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AMENDMENT OF THE NATIONAL BANKRUPTCY ACT

MARCH 29, 1926.—Referred to the House Calendar and ordered to be printed

Mr. MICHENER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 8119]

The Committee on the Judiciary, to which was referred the bill (H. R. 8119) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto, having considered the same, report favorably thereon with amendments, and recommend that the bill as amended do pass.

The committee amendments are as follows:

On page 10, line 23, strike out the word "or" and insert after the comma following the word "trustee" the following: "United States marshal, or other officer of the court charged with the control or custody of property, or from creditors in composition cases."

On page 11, line 21, beginning with the semicolon strike out the remainder of line 21 and all of lines 22 and 23 and insert in lieu thereof a period.

On page 12, beginning on line 3, strike out all of subdivision (e) and insert in lieu thereof the following:

(e) (1) Whenever any referee, receiver, or trustee shall have grounds for believing that any offense under this act has been committed, or from facts or circumstances brought out in the course of administration or otherwise brought to his attention, that there is reasonable ground to believe that such an offense has been committed, or for special reason an investigation should be had in connection therewith, it shall be the duty of such referee, receiver, or trustee to report such matter to the United States attorney for the district in which it is believed such an offense has been committed, including in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses, and a statement as to the offense or offenses believed to have been committed.

(2) It shall be the duty of every United States attorney immediately to inquire into the fact so reported to him by any referee, receiver, or trustee, and the law applicable thereto, and if it appears probable that any offense under this act has been committed, in a proper case and without delay, to present the matter to the grand jury, unless upon inquiry and examination such district attorney decides

that the ends of public justice do not require that the alleged offense should be investigated or prosecuted, in which case he shall report the facts to the Attorney General for his direction in the premises.

On page 12, line 23, strike out all of lines 23, 24 and 25, and on page 13 strike out all of lines 1 and 2.

On page 13, line 3, after the word "Sec." strike out "14" and insert in lieu thereof "13."

On page 14, line 20, after the dollar sign strike out "300" and insert in lieu thereof "600."

On page 14, line 23, after the colon following the "priority" insert the following:

Provided, That the term "person" as used in this section shall include corporations, the United States, and the several States and Territories of the United States.

On page 15, line 3, after the word "Sec." strike out "15" and insert in lieu thereof "14."

On page 16, line 4, after the word "Sec." strike out "16" and insert in lieu thereof "15."

On page 16, line 8, after the word "Sec." strike out "17" and insert in lieu thereof "16."

On page 16, line 16, after the word "Sec." strike out "18" and insert in lieu thereof "17."

On page 16, line 18, after the word "Sec." strike out "19" and insert in lieu thereof "18."

All of the above committee amendments were recommended by the Attorney General.

STATEMENT

The changes in the national bankruptcy act (act of July 1, 1898, 30 Stat. 544, as amended by acts approved February 5, 1903, June 15, 1906, June 25, 1910, January 28, 1915, September 6, 1916, March 2, 1917, and January 7, 1922) proposed by this bill are as follows:

Section 1 of the bill amends subdivisions 6, 8, and 24 of section 1 (a) of the bankruptcy law as amended.

Section 2 of the bill amends the introductory provision preceding subdivision 1 of section 2 of said act as amended.

Section 3 of the bill amends section 3 (a) of said act as amended.

Section 4 of the bill amends section 7 (a) subdivision (8) of said act as amended.

Section 5 of the bill amends section 12 (a) of said act as amended.

Section 6 of the bill amends section 14 (a) and (b) of said act as amended.

Section 7 of the bill amends section 21 of said act as amended, and adds after paragraph (g) thereof a new paragraph (h).

Section 8 of the bill amends section 23 of said act as amended.

Section 9 of the bill amends section 24 (a) and (b) of said act as amended, and adds a new subdivision (c).

Section 10 of the bill amends section 25 (a) of said act as amended.

Section 11 of the bill amends section 29 (a), (b), and (d) of said act as amended and by adding another paragraph (e).

Section 12 of the bill amends section 38 (a) subdivision 5 of said act as amended.

Section 13 of the bill amends section 64, subdivisions (a) and (b) of said act as amended.

Section 14 of the bill amends section 70, subdivisions (a) 2 and (b) of said act as amended.

Sections 15, 16, 17, and 18 of the bill are new and are saving clauses and in no way change existing law.

The following is a statement showing in detail wherein the proposed bill changes existing law, with reasons therefor. The topical headings are the same as used in the bankruptcy law.

Section 1 of the bill, being section 1 of the law: "Meaning of words and phrases."

To the definition given in present law of the word "corporations" has been added the following words: "joint stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees, wherein beneficial interest or ownership is evidenced by a certificate or other written instrument."

The object of this amendment is to include within the scope of the operation of the bankruptcy law, beyond any doubt, those businesses conducted under the guise of so-called trusts.

Clause 8 defining "courts of bankruptcy" has been made to conform with present-day conditions by striking out reference to the "United States Court of the Indian Territory."

Clause 24 has also been modernized by striking out the words "the Indian Territory."

Section 2 of the bill being section 2 of the law: "Creation of courts of bankruptcy and their jurisdiction."

The comments with respect to clauses 8 and 24 of section 1 above are in point here.

Section 3 of the bill, being section 3 (a) of the law: "Acts of bankruptcy."

There are three amendments to this section. The first is to be found in 3 (a) where the word "final" preceding the words "disposition of any property" has been changed to read "other."

The purpose of this amendment is to prevent frequent evasions of the bankruptcy act now occurring, due largely to inability to prove that a sale which has occurred within four months prior to the bankruptcy was a final disposition; some of the courts holding that until a hearing has been had on the merits there has been no final disposition of the defendant's property. In the meantime and upon the lapse of four months the bankrupt creditor has gained a preference by legal proceeding, thereby defeating the spirit of the law.

The second amendment to section 3 (a) is the insertion of a new act of bankruptcy which is designated "(4)" and reads as follows:

suffered or permitted, while insolvent, any creditor to obtain through legal proceeding any levy, attachment, judgment, or other lien, and not having vacated or discharged the same within thirty days from the date such levy, attachment, judgment, or other lien was obtained.

Under existing law a creditor may obtain judgment against a debtor and hold that judgment for four months and one day and it becomes a lien entitled to priority of payment under the laws of the State, if the debtor subsequently goes into bankruptcy, that is, the lien has been permitted to ripen into a preference, giving the creditor advantage over other creditors and defeating one of the fundamental principles of equality among creditors.

It will be observed that the debtor must be insolvent. The idea being that the insolvent estate during the term of four months shall be protected against seizures, as well as against preferential payments out of the estate. As suggested by Mr. Remington at the hearing this section has no reference to liens by right, no reference to foreclosure of mechanics' liens, or mortgage liens.

The third amendment in this section occurs in "(4)" of 3 (a) of the present law. Said "(4)" being "(5)" of the bill and as amended reads:

made a general assignment for the benefit of his creditors; or, whole insolvent, a receiver or a trustee has been appointed or put in charge of his property.

Under judicial interpretation the existing provision of the law has been held to mean that insolvency must actually be alleged in a petition for the appointment of a receiver, and a receiver must have been appointed because of insolvency, in order to become an act of bankruptcy. Under the amendment the appointment of a receiver for a debtor who is in fact insolvent, is in itself an act of bankruptcy, even though such insolvency was not directly alleged in the petition asking for the receiver.

Section 4 of the bill, being section 7 (a) of the law: "Duties of bankrupts."

All the language of subdivision (8) of section 7 (a) is stricken out and new language inserted.

The purpose of this amendment is to place the voluntary bankrupt on a parity with the involuntary bankrupt in respect to the filing of schedules and serves to eliminate the excuse for collusive petitions. Under existing law, schedules must be filed within 10 days in involuntary cases and with the petition in voluntary cases. The adoption of this amendment will do away with many so-called "voluntary involuntary" bankruptcy proceedings.

Section 5 of the bill, being section 12 (a) of the law: "Compositions, when confirmed."

This amendment strikes out the words "and action upon the petition for adjudication shall be delayed until it shall be determined whether such composition shall be confirmed," appearing at the end of section 12 (a), and inserts in lieu thereof the following:

but action upon the petition for adjudication shall not be delayed, except that the court, for good cause shown, may in its discretion delay such action upon such terms and conditions for the protection of and indemnity against loss by the bankrupt estate as may be proper.

Experience has shown that many composition offers are submitted which are never intended to be carried through, and it is customary and proper for the preservation of the good will of the bankrupt's business to continue its operation pending the consideration of his composition terms, and as these businesses are frequently conducted at a loss, therefore after the composition terms are withdrawn it is found that the bankrupt estate has suffered accordingly.

This amendment will prevent a debtor in bankruptcy making an offer of composition which ipso facto stays further proceedings and very often to the detriment of the creditors.

Section 6 of the bill, being section 14 (a) and (b) of the law: "Discharges, when granted."

In paragraph (a) of the present law the words "the next" are stricken out for the reason that these words have produced am-

biguity, doubt existing as to whether a bankrupt has 12 or 13 months from the date of his adjudication in which to apply for his discharge. The amendment corrects this ambiguity and is in accordance with the original intent of Congress as indicated by the vast majority of courts passing upon the question.

In 14 (b) the first amendment occurs in subdivision (2). The principal change comes by striking out the words "with intent" so that the destruction, mutilation, falsification, concealment, or failure to keep books shall be ground for denying the discharge unless the court deems such failure or acts to have been justified.

Mr. Brandenburg, the authority on bankruptcy, said at the hearings:

> Those of us who have made a study of the law have realized that under the statute as it originally existed, all persons should keep books of account. Now, we know that the farmer does not keep books of account; we know that the ordinary householder does not keep books of account. This amendment permits the court to excuse the obligation of not keeping books of account; and we think that this is important.

In 14 (b) the second amendment comes in subdivision (3) of the present law, which reads as follows:

> obtained money or property on credit upon a materially false statement in writing made by him to any person or his representative for the purpose of obtaining credit from such person.

This subdivision has been stricken out and there has been inserted in its stead the following:

> obtained money or property on credit, or obtained an extension or renewal of credit, by making or publishing or causing to be made or published, in any manner whatsoever, a materially false statement in writing respecting his financial condition.

The commerce of to-day is transacted almost entirely upon credit. Under the present law a false financial statement to be grounds for denying a discharge must be given directly to the complaining creditor or his representative. The amendatory provision serves to prevent those evasions of the law which now occur by having the false statements made to and distributed by commercial agencies.

In 14 (b) the third amendment comes in 14 (*b*) (4). The material change being that the words "four months" have been stricken out and the words "twelve months" inserted in lieu thereof.

The purpose of this amendment is to permit fraudulent transfers occurring at any time within 12 months preceding the filing of the bankruptcy petition to be grounds for denial of a discharge.

In short the amendment requires the bankrupt to be honest for a period of 12 months preceding his bankruptcy instead of 4 months as now provided, if he is to receive the benefits of the bankruptcy law.

In 14 (b) subdivision (5) it is provided that no bankrupt, voluntary or involuntary, can receive a discharge oftener than every six years. This is the law to-day so far as voluntary bankrupts are concerned. In actual practice, the hearings developed that there are those who seek discharges in bankruptcy oftener than once every six years, and the practice has been to have some friendly creditors file involuntary petitions and in this way evade the law.

In 14 (b) subdivision (7) is found an entirely new subdivision.

By the provision of this amendment the burden of proof is shifted from the creditors to the bankrupt to explain any losses of assets or

deficiency of assets, which should be present to meet liabilities, and in case an objector to a discharge shows to the satisfaction of the court that there is reasonable ground for believing that the bankrupt should be denied a discharge in accordance with section 14 (b), then the burden is placed upon the bankrupt to show that he is entitled to his discharge, the contention of the objector to the contrary notwithstanding.

Section 7 of the bill, being section 21 of the law: "Evidence."

The amendment to this section consists in adding a subdivision to be known as ("h").

It is intended by this amendment that a creditor may write to another creditor or to the trustee or to the receiver, concerning the bankrupt acts or property of the bankrupt, and that the creditor shall not be held liable to any person for such communication, provided the same was uttered in good faith and with reasonable ground for belief in its truth. It developed before the committee that investigations of bankrupts, etc., are now conducted largely by creditors' committees and it was thought advisable to permit these creditors to communicate freely with each other in reference to the bankrupt's conduct in connection with his estate.

Section 8 of the bill, being section 23 of the law: "Jurisdiction of United States and State courts."

The principal amendments in section 8 of the amendatory bill to section 23 of the existing law are these:

In line 3 the words "The United States district courts" have been substituted for "United States circuit courts," and section 23 of the existing law, relating to jurisdiction of the United States circuit courts, has been entirely eliminated. It is quite obvious that the United States circuit courts have been abolished.

Section 9 of the bill, being section 24 (a) and (b) of the law: "Jurisdiction of appellate courts."

The amendments to this section are threefold: First, to comply with recent congressional legislation provision has been made for appeals in the District of Columbia to the Court of Appeals of the District; this change has been made in both subdivisions (a) and (b) of section 24. Second, the amendment to 24 (b) has for its object the elimination so far as possible of the fine distinction between appeals and reviews, as the judiciary repeatedly suggested should be done. It is proposed to amend the law by having reviews take the form of appeals, without, however, carrying up to the appellate court matters of fact as well as matters of law. Third, subdivision (c) is new and is as follows:

> (c) All appeals under this section shall be taken within 30 days after the judgment or order or other matter complained of has been rendered or entered.

The purpose of this amendment is to render uniform the time within which appeals and reviews may be taken. At the present time certain appeals are to be taken within 30 days and other appeals and reviews are to be taken within periods ranging from 30 days to 6 months.

Section 10 of the bill, being section 25 (a) of the law: "Appeals and writs of error."

The amendatory matter contemplates two changes in the existing section. First, the insertion of "the Court of Appeals of the District

of Columbia"; and the other, striking out the period of 10 days within which an appeal might be taken and inserting in lieu thereof "30 days."

The reasoning applied to the amendments under the previous section is here in point.

Section 11 of the bill, being section 29 (a), (b), and (d) of the law: "Offenses."

The first change is in section 29 (a) where at the end of the section the words "receiver, custodian, or other officer of the court" have been added, so that it shall be a crime to conceal from receivers, custodians, or other officers of the court, as well as from the trustee.

The first change in section 29 (b) is the substitution of the term of "five years" for two years, so that "a person shall be punished by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently," etc.

As many of these commercial frauds are of large proportion, the maximum punishment now provided is thought to be inadequate.

The next change is in section 29 (b) (1). This amendment is recommended by the Attorney General, who, in his annual report, said:

> It shall be made an offense to conceal assets, not only from the trustee, as now provided by section 20 (b) (1) of the bankruptcy act, but also from creditors in composition cases, and from any officer of the court charged with the control or custody of property, including, for example, receivers in certain cases, trustees, and United States marshals.

The next change occurs in section 29 (b) (5), which now reads as follows:

> (5) Extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

As amended this subdivision would read:

> (5) Received or attempted to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof, from any person for acting or forbearing to act in bankruptcy proceedings.

This amendment was prompted by the fact that the courts have given the most rigid interpretation to the word "extort," whereas it was doubtless the intent of Congress that one should render himself criminally liable if he knowingly and fraudulently received or attempted to obtain any money or property for acting or forbearing to act in bankruptcy proceedings

To section 29 (b) has been added subdivisions (6), (7), and (8), as follows:

> (6) Having been an officer or agent of any person or corporation, and in contemplation of the bankruptcy of such person or corporation, or with intent to defeat the operation of this act, concealed or transferred any of the property of the debtor; or (7) after the filing of the petition or in contemplation of bankruptcy concealed, destroyed, mutilated, or falsified any book, document, or record affecting or relating to the property or affairs of a bankrupt; or (8) after the filing of the petition withheld from the receiver or trustee any book, document, or paper affecting or relating to the property or affairs of a bankrupt.

The purpose of (6) is to reach behind a corporate entity in order to get at the one directly responsible for the wrongdoing. Subdivision (7) is also intended to reach those acts committed in contemplation of bankruptcy; and subdivision (8) is a necessary compliment to other provisions of the bankruptcy law.

In section 29 (d) the time within which a bankrupt may be prosecuted criminally has been changed from one year to three years.

This amendment has been proposed at various times by many Attorneys General of the United States and conforms with the Federal penal statutes.

Section 29 (e) is new matter and the text of the amendment was prepared by the Attorney General. The Attorney General did not suggest the amendment but did perfect the text. The amendment is designed to secure the aid and cooperation of the United States district attorney in bringing to speedy justice offenders against the bankruptcy law.

Section 12 of the bill, being section 38 (a) (5) of the law: "Jurisdiction of referees," has to do with the employment of stenographers in bankruptcy matters.

The rate allowed by the law to be paid to stenographers is not to exceed 10 cents per folio for reporting and transcribing the proceedings. The amendment would permit the payment to stenographers such reasonable compensation as the court might fix. It is impossible in the larger centers at this time to secure stenographers at the rate now provided in the bankruptcy law.

Section 13 of the bill, being section 64 (a) and (b) of the law: "Debts which have priority."

The amendatory matter in this section is a revision of the provisions of (a) and (b) of the present act. The principal changes are:

(a) That no order shall be made for the payment of a tax assessed against real estate of a bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court.

And the insertion of a new priority debt as follows:

(b) (4) Where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, in the discretion of court the reasonable expenses of such creditors in opposing such composition.

Under the present law wages due to workmen, clerks, etc., which have been earned within three months before the date of the commencement of bankruptcy proceedings and not to exceed $300 to each claimant has priority. The amendment increases the amount of priority claims to $600. Certain organizations appeared before the committee and asked that the time limit and the limit on amount be eliminated from the present law. However, the committee does not think this advisable but is of the opinion that if $300 was a proper priority claim in 1898 when the law was enacted, taking into consideration the value of the dollar then and the value of the dollar now, that $600 would be a fair amount at this time, and for this reason this amendment is suggested.

"Priorities granted by any State law to its residents or to its domestic corporations over nonresidents or foreign corporations shall not be recognized and allowed" is a new provision, and the reason for its enactment is that one or two States have statutes granting liens on assets of insolvent estates in favor of their own citizens who are creditors. This amendment also serves to establish equality among creditors.

Section 14 of the bill, being section 70 (a) 2 and (b) of the law: "Title to property."

The present law reads:

(2) Interests in patents, patent rights, copyrights, and trade-marks is changed to read:

"(2) Interests in patents, patent rights, copyrights, and trade-marks, and in application for patents, copyrights, and trade-marks; provided that in case the trustee, within 30 days after appointment, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection the bankrupt may apply to the court for an order revesting him with the title thereto, which petition shall be granted unless for cause shown by the trustee the court grants further time to the trustee for making such election; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon revesting the bankrupt with such title, shall direct the trustee to execute proper instruments of transfer to make the same effective in law and upon the records."

This amendment is made necessary due to the fact that in the administration of bankruptcy causes the trustees often pay but little heed to patent rights and interests, and after closing the estate serious difficulties are later presented with respect to title. Under this amendment the trustee must act within a specified time, otherwise the bankrupt may take certain action looking toward revesting him with his title.

By the terms of (b) of the existing law all property belonging to bankrupt's estate must be appraised by three disinterested appraisers. While the amendment proposes that the property shall be appraised by not more than three disinterested appraisers who shall be appointed by and report to the court.

There are many small cases where there is no necessity for three appraisers and the amendment would lodge a discretion in the court, permitting the court to appoint less than three appraisers if thought advisable.

Sections 15, 16, 17, and 18 are new and in no way change or affect the existing law, other than to carry out the amendments of the preceding 14 sections.

CONCLUSION

The national bankruptcy law has become a permanent part of our jurisprudence. Credit plays such an important part in the commercial life of America to-day that commerce and business in general warrant the perpetuation of the bankruptcy law. This law performs its functions so far as relates to its purpose to relieve an honest debtor from his misfortunes. The failure; if such, of the bankruptcy law, and the malfeasances for its administration, have reference solely to its second purpose or function, that of securing to creditors at the least possible expense the equal distribution of the property of the debtor to his creditors.

The proposed amendments are not in the way of innovations; they are simply declaratory of and for the strengthening of the present law, and are directed to helping creditors help themselves to administer that law. No honest debtor can in any way be injured by the proposed amendments and no creditor will suffer by these changes.

This bill is supported by the American Bar Association, the National Association of Credit Men, the Commercial Law League of America, and other organizations. Extensive hearings were held on the general effect of the proposed changes in the law and H. R. 8119 is the result of numerous conferences by the above organiza-

tions. There are those who would make additional changes in the law, but the committee is not familiar with any organization the representatives of which oppose the general provisions of this bill. The committee had the assistance of Mr. Edwin C. Brandenburg and Mr. Harold Remington, authors of recognized works on bankruptcy, in the preparation and consideration of the bill.

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