, but the bankrupt may file a written waiver of his right thereto. A corporation is required to file a formal application within six months subsequent to its adjudication instead of twelve months, as heretofore. The Chandler Act provides that after the bankrupt has been examined, either at the first meeting of his creditors or at a meeting specially called for that purpose, the court shall fix a time for filing objections to the discharge and notice of the order fixing such time shall be given to all interested parties. If no objections are filed the court grants the discharge, but if objections are filed the court hears the evidence offered by the objecting party and by the bankrupt and grants the discharge unless satisfied that the bankrupt has committed one of the acts specified as barring discharge. Such acts are substantially the same as those defined in the old Act, it being made clear that the confirmation of a composition under the old Act, or an arrangement or a wage earners' plan under the Act as amended, within six years prior to bankruptcy, shall operate to bar discharge just as the obtaining of a discharge within that period does.

The inhibition against a trustee in bankruptcy interposing objections unless authorized by the creditors at a meeting called for that purpose on the application of a creditor, contained in the old Act, has been deleted.

There is a new provision that the United States attorney, or such attorney as the Attorney General may designate, shall, if requested by the court, examine into the acts and conduct of the bankrupt and file objections and oppose the discharge if he finds probable grounds for so doing and if the public interest so warrants. This provision should prove particularly valuable in no-asset cases where there is either no trustee (presuming that General Order XV, which permits the practice of not appointing trustees in such cases, is continued in
effect or a new General Order to the same effect is adopted), or if there is a trustee, he does not have funds available for contesting the discharge application.

The Chandler Act also has a new provision that a bankrupt shall be deemed to have waived his right to discharge and an order shall be entered to that effect if, after hearing upon notice, it is proved that the bankrupt failed, without sufficient excuse, to attend and submit to examination at the first meeting of his creditors or at a meeting specially fixed for that purpose, or if he fails to attend and submit to examination at the hearing upon his discharge.

Section 15, providing for the revocation of discharges obtained by fraud, has been retained unchanged except that the word "court" has been substituted for the word "judge," thus giving referees authority to act.

Section 16, concerning the liabilities of co-debtors with, or guarantors or sureties for, a bankrupt, is not amended by the Chandler Act.

The only notable change in Section 17, relating to the effect of a discharge, is a provision making it clear that a discharge shall release a bankrupt from all provable debts even though allowable only in part.

**Chapter IV**

**Courts and Procedure Therein**

The principal changes effected by the Chandler Act in Section 18, which relates to process, pleadings, and adjudications, are: The reduction of the time for the return day to ten days from fifteen; the reduction of the number of publications (where service is made by that means) to one; the elimination of that clause in the old Act which permitted creditors to contest involuntary petitions; and the insertion of a provision permitting a general partner not joining in a voluntary partnership petition to appear and plead. In the next section, dealing with jury trials, the changes are consequential; and the only change in Section 20, designating the
officers who may administer oaths and affirmations, is the sub-
stitution of "judge" for "court," made necessary because
court now includes the referee.

In Section 21, which deals with evidence, changes have
been made to show that the husband of a bankrupt may be
examined pursuant to subdivision (a) as well as the wife of
a bankrupt and that, to the extent therein allowed, a husband
or wife may be examined despite any contrary law, either
Federal or State. There is a new provision making a cer-
tified copy of an order approving a trustee's bond conclusive
evidence of his appointment and qualification. A certified
copy of any order or decree is made evidence of the juris-
diction of the court, the regularity of the proceedings, the
fact that the order or decree was made, and its contents, and
it is provided that such certified copy, if recorded, shall impart
the same notice as the recording of a deed or other instru-
ment affecting property would impart.

An important addition to Section 21 and one which will
be of great assistance to attorneys examining abstracts, is
contained in subdivision (g). It provides that a certified
copy of the petition or of the decree of adjudication or of
the order approving the trustee's bond may be recorded by
the bankrupt, his receiver, custodian or trustee, the referee,
or any creditor, at the cost of the estate, in each county where
the bankrupt owns or has an interest in real property and
that where not so recorded, except in the case of real estate
located in the county in which the records of the bankruptcy
proceeding are kept, the commencement of the proceeding
shall not be constructive notice to or impair the title of any
subsequent bona fide purchaser or lienor who has given a
present fair equivalent value and has not had actual notice
of the pendency of the proceeding. There is a further provi-
sion that in the case of a judicial sale of real estate of a
bankrupt made under the order of any Federal or State
court, the jurisdiction of such court shall not be affected by
a pending bankruptcy proceeding unless the recording, as
before provided, has been made before the consummation of
such judicial sale.
The old Act made a communication by a creditor, receiver or trustee of a bankrupt, to another creditor, privileged under certain circumstances. The Chandler Act makes this provision more complete by including communications from or to attorneys and referees. There is a new provision permitting cross-examination of adverse witnesses by the parties calling them and providing that such parties shall not be bound by their testimony. This provision should be of benefit in bankruptcy cases where it is frequently necessary to endeavor to obtain facts from witnesses who are adverse to the party calling them. There is a further provision giving parties in proceedings under the Act the rights and remedies granted by the Federal equity rules in regard to discovery, interrogatories and the production of instruments and to the admission of their execution and genuineness. There is also the provision, hereinbefore referred to, that in a proceeding against a bankrupt for an accounting of his property or for a turnover order, the presumption obtains, until rebutted, that such property was sold by the bankrupt at not less than cost if his records fail to disclose the actual cost.

Section 22 dealing with reference of petitions has been completely changed. Under the old Act the provisions are for reference after adjudication. Under the Chandler Act the judge may, at any stage of the proceeding, refer the bankruptcy case to a referee, either generally or specially. It seems obvious that this provision, as well as the changes in the procedure relating to discharge, will greatly enlarge the duties of a referee and to a large extent obviate the reference to special masters, with the attendant expense.

The changes in Section 23 defining the jurisdiction of United States and State courts have been expanded to include actions brought by receivers as well as trustees. The next section, which concerns the jurisdiction of Appellate Courts, no longer contains the provisions concerning appellate practice which proved confusing in the old Act. Particularly important is the elimination of the distinction between appeals from "controversies arising in bankruptcy proceedings" and
appeals from "proceedings in bankruptcy," the Circuit Courts of Appeals being given appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions both in proceedings in bankruptcy and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and matters in fact, it being provided, however, that the jurisdiction upon appeal from a judgment upon a verdict rendered by a jury shall extend to matters of law only, and further, that when less than five hundred dollars is involved, an appeal may be taken only upon allowance of the appellate court. The United States Supreme Court is given appellate jurisdiction to review judgments, decrees and orders of the Circuit Courts of Appeals in accordance with the United States laws now in force or hereafter enacted.

Section 25, as amended, refers only to practice on appeals. It now provides that appeals to the Circuit Courts of Appeals shall be within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, and if notice is not served or filed, then within forty days from such entry. Thus the time may be reduced from forty days to thirty days by simply serving notice upon the losing party and filing proof of such service within five days thereafter. The old Act exempted trustees from giving bond on appeal and the amendment extends this exemption to receivers.

The next section permits receivers, as well as trustees, to submit to arbitration any controversy arising in the settlement of an estate, and remains otherwise substantially unchanged. The amendment to Section 27 permitting the compromise of controversies extends this right to receivers. Section 28, prescribing the designation of newspapers for the publication of notices, is unchanged except for a minor deletion.

The changes in Section 29, dealing with offenses against the Bankruptcy Act, are mostly of a clarifying nature. The punitive provisions have been made more elastic, however. In the old Act imprisonment of not to exceed five years was
provided for the various offenses enumerated in subdivision (a). The penalty now is imprisonment for a period of not to exceed five years or a fine of not more than $5,000, or both. The old Act made it an offense for a referee to purchase, directly or indirectly, any property of an estate in which he was acting as referee; by the amendment, this offense is extended to include receivers, custodians, trustees, marshals, or other officers of the court.

The three-year limitation on prosecutions for offenses arising under the Act has been qualified, the Chandler Act providing that the offense of concealment of assets of the bankrupt shall be deemed to be a continuing offense until the bankrupt shall have been finally discharged, and the period of limitations does not begin to run until such final discharge.

In 1926 the Bankruptcy Act was amended so as to require a referee, receiver or trustee to report to the United States attorney if they had any grounds for believing that any offense under the Act had been committed or if they believed that an investigation should be had. The Chandler Act contains similar provisions but provides that where one of such officers has made such a report, the other officers named are not required to do so. The provisions requiring the United States attorney to inquire into the facts so reported to him are retained, but there is a new provision requiring the District Attorney to make report of the results of his inquiry to the referee. There is a new subdivision (f) in this section providing that wherever the word bankrupt is used therein, the term shall include a debtor by or against whom a petition proposing a plan or arrangement has been filed. Section 30, conferring on the Supreme Court the power to prescribe rules, forms and orders as to procedure, is retained unchanged in the Chandler Act, and Section 31, specifying the manner in which time shall be computed, is clarified but not materially changed. Section 32, as amended, permits the transfer and consolidation of cases filed in different courts of bankruptcy, each of which has jurisdiction, in voluntary proceedings, as well as in involuntary proceedings as heretofore.
Section 33 of the Bankruptcy Act creates the offices of referee and trustee and is not amended by the Chandler Act. There are some changes, however, in Section 34 providing for the appointment, removal and districts of referees, the territorial jurisdiction of referees being made co-extensive with the territorial limits of the jurisdiction of the courts of bankruptcy appointing them, unless otherwise provided. The old provision that each county, where the services of a referee are needed, shall constitute at least one district, has been dropped. Some changes have been made in Section 35 concerning the qualifications of referees, it being required under the Chandler Act that the referee be a resident as well as have his office within the territorial limits of the district for which he is appointed and that he be a member of the bar in good standing of the federal district court which appoints him. The qualification last mentioned is made not to apply to existing referees, however, there being a few incumbents who are not members of the bar. The Chandler Act does not change Section 36, which prescribes the oath to be taken by referees, and the only change in Section 37 concerning the number of referees is the addition of a proviso that the number shall be limited, in so far as possible, with a view to employment of referees on a full time basis.

The provisions of Section 38 defining the jurisdiction of referees have been expanded to include granting, denying, or revoking discharges, confirming or refusing to confirm arrangements or wage-earner plans or setting aside such confirmation, and performing duties incidental to ancillary jurisdiction.

Section 39 has completely rearranged the provisions defining the duties of referees, but has not substantially changed the old provisions. There have been added, however, the duties of transmitting to the clerk bonds filed with referees and approved by them, the originals of all orders made by them granting adjudications or dismissing petitions, and cer-
tified copies of all orders made and entered by them, granting, denying, or revoking discharges, or confirming or refusing to confirm arrangements or plans, or setting aside the confirmation of arrangements or wage-earner plans and reinstating the proceedings or cases, and reports of the completion thereof, such new duties arising by reason of the additional jurisdiction which has been conferred upon referees by the Chandler Act.

A new subdivision concerning reviews of orders of referees has been added. It is provided that a petition for review shall be filed with the referee within ten days. Neither the old Act nor the General Orders prescribed a definite time in which to file a petition for review. In the Indiana districts, however, rules of court prescribed that petitions for review be filed within ten days and the provisions of the Chandler Act in this regard will, therefore, not change the practice in this state.

The compensation of referees prescribed by Section 40 has not been changed although the matter has been somewhat clarified and judges are given authority, by rule of court or by a special order in any proceeding, to fix a lower rate of compensation so that no referee shall receive excessive compensation during his term of office. The Chandler Act contains provisions for the compensation of referees in ancillary proceedings, such compensation not having heretofore been uniform.

There is no material change in the definition of contempts before referees, but the practice in contempt proceedings is facilitated, the referee being authorized to serve or cause to be served upon a person who does any of the things forbidden, an order requiring such person to appear before the judge upon a day certain to show cause why he should not be adjudged to be in contempt. The provision of the old Act that no person shall be required to attend as a witness before a referee outside of the state of his residence and more than one hundred miles from his place of residence and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him, has been deleted, and the
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section now provides that a person other than the bankrupt or, in case of a corporation, its officers or members of its board of directors, or trustees, shall not be required to attend as a witness before a referee at a place more than one hundred miles from his place of residence or unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

The changes in Section 42 prescribing the records to be kept by referees are not substantial and merely authorize a more modern system for keeping records. Section 43 empowering the judge to act or to appoint another referee in case of a vacancy in the office of referee or the absence or disqualification of its occupant, remains unchanged.

Section 44 provides for the appointment of a trustee or three trustees of the estate of a bankrupt by the creditors. The Chandler Act inserts a provision excluding the bankrupt's relatives, or where the bankrupt is a corporation, its stockholders or members, its officers, or members of its board of directors or trustees, from exercising powers of appointment. In many jurisdictions, including the southern district of Indiana, referees have customarily refused to permit relatives of a bankrupt, or stockholders, officers or directors of a bankrupt corporation, to control the appointment of trustees, and the Chandler Act now provides ample statutory authority for taking this position. There is a further provision giving the court the right to make the appointment if the trustee appointed by the creditors fails to qualify. This provision obviates the necessity of calling another meeting of creditors when such contingency occurs.

The Chandler Act makes provision for the appointment by the creditors at the first meeting of a committee of not less than three creditors to consult and advise with the trustee regarding the administration of the estate, to make recommendations to the trustee regarding his duties, and to submit to the court questions concerning the administration of the estate. This procedure is new to our bankruptcy practice but has been a feature of English and Canadian bankruptcy acts for some time. While the functions of this committee
are apparently only advisory and consultative, the appointment and activities of such committees will undoubtedly tend to keep alive the interest of creditors in the administration of the estate and will keep the trustees and the court advised of the wishes of creditors in respect to various steps of administration such as prosecuting actions to recover preferences, making compromise of controversies, and the like.

Another new subdivision added to this section provides that an attorney shall not be disqualified to act as an attorney for a receiver or trustee merely by reason of his representation of a general creditor. While there has been a growing tendency on the part of appellate courts to disqualify attorneys for creditors as attorneys for receivers or trustees in bankruptcy, those engaged in the actual practice have generally realized that it is disadvantageous to the estate for receivers and trustees to employ attorneys who have no knowledge of the situation and of the background which caused or induced bankruptcy. Since the appointment of trustees is made by general creditors, there would appear to be no reason why an attorney representing a general creditor, in the absence of some special interest, should be considered as being adverse to the other general creditors.

The only material change in Section 45 defining the qualifications of receivers and trustees is the inclusion of receivers, the old Act referring only to trustees. The same is true of Section 46 which provides that the death or removal of a receiver or trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but that the same may be proceeded with or defended by his joint receiver or joint trustee or successor, the only change made being that the provisions have been made to include receivers.

While most of the provisions of Section 47 defining the duties of trustees have been retained, they have been completely rearranged in the Chandler Act and the following additional statutory duties have been imposed: Trustees are required to examine bankrupts at the first meeting of creditors or at other meetings specially fixed for that purpose unless
they shall have already been fully examined by the referees, receivers or creditors, and also at the hearing of objections, if any, to their discharges, unless otherwise ordered by the court; they are required to examine all proofs of claim and object to the allowance of such claims as may be improper, their duties in this regard being the same as heretofore imposed by Clause (4) of General Order XVII; and they shall oppose, at the expense of the estates, the discharges of bankrupts when they deem it advisable to do so. Undoubtedly, where there is a creditors' committee, a trustee will consult with such committee before determining whether or not to oppose discharge. The provisions defining the duties of trustees in respect to exemptions claimed by the bankrupt have been greatly clarified, trustees being required to set apart the bankrupt's exemptions allowed by law, if claimed, and to report the items and estimated value thereof, to the court, as soon as practicable after their appointment. Under this provision trustees will not be required to set aside everything claimed by the bankrupt and then, themselves, file exceptions to their own report, a practice which was frequently followed under the old Act.

The old Act required the trustee, within thirty days after adjudication, to file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution. The Chandler Act reduces the time to ten days and requires the trustee to record a certified copy of the order approving his bond.

The principal changes affected by the Chandler Act in the provisions of Section 48 fixing the compensation of receivers, marshals, and trustees are that the commissions in arrangements are raised to the same level as in liquidation cases and the court is authorized, on its own motion, where the compensation of a trustee when calculated according to the percentages fixed in this section, does not exceed $100, to allow the trustee a fee which, with the commissions paid or to be paid him, shall not exceed $100. The amendment mentioned is designated to meet the situation in cases where, through
no fault or neglect on the part of the trustee, the estate, upon liquidation, proves so small that the trustee's commission is negligible and wholly fails to compensate him for his services. A new provision has been added in respect to compensation in case of an arrangement. It is provided that such compensation shall be computed upon all moneys disbursed or turned over by a marshal, receiver, or trustee to any persons, including lienholders, upon all moneys to be paid to unsecured creditors upon confirmation of the arrangement and thereafter pursuant to its terms, and where under the arrangement any part of the consideration to be paid is other than money, upon the amount of the fair value of such consideration, there being a proviso that the court may, in respect to all moneys to be paid to unsecured creditors after confirmation, prescribe such time for the payment of the compensation computed thereon as in the particular case may be fair and equitable. Additional provisions have been added in respect to plans of reorganization confirmed under the Act. The compensation of a marshal, receiver or trustee in a prior pending bankruptcy proceeding superseded by a reorganization proceeding, is to be computed upon all moneys disbursed or turned over to any person including lienholders, upon all moneys to be paid to unsecured creditors upon the confirmation of the plan of reorganization and thereafter, pursuant to its terms, and where any part of the consideration to be paid to unsecured creditors is other than money, upon the amount of the fair value of such consideration, it being likewise provided in respect to moneys to be paid to unsecured creditors after the consummation of the plan that the court may prescribe the time for the payment of the compensation computed thereon.

Section 49 of the old Act provided that the accounts and papers of trustees shall be open to the inspection of officers and all parties in interest and the Chandler Act has expanded this provision to include receivers. Likewise Section 50, which concerns bonds of bankruptcy officers has been expanded to include receivers. Trustees were formerly given ten days within which to qualify by filing their bonds but the amended
provision requires receivers and trustees to qualify within five days after their appointment. Formerly the creditors of the bankrupt fixed the amount of the bond of the trustee, but according to the Chandler Act the court fixes the amount of receiver’s and trustee’s bonds and may increase or decrease the amount at any time when cause therefor appears. There is a new provision empowering the court summarily, upon application of any party in interest and on notice, to determine the damages for breach of any obligation of a bond furnished under the Act and by appropriate process to enforce collection from those liable on the bond.

There are no important changes in Section 51 defining the duties of clerks of the bankruptcy courts with the exception of a new provision requiring the clerk to collect his filing fee and the fee of the referee in each ancillary proceeding before filing the petition instituting the same. The only change of any consequence in Section 52 is one conforming to the provisions of Section 51 and requiring the Clerk to collect a filing fee of ten dollars in each estate in ancillary as well as primary jurisdiction.

Under Section 53 the Attorney General is required annually to lay before Congress statistical tables concerning bankruptcy cases and the Chandler Act prescribes such detail that the information furnished will be of value in showing the operation and efficiency of bankruptcy administration in the country as a whole, and in the various states, districts and divisions.

Chapter VI

Creditors

Section 55, dealing with meetings of creditors, has not been substantially changed except that the examination of the bankrupt has been made mandatory and subdivision (d) of the old Act which provided for holding meetings subsequent to the first one, at any time or place when creditors whose claims have been filed and allowed sign a written consent, has been dropped. A provision has also been added that a no-asset case may be closed without ordering a final meeting. The
most important change in Section 56 which governs voting at meetings of creditors is that claims of fifty dollars or less are not to be counted in computing the number of creditors present or voting, but shall be counted in computing the amount. This will tend to prevent blocking of control by a preponderantly large amount of claims on the part of holders of small claims.

Some important changes have been made in Section 57 governing the proof and allowance of claims. An unliquidated or contingent claim may be allowed if liquidated or the amount thereof estimated in the manner and within the time directed by the court, but shall not be allowed if the court determines it is not capable of liquidation or of reasonable estimation or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under the Act. This provision may prove beneficial to the bankrupt because some claims formerly deemed not provable and hence not dischargeable, may now be allowed and, therefore, discharged. There is a provision that the determination of the value of securities held by secured creditors by converting the same into money according to the terms of the agreement pursuant to which they are held, or by agreement, arbitration, compromise or liquidation by the secured creditors and the trustee, shall be under the supervision and control of the court. The provision of the old Act giving the trustee the right to recover excess dividends paid to creditors has been expanded so as to permit such recovery by means of a summary proceeding in the bankruptcy court.

One of the most important changes in this section from an administrative viewpoint is that relating to the time within which claims must be proved and filed. Claims are required to be filed within six months after the first date set for the first meeting of creditors instead of within six months after adjudication. Some injustice to creditors resulted at times when for one reason or another considerable time elapsed between the adjudication and the giving of the notice of the first meeting, the time for filing claims after notice of the proceedings being sometimes very brief in consequence. The
old Act did not specifically require claims of the United States or of any state or subdivision thereof to be filed within the time fixed and, under the decisions, the entering of orders barring the filing of tax claims, if not filed within a time fixed was frequently necessary. The Chandler Act requires claims of the United States and of any state or subdivision thereof to be filed in the same manner as other claims but permits the court, upon application before the expiration of the period and for cause shown, to grant a reasonable fixed extension of time for the filing of claims by the United States or any state or subdivision thereof.

The old provision that if claims are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, the time for filing such claims will expire within sixty days after the rendition of such judgment, has been deleted. There is a new provision that a claim arising in favor of a person by reason of the recovery by the trustee from such person of money or property, or the avoidance by the trustee of a lien held by such person, may be filed within thirty days from the date of such recovery or avoidance, but if the recovery is by way of a proceeding in which a final judgment has been entered against such person, the claim shall not be allowed if the money is not paid or the property is not delivered to the trustee within thirty days from the date of the rendering of such final judgment, or within such further time as the court may allow. The Chandler Act also provides that in any case wherein all claims which have been duly allowed have been paid in full, claims not filed within the time fixed in the Act may, nevertheless, be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case. The provision last referred to meets the situation where only a few claims are filed within the time fixed and the assets are such that these are paid in full and there is a surplus to be turned back to the bankrupt. Such cases, incidentally, have not been of rare occurrence.

Some interesting procedural changes have been made in
Section 58 respecting the giving of notices. The provision for ten days’ notice by mail has been retained. However, notice of examinations of the bankrupt is to be given only if the court so directs. Notices are to be given to creditors of all hearings upon applications for confirmation of arrangements and wage-earner plans, of all meetings of creditors, and of all proposed sales of property (there being a provision, however, that the court may, upon cause shown, shorten such time or order an immediate sale without notice); the declaration and time of payment of dividends; the filing of all accounts of a receiver and trustee for which confirmation is asked, and the time when they will be examined and passed upon; the proposed compromise of any controversy in which the amount claimed by either party in money or value exceeds one thousand dollars; the proposed dismissal of the proceeding in cases where notice is required by Section 59 of the Act; and all applications by receivers, ancillary receivers, marshals, trustees and attorneys for compensation from the estate for services rendered. There is a further provision that where a creditors’ committee has been appointed, notice of examinations of the bankrupt, proposed sales of property, and compromise of controversies, shall be sent only to such committee and to creditors who have filed with the court a demand that all notices be mailed to them. The provision permitting the court, upon cause shown, to shorten the time of the notice of sale or to order an immediate sale without notice, will doubtless prove extremely valuable. Under the old Act it was only in case of perishable property that delay in making sales of assets could be avoided. Consequently the term “perishable property” was sometimes construed so liberally as to lose all real meaning. The court may now exercise its discretion in cases where assets, although not really perishable, would lose their value if sale is delayed, and order a sale on short notice or without any notice whatever. The provision obviating the necessity of giving notice of proposed compromises involving less than one thousand dollars will undoubtedly prove helpful, the cost of giving notice in some cases being disproportionate to the amount involved. Whether
the provision eliminating the giving of notice to creditors generally unless they have filed a demand, in cases where a creditors' committee has been appointed, will prove salutary, remains to be seen.

The Chandler Act requires the giving of thirty days' notice by mail of the last day fixed by the court for the filing of objections to the bankrupt's discharge, such notice to be given to the creditors, to the trustee, and his attorney, and to the United States attorney. The court is also required to give at least thirty days notice by mail of the time and place of hearing upon objections to the bankrupt's discharge, such notice to be given to the bankrupt and his attorney and to the objecting parties and their attorneys. These provisions are made necessary by the changes in Section 14 relating to discharges.

The amendatory act requires the clerk to mail to the Commissioner of Internal Revenue a certified copy of every order of adjudication forthwith upon the entry thereof. Under General Order XVII notice of adjudication to the Commissioner of Internal Revenue is at present required to be given by the Trustee in Bankruptcy. Undoubtedly the statutory provision will replace this requirement of the General Orders.

The court is required, under the provisions of the Chandler Act, to mail or cause to be mailed a copy of the notice of the first meeting of creditors to the Commissioner of Internal Revenue, and to the Collector of Internal Revenue for the district in which the court is located.

Section 59 deals with those who may file and dismiss petitions in bankruptcy. No change has been made in respect to a voluntary petition, but in case of an involuntary petition the creditor or creditors filing must hold provable claims, fixed as to liability, liquidated in amount, and aggregating five hundred dollars or over in excess of the value of securities, if any, held by them. The purpose of requiring the claims to be fixed as to liability and liquidated in amount is to simplify the trial of a contested petition. If this is construed to apply to the holder of a large claim which is undoubtedly in excess
of five hundred dollars but is not liquidated, the effect may be unfavorable.

The Chandler Act requires petitions to be filed in triplicate so that one copy will be available to the referee, to whom reference may be made immediately upon the filing of a petition.

Additional classes are added to the list of creditors which should be excluded in computing the number of the creditors of the bankrupt for the purpose of determining how many creditors must join in the petition. Thus stockholders, officers or directors of an alleged bankrupt corporation are excluded, and likewise creditors who are fully secured or who have received voidable preferences. As a condition precedent to the dismissal of a voluntary or involuntary petition, the bankrupt is required to file a list, under oath, of all of his creditors with their addresses in order that notices may be sent to them. The Chandler Act provides that if the bankrupt shall fail to file such list within a time fixed by the court, it may be filed by the petitioning creditors according to the best of their knowledge, information and belief. The amendment provides that in case of a dismissal for failure to pay the costs of the bankruptcy proceedings, notice shall not be required. There is also a new provision to the effect that a creditor shall not be estopped to act as a petitioning creditor because he participated in any prior matter or judicial proceeding having for its purpose the adjustment or settlement of the affairs of the debtor or the liquidation of his property, or to allege such prior matter or proceeding as an act of bankruptcy, unless he has consented thereto in writing with knowledge of the facts, if any, which would be a bar to the discharge of the debtor under this Act. This provision will remove the disability which courts have frequently held to attach to creditors who have participated in prior equity receiverships.

Some of the most important changes effected by the Chandler Act occur in Section 60 which deals with preferred creditors. The definition of a preference has been entirely rewritten and is clearer than the definition in the old Act but
the purport may be said generally to be the same. The language of the old Act concerning the suffering of a judgment to be entered against an insolvent has been deleted. Any transfer of property of the debtor to or for the benefit of a creditor for an antecedent debt, made or suffered by the debtor while insolvent and within four months before the filing by or against him of the petition in bankruptcy, or of the original petition under Chapters X, XI, XII, or XIII, the effect of which will enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class, constitutes a preference. There is new language to take the place of the amendments made in 1903, 1910 and 1926 which attempted to date the transfer at the date of recordation or registration if such was required or permitted by law. It is now provided that a transfer shall be deemed to have been made at the time when it became so far perfected that no bona-fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, and, if such transfer is not so perfected prior to the filing of the petition in bankruptcy or of the original petition it shall be deemed to have been made immediately before bankruptcy.

Under the former phraseology a transfer was voidable if, at the time thereof, being within four months before the filing of the petition in bankruptcy or after the filing and before adjudication, the bankrupt was insolvent and the transfer operated as a preference and the person receiving it or to be benefited thereby had reasonable cause to believe that it would become a preference. The Chandler Act provides that a preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby, or his agent acting with reference thereto, has, at the time when the transfer was made, reasonable cause to believe that the debtor is insolvent. It is further provided that in case of a voidable preference the trustee may recover the property, or, if it has been converted, its value, from any person who has received or converted such property, except a bona-fide
purchaser from or lienor of the debtor's transferee for a present fair equivalent value. Where less than such value has been given, the transferee has a lien upon the property but only to the extent of the consideration actually given. The clause giving state and bankruptcy courts concurrent jurisdiction in actions for the recovery or avoidance of preferential transfers has been retained with some changes in phraseology.

The Chandler Act has elaborate provisions dealing specifically with stock brokerage transactions, the Act prior to amendment not having such. These new provisions are intended to make the law uniform and to avoid the inequalities in distribution which ensued when the rights and claims of customers of a stockbroker were determined according to the laws of the states in which the various transactions took place.

CHAPTER VII

ESTATES

The principal change effected in Section 61 providing for the designation of bankruptcy depositories is the granting of authority to the judge to accept the deposit of securities in lieu of a surety or sureties upon the bond of a banking institution. The securities which may thus be accepted are those designated in Section 1126 of the Revenue Act of 1926, as amended, and it is provided that they shall be placed in the custody of Federal Reserve banks or branches thereof designated by the judges of the several courts of bankruptcy, subject to the orders of such judges. Pledges of securities heretofore made are ratified and validated. At the time when many banks were closing their doors during the depression, offers to deposit securities were made by banking institutions designated as bankruptcy depositories but in many jurisdictions the view was taken that this could not lawfully be done. The Chandler Act now permits this practice.

Section 62 concerns the expenses of administering estates; unauthorized sharing of fees; and withholding allowances.
The Chandler Act makes contingent debts and contingent contractual liabilities provable. The old Act was amended in 1926 to make claims for damages respecting executory contracts, including future rents, provable but limiting the claim of a landlord for injury resulting from the rejection by a trustee of an unexpired lease of real estate, or for damages or indemnity under a covenant contained in such lease, to an amount not exceeding the rent reserved by the lease, without acceleration, for the year next immediately preceding the date of the surrender of the premises, plus an amount equal to the unpaid rent accrued up to said date. The Chandler Act renders claims provable for anticipatory breach of contracts, executory in whole or in part, including unexpired leases of real or personal property, but also limits the claim of a landlord for damages for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity
under a covenant contained in such lease to an amount not exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises to the landlord or the date of re-entry of the landlord, whichever first occurs, whether before or after bankruptcy, plus an amount equal to the unpaid rent accrued, without acceleration, up to such date. There is a further provision that notwithstanding any state law to the contrary, the rejection of an executory contract or unexpired lease, as provided in the Act, shall constitute a breach of such contract or lease as of the date of the filing of the petition in bankruptcy or of the original petition under Chapters X, XI, XII or XIII. This provision clarifies and strengthens the existing law as to claims for breach of executory contracts.

As hereinbefore noted, Section 57 provides for the liquidation of contingent and unliquidated claims and provides that such claims shall not be allowed if the court shall determine that they are not capable of liquidation or of reasonable estimation within a time which will not unduly prolong the administration of the estate. A new provision to Section 63 makes claims of this character which are not allowed, not provable. The obvious purpose of this provision is to safeguard such claims against discharge.

Section 64, defining debts which have priority, still consists of two subsections. However, subsection (a) of the Act prior to amendment has been merged in what corresponds generally to old subsection (b), which is now designated (a). Wages have been advanced in priority over the costs and expenses incurred in opposing the bankrupt's discharge or procuring the revocation thereof, or in securing the conviction of any person guilty of any offense under the Act. Only five classes of priorities are now described. The first includes, with some changes, the first three classes prescribed in the old Act; the second consists of wages, having been expanded to include the compensation of a traveling or city salesman who may sell one or more lines for the bankrupt but who is not exclusively employed by the bankrupt; within the third class are the reasonable costs and expenses of creditors
incurred in bringing about the refusal or revocation of the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge, or in obtaining evidence resulting in the conviction of any person of an offense under the Act; the fourth class consists of taxes legally due and owing by the bankrupt to the United States or any state or any subdivision thereof, there being a provision that no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein, as determined by the court (a clause appearing in substance in the old Act but applicable only to taxes assessed against real estate), it being provided also that the court may determine questions concerning the amount or legality of any taxes; and the fifth class consists of debts owing to any person, including the United States, who, by the laws of the United States, is entitled to priority, and rent owing to a landlord who is entitled to priority by applicable state law, there being a provision that such priority to a landlord shall be restricted to the rent due and owing for the actual use and occupancy of the premises affected and accruing within three months before the date of bankruptcy. It is to be noted that the provision of the old Act giving priority to any person who by the laws of the state is entitled thereto has been omitted. It would seem that interesting questions are sure to arise as to whether various impositions of state governments, entitled to priority under state law, constitute taxes, the questions not being so important heretofore because if they were not held to be taxes and thus to fall within the sixth order of priority of old Section 64(b), they were held to fall within the seventh.

Section 65 covering the declaration and payment of dividends has not been greatly changed. The date for declaring the first dividend is altered to thirty days after the date set for the first meeting of creditors instead of thirty days after adjudication. There is a new provision that after the expiration of six months following the first date set for the first meeting only one dividend need be declared. Since the time for filing claims expires by that time, the practice has generally
been to make distribution by means of a sole and final dividend and such practice now has the sanction of the statute.

Some change has been made in Section 66 dealing with unclaimed moneys. Formerly a trustee paid into court the dividends remaining unclaimed for six months after the declaration of the final dividend. This time has been shortened to sixty days. The Trustee is required to file with the Clerk of the court a list of the names and postoffice addresses of the persons entitled to the amount paid in, showing the respective amounts payable to them. This has been the practice in the Indiana districts, but it has not heretofore been required by the Act.

Section 67, prior to amendment, purported to deal with liens. The caption in the Chandler Act is "Liens and Fraudulent Transfers." The changes in this section are so extensive that any kind of a complete analysis thereof is impossible within the limits of this discussion.

Every lien against property of a person obtained by attachment, judgment, levy or other legal proceedings within four months before the filing of a petition in bankruptcy or of an original petition under the debtor-relief chapters shall be deemed null and void if such person was insolvent at the time the lien was obtained or if the lien was sought or obtained in fraud of the Act, there being a proviso reinstating such liens if the person is not finally adjudged a bankrupt or if no arrangement or plan is proposed and confirmed. If the lien thus deemed void has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified by the transfer of or the creation of a lien on any of the non-exempt property of a person before the filing of a petition in bankruptcy or of a debtor-relief petition by or against him, such indemnifying transfer or lien shall also be deemed void. A like proviso as that above mentioned for the reinstatement of such lien in case there is no adjudication or no confirmation of an arrangement of plan is appended to these provisions. The property affected by any lien deemed void under the provisions aforesaid shall be discharged from such lien and shall pass to the trustee or debtor as the case
may be, except that the court may, on due notice, order any such lien to be preserved for the benefit of the estate and the court may direct such conveyance as may be proper or adequate to evidence the title thereto to the trustee or debtor. It is provided, however, that the title of a bona-fide purchaser of such property shall be valid, but if acquired otherwise than at a judicial sale held to enforce such lien, then it shall be valid only to the extent of the present consideration paid for the property. The bankruptcy court is given summary jurisdiction in any proceeding by the trustee or debtor to hear and determine the rights of any parties in respect to the matters aforesaid. This appears to be a decided change in the law in that it seems to obviate the necessity of plenary proceedings where the property involved is in the hands of a party holding it adversely. The Chandler Act further provides that where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court may, upon proper application, ascertain the value of such property or lien and if the same is less than the amount for which the property is indemnity or than the amount of such lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value to the trustee or debtor. The limit of the surety's liability is made definite by a provision that the liability of a surety under a releasing bond shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien voided by the trustee or debtor.

Subsection (b) of Section 67 is to the effect that the provisions of Section 60 relating to preferences to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts created or recognized by the laws of the United States or any state, may be valid against the Trustee even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the bankruptcy or debtor-relief petition by or against him. It is further provided that where, by such laws, such liens are required to be perfected and they arise but are not
perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court. These provisions point substantially to the practice which has been employed in Indiana in respect to mechanics' liens. Where the time during which suit may be commenced had not expired at the time of the bankruptcy proceedings, the perfecting of such liens has been permitted through the filing of appropriate pleadings in the bankruptcy court.

Subdivision (d) of this section provides that transfers made and obligations incurred by a debtor within one year prior to the filing of a bankruptcy or debtor-relief petition by or against him, are fraudulent (a) as to creditors existing at the time of such transfer or obligation, if made or incurred without fair consideration by a debtor who is or will thereby be rendered insolvent, regardless of his actual intent, or (b) as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to be engaged in such business or transaction, for which the property remaining in his hands is an unreasonably small capital, without regard to his actual intent; or (c) as to his then or future creditors, if made or incurred without a fair consideration by a debtor who intends to incur or believes that he will incur debts beyond his ability to pay as they mature; or (d) as to then existing and future creditors, if made or incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either existing or future creditors. This provision is substituted for the provisions of subsection (e) of Section 67 as it was constituted prior to amendment, but the time during which such fraudulent transfers are made voidable is now one year instead of four months as formerly. Every transfer made and every obligation incurred by a
debtor within four months prior to the filing of a bankruptcy or debtor-relief petition by or against him is fraudulent, as to then existing or future creditors, if made or incurred with intent to use the consideration, obtained for the transfer or obligation, to effect a preference to a third person voidable under Section 60 of the Act, the remedies of the trustee for the avoidance of such transfer or obligation and of such preference being made cumulative, but the trustee being limited to only one satisfaction in respect thereto. In this provision four months is used to coordinate it with Section 60 dealing with preferences. There is a subdivision applicable to partnerships which, like many of the provisions of this section heretofore discussed, is taken from the Uniform Fraudulent Conveyance Act, making transfers of partnership property within one year before the filing of a petition in bankruptcy or for debtor-relief, when the partnership is insolvent or will be thereby rendered insolvent, fraudulent as to partnership creditors existing at the time of such transfer or obligation, without regard to actual intent, if made or incurred (a) to a partner, whether with or without a promise by him to pay partnership debts, or (b) to a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners. The definition of the time when a transfer shall be deemed to have been made is similar to that hereinbefore referred to in the discussion of the provisions of Section 60. Another provision taken from the Uniform Fraudulent Conveyance Act makes a transfer, fraudulent under this subdivision against creditors having provable claims, void as against the trustee except as to a bona-fide purchaser, lienor or obligee for a present fair equivalent value; a purchaser, lienor or obligee without fraudulent intent being protected by a provision giving him the right to retain the property, lien, or obligation as security for repayment. This subdivision of Section 77B contains a paragraph defining various terms applicable only to it. The final subdivision of this section gives state courts which would have jurisdiction if bankruptcy
had not intervened, and courts of bankruptcy, concurrent jurisdiction for the purpose of any recovery or avoidance under the section where plenary proceedings are necessary.

The changes in Section 68, which refer to set-offs and counterclaims, have not been materially changed. Section 69 dealing with the seizure of the property of bankrupts by officers of the bankruptcy court, has been expanded to include provisions formerly appearing in Section 3(a) concerning the bond to indemnify the bankrupt in case of the dismissal of the proceedings. An important new provision has been added relating to receivers or trustees not appointed under the Act, making them accountable to the bankruptcy court, upon the filing of a petition, for any action taken by them after the filing thereof and requiring them to file in the bankruptcy proceeding a sworn summary of the property in their charge and of the liabilities of the estate, both as of the time of and since their appointment, and a sworn statement of their administration thereof. These provisions prohibit such receiver or trustee, with knowledge of the bankruptcy proceedings, from making disbursements or taking any action in the administration of the property in their charge without first obtaining authorization therefor from the bankruptcy court. This provision, while restricting their activities, will serve to protect equity receivers who, in the past, have frequently found themselves placed in an anomalous position where bankruptcy proceedings have intervened but no order has been entered appointing receivers in bankruptcy to take over the property in their charge.

The first subdivision of Section 70 of the old Act, dealing with title to property, vested title in the trustee as of the date of adjudication but a subsequent clause gave the trustee title to "property which prior to the filing of the petition he (the bankrupt) could by any means have transferred or which might have been levied upon and sold under judicial process against him." This was construed to mean that the title of the bankrupt vested in the trustee as of the date of adjudication but upon thus vesting it related back to the time of the filing of the petition. The Chandler Act makes it clear that
the trustee is vested with the title as of the date of the filing of the petition in bankruptcy or of the original petition proposing an arrangement or plan under the Act. It provides that rights of action ex delicto for libel, slander, injuries to the person, etc., shall not vest in the trustee unless by the law of the state such rights of action are subject to attachment, execution, garnishment, sequestration, or other judicial process. Contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, and like interests in real property, which were nonassignable prior to bankruptcy and which, within six months thereafter, become assignable interests or estates or give rise to powers in the bankrupt to acquire assignable interests or estates, now pass to the trustee. Furthermore, property vesting in a bankrupt within six months after bankruptcy by bequest, devise, or inheritance shall vest in the trustee, his successor or successors, upon qualification, as of the date when it vested in the bankrupt, and shall be free of any transfer made or suffered by the bankrupt after bankruptcy. It would seem that this provision may, in some cases, prevent resort to bankruptcy as a device to deprive creditors of the benefit of an imminently impending inheritance. It will serve to protect those who extend credit upon the prospect of expected inheritances. A further provision in line with the one last discussed, vests in the trustee, as of the date of bankruptcy, all property in which the bankrupt has, at the date of bankruptcy, an estate or interest by the entirety and which, within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt, to the extent that it becomes so transferable. Heretofore it has been customary to close estates at the first meeting of creditors where the only substantial property consisted of real estate held by the entireties. It may become necessary, in view of this provision, to hold all such estates open for six months. Since the title relates back to the date of bankruptcy, it would seem that during the six months period transfers, encumbrances and the like cannot be effectively made in respect to such property.
The Chandler Act has a number of provisions relating to executory contracts, including real estate leases. They require the trustee, within sixty days after the adjudication, to assume or reject any executory contracts, including unexpired leases of real property, the court being given authority, for cause shown, to extend or reduce such period. Any such contract or lease not assumed or rejected within such period, whether or not a trustee has been appointed or has qualified, shall be deemed to be rejected. The trustee is required to file, within sixty days after adjudication, a verified statement showing what, if any, contracts of the bankrupt are executory in whole or in part, including unexpired leases of real property, and which, if any, have been rejected by the trustee, the court being given the right, for cause shown, to extend or reduce such period of time. Unless a lease for real property expressly provides otherwise, a rejection of such lease by the trustee of the lessor shall not deprive the lessee of his estate. A general covenant or condition against assignment in a lease shall not be construed to prevent the trustee from assuming the same at his election and subsequently assigning the same, but an express covenant that an assignment by operation of law or the bankruptcy of a specified party thereto or of either party shall terminate the lease or give the other party an election to terminate the same, is made enforceable. A trustee who elects to assume a contract or lease of the bankrupt and who subsequently, with the approval of the court and upon such terms and conditions as the court may fix after hearing upon notice to the other party to the contract or lease, assigns such contract or lease to a third person, shall not be liable for breaches occurring after such assignment. While these provisions are, for the most part, merely declaratory of the existing decided law, they will certainly serve to clarify matters involving executory contracts, particularly real estate leases, and to make the practice uniform in all jurisdictions.

The Chandler Act has a provision which gives the trustee the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitations, statutes of frauds, usury, and other personal defenses, and provides that
such defenses cannot be waived by the bankrupt after bankruptcy. There is also, in substance, the clause formerly in Section 47, vesting the trustee, as to all property in the possession or under the control of the bankrupt at the date of bankruptcy or otherwise coming into the possession of the bankruptcy court, with all the rights, remedies, and powers of a creditor then holding a lien thereon by legal or equitable proceedings, and vesting the trustee, as to all other property, as of the date of bankruptcy, with all the rights, remedies, and powers of a judgment creditor then holding an execution duly returned unsatisfied.

The amendatory Act makes a transfer, after bankruptcy, of any of the bankrupt's property, other than real estate, to a person acting in good faith, valid as against the trustee if made for present fair equivalent value, and also protects a debtor of the debtor or one holding property for him, if acting in good faith, he pays such indebtedness or delivers such property to the bankrupt, it being specified, however, that these provisions shall not be applicable if a federal or state court receiver is in possession of all or the greater portion of such property. The burden of establishing the validity of a transfer after bankruptcy is upon the person asserting it. One who has actual knowledge of the pending bankruptcy shall not be deemed to act in good faith unless he has reasonable cause to believe that the bankruptcy petition is not well founded. Transfers, after bankruptcy, other than those specified in these provisions of Section 70 and the provisions of Section 21 which protect transfers of real estate where certain documents showing the bankruptcy have not been recorded, are declared invalid. It is provided, however, that the negotiability of currency or negotiable instruments shall not be impaired.

There is an important procedural change in this section respecting the appointment of appraisers. Formerly it was necessary to appoint three appraisers, but under the Chandler Act the court appoints a competent and disinterested appraiser and upon cause shown may appoint additional appraisers. This change will undoubtedly be salutary in small cases in
which paying the compensation of three appraisers has often proved burdensome. There is a new provision that an auctioneer, if an individual or a partnership, shall be a bona-fide resident and citizen of the judicial district in which the property to be sold is situated. If the auctioneer is a corporation it must be lawfully domesticated and authorized to transact such business in the state in which the judicial district is located.

Conforming with the provisions of the Act dealing with arrangements and plans, there is a provision that upon the confirmation of an arrangement or plan, or at such later time as may be provided therein or in the order confirming the same, the title to the property dealt with shall revest in the bankrupt or debtor or vest in such other person as may be provided in the arrangement or plan or in the order confirming the same.

The changes in Section 71—Clerks' indexes, certificates of search, dockets—are not sufficiently material to require discussion, the changes being for purposes of clarification. Likewise Section 72, defining the limitation of compensation of officers of the court, has not been materially changed except that it is made clear that it is only in respect to services that are required by the Act, that the limitations apply.

CHAPTER VIII

PROVISIONS FOR THE RELIEF OF DEBTORS

This chapter, as aforesaid, contains Section 75, agricultural compositions and extensions, and Chapter 77, reorganization of railroads engaged in interstate commerce. Former Section 76 providing that extensions shall apply to persons secondarily liable, has been deleted. No changes of consequence have been made by the Chandler Act in Section 75 which is a temporary measure, the life of which has recently been extended to March 4, 1940; and likewise no changes have been made in Section 77, the railroad reorganization section.
CHAPTER IX
COMPOSITION OF INDEBTEDNESS OF CERTAIN TAXING AGENCIES OR INSTRUMENTALITIES

This chapter contains no provisions except those relating to municipal debt readjustments and has not been amended by the Chandler Act.

CHAPTER X
CORPORATE REORGANIZATIONS

This chapter is a revision of Section 77B. It is so extensive and contains so many important provisions and such material changes have been effected that even a general discussion of the latter would extend this paper beyond all reasonable limits. A brief reference to some of the more important changes must suffice.

Many ambiguities existing in former Section 77B have been cleared up and many omissions supplied. The provisions have been arranged into much more logical order than before and have been separated into sections easily referred to.

One of the important changes is that in all cases where the liquidated and non-contingent indebtedness of the debtor is $250,000 or more, a disinterested trustee or trustees must be appointed. Where the indebtedness is less than $250,000, the debtor may, as before, be permitted to remain in possession, but if a trustee is appointed he must be disinterested. Any attorney appointed to represent a trustee must also be disinterested except that for specified purposes the trustee may, with the approval of the judge, appoint an attorney who is not disinterested. The court is given power to appoint a trustee additional to the disinterested one and such additional trustee may be a director, officer or employee of the debtor. The duties of the trustee have been extended. He is required, within a time fixed by the judge, to prepare and file a plan or to report his reasons why a plan cannot be effected. The court, upon notice to interested parties, shall enter an order approving the plan or plans which, in his
opinion, comply with the provisions of the Act and are fair and equitable and feasible and shall fix a time within which the creditors and stockholders affected thereby may accept the same. Except by special permission of the court, the solicitation of acceptances of a plan is not permitted before the approval of the plan by the court.

After the hearing on the plan or report of the trustee and before the approval of any plan, the judge may, if the scheduled indebtedness of the debtor does not exceed three million dollars, submit to the Securities and Exchange Commission for examination and report the plan or plans which he regards as worthy of consideration and, if the indebtedness exceeds the sum mentioned, the plan must be submitted to the Securities and Exchange Commission. The judge cannot enter an order approving a plan submitted to the Securities and Exchange Commission until after that Commission has filed its report thereon or has notified the judge that it will not file a report, or until the expiration of a reasonable time for the filing of such report, fixed by the judge, whichever first occurs. Upon the approval of a plan by the judge, the trustee or the debtor in possession shall transmit, by mail or otherwise, to all creditors and stockholders affected by the plan, the following: A copy of the plan or plans approved, together with a summary thereof approved by the judge; the opinion of the judge, if any, approving the plan or plans, or a summary thereof approved by the judge; the report, if any, filed by the Securities and Exchange Commission or a summary thereof prepared by that Commission; and such other matters as the judge may deem necessary or desirable for the information of creditors and stockholders.

The Securities and Exchange Commission shall, if requested by the judge, and may, upon its own motion, if approved by the judge, file notice of its appearance in a proceeding under this chapter and upon the filing thereof the Commission shall be deemed to be a party in interest with the right to be heard on all matters arising in the proceeding and shall be deemed to have intervened in respect to all matters in the proceeding with the same force and effect as if a petition for that pur-
pose had been allowed by the judge, but the Commission may not appeal or file any petition for an appeal in any such proceeding. The chapter contains limitations on creditor and stockholder representation and gives the judge wide powers in respect to deposit agreements, proxies, powers of attorney, trust mortgages, committee or other authorization, and the like, by the terms of which an agent, attorney, indenture trustee or committee purports to represent any creditor or stockholder.

The chapter, as amended, permits the reference of the proceeding to a referee in bankruptcy to hear and determine any and all matters not reserved to the judge, or reference to a special master who may be a referee in bankruptcy, to hear and report generally or upon specified matters, and authorizes the judge to make allowances for the services and expenses of such officers and of the trustees, their attorneys, and the attorneys for the debtor and the petitioning creditors, and of indenture trustees, depositaries, reorganization managers, committees or representatives of creditors or stockholders and any other parties in interest. As before, the petition of a debtor for reorganization shall not be approved unless the judge is satisfied that it has been filed in good faith. A petition shall be deemed not to be filed in good faith if adequate relief would be obtainable under a debtor's petition under the provisions of Chapter XI which governs arrangements. It is believed that adequate relief by way of arrangements can be obtained for many corporations, and the necessity of reorganization proceedings thus obviated.

Some of the provisions aforementioned were subjected to considerable criticism during the consideration of the Chandler Act by the Senate Committee on the Judiciary and have been criticised by various commentators since its enactment. It has been pointed out that a disinterested trustee will, almost necessarily, be ignorant of the corporation involved and its activities and that considerable time must elapse before he is able to draft the plan of reorganization, a duty imposed upon him by the amended Act. Acceptances cannot be obtained until the proceedings have lasted for a considerable time.
The debtor's petition must have been filed and a disinterested trustee found and appointed. Such trustee must have conducted an investigation, if ordered to do so, and have reported to the security holders, inviting suggestions concerning the plan. A hearing must have been held upon the trustee's plan, at which any creditor or stockholder is given the right to submit additional plans. The court must have eliminated all plans not worthy of consideration and have referred the plans under consideration, in cases where the liabilities amount to three million dollars or more, to the Securities and Exchange Commission. The Securities and Exchange Commission must report to the court and a second hearing be held. Thereupon, if a plan or plans meet with the approval of the court, the proponents of the plan may, for the first time, seek acceptances from the creditors and stockholders. It has been charged that not only will the new provisions greatly delay the completion of reorganization proceedings, but that considerable additional expense will be involved on account of the necessity of appointing trustees in certain cases, and on account of the proceedings in relation to the Securities and Exchange Commission. It has been suggested further, that while the reports of the Securities and Exchange Commission are purely advisory, they will necessarily have great weight and that it is unlikely that a judge will approve a plan, even though the parties most in interest consider it meritorious, if the report of the Securities and Exchange commission is adverse.

While it must be conceded that some of the new provisions relating to the reorganization of corporations will tend to protract such proceedings and perhaps to increase the expense in some cases, the great power of supervision which has been granted the court and the additional safeguards which have been thrown about the rights and representation of security holders must be considered as outweighing to some extent, at least, the disadvantages of delay and expense. Doubtless time and experience will develop some flaws in the new corporate reorganization act but it is, in the main, the composite result of the efforts of sincere and extremely able men, well
versed in bankruptcy and reorganization matters, who con-
tinued to urge the passage of the Chandler Act even after
some of the suggestions of representatives of the Securities
and Exchange Commission had been incorporated in Chap-
ter X. Unconstructive adverse criticism should be withheld
pending a thorough trial of the new provisions relating to
corporate reorganizations.

Chapter XI
Arrangements

This chapter takes the place of former Section 12 dealing
with compositions and former Section 74 dealing with exten-
sions and compositions. Chapter 74 was intended to remedy
some of the defects of Section 12 and to provide a much
more elastic method of rehabilitation than the old composi-
tion section afforded. In actual practice it proved unsatis-
factory and only in a few localities was advantage of its
provisions taken by any considerable number of debtors.

Chapter XI is available to natural persons and corpora-
tions and it is believed that many smaller corporations will
be enabled to take advantage of its provisions and thus avoid
resort to the more complex and expensive procedure of
Chapter X.

An arrangement, according to the definition set forth in
this chapter, is any plan of a debtor for the settlement, satis-
faction, or extension of the time for payment of his unsecured
debts, upon any terms.

A debtor may file a petition for an arrangement under
Chapter XI in a pending bankruptcy proceeding either before
or after his adjudication and, if no bankruptcy proceeding is
pending, he may file an original petition. In order to take
advantage of the provisions of this chapter the debtor must
aver that he is insolvent or unable to pay his debts as they
mature. Provision is made for reference of the proceeding
to a referee and the court may, upon the application of any
party in interest, appoint a receiver for the property of the
debtor or, if a trustee in bankruptcy has previously been
appointed, continue such trustee in possession. Where no
receiver or trustee is appointed, the debtor continues in possession of his property and exercises the powers of a trustee subject to the control of the court.

An arrangement within the meaning of this chapter is required to include provisions modifying or altering the rights of unsecured creditors generally and may include provisions for treatment of unsecured debts on a parity, one with the other, or for a division of creditors into classes and for treatment thereof in different ways or on different terms. The arrangement may also include provisions for: The rejection of any executory contract; specific undertakings of the debtor during any period of the extension provided for in the arrangement, including provisions for payments on account; the termination, under specified conditions, of any period of extension provided by the arrangement; continuation of the debtor's business with or without supervision or control by a receiver or committee of creditors; the payment of debts incurred after the filing of the petition and during the pendency of the arrangement with priority over the debts affected thereby; and retention of jurisdiction by the court until the provisions of the arrangement have been performed; and may contain any other appropriate provisions not inconsistent with the chapter.

The court is required to call a meeting of creditors promptly and if the arrangement is accepted in writing by all creditors affected thereby, it shall be confirmed by the court when the debtor shall have made the deposit required to carry out the terms of the arrangement and if the court is satisfied that the arrangement and its acceptance are in good faith. If the arrangement has not been so accepted, an application for the confirmation thereof may be filed with the court, but not before it has been accepted in writing by a majority in number of all creditors or, if the creditors are divided into classes, by a majority in number of all creditors of each class affected by the arrangement whose claims have been proved and allowed, which number shall represent a majority in amount of such claims generally, or of each class of claims, as the case may be; and not before the debtor has made the required
deposit. The confirmation of an arrangement discharges the
decltor from his unsecured debts and liabilities provided for
in the arrangement except as provided in the arrangement or
in the order confirming the same, and excepting debts which
are not dischargeable.

If an arrangement is withdrawn or abandoned prior to its
acceptance, or is not accepted at the meeting of creditors or
within such further time as the court may fix, or if the required
deposit is not made or the application for confirmation is not
filed within the time fixed with the court, or if the application
for confirmation is refused, the court shall, in case a bank-
rupcy proceeding was pending, dismiss the arrangement pro-
ceeding and direct that the bankruptcy be proceeded with;
and where the arrangement proceeding was commenced by
an original petition, the court may either adjudge the debtor
a bankrupt or dismiss the proceeding; and in case of a default
in the terms of an arrangement or the termination thereof,
where the court has retained jurisdiction after confirmation,
the court may take like action. No adjudication shall be
entered against a wage earner or farmer unless such person
files written consent to adjudication.

There are provisions for setting aside or modifying arrange-
ments, suspending the running of statutes of limitations, ex-
empting securities issued by a receiver, trustee, or debtor from
the provisions of Section 5 of the Securities Act of 1933,
precluding income tax assessments on account of the scaling
of indebtedness, and providing for the payment of taxes
owing to the United States or any state and permitting the
United States or any state to accept in writing the provisions
of any arrangement dealing with the assumption, payment or
settlement of any such tax.

CHAPTER XII

REAL PROPERTY ARRANGEMENTS BY PERSONS OTHER
THAN CORPORATIONS

The principal purpose of this chapter is to furnish relief to
individuals and partnerships in respect to debts secured by
real property. They cannot resort to Chapter X which is available only to corporations, or to Chapter XI which affects only unsecured debts. It is said that the necessity for this relief has arisen for the most part in the Chicago area where many individuals are obligors on bond issues secured by real estate. The provisions of this chapter are not available to corporations.

This chapter contains many of the provisions appearing in Chapter X and Chapter XI. The treatment of secured debts and many of the general provisions are taken from Chapter X and the treatment of unsecured debts from Chapter XI.

The debtor may file under this chapter in a pending bankruptcy proceeding before adjudication or, if no such proceeding is pending, he may file an original petition. He must allege that he is insolvent or unable to pay his debts as they mature.

Since the provisions of this chapter are so similar to many of the provisions of the two preceding chapters, it will serve no purpose to discuss them in detail. It should be noted, however, that an arrangement under Chapter XII is required to include provisions modifying or altering the rights of creditors who hold debts secured by real property or a chattel real of a debtor, generally or a class of them, either through the issuance of new securities of any character or otherwise, and to include provisions for the rights of all other creditors of a debtor who may be affected by the arrangement. It must also provide for the payment of all costs and expenses of administration or other allowances which may be approved or made by the judge; specify what debts, if any, are to be paid in cash in full; specify the creditors or any class of creditors not to be affected by the arrangement; provide, for any class of creditors which is affected by and does not approve the arrangement by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their debts against the property dealt with by the arrangement, either as provided in the arrangement or in the order confirming it or in similar manner as such protection must be provided in corporate reorganiza-
tions; and provide adequate means for the execution of the arrangement. An arrangement may provide for treatment of unsecured debts on a parity one with the other, or a division of debts into classes and treatment thereof in different ways on different terms; for the rejection of any executory contracts; for the continuation of the debtor's business and the management of his property with or without supervision or control by a trustee or by a committee of creditors; for the payment of debts incurred after the filing of the petition and during the pendency of the arrangement, in priority over the debts affected thereby; may deal with all or any part of the debtor's property; and may include any other provisions not inconsistent with the chapter. To be confirmed, an arrangement must be accepted by creditors of each class holding two-thirds in amount of the debts of such class affected by the arrangement proved and allowed before the conclusion of a meeting held to consider the same or before such other time as may be fixed by the court, exclusive of creditors or of any class of creditors not affected by the arrangement or for whom payment or protection has been provided in the manner prescribed in the chapter.

There are provisions permitting reference to a referee and the appointment of a trustee, and for the allowance of reasonable compensation to these officers and to the attorneys for any of them, including the attorney for the debtor, such compensation not being governed by Sections 40 and 48 of the Act. There are also provisions for the allowance of compensation to indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors, the attorneys of any of these, and any other parties in interest.

It is provided that a petition may be filed under this section notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a federal or state court, in which a receiver or trustee of all or any part of the property of a debtor has been appointed, and that such prior proceeding shall be stayed by the filing of a petition under this chapter. Upon a dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated. Where a bank-
Bankruptcy proceeding has been superseded by a proceeding under this chapter, the court, upon dismissal of the arrangement proceeding, shall direct that the bankruptcy be proceeded with. Where there was no prior proceeding and the real property arrangement proceeding was commenced by an original petition, and is withdrawn or abandoned, or if no arrangement is confirmed, the court may either adjudge the debtor a bankrupt or dismiss the proceedings. There is the same protection for farmers and wage earners as in the preceding chapter.

Chapter XIII
Wage Earners' Plans

In this chapter an attempt has been made to devise a procedure which is simple and inexpensive and which will permit a wage earner, out of his future earnings, to adjust his debts with his unsecured creditors generally, and with his secured creditors severally, upon very broad and general terms. Debts secured by real property are excluded from the operation of this section. An endeavor has been made to reduce the costs of the proceeding to the lowest possible amount, a filing fee of fifteen dollars and a maximum deposit of fifteen dollars to indemnify the referee against expense being the only deposits this chapter requires the debtor to make. All other costs and expenses of the proceeding are to be paid if, and when, accumulated from the future earnings.

The court is given exclusive jurisdiction of the debtor and his property and earnings during the period of consummation of the arrangement. Only individuals whose earnings, including all income, do not exceed $3,600 a year, are entitled to the relief afforded by the provisions of this chapter. Unsecured creditors are dealt with as a class and the debtor must obtain the acceptance of his proposal by a majority in number of such creditors whose claims have been proved and allowed, which number shall represent a majority in amount of such claims. He must obtain the consent of all secured creditors whose claims are dealt with by the plan. The claims
of secured creditors who do not accept the plan are apparently not affected thereby.

A plan under this chapter must include provisions dealing with unsecured debts generally, upon any terms, and provisions for the submission of any future earnings or wages of the debtor to the supervision and control of the court for the purpose of enforcing the plan; and must provide that the court may, from time to time, during the period of extension, increase or reduce the amount of any instalment payments provided by the plan, or shorten or extend the time for such payments, when it appears, upon hearing, that the debtor's circumstances so warrant or require. A plan may also include provisions dealing with secured debts severally upon any terms agreed to by the secured creditors; may provide for priority of payment during the period of extension as between the secured and unsecured debts affected by the plan; may include provisions for the rejection of executory contracts of the debtor; and may include any other appropriate provisions not inconsistent with the Act. There are provisions fixing the priority of various costs and expenses to be paid in advance of distribution to creditors. When the debtor has complied with the provisions of the plan he is to be discharged from his debts and liabilities provided for by the plan. There are provisions concerning the action to be taken if the proceedings are dismissed or if the plan confirmed is not carried out and general provisions concerning statutes of limitations, taxes, etc. These provisions are, however, so similar to those referred to in the discussion of the two preceding chapters that they do not warrant further mention herein.

Chapter XIV

Maritime Commission Liens

This chapter, which was offered at the request of the United States Maritime Commission for the general purpose of providing for the continued operation of merchant vessels of the United States on essential trade routes, provides for the appointment of the Maritime Commission as sole trustee
or receiver of a corporation operating vessels of United States registry in foreign commerce, upon which the United States holds mortgages, subject to the directions and orders of the court, upon a finding by the court that it will inure to the advantage of the estate and the parties in interest and tend to further the purposes of the Merchant Marine Act of 1936. The Commission cannot be constituted trustee or receiver without its express consent. The chapter further provides that if the court is unwilling to permit the receiver or trustee to operate such vessels, pending the determination of such proceeding, without financial aid from the government, and the Commission certifies to the court that continued operation is essential to the foreign commerce of the United States, the court may permit the operation of the vessels subject to the orders of the court, the Commission to pay all operating losses.

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From the foregoing discussion, incomplete and inadequate as it is, it is apparent that both, in respect to procedure and to substantive matters, the Chandler Act has wrought tremendous changes in the bankruptcy law. What the effect of some of the innovations will be, remains to be seen. The Chandler Act is, however, largely the result of the work of the National Bankruptcy Conference which included in its membership representatives of the American Bar Association, the Commercial Law League of America, the National Association of Credit Men, the National Association of Referees in Bankruptcy, and a number of authors, law instructors and practitioners, all profoundly interested and well-versed in bankruptcy law and all earnest in their desire to bring bankruptcy jurisprudence abreast of the times. There is every reason to believe, therefore, that the Bankruptcy Act, as amended by the Chandler Act, will be found more adequately implemented than ever before to serve the purposes for which it is intended.