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Bankruptcy (Transcript of a Radio Address Broadcast January 30, 1928)

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BANKRUPTCY *

BANKRUPTCY should be of particular interest to merchants, bankers, lawyers and accountants, since they come in contact with this most important branch of law in their daily transactions with the business world.

The figures published by the Attorney General of the United States indicate that there were about 45,000 bankruptcy cases last year in the United States. Greater New York, the greatest business center of the world, has annually more bankruptcies that any other city of our country.

Most of the New York and Brooklyn papers carry daily a column entitled "Business Troubles" or "Business Records," which contains a list of the previous day's bankruptcies in Manhattan or Southern District of New York, and Brooklyn or Eastern District of New York.

The Bankruptcy Law of the United States finds its origin in the English Bankruptcy Acts. The early English bankruptcy law was in effect a criminal statute. Not alone were the remaining assets of a debtor confiscated, but he was also imprisoned. The first English Bankruptcy Act was enacted in the reign of King Henry the Eighth in 1542.

When the thirteen colonies declared their independence and threw off the yoke of English rule, our early statesmen prepared and adopted our great Constitution, and in it they wisely provided in Article 1, Section 8, Clause 4 of the Constitution, that:

> "The Congress shall have power . . . to establish . . . uniform laws on the subject of Bankruptcies throughout the United States,"

This provision in our Constitution was placed there—not merely for the benefit of creditors—not merely for debtors—but for society in general—on the ground of public policy.

Under our constitution we have a uniform system of bankruptcy jurisprudence which governs transactions all over the country. It is

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* An address by Samuel C. Duberstein, Esq., broadcast January 30, 1928, over Station WLWL. Mr. Duberstein, an acknowledged expert in the field, lectures on Bankruptcy in St. John's College School of Law.

the same law in the State of Maine and in the State of Texas, the same in Washington and the same in Florida. It is uniform throughout the United States of America and its territories. It operates alike everywhere.

We have had four (4) Bankruptcy Acts in the life of our Nation. The first was enacted April 4, 1800, and repealed December 19, 1803. The second was enacted August 19, 1841, and repealed March 3, 1843. The third was enacted March 2, 1867, and repealed June 7, 1878. The fourth was an Act of Congress of the United States approved July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States," and together with the amendments which have been made thereto, furnish the present Bankruptcy Law of the land.

The United States District Courts in the forty-eight States of our Union, the Supreme Court of the District of Columbia, the District Courts of the several territories, and the United States Court in the District of Alaska, have been constituted Courts of Bankruptcy.

The enormous losses sustained by business men throughout the breadth and length of our land compelled them to seek the enactment of Federal legislation to reduce these losses,—to grant them, as creditors, efficient and wholesome remedies for the recovery of a debtor's assets, and also to place on the shoulders of the bankrupt debtor certain definite responsibilities before the United States Courts would relieve him of his debts.

Fault was found with the Act of 1898 as originally enacted. The judges of the United States Supreme Court, the Circuit Courts of Appeals and the District Courts, lawyers, bankers, accountants, credit men, and merchants, recognizing that evil conditions had crept into the early administration and enforcement of the original Bankruptcy Act of 1898, sought an amended bankruptcy statute "with teeth" in it—one which would punish the defrauding debtor and permit of an equitable, expeditious distribution of the bankrupt's assets, at a minimum expense. This agitation has borne fruit. In 1925 the United States Supreme Court promulgated additional rules to the General Orders in Bankruptcy, and in 1926 President Coolidge signed the bill by which several important amendments have been added to our Bankruptcy Law.

Bankruptcy, as is commonly accepted today, is the Federal system of jurisprudence created by the enactments of Congress by which a debtor's assets are recovered and taken into custody; and by which an equitable distribution of these assets is made amongst the creditors on a *pro rata* basis; and in the event that the bankrupt debtor has surrendered all his assets and has committed no fraud, then to grant the bankrupt a discharge of his debts.

It has been said that the provision of Bankruptcy Law relating to discharge finds its origin in the Bible—the Old Testament—where we read in Chapter 15, Verses 1 and 2 of Deuteronomy:

> "At the end of every seven years, thou shalt make a release. And this is the manner of the release: Every creditor that lendeth ought unto his neighbour shall release it; he shall not exact it of his neighbour, or of his brother; because it is called the Lord's release."

However, whether or not this is the basis for the discharge feature of the Bankruptcy Law, the fact remains that a bankrupt is granted a discharge from his debts—but only after he has surrendered all his assets and complied with the provisions of the Bankruptcy Law which require him to be examined concerning his acts, conduct and property, and to assist creditors in the recovery of all his property preferentially or fraudulently transferred, and in the collection of his outstanding accounts.

Creditors must realize that bankruptcies or failures are due in a large measure to a debtor's business incompetence, also to the careless extension of credit granted a debtor, and also to poor financing, and not always due to the debtor's crookedness. The desire to sell merchandise regardless of the debtor's real needs creates a surplus stock; the debtor sells at or below cost with the same large overhead—a stagnant condition ensues—then the failure.

There is a popular misconception that bankrupts are all crooked. That is not true. To a great extent bankrupts are largely incompetent. They should be working for someone else instead of conducting their own business.

There are two kinds of bankruptcy proceeding—the voluntary and the involuntary.

Today, any person, partnership, or corporation, except municipal, banking, insurance and railroad corporations, may become a voluntary bankrupt on his or its own petition.

An involuntary proceeding may be instituted against any natural person (except a farmer or a wage-earner)—against any business, commercial or moneyed corporation (except banking, municipal, railroad and insurance corporations), and against any unincorporated company, such as a partnership, owing debts to the amount of $1,000.00 or more.

In both the voluntary and the involuntary proceedings, a bankrupt debtor may apply and obtain a discharge releasing him of his debts, provided he has surrendered to his creditors all his property, assets and effects, and has not committed any fraud.

Petitions in bankruptcy are filed in the United States District Court, presided over by United States District Judges, who are appointed for life by the President.

Assisting the United States District Judges in the judicial administration of bankruptcy proceedings, are the Referees in bankruptcy, who are appointed for a two-year term by the United States Judges.

Statistics prove without a doubt that the cost of administering a bankrupt estate through the medium of the United States Court is less than the cost of administering insolvency proceedings in the State Courts. The fees of the Referee in bankruptcy, the Receiver, the Trustee, and the Marshal, are expressly limited by the Bankruptcy Statute, and under Section 72 of the Bankruptcy Act "neither the Referee, Receiver, Marshal, nor the Trustee shall in any form or guise receive, nor shall the Court allow him, any other or further compensation for his services than that expressly authorized and prescribed in the Bankruptcy Act."

The Judges and Referees in Bankruptcy exercise great caution in passing on allowances. Bear in mind that creditors receive a ten-day notice of all hearings on the accounts of Receivers and Trustees and on the allowances of fees and commissions, and the creditors may voice their opinion or objection as to the amount of the allowance to be made, and such expression is given due consideration by the Court.

The average cost of administering a bankrupt estate, including fees and disbursements of the attorneys, Receiver, Trustee, and Referee, does not amount to more than ten per cent of the amount collected.

It should also be noted that the Bankruptcy Law gives the fullest protection to creditors in the prosecution of their rights. By instituting bankruptcy, creditors immediately set in operation the machinery of our Government to take immediate possession of the bankrupt's assets, to stay Sheriff's sales, to prevent unlawful preferences and to set aside fraudulent transfers and to summarily recover concealed assets. They may also invoke the aid of the United States Attorney in the prosecution of any criminal acts committed by a bankrupt and his associates.

Furthermore, creditors have the unquestioned right to select their own Trustee, who takes title to all of the bankrupt's assets, and who is charged with the duty of administering the estate and handling the funds. Creditors are always apprised of all important steps taken in the bankruptcy proceedings. No sale of assets can take place without at least ten days' notice to all creditors. No first meeting of creditors, at which the bankrupt must submit himself to an examination, can take place without at least ten days' notice to creditors. No compromise of any claim that the Trustee may have against anyone can take place without at least ten days' notice of a meeting to consider and act on such compromise. No hearing on a bankrupt's application for discharge can take place without at least thirty days' notice to the creditors. All creditors are entitled to examine the bankrupt, his records, books and papers.

While, generally speaking, a majority in number and amount of the creditors may approve of a settlement, the bankruptcy law affords any creditor, no matter how small his claim, the right to object to any settlement, and if he can prove that the bankrupt has committed a fraud, or that the proposed settlement is not for the best interests of the creditors the Court will refuse to confirm the proposed composition.

All hearings before the District Judge and Referee in bankruptcy are public and at all times creditors are invited to attend.

While sometimes it may be difficult to prevent crooked business sharps from obtaining credit on false financial statements, or to compel complete restitution of concealed assets, yet the administration of a bankrupt estate, dealing as it does with involved and often intricate business problems, in the hands of honest and competent attorneys with a thorough knowledge of the Bankruptcy Law and

accountancy, should result in minimizing losses sustained by merchant creditors and cause the commercial swindlers to be prosecuted and sent to jail.

A careful study of the subject of Bankruptcy should be made by the merchant, accountant, law student and the practicing attorney in order to make effective this legislation, for it is apparent that by an intelligent and honest application and enforcement of the provisions of the Bankruptcy Law, the rights of creditors can be safeguarded, and the recovery of property preferentially transferred or fraudulently concealed can be obtained.

The Bankruptcy Statute, although a creation of the human mind, provides a well-nigh perfect system of jurisprudence by which the rights of creditors are zealously protected, and the honest bankrupt can avail himself of this kindly, humane, benevolent legislation and obtain a discharge from the payment of his debts, thereby obtaining a new lease of business life.

On Saturday, January 28, 1928, there appeared in the local newspapers the story about a Jacob B. Gordon, a retail jeweler, who went into bankruptcy in 1914 and whose creditors received only sixteen (16) cents on the dollar. Gordon had since then prospered in business in Boston, and although legally freed of his debts and under no legal obligation to do so, Gordon paid off all of the creditors' claims in full and with interest besides.

About the first of the year we read in the newspapers that Reuben H. Donnelly, the well known printer, had been associated in 1905 with a company which failed for more than $300,000.00, and the creditors received 27 per cent. But, although legally freed of his debts, Donnelly was not satisfied that he was morally freed, and on New Year's day he paid off all of the creditors' claims in full and also added interest which amounted to another $300,000.00.

These and other similar instances recorded in the newspapers indicate that the ethical standards in the business world are being elevated, and that these men were prompted by a high sense of honor and integrity.

Creditors are considerably aroused and agitated when occasionally a crooked debtor seemingly has an alleged "successful" failure, by which creditors cannot recover concealed or hidden assets. But we have it on good authority that there is no real gain in such a case.

The Bible asks, "What shall it profit a man if he shall gain the whole world and lose his own soul?" The concealment of assets by a bankrupt means no true benefit to him. Not alone is the bankrupt subject to the accounting he must give his own conscience, but in our Bankruptcy Courts he is subject to vigorous and rigid examinations as to his acts, conduct and property, and he is required to account fully and completely for all property and moneys received by him, and his failure to do so renders him liable to criminal prosecution.

We must not lose faith in the inherent honesty of the merchant, even though the crooked business bird of prey puts in a spasmodic appearance. The provision for a bankrupt's discharge of his debts evidences the faith that our representatives in Congress, aye—the people of this country—have in the unfortunate heavy-laden debtor.

The Bankruptcy Law, with its beneficent purposes, is a great humanitarian document. It is a progressive movement towards a more ideal standard of business association; it is the realization of a higher form of justice, justice tempered with true mercy; it bespeaks mutual helpfulness and demonstrates the practice of the Golden Rule——all of which manifest an expression of the great truth—"Love is the fulfilling of the law."