JOURNAL

of the

National Association of Referees in Bankruptcy

ORGANIZED DETROIT, MICHIGAN, JULY 9th and 10th, 1926
A QUARTERLY

Vol. 12 | OCTOBER, 1937 | No. 1

PROCEEDINGS

of the

TWELFTH ANNUAL CONFERENCE

Kansas City, September 23rd, 24th and 25th, 1937

ADDRESSES

JOURNAL

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NATIONAL ASSOCIATION of REFEREES IN BANKRUPTCY

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Vol. 12 OCTOBER, 1937 No. 1

From Our President

October 26, 1937.

Fellow Referees:

Another Conference has come and gone and for the most part a new group of officers, guided by our efficient and dependable Secretary, has taken over the affairs of our Association.

Our branch of the law has become more and more specialized and complicated and only by organization can we best study the problems presented and attempt a greater uniformity of practice and better administration of our office.

Those of us in the Association appreciate its helpfulness and realize the benefit of our JOURNAL and our Conferences, with the opportunity to meet for discussion with those engaged in the same work. Of how much greater mutual benefit it would be if our membership could include those Referees now outside the organization. By graduating the scale of dues, every Referee can now afford to join and I hope that by contact and solicitation of non-members our number may be increased with resulting mutual help and guidance and increasing usefulness of our Association.

John Keogh

President

A New Day for the Association

AFTER eleven years in which the worthwhileness of this Association has been fully established, progressive steps were taken at the Kansas City Conference so as to enlist, if possible, one hundred percent cooperation on the part of Referees in Bankruptcy in its work. In the past, the Association has endeavored to keep all Referees in Bankruptcy informed as to its activities and to secure cooperative action from all as far as advisable. For its first few years it secured sufficient support from its active members with such occasional calls upon full-time Referees as were necessary, to meet its current budget. In time, likewise, this budget has become established. Its primary items is the cost of publishing and mailing the JOURNAL, followed in lesser amounts by the expenses incident to the annual Conference, the work of its committees and its Secretary. It approximates $3,000 annually. During the past few years the experience of this Association has been similar to that of other organizations including Bar Associations, in that it has been difficult to maintain its membership. In the majority of Districts there has been a decrease in the number of bankruptcy references and those Referees who are also engaged in general practice have met with the same experiences as lawyers generally. Thus there has been a decline in membership support requiring more frequent appeals to the full time Referees for aid. It has been evident to the officers of the Association and those members who have given its affairs careful thought that a change in the amount of dues should be effected which would bring the cost of the Association within the reach of all Referees enabling them to support it as members and to continue to secure the benefits arising therefrom. The retiring Board of Directors, at its meeting in June last, tentatively proposed a graduated scale of dues based upon the number of references. This proposal was favorably considered by many Referees when presented to them and they promptly made application for membership on this basis. Others indicated an intention to do so if the plan was adopted by the Association. The subject-matter was further considered at the Conference, a special committee giving it careful thought, and an amendment to the Constitution was unanimously adopted putting the plan into effect. Under this new arrangement, $10 remains as the basis for annual dues with all dues payable for the same fiscal year commencing September 1st. The Directors are authorized to classify the members upon the basis of bankruptcy income or number of references and to fix the dues for each such class for each year. The maximum is $30, the minimum $1. In accordance with this authorization the incoming Board fixed the maximum at $25 and established the number of references for the classifications for dues. No standards for membership are made but all members are upon the same basis, i.e., active members with equal voting rights. This new arrangement gives to the members who have been supporting the Association upon a uniform basis the benefit of the change and the Secretary's office has initiated the necessary steps to adjust the dues for the members to fit the present fiscal year. As far as the present membership of the Association is concerned, this new arrangement is proving satisfactory and prompt remittances are being made. An appeal has also been directed to all non-member Referees that they now become actively affiliated with the Association as members. We believe that this should appeal to every Referee in Bankruptcy and that his active connection with the organization should be effected. The individual Referee represents Bankruptcy to his community so that the worth of the Act as a rehabilitation measure or in the adjustment of a debtor's affairs is judged by his community largely by its local administration. Through the JOURNAL, the annual Conference, and from contact with other Referees, he is able to adjust his administration in keeping with the best standards. No matter how well one has conducted this office, changes for the better or improvements in its administration may come about from learning as to what others are doing. This is the unanimous testimony of those Referees who have participated in the "open forum" sessions of our Conferences. In many respects, the most outstanding forum held was at the Kansas City Conference. Inasmuch as one takes a keener interest in an organization when he is actively a member of it there can be no question but that all Referees who thus become associated with the organization through membership will experience a renewed interest in their bankruptcy work. The present Act has remained upon the statute books much longer than the combined life of all prior Acts. Its permanence is unquestioned. The office of Referee will continue and will be filled by those designated to administer the law. Just as older Referees in service have testified to the help which they have received from the Association so will more newly appointed Referees profit from such contact.

This "New Day" calls for the co-operation of all Referees in Bankruptcy regardless of the number of references they receive annually in an active association with their fellow Referees that the Bankruptcy Act and its administration in specific instances may be of the utmost service to parties in interest and the community generally. May we make this "New Day" a realization by securing a practically unanimous assent from among all Referees in Bankruptcy?

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PROCEEDINGS

of the Twelfth Annual Conference of the National Association of Referees in Bankruptcy held at Kansas City, Mo., September 23rd, 24th and 25th, 1937

First Session

THURSDAY MORNING

THE Conference was called to order by Referee John M. Thornburgh, of Knoxville, Tenn., its President, who introduced Rev. Harry Clayton Rogers, D.D., Pastor of the Linwood Boulevard Presbyterian Church, who pronounced the invocation.

PRESIDENT: We will have a word of welcome from our host Referee Fred S. Hudson, a past president of this Association.

Address of Welcome

MR. HUDSON responded felicitously welcoming those in attendance and describing facts of interest relative to Kansas City.

He said, in part:

We call this city the "Heart" of America, and we think rightly so, for there are five states to the west before you get to the Pacific Ocean, and five states to the east before you get to the Atlantic Ocean; two states to the north and you find Canada and the Great Lakes, and two states south you get to the Gulf of Mexico and the country of Mexico. So we are actually almost within the center of the universe here. * * *

You are all very welcome here, and I join others in extending this welcome to you. I hope that you will take advantage of your stay to see our city, to know our people, so that we may impress ourselves upon you. We want you to take something worth while back with you, so that you will remember this meeting here at this time.

PRESIDENT: We delayed briefly calling this Conference to order as we were awaiting the arrival of the Mayor of Kansas City. I understand that he flew over from Tulsa, Oklahoma, this morning to be with us and to extend a word of welcome. I present the Hon. Bryce B. Smith.

MR. SMITH (in part): Personally and as an official representative of Kansas City I wish to extend a very cordial welcome to the twelfth annual Conference of Referees in Bankruptcy. I offer you the key to the city, and anything else we have that you want is yours. Kansas City feels highly honored that you are our guests today, and we want you to make yourselves perfectly at home. We want you to do everything that you want to do, — that is, within reason — and we certainly want to be of service to you. I know that I speak for all of the citizens of Kansas City when I tell you that we wish you a most pleasant and instructive meeting. * * *

I think that your Conference is doing a very wonderful service in your efforts to develop a more uniform practice in bankruptcy, and a more even administration in bankruptcy estates. There might be other things I could say about this but I know that you know a million times more about them than I do. . . . I wish you the greatest of success in your cooperative organization. . . . and I sincerely hope that you will return to Kansas City again soon, and when you leave, you will have nothing but pleasant memories of our city.

REFEREE JOHN M. THORNBURGH
Knoxville
Who Presided

PRESIDENT: The response to these addresses of welcome will be made by Referees Estes Snedecor of Portland, Oregon.

Response

REFEREE ESTES SNEDECOR, Portland, Ore.: I deem it a distinct honor and a genuine personal pleasure to respond on behalf of the Referees to the cordial addresses of welcome to Kansas City.

Kansas City, as Referee Hudson has told you, is known as the geographical center of the United States. We have come from the four corners of this vast country to enjoy the hospitality of your city. We have come here to confer on matters of mutual interest and on subjects which we conceive to be of great moment and of great importance to our country.

Kansas City is also famed as a great livestock center. We understand that you have the most elaborate and commodious hostelries for livestock sent here from the four corners of the country. You are famous for your entertainment and hospitality of livestock. I understand that you regale them with daily feasts of corn and wheat to fatten them, and when they grow peaceful and contented,

you cut them down, but they are happy because they have enjoyed your hospitality, and then they go away and then we enjoy them. We are here to enjoy your feasts, but we hope you will let us go back to tell the tale to our fellow countrymen of the hospitality of your great city.

Kansas City is equally well known as a great convention city, a great center of culture, with your majestic Memorial, your Art Institute, your magnificent public buildings, and your parks and boulevards, and also your whole-hearted, open-handed people of the West.

Kansas City has opened its heart to us. We appreciate your generous welcome and we know we are going to enjoy our sojourn of a few days in your great city. Thank you very much.

PRESIDENT: We have now reached the point where we shall have the annual report of our Treasurer.

REFEREE HERBERT M. BIERCE, Winona, Minn.: This is my report as Treasurer.

TREASURER'S REPORT

Winona, Minnesota, Sept. 1st, 1937.

To the Members of this Association:

I render the following report as Treasurer for the fiscal year which closed August 31st. This report is for an even twelve months constituting our fiscal year.

Balance on hand last report,		$ 31.23
RECEIPTS		
From dues,	$2,356.00	
From subscriptions to and sales of Journal,	307.00	
From contributions,	515.50	
From advertising,	100.75	
From miscellaneous,	18.55	
		$3,297.80
		$3,329.03
DISBURSEMENTS		
Promotional, soliciting members, mimeographing and a major portion of the postage,		$ 58.15
Office supplies and stationery, including letter heads and interchange sheets for Directors,		174.79
Postage, Secretary, including a portion used for mailing the Journal,		111.00
Journal, printing and mailing four issues, halftones, wrappers, mimeographing, soliciting subscriptions and postage, subscriptions to other periodicals and major portion of postage,		1,835.07
Balance of expenses of Detroit (1936) Conference including Secretary's expenses, printing programs and miscellaneous hotel expenses,		230.36
Expenses of this (Kansas City, 1937) Conference to date, announcements,		39.84
Secretary's expense, secretarial, and expenses attending Directors' meeting,		327.93
Special Conference Committee, our portion National Bankruptcy Conference expense,		100.00
Special Finance Committee expense,		21.80
Miscellaneous,		27.94
Bank "float" charge,		29.45
		$2,956.33
Balance on hand,		$ 372.70

Of the amount reported as received for dues, $328.00 should be allocated to the 1937-1938 budget so that the cash on hand allocated to the budget for the current year would be $44.70. At this time no accounting is made for the moneys which are to be received or for disbursements made in September.

I append:

(1) Detailed statement of bank deposits and checks drawn thereon;

(2) Cancelled checks for all disbursements with attached invoices when and as rendered;

(3) The bank statement establishing balance.

Respectfully submitted,

HERBERT M. BIERCE,
Treasurer.

REFEREE PETER B. OLNEY, JR., New York: I move that this report be approved with congratulations to the Treasurer.

The motion was seconded and put and was unanimously carried.

SECRETARY: I now present my report as Secretary.

SECRETARY'S REPORT

Winona, Minnesota, Sept. 1st, 1937.

To the Members of this Association:

As Secretary I present my report for the Association's fiscal year just closed. In so doing I comment upon the present status of the Association as I believe that direct action is needed at this Conference in that connection.

The work of this office has become manifold as hardly a day passes that some attention to its affairs is not given by me. Perhaps I am receiving requests which, in the earlier years of the organization, were presented to other Referees; possibly these requests are made to me in addition to being presented to others. For example, during the year I furnished information to the office of a newly appointed Referee regarding the liability of his clerk for state income tax; again to another Referee. I gave information which enabled him to satisfy the clerk that the $15 filing fee should be paid to the Referee in those cases wherein a composition was offered after reference but where no adjudication resulted; in another instance suggestions were made which enabled the estate of a deceased Referee to adjust compensation with a successor. During the year information generally was furnished our Referees relative to their liability for the federal social security tax as well as the use of postal savings depositories for bankruptcy funds. These are but examples.

DEATHS

The following members were lost to us by death, viz.: Charles R. Freeman, Muskogee, Okla., George D. Judson, Lockport, N. Y., Thomas J. Sheridan, San Francisco, Calif., Robert E. Steedle, Atlantic City, N. J., John A. Hope, St. Louis, Mo., and R. W. Herring,* Fayetteville, N. C. Referee Sheridan, Steedle and Freeman had served the Association as Directors and the first two named attended several Conferences. Referee Hope likewise took an active interest in Association affairs. Brief obituaries were published in the JOURNAL as well as of those other Referees not members of the Association notice of whose death came to my attention.

MEMBERSHIP

Our membership is now 234, of which 7 have retired as active Referees or are not receiving references. However, 21 of these are on the new basis, which will be discussed in the course of this report, so that under ordinary circumstances the membership is but 216. This would make it 12 below that of last year but on the new basis it is slightly in excess of last year. 36 new members were secured during the year but, as stated, 21 of these are on the new basis. We received 8 resignations but of this number

* Had ceased to be a Referee in Bankruptcy.

6 are no longer acting as Referees. Those who resigned are Morgan S. Kaufman,* Scranton, Pa., Forrest Lear,* Norfolk, Neb., Edward R. Meyer,* Zanesville, O., Oscar L. Tompkins, Dothan, Ala., Archie Elledge, Winston-Salem, N. C., Leigh M. Kagy,* Springfield (now East St. Louis) Ill., Peter G. Honegger, Sioux Falls, S. D., † and J. W. Kingren,* Ukiah, Calif.

Our most serious loss continues to be in the non-payment of dues. And in accordance with Article X, Sec. 2 of our constitution, which reads:

> Members in arrears of dues for two years shall be dropped from the membership roll,

we have again found it necessary to make several clearances in our membership roll. Those who are dropped are . . . These number sixteen, but of this number five have retired as Referees. As in prior years leniency has been shown in the enforcement of our rule so that no one has been dropped who indicates a desire to retain his membership even though he is unable to remit present dues and a few adjustments in dues have been made in order to retain the active interest of some of our members. Of those so dropped who continue as Referees the rule has been enforced due to their insistence or because they neglect to answer any correspondence.

The usual appeal to new appointees that they associate with us has been made during the year and in addition thereto two appeals for support generally have been made by me and in some instances by the Circuit Director. We continue to have from 50 to 75 Referees whose number of references annually would justify their support of the Association who ignore all appeals. Circumstances are such that there is the usual if not somewhat heavier turnover in new appointments than in earlier years of Association affairs and it is quite a problem to arouse the interest of these new appointees. The Association is wholly new to them and in most instances their work as Referee is likewise new. Our most serious problem, however, is retaining the membership of those who have been associated with us for several years but are now prone to permit such membership to lapse. Seemingly a large number of Referees gauge their interest in the Association by the number of references which they receive and with most of them there has been a decrease in such number in the past two or three years. While others excuse their inability to remain active for general economic reasons. Efforts have been made by our special Finance Committee as well as by myself to retain the continued interest of members for it is impossible to tell when a Referee delinquent in dues will be moved to place himself in good standing. However, with approximately 500 Referees in the country actually receiving references and with a membership of less than 50% of that number, we are now at the point where it must be emphasized that the support from our members alone is quite insufficient to meet the Association's present budget.

This matter has been brought to the attention of our Directors in recent years but with no solution of the problem undertaken other than the suggestion made at the Washington Conference in 1935 that we continue to replenish the Association's treasury by seeking contributions from our members especially from those who receive a substantial income. Such an appeal was made this past year with a successful result but under present circumstances it is evident that this appeal will need to be made annually. In addition to that fact and the insistence on the part of several of our present members that unless there is a readjustment in dues they must retire from membership prompts the suggestion that this matter now have our serious consideration with the view of establishing an equitable basis which will enable us to properly finance the Association.

* Had ceased to be a Referee in Bankruptcy.
† Has reinstated.

Finances

My report as Treasurer states the financial condition of the Association as of the close of the fiscal year. The amount received from dues is approximately the same as the prior year. We have a slight increase from subscriptions to the Journal and from advertising and a marked increase from contributions.

Our budget has continued approximately as heretofore and as I have frequently stated is really at a minimum if we are to actively function. It is with this information that we are able to compute approximately the amount of money which we require annually for Association affairs. This minimum is about $3,000.

Journal

Four issues of the Journal were published during the year, being Vol. 11, with a total of 156 pages. Nearly the entire proceedings of the Detroit Conference were published in one issue although the addresses at the annual dinner were carried into the second issue. This enabled us to devote three issues to matters of general information to our readers, including reports as to the progress of the Chandler Bill. The article in the July issue prepared by Referee Fred H. Kruse, Toledo, entitled "Liability of Referees for State Income Tax" should be of very practical help. No index of any volume has been prepared although a table of contents of each issue is now published. It is worth while, I believe, if we were to prepare an index of the contents of the first ten volumes and have the same published.

A somewhat active campaign for subscribers was undertaken, resulting in an increased number of subscriptions.

Without question the Journal is rendering a service and in some respects occupies a distinct field among law publications. Frequent requests for back numbers are received and bound volumes of the Journal will be found in many law school libraries. It is also cited in Law Review articles. In a recent article in the *Yale Law Journal* there were 23 references to our Journal. As heretofore, the Journal is mailed to all U. S. Circuit and District Judges, all Referees in Bankruptcy who are members of the Association, to our subscribers, to exchanges and to instructors in bankruptcy law in various law schools expressing an interest in it and to many law school and bar libraries. By a vote of the majority of directors who voted, it was again decided to curtail the mailing of the Journal to those Referees who are not members of the Association but from whom we feel we should receive support. However, it is advisable to send the issue containing the proceedings of the Conference to all Referees that they may be advised as to our activities. Many non-member Referees have expressed their interest in the Journal as being one of help to them.

1937 Conference

We are happy to hold this Conference at the invitation of Referee Fred S. Hudson, past president of the Association, in his home city. Mr. Hudson has co-operated actively in the arrangements. In thus meeting in this city we have given special opportunity to those Referees in the southwestern and western sections of the United States to attend the Conference at a reasonable expense inasmuch as this is the first Conference we have held west of the Mississippi River and the only one in this general section since Memphis in 1929.

In my opinion our 1938 Conference should be held at some eastern point for the benefit of our New England and Middle Atlantic Referees especially.

Bankruptcy Legislation

A statement as to the Congressional situation, especially with reference to amendments to the Act, will be presented by the Committee on Legislation as well as by the special

Conference Committee, which latter has to do particularly with the Chandler Bill. I need give no details in this respect.

Attention, however, is directed to the fact that a bill has passed the Senate eliminating the limitation of the existence of § 75, the agricultural composition and extension amendment to the Act. This bill is pending in the House and information indicates that it may there be amended to continue its existence for only five years. At the time active consideration was being given to the amendatory bill the relief attempted in § 75, because of the limitation, was not incorporated into the amendments and especially so after the Supreme Court invalidated subsection (s). The Chandler Bill, in effect, was completed by the time the Supreme Court had acted upon the new subsection (s) which held it valid. Under the circumstances, it is respectfully suggested that the moratorium feature in 75 (s) should have the consideration of the National Bankruptcy Conference and, perchance, in some form, be incorporated into the Chandler Bill. As one new feature of the Chandler Bill provides for a reduced filing fee in certain proceedings, which is also a feature of § 75, it might be possible to include such a provision. As we all appreciate, § 75, by virtue of the amount paid to the conciliation commissioner as his compensation creates the first instance under the present Act as least when the administration of a bankruptcy estate actually has been at public expense.

During the year the Supreme Court promulgated General Order LIII. When this was issued I communicated with the Chief Justice relative to some practical problems presented to Referees incident to the depository situation. The subject was further considered by the Supreme Court but the Court decided to adhere to the General Order as promulgated. The concensus of opinion seems to be that under the General Order depositories must qualify by filing bond and that the use of an existing statute permitting the deposit of securities with the Federal Reserve Bank earmarked for the protection of bankruptcy funds is not applicable. However, in fixing the amount of the bond under the provision of the statute consideration shall be given to the fact that bankruptcy funds are protected by membership of the depository bank in the Federal Deposit Insurance Corporation. Furthermore, such funds may be placed on deposit in the Postal Savings depositories under an amendment to the Act approved March 3, 1933. This latter act gives concrete illustration of the possible value of this Association and the danger of urging amendments without Association consideration. In this instance, I am advised, a Referee experiencing the refusal of banks to qualify as depositories owing to the then economic conditions brought the matter to the attention of a Congressman and the present amendment was drafted. It appeared to accomplish the purposes intended, towit: the use of postal depositories in lieu of commercial banking facilities. However, its interpretation as made by the Postoffice Department and which interpretation seems to be sound does not permit the withdrawal of funds from the postal depository in payment of expenses of administration and dividends in the usual form adopted by Referees in issuing checks upon the depository signed by a trustee and countersigned by the Referee. Apparently this makes it necessary that there be a qualified depository even though Postal Savings be used for deposits in excess of those covered by the F.D.I.C. I suggest that this matter have the attention of our Committee on Legislation or the National Bankruptcy Conference with the view of making the use of postal savings depositories fully available.

National Bankruptcy Conference

Several years ago this Association created a special Conference Committee, the general purpose of which was to offer the Association's services to any responsible organization interested in amending the Bankruptcy Act. This is not a standing committee under our constitution, although, in effect, it has become such. Its appointment proved helpful and serviceable to the extent that when it became advisable to organize, although informally, a National Bankruptcy Conference, our Association was in a position to act and it has had, as we all know, a mos active part in the work of the Conference. It is suggested that this committee should be made a standing committee.

While it appears as though the work of the National Bankruptcy Conference is about completed, it is apparent to most students of the Act that it is advisable that there be some sort of clearing house for the consideration of suggested amendments as made in the future. To me better service to the country in this respect can be rendere than by placing the National Bankruptcy Conference upon some sort of permanent basis and it will be very proper, I believe, that this Association take active steps to that end.

Association Activities

No meeting of the Directors was held at the close of the Detroit Conference and as it seems to be very difficult to get our Directors to express themselves through an interchange of correspondence, the work placed upon me during the first few months of the current year was heavier than usual. It is not fair to ask the secretary to decide all questions of moment which affect the activities and determine the policy of the Association. He is entitled to and should have the counsel of his associate Directors. It did not prove possible, owing to the secretary's physical handicap for a few months the forepart of this year, for the Directors to meet until last June when they convened in Chicago. The attendance was satisfactory although the presence of two or three members of the Board who at the last moment were unable to attend would have given us the benefit of further counsel. In accordance with the action of the Detroit Conference the Directors appointed special committees to consider an international conference on bankruptcy as well as offering to the Department of Justice suggestions as to the desirable contents of the form for statistical data. Details concerning the Kansas City Conference were also considered.

It was at this meeting that the question of securing additional support to the Association from among non-member Referees by proposing a graduated scale of dues was considered. Tentatively this calls for dues of $3 per annum to those Referees receiving fewer than 25 references annually, $5 to those receiving fewer than 50 references and $10 for all above that amount with a fiscal year for all commencing September 1st as that method will simplify the collection of dues. This matter was submitted to our non-member Referees and some 21 favorable responses were received but with about a half dozen declinations. Those responding stated they considered this method equitable and were happy to thus co-operate. But from the large number of Referees who are not members no response whatsoever was made to two letters from me. It is evident from the responses received as well as from other information that the very large majority of our Refere are receiving very few references annually, especially i the past two or three years. Nevertheless we should have their support and co-operation. Every Referee represents the general subject of bankruptcy to his community. It is also evident that we shall have difficulty in retaining a portion of our present membership among Referees receiving very few references annually if we insist upon maintaining the present rate of dues. If the Association deems it advisable not to adopt the graduated scale, then practically all of those Referees who have expressed a willingness to join thereunder will discontinue as members and in like manner we will experience a decrease in the present membership. On the other hand if we are to adopt the graduated scale and at the same time effect an increase in income, we will need to have the active membership of at

least 200 non-member Referees. Can it be done? It is this matter which I present to you at this Conference for consideration and decision.

Apparently no satisfactory method seems to have been devised for securing the active functioning of our Circuit Directors as far as the details of the Association are concerned. Association Directors should supervise the securing of new members in their respective Circuits as well as in preventing, as far as possible, losses incident to delinquencies in dues. This is in addition to their comment upon general Association affairs. I am in hopes that some method by which this may be effected can be ultimately worked out. The secretary cannot assume the almost sole responsibility for all of this.

Official Relations

During the past year I wish to acknowledge the help which I received during the period of partial incapacity arising out of a gymnasium accident. I am also happy in my relations with our President and with the Directors and members of the Association.

There is no question in my mind but that the Association has fully demonstrated its value to our Referees in Bankruptcy as well as to the country at large on the general subject of bankruptcy. Its present policy of publishing a quarterly Journal, holding an annual Conference, and keeping in active association with other responsible organizations interested in the Act, justify its continued existence. Therefore, I urge that after eleven years of activity we now give most serious consideration to methods for securing the active co-operation of the large majority of our Referees in its affairs.

Most respectfully submitted,

HERBERT M. BIERCE,
Secretary.

Mr. Olney: I would like to know when on this program we are going to take up this question of dues because it seems to me it is a very important one, and I think it might be advisable for the chair to appoint a committee now to canvass the situation and bring in recommendations later on.

President: I agree with you that that is a matter of vital importance to the association, and we are going to discuss it on Saturday morning. The Secretary has referred to it in his report, so that all of the members can, between now and then, consider the proposition.

Referee Fred H. Kruse, Toledo: I move that the report of the Secretary be approved on those matters without the province of the standing committees, and all other suggestions referred to those committees, and as to other matters that the President appoint a special committee with instructions to report at a convenient time later.

This motion was seconded and was adopted.

Referee James W. Persons, Buffalo: It seems to me, in view of the limited time that we can give to this matter in an open session, that if this special committee could be requested to have a hearing where various ideas could be threshed out, it might save time.

Mr. Olney: I think that is a good suggestion.

President: At our meeting in Chicago, we spent some little time on this. We had a very representative meeting of the Directors there, Referee Adams was our genial host, and we discussed this question considerably. We decided at that time to try out temporarily the suggestion outlined in our Secretary's report. But this is not going to provide enough revenue for our Association, without outside contributions. So this matter of dues should be considered, and we may have an opportunity at the close of this session today to do some more talking on it.

I will appoint on this committee Referees Olney, Kruse, Keogh, Persons, King and Adams.

ANNUAL ADDRESS OF THE PRESIDENT

President: We have come to the place on the program where it says Annual Address of the President, but that is going to be omitted at this time, for this reason, that I do not believe in talking just because I have the opportunity. Presidents' addresses in the past have usually dealt with recent Supreme Court decisions by the United States Supreme Court, on bankruptcy matters. Our Secretary, in the last two issues of the Journal, has covered that matter pretty thoroughly, and for me to attempt to re-hash those decisions would add nothing to your store of information.

Then, too, the President sometimes in an address discusses the status of legislation on bankruptcy matters before Congress. We have that matter thoroughly covered in the session this afternoon, and I do not want to steal any of the thunder of Referee Paul King, who is going to conduct this forum on the Chandler Bill.

There is only one piece of legislation that I think probably should be called to the attention of the Referees at this time, and that is the new bill that was passed just before Congress adjourned, to overcome or circumvent the decision of the Supreme Court of the United States holding unconstitutional that section of the Act on municipal debt readjustments. Congress has passed a new Act for the adjustment of debts of municipalities and taxing districts, under which the municipality or taxing district may file a voluntary petition to have its debts readjusted or reduced, but which is not subject to an involuntary proceedings.* That may be of interest to you and it is certainly a piece of legislation that will have some far reaching effects in certain localities. The Congressman from Florida who sponsored the original act in Congress was instrumental in having this new act passed.

With these brief remarks, I am now going to ask our Secretary to introduce the various referees present, so that we may become better acquainted.

Mr. Bierce then introduced the Referees in attendance.

President: The only other matter scheduled this morning has to do with greetings to the Association by representatives of other associations.

I believe we have a representative from the American Bankers Association, and we will be glad to have a word from him at this time.

Greetings, American Bankers Association

Mr. Myron R. Sturtevant, St. Louis: I have enjoyed your program up to this time and I would continue to enjoy it right through if you had not called upon me. When Mr. Bierce sent the invitation to the American Bankers Association at the New York headquarters, the president and other officials of the Association were present, and instantly they said, "We must be represented; we have been highly honored." It was expected that our general counsel would be in attendance, but he could not come. So he sent me as a pinch-hitter, not expecting that I would be "struck out" by the first ball.

The American Bankers Association is not unmindful of the courtesy of your invitation and I shall report, as best I know how, the proceedings of this meeting and I can only hope that some time we will be invited to another one.

President: Have we anyone here from the Commercial Law League of America? Mr. Reuben Hunt.

Greetings, Commercial Law League of America

Mr. Reuben G. Hunt, Los Angeles: I can say that I am always glad to be here with you. I was much interested this morning in the talk of Mr. Hudson relative to the glories of Kansas City. I might suggest that the word "California" be substituted for "Missouri." I noticed when I came in here this morning that the paper said it was hot

* Chapter 657. Pub. No. 302, 75th Cong., 1st sess.

here yesterday, and I thought to myself, "What am I getting into?" and then I felt that I could not say anything in answer, because they have borrowed our stock phrase, "It is very unusual weather." That phrase belongs to California exclusively. Our greetings are extended from the Commercial Law League of America.

The National Association of Credit Men is represented here by Mr. Randolph Montgomery. We would like to have a word from him.

GREETINGS, NATIONAL ASSOCIATION OF CREDIT MEN

MR. W. RANDOLPH MONTGOMERY, New York: I think that Mr. Baldwin from the Washington office is coming tomorrow, and his express purpose is to extend the greetings of the National Association of Credit Men, so I do not think I should steal his thunder. I wish to express my personal appreciation in being here. I would have been very much disappointed if I could not have come. The contacts I have made with the Referees in the past years, particularly in connection with the work of the National Bankruptcy Conference, have been very pleasant and very instructive. I have learned more about the Bankruptcy Act from my contacts with the Bankruptcy Conference, under the leadership and fine guidance of Paul King, than I could possibly have learned in any other way.

I hope some time the Referees Conference will meet at the same time and place that the Association of Credit Men meet. I think that would afford an opportunity for both of us to become better acquainted. You would hear then what the credit men actually think of you, and I am sure it would be most complimentary.

PRESIDENT: This might be a good time to have just a word about fees, by Irwin Kurtz.

REFEREE IRWIN KURTZ, New York: This bill (exhibiting it) was introduced by Senator Borah and it became a law on August 25th. It does not directly amend the Bankruptcy Act but it concerns us. The portions of that Act which affect us I will read. It provides:

That:

(a) It shall be unlawful for any party in interest, or any attorney for any party in interest, in any receivership, bankruptcy, or reorganization proceeding, in or under the supervision of any court of the United States, to enter into any agreement, written or oral, express or implied, with any other party in interest, or any attorney of any other party in interest, in such proceeding for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorney of any party in interest in such proceeding, for services rendered in connection therewith when such fees or other compensation are to be paid from the assets of the estate in receivership, bankruptcy or reorganization. As used in this section, the term "party in interest" includes any debtor, creditor, receiver, or trustee and any representative of any of them.

(b) It shall be unlawful for the judge of any court of the United States to approve the payment of any fees or compensation the amount of which is fixed as the result of any act declared to be unlawful by subsection (a) of this section.

(c) It shall be unlawful for the Judge of any court of the United States to appoint as Receiver, or Trustee, any person related to such Judge by consanguinity, or affinity, within the fourth degree.*

There is, of course, a penal provision.

It has been the custom in our jurisdiction (in order to avoid criticism, and there was adverse publicity with respect to attorneys asking for huge fees, such as in the *Paramount* case) to sit around the table with these various committees and their counsel, not to agree upon the amount of fees they were to get but the amount of fees that they were to ask for, so as to take the water out in advance, so as not to gain newspaper notoriety. I have such a situation in the United Cigar case, where we were going to sit down to discuss the amount to be asked for, but as a result of this bill, the attorneys are afraid that they may be subject to a fine of $10,000, so they have refused to sit down and discuss it, so as a result, it may be published throughout the country that many millions of dollars are being requested, which will make it more difficult to accomplish the reorganization.

* Chap. 777, Public — No. 373, 75th Cong., 1st sess.

REFEREE FRED S. HUDSON
Kansas City
Our Host

Under this Act it will be more difficult for us as we are unable to effect agreements. This will cause extended delays as fees will have to be fixed before we can certify the matter to the court. I think it well to call this to your attention as the law was enacted at the close of the session of Congress and is in effect and none of us wants to get into any trouble.

PRESIDENT: Referee McNabb, I believe you have something you wish to say.

REFEREE SAMUEL W. MCNABB, Los Angeles: This is probably an appropriate time to say a few words in behalf of my colleagues from Los Angeles and Southern California and for myself. I would like to extend an invitation for the conference to assemble in Los Angeles in 1939. We would like very much to have the Conference come to us then. The exact time of year is not so important. It is our hope that if you come you will plan on taking a real vacation because it is a long trip there for just two or three days. Mr. McNabb then described some of the advantages of holding a Conference in Los Angeles.

PRESIDENT: Thank you very much. If there is nothing further to come before us we will recess. The Fellowship Luncheon will follow immediately after this session.

Second Session

FELLOWSHIP LUNCHEON

The Fellowship Luncheon attended by Referees, their ladies and other guests was held in the Reception Room of the hotel. Referee John Keogh, Bridgeport, Conn., the Vice-president of the Association, presided. Brief remarks were made by Referee Ray C. Fountain, Des Moines, Iowa, attending his first Conference, Referee Theodore Stitt, Brooklyn, and Brien McMahan, assistant U. S. Attorney-General, Norwich, Conn.

Third Session

THURSDAY AFTERNOON

PRESIDENT: At this time I will appoint the Committee on Resolutions as follows: Referees Covey, Hollins, Endicott, Jones, Mullinix, McLaughlin and Knehans.

The Committee on Nominations will be Referees Irwin Kurtz, Glenn, McNabb, Stitt, Foster, Baldwin and McAllester.

I am going to ask Referee Adams to introduce the next speaker.

REFEREE CHARLES TRUE ADAMS, Chicago: I have great pleasure in introducing a man who has the unusual distinction of having served on the United States District bench, and after such service, upon going out into the practice of law, has become one of the leading members of the Bar in one of our great states.

For many years Judge George E. Q. Johnson has made a study of the subject, and has spoken many times on it, which he is going to tell us about today. I do not know whether you will agree with him or not, but I am sure you will feel that it is one of the most burning questions before lawyers and particularly anyone who has anything to do with the courts, or as an officer of the courts, by way of being some sort of semi-judge, which I suppose we are sometimes. His subject is "The Present Trend to Limit and Evade the Jurisdiction of the Court."

I have great pleasure in introducing the Honorable George E. Q. Johnson.

HON. GEORGE E. Q. JOHNSON, Chicago: Mr. Chairman and gentlemen: I appreciate very much this present introduction by Mr. Adams. I know something about the responsibilities of public office, and I have some knowledge of the responsibilities and difficulties pertaining to the office of Referee. In fact, any office leads me always to think of a deacon in a church. As usual, they were having a great deal of trouble collecting their pledges. This deacon said, "By gum, I will collect the pledges if you will turn the whole business over to me." He went at it with vim. In response to his first letter, half of the pledges came in. On his second letter, all of the pledges came in except that of one brother. On the third letter, that pledge came in with a check, but with it came a letter which read something like this: "Dear Brother Brown: I don't object to your collecting the pledges, but I do object to your spelling. You spelled 'louse' with a 'z', and 'skunk' with a 'c'."

HON. GEORGE E. Q. JOHNSON
Chicago

(The address of Judge Johnson appears commencing on page 10.)

PRESIDENT: Thank you very much, Judge Johnson. We have all appreciated greatly the fine address you have made to us.

I now introduce Paul King, who will take charge of the rest of the program, which will cover a discussion of the Chandler Bill.

SYMPOSIUM

Revision of Bankruptcy Act As Proposed in the Chandler Bill, HR. 8046

REFEREE PAUL H. KING, Detroit: I appreciate very much the many kind words which have been said to me. I only wish they were deserved. As chairman, I have been sort of a general factotum for the National Bankruptcy Conference. I have helped to hold it together. I think I may reasonably claim some credit for insisting, sometimes in the face of difficulty and obstacles, that we do finish the job. I am quite sure that if any of us had ever contemplated the length of time and the amount of work that this task was going to involve, we undoubtedly would not have had the courage to undertake it.

This has been a continuing process. When we made the first tentative draft I am quite sure that we felt that we had a fairly good proposed revision of the bankruptcy law. This print which I have here is the tenth printing through which this draft has gone. I am not sure it is the last one.

We have been blessed, in the work of the Conference, by the help of some of the ablest men in bankruptcy in the country. I refer to men like our own Referee Watson Adair, who has given unstintingly of his time and effort; men like Jacob Weinstein, of Philadelphia, and I might say that I do not know of any better draftsman in this country of a bankruptcy law, or any other legislation, for that matter, and men like Professor McLaughlin, of Harvard. I could go right down the list. I might mention Randolph Montgomery, who is here, and Referee Adams, of Chicago, and others who have stuck to this job through thick and thin over a period of more than five years, always ready, always willing to do their share and more. It really is an accomplishment to have gotten thus far. I see my good friend Reuben Hunt has just come in. He has been one of the wheel-horses in this conference work. I wish I could name them all and pay just tribute to them. I do not know of any other group of men who have so devotedly given of their time, talent and energy, at no small expense, in bringing this work to its present point.

On this symposium program this afternoon, we are going to discuss some of the salient features of the draft. I am very sorry to say that Watson Adair cannot be here. I had counted on him until the last minute, but yesterday I received a letter that he could not be here. I may say further that Henry Shull, chairman of the Committee on Commercial Law and Bankruptcy of the American Bar Association, who is on the program for a summary, will be unable to be here. I have not tried to fill their places on short notice. The thought just occurred to me, Reuben, and perhaps it is imposing on you, though I hope it is not, that you might be willing, at the conclusion of the presentation of the special subjects here, to give us a few words of summary. If you will be thinking about that, we will be under obligation to you for it.

The Modernization of Our Bankruptcy Law

I have taken for my own text, the subject of "The Modernization of our Bankruptcy Law." That is the phrase that we have applied to this draft. Of course, our present law was passed more than a generation ago and the times unquestionably have changed.

I remember hearing an address by Raymond Fosdick some two or three years ago which had this thought, that if Abraham Lincoln were to come back to these United States today, and go into the Capitol of our country in the city of Washington, he would not know the place. He would be in a different world. The speaker went on to illustrate what he meant by saying that, for example, the geography would have been changed; the shacks and the slum section on Pennsylvania Avenue would be gone, the old railroad terminal gone, the market-place gone; and instead of that public buildings are being erected, and

(Continued on page 14)

The Present Trend to Limit and Evade the Jurisdiction of the Courts *

By GEORGE E. Q. JOHNSON of the Chicago Bar †

IF ANY one should think that this trend is of recent origin, for there is a trend in this direction, it is due to the fact that this tremendously important subject has not had such an important place in the discussions of members of the bar so as to attract general attention. Its beginnings go back more than forty years. Every administration in Washington has added to it. Each of the administrations of President Coolidge, President Hoover and of President Roosevelt accelerated the pace. The roots of this trend, it seems to me, extend down among the masses of the people where there has grown a natural and understandable impatience about the "law's delays." [1] The National Government has approximately one hundred commissions and bureaus which function as courts to the extent that they are fact-finding bodies, and this has been duplicated by the states in form of hundreds of commissions and bureaus. The trend to limit the jurisdiction of the courts is evidenced by such Acts as the Norris-La Guardia Injunction Law. The trend is further evidenced by attempts of both national and states legislatures to limit the power of the courts in the appointment of their own officers in administrative proceedings.

Thus when we view this field, we see a great body of the law withdrawn from the jurisdiction of the courts.

This has clearly happened. Steadily this encroachment marches on, sometimes openly, sometimes insidiously, and we as members of the bench and bar are passive.

Writers for the great law journals and law reviews who are mostly teachers, in the main approve and are critical where the courts assert their authority. [2]

So to retain this great body of law for the jurisdiction of the courts so far as it is necessary to invoke the process of the courts to enforce the orders and decrees of these quasi judicial bodies and to hold open courts to protect the rights of citizens to have the findings and orders of these commissions and bureaus reviewed as the judgments and decrees of the *nisi prius* courts are reviewed, is now the paramount issue.

Time will permit to discuss only the *quasi* judicial commissions and bureaus which function as courts as to fact finding. Out of the activities of these tribunals has grown up a great body of administrative law which Professor Fruend defines as "The Law of Official Power and its Subjugation to Judicial Control," or as Professor Frankfurter defined it, "The law which deals with the field of legal control exercised by law administering agencies other than courts, and the field of control exercised by the courts over such agencies."

This development is not strange to either England or continental Europe. The Republic of France and other countries of the continent have their administrative courts as distinguished from the courts of general sessions. In England, a democracy, administrative tribunals have progressed far beyond what any one would dream of in the United States, and largely in the last twenty years, some acts of Parliament have vested in public officials to the exclusion of the jurisdiction of the courts of law, the power of deciding questions of a judicial nature.

English courts, of course, are not concerned with constitutional questions, in the American sense. They, however, do deal with statutes, and questions arise as to whether or not in the exercise of executive authority conferred by statute the administrative agency has exceeded its authority, and if it has, such act is declared *ultra vires* by the courts. These administrative agencies in England were impatient even of such restraint, and in 1925 a local government act contained the following startling provisions:

> If any difficulty arises in connection with the application of this Act to any exceptional area, or in bringing into operation any of the provisions of this Act, the Minister may by order remove the difficulty, or make any appointment, or do any other thing which appears to him necessary for bringing the said provisions into operation, and any such order may modify the provisions of this Act so far as may appear to the Minister necessary or expedient for carrying the order into effect. [3]

Of course we are in no danger from such usurpation of authority by reason of the Constitution, unless the same shall become completely emasculated and no longer regarded.

I think we may say with a great deal of assurance that the battle for the restoration of powers of the courts is largely lost. The attention of the bench and bar should be directed to shape and direct the present trend so that it will not wreck the very foundation stone upon which our whole judicial structure rests, with the result that the courts will be bound by administrative determinations of fact where issues involving constitutional rights arise. This battle is now in progress, and I will attempt to state the issue, and then by consideration of a few cases in our Supreme Court, let you judge what inherent danger there is in store for us.

The importance of this growth of administrative law suddenly confronts every law office in America which represents either labor or industry by reason of the National Labor Relations Act, commonly known as the "Wagner" Act. No one can interpret or understand this Act without an understanding of Administrative Law.

By reason of the provisions of our Federal Constitution, as well as the provisions of the various State Constitutions, ultimately a quasi-judicial body must resort to the courts to enforce its orders and findings. This then leads us to a discussion of how much control a court may exercise over such proceedings once they have been lodged there in conformity with various statutes.

Many bills have been introduced in State Legislatures and in Congress to make the findings of facts of these bodies conclusive upon the court. So far these attempts have been partially resisted. In a few western states in dealing with the troublesome question of water diversion and irrigation, findings have been made conclusive upon the courts and such acts have been approved,[4] but up to

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* An address delivered before the twelfth annual Conference of the National Association of Referees in Bankruptcy at Kansas City, Missouri, September 23, 1937.

† Mr. Johnson is a member of the law firm of Johnson, Swanstrom & Wiles, 34th floor Bankers Building, Chicago. He was a U. S. District Judge and U. S. Attorney for the Northern District of Illinois and the author of "Bankruptcy Reorganization," published in 1936.

[1] See Smith, "Administrative Justice," 18 *Ill. L. Rev.* 211; Haines "Effects of the Growth of Administrative Law," 26 *Am. Pol. Sc. Rev.* 875; Pillsbury, "Administrative Tribunals," 36 *Harvard L. Rev.* 405; Gaus "Public Administration and Administrative Law," 26 *Am. Pol. Sc. Rev.* 875.

[2] See Brown, "Administrative Commissions and the Judicial Power," 19 *Minnesota L. Rev.* 261; Hyneman, "Administrative Adjudication," 51 *Political Sc. Quar.*, 382; Tollefson, "Administrative Finality," 29 *Michigan L. Rev.* 339; McFarland, "Administrative Agencies in Government and the effect of Constitutional Limitations," 20 *Am. Bar Ass'n Journ.* 612; Albertsworth, "Judicial Review of Administrative Action by the Federal Supreme Court," 35 *Harvard L. Rev.* 127.

[3] Rating and Valuation Act 1925, 15 and 16 Geo. V., Chap. 90, § 67 (1).

[4] See Weil, "Fifty years of Water Law," 50 *Harvard L. Rev.* 252.

this time it has been in that very limited field, and I shall not discuss briefly the exact issue that we have to meet.

It might be well to observe that these bureaus and commissions are also vested with the authority to make "rules" or "regulations" which frequently invade the legislative field. I only desire to draw your attention to the fact that these "regualtions" sometimes infringe upon constitutional rights.

The problem presents questions of great importance to the individual so far as the preservation of his individual rights are concerned. If legislatures can encroach upon the field of judicial action by administrative procedures, then our rights of liberty and property can be taken away or modified by tribunals acting outside of the judicial field not subject to the supremacy of law as it has heretofore been understood. In that event we are certain destined for a new bureaucratic dictatorship, which will not be far removed in its character from similar dictatorships now flourishing in other countries.

The most important elements of the problem of constitutional limitation on administrative action are those which relate to the attempts of legislatures to make findings of fact by administrative agencies binding on the courts.

UNLIMITED POWER TO DETERMINE FACTS INVOLVES UNLIMITED POWER TO ABROGATE RIGHTS.

First, it must be observed that the power to find facts conclusively, if conferred, involves an almost unlimited power to determine rights, for legal relations must be governed by the facts out of which they arise.

Chief Justice Hughes, in an address reported in the *New York Times*,[5] said:

> The power of administrative bodies to make findings of fact which may be treated as conclusive if there is evidence both ways, is a power of enormous consequence. An unscrupulous administrator might be tempted to say, "Let me find the facts for the people of my country and I care little who lays down the general principles."

Professor Scharfman, in his well known treatise on the Interstate Commerce Commission, has well pointed out that there is no fixed distinction between questions of fact and questions of law:

> Matters of law grow downward into roots of fact and matters of fact reach upward without a break into matters of law. The knife of policy alone effects an artificial cleavage at a point where the court chooses to draw . . . the line.
>
> When the courts examine a record to determine whether there has been any "mistake of law," whether a Commission has failed to apply, or has erred in applying, some legal principle, they are in effect reviewing the Commission's ultimate findings of fact. The distinction between the two categories, question of fact and question of law, is not so clear cut so as to provide an automatic guide for delimiting the respective spheres of administrative and judicial action.

When mixed questions of law and fact are involved, a review on the question of law gives a certain amount of control to the reviewing tribunal over the question of fact involved.

Congress has attempted in many fields of legislation to make findings of fact by Administrative Boards or officers conclusive on the courts. These attempts have met with a great measure of success but there fortunately still remains an area in which the courts can respect administrative findings.

The facts found by administrative tribunals may be classified into three groups:

1. The facts relating to matters, the control of which have been properly delegated to the tribunals with suitable statements of legislative policy and principle to be applied in the control of the subject matter.

2. Jurisdictional facts which have to do with the question of whether or not matters are within the area assigned to the tribunal.

3. Constitutional facts which have a bearing on the question of whether or not constitutional rights of individuals are impaired or confiscated.

[5] February 13, 1931.

WHEN ADMINISTRATIVE FINALITY AS TO FINDINGS OF FACT IS PERMITTED

As to the first two classes, as will appear from the discussion which follows, the battle to maintain a judicial review of the evidence has been lost. The rule is that, if certain fundamental requirements of the judicial process have been observed and if there is substantial evidence to support the findings of fact, they must be accepted by the courts.

As pointed out by Chief Justice Hughes in the *Schechter*[6] case, when a Commission is created with provisions for formal complaint for notice of hearing and for appropriate findings of fact, supported by evidence, and provisions for judicial review on matters of law, findings of fact, if supported by substantial evidence, will be binding on the courts. The latter, in such a case, may not substitute their findings of fact for those of the Commission. This rule is subject to the limitation that the procedural requirements have been actually complied with. The extent to which this limited conclusiveness of fact-findings by administrative tribunals has been recognized as constitutional and has been reviewed in detail by Brandeis, J., in *Crowell v. Benson*,[7] and may be summarized as follows:

Boards whose findings are conclusive: Interstate Commerce Commission;[8] Federal Trade Commission;[9] Federal Power Commission; United States Shipping Board;[10] Secretary of Agriculture,[11] Board of Tax Appeals,[12] Grain Futures Commission; District of Columbia Rent Commission,[13].

Congress can, of course, by express enactment, permit the introduction of additional evidence in a court review of administrative findings.

To the list of tribunals whose findings of fact have been made conclusive under the limitations above stated there must now be added the National Labor Relations Board. The constitutionality of the Act creating this Board was upheld in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*[14] decided April 12, 1937, on the same day that the appeal in the *Washington, Virginia and Maryland Coach Company v. National Labor Relations Board*[15] case came before the Supreme Court.

The history of the Coach Company's experience with the National Labor Relations Board merits a review of the case with some detail.

The Coach Company engaged in the interstate transportation of passengers, was found by the N. L. R. B. to have discharged and to have refused to reinstate certain employees because of their membership in a trade union. The Labor Board found that this constituted an unfair labor practice and rendered a decision setting forth findings of fact and entered an order prohibiting the Coach Company from discriminating against its employees in respect to membership in a union and requiring it to restore the eighteen discharged employees. The Coach Company refused to comply with the order and the Board filed a petition in the Circuit Court of Appeals as authorized by the

[6] *Schechter Poultry Corp. v. U. S.*, 295 U. S. 495, 79 L.ed. 1570, 55 S.Ct. 837.

[7] 285 U. S. 22, 76 L.ed. 598, 52 S.Ct. 285.

[8] *Interstate Commerce Comm. v. Louisville & Nashville R. R. Co.*, 227 U. S. 88, 57 L.ed. 431, 33 S.Ct. 185.

[9] *Federal Trade Comm. v. Curtis Publishing Co.*, 260 U. S. 568, 67 L.ed. 408, 43 S.Ct. 210.

[10] *United States Navigation Co., Inc. v. Cunard Steamship Co., Ltd.*, 284 U. S. 474, 76 L.ed. 408, 52 S.Ct. 247.

[11] *Tagg Brothers & Moorhead v. U. S.*, 280 U. S. 420, 74 L.ed. 524, 50 S.Ct. 220.

[12] *Phillips v. Commissioner of Internal Revenue*, 283 U. S. 589, 75 L.ed. 1289, 51 S.Ct. 608.

[13] *Block v. Hirsh*, 256 U. S. 135, 65 L.ed. 865, 41 S.Ct. 458.

[14] 301 U. S. 1, 81 L.ed. 57 S.Ct. 615.

[15] 301 U. S. 142, 81 L.ed. 57 S.Ct. 648.

Act for the enforcement of the order. The Circuit Court of Appeals refused to distrub the findings of fact made by the Board. The Coach Company appealed to the Supreme Court. While disposing of the constitutional questions for the reasons given in the Jones and Laughlin case, it dealt with the findings of the Board as follows:

> The petition for certiorari made no mention of any claim with respect to the sufficiency of the evidence to support the findings. In the light of this fact, the question is not open for decision here. (Citing cases). But were not this so, we should not review the facts since § 10 (e) of the act provides that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive," and there was substantial evidence to support the findings.
>
> This is not a case of alleged confiscation, [compare *St. Joseph Stock Yards Co. v. U. S.*,* nor is it one where the Board lacked jurisdiction, [compare *Crowell v. Benson*,†] for admittedly the petitioner's activities are in interstate commerce. The complaint is merely of error in appreciating and weighing evidence. In the case of statutory provisions like § 10 (e), applicable to other administrative tribunals, we have refused to review the evidence or weigh the testimony and have declared we will reverse or modify the findings only as clearly improper or not supported by substantial evidence. (Cases cited.) The contentions respecting the rejection of evidence are not well founded.

WHAT IS THE SUBSTANTIAL EVIDENCE WHICH WILL SUSTAIN AN ADMINISTRATIVE FINDING IF DUE PROCESS HAS BEEN OBSERVED?

Little help in defining substantial evidence can be found in the decisions of the Supreme Court or in other cases. Almost the only definition attempted is that given by Cochran, D.J., sitting in the C.C.A., in *Jenkins & Reynolds Co. v. Alpena Portland Cement Co.* [16] It is in effect as follows:

> * * * By substantial evidence is not meant that which goes beyond a mere scintilla of evidence. Evidence may go beyond a mere scintilla, and yet not be substantial. Judge Severens pointed this out in [*Minahan v. Grand Trunk Western Ry. Co.*‡] . . .
>
> . . . substantial evidence [is],
>
> "Something of substance and relevant consequence and not vague, uncertain, or irrevelant matter, not carrying the quality of 'proof', or having fitness to induce conviction."
>
> [Substantial evidence] is such that reasonable men may fairly differ as to whether it establishes [the plaintiff's case]. If, however, it is such that all reasonable men must conclude that it does not establish [such case], then it is not substantial. (Citing *Grand Trunk R. Co. v. Ives* §.)

The Supreme Court appears to have refrained from attempting to define what will amount to substantial evidence, thus leaving the decision of what constitutes such evidence to be grounded on the facts arising in each particular case.

LIMITING THE JUDICIAL POWER

The substantial evidence rule is a forlorn hope. The *Coach Company* case reveals that the entire court are agreed that there is a constitutional method by which the power to review findings of fact can be withdrawn from the courts. The National Labor Relations Act represents the high water mark reached by congressional attempts to swamp the judicial power. These attempts still persist. A change in the personnel of the Supreme Court might easily result in the inundation of extensive areas long held to be clearly beyond the province of the administrative bodies. This will appear from a study of the way in which the court has decided in a few recent cases.

THERE SHOULD BE NO FINALITY GRANTED TO ADMINISTRATIVE FINDINGS WHERE CONSTITUTIONAL RIGHTS ARE INVOLVED

A majority of the Supreme Court has developed the doctrine that where constitutional rights of liberty and property are involved, and these rights have been invaded by administrative action, Congress cannot make the findings of Administrative Tribunals conclusive upon the courts, and the courts are required in the performance of their function to exercise their independent judgment upon the facts and may, in a proper case, permit a trial *de novo*. This rule has led to a distinction between so-called "jurisdictional facts" and "constitutional facts." The constitutional fact doctrine first finds clear expression in *Ohio Valley Water Company v. Ben Avon Borough.*[17]

Ben Avon Water Company was a Pennsylvania corporation. Upon a complaint, the public service commission of Pennsylvania took evidence and fixed a water rate. The company claimed that the rate was confiscatory and appealed to the Superior Court which reversed the order. The Supreme Court of the state, on appeal, reinstated the order holding that there was competent evidence in the record before the Commission to sustain its conclusion. The opinion delivered by Mr. Justice McReynolds, with Brandeis, Holmes and Clarke, JJ., dissenting, contains the following:

> . . . we are compelled to conclude that the supreme court [of Pennsylvania] interpreted the statute as withholding from the courts power to determine the question of confiscation according to their own independent judgment when the action of the Commission comes to be considered on appeal.
>
> The order here involved described a complete schedule of maximum future rates and was legislative in character. (citing cases) In all such cases if the owner claims confiscation of his property will result, the State must provide fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause, 14th Amendment. (citing cases).

The act provided:

> Section 31. No injunction shall issue modifying, suspending, staying, or annulling any order of the commission, or of a commissioner, except upon notice to the commission and after cause shown upon a hearing. The court of common pleas of Dauphin County is hereby clothed with exclusive jurisdiction throughout the commonwealth of all proceedings for such injunctions, subject to an appeal to the supreme court, as aforesaid. Whenever the Commission shall make any rule, regulation, finding determination, or other under the provisions of this act the same shall be and remain conclusive upon all parties affected thereby, unless set aside, annulled, or modified in an appeal or proceeding taken as provided in this act.
>
> It is argued that this section makes adequate provision for testing judicially any order by the Commission when alleged to be confiscatory, and that plaintiff in error has failed to take advantage of the opportunity so provided. * * *
>
> Plaintiff in error has not had proper opportunity for an adequate judicial hearing as to confiscation; and unless such an opportunity is now available, and can be definitely indicated by the court below in the exercise of its power finally to construe laws of the state (including, of course, § 31), the challenged order is invalid."

The judgment of the Supreme Court of Pennsylvania was reversed. Brandeis, J., dissenting, said:

> . . . there was substantial evidence to support the finding of the Commission; and no adequate reason is shown for declining to accept as conclusive the facts found by the state tribunals.

The *Ben Avon* case called forth a great deal of criticism in legal periodicals.[18] The division in the court there manifested has continued down to the present time.

The next important pronouncement on this subject is *Crowell v. Benson* [19]. It is an outstanding landmark in the development of the doctrine of the constitutional fact and merits review at length. Congress under the Longshoremen's and Harbor Workers' Compensation Act, passed a Workmen's Compensation Law modeled after the New York State Compensation Law. The Act established a scale of compensation, required claimants to give notice to a Commissioner and their employer, claim had to be

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* 298 U. S. 38, 80 L.ed. 1033, 56 S.Ct. 720.

† 285 U. S. 22, 76 L.ed. 598, 52 S.Ct. 285.

[16] (C.C.A. 6th 1906) 147 Fed. 641.

‡ C.C.A. 138 Fed. 137.

§ 144 U. S. 408, 36 L.ed. 485, 12 S.Ct. 679.

[17] 253 U. S. 287, 64 L.ed. 908, 40 S.Ct. 527.

[18] See Curtis, "Judicial Review of Commission Rate Regulation," 34 *Harvard L. Rev.* 862; C. W. Pound, "The Judicial Power," 35 *Harvard L. Rev.* 787; Weil "Administrative Finality," 38 *Harvard L. Rev.* 447; Buchanan, "The Ohio Valley Water Co. Case and the Valuation of Railroads," 40 *Harvard L. Rev.* 1033; Freund, "The Right to a Judicial Review in Rate Controversies," 27 *W. Va. L. Q.* 207; Isaacs, "Judicial Review of Administrative Findings," 30 *Yale L. Jour.* 781.

[19] 285 U. S. 22, 76 L.ed. 598, 52 S.Ct. 285.

filed and the commissioner was given authority to hear and determine all questions in respect to the claim. The commissioner was required to notify the employer when a claim was filed, to order a hearing upon notice. It was provided that in conducting hearings, he should not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure. He was required to prepare a record of the hearing and upon filing the order, an order was to be made which could be filed with the Clerk of the Federal Court and a judgment entered thereon if "in accordance with law." Review of the judgment was provided for as in civil suits, and it was provided that the order could be set aside if not in accordance with law. Under the Act an order was made by the Commissioner, Crowell, against the employer, Benson. Suit was brought by the employer in the District Court to enjoin the enforcement of the award, that the Act was unconstitutional under the Fifth Amendment and the provision of the Seventh Amendment as to trial by jury and under the provisions of Article 3 with respect to the judicial power of the United States. The District Judge granted a hearing *de novo* and upon hearing the evidence of both parties decided that Knudson was not in the employ of Benson and restrained the award. The decree was affirmed by the Circuit Court of Appeals and by the Supreme Court. The opinion of the court was delivered by Chief Justice Hughes. A dissenting opinion by Brandeis, J., was concurred in by Stone and Roberts, JJ. The dissenting opinion occupies thirty pages in the official report. The essence of the majority opinion is found in the following quotations:

> In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function (citing *Ohio Valley Water v. Ben Avon Burough.*) . . .
>
> In the present instance, the argument that the Congress has constituted the deputy commissioner a fact finding tribunal is unavailing as the contention makes untenable the assumption that the constitutional courts may be deprived in all cases of the determination of facts upon evidence even though a constitutional right may be involved. . . But when fundamental rights are in question, this court has repeatedly emphasized "the difference in security of judicial over administrative action" (case cited.) Even where issues of fact are tried by juries in the Federal courts, such trials are under the constant superintendence of the trial judge. In a trial by jury in a Federal court the judge is "not a mere moderator" but "is the governor of the trial" for the purpose of assuring its proper conduct as well as of determining questions of law (cases cited.) . . . Where testimony in and equity cause is not taken before the court, the proceeding is still constantly subject to the court's control. And while the practice of obtaining the assistance of masters in chancery and commissioners in admiralty may be regarded . . . , as furnishing an analogy . . . , their reports are essentially advisory, a distinction of controlling importance when questions of fundamental character are at issue. * * * As the question is one of the constitutional authority of the commissioner as an administrative agency, the court is under no obligation to give weight to his proceedings pending the determination of that question. . . . We think the essential independence of the exercise of the judicial power of the United States in the enforcement of constitutional rights requires that the Federal court should determine such an issue upon its own record and the facts elicited before it.
>
> . . . we think that there is a clear distinction between cases where the locality of the injury takes the case out of the admiralty and maritime jurisdiction, or where the fact of employment being absent there is lacking under this statute any basis for the imposition of liability without fault, and those cases which fall within the admiralty and maritime jurisdiction and where the relation of master and servant in maritime employment exists. It is in the latter field that the provisions for compensation apply and that, for the reasons stated in the earlier part of this opinion, the determination of the facts relating to the circumstances of the injuries received, as well as their nature and consequences, may appropriately be subjected to the scheme of administration for which the Act provides. . . .
>
> We are of the opinion that the District Court did not err in permitting a trial *de novo* on the issue of employment.

A MINORITY OF THE SUPREME COURT OPPOSE THE RULE LAID DOWN IN THE *BEN AVON* AND *CROWELL* CASES

In the latter case, Brandeis, J. dissenting, said:

> It is suggested that this exception [trial *de novo*] is required as to issues of fact involving claims of constitutional right. . . . But even assuming it to be so, the conclusion does not follow that the trial of the issue must therefore be upon a record made in the district court. That the function of collecting evidence may be committed to an administrative tribunal is settled by a host of cases. . . . In federal equity suits, the taking of evidence on any issue in open court did not become common until 1913, . . . and in admiralty, it was not required by the Rules of this Court until 1921. . . . . the function of the deputy commissioner is like that of a master in chancery who has been required to take testimony and to report the findings of fact and conclusions of law. . . . .
>
> . . . I see no reason for making special exception as to issues of constitutional right, unless it be that under certain circumstances there may arise difficulty in reaching conclusions of law without consideration of the evidence as well as the findings of fact. . . .
>
> Trial *de novo* . . . is not required by the Judiciary Article of the Constitution. . . . the Court holds that it is compatible with the granted power under Article III to deny a trial *de novo* as to most of the facts upon which rests the allowance of a claim and the amount of compensation. . . .
>
> . . . I see no basis for a contention that the denial of the right to a trial *de novo* . . . is in any manner subversive to the independence of the federal judicial power. . . . Congress has repeatedly exercised authority to confer upon the tribunals which it creates, be they administrative bodies or courts of limited jurisdiction, the power to receive evidence concerning the facts upon which the exercise of federal power must be predicated, and to determine whether those facts exist. . . .
>
> . . . An accumulation of precedents, . . . , has established that in civil proceedings involving property rights determination of facts may constitutionally be made otherwise than judicially; . . .

Justice Brandeis then reviews the Acts of Congress creating the various Boards, enumerated in an earlier part of this paper, whose findings of fact have been made conclusive on the courts.

The acute situation presented by the dissent in the Crowell case continues. In *St. Joseph Stock Yards Co. v. U. S.* [20] the majority of the court again asserted the right of a court to direct a trial *de novo* where constitutional rights were involved. Cardozo, J. wrote the dissenting opinion, holding that there should be no distinction drawn between cases in which constitutional rights were involved and other cases, and asserting that Congress could make administrative findings of fact conclusive if due process was observed and there was substantial evidence. Stone and Cardozo, JJ., in a special concurrance, say that "Mr. Justice Brandeis states the law as it ought to be," and they add:

> If the opinion of the Court did no more than accept those precedents [*Ben Avon* and *Crowell*] and follow them, we might be moved to acfiuiescence. More, however, has been attempted. The opinion reexamines the foundations of the rule that it declares, and finds them to be firm and true. We will not go so far. The doctrine of *stare decisis*, however appropriate and even necessary at times, has only a limited application in the field of constitutional law.

If the views of the minority should ultimately prevail, and the rule laid down in the *Ben Avon* and *Crowell* cases should be abrogated, Congress will have succeeded in finally withdrawing from the cognizance of the courts all facts relating to issues before administrative tribunals involving constitutional rights of liberty and property with the result that bureaucratic action will be final as to fact finding, and therefore in large measure bureaus will be able to destroy or modify constitutional rights. The significance of Justice Hughes' remark, quoted above, is now apparent. Let me repeat it.

> "Let me find the facts for the people of my country, and I care little who lays down the general principles."

In conclusion, permit me to say in my judgment the maintenance of the rule laid down in *Crowell v. Benson* [21] is of the gravest importance.

The legislative drive to delegate administrative agencies the regulation of ever-widening areas of industrial and social life and to withdraw from the courts any substantial review of findings of fact on which administrative action is based will still continue, if social forces now in action continue to operate along the lines already entered upon.

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[20] 298 U. S. 38, 80 L.ed. 1033, 56 S.Ct. 720.

[21] 285 U. S. 22, 76 L.ed. 598, 52 S.Ct. 285.

In England, where Parliament is supreme, absolute finality has been given to bureaucratic action in many fields. Parliament, being supreme, was able to withdraw from the courts the power to review such action. This has led to what the Chief Justice of England has called "the new despotism." [22]

A bulwark of the Constitution, which has not yet been undermined by the forces which are driving for administrative regulation of our destinies, still stands in the field where constitutional rights are affected by administrative action. Here the right to a trial *de novo* in a court of justice still remains. But the attack on the bulwark continues. Most of the writers on constitutional law advocate the surrender of this bulwark and the substantial exclusion of the courts from any direct fact-finding authority in administrative matters. If the assault is successful we will enter upon an almost uncontrolled reign of administrative officials, which will set up a government of men where law has heretofore been supreme.

Proceedings

(Continued from page 9)

gardens. Then he would go up to the White House, and if it were in the evening, if he pushed a little button to turn on the lights, he would not know what that meant, because he did not know anything about electric lights. From a little box in the corner would come maybe a grand symphony, a concert or a public address, and that would be news to him, because he did not know anything about the radio. They might take him to the "movies," and that would be something that he had not heard about, and so on. I do not need to enlarge upon the point.

When we think of the changes that have taken place in the world as we know it, and have known it, over the period of years spanned by the present bankruptcy law, we can see, of course, that changes have taken place not only in our common every-day personal lives, but in our business experience. Business is not transacted as it was when this bankruptcy law was enacted. It was enacted with the idea of the creditor being more or less local to the bankruptcy. As Referees we know it is no uncommon thing, in fact, it is quite an everyday experience, that in the list of creditors we find men and companies from a half a dozen or more states, with whom the debtor transacted business. We find that in our everyday experiences our means of transportation have improved. Wonderful highways cover the country like a net-work. Business is more easily transacted than it was in 1898, and the relationships have constantly expanded. So that it is no small wonder that our bankruptcy law may need modernizing.

In bringing a bankruptcy law, or any other law up to date, we do not necessarily need to disrupt it in its entirety. We want to keep before us constantly, of course, the major principles upon which it is based, and we do not need to uproot them; but what we look to particularly is the method of the administration of the law, the "mechanics" of it, and then change, depending on the circumstances. So that it seems to me it is no wonder at all that a law of this kind, affecting as it does so many people and so many different relationships, needs to be brought up to date occasionally. Whether or not there are any periods of time which we might say ought to elapse between changes, is a question.

This Act has been amended a number of times. I was interested to note that the dates of the principal amendments seem to be about ten years apart. My thought is that all we can do here now is to bring this law up to the point commensurate with our other progress. After this bill is enacted, the National Bankruptcy Conference, if it remains in existence, and I hope it will (there seems to be the thought that it should continue as an advisory group) should start immediately in the preparation of amendments for 1946, or 1947, as the case may be. It takes about ten years to amend the bankruptcy law.

You will recall that after the amendments of 1926, for three years there was comparative quiet, and then we had the difficulties which arose in the Southern District of New York in 1929, in which there were many indictments. There was an investigation which was conducted on the petition of the Bar Association of the City of New York, the New York County Lawyers Association, and the Bronx Bar Association. This was conducted before Judge Thacher, at that time one of the judges of the Southern District of New York, by William J. Donovan, Assistant Attorney General. Many witnesses were examined, much testimony was taken. Many referees throughout the country were consulted. That led to a report which found much fault with our bankruptcy law. It was said that it did not fit the conditions, and the reasons that it did not fit were because of its slow-moving procedural machinery, too great a burden of administrative detail thrust upon the courts, the breakdown of creditor control, and the domination by attorneys in bankruptcy proceedings.

Following the tentative report, which came out in 1930, we had the departmental survey, made at the instance of President Hoover, a survey conducted by the Department of Justice, with the collaboration of the Department of Commerce, by and under the direction of Judge Thacher, who had then become Solicitor General of the United States, with the assistance of Lloyd Garrison, now Dean of the Law School at the University of Wisconsin. You will remember when that report came out. It found about the same faults as were found in the tentative report and suggested certain remedies which would make the Act a better medium of distribution; the discharge provisions would be more just and more effective, and there would be a creditor control where there was a general creditor interest; waste and undue expense were to be eliminated.

There followed upon that report the Hastings-Michener Bill, which was introduced in April, 1932, and there was probably no law ever went to Congress with more force behind it than that measure. It was approved by the Department of Justice and by the Judicial Council. It was accompanied by a special message from the President of the United States, and it is something of a wonder to me that it did not become the law of the land. There were two things which stood in the way, and one of these was that it was a complete revision of the Bankruptcy Act. Many authorities felt, men like Jacob M. Lashly and Robert A. B. Cook, that it was going to entirely do away with the judicial interpretation of the law as we then had it, resulting in throwing into the discard the decisions of the courts bearing upon the Bankruptcy Act, and that would be a loss which we could ill afford to sustain.

The second difficulty was because it set up in Washington a new bureau for the administration of the act, with a large force of men under administrators appointed for the judicial circuits, a large number of examiners, and it was felt that establishing and fixing a bureaucracy upon the administration of the law would be a grave mistake.

The measure did not pass as a result of these objections.

Then grew up what we have come to know as the National Bankruptcy Conference, a group of men, entirely volunteers in the work, men who were willing to give time and thought to the subject, just a little group that met in Boston in 1932, right after the hearings were concluded in Washington, at the invitation of Mr. Cook, and there were only seven of them. I presented a little pencil diagram of a course of procedure which we could follow, whereupon I found myself invested with the title of Chairman.

At that time it did not seem much of an undertaking. We considered whether or not there should be a "long bill" which would cover all of the desirable amendments which we might think of to the Act, or whether there should be

[22] See "The New Despotism," Lord Hewart.

a "short bill" which would embody those changes which we felt ought to be made right away. We decided to go ahead with the "short bill." We prepared a draft that we thought was very good. A considerable portion of this was accepted by the American Bar Association Committee that year and was presented as a part of its report to the Bar Association.

It developed that there was still more to be done, that we had not really covered the subject adequately. Then we got into that hectic period of 1933, when the normal administration of bankruptcy was, for the time being, obscured. I have sometimes thought of conditions in Washington at that time as approaching chaos. Unquestionably, Congress was thoroughly alarmed. I am quite sure that many members of Congress believed that we were on the verge of chaos governmentally and industrially and that strenuous measures were necessary to meet the situation. You will remember the first bill that was passed under suspension of rules, where three bills were jammed together, without even taking the trouble of removing the enacting clauses from the bills, as they were hitched together, end-to-end.

The measure was patched up in the Senate, was enacted, and we got the first of the so-called special relief measures, which really was founded on the Hastings-Michener Bill. In the early draft, there were provisions for corporate reorganization, and for amortization of wage debts, personal compositions and the like.

Numerous sessions of this Conference have been held. I think we have met ten times in various parts of the country, besides meetings of the Drafting Committee and Hearings before Committees.

After the storm passed and we could get back again to a consideration of the proposed law that ought to be effective under any condition, work was resumed, and we have reached this stage. The Judiciary Committee of the House has been most appreciative of our work. They have said so on their reports, and in the proceedings, as shown by the Congressional Record. The Chandler Bill was passed under a suspension of the rules. It was an achievement that Mr. Chandler could get a special rule during the closing days of the session. He and Chairman Sumners secured the special rule allowing two hours for debate. But forty-five minutes of that time were used. That was solely due to this one thing, that, contrary to any previous process in the drafting of proposed legislation, difficulties were composed in advance. The usual practice is, of course, for somebody to introduce a bill, and then those persons, individuals or groups particularly interested rush down to Washington, and voice their opposition in various forms to various parts of the measure. After a hectic time they get together on a compromise bill, and the bill is passed. We went at it the other way, and endeavored to reconcile all of the difficulties in advance. I think we succeeded to a marked degree. Then we went to the Senate.

Commissioner Douglas, of the Securities and Exchange Commission, with whom we had been collaborating, was very anxious that the new proposed Chapter X on Corporate Reorganizations should become effective at once. He thought that there was a possibility, and we also thought so, that the Senate might be willing to accept the work of the House Committee and would take a like action before adjournment. A special committee consisting of Senator O'Mahoney of Wyoming, Senator Van Nuys of Indiana, and Senator Steiwer of Oregon were appointed to handle the measure in the Senate. Senator Van Nuys was in favor of immediate action. He, however, was not the chairman of the sub-committee. The chairman was Senator O'Mahoney. His thought was this, and I rather think he was right about it, suppose this measure is all right, — and they were more or less prepared to take our word and accept it — it would be a bad precedent to establish for the Senate Committee and the Senate to act so hastily, upon so important a piece of legislation, a bill of some 250 pages. We were assured that the bill will receive early attention in the coming session. I think we have a foundation that will be helpful when the bill comes up for consideration in regular course; in other words, we will not have to start "cold," so to speak; the Senators already know something about it, and that foundation will save us much time and effort, I am sure, in the approaching session.

You are more or less familiar with what this bill does. There would not be time to discuss even a small part of it this afternoon.

The general purposes of the law, as set forth in the report, are first, to clarify certain of the definitions and to add certain other desirable definitions.

Second, to increase the efficiency of administration under the Act. That is attained in various ways, we hope and believe, through the shortening of administrative periods of time, and the restricting of expenses, allowances and priorities, the conferring of jurisdiction on the referee in bankruptcy in discharge proceedings and the confirmation of compositions, and the like.

The third purpose is to make clear the jurisdiction of the Bankruptcy Court; covering suits by receivers; determination of dower interest; closing of dormant estates; the removal of trustees in bankruptcy; the surrender of or accounting for assets in proceedings prior to bankruptcy, proceedings not under the Act.

Fourth, to improve the procedural sections, and, among other things, to safeguard real estate titles; to cover the examination of hostile witnesses; proceedings for discovery; and the practice on appeals. Mr. Hunt has, I think, a better suggestion for the improvement of practice on appeals than is contained in the Bill. The question is whether we should have it discussed before the Committee, inasmuch as the proposed provision meets with the approval of the special committee of Judges of the Circuit Court of Appeals, and the House Committee accepted the recommendation as contained in the bill. Finally, tolling statutes of limitations, in the event discharges do not result from the bankruptcy proceedings.

Fifth, tightening up the provisions for enforcement of the criminal section, §29, which includes debtors under the new procedure; the strengthening of the language of the section defining various offenses; providing for reports to Referees of investigations by the Bureau of Investigation.

Sixth, to minimize evasions by bankrupts, and to grant certain new privileges to bankrupts. Among the things to minimize evasions are to provide for examination of bankrupts in all cases, and in every case to require what is called a statement of affairs. I think you will like that. I am somewhat responsible for that one provision. I found it in the English practice, and it seemed to be just exactly what we need. A bankrupt must make out, along with his schedule, a statement of his affairs, and it goes into the files, then we have something on record which shows the surrounding circumstances relating to the bankruptcy. We have examinations, and sometimes we have stenographic records, which sometimes are transcribed, and sometimes not. But here is something that goes right into the files. Further, it is the basis for examination by the trustee, possibly by the receiver and counsel. That is, they have got something to start with. I have great hopes of it.

The filing of cost inventories is another thing, in turnover proceedings. We all know that if we could have a cost inventory we could better tell what to do in a turnover proceeding.

Among the new privileges for bankrupts is the elimination of the present requirement of an application for discharge. So long as in a voluntary case the object is discharge, why not treat the petition and the adjudication in the first instance as an application for discharge, and not have to file a second petition?

The seventh object of the amendments to the Act is to

make the discharge proceedings more effective, by providing for the automatic application, and an examination of the debtor on every application for discharge; also, the intervention of the United States Attorney in cases where there is a public interest.

The eighth purpose is to perfect the sections relative to preferences, liens, and title of trustee. I think we have a splendid definition of preference. I wish you could have seen how that was really carved out. That definition was written by Professor McLaughlin and Mr. Weinstein on desks, tables, the sides of walls, radiators, chairs and anything they could find, as they wandered around the room, seeking for the exact words to express the particular shades of meaning they desired, and, really, I think they have carved out what is a work of art.

Provision is made for improved proceedings for the recovery of preferences, and for uniform rules for the liquidation of assets in stock brokerage cases, which have given so much trouble.

Under the heading of liens, we revised the present unsatisfactory lien section, and have included a summary, or condensation, of the uniform fraudulent conveyance act.

On the subject of title, we have enlarged the title of the trustee and perfected his defenses.

The ninth object is to provide a more workable partnership section, and among the points there, we provide for a joint petition, for which we have no law now; also that partners who have not joined may contest the proceeding; when all of the partners have been adjudicated, then the partnership is automatically adjudicated; in case of necessity or desirability where there is a conflict of interest, separate trustees may be appointed; the discharge of the partnership does not discharge the individual partners; and we have included a section applicable to limited partnerships.

Finally, the tenth object is to prescribe improved composition procedure. This was a very interesting development. The composition procedure is much broader than the present Act contemplates. A composition is, of course, more than is now provided for in § 12. Any settlement that composes the debt in any way, really, of course, is a composition. In Denmark, they have a composition where they reduce the amount of the indebtedness and make the man solvent again, so that what he owes is less than what he has. That is a composition. Then we have in some of the countries of Europe, the Norwegian countries, the extending of the time within which the debt may be paid. We have that here in our new chapter, Chapter XI, carrying out the idea of the extension of time. Because all of these things are compositions, we had them all in § 12. We had in the Section 1, sub-sections 1, 2, 3, and 4. As a matter of mechanical construction, it was unwieldy. The Conference finally decided to take out these subsections and make them separate chapters, which is the present arrangement, and I think you will agree that that is a very fine piece of work. I did not do it, so I can praise it. Watson Adair, Jacob Weinstein, Randolph Montgomery and Professor McLaughlin did it.

These chapters parallel each other, that is, you can readily correlate procedures by comparing the text. I should give Prof. John Gerdes credit for the plan of arrangement. It was his idea and we fell in with it. It meant a lot of work in cross-referencing and rephrasing. That was part of the work that the others did.

I think myself, and I am divorcing myself from any connection with it, that the Conference has done a fine job. I do not think that any member of the Conference will say that it is a perfect piece of work. Nobody claims that. There are things about it I am quite sure I would like to have different. If I had my way, I would abolish jury trials in bankruptcy proceedings. There are largely accounting measures, and there is nothing about them that really needs a jury and I would appoint a receiver in every case where the property is under the charge of the court. There may be some things that you do not like. There may be some things that are not there that you think ought to be there. We have canvassed almost every conceivable proposition there is in bankruptcy in order to get this far with the Bill.

As far as I know, there is no opposition in the Senate, but, of course, there may be.

I understand there is some slight objection to some of the provisions of the wage-earner amortization plan. If there are objections, they can be composed quite readily, I think. There is some opposition to any revision of 77.

This is such a splendid job that I cannot conceive anyone seriously opposing it, particularly in view of the concessions that were made. The Securities and Exchange Commission worked with us, and we with them; more than a thousand cases, actual cases, were examined by them, and they are convinced that some action of a rather determined character ought to be taken soon. They found certain abuses that ought to be corrected. The recommendations of the SEC are to be purely advisory. As Judge Johnson pointed out in his address, here is a proper working of an executive agency, to advise the courts. The advice is not given in the smaller cases. It is not mandatory. There was some objection to the independent trustee, which the Commission was very insistent upon. There was a slight concession there, and in cases involving less than $250,000. the independent trustee is optional and over that mandatory.

The report covers in detail these various changes, and the reasons for them. Copies of that report may be had, I am sure, upon application.

I am sorry that Watson Adair is not here to discuss § 77B, but we are to have on Saturday morning a representative of the SEC, Mr. Clark, who is going to discuss corporate reorganization. We will let that go over until then. He is fully informed on the subject, much better than I am.

I think we will pass now to new chapter XI. This combines § 12 and § 74, the combination being Mr. Montgomery's idea, which has been developed into a new and more workable provision.

I have great pleasure in presenting Mr. W. Randolph Montgomery, general counsel of the National Association of Credit Men.

Combining Sections 12 and 74 in Proposed Chapter XI

MR. MONTGOMERY: Mr. Chairman and gentlemen: Paul King has already given us considerable information about the Chandler Bill, and something with respect to the new arrangement of sections which, under the Chandler Bill, is Chapter XI. I do not think it is necessary to spend a great deal of time on this particular chapter.

When the Conference got to work on a revision of the bill, they were, of course, impressed with the fact that Congress in enacting § 74, had duplicated to a large extent, as respects individuals, the provisions of § 12. We thought that it was desirable to harmonize the two sections, put them together, and make one workable section out of the two.

§ 74 was part of the emergency legislation that passed Congress in the late days of the Hoover administration. President Hoover at the time he recommended immediate enactment of this section, proposed it as a remedy for the pending foreclosures of real estate. There seemed to be a notion that the machinery afforded by § 74 would permit home owners to obtain an extension of time for the payment of mortgage debts. I think it was that theory that got § 74 through Congress as speedily as it happened. It was for that reason that § 74 failed to make any distinction between secured and unsecured debts, in determining the percentage or the number of creditors whose consent was necessary to the confirmation of a plan of extension. In

practice, the grouping of secured and unsecured debts in one class was found not to be practical in respect of a mortgage moratorium and so § 74 has failed to accomplish expected results. Messrs. Frazier and Lemke got together to work that situation out as far as farms were concerned, but nobody knew anything about it in respect to individual mortgages on property owned by individual people.

In attempting to combine § 74 with § 12, we looked, first, to see why it was that business men were so generally throughout the country working with debtors in the settlement of debtors' affairs out of court, out of court compositions, out of court extensions, and arrangements of one sort of another, and an examination of a lot of those documents disclosed the fact that the machinery afforded by the Bankruptcy Act was obviously not broad enough to accomplish the objects business men and debtors were accomplishing through voluntary agreements out of court.

So we set to work in the new section to make the section flexible enough so that debtors and creditors could get together and agree on any plan of extension. composition or a combination of both, which they could effectuate out of court, or the extension of any plan for the settlement or adjustment of the debts of the debtor which may be agreed to by a majority of the creditors, which shall be found to be fair and equitable and receive the confirmation of the court. Unlike § 74, that section requires a finding prior to confirmation of the arrangement, that the debtor has not been guilty of any of the acts which would be a bar to discharge.

That provision has been carried back into the arrangement section. In general, the language of the composition section has been followed throughout, except that an arrangement like an extension or composition under § 74 may be initiated in the original proceeding by the debtor. That original proceeding may be instituted whether or not a bankruptcy proceeding is pending. and if a bankruptcy proceeding is pending, that proceeding is not stayed, unless the Judge so directs, upon the deposit of sufficient indemnity to protect the estate against loss. On the other hand, if the arrangement proceeding is commenced without a pending bankruptcy proceeding, the court may impose terms as a condition for permitting the debtor to remain in possession, or permitting the arrangement provision to proceed. It may require indemnity for the protection of the estate. Just how such indemnity can be procured is a question which has bothered some of us, but, nevertheless, it appears in this bill. I do not know how an insolvent debtor is going to be able to get anybody to provide indemnity against loss in the estate during the pendency of the proceedings.

The debtor can remain in possession under an arrangement, but I have been asked by a great many business men who object to the debtors in possession, whether the debtor will be left in possession under the arrangement. My reply has been that I think it is highly improbable that the debtor will remain in possession in many instances, because under the proceeding the court may appoint a receiver, as in any bankruptcy proceeding, if the Judge finds the appointment of a receiver is necessary.

Confirmation of an arrangement is dependent upon the consent of a majority in number and amount of creditors, as in 77B. It has been our thought in drawing this arrangement section that it would pick up and take care of all of those cases which are now going under § 77B, but which do not properly belong there. 77B was never intended for anything except a genuine reorganization. The term "reorganization" is not defined in 77B, but it was obviously intended to mean a situation where a debtor could not get relief, either under § 12 of the Act, or through any other machinery of the Act. The present § 77B requires a showing in the petition of the necessity of relief under this section. Those words "this section" were written into 77B for the purpose of sending back to the composition section and the liquidation section of the Act cases which are not properly reorganizations, such as compositions, extensions, and other cases which affect only unsecured debts. An arrangement may affect only unsecured debts. As a correlative provision, as revised in this bill, there is now a provision that the Judge must make a finding not only that the petition under 77B has been filed in good faith, but that adequate relief cannot be obtained under the arrangement section of the act. If, for example, a corporation has a large amount of unsecured debts, but owes secured debts to individual secured creditors, there being no diversification of ownership on a single lien, that case goes in under arrangements; it does not go in under 77B. If there are securities outstanding in the hands of the public, and the corporation needs relief by reorganization of its capital structure, that corporation belongs under 77B and not under arrangements.

The great bulk of the cases that are now going in under 77B are cases that belong in the arrangement section of the Act, and if this section works properly, it is going to relieve the courts of a great burden which is now imposed upon the Judges under 77B. Under the arrangement section, the Referee is in full charge of the proceeding from the beginning to the end under the order of reference. Such is not the case under § 77B as revised.

I think that I have covered most of the arrangement provisions which need to be discussed. Under the arrangement section, creditors need not all be treated alike. They may be classified, and different classes of creditors may be treated differently and upon different terms. That was put into the section to cover a situation where a company has a large number of creditors, but the great majority of them, or a certain percentage of them are very small claims, for example, under $100. It is difficult to get the consent of those small claims to any kind of an extension or other proposal. In out of court settlements, it is quite customary for the creditors to agree that all claims under $100 shall be paid in full in cash. That can be done under the arrangement section.

There is one defect in that section that I want to mention. The act, as drawn, provides that the plan of arrangement shall accompany the petition when the petition is filed. That is an inflexible requirement. It seems to me in large cases of an operating business where the trouble is a deficiency in capital, it will be necessary for the company to continue its operation under the jurisdiction of the court, like any old-fashioned equity receivership, and to demonstrate the earning capacity of the company in order to attract new capital before it will be possible to propose a plan of arrangement. If you are going to be successful in keeping these companies from going into 77B, and keep them in the arrangement provision, where they belong, either that provision in the arrangement section will have to be changed so the court under certain circumstances and upon good cause shown can permit the filing of a plan of arrangement at a subsequent date, or otherwise, § 77B as revised will have to be changed so that the judge may permit such a company to come into 77B upon a showing either that the relief obtainable under the arrangement section is not adequate, or that the procedure provided for under the arrangement section is not adaptable to the circumstances of this particular case. Either one of those amendments will have to be made.

I think that is about all that I have to say on this, and I think that covers the point.

CHAIRMAN: We are very grateful for your coming out from New York to give us this fine presentation. I wish we might have discussion but the time is too limited.

We will pass to the next subject which is under the authorship of Referee Charles True Adams of Chicago. This proposed chapter covers a situation which is present in Chicago, in particular, and I believe in some other parts of the country, and the Conference has worked out with

Referee Adams this proposed new chapter, and I will ask him to present it to you at this time.

Real Property Arrangements by Unincorporated Persons

REFEREE CHARLES TRUE ADAMS, Chicago: Chairman King and gentlemen: Somehow or other I always get this § 74 revision. I am much more interested in 77B and some other things.

In Chicago we had a situation where a great many people had mortgages on property, where a corporation was not formed as a debtor. In other words, John Jones owned an apartment building, and, instead of having a single mortgage, there was a trust deed, and bonds were issued under it, and John Jones and his wife were on the notes. We had about 2200 of those cases in the Chicago district alone. They could not go under 77B. This situation was not limited only to Chicago, although we had the greater part of it. New York apparently had a very small amount, if any. I think the general incorporation of properties was probably more prevalent in New York than it was in other metropolitan districts. I think also their foreclosure laws are probably more expedient than ours, of broader capacity, so that by the time § 74 was passed, a great deal of the distress property in New York had been washed up through state foreclosure proceedings.

Mr. Montgomery has spoken of § 74 as he knows it. One remarkable thing about the present § 74 is that it can offer anything to anybody. But, it is not good for anything very much. There are none of these various cases, I think, where 74 has worked out very well. The statute is so poorly drawn, as Mr. Montgomery has told you, that it did not work out very well with composition for unsecured debts. We thought of it practically only for real estate. It is better than nothing. Referee Nesbit has used it for wage earner composition, which we did not think of. He worked that out very well in Birmingham.

The situation is quite similar to the problem you have in 77B, where your principal asset is real estate secured by notes under a mortgage, or a bond issue under a mortgage, where the debtor is an individual, or a group of individuals, rather than a corporation. To simply widen 77B to allow this to be taken care of under 77B would add a terrific amount of cumbersome machinery to 77B, to what is very simple, because with an individual you have not any complications of corporate law and corporate procedure, which varies in different states. Therefore, it should come under, and it has been put under a separate section.

That, in essence, is the purpose of new Chapter XII. It is very vital to these people when those circumstances arise. It concerns in the Chicago area alone many millions of dollars of real estate, and certain things that were in old § 74 had to be eliminated in order to work this thing out at all.

Under old § 74 there was a provision for deposit of claims which had priority, which our Circuit Court of Appeals took to include real estate taxes, and the Court held that they must be deposited before composition could be offered. That killed the section entirely. Usually in cases like that the tax agency is not as pressing as the mortgage creditor, and when the property can no longer pay them, why, the men who get it are the mortgage creditors, and the taxes go along unpaid for three or four years. Incidentally, those that we have been able to put through, we have worked them out very beautifully, to the extent where the Chicago Title & Trust Company, for instance, who brought those actions under § 74 to start with, are now cooperating with us to the fullest extent, and they are heartily in favor of the changes put in the new act.

CHAIRMAN: Thank you very much.

The last subject is in respect of wage-earners. Referee Nesbit of Birmingham, Alabama, has come here especially at my invitation to present this subject to you. He is an authority on it. As Referee Adams says, he has worked out a procedure with relation to that under the present law, but we want to get a provision in the law which will specifically cover the kind of cases which he has been handling.

I present to you Referee Valentine Nesbit of Birmingham

Wage-Earner Plans

REFEREE VALENTINE J. NESBIT, Birmingham, Ala.: Mr. chairman and gentlemen:

The bankruptcy laws were heretofore largely confined to the liquidation of insolvent estates, either through a sale of the assets of such estates, or a reorganization.

With the passage of § 74, which became a law on Marc 3, 1933, provision was made in the bankruptcy law for the rehabilitation of individuals and firms who had become financially involved but who were not totally lost. The Canadian and English laws have long contained provisions for the liquidation of the indebtedness of individuals, firms and corporations on a partial payment plan, thereby enabling a debtor who had become financially involved to pay off his obligations over a period of months, and these provisions have been very generally used in both Canada and England. The old Roman laws provided for the imprisonment of a defaulting debtor but even these laws were subsequently modified so that the debtor was freed from jail on conditions that he work and from the proceeds of his labor, pay his debts. They, being a very practical people, found it more to the advantage of the creditor to give the debtor an opportunity to pay his debts rather than keep him in jail at the expense of the state.

The passage of § 74 marked a radical change in the policy of our bankruptcy formula and thereby the debtor was given an opportunity to pay his debts on an installment basis secured through an arrangement with a majority in number and amount of his creditors. An amendment was subsequently passed giving the Referee the power to confirm an equitable arrangement for the payment of his debts provided the same was for the best interest of creditors and debtors even though the creditors refused to agree.

Until the passage of § 74, the Spartan law of "survival of the fittest" prevailed in this country. Many of the ablest Referees, however, denied the efforts to scuttle the ship and allowed continued operation of the business and affairs of the debtor which in many instances in my district, resulted in full payment of the creditors and the rehabilitation of the debtor. This was confined to persons engaged in business and no such opportunity was given the individual debtor, who worked for a wage, to pay off his debts on an installment basis. The only privilege given him was to be adjudicated a bankrupt, secure a discharge and thereby cancel his indebtedness.

In June, 1937, the Judiciary Committee of the House of Representatives met to consider a general revision of the Bankruptcy Act. At the request of the National Committee, I appeared before the Judiciary Committee and gave the result of my experience in handling cases that had been filed under § 74. At that time, there had been filed and referred to me for administration 1,951 cases. At the present time, there has been filed and referred to me 2,300 cases. It will be interesting to classify the persons and groups by whom these petitions were filed;

Office employees, 192; industrial employees 1,029; railroad employees, 659; public utility employees, 217; county employees, 34; city employees, 98; state employees, 2; newspaper employees, 47; and United States Government employees, 22; making a total of 2,300 petitions.

On September 1, 1937, there had been paid by these debtors to the supervisor for the Court $311,720.47. The amount paid by the debtors, less the cost of administration, was distributed to 814 different creditors. The classification of these creditors should be interesting to you for it will show through what channels the money was again

returned to circulation. Banks, 14; industrial companies, 22; short loan companies, that is, those who charge usury, 81; grocers, 73; doctors, 118; dry good stores, 15; rental agents, 39; insurance agents, 5; jewelry stores, 14; furniture stores, 55; department stores, 14; hardware stores, 5; coal dealers, 12; piano stores, 4; construction companies, 2; garages, 3; individuals, 218; dairies, 3; transfer companies, 2; and various other creditors, making a total of 814 different creditors.

When it became known in our district that a person harassed by debts might obtain relief by filing a petition under § 74 and be given an opportunity to pay his debts on a partial payment or extension plan, petitions to this end began to come in seeking that relief. It then became necessary to devise a plan to accomplish the results intended by the Act.

When a petition is filed and referred to me as Special Referee, a notice is sent to each creditor and to the debtor setting a day, place and hour for the first meeting of the creditors and a hearing on the petition.

At this meeting, the debtor is sworn and examined, his earnings ascertained, the number of his dependents and an itemized statement of his necessary expenses and an allowance for incidentals. It is then possible to determine what amount the debtor can pay each month to be applied pro rata in liquidation of his indebtedness. The debtor at this first meeting of creditors, makes a proposal agreeing to pay so much each month to be applied, if there are no secured creditors, ratably amongst his creditors. If there are secured creditors, an agreement is arrived at with each secured creditor allocating a portion of the payments to such creditors in definite amounts and the balance is divided pro rata amongst his unsecured creditors. Ten days notice of this first meeting of creditors is given to the debtor and each creditor by mail.

Upon the filing of the proposal of the debtor, a day is set for a hearing upon the confirmation (or not) of his proposal and this having been accepted by a majority in number and amount of his creditors whose claims have been filed and allowed, the proposal is then confirmed and is binding upon the debtor and creditor alike. Occasionally, the debtor and his creditors can not agree. In this event, under the present § 74 as amended, I confirm a proposal that is for the best interest of the creditors and debtor. In only two instances out of 2,300 cases has this been necessary and, in both of these instances, the creditors were seeking an unjust advantage of the debtor and were trying to collect usurious interest which the objecting creditors knew would not be allowed.

This plan was not followed in the Bill HR. 8046 for that bill eliminated the right of the Referee to confirm a case where a majority in number and amount of creditors do not agreee. I believe that this provision should be contained in the law for it enables a Referee to do justice where some creditors would for selfish interest block the proceeding.

At first, I adopted a plan requiring each debtor to make his pro rata payments to his creditors but found that the debtors as a whole were not capable of executing this plan. I then appointed young lawyers to act as supervisors for the debtors and creditors, but found that the lawyers were not very apt in keeping accounts and the amounts that could be paid to the lawyer for such services were so small that he soon lost interest.

I then asked the Federal Judge to appoint a supervisor for the court whose duty it was to collect all payments made by the debtors and disburse the money so collected in accordance with the proposal of extension. This supervisor was placed under a bond of $10,000, payable to the United States of America, for the faithful performance of his duty. As the work increased, it became necessary to set up a formal set of books and employ a bookkeeper. We now have two bookkeepers employed in addition to the supervisor and at times have to call in extra help. The appointment of a supervisor and providing an office where payments can be made by debtors, I believe is one of the principal reasons for the success enjoyed in Birmingham for it enables me to have the business of the debtor conducted in a workmanlike manner. Creditors can get statements and so can the debtor showing the status of each debtor's affairs. This, in a general way, outlines the method of procedure of the Debtor's Court, as I call it, in Birmingham.

Under the present law, a trustee is appointed who performs the duty of a supervisor as outlined above, but it does not change operations of the law which can not be operated as efficiently handled under a trustee as a supervisor.

It will be interesting to know what has become of the 2,300 petitions filed prior to October, 1937. Of these petitions, 200 were dismissed for various reasons — such as death, loss of employment, failure to keep up the extension proposal and other causes; 400 have paid their debts in full and, in each case where the debtor paid in full, an order was made by the Federal Judge, upon my recommendation, dismissing the case and stating that the debtor had paid in full all claims filed and allowed. At the present time, between 15 and 20 debtors each month are liquidating their indebtednesses in full and receiving their discharge from these debts. This number will be gradually increased and I soon expect the number to reach 25 to 30.

Upon payment in full of the debts filed and allowed, recommendation is made to the Federal Judge that he enter an order dismissing the case, stating in the order that the debtor has paid in full all debts filed and allowed. Such an order becomes a matter of record, while a similar order by the Referee could not be a matter of record. For this reason the Federal Judge is requested to make the order.

Some of the claims filed are not allowed for they include usurious interest charged by the short term money lender. Our practice in Birmingham is to credit against the principal borrowed from the money lender all usurious interest paid as a payment on the principal and I do this under the Alabama laws relating to usury. Naturally, this is not acceptable to the money lender, but whether or not he likes it, that is our practice. We have had some interesting battles over this question of usury and I will not accept a claim filed by a money lender unless the same is accompanied by his oath that the same is free from usury and a statement showing the amount borrowed and the usurious interest he has paid.

HR. 8046 does not include a provision that upon filing a proof of debt for money loaned, the affidavit shall be made that no usurious interest is included. I believe this should be included in the Act for certainly a debtor should not be required to pay usurious interest. In Birmingham, there are money lenders who charge 20% per month and more alleged interest. It has been my practice to credit these payments on the principal amount of the loan and I accept no claim from a money lender that does not contain a statement that no usurious interest is included. It has worked quite satisfactorily.

One of the vexing questions arising in these petitions was the purchase of furniture and other property under lease sale contract providing for the repossession of such property in the event the terms of the lease sale contract were not complied with. We have had the full cooperation of all companies selling their merchandise under lease sale contract. Merchants selling such articles as refrigerators, furniture and other property on this basis, have adopted the practice of sending in their proofs of debt, setting forth the amount due, the fact that they have a lien and accepting in advance the proposal of extension made by the debtor. Of course, this places upon me the responsibility of an equitable and fair adjustment. The merchants tell me that they are being paid out almost as rapidly as they would have been paid had they made their collections direct and

in addition, have no cost of collection. They seem pleased with the results obtained and cooperate with the court in working out a schedule for payment of the debts. These payments usually provide for an 18 months basis, but I bear in mind that the unsecured creditor is entitled to a fair consideration.

The method used in Birmingham would not have been successful without the cooperation of the debtor. Those debtors who have no intention of paying their debts and who are trying to use the court to avoid payment are soon found out and are not tolerated. Their petitions are forthwith dismissed. Unless a debtor is honestly trying to pay his obligations, I feel that he should not receive protection.

The present Act does not seem to me sufficiently clear in either its terminology or its provisions. There is pending in Congress a new bill. This bill has been analyzed by the American Retail Credit Federation as follows:

The situation it is designed to correct can be analyzed in this way—

(A) From a creditor's point of view:
1. High cost of legal proceedings.
2. Doubtful return from legal proceedings.
3. High cost of collection agencies.
4. Direct loss from nonpayment suffered by unsecured creditors.

(B) From the debtor's point of view:
1. Emergency costs such as sickness, or accident throw a wage earner's budget out of balance.
2. Wage earner may be forced to apply to loan sharks in an attempt to tide over times of need.
3. Wage earner's fear of loss of an acquired equity in property.
4. Wage earner's fear of garnishments.
   a. Garnishments are expensive.
   b. Garnisheed employees of ten lose their jobs.
   c. Garnishments often take more of wages than is equitable.

Method of correction: The method of correction can be analyzed as follows:
1. Brings the debtor and creditor together.
2. Examines the situation, eliminates unjust charges and usury.
3. Provides a plan equitable to the debtor and to the creditors.
4. Makes the plan binding on both debtor and creditors.
5. Prevents debtor from evading his responsibilities.
6. Prevents creditors from destroying debtor by unrelenting demands.

§ 76 of the Act, as amended, provides that when an extension proposal has been confirmed, such confirmation automatically extends the obligation of any person who was secondarily liable or who had guaranteed the debts of the debtor, etc. The proposal HR 8046, which we are discussing, eliminates this provision upon the general policy that it was an emergency measure and now that the depression is over, this emergency measure should be eliminated from the law. We are dealing with the wage earner and not with general business and I believe that the wage earner should continue to receive that protection for it is invariably his friends who endorse his notes for him and unless they are protected, an extension granted to a wage earner will be of little avail for he would be forced through friendship to protect his endorsers, when in truth, all he wants is an opportunity to pay his creditors. Those engaged in the lending of money on endorsement as security in Birmingham do not object to this provision. Those whom I have consulted on the subject approve of its inclusion in the law and I believe it is a wise provision.

The proposed law, HR 8046, includes all of the features we have just discussed, but does not contain a provision relating to usurious interest, extension of an endorser's obligation and has no provision relating to after acquired indebtedness. Usurious laws ultimately trace back to the biblical prohibition of all interest taking. This prohibition became a vital part of the church teaching during the middle age and coincident with these teachings on usury, was growth on the concept of "just price." In the course of time, the concepts of "just price" and usury became interwoven, and oppressive bargains of any nature came to be branded as usurious. At one time in many of the states the statutes provided that there should be no limitation upon the amount paid for rent of money, but it was found that debtors were exploited to such an extent that it became necessary to pass laws prohibiting usury and these laws should be equally applicable to the bankruptcy statutes.

We, in Birmingham, have demonstrated the necessity for legislation of the types proposed in HR 8046 and have shown that they can be efficiently handled and made applicable to present conditions, affording relief to the debtor and also protection for the creditor. It can not be sufficient unless these two features be combined. I am firmly of the opinion that a new phase in the Bankruptcy procedure has come and this will enable debtors to pay their debts and rehabilitate themselves both in their own eyes and in the estimation of the public.

CHAIRMAN: Thank you very much, Mr. Nesbit.

MR. KRUSE: What keeps the debtor in those cases which I referred to you from filing so-called straight bankruptcy cases?

MR. NESBIT: I should say that about 60% of the debtors who have filed petitions under 74, which have been referred to me, have never filed a bankruptcy case. The reason for that is because they do not want a discharge, they want to pay their debts.

MR. KRUSE: We have probably 400 cases a year of wage-earners, and only one during the last year attempted to file under 74. What is the average cost to the debtor?

MR. NESBIT: The average cost to the debtor is about $25; the filing fee is $25, with one-half of one per cent to the Referee on the amount paid.

MR. THORNBURGH: That does not include all costs?

MR. NESBIT: The administration cost is 8%, covering the cost of bookkeeping, rental, and so forth.

A REFEREE: What do you do in a case where you have deficiency judgments from chattels or from real property, running into large amounts sometimes? Do you have any provision to take care of those?

MR. NESBIT: No. I recommend that they go into bankruptcy. At times, the wage-earner is so tied up with debt that it is not possible to do anything else.

MR. MONTGOMERY: What percentage of the total earnings of the debtor do you apply to the payment of his debts?

MR. NESBIT: If there is just the man and his wife alone, I take a substantial part. But, if a man has several children, why, we take care of that situation, and, if there is anything left for the creditors, they get it.

MR. MONTGOMERY: Do they run up new debts?

MR. NESBIT: Some of them do, and some do not. I think when a man who has taken this provision, § 74, that is notice to creditors that he has taken it, and they will be paid after the present creditors are paid.

MR. THORNBURGH: Are you annoyed very much by these debtors coming in and trying to escape payment, on account of sickness, or one cause or another?

MR. NESBIT: Well, it takes about six minutes to try a case. Then I refer it to the supervisor for collection and distribution. I do not interfere with his work.

MR. ADAMS: Do you grant any extensions of time for payments?

MR. NESBIT: For sickness I do.

REFEREE CHARLES A. BURNETT, Lafayette, Ind.: If a claim is filed, based upon a usurious note, who investigates that?

MR. NESBIT: Each debtor has a lawyer, and I require that lawyer to investigate the case. If there is usury in the case, a motion is made.

REFEREE SAM J. MCALLESTER, Chattanooga, Tenn.: In connection with Mr. Kruse's question, there is a situation which prevails in Chattanooga which is very similar to the condition which prevails in Birmingham. I have not the large number of cases pending that Mr. Nesbit has. I have about 125. But, comparing notes with Mr. Nesbit, we find that our experiences are similar. However, there is only a small percentage who file a petition under 74 who

have not been in bankruptcy at some time previously.

MR. KRUSE: Within six years.

MR. MCALLESTER: Yes, or failed to get a discharge. Of the group I have, a percentage have obtained a discharge within six years, or have failed to get a discharge upon a previous bankruptcy petition. There is a very small percentage who have never been in bankruptcy before.

MR. BRISTOW: All of those debtors are represented by attorneys?

MR. NESBIT: Yes, young attorneys. These people come to me, and I send them to various young attorneys.

MR. KRUSE: Are many of your cases cases of colored folks?

MR. NESBIT: I suspect half of them.

CHAIRMAN: I wish we could spend much more time with this, but the hour is getting late, and I think we shall have to close this.

In closing this symposium, I will ask Reuben Hunt to give us a little summary. As you all know, I am calling on him at the last minute. He has been working with us faithfully, like the rest of the confreres, right from the very beginning, and has been one of our most valuable members. I am happy to have him here this afternoon to take Chairman Shull's place. He is a member of the A.B.A. Committee, as you know, and, therefore, it is highly proper that he should represent the committee at this time.

Summarizing the Work of the Conference

MR. HUNT: It is a great privilege to be allowed to appear before you here, as I am, instead of standing in front of the table and presenting an application for attorney fees, and wondering what is going to happen next.

During my service on the American Bar Association Bankruptcy Committee, we appeared before the House Judiciary Committee for a week. I spent a week in New York with different lawyers there going over the various provisions of the Chandler Bill, and I acquired a number of experiences.

In the hurry of getting out the report of the Bankruptcy Committee of the American Bar Association, so that it could be published in the advance program of the meeting which convenes next week, our very able chairman, Henry Shull, undertook the work of writing out the report, and if you will read it, you will see that it is a very fine piece of work. In talking to one distinguished member of the Bar, in one of the large cities of the country, with whom I am acquainted, he told me that he rather thought the Referees should be restricted in this 77B work; that most of the work should be done by the Judges. I have always been opposed to that idea, because my idea is that in these 77B matters, the more discussion we have, the more time you give to them, the better results you obtain. You can get that done before a Referee, where ordinarily you cannot get it done before a Judge. The average Judge has a busy calendar every day, he is trying cases, and when you come before him on a 77B matter, which requires careful consideration, he simply cannot give you the time; whereas, you go before a Referee, he usually can and will give you the time, and to say that the Referees belong in an inferior class is just plain poppycock.

In drawing up this report, Mr. Shull listened to the other side and he had it in there that the Referee should be restricted. Unfortunately I got that report too late, and I was in great consternation, so I wrote back to Mr. Shull that something had to be done about it, so I managed to get in some sort of a dissenting report on that particular subject.

Then there is another subject in respect of which I have firm convictions. There was quite a division of opinion in Washington between certain groups as to whether there should be a mandatory trustee in every case under 77B. A number of New York lawyers, very able and prominent men, felt that the present scheme of debtor possession should be maintained. I agreed with them to a certain extent. I think that should be maintained, but I held that if you had a mandatory trustee, he must be disinterested; he cannot be a creditor or a stockholder, or connected with the underwriter; he has got to be some outside person who knows nothing about the affairs of the concern. I think that there should be a trustee in every case who is under bond. That trustee can be picked by the debtor; if the court wants to continue the debtor in possession, let him put the president or general manager in possession, but put him under bond. I think that if you put a trustee under bond, you will cure many of the evils of waste, inattention and frittering away of assets.

I want to pay a very sincere tribute to my good friend Paul King. He speaks of Mr. Weinstein and Watson Adair as the men who did most of the work in getting up this Chandler Bill, and he is right. The only thing is that he forgot to include himself. Those three men bore the brunt of the work. They seem to me somewhat like the story of the "Immortal Three." They remind me of a football team, Weinstein is center, he passes the ball back to Adair, who passes the ball to Paul King, and Paul King always runs to a touchdown. He has held the Conference together for five years, and the suave way in which he keeps them good tempered is marvelous. I think when you consider paying tribute to anyone, you want to include Paul King. He has not only been the secretary, but he has been the clerk, the stenographer, and I know he has spent much money assembling the work to be presented at Washington.

I want to pay tribute, before closing, to another man who has contributed a lot to this Chandler Bill, and that is John Gerdes. He has written a splendid work on corporate reorganizations. Judge Johnson, who appeared before you earlier today, has also written a very fine work on that subject. Gerdes has contributed an important work to this 77B, by having it rearranged.

I think that I should add this, in respect of 77B, that it has been terribly misused. It has been used by corporations who do not belong there. In Los Angeles, anyone filing a petition under 77B has got to show good reason why he cannot get relief under § 12. They used to come in with a lot of wild allegations. A Judge in Los Angeles hit the nail on the head the other day in a case I was interested in, when he said, "I am going to order liquidation right now. Half of these cases that come in here don't belong here at all, they are ordinary composition cases, and they fritter away the assets, and after several months, when the matter is brought to our attention, we order liquidation, and then sometimes it is too late to save the assets. I note in this 77B that they are doing their best to correct that situation, but that, to my mind, is paramount, and something must be done to make 77B workable."

I think the whole system of the appellate procedure, from the District Court to the Circuit Court of Appeals, is wrong. It has been, for example, almost forty years since the act was passed, that is, as to the maintenance of the old fictitious distinctions between controversies arising in bankruptcy proceedings, and proceedings in bankruptcy proper. The Conference still maintains that distinction here, but tries to get away from it by giving the appellate judges the privilege of allowing an appeal, even though it is brought by the wrong method. The trouble with this is that it is entirely arbitrary, and it forces vigilant counsel to go ahead on both methods, just the same as before, at double the expense, because you cannot tell in advance what appellate judges are going to do. You might decide that one method is right and go ahead that way, and ignore the other method, and get up there and then the judges might take a notion, even though it is discretionary to allow the appeal that they are not going to allow it. You cannot take those chances.

In the new amendments to the rules governing common law suits in Federal Courts, they have simplified appellate

procedure tremendously. They follow the provisions of most of the state laws. When you want to appeal, you file notice of appeal, you file assignments of error, you file your costs bond fixed by the court, and your appeal is perfected. I think that is what we ought to do. Mr. Henderson, of the American Bankruptcy Committee and I have proposed amendments, but we have not got anywhere with them, but I assure you that we are going to fight for them between now and the next session of Congress.

Those who are interested in changes which have been made in 77B since you got the first Chandler Bill last fall will be interested in an article that appeared in the *Commercial Law Journal* on that subject in July of this year; in those of you who are interested in appellate matters, which I have just mentioned, will be interested in an article appearing in the same journal in July of this year.

Thank you very much for the privilege of addressing you.

CHAIRMAN: Thank you very much. I will now turn the meeting back to the president.

PRESIDENT: We will adjourn.

COMPLIMENTARY DINNER

A dinner in compliment to the National Conference of Commissioners on Uniform State Laws and the National Association of Referees in Bankruptcy was tendered by the Bar of Kansas City at the Kansas City Club at 7:00 P.M. The Referees and their ladies and guests, together with the Commissioners on Uniform State Laws and their ladies were in attendance at a sumptious repast. Music during the dinner was furnished by members of the Kansas City Philharmonic Orchestra under the direction of Jacque Blumberg during which there was dancing. The head table was occupied by officers of both organizations and chairmen of the local committees. The arrangements were under the immediate direction of William H. H. Piatt as chairman of the local committee of Commissioners on Uniform State Laws and Elmer N. Powell as chairman of the committee on Referees in Bankruptcy. Kenneth Teasdale, St. Louis, president of the Missouri Bar Association, was introduced as the presiding officer and greeted those in attendance. There were no other speeches but a program which included Pat Dunn and Mary Craig French accompanied by Howard Everett at the piano in a group of songs, modern dance selections by Betty Joe Benningfield, a selection of novelty songs by Wilma Collins and a group of dance numbers by Charles and Dorothy Rankin of the Helen Gifford Dance Studio.

Fourth Session

FRIDAY MORNING

PRESIDENT: Gentlemen, please come to order now. Referee Irwin Kurtz of New York will preside at this session.

OPEN FORUM

On Bankruptcy Practice

CHAIRMAN: Each of these subjects will be led by the Referee named on the program. We will try to follow this in logical order, and the first subject is Proofs of Claim, by Referee Cameron L. Baldwin of La Crose, Wisconsin. When he finishes his discussion, questions may be asked, and when you ask questions, why, ask questions, and do not make speeches.

Proof of Claims

(a) Form of proof of claim.
(b) Should claim filed after 6 months' period be accepted by Referee.
(c) Motion to amend unfiled claim.
(d) Address of creditor, c/o his attorney or unknown.
(e) Power of attorney filed with proof of claim.
(f) Attorney's lien.
(g) Alteration of power of attorney.
(h) Revocation of power of attorney.
(i) Amendment from secured to unsecured claim.
(j) Objections to proof of claim.
(k) Filing claim with trustee or assignee before the six months' period.

REFEREE CAMERON L. BALDWIN, La Crosse, Wis.: The subject presented comprehends a number of subdivisions and if the chair expects a discussion on each one of these in five minutes, he will be somewhat disappointed.

There is one main idea that I want to convey to the Referees, and that is this, that we are apt in a great mass of adjudicated cases not to see the woods for the trees. The main thing in the proof and allowance of a claim is to get the debtor's just claims, if possible, on your docket. Do not forget that. If you get to studying all of these cases that have been decided by different Courts and different Referees, you are just going to get muddled up, and sometimes do an injustice.

§ 57, covering the proof and allowance of claims, is part of a comprehensive statute. It goes on and tells what must be in the proof of claim. Then the Supreme Court came along and, in General Order XXI, set out details as to proofs of debt. My own motion is that this General Order should be eliminated. From the very inception of the Act, all that that has ever done is to confuse, and to try to make proofs of debt very technical. In addition to that, they say, among other things, that the proof of debt must say that there has been no note given. The statute does not say that and in the Official Forms which they have given us, they do not say that either. The forms, of course, are a relic of the laws of 1801, of 1840 and 1876.

I think that the proof of claim blank ought to be reformed and instead of having that form complicated and misleading as it is, we ought to have a simple form for proof of claim, as they do in Canada. For instance, have it like this, say, the claim of John Jones for $100. What for? For goods, wares and merchandise, sold on certain dates. Total consideration. Payments. Then it is signed by John Jones, and I do not care whether it is sworn to or not. If it is on a note, perhaps all that you should have is a copy of the note. If it is for a bill of goods, it would be a useful thing to have them attach a bill, just as they would if they were sending it out to a creditor.

There has been a good deal of confusion about this. Some Courts have required a complete statement of the claim, going back perhaps for years, and itemizing the accounts. This, in brief, is my idea. Thank you.

CHAIRMAN: Are there any questions on this subject, proofs of claim?

REFEREE OSCAR A. KNEHANS, Cape Girardeau, Mo.: "Balance due", is that sufficient?

MR. BALDWIN: I think so. There is nothing in the statute that says that you have to have any sort of a statement.

MR. BRISTOW: I have ruled that "balance due" is not sufficient. I have ruled that it should be an itemized statement. I will not allow the claim unless that is done.

MR. BALDWIN: There is a decision to the effect that you do not have to compute interest unless the different due dates are there, but that is all.

MR. BRISTOW: My own experience has been, in many cases, where it is itemized, it shows that part of the claim is without the statute of limitations.

REFEREE CARL D. FRIEBOLIN, Cleveland, O.: "Account stated?"

MR. BALDWIN: Yes. That is the only thing that is practical.

MR. BURNETT: What do you do with a letter that is sent in alone?

MR. BALDWIN: Oh, I file it and tell them to file a claim, to get a regular bankruptcy blank and file it. I just put it in there and enter it on the file as evidence that they have a claim in mind.

A REFEREE: What do you do when they make a claim

seven months after adjudication?

MR. BALDWIN: I write them back that it is filed too late and is disallowed.

A REFEREE: Do you throw it in the waste-basket?

MR. BALDWIN: No. I leave it in my files.

CHAIRMAN: I think you have got to send it back. Do you not think that it is a mistake for a Referee to take a claim that comes in after the six months' period, and file it at all in any form?

MR. PERSONS: Is it not a fact that the Supreme Court has held that the Referee has no power to accept that claim?

MR. BALDWIN: Yes. What I say is that I receive it, file it and disallow it. I think that is all I mean by that decision.

MR. BRISTOW: In Kansas, where there is practically nobody selling legal blanks, creditors write in and ask me for blanks. Now I send out blanks to every creditor in every asset case.

MR. BALDWIN: That is all right, but I do not do that. It is too much trouble.

MR. OLNEY: Where do you get them from?

MR. BRISTOW: I have them printed up.

MR. OLNEY: I think that is real service.

A REFEREE: How much can you let them amend claims, and evade the six months' rule?

MR. BALDWIN: The sky is the limit!

MR. OLNEY: No, it is not, excuse me. The law is clear, but it is a bit anomalous. If you have a letter in writing as to the claim within the six months, which has come into the possession of the trustee, the receiver or the Referee (an assignee will not do) where the creditor shows his intention of getting a dividend out of the estate, he may then after the six months come in and move to amend *nunc pro tunc*, so as to file a verified proof of claim required by the act. If he has, within the six months, filed a verified proof of claim, setting forth definitely some claim upon a specific cause of action, the law is that he cannot after the six months come in, under the guise of an amended proof of claim, and set up a different cause of action. There appears to be a bit of an anomaly there, because if the creditor has written a letter prior to the six months and said, "I am a creditor of this estate, and I expect to get a dividend," then he can come along later and file a claim, setting forth the cause of action, goods sold and delivered, money loaned, or what not. But, if he has filed a proof of claim, stating that he has a cause of action for $10,000, based upon goods sold and delivered, he cannot thereafter, after the six months, come in and say, "This is not a cause of action upon goods sold and delivered, but it is for services rendered." How you are going to link up those two lines of decisions, I do not know.

MR. KEOGH: There are two other elements necessary, namely, that the claim shall be scheduled, that is, that the debtor should already have filed, and that the assets have not yet been distributed.

MR. BALDWIN: I think that the statute is wrong in limiting the time when claims may be filed. I think the statute should say that an estate may be closed within six months, and then give them up to the time of distribution.

CHAIRMAN: I had a case directly in point. A creditor came in and asked for a 21(a) examination within the six months' period and did not file a proof of claim and then came in and made a motion for leave to file proof after the six months period. I permitted him to amend, holding that the 21(a) was practically a claim, and I was sustained above.

MR. THORNBURGH: Do you think it is necessary for a creditor, when he files a secured claim, to amend and show that he has an unsecured claim? In other words, it is the Referee's duty, as I understand it, in examining those claims, if he is of the opinion that the claim is not secured, but is unsecured, to allow it as an unsecured claim, no matter how it is filed, if it is filed in the cause.

MR. BALDWIN: I do not think it is necessary to amend in that instance. The Referee can act.

CHAIRMAN: I would like to call your attention to some cases on this subject. One is *In the matter of Rothbell*,* Another is *In the Matter of Lipman*,† A Supreme Court case is *Hutchinson v. Otis, Wilcox & Co.*‡ The other one is *Lewith v. Irving Trust Co.*§

MR. BRISTOW: I have just been wondering how much attention you paid to the requirement in the General Order that the trustees shall examine claims and object to them. The average trustee has not the slightest notion as to whether a claim is allowable or not, when looking at it, and, in many cases, the attorneys have not much more knowledge than the trustee, and, again in many cases, there is no attorney appointed for there is no occasion to appoint an attorney. I examine every claim that comes before me and, if there is reason to object to it, I call the attention of the trustee to it. I just wondered whether there is any general attempt to observe this.

MR. FRIEBOLIN: I think Referees sometimes overlook the last paragraph in General Order XXI, the first part of it. I think that is from a Supreme Court case. If a claim is filed with the trustee, it is definitely recognized as being filed, because the last sentence says that proof of debt received by any trustee shall be delivered to the referee to whom the case is referred. The Supreme Court has said that that is just the same as filing with the referee.

REFEREE WILLIAM JEROME KUERTZ, Cincinnati: I had a case growing out of an interest of a bankrupt in an estate. That is one of the questions I ask of any man who comes before me, *i.e.*, have you an interest, or have you ever had an interest in any estate or ever received any inheritance? That particular bankrupt said that he never had any, and the six months went by, and we were ready to close the case as a no asset case, when we learned, or got information, that the man had an interest in an outside estate. I appointed a trustee and he investigated and found out that this man had a $50,000 interest in a large estate in the East. Then we employed counsel. The six months had gone by, but because of the fraudulent misrepresentations of the bankrupt, I sent a notice to all of the creditors explaining the facts to them, and gave them permission to file claims, and we paid the claims in full, there were four or five hundred of them, and everybody got a hundred cents on the dollar.

MR. BALDWIN: I think you did exactly right, but I think you might be reversed on that. This new bill takes care of that.

CHAIRMAN: I want to thank Referee Baldwin very much for his courtesy in acceding to my request to take part in this forum.

The next subject is "First Meeting of Creditors" and the discussion will be led by Referee George K. Foster, of Bloomington, Illinois.

First Meeting of Creditors

(a) Questions to be asked by Referee.
(b) Election of trustee, how conducted.
(c) Should there be a trustee in every case.
(d) Appearance of laymen holding power of attorney.

REFEREE GEORGE K. FOSTER, Bloomington, Ill.: Mr. Chairman, and fellow Referees: Several decades ago Herbert Spencer wrote that which constitutes history properly so-called is in great part omitted from works on the subject.

The experiences of Referees in Bankruptcy are not found in textbooks. Hence the need of Referees' Conferences, and the demand for programs such as this, in which every Referee present is given an opportunity to participate.

My part on this program is simply to open the question, to open the discussion on the subject "First Meeting of

* (D.C., S.D., N.Y. '33) 6 F. Supp. 244, 24 Am.B.R. (N.S.) 298.
† (C.C.A. 2nd, '33) 65 F. (2d) 366, 23 Am.B.R. (N.S.) 342.
‡ 190 U. S. 552, 47 L.ed. 1179, 23 S.Ct. 778, 10 Am.B.R. 135.
§ (C.C.A. 2d, '33) 67 F. (2d) 855, 24 Am.B.R. (N.S.) 318.

Creditors," and I find under subdivision (a) "Questions to be asked by the Referee."

Unless there are creditors present at the first meeting who can give the Referee a foundation as a basis for examination, it is not likely that the answers to questions asked by him will lead to discovery of assets. But Referees frequently ask questions, and not much time is wasted thereby, because there is always something which indicates to the referee that it is time to conclude.

Referee Williamson of our district recently reported an experience of his, in which the questions and answers were about as follows:

"Q. How long have you had your household goods? A. Eh?

Q. Your household goods, how long have you had them?

A. You will have to talk loud to me. I am hard of hearing.

Q. All right. I am used to talking loud. Everybody in this room will hear me. Your household goods? A. What's that?

Q. You are excused. A. What did you say?

Q. You have been examined. That is all."

In connection with the matter of the selection of the trustee, after some experience I have reached the conclusion that there are certain cases in which no trustee should be appointed. In case that the trustee has to be selected, the creditors present in person vote and lawyers holding powers of attorney vote. In matters coming before me, the layman is not permitted to vote for trustee by proxy. That is now the rule in our jurisdiction and I have not seen it challenged. In my opinion, it is one of the most effective means for eliminating one of the most subtle vices in bankruptcy practice, and that is collusion between a corrupt bankrupt and an avaricious creditor. Thank you very much.

CHAIRMAN: May I ask you this question, sir: Where do you get your authority for the rule that you have just spoken of?

REFEREE THOMAS WILLIAMSON, Edwardsville, Ill.: From Foster.

MR. FOSTER: That is about it.

CHAIRMAN: If the act should be amended so as to include that, a lot of trouble could be avoided, but I do not see any authority for it.

MR. MCNABB: Supposing the creditor executes a power of attorney to a layman, not a lawyer, and he comes in and wants to vote his claim. Do you let him vote it?

MR. FOSTER: We do not allow him to vote it, and we have never had any trouble about it.

MR. WILLIAMSON: On this question of no asset cases, and that is all I have, no property up to the amount of exemption, when a creditor asks to have a trustee appointed, and it is an absolutely useless formality, what do you do?

MR. FOSTER: Appoint him. When I began, we appointed a trustee in every case, but we finally reached the conclusion that it was better not to do that. Take in some cases where a trustee has gone in, where some creditor wanted him, he has gone to some expense, and later they have had to call on the other creditors to help out.

CHAIRMAN: In our district, what we do in these small cases, where apparently there are no assets, but a creditor comes in and wants a trustee, our policy is always to give them a trustee when they request it. We allow them to put up a personal bond, with the understanding on the record, that if any assets come in to the estate, we are to be notified so that we can fix a surety company bond.

REFEREE FRED C. MULLINIX, Jonesboro, Ark.: You approve the bond?

CHAIRMAN: We approve the bond.

MR. PERSONS: I appoint a trustee in every case, and he files a personal bond. If any assets come into the case, a surety bond is arranged for. The trustee in each case examines the bankrupt through a questionnaire which I have prepared, and the questionnaire is so formed as to elicit information which may lead to assets. That is copied from the Friebolin practice, and it is good.

MR. MCNABB: In our jurisdiction, after some experience, we appoint trustees in every case. For instance, I have three young attorneys who are willing to take no asset cases and investigate them, taking their chances. They give a $200 personal bond, under instructions that in case assets are developed, then the Referee is to be notified, but, of course, the Referee eventually knows about it anyway, because the assets come in through the court, and the bond is raised and a surety bond is filed.

Prior to the incumbency of the present Referees, one the men was in the habit of making his own examination of the bankrupt. Later on into my court came two cases of homesteads. No trustee had been appointed. The lawyer who prepared the schedule said that it was not necessary to list the homestead, because that was exempt. He assumed to take out the exemptions before he ever got into the bankruptcy court. The case went on. Finally this fellow wanted to get a loan on his homestead, but the title company said, "You have been in bankruptcy and you did not schedule your homestead, and we cannot loan you any money on it, because there is that bankruptcy proceeding." So we had to reopen the case but at the expense of the bankrupt, and the exemption allowed him. In another case, we had a no asset matter, and it went through the same way, but later one of the creditors discovered some assets, and we got $12,500 out of it. If there had been a trustee appointed, this would have been discovered at the time.

MR. FRIEBOLIN: I have been advocating the appointment of a trustee in every case for a great many years. There is a General Order which says that if the schedule shows no assets, but if any creditor appears and asks for a trustee, you have to appoint one. We appoint a trustee in every case. We appoint some young lawyer in a building near by who does the work. He has a certain questionnaire, certain questions are prepared which he asks the bankrupt. Where the trustee digs up any money, why, that is something which we would not have had, and the bankrupt would have had that, and taken his discharge.

MR. BURNETT: You said that if any creditor appears you appoint a trustee. What do you call an appearance on the part of a creditor present in your court?

MR. FRIEBOLIN: I said that I appoint a trustee in every case, whether a creditor appears, or not. I want someone to take title to whatever there is.

MR. BURNETT: When you appoint a trustee, he has to serve, and you must keep the case open for six months.

MR. FRIEBOLIN: No, you do not have to keep it open longer than otherwise. But if there are assets, they have passed from the bankrupt to the trustee, any assets that anybody knows anything about.

MR. THORNBURGH: In connection with the first meeting of creditors, this discussion is certainly fine and interesting, and I hope that every Referee here will get up and have something to say. We have here real authorities on the bankruptcy law. But there is just one matter, in connection with first meetings of creditors, in my practice, that I think might be of interest, and save some time, and that is this: I always call the first meeting of creditors for a special day in the week, Tuesday or Thursday, and the lawyers and the creditors all know that there will be a session of the bankruptcy court, at its headquarters, on that day. Of course, notices of these first meetings of creditors are sent to all creditors as well as to the attorneys for the bankrupts filing petitions. The point I want to put over is this, that I adjourn that first meeting of creditors to a day certain, one week, two or three weeks from that day, at a special time and place, where the trustee is directed to appear and file a written report. Then all of the creditors interested in that case return at that time, and

further action is taken in the case without the necessity of sending notice to confirm the sale of $100 worth of personal property, or something of that sort. I believe that the first meeting of creditors can be kept alive by an adjournment to a certain date, and avoid the necessity of sending out so many different notices to confirm sale of personal property; and if a day certain, and if a time and place are fixed to which that meeting is adjourned, I believe that will expedite our work a good deal.

A REFEREE: When do you examine the bankrupt?

MR. THORNBURGH: Usually at the first meeting or at the adjourned meeting. Of course, at all §74 cases he has be examined at the first meeting. In other cases he does not have to be examined at the first meeting, unless some creditor wants to examine him.

CHAIRMAN: Do you appoint a trustee in every case?

MR. THORNBURGH: Not in every case. If the schedules disclose no assets and there is no creditor present asking for a trustee, I frequently close the case. My experience is this, I have ten or twelve young lawyers, several of whom represent retail creditors, and some wholesale creditors, and in nine cases out of ten those lawyers will be there, and they will have at least one or two claims to file, and they will elect one of their number trustee. I am very glad to have them elected, because it takes a good deal of the responsibility away from the referee.

MR. WILLIAMSON: When you do not appoint a trustee, who sets aside the exemptions?

MR. THORNBURGH: The Referee.

CHAIRMAN: I have brought with me what I consider a model examination by a referee. It is not by me, so I have no modesty in saying so. It is by Referee Ehrhorn. After the meeting, if any of you would like to look at it, I will be glad to show it to you. You should ask every bankrupt whether he has any bank accounts under fictitious names, or as agent or trustee for another. If you will ask that question, it will amaze you how often that comes back to plague a bankrupt.

MR. BRISTOW: I have followed the practice of appointing a trustee in each case, but there is a real problem which I have, in respect of the practice of examining bankrupts at the first meeting. It is 250 miles from Salina to the northwest corner of my district. Most of my cases are no asset cases. The law provides that if a bankrupt is called from out of his place of residence, he is entitled to mileage. Supposing a bankrupt lives one or two hundred miles away, who is going to pay that mileage? There are no assets in the case. No creditor is willing to put up money to pay that, and there are no assets out of which to pay my traveling expenses.

MR MCNABB: Does not the order of the Judge say that he shall attend before you on a certain date?

MR. BRISTOW: Yes, but the law says that he shall receive mileage.

MR. PERSONS: He cannot be compelled to attend as a witness, or for examination, but, on the other hand, if he files a petition in bankruptcy, the Judge says all right, you go before the referee on such and such a date. It is absolutely up to him, and if he does not come, does not appear, you just return the case for want of prosecution, and he is right where he was when he started. Of course, he is entitled to have the first meeting at the county seat of his residence.

MR. SNEDECOR: I would like to have the record show how many Referees appoint trustees in every case.

A show of hands indicated 15 who do and 21 who do not.

CHAIRMAN: I want to call your attention to one defect I have noticed in a lot of minutes of Referees at first meetings, where there is a contest for trustee. Sometimes you fail to set forth the exact list of claimants voting for the various trustees. Our court has rapped several Referees for failing to do that. Such a list should be incorporated in the record.

MR. KUERTZ: What is the practice where a lawyer votes claims at the first meeting, and then evidence is presented to the Referee that he solicited those claims? I do not permit him to vote the claims. I do not know what your practice is. I refuse to permit an attorney to vote claims which he has solicited.

CHAIRMAN: The answer to that should be obvious. Isn't it a violation of the canons of ethics of the American Bar Association for an attorney to solicit?

I want to thank Referee Foster for his kind help in this connection. I think we shall have to pass along now.

Our next subject is one which is not of much importance to us in New York, but it is in different parts of the country. The discussion of the "Referees Indemnity Fund" will be led by Referee Horace H. Glenn, of St. Paul.

The Referee's Indemnity Fund

(a) Application of General Order X.
(b) The amount.
(c) Its use.
(d) Accounting for surplus.
(e) Referee's expenses in asset cases.
(f) Items of expense.

MR. GLENN: This subject has so many phases, and there are so many different rules in the several districts, that it is a little difficult to know just how to introduce the subject, but I think it would be appropriate to refer, first, to the applicable statutes and the General Orders.

§ 62 reads as follows:

> The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved, or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

That probably has primary reference to receivers and trustees, but the language is broad enough, you will notice, to take in the expenses of the Referee.

Then General Order X:

> Indemnity for expenses: Before incurring any expense in publishing or mailing notices, or in traveling, or in procuring the attendance of witnesses, or in perpetuating testimony, the clerk, marshal or referee may require, from the bankrupt, debtor, or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt, debtor or other person shall be repaid out of the estate as part of the cost of administering the same.

Then General Order XXVI:

> Accounts of referee. Every referee shall keep an accurate and itemized account showing, with respect to each case referred to him, his receipts and expenditures and their nature. * * *
> (4) The particular rule or method by which the amount of expense charged against individual estates is computed or fixed.

Then we have General Order XXXV:

> Compensation of clerks, referees and trustees. The compensation of referees, prescribed by the act, shall be in full compensation for all services performed by them under the act, or under these general orders; but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the act and allowed by special order of the judge.

Those seem to be all of the provisions of the statute or General Orders that are applicable to this question. As I say, the rules are so varied in the districts, it is difficult to know how to introduce a general discussion of the matter. For instance, in the Minnesota District, we have a rule that,

> Reasonable fixed charges authorized in each case to cover actual and necessary clerical and office expenses of referee. They shall fairly take into account work required in his office and the time involved. In no asset cases this amount shall be uniform.

I notice in Nevada they have a practice whereby the Referee charges 15 cents per notice for certain notices, and 25 cents per notice for other notices, in lieu of his actual

expenses for stationery, clerk hire, and office rent.

It has been suggested in a recent decision of the Circuit Court of Appeals of the Ninth Circuit,* that the District Courts have no power to make rules of bankruptcy. Probably that suggestion has reference to § 30 of the act, which provides that,

> All necessary rules, forms and orders as to procedure and for carrying this act into force and effect, shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

Apparently the Supreme Court had no doubt of the jurisdiction of the District Courts to make rules, because in its order in 1898, promulgating the first General Orders, they referred specifically to said further regulation by rule or order of the District courts, as may be necessary or proper to carry into force and effect the Bankruptcy Act of 1898 and the general orders of this court.

There are a number of decisions of the District Courts which recognize the authority of the district courts to make rules in bankruptcy. For instance, there is a decision by the Circuit Court of Appeals, Eighth Circuit, *United States v. Ward.*†

> We are also of the opinion that the United States District Court may authorize the referee to employ a clerk, and allow the expenses for stationery, office rent, light, heat and phone, and that these authorizations may be made by standing rule or order as well as by special order in any particular case.

In the *Owl Drug Company* case,‡ Judge Yankwich, referring to the Nevada rule, stated:

> In the administration of bankruptcy estates, particularly in large districts, it was found difficult, as a matter of bookkeeping, to keep track of the actual expenditure incurred in each of the acts which the Referee is required to do, and for the expenses for which he can be reimbursed under the General Orders. So in most districts rules, such as the provisions of Rules 7 and 10 in the Nevada District already quoted, have been formulated. Some question has arisen as to whether even such a rule could, under all circumstances, be justified. Nevertheless, most of the districts have operated under such a rule, as being the only practical method of providing for reimbursement. And if the amount is reasonable, no fault can be found with it.

I think that is all I have to say on that.

CHAIRMAN: Are there any questions to be asked of Referee Glenn? There is another decision that I want to call your attention to, gentlemen, and that is the *Matter of King,*§

MR. BRISTOW: Is there not a recent decision in your circuit that a Judge may not depart from the rules of the District Court?

CHAIRMAN: Yes.

MR. BRISTOW: Which, by implication, certainly would approve the practice of the District Courts promulgating rules in bankruptcy.

MR. BIERCE: The question giving concern to many Referees is, Are they protected by their local rules in their charges for expenses, where such charges exceed their actual expenses?

MR. BALDWIN: May I show you a district where we have not any such fund? We have no indemnity fund. At the end of the month, we make our charges against the cases, pass it up to the Judge, and he approves it, and when the estate is closed, we can then have the matter paid. We have never had any indemnity fund in the district at all.

CHAIRMAN: I would like to state what we do in our district and how we work it.

We have an indemnity fund under our rules, without specifying so much for each thing, and then that money goes into a general fund; and under the rule we are permitted to spend $4.50, and no more, for clerk hire, and $3.50 for office rent. We do not pay that now, because we are all in the new court house. We receive so much a month for stationery.

We have one or two illustrations in our district of how that works. One of the Referees died, and he has the largest indemnity fund of us all, he had about $10,000 in his fund when he died. By order of Judge Know, that was split up among the remaining six or seven Referees, and went into their indemnity funds and not their personal funds. A Referee resigned two years ago, who did not have as much money as the remaining six Referees, but that money was distributed among them for their indemnity fund by order of Judge Knox.

So far, most of us have just been a little ahead of the sheriff, as far as our indemnity funds are concerned. I have not very much now. I have enough for the next two months and that is about all I am able to do. Herbert told me that some Referees seem to have an idea that if there is any surplus money in that fund, they are entitled to it for themselves, and they can put it in their own pockets and spend it.

VOICES: No, no.

CHAIRMAN: That is an absolutely wrong idea.

MR. WILLIAMSON: Whose money is it?

MR. GLENN: I do not know whose money it is, but I think it is a special trust fund for specific purposes, to pay the expenses of the Referee.

A REFEREE: Any balance should go back to the register of the court.

CHAIRMAN: In the instances I have just mentioned, I think that if there had not been other Referees, or we all had plenty of money in the fund, then Judge Knox could have made an order turning that money over to the Treasurer of the United States as surplus money.

MR. MULLINIX: The order creating our fund states specifically that the fund is not the property of the referee in bankruptcy.

CHAIRMAN: If there are no other questions, we will pass to the next subject. Thank you very much.

Our next subject is "Sales Before Referees," and the discussion will be led by Referee Samuel W. McNabb of Los Angeles.

Sales Before Referees

(a) Their conduct.
(b) Proceedings arising out of failure to go through with bid.
(c) Attempt to raise issues in relation to property bought by successful bidder.

MR. MCNABB: There is not very much law about this matter of sales. Sales require psychology, common sense and maneuvering to try to get the most out of the assets. This is the most important thing in the whole administration of bankruptcy, for the reason that it is the main thing that the creditors are interested in, it is the main thing that the trustee is interested in, and, last but not least, it is the main thing that the Referee is interested in.

I do not know that I can say anything on sales except what our own practice is in Los Angeles. We have built this practice up by tried methods in the past and have come to the conclusion that it is the most successful method of conducting sales that we have arrived at yet. They used to allow the trustee, before my time, to negotiate privately, have private sales, and have them come in and have them confirmed. No matter how good a sale was, that seemed to lead to a suspicion by some of the creditors who would not take the trouble to investigate, that there was collusion. So we came to the conclusion that we would follow the statute literally, and now the rule is that all sales must be by public auction, held in the court-room of the Referee and before the Referee. He is usually the auctioneer.

In the notice sent out for the first meeting of creditors, we include this in the notice, that at the first meeting there will be consideration given by the creditors to the authori-

* *Cohn v. Edler* (1937) 90 F. (2d) 823, 34 Am.B.R. (N.S.) 367.

† 257 Fed. 352, 43 Am.B.R. 711.

‡ *In the matter of the Owl Drug Co.* (D.C., Nev. '36), 16 F. Supp. 139, 31 Am.B.R. (N.S.) 763.

§ (D.C. W.D., Tenn. 1935) 11 F. Supp. 351.

zation of the trustee to make a sale of the property belonging to the bankrupt. That, of course, complies with the general rule of notice to creditors, as far as the personal property is concerned. When the estate is one of a small business, in which there is probability of it being sold as a whole, we always appoint a receiver. That receiver takes charge of the property and inventories it. The inventory is made upon a cost basis, the extensions are carried out on what the stuff costs. The receiver, in cooperation with the Referee, has the appraisers appointed. This is all before the first meeting. When the matter comes up on the first meeting, for the election of a trustee, we have the property here on sale in court that morning. We have the published notice there, which appears in the law journal. All of the people practically who are interested in sales of bankrupt estates take this paper; all of the law offices, and all of the business people in Los Angeles take this journal. We have rented a column, it is always in the same place, and at the top of the first column we have future bankruptcy sales, with a blank heading. Five days before the first meeting, we will say, we publish a description of the property, where it is located, how it can be seen, and so forth. Then on the morning of the sale, it appears under "Today's bankruptcy sales." You can look at any time and find what is to be sold. Of course, that will not apply in every instance, and, of course, we do away with that in cases where it is perishable property, where we have got to dispose of it right away, like meats and vegetables, or anything of that kind, and where the business is not going to be conducted; but that is the general rule that we follow in ordinary small merchandise cases.

I sold a yacht here just a few weeks ago. That was something that you could not go out and peddle, because you do not find very many people who want to buy a vessel which costs $3,000 a month to operate. So I directed the custodian to get pictures of that yacht and send them to all of the principal shipping ports, and sportsmen's places in the United States, like New York, Miami, San Francisco, Portland and Seattle. It was advertised for sale at public auction in the court room just the same as though it was nothing but a stock of goods. We had two bidders, one from New York City, and one from Portland, Oregon. We had a flat offer on the quiet, which we did not vidulge, of $56,000 for it. I might say that we published the notices also in the yachting journals. It was quite expensive advertising, but you will know that it paid well when I say that we got $77,500 for the yacht. $56,000 was all we could get on the first bid. I take that to indicate that you must use common sense in your selling work, and you have got to use psychology to a large extent.

When it comes to sales in the court room we have, as I suppose you all have, a bunch of fellows who make a specialty of buying bankrupt stocks. There are in Los Angeles I suppose probably fifteen of such firms. Most of them, I think, have gotten rich because a man who is able to handle that kind of stuff is in a position to make money. The thought often strikes us that there might be collusion between those people, but by this system that we have established, we send notices to the creditors, and we generally get pretty fair prices. For instance, in a stock of groceries, there is a lot of standard stuff, like coffee, that we can get a hundred cents on the dollar for, unless it is old stuff. If it is real property, we send notices to the creditors, an additional notice to the creditors, because we never sell real property at the first meeting, because we are not in position to do it. We have to elect a trustee and he does not know anything about it. But, when he is elected, we then proceed to sell. I will say that in most instances the creditors show up by their attorneys, and creditors in the main, with respect to small businesses, ten or fifteen thousand dollars, in out city, are not interested enough to come out. They like to kick, though, so we take all of the sting out of it that we can by giving them notice of everything. For instance, if we want to unlock the front door, we give a notice to the creditors, so that when he comes to examine the record, he cannot object.

It is a protection to the trustee, and it is a protection to the Referee, to have these sales in open court. In my court I generally take it in hand, because I think I am a little bit better salesman than the average trustee. We get very good results in that way, and it has the added benefit of taking away any suspicion that there is collusion on the part of anybody, because anybody can come in there and make a bid, and if a creditor comes in and says, "I think I have got a bidder that will give you more money for this, I am a creditor, and I am interested," if he will guarantee the highest bid that is made that day, I continue the sale and let him bring his bidder in, so that he has no complaint.

That is our system in the way of sales.

The next thing concerns cases where you have someone come in and make a bid on some property, and he gets to thinking about it, that he has paid too much money for it, and does not want to go through with it. Well, in the first place, we have a rule whereby every man who bids on property, a man who is not known, or has not the confidence of the trustees, must make a deposit of 10% of the purchase price right then. He has to give a check for that amount before he gets away from the trustee. If it is a bid that the trustee has secured in advance, the trustee already has the check. Then when the statement is made as to what we are selling, I always take the precaution, after the trustee has read off a list of the property he is selling, if there is any question about the title or anything that we are not sure of, I always read and repeat in definite language just what we are selling.

The reason I do that is because I had not been in bankruptcy work very long when I had a large automobile accessories business; they had a branch house in Denver, and one in San Francisco, and I believe one in Portland. The main concern was at Los Angeles. That is what made me adopt that, dealing with those branches and their contents.

We have a rule of having sales on two days a week. Two Referees have sales on Mondays and Wednesdays, and the other two on Tuesdays and Fridays. They have the right of way on those days, the sales take place first.

I am greatly of the impression that, in many instances, sales are made too quickly. I think that it pays to play with the bidders, I have learned that. In the case I just mentioned, notices have been sent out, but the trustee came in just before the sale and said that he had an offer of $56,000, and he felt that was the best he could do. Going into the court room, he got up and made a statement of what he was willing to bid. Well, somebody else bid $57,000; $57,500; $57,750, and so forth, and we got it up. Then in walked a bankruptcy attorney in Los Angeles, and he read a letter from the president of the company which was being sold out, and they had a patent on a piston ring, which the president claimed as his own property. The trustee had not heard of that before. So I said, "You understand, we do not know anything about this; this may be valid, or it may not be. Remember, though, that in a sale we are only selling you the property that the bankrupt owns, and in case this piston ring matter is good, you will have to take it subject to that, and if it is not good, you will have the patent." Well, they went on and bid the property up to $76,000. The next day after they bought the property, they brought a lawyer down from San Francisco, and he tried to repudiate the sale. I have just ordered that record written up.

CHAIRMAN: Are there any questions?

MR. BURNETT: I would like to have a show of hands as to the number of Referees who attend sales and those who do not. I never attend a sale in my life. They are conducted by the trustee.

(Continued on page 30)

Kansas City Conference

IN THIS issue is published the proceedings of the twelfth annual Conference held in Kansas City. The reporter has promptly transcribed the record, this has been edited and passed on to the printer as rapidly as possible so that there has been little delay in publication. Thus the JOURNAL enters upon its twelfth volume.

The Conference attendance was satisfactory with many Referees present for the first time. The program was excellent. Special speakers included former U. S. District Judge George E. Q. Johnson, Chicago, on "The Present Trend to Limit and Evade the Jurisdiction of the Court," and Samuel O. Clark, Jr., Washington, chief attorney, Protective Committee Study, Securities and Exchange Commission, on "Reorganizations under the Bankruptcy Act." U. S. District Judge Albert L. Reeves, Kansas City, spoke at the annual dinner on "The Anomalies of Bankruptcy." The Chandler Bill was presented for consideration by Referees King, Detroit, who presided, Adams, Chicago, who discussed real property arrangements now carried on under § 74, and Nesbit, Birmingham, who spoke upon the wage earner plan. Other sections were considered by W. Randolph Montgomery, New York, counsel, National Association of Credit Men, and by Reuben G. Hunt, Los Angeles. The "Open Forum" on bankruptcy practice, with Referee Irwin Kurtz, New York, presiding, proved very interesting and will be continued at future Conferences. The informality of much of the discussion made it impossible to report the detail remarks. Referees James W. Persons, Buffalo, spoke at the annual dinner, and Theodore Stitt, Brooklyn, and Ray C. Fountain, Des Moines, at the fellowship luncheon. The present status of § 75 was presented by Referee Fred H. Kruse, Toledo. Our President, John M. Thornburgh, Knoxville, presided. We were graciously welcomed by our host Referee Fred S. Hudson, assisted by former Referee Elmer N. Powell, chairman, and A. J. Granoff, vice chairman of the local committee. As an entertainment feature we visited the farm of Mayor Bryce B. Smith and were also the guests with the members of the National Conference of Commissioners on Uniform State Laws at a complimentary dinner at the Kansas City Club tendered by the local Bar. Special entertainment features were also arranged for the ladies.

ELMER N. POWELL
Chairman
Committee on Arrangements

Mr. Powell was a Referee in Bankruptcy (1923-27) and a Director of this Association (1926-27). He founded the Kansas City School of Law.

Those in attendance at the Conference are deeply appreciative of the services rendered and the arrangements perfected by our host Referee, Fred S. Hudson, who in this respect was most ably assisted by his private secretary, Miss Helen M. Kemper, incidentally known to several as "MacGregor." Miss Kemper graciously aided in the entertainment of those who arrived during the day preceding the Conference opening. The detail arrangements were under the immediate supervision of Messrs. Powell and Granoff, who left nothing undone in this respect. William H. H. Piatt was active in completing the arrangements for the joint dinner. Other members of the committee were in attendance and willingly aided in making our stay enjoyable. The appointments at the Hotel Kansas Citian were most satisfactory.

DIRECTORS MEET

A. J. GRANOFF
Vice Chairman
Committee on Arrangements

At the close of the Conference, the incoming Board of Directors met to consider Association affairs. Its first action was to establish the dues for the fiscal year which commenced September 1st. The amounts were fixed upon the bankruptcy work of each Referee for 1936. For those Referees who had an income therefrom of $7500 or more the current dues are $25; if the income was less than that amount but the Referee received 50 or more references, $10; if the number of references was 25 but did not exceed 49, $5; if the number of references was 10 but did not exceed 24, $3; if the number of references was 9 or less, $1. All members are invited to remit $10. The Secretary was authorized to adjust dues of members in arrears. Careful consideration was given to the selection of the place for the 1938 Conference and after a canvass of the situation New York City was determined upon, the dates to be decided later. The Board also recommended that the 1939 Conference be held in Los Angeles. It was decided to continue the JOURNAL as a quarterly but to mail it only to those Referees in Bankruptcy who are members of the Association.

CONGRESS OF COMPARATIVE LAW

The second International Congress of Comparative Law was held at The Hague, August 4-11 at the Peace Palace with thirty-five nations represented, numbering 240 delegates. Of this number forty-seven came from the United States, thirty-one from France, twenty-nine each from Great Britain and Germany, twenty-three from The Netherlands, fourteen from Italy and the others were scattered, Russia being the only European country not represented. The members included many distinguished jurists and law school professors as well as practitioners. The president of the Congress was the eminent Cuban jurist A. S. de Bustamante, a Judge of the World Court, and the secretary was Elmer Balogh, secretary-general of the International Academy of Comparative Law which sponsored the Congress. The Congress divides itself into five sections, of which the third is known as Commercial. One of the chairmen of this section on Commercial Law was Phanor J. Eder of New York and among the subjects considered was that of the "Effect of the Depression on Changes of Bankruptcy Measures." Among the resolutions adopted by that section is the following:

The Congress, taking note that at the present time it is difficult to obtain speedy and complete information as to legislation on bankruptcy and compositions with creditors, expresses the hope that, in the interest of research and of the needs of trade, an International Information Centre for bankruptcy and composition will be created, such centre to be vested with the duty of gathering the necessary documentation concerning such topics and keeping it up to date.

At this Congress a paper on corporate reorganization by John Gerdes, New York, was presented under the title "Recent and Pending Developments in the United States of America in the Law Relating to the Reorganization of Corporations because of Financial Difficulties. This address is published in the *United States Law Review* for August last. *

MAJOR DEININGER'S RECORD

The "Official History of the Militia and National Guard of the State of Pennsylvania" is being published and Vol. 4, Sec. 6, bearing a July, 1937, date, features the history of the Escort of Honor Battalion commemorating the ninth anniversary of their pilgrimage to France. This account records the activities of Referee L. L. Deininger, Philadelphia, as follows:

Major Leonard LeRoy Deininger was chosen as Commandant. It was a most fortunate selection. Major Deininger not only had unusual abilities as an executive officer but his pleasant personality and rare zeal for the work thrust upon him together with his real popularity among the enlisted personnel of the Honor Battalion of Pennsylvania assures the success of the pilgrimage from its very beginning.

Major Deininger, then as now, a prominent citizen of Pennsylvania, had long been active in the National Guard and had rendered valuable service in France in the World War. He was born at Phoenixville, Pa., April 13, 1891. He graduated from the Phoenixville High School and studied law in the offices of the late Governor Samuel W. Pennypacker and J. Whitaker Thompson, for the past several years a United States Circuit Court Judge at Philadelphia, and later received his degree from the Law School of the University of Pennsylvania in June, 1914.

He enlisted as a private June 27, 1916, in Battery C, 107th F.A., commanded by the late Captain Samuel A. Whitaker, former Speaker of the General Assembly of Pennsylvania, and served on the Mexican Border from July 5, 1916, to November 30, 1916. Called into Federal Service for World War at Phoenixville, July 15, 1917, he was appointed Sergeant August 1, 1917, and was assigned August 21, 1917, to Second R.O.T.C., Fort Oglethorpe, Ga. He was appointed First Leiutenant, F.A., November 27, 1917, and assigned to Battery D, 335th F.A. as Executive Officer. He sailed for France August 2, 1918, and served in the A.E.F. as Executive Officer and later as Battery Commander, Battery D, 335th F.A. Major Deininger was mustered out of Federal Service as Battery Commander at Camp Dix, N. J., on March 29, 1919. While in France he was also assigned for service to Co. A, 55th Engineers. Upon his discharge he resumed the practice of law with offices in the Finance Building, Philadelphia, and for upward of four years he served as Assistant United States District Attorney at Philadelphia and as a Federal prosecutor, vigorously and successfully conducted the trials in many large and important criminal prosecutions. More than ten years ago the Judges of the United States District Court at Philadelphia, recognizing his integrity and ability, appointed him as a Federal Referee in Bankruptcy at Philadelphia and which responsible office he still conducts with fidelity and learning. By his fairness to all who have appeared before him, and through his distinct sense of justice, he enjoys the respect and admiration of the members of the Philadelphia Bar as well as of the parties litigant who come before him. In late years he has supervised and directed the financial reorganization of several large corporations in the Philadelphia area under Section 77B of the Bankruptcy Act.

He was commissioned Captain, Infantry, Penna. National Guard, February 1, 1920, and assigned to reorganize and command Company D, 6th Infantry, P.N.G. (later designated as Co. L. 111th Infantry.) He commanded Co. L, 111th Infantry until May 11, 1926, which company had an average strength of more than one hundred enlisted men, and led the 28th Division in rifle and pistol markmanship qualifications during his command. The company was also outstanding in drill attendance and in athletic accomplishments, and was habitually rated by Federal Inspecting Officers as "apparently far above the average National Guard Organization in efficiency."

On May 12, 1926, well merited promotion was received, and Major Deininger was assigned to command the 2nd Battalion, 111th Infantry, which Battalion developed splendidly under his efficient command. Upon the death of Major John C. Groff, he was transferred to command the 3rd Battalion, 111th Infantry. Under his command harmony, efficiency and excellent results ever manifested themselves. Upon the demise of Colonel Charles B. Finley and promotion of Colonel Charles C. Meyers to command the 111th Infantry Regiment, Major Deininger was assigned as Second in Command of the regiment, as Executive Officer under Colonel Meyers. Later, upon his own application, he retired from active assignment with the regiment and received his voluntary transfer to the National Guard Reserve.

* Vol. LXXI, p. 443.

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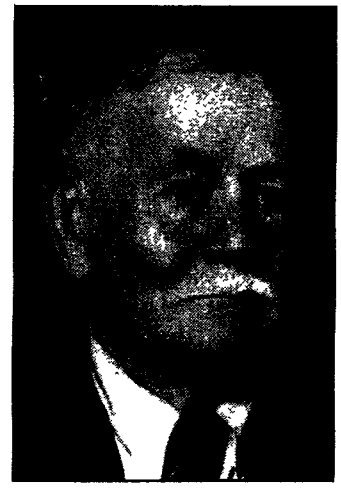
VETERAN REFEREE AND LAWYER RETIRES

The retirement of Delmar M. Darrin, Addison, N. Y., as a Referee in Bankruptcy, has been announced by him. He is closing his law offices and has offered his large law library for sale.

Mr. Darrin was a member of this Association and has attended several Conferences, usually accompanied by one of his daughters. He is now eighty-eight years of age. Mr. Darrin was born in his home county and has spent his entire life at Addison. His early education was in the public grammar school and in a private school established by twelve citizens for the education of their sons. He entered Cornell University, graduated at the end of three years in 1872, and was admitted to practice in 1875 so that he has actively practiced law for sixty-two years. During a part of that time his son Hugh was associated with him and offices were maintained in Addison and Corning. His son attended Hamilton College and the Albany Law School but died in 1917. A grandson, Charles, is on the administrative staff of Mansfield State College. A daughter, Helen, is now Mrs. Robertson and lives at Atlanta, Ga. She has one son located at Toledo, O., and another who is a Lieutenant in the U. S. Navy. Another daughter, Katharine, lives at Addison. Mr. Darrin married Mary Dawson in 1876 who died in 1926.



REFEREE
DELMAR M. DARRIN
Addison, N. Y.

Mr. Darrin was appointed as a Referee in Bankruptcy in 1901, his district then included Steuben, Allegheny and Livingston Counties. Later Schuyler and Chemung Counties were added but in more recent years he has served in but two counties. He is now completing old cases. To Mr. Darrin the many members of this Association acquainted with him extend heartiest congratulations upon his many years of useful and faithful service as a Referee in Bankruptcy and in the practice of law and express their best wishes that he continue in good health.

Proceedings

(Continued from page 27)

CHAIRMAN: (After a show of hands.) There seem to be a preponderance of those who do not attend sales.

The next subject is "Final Meetings of Creditors," and the discussion will be opened by Referee Edwin L. Covey, of Peoria, Illinois.

Final Meetings of Creditors

(a) Disposal of remaining assets.
(b) Attorney's fees.
(c) Trustee's fees.
(d) Fees of appraisers.

REFEREE EDWIN L. COVEY, Peoria, Ill.: The one thing that has embarrassed me so far in this discussion is the fact that we all go by the same Bankruptcy Act, and in practically all that has been discussed, we are all doing it in our own individual way, and, unfortunately, in a great many cases this does not correspond. I think it is pretty hard to look at the Act and say, now, with reference to this particular thing, you must do thus and so. I think that we all work it out to what we think is the best advantage, to fit our particular slant of the problem, in harmony with our particular slant of the law.

I have that same feeling with reference to the final meetings of creditors. I have a practice more or less definite in my own mind which I try to follow. I am not sure that it is all entirely correct, but I think, in the main, that the practice I follow is a practice which is proper, and which accomplishes what the law intends to be accomplished at the final meeting of the creditors. Mr. Kurtz has outlined several things here, and I think, in the main, I am quite familiar with how those things are handled, but I would like to add a few things before we get into the discussion.

As a matter of fact, your first meeting of creditors starts with your final report. The Act provides that the referee shall fix the time when the case shall be closed, when it is ready to be closed. In practice, I do not believe many of us do that. I think you wait until the final report comes in and then you fix the time for the final meeting of the creditors. We just reverse it.

The report must contain a statement of the account, receipts and disbursements generally, and a complete statement of what has been done in the administration of the estate. I think one of the most important parts of this whole thing is the question of the notice that you give, the notice of your final meeting of the creditors. There are certain requirements which you must follow in the notice, under the General Order. There is application for allowances for fees, and I think generally that is done. Personally, I do not put in my notices the names of the persons making the application. If you have a petition for allowance of attorneys for fees, some notices show, John Jones, attorney for the trustee, asking for so much money. I put in my notice, fees requested, attorney for trustee, so many dollars. If he has been allowed something on account, I show the amount paid on account, and the balance remaining unpaid. Personally, I do not favor the allowance of fees on account. I think the tendency is in the end that you make bigger allowances, and there may be criticism. I think you will find that you are allowing them more, if you make allowances on account, than if you made them come in and file their petition at the end. In the report of the trustee, he must petition for his allowance of fees, and the affidavit must state that there is no agreement for the splitting of fees in any way.

I always put in my notice the amount that the receiver is claiming, and the amount that the trustee is claiming, and the amount of his expenses. I require him to itemize those expenses to the last penny.

I have had a good deal of difficulty in getting good trustees, or lawyers who know anything about it, to look after the small cases. The commissions that they are allowed on a 6% basis are comparatively small for the amount of work that must be done, which the trustee has to do. Of course, they are entitled to their expenses, and if I have erred in those cases, I have erred on the side of allowing liberal expenses to the trustee, in order to make up, perhaps, somewhat for the small amount of compensation that he can get as fees or commissions.

I feel that it is proper practice to allow the receiver expenses for stenographic services, use of automobile, and any other expenses that he can itemize.

I also put in my notice the balance on hand, total receipts, total disbursements to date, balance on hand for distribution, claims filed and allowed, classified into secured and unsecured claims. When I redraft this notice, I am also going to provide a place at the bottom of it to fill in for the disposition of the remaining assets at the end of the administration. Very often we go along and we have some tag ends, some uncollected accounts that you want to dispose of, that you want to clean up, and you may want to hold a special sale to do that. For instance, a trustee will report that he has a list of accounts that are unsold, and ask leave to sell them at the final meeting of creditors. I put that in the notice. When that amount is fixed, when the sale is held, and the trustee reports what he has realized at the final sale, I add it into the amount I have on hand for disposition.

In regard to how you handle the matter of actually closing the estates, in asset estates, I prepare an order of distribution, usually fixing the amount of fees and allowances at the final meeting of the creditors, announcing what I am going to allow on these various petitions for allowances, and enter an order for distribution. If there are any lien claims, I have the trustee account for any money which has come in on property subject to liens.

After the trustee does all of this and pays all of the money out, I require him to bring in a report showing that he has made distribution of these funds in accordance with the order heretofore entered, and then I enter an order including his distribution closing the estate, discharging the trustee, and releasing his bond. I think that closing order is important, because, I know we have had it come up, in a great many cases, Government agencies have come in, and they want to know if you have made an order closing the case. They will not make a loan unless we have a specific order closing the case. I think that should be entered in every case, a formal closing order.

I have one other thing in mind. I notice in this list that there is no discussion of the amount of Referee's fees and expenses. I have one thing that I would like to have discussed, and that is as to what the general practice is over the country where you allow the trustee to operate a business, and, suppose has $100,000 in sales, but maybe on the operation of the business he has been successful to the extent of obtaining half of that as a result of that operation. How much fees is the Referee, and also the trustee, entitled to be paid on those operations? Is he entitled to double commissions on the total amount of sales that he makes? Is the Referee entitled to commissions on the total amount of sales that he makes?

Another question is, when you allow fees in cases to attorneys, is that a distribution to creditors that the Referee is entitled to his commission on, on the amount distributed?

A VOICE: No.

CHAIRMAN: No. As far as the trustee is concerned, where he has run a business, we have a local rule which provides that he can receive double commissions, in the discretion of the court.

MR. COVEY: Well, I have had the experience that if you allow double commissions, you are going to allow fees that will consume every dollar that you have got on hand, and you might just as well never have operated the business.

MR. THORNBURGH: You do not have to.

MR. BURNETT: You cannot make an allowance for operating a business unless the record contains a previous order authorizing the trustee to operate it.

MR. COVEY: That is ture, but when you get down to the end, you have a lot of these fellows coming in with petitions for allowances, and my experience has been, when you get all through, you would have been better off if in the beginning you had shut it down and sold it in thirty days.

MR. BRISTOW: As far as this double allowance is concerned, the court does not have to allow it. I have been unable to reconcile the cases on that. The best rule is that the court shall use its discretion.

There is a rule which prevails in the Kansas district, that apparently is not generally prevalent, that requires that the final meeting shall be held after distribution is completed, which requires that there be a special meeting for the allowance of the fees, and so forth.

MR. KING: Of course, the prime consideration in the operation of the business, I think, is not so much what you are going to make out of the operation, as in selling the business as an entity, where you can get more for it many times if you keep it alive as a continuing and going concern, than if you shut it down. That has been the principal argument for the continuation of a business.

MR. COVEY: I think that is about the only argument that you can put up.

REFEREE ERNEST R. UTLEY, Los Angeles: What will you do where you are operating a bunch of oil wells?

CHAIRMAN: Let them gush!

MR. COVEY: They should not be in bankruptcy!

MR. KRUSE: I do not see any reason why you cannot prepare a summary of the proceedings in the cause, have your final meeting and close it all up. We sent out a notice which states what has been done in the case, that money has come into the hands of the trustee, where from, what property has been disclaimed and abandoned, and exemptions set off, what applications have been filed, and what is the balance in the hands of the trustee. We state that those matters will come up from hearing, and at that meeting it is proposed to make orders as follows, and then we set forth those in detail.

MR. COVEY: That is one way of doing it, but it seems to me you make yourself about ten times as much work, work which in many cases you will have to do over again when you get your people before you.

MR. KRUSE: Very rarely.

MR. BALDWIN: Is there any general practice of having the checks made in the Referee's office?

MR. COVEY: Well, you go through a lot of work writing them out. I make the trustee write them. Of course, it is your duty to check them against your distribution sheet. I always have my secretary do that.

CHAIRMAN: May I call attention to the fact that where there are outstanding accounts to be sold, I always make it a practice of inquiring and getting upon the record the efforts of the attorney for the trustee to collect. Sometimes I find that the attorney for the trustee falls asleep at the switch and makes no real effort. I take that into consideration when I pass upon his application for allowances.

MR. OLNEY: In trying to follow that up, and I frequently do in cases where I find the attorney for the trustee has gone asleep, I simply put over the final meeting, I will not take it up at all, and I tell him, "You have got to go out and probe this situation." However, some of them are very good. Some of them come in with a complete list of the names of the accounts receivable, the amounts thereof in detail, describe categorically what has been done as to each of them, and the result. There are others who are asleep, and I crack down on them; I either adjourn the whole thing indefinitely, or adjourn it to a date for another final meeting. I think that is very important, because attorneys are pretty lax on that.

MR. KING: What do you do with the sale of odds and ends? Do you ask for bids, however small they may be?

MR. COVEY: I think, generally speaking, that is the practice. I think you have got to take what you can, when you get down to the tag ends.

MR. KING: That is a real problem with us. For instance, we have accounts receivable, uncollected, or we have various goods, so to speak, to dispose of, which are not worth very much, and in those cases, why, we have a group of buyers who come in and buy the accounts, I think, for the express purpose of harrassing debtors and getting what they can, as sort of a nuisance value. I had a bid the other day, for $1300 of accounts, of $5. I thought that I would rather abandon them than take the $5, so I did that.

MR. COVEY: I think that depends somewhat on the kind of accounts that you have. If you have a lot of five-year old grocers' accounts, or doctors' bills that you have had a hard time collecting anything on, I think you are better off to grab the $5 and forget it.

MR. KING: That makes a bad record, though.

MR. COVEY: But what can you do? Your bounden duty is to get what you can, to get all the money that you can, even though it is only $5.

MR. FRIEBOLIN: Well, apparently you gentlemen are doing a lot of business at the final meeting, and I do not see how you reconcile that with the Act, which says that whenever the affairs of the estate are ready to be closed, a final meeting of the creditors shall be ordered. Now, you are not closing an estate when you are doing all of this business.

MR. KING: You are, certainly.

MR. FRIEBOLIN: I think you may well read the provisions in respect of the final meeting of creditors. Presumably all of the affairs are administered. We do not call any final meeting until the estate is administered and ready to be closed. You cannot close an estate until everything is disposed of.

MR. KING: What use is the final meeting, then?

MR. FRIEBOLIN: I have not been talking about what use it is. I am talking about the law.

MR. BRISTOW: A moment ago I said that I had never had a creditor present at a final meeting, and while that is literally true, there have been two or three cases where I have received a formal notice that there were some unadministered assets which have been discovered between what was supposed to be the final disposition and the final meeting, and I adjourned the final meeting.

A REFEREE: Here is something that may be of interest. In a small estate, where you have got $75 for distribution, how do you distribute it? First, trustee's expense, then referee's expense, then comes attorneys' fees, and then comes the referee's claimed fees. Do you pay the attorney's fees before you pay your own claimed fees? It is my practice to call a meeting whenever there is a dollar's worth of assets in the estate.

MR. OLNEY: There is one thing that occurs to me in connection with this inquiry as to whether the Referee's expenses and fees come in on the distribution ahead of these other things. Personally I do not think it looks well for a case to be closed up with the Referee getting paid one hundred cents on the dollar, on his filing fees, his indemnity fee, and then everybody else pro-rating. What I usually do myself is to cut down perhaps on my indemnity and on the filing fee, and then share equally with other expenses of administration, on practically an equal pro-rata basis. It does not amount to much in dollars and cents, but I really think it looks better to the attorneys and others to see that the referee is not getting his expenses and compensation ahead of the trustee's commissions and the attorney fees.

A REFEREE: You do reduce your claim fees some times?

MR. OLNEY: Yes, I do, sometimes.

MR. COVEY: I think that is a matter of practice.

On the question of attorneys' fees, I have found that a very troublesome thing, especially when attorneys come in and very often file petitions for attorneys' fees, and you know what has been going on, you know about the amount of work that has been done. I am assuming that you have all been more or less active in bankruptcy practice before you were Referees. They come in with petitions for allowances which are out of line. Before I was a Referee, it was the general practice in our district to file petitions for allowances anywhere from fifty to two hundred times more that you expected to get. You had to do that in order to get what you really expected to get. Personally, I always hated that situation, and I made it known to the lawyers generally, when I was appointed Referee, that what I wanted was an honest-to-goodness petition of what they expected to get, and if they would come in on that basis, they were not going to find any quibbling on my part like we used to have before I went in. You will find that 90% of the lawyers will play square with you, but there are just a few in your district who are going to come in on the same old basis. Those are the fellows who make it tough for you and the men you have to crack down on.

CHAIRMAN: I want to thank Referee Covey for his share in this morning's program.

We have now come down to the final subject, and it is one of the most important subjects in our practice, and when I talked to Jerome Kuertz about it, I knew, and he knew that he could not even come within a long distance of covering it in a few minutes, but he is going to try and do the best he can. The subject is "Specifications in Opposition to Discharge."

Specifications in Opposition to Discharge

(a) Burden of carrying forward expenses of hearing.
(b) Improper specifications.
(c) Conduct of proceedings.

MR. KUERTZ: Mr. Chairman and fellow Referees: So far this morning, we have discussed various subjects under the first phase of bankruptcy, namely, the administration of the bankrupt's estate and its equitable distribution amongst creditors. We now come to the second phase of bankruptcy, namely, discharge of the bankrupt from his debts, and the subject which has been assigned to me is "Specifications in Opposition to Discharge."

In opening this discussion, I shall sketch briefly the questions that usually arise in practice.

I. THE BURDEN OF CARRYING FORWARD EXPENSES OF HEARING.

While under the Act, the District Judge has exclusive jurisdiction of the petition for discharge, the practice is pretty general to refer to the Referee as Special Master specifications in opposition to discharge. The Bankruptcy Court under § 2 (18) of the Act, has power "to tax costs whenever they are allowed by law, and render judgment therefor against the unsuccessful party, or (against) the successful party for cause; or in part against each of the parties, and against his estate." But the question arises before judgment is rendered, who must advance the cost of carrying forward the expenses of the hearing. The principal cost is the bill of the reporter for attendance and for transcribing the testimony, and inasmuch as the burden of proof is on the objecting creditor to show to the satisfaction of the court that there are reasonable grounds for believing that bankrupt has committed acts which prevent his discharge, these expenses should be advanced by the objecting creditor and the Special Master can therefore require indemnity for costs, before proceeding.* The Referee may designate stenographer to report testimony.† In my practice I designate the official reporter of the District Court. The cost of subpoenaing witnesses should be advanced by the party calling same. Counsel fees, of course, should be paid by the respective parties. Neither the fee of the bankrupt's counsel, nor that of counsel for the objecting creditors should be paid out of the estate. Of course, where the trustee has filed the objections to the discharge, after due authorization by a creditors meeting duly called by a creditor or creditors, it would be proper to make the allowance out of the estate for his counsel fees, but such counsel fees would be allowed after the specifications had been finally disposed of.

After the District Court finally passes upon the specifications, it renders judgment for the cost of the hearing against the losing party, or for cause against the successful party, or where the circumstances warrant, partly against the successful and unsuccessful parties.

II. IMPROPER SPECIFICATIONS.

Under this heading we can consider the time when they are required to be filed, the various defects of form, indefiniteness and insufficiency to state a valid objection. Some of these are the following:

1. Time for filing specifications. They must be filed on or before the day set for hearing the petition for discharge. This hearing may be postponed for cause, but if there is no entry of continuance, the Court loses jurisdiction thereafter to grant leave to file specifications or amend specifications setting up new grounds of objection. This was decided in *Lerner v. First Wisconsin Natl. Bank of Milwaukee.**
2. Objecting creditor must be party in interest. Specifications may be filed only by "a party in interest." Such interest should be shown by appropriate allegations in the specifications. If a creditor, he need not have filed a claim with the Referee.
3. One of the grounds of objection mentioned in § 14 of the Act must be alleged in its specifications. These grounds are as follows:

   (1) committed an offense punishable by imprisonment as herein provided; or
   (2) destroyed, mutilated, falsified, concealed, or failed to keep books of account, or records, from which his financial condition and business transactions might be ascertained; unless the court deem such failure or acts to have been justified, under all the circumstances of the case; or
   (3) obtained money or property on 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; or
   (4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition, transferred, removed, destroyed, or concealed or permitted to be removed, destroyed, or concealed any of his property, with intent to hinder, delay or defraud his creditors; or
   (5) has been granted a discharge in bankruptcy within six years; or
   (6) in the course of proceedings in bankruptcy, refused to obey any lawful order of or to answer any material question approved by the court; or
   (7) has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities; †

4. All essential facts must be pleaded. Each ground must be stated with full particularity and definiteness, and not merely in the language of the statute. The only ground of objection which may be pleaded in the language of the statute is that the bankrupt failed to keep books of account from which his financial condition and business transactions might be ascertained.
5. Where the commission of an offense is set up as a ground of objection to discharge, it must be pleaded with the same particularity that would be required in an indictment, and all the essential elements of the offense must

* *In re Viola Illma* (D.C. S.D. N.Y. Aug. 15, '34, Woolsey, D.J.) unreported.

† *In re Louis Lash* (D.C. S.D. N.Y. Aug. 1, '35) unreported.

* 294 U. S. 116, 79 L.ed. 796, 55 S.Ct. 360, 27 Am.B.R. (N.S.) 196, CCH Bankr. Serv. ¶ 3226.

† *In re Scheffler* (C.C.A. 25, '34), 68 F. (2d) 902, 25 Am.B.R. (N.S.) 38; *In re Ruhlman* (C.C.A. 2d) 279 Fed. 250, 48 Am.B.R. 3; *In re Rinder* (D.C. S.D. N.Y. Sept. 30, '36) unreported.

be alleged. For instance, if it is a false oath in the bankruptcy proceedings, it must be alleged that the bankrupt "knowingly" and "fraudulently" gave the false testimony, after being duly sworn, with the further allegation of the item of testimony in question, and that the same was false.* (S. D., Sept. 30, '37.)

6. Non-dischargeability of a debt as provided in § 17 of the Act cannot be pleaded in specifications as a ground of objection to a general discharge. It is not proper practice to except from a discharge granted by the court, certain debts which are not dischargeable under § 17, even though they be scheduled by the bankrupt. When the creditor brings suit in some other tribunal, on such debt claimed to be non-dischargeable under § 17, and the bankrupt pleads his discharge as a defense, the court hearing such suit must determine whether the debt is dischargeable or non-dischargeable. † There is perhaps, only one exception to the rule that a general discharge should not contain exceptions: where a bankrupt has in a previous proceeding in bankruptcy been denied a discharge from any of the debts listed in his subsequent proceeding, such creditor can object to a discharge of said debt, and it has been held proper in such case to add a clause to the discharge, excepting the particular debt. This is not on the ground that the debt is non-dischargeable under § 17, but because under the doctrine of *res adjudicata*, the claim is barred.
7. Another instance of improper specifications is where the trustee files specifications without being duly authorized by a meeting of creditors called upon application of a creditor.
8. Defects of form, of which the following are examples:
   (a) Not signed by creditor. Where specifications were not signed by party in interest.
   (b) Lack of verification. Failure to verify specifications. While the official form of specifications prepared by the Supreme Court does not contain a form of verification, under § 18 of the Act, "all pleadings setting up matters of fact shall be verified under oath."
   (c) Verification positive. The affidavit must be positive and not merely on information and belief.
9. Amendments to specifications. It has been held that amendments making the allegations more definite and certain may be made by leave of court. However, after the return day of the petition for discharge, where the hearing has not been postponed by order of court, the court is without jurisdiction to permit an amendment setting up a new ground of objection, or where the original specifications did not state facts sufficient in law to constitute a valid objection, an amendment may not be allowed, after the hearing day on the petition, seeking to charge a valid ground of objection.

III. CONDUCT OF THE PROCEEDINGS ON SPECIFICATIONS.

(a) Reference to Special Master. As previously stated, the court has exclusive jurisdiction to hear the petition and specifications, and may, and usually does, refer the specifications to the Referee as Special Master to hear testimony, and report his findings of fact and conclusions of law.

(b) Burden of proof. In such proceedings, of course, the objecting creditor has the burden of proof. Under § 14, however, if "the objectors shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts, which under this paragraph (b) would prevent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt." Thus in the course of a hearing, the burden sometimes shifts to the bankrupt and requires him to explain the acts charged in the specifications. The burden of proof rests on the objecting creditor as to each element of the ground of objection necessary to be proved, until the Special Master is satisfied from the evidence adduced by the objector that there is reasonable ground for believing that the bankrupt committed the act charged, when the burden shifts to the bankrupt to explain.

(c) Degree of proof. Objections to discharge must be established by a preponderance of the evidence. Even where the ground of objection is the commission of an offense, the general rule seems to be that the objector need not prove the ground of objection beyond a reasonable doubt. In cases where the ground is the commission of an offense, the proof according to some authorities must be clear, satisfying and convincing.

(d) Introduction of testimony of bankrupt on general examination. This may be admitted in evidence in support of the specifications, but it must be formally offered as it does not form a part of the evidence, unless offered or stipulated in. Testimony of other witnesses on examination held before the Referee are not however admissible, unless offered with the consent of all parties. Schedules are of course admissible against the bankrupt.

(e) Rulings of Special Master. When the Special Master rules on objections to the introduction or exclusion of evidence, or testimony, the record should show the testimony or evidence sought to be admitted or excluded, so that the reviewing court may pass upon its competency, relevancy, etc.

(f) Arguments and briefs. After the evidence is concluded, counsel present arguments and briefs to the Special Master, and after the testimony has been transcribed by the reporter, the Special Master prepares and files his report, passing upon the legal questions involved, also upon questions of fact, and giving his opinion on the specifications. He also attaches to his report a transcript of the testimony and evidence, and his findings of fact and conclusions of law, together with his recommendation as to whether the specifications should be sustained or over-ruled.

(g) Confirmation of Special Master's report. After the Special Master has filed his report, the successful party usually files a motion to confirm the report which brings the matter before the District Judge for final hearing and decision.

EDITOR'S NOTE: During the course of the foregoing forum, there was much discussion which could not be reported. Such discussion was informal and the reporter was thereby unable to identify those participating and to make a satisfactory transcript of the remarks.

CHAIRMAN: I want to thank you all for your attendance, your courtesy and consideration. I now turn the meeting back to our President.

PRESIDENT: What is your pleasure?

MR. OLNEY: I would like to move that we extend a vote of thanks to Mr. Kurtz and those who have assisted in this program, which I think has been one of the best things we have ever had in any Conference.

MR. PERSONS: I support the motion. The motion was unanimously carried.

FRIDAY AFTERNOON

An informal luncheon occupied the noon hour Friday and immediately following this buses were furnished by the committee on arrangements of the Kansas City Bar which conveyed the Referees and men guests on a trip through the city of Kansas City and suburbs ending at the farm of Mayor Bryce B. Smith where an opportunity was given to inspect the blooded live stock and view the premises. Refreshments were served at the farm house. The return

* *In re Rinder* (D.C. S.D. N.Y. Sept. 30, '36) unreported.

† *Teubert v. Kessler*, (C.C.A. 3d '24) 296 Fed. 472, *subnom Matter of Kessler*, 4 Am.B.R. (N.S.) 768; *In re Frank Sutton* (D.C. S.D. N.Y. July 6, '37, Leibell, D.J.) unreported.

to Kansas City was by a different route than the trip out so that all who participated were able to get a complete picture of the convention city.

Fifth Session

ANNUAL DINNER

The annual dinner was served in the Roof Garden ballroom on the twenty-second floor of the Hotel Kansas Citian with a sumptious repast and orchestral music. President John M. Thornburgh presided. At the first speaker he introduced Referee James W. Persons, Buffalo, a past president of this Association, who responded informally and humorously ending with a brief appeal to those present that they appreciate the service which as Referee is rendered by them. U. S. District Judge Merrill E. Otis, the junior judge for the Western District of Missouri, was next introduced. He extended greetings to the Referees present and then introduced as the speaker of the evening his senior associate, U. S. District Judge Albert L. Reeves, Kansas City.

(The address of Judge Reeves appears commencing on page 35.)

REFEREE JAMES W. PERSONS
Buffalo
Past President who spoke at our Annual Dinner

Sixth Session

SATURDAY MORNING

PRESIDENT: Gentlemen, we have a rather full morning ahead of us. The Secretary has some letters and telegrams that are to be read. Letters and telegrams were then read by the Secretary.

PRESIDENT: I will ask Referee Paul King to present the next speaker.

MR. KING: Gentlemen, I have a great deal of pleasure in presenting a co-worker on the Chandler Bill, Mr. Charles F. Baldwin, of Washington, D. C., who represents the National Association of Credit Men there, as well as here. Mr. Baldwin has been tremendously helpful in getting our bill before the committee, and we have come to be very good friends. Mr. Badlwin will present the greetings of his association to us.

GREETINGS, CREDIT MEN'S ASSOCIATION

MR. CHARLES F. BALDWIN, Washington: It is a very great pleasure to be here with you at this convention. I had the pleasure of sitting with you in a few of your sessions in Washington two years ago, and since then I have met more members of your Association, and I have really looked forward to the privilege and opportunity of being here with you.

I would like to add just a word of greeting to that expressed by Mr. Montgomery the other day. Mr. Heimann, the executive manager of our Association, and Mr. Fielden, our national president, wrote me and asked me to extend to this meeting not only their personal greetings, but their very best wishes for a successful meeting. I shall certainly report back to both of my superiors that the meeting was as successful as anyone could wish.

I would like to say just a word in connection with the suggestion I understand Mr. Montgomery made the other day, with regard to the possibility that your Association and my Association might at some time in the future hold their conventions at the same time and place. That is a matter which has been discussed on several occasions. I have discussed it with Referee King. We try every year to have a large and fairly interesting convention. I can see what you do at your conventions here. We have a certain community of interest in much of the work of both organizations and I feel that if we could at some future time bring our conventions together, it might be mutually interesting and mutually beneficial.

It has been a great pleasure to be with you, and I thank you for the opportunity of being here.

PRESIDENT: I am sure we appreciate this additional greeting from the Credit Men's Association.

Fred Kruse, of Toledo, has a matter that was left over from the program yesterday, and also some statistical data on the report that the Referees make to the clerk. A new report has been promulgated recently, but still we think that does not present a correct picture of the administration of an estate. I am going to ask Mr. Kruse to present this matter.

SECTION 75 DEVELOPMENTS

MR. KRUSE: Mr. President and gentlemen:

When Mr. Bierce wrote to me a few days ago, asking me to say something with regard to the status of § 75, I doubted very much whether it was worth while to say anything because so few Referees are now interested in § 75, but knowing that our genial Secretary usually has some good reason for this, I went ahead and did a little work on it, and have a short paper to read on the subject.

In order to understand the present status of § 75, embodying the amended Frazier-Lemke Act, it is necessary to briefly refer to the first Frazier-Lemke Act, which was held void by the Supreme Court in the case of *Louisville Joint Stock Land Bank v. Radford,** because in violation of the due process clause of the constitution, in that it substantially impaired the mortgagee's security, these rights being stated to be: (1) the right to retain the lien until the indebtedness secured thereby is paid; (2) the right to realize upon the security by a judicial public sale; (3) the

(Continued on page 36)

* 295 U. S. 555, 79 L.ed. 1593, 55 S.Ct. 854, 28 Am. B. R. (N.S.) 397.

The Anomalies of Bankruptcy *

By Hon. Albert L. Reeves, of Kansas City.†

Mr. Toastmaster:

It would be a herculean task to undertake to present a true picture of our uniform laws on the subject of Bankruptcies.

This subject, and these laws, have so many facets that it would be like shifting the position of the chameleon, or shaking the kaleidoscope. Moreover, I fear that my experience would be similar to that of the blind men of Hindustan, who went to see the elephant. Each one, after different contacts with the great pachyderm, conceived different notions and expressed different views. The one who touched his side at once began to bawl for, said he, the elephant is like a wall; whereas, the one who touched his ear thought he was like a fan; another one holding his tail, thought he was like a rope, and the one that touched his knee believed he was like a tree.

Whoever becomes versed in bankruptcy must be agile in thought and able at all times readily to adjust himself to new aspects, — even then, such person may receive different impressions. It is comparable to the old-time drugstore sign, where letters were so placed that from three different viewpoints three different words were visible.

Bankruptcy, as you know, has been the subject of commendation and condemnation. It has been the flowing spring of both sweet and bitter waters. To some, it brings joy, and to others, it brings disappointments.

When I think of our uniform laws on the subject of Bankruptcies, I recall the Roman tradesman, who, involved in heavy debt beyond his ability to pay, called his creditors together, gave them a splendid banquet, and, at its conclusion made the dumfounding announcement that all his worldly goods had been converted into the repast of which his creditors had so heartily partaken, and that all that remained was his body, which, under the Roman Law, could be divided as the creditors might deem appropriate. He offered his body as the very last of his assets. One of his creditors suffering the greatest disappointment promptly announced that in dividing the body he had a choice. "Let others," said he, "take any other part of the body of this man they may care to have, but as for me, — give me this man's gall."

When I announced my purpose to address you on the subject of "The Anomalies of Bankruptcy," it was my thought that I would give this subject for the program and then talk about something else. I find, however, that it is a good subject.

The provision for uniform laws on Bankruptcies is found in the Constitution. It is in the schedule of powers conferred by that great document upon the Congress. It is there provided that the Congress shall have the power to establish uniform laws on the subject of Bankruptcies throughout the United States. It must be obvious to you that this provision is one of the powers of Congress, and not a judicial power conferred upon the judiciary. It is not one of the cases in law and equity cognizable under the Constitution by the federal courts, nor is it within the constitutional purview of judicial power. The courts of bankruptcy, therefore are legislative courts. The congress could just as well have established its own tribunals for the administration of the bankruptcy law as to impose the burdens of bankruptcy administration upon the judges.

Bankruptcy is a foundling, placed upon the doorstep of the federal judiciary, and, like Topsy, it has "des growed." It is an adopted child of the federal judiciary. The adoption, however, was an involuntary proceeding. It is not a constitutional, but a legislative jurisdiction exercised by the courts. It would be within the power of the Congress entirely to separate bankruptcy from the constitutional courts and place its administration in statutory judges. It, however, elected to make it a legislative arm of the constitutional courts.

While all of the jurisdiction of the constitutional courts is legislative, save only a negligible number of cases vested by the constitution in the Supreme Court, yet the Congress is compelled, when it grants constitutional jurisdiction over cases in law and equity, to vest or confer same upon the constitutional judges. It is not compelled to do so in bankruptcy administration. I doubt if the authors of the Constitution ever intended that the courts should be given jurisdiction in bankruptcies: Otherwise there would have been a statement to that effect in the declaration as to the extent of judicial power. This is one of the anomalies of bankruptcy.

Bankruptcy in its best understood significance means the surrender of property by a debtor for distribution to his creditors, and then the discharge of his debts. Necessarily, this involves the collection and liquidation of the estate so surrendered and the distribution to the creditors.

Emphatically these are law matters, and not questions of equitable cognizance; but, nevertheless, these dour and stern faced law cases are robed in the benevolent and adjustable habiliments of equity. Almost, it is a wolf in sheep's clothing. Law cases are adjudicated according to the rules and practices of equity.

The Constitution of the United States forbids that any of the states shall enact laws impairing the obligations of Congress. Yet, nevertheless, in the exercise of this innocent appearing power conferred upon the Congress, bankruptcy may pridefully do that which the sovereign states cannot do. It is traditionally and continually engaged, not only in impairing the obligations of contracts, but actually discharging the most solemn obligations. In the lexicon of Bankruptcy, the word "sacred" in relation to contracts does not appear.

Our uniform laws on the subject of Bankruptcies are biased, partisan, factional, and characterized with favoritism. For instance, railroads, banks, building and loan associations, and municipalities may not have the benefit of the law willy nilly. Very recently the Congress has permitted municipalities to enjoy a limited benefit of the law.

A farmer and a wage earner may voluntarily use the law, but it cannot be imposed upon them. If one may have the benefit of bankruptcy in a voluntary proceeding, why should not the same individual be subject to the same law in an involuntary proceeding?

The object of the law, as is well known, is to distribute the property of the debtor among his creditors and discharge him from his debts.

There is a departure from that objective until the creditor may experience, under some of the procedures in bankruptcy, a very considerable impairment of his debt with very little inconvenience to the debtor. In fact, under the bankruptcy law, the debtor may seek a moratorium on his obligations without even obtaining a discharge in bankruptcy. Again, under the bankruptcy law, the obligations of the debt may be greatly impaired and yet the debtor may go hence without himself being affected by the bankruptcy law.

Very recently the bankruptcy law has been used as an

* An address delivered at the annual dinner at the twelfth annual Conference of the National Association of Referees in Bankruptcy at Kansas City, Mo., September 24, 1937.

† U. S. District Judge for the Western District of Missouri. Judge Reeves was so appointed in 1923.

instrumentality for the revitalization of sick and impaired corporations. Under these uniform laws, sick corporations now reorganize. They never do this without an impairment of their obligations, and yet the corporation gives up nothing. What is said about corporations, including railroads, as well as business or trade corporations, may also be said of many natural persons, and particularly the agricultural class.

It is one of the boasts of bankruptcy that it will not tolerate preferences in favor of creditors, and yet this law, dressed in the robes of equity, ever protesting its hatred of fraud and preferences, nevertheless sometimes becomes the refuge of fraud and preferences. In older times, cities of refuge were established. The man who killed unwittingly and unawares, and without hatred or menace in his heart, could escape the avenger of blood by running to the city of refuge and crying, "Sanctuary!" The avenger of blood could not follow him into the city of refuge and avenge himself. If a man killed purposely and with malice, then the cities of refuge were not set apart for him.

Bankruptcy is somewhat indifferent to the manner in which the debt was created, although this might be denied under given circumstances, yet it tolerates and encourages the grossest frauds. A farmer, for instance, may voluntarily take bankruptcy. He may choose his own time for the procedure. He may encumber his property, he may transfer it in fraud of creditors, and then wait four months and bankruptcy welcomes him, distributes the property not already turned over to creditors, and gives him an honorable discharge. Moreover, it was the purpose of the law to discharge the debtor from his debts only after he had turned over all of his property for distribution to his creditors. The fundamental idea back of the bankruptcy law was that he should have a fresh start.

Nevertheless and notwithstanding, under our uniform laws on the subject of bankruptcies throughout the United States, the bankrupt may have the benefit of the exemption laws of the state wherein he resides, even though that may result in having set off to him all of the estate owned by him. This means that under the bankruptcy law, the debtor, or bankrupt, may have his debts annulled, and yet take his discharge with all his goods, and go hence without day.

These are a few of the anomalies of the bankruptcy law. Others might be mentioned. But these are enough to point to the difficulties encountered in the commendable endeavor to administer a fair and beneficent law so as to do justice to all and at the same time give an honest debtor, crushed with debts, a chance to start anew.

Proceedings

(Continued from page 34)

right to determine when such sale shall be held, subject only to the discretion of the court; (4) the right to protect its interests in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of a fair competitive sale or by taking the property itself; (5) the right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt.

The new Frazier-Lemke Act sought to preserve these rights. Under it, it is said that (1) liens are preserved in full force and effect; (2) the property is in the control and custody of the court; (3) the debtor must pay a reasonable rent semi-annually, which is to be used to pay taxes and upkeep; (4) the court may require additional payments on principal of secured debts; (5) the creditor may have a judicial sale, at which he may bid in the property; (6) if the debtor fails to comply with the provisions of the Act, or any order made thereunder, or is unable to finance himself within three years, a trustee may be appointed and the property sold.

The Amended Act was held constitutional by the Supreme Court on March 29, 1937, in *Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke.* *

§ 75, as it now stands, is temporary or emergency legislation, and new petitions of farmers under its provisions could not be filed after March 3, 1938, five years after the Act was passed.

On July 22, 1937, the United States Senate, without a dissenting vote, passed a Bill (S. 2215, introduced by Senator Frazier), making the following changes in § 75:

(1) Amending § 75 (c) by eliminating the words "within five years," in the first sentence, which now provides, "At any time *within five years* after this Section takes effect, a petition may be filed by any farmer," etc.

(2) Amending paragraph 5 of subsection (s) by a change in the wording which is not material.

(3) Repealing paragraph 6 of subsection (s) which declared the Act to be an emergency measure and if, in the judgment of the court, such emergency ceased to exist in its locality, then the Court, in its discretion may shorten the stay of proceedings provided for and proceed to liquidate the estate.

This amendment would make the Act permanent bankruptcy legislation and that was the purpose in the mind of the Committee on the Judiciary, as shown by the following language in its report to the Senate (Report No. 899, Calendar No. 917):

> In other words, it makes this legislation permanent legislation.
>
> We wish to make it clear that section 74 of chapter 8, relating to private business, is permanent legislation; that section 77, for reorganization of railroads, is permanent; and that section 77B, which has been added for the benefit of private corporations, is permanent legislation. The only section in which there is a time limitation is section 75, which was for the aid of agriculture.
>
> It may be said that in practically every State in this Union this act is now conserving property for the benefit of both the debtors and the creditors. Under the terms and provisions of this law the farmers now act as the receivers under the supervision and control of the Court and there is no cost to such receivership. The farmer is given an opportunity for 3 years, by paying a reasonable rental, to become refinanced. The creditors lose nothing and the property values are maintained. We feel there is no reason or logic why this legislation should not be made permanent.

The Bill was introduced in the House by Mr. Lemke, who has stated he has been assured by the Judiciary Committee of the House that it will be taken up as soon as Congress convenes in January and undoubtedly passed, but that, in place of making it permanent legislation, they may extend it for just another five years.

Mr. Lemke made an address a part of the Congressional Record under date of April 1, 1937, on "Procedure Under Frazier-Lemke Moratorium," in which he comments upon the purpose of the Act and gives some good advice to farmers who may wish to take advantage of its provisions, which is of interest to those having to do with the administration of this Section. Among other things, he states:

> May I suggest that a farmer ought to be careful and not submit any proposal for composition or extension of time that he knows or has reason to believe he cannot live up to? This act is intended to get the farmer out of debt and keep him out of debt. He must not be too optimistic of his ability to pay but should reason it out carefully and make only such proposal for composition and extension of time, the terms of which he knows he can meet. Otherwise he is just postponing the evil day.
>
> Pay no attention to the street-corner advisor and get a lawyer who knows the law and who is sympathetic and you will have no trouble.
>
> The farmers ought to work through their farm organizations and local attorneys. Members of Congress receive thousands of requests to act in individual cases for farmers, but this obviously is impossible, much as they would like to.

According to Mr. Lemke, the three year period dates from the time the farmer files his amended petition under

* 300 U. S. 440, 81 L.ed. . . . , 57 S.Ct. 556, 33 Am. B. R. (N.S.) 353, CCH Bankr. Serv. ¶ 4547.

75 (s), although it has been held that the amended petition under 75 (s) relates back to the filing of the original petition.* If that is so, then the three year period has expired in many cases and they are subject to dismissal.

In the summer of 1935 we gathered statistics as to the number of cases filed under § 75 from practically every State and District in the country. The corrected figures obtained at that time showed a total of 11,948 cases filed under § 75 and referred to Conciliation Commissioners. Recently we mailed a questionnaire to clerks of District Courts in the twenty-four Districts having the most cases filed as shown by our previous tabulation, asking for the number of cases filed under § 75 during the fiscal years ending June 30, 1935, 1936 and 1937. The time was somewhat short and we have not gotten complete returns, but those received show a large falling off in the filing of new cases, as appears from the following tabulation:

	1935	1936	1937
California, N. D.	482	183	94
Illinois, E. D.	135	45	39
Illinois, S. D.	149	156	12
Iowa, N. D.	319	24	9
Iowa, S. D.	145	114	28
Kansas	633	91	47
Nebraska	110	7	46
North Carolina, M. D.	87	60	13
Ohio, N. W., W. D.	188	40	13
Oklahoma, E. D.	367	210	123
Oklahoma, W. D.	335	140	112
Utah	114	49	15
Wisconsin, E. D.	121	7	4
	3185	1126	555

Some cases of importance and interest involving § 75 proceedings are:

Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke.† holding the amended Frazier-Lemke Act constitutional and construing some of the language of the Act, which is very helpful in its administration. The Court said that the Act "must be interpreted as meaning that the Court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself within the three-year period." It also construes the provision of the Act requiring the first payment of rent within one year to mean that the payment may be fixed within the year but not postponed beyond one year.

First National Bank & Trust Co. of Bridgeport v. Beach,‡ decided by the Supreme Court, May 17, 1937, wherein the Court construed the definition of a "farmer" under § 75 (r), holding the debtor to come within that definition, and reversed the Court of Appeals for the Second Circuit.§

Hoyd v. Citizens Bank of Albany County ¶ decided by the Sixth Circuit Court of Appeals, March 12, 1937, holding the debtor had the right to a restraining order, under § 75, although the case was not filed until after sale on foreclosure but before confirmation.

In re Iverson, ** holding that an extension agreement which reduces the interest payment on a secured debt will not be confirmed, as the Court has no power, against objection, to authorize any reduction either in principal or interest on such a debt. The case is under § 74 but the same reasoning would apply to § 75.

*In re Archibald,** holding that where a farmer failed to obtain acceptance of his proposition under § 75, he could not thereafter file another case under the same section, under the doctrine of *res adjudicata.*

In re Chilton,† holding that a trustee's sale in bankruptcy, such as upon an order of liquidation because of failure to obey an order of the Court to pay rent, or failure to refinance within three years, is without right of redemption, and that the right of redemption in § 75 (s) (3) applies only to a sale under the provisions of that paragraph upon request of the secured creditor.

In re Wright,‡ decided by the Seventh Circuit Court of Appeals, July 3, 1937, holding that the amended Frazier-Lemke Act was unconstitutional to the extent that it authorized extension of the period of redemption.

In re Borgelt,§ cited with approval by the Supreme Court in note 6 to its opinion in *Wright vs. Vinton Branch,* holding that a petition under § 75 may be dismissed if the farmer has not made a proposition which could be considered as made in good faith, as where there is no reasonable probability of eventual debt liquidation.

Cornelison v. Fitch,¶ holding that the money necessary to pay a composition under § 75 must be deposited before the proposition can be confirmed, and that it is not enough to satisfy this requirement for the debtor to allege he believes within a reasonable time he can become possessed of funds to pay the composition offer.

As to the effect of § 75 in the future upon farmers who desire to make loans upon farm mortgages, and whether or not the existence of this section will do farmers in general more harm than good, that is a question. Professor Hanna of the Law School of Columbia University, who has given the subject considerable study, has stated that lenders to farmers other than quasi-governmental institutions will tend to be exceedingly careful in the scrutiny of all their loans; that if the Government should cease its artificially low interest rates to farmers, the net result of § 75 in its present form may be an added interest burden on farmers in general. Private lenders taking such mortgages would undoubtedly scrutinize the borrower and his ability to pay more carefully. The president of a bank in southern Indiana stated to me last summer that his bank was not making any farm loans except the very best risks, because they did not want to become involved in proceedings under § 75.

PRESIDENT: I am sure we are indebted to Referee Kruse for this investigation of § 75 and those of us who are interested in it will read it with profit in the JOURNAL. I regret we will not have time for any discussion of this subject.

We are particularly pleased to have with us today Mr. Samuel O. Clark, Jr., of Washington, a member of the staff of the Securities and Exchange Commission, who has come all the way to address us. His subject is "Corporate Reorganizations under the Bankruptcy Act."

(The address of Mr. Clark appears commencing on page 38.)

PRESIDENT: Mr. Clark, we are indeed gratified to have this wonderful delineation of the Chandler Bill as it applies to corporate reorganizations, and we are also particularly gratified by your reference to the capacity and ability of the Referees to handle more of this work than they are now handling, and to relieve the District Judges of the detail of these matters. While there has been a good deal of criticism about some of the commissions which have been appointed, I think the Securities and Exchange Commission has done, and is doing a really valuable, constructive work, and is one of the high points in the administra-

(Continued on page 42)

* *In re McChesney* (D.C. W.D. Ky. '35) 11 F. Supp. 579, 30 Am. B.R. (N.S.) 8.

† 300 U. S. 440, 81 L.ed. . . . , 57 S.Ct. 556, 33 Am.B.R. (N.S.) 353, CCH Bankr. Serv. ¶ 4547.

‡ 300 U. S. 435, 81 L.ed. . . . , 57 S.Ct. 801, 34 Am.B.R. (N.S.) 1, CCH Bankr. Serv. ¶ 5495.

§ *In re Beach,* 86 F. (2d) 88, 32 Am.B.R. (N.S.) 356, CCH Bankr. Serv. § 4310.

¶ 89 F. (2d) 105, 33 Am.B.R. (N.S.) 712, CCH Bankr. Serv. ¶ 4521.

** (C.C.A. 7th '36) 85 F. (2d) 159, 32 Am.B.R. (N.S.) 41, CCH Bankr. Serv. ¶ 4132.

* (D.C. Minn. '36) 14 F. Supp. 437, 30 Am.B.R. (N.S.) 622, CCH Bankr. Serv. ¶ 4004.

† (D.C. Colo. '37) 18 F. Supp. 934.

‡ CCH Bankr. Serv. ¶ 4700.

§ (C.C.A. 7th '35) 79 F. (2d) 929, 30 Am.B.R. (N.S.) 298, CCH Bankr. Serv. ¶ 3717.

¶ (C.C.A. 8th '37) 91 F. (2d) 5, CCH Bankr. Serv. ¶ 4719.

Corporate Reorganizations Under the Bankruptcy Act*

By Samuel O. Clark, Jr., of Washington †

IT IS a pleasure for me to discuss with you the subject of corporate reorganizations under the Bankruptcy Act, for in this subject the Securities and Exchange Commission and your Association have mutual interests and common objectives. We are both vitally concerned with the many complex and intricate problems inherent in corporate reorganizations. We are both desirous that the reorganization processes shall be conducted in a sound, constructive fashion and solely in the interest of investors. We are both conscious of defects and shortcomings in the existing methods and techniques and are anxious that these be corrected by remedial legislation.

As many of you are familiar with the work of this Commission in the reorganization field, I shall refer to it but briefly. Pursuant to a mandate from Congress, the Commission has been studying protective committees and reorganizations for the past three years. It has included in that undertaking both statistical studies of 77B proceedings and case history investigations of individual reorganizations. Its findings and recommendations have been incorporated in a number of reports transmitted to Congress.

Our studies convinced us of the urgent need for a thorough-going revision of 77B, — a revision such as that embodied in Chapter X of the Chandler Bill.

Section 77B was an emergency piece of legislation designed to meet an emergency condition. The nation was then faced with the problem of readjusting defaults on corporate obligations in amounts unprecedented in our financial history. The available reorganization techniques and procedures, principally equity receivership and the fictional foreclosure sale, were time-consuming, cumbersome and expensive. They were inadequate for coping with the problems involved in rehabilitating the numerous corporate exterprises which could no longer meet their obligations. 77B made resort to these devices unnecessary by creating procedural machinery which enabled corporations to reorganize with less than 100% consent of their security holders, yet without burdensome cash payments to dissenting minorities.

But 77B had its defects. It was mainly directed at matters of procedure. By and large it left unaffected the conventional reorganization processes which had been developed through many years of equity receivership practice, and it failed to correct the abuses which had crept into those processes. These considerations all pointed to the conclusion that thoroughgoing changes to 77B were necessary.

The National Bankruptcy Conference recognized the necessity of amending 77B. It took the initiative and furnished the drive to that end. I cannot pay too high a tribute to the Conference and to the work it has accomplished. Its constructive endeavors to improve the quality of our bankruptcy legislation are too well known to this group to require any elaboration by me. It has been a source of great satisfaction to the Securities and Exchange Commission that it was accorded an opportunity to cooperate with the National Bankruptcy Conference in its efforts to improve 77B, and permitted to submit to the Conference its views and suggestions concerning the amendments it thought desirable. I regard our relationship with the Conference as an excellent example of government and private interests, both vitally concerned in furthering a legislative reform of paramount national importance, moving forward together toward that common goal.

In all these endeavors your Association has been a most constructive force. It has long been aware of the necessity of amending 77B. To the intricate problems involved it has applied the wisdom developed through the practical experience of its members in administering and interpreting the present Act. The members of your Association who have served on the Conference have devoted themselves tirelessly to the work on the new bill. Their ideas and suggestions concerning general policy as well as the specific working of the many sections of the proposed act have proven invaluable.

In view of the importance of Chapter X of the Chandler Bill, I believe it desirable to consider with you this morning some of its more salient provisions and their effect upon existing practices. In so doing, however, I do not wich to overlook the numerous improvements which the bill makes in the form and arrangement of 77B. The long, involved paragraphs of 77B have been broken down into small sections each dealing with a single subject. This lends clarity to the bill, and also makes for ease of citation. No longer will a 77B citation have the appearance — to use the words of Congressman Chandler — of a "quadratic equation". Also of significance are the improved definitions, the more logical arrangement of related concepts, the removal of ambiguities and inconsistencies, and the general clarification of the language. These and other changes of similar nature will appeal to every lawyer who has struggled to grasp the meaning of the present Act. In drafting the bill, however, care was taken to change the existing language only where revision seemed essential. In this connection it should be pointed out that much of the language of 77B has been judicially construed and the desirability of retaining this language wherever possible is apparent.

Turning now to matters of substance, one of the significant provisions of the Chandler Bill is designed to insure that the reorganization machinery will not be clogged with unnecessary cases. 77B, of course, is best adapted to corporations in which there is an investor interest, — that is, where securities are outstanding in the hands of the public. It was probably never intended to apply to the incorporated privately owned business, for whose purposes the less complicated machinery provided by other sections of the Bankruptcy Act was entirely adequate. But a serious defect of 77B was its omission to create the means for discriminating between these two classes of corporations. The result was a flood of petitions under 77B to reorganize what one Federal Judge has aptly termed "hot dog stands." Under Chapter X of the Chandler Bill the burden is on the petitioners to show that the corporation is of the type to which the reorganization provisions are adaptable. To this end the proposed legislation requires that the petition show specifically why adequate relief cannot be obtained under Chapter XI of the bill, — that is, the bankruptcy composition provisions. This requirement merely incorporates into the statute a rule of court already adopted in some districts. To further strengthen the requirement, the court is empowered to dismiss the petition as one not filed in good faith if it finds that Chapter XI would furnish adequate relief to the debtor.

I now turn to the most significant provision of Chapter X of the Chandler Bill — the one making mandatory the appointment of a trustee in every case of appreciable size. The bill puts an end to the practice of continuing the debtor in possession except in cases where the liabilities of the debtor are less than $250,000. In these smaller cases

* An address delivered before the twelfth annual Conference of the National Association of Referees in Bankruptcy at Kansas City, Missouri, September 25, 1937.

† Chief attorney, Protective Committee Study of the Securities and Exchange Commission.

where presumably the investor interest will not be widespread or substantial, the judge may either appoint a trustee or continue the debtor in possession.

The mandatory appointment of a trustee and the duties and responsibilities which he must discharge under the bill are of basic, fundamental importance. They form the keystone for any effective and thoroughgoing revision of 77B in the general interests of creditors and stockholders. They correct serious defects in 77B. A widely recognized evil in the equity receivership procedure was the all too frequent practice of appointing a friendly receiver. Under 77B this practice is continued, and even aggravated. Not only are friendly trustees possible but the debtor, that is to say the old management, may be continued in possession. And in frequency with which debtors took advantage of this privilege — one that theretofore was entirely foreign to our bankruptcy philosophy — is indicated by the statistics compiled by the Securities and Exchange Commission. These show that in 1936, 955 proceedings were instituted under 77B. In 814 of these we have specific information as to where the control of the debtor's estate was lodged. In 545 of these cases the debtor was continued in possession, while in only 269 was a trustee appointed. In other words these figures demonstrate that the chances of the debtor being continued in possession are better than two to one. Moreover, although we do not have the exact figures, we found that the trustee, where appointed, was often an executive officer of the debtor corporation.

The practice of continuing the debtor in possession has served to reinforce the control of reorganization processes which traditionally has been exercised by a small inside group — the company's management, its investment bankers and the protective committees which they organize and dominate. The history of corporate reorganization indicates beyond a reasonable doubt that this inside group frequently has interests antagonistic to those of security holders. The reports of this Commission's study of the reorganization field are replete with instances of such incompatible interests and the immediate or potential harm to investors resulting therefrom. Furthermore, control exercised by this group has meant a virtual denial to investors of an opportunity to participate in the proceedings. In the first place, no means were afforded whereby they might receive accurate and comprehensive information concerning the debtor, its past operations and future prospects. Lacking these essential facts they could not form a sound, intelligent judgment on the many questions arising during the course of the reorganization. In the second place, there was no machinery within the framework of 77B through which the investor's viewpoint could be articulated and his ideas and suggestions concerning plans of reorganization and other aspects of the proceedings obtained and considered. The consequence was that these important functions continued to be performed by a small group of directors and bankers and their chosen protective committees.

These deficiencies in the existing legislation are cured by the requirement that an independent trustee, charged with certain specific duties, be appointed. One of his first duties, and an important one, is to investigate the past acts and conduct of the debtor. He must report to the judge any facts ascertained in the course of such investigation pertaining to fraud, misconduct or mismanagement and irregularities and to any causes of action available to the estate. He has the power, with the approval of the judge, to institute suit on any causes of action he discovers.

It should be noted that these particular provisions in no way increase the powers now possessed by trustees under 77B. They simply vitalize the powers which have traditionally belonged to equity receivers as well as trustees in bankruptcy. Thus, under the Chandler Bill renewed emphasis is given these powers by provisions which insure that they will be actively exercised for the benefit of investors. That is to say, there will be an investigation of the management and a report as a routine matter in every case. By the further requirement that the trustee shall be disinterested assurance is given that his investigation and findings will not be influenced or colored by his own self interest. Under the standards established by the bill, a person cannot be appointed a trustee if he is a creditor or stockholder, an underwriter, or a director, officer or employee of the debtor corporation, or generally, if he has interests adverse to any class of security holders.

The same considerations calling for the appointment of an independent trustee require that the trustee's counsel be disinterested. The importance of the role played by the lawyer in corporate reorganizations needs no elaboration. Obviously the requirement that the trustee be disinterested would be rendered nugatory unless his counsel also is required to meet this standard. This requirement assumes greater importance when it is realized that the increased duties and responsibilities placed upon the trustee by the Chandler Bill increase the duties and responsibilities of his counsel as well.

Where a friendly trustee is selected or the debtor is continued in possession, it is obviously unlikely that an investigation will be made of the conduct of the management. It taxes human credulity to expect that the management will investigate itself, that it will demonstrate its own accountability to the estate if that accountability exists, or that it will reveal its past history if that history would demonstrate its incompetence to continue in office. In other words, if the debtor is continued in possession, or if a trustee is chosen from the management, the underwriter or other special interests in the situation, any causes of action based on past misconduct in all probability will be wholly neglected. And, moreover, lacking the complete information which only a detailed painstaking investigation can reveal, creditors and stockholders as well as the court will be unable to appraise the fitness of the old management to continue in office when the enterprise emerges from reorganization.

The objection has been made that the independent trustee provision will deprive the estate of the benefit of an experienced management familiar with its problems. This criticism indicates a misconception both of the purpose and effect of the independent trustee requirement. The Chandler Bill does not prevent the retention of worthy members of the old management to assist in the conduct of the business during reorganization. It expressly provides that the trustee may employ officers of the debtor at a rate of compensation to be approved by the court. But it also provides that the old management shall not be vested with fiduciary powers and duties which it is not shown to be qualified to fulfill. If the members of the old management do not find sufficiently attractive the opportunity to serve their real principals — the creditors and stockholders — at a fair salary fixed by the court, without the additional opportunities of covering up possible causes of action against themselves, of controlling the reorganization process, of insuring their retention by the reorganized company (and these are the only opportunities of which the members of the old management are deprived by the requirement of an independent trustee) they certainly have no just claim to act in a fiduciary capacity.

Such emphasis as I have placed upon the duty of the trustee under the Chandler Bill to scrutinize the conduct of the management should not obscure other duties of paramount significance which the bill requires him to discharge. These relate principally to the preparation and proposal of a plan of reorganization. In fact, I believe that it is in this connection that the trustee will perform perhaps his most important function. Under the bill it is the trustee's duty to see that a plan is formulated, in cooperation with creditors and stockholders, and their representatives, and submitted to the court. To this end any stockholder or

creditor may submit a plan or suggestions for the formulation of a plan to the trustee. The trustee is directed to give an appropriate notice to this effect to security holders. Upon the filing of a plan by the trustee, a hearing is held upon that plan. At such hearing alternative plans may be proposed by the debtor or any creditor or stockholder. Subsequent to the hearing the judge enters an order approving a plan, whereupon the trustee transmits it to creditors and stockholders. As a necessary preliminary to the preparation of a plan by the trustee or by others, it is the duty of the trustee to assemble the essential data upon which the plan will be based. He is specifically directed to make an investigation of the property, liabilities and financial condition of the debtor, the operation of its business and generally all matters relevant to the formulation of a plan. He is further directed to submit his findings to the judge and to security holders. In substance, the independent trustee serves as the vehicle for bringing into the reorganization process judicial and administrative supervision, scrutiny and control over the formulation and negotiation of plans of reorganization.

It thus removes this essential function from the control of the inside group whose interests are so frequently incompatible with those of creditors and stockholders. For the first time this process will take place within, instead of outside, the court. Under this system full opportunity is provided for investor participation in the determination of the future allocation of the company's assets, earnings and control. Furthermore, the trustee's investigation and report will provide the investors with the data necessary to enable them to participate intelligently in the proceedings. The trustee, of course, will be in an advantageous position to render an intelligent report on these matters. As the operating head of the company he will necessarily be thoroughly conversant with its affairs. Furthermore he will have free access to all its books and records. At the same time, recognition is given in the bill to the fact that, left to their own devices, investors might not take the initiative, or if active investor interest from many divergent groups should appear, progress toward a reorganization might dissolve in a chaos of talk. Here the trustee will play an important role. He will furnish the initiative and the drive toward the consummation of a reorganization. It will be his function to reconcile the divergent views expressed in the plans submitted by investors, weed out the proposals that are unfair or impractical, and evolve a plan which is both feasible and equitable. In all this he, in a sense, will be performing the functions of a reorganization manager; but he will do so as an agency of the court. By clothing the judge with the power to fix a time within which the trustee must file a plan, the bill gives assurance that the trustee will discharge this duty.

Experience with 77B cases points decisively to the desirability of the appointment of a trustee instead of continuance of the trustee in possession. I have found no clearer or more persuasive statement of the advantages of such an appointment than that contained in a memorandum by Referee Charles True Adams which was introduced in evidence at the hearing before the House Judiciary Committee on the Chandler Bill. His wide experience in handling 77B cases in Chicago lends special authority to his views. In his memorandum, which I quote, he lists the following advantages:

1. The number of cases where a plan (regardless of merit) has finally been confirmed is double, proportionately, in those estates where a trustee has been appointed. To say the same thing another way, liquidation has been necessary in double the number of cases, again proportionately, where debtors have been left in possession than in those where a trustee has been in possession.

2. By and large, I have felt far more confident of the fairness and merit of the plans confirmed in trustee cases than I have in those reorganizations where the debtor has retained control during the proceeding. This theory cannot, of course, be factually demonstrated, but the impression upon me has become so definite that I am convinced of its truth. It should also be remembered, in this connection, that I am not considering those cases where confirmation has been refused because the court had tangible reason to feel that the plan was inequitable or that consents had been improperly obtained.

3. In those cases where liquidation became necessary, the assets have been, in most instances, considerably reduced, under debtor management, between the time of the filing of the petition and the entry of the order of liquidation. In a few cases the dissipation of assets has been shocking. Where trustees have been in control there has been little or no reduction of assets. On the contrary, in many cases, particularly where assets consisted of real property, trustees have succeeded in substantially increasing the assets of the estate.

4. In spite of the usual contention that the appointment of a trustee adds to the expenses of administration, it has been my experience that this is not true in practice. Aside from questions of conservation, actual administration expense has generally been less, proportionately, in cases where a trustee has been in possession.

5. The speed of administration and the continued forward movement of these causes is, in almost all cases, definitely quickened by the appointment of trustees.

It should be borne in mind in considering the above, that I was definitely in favor of the provision allowing debtors to remain in possession when I first came into close contact with 77B. I have been gradually convinced of its impracticability more or less against my will.

I shall now discuss with you the provisions of the Chandler Bill dealing with the scrutiny of the plan of reorganization by the court. The bill contains the significant provision that the judge after a hearing must find that the plan is fair, equitable and feasible before it is transmitted to creditors and stockholders. This requirement is implemented by the further provision that any assents, conditional or unconditional, to a plan solicited prior to such court approval shall be invalid. These provisions remedy serious defects in the present procedure. The practice has been, with some exceptions, to formulate a plan and obtain assents thereto prior to any judicial scrutiny of its terms and provisions. Frequently it is not until a late stage in the proceedings that the reorganizers present the plan to the court and request its seal of approval. At that time there is great pressure upon the court to accept the plan presented to it. Arguments are presented that much time, effort and money has been spent in the forumlation of the plan and in the solicitation campaign — that changes may mean considerable further expense and delay. Then there is the yet more impressive argument that the plan has met with the approval of stockholders and creditors and should, therefore, not be changed by the court. This argument serves to divert attention from the merits of the plan and to induce a natural reluctance to run counter to the apparent wishes of a large percentage of investors. It ignores the well-known fact that acceptances from investors frequently do not reflect the mature and informed judgment of investors on the merits of a plan, and that not uncommonly oppressive solicitation methods are used. Although in exceptional cases courts at a late stage in the proceedings may order substantial changes in plans which have met the approval of an overwhelming majority of creditors and stockholders, the normal effect of the present practice is approval of such plans without substantial change.

Under the Chandler Bill courts no longer will be subject to the natural disinclination to reject a plan late in the proceedings. And by providing that a plan shall receive the critical scrutiny of the court before it is laid before the creditors and stockholders, greater assurance is supplied that the plan ultimately adopted will be fair and equitable.

The provisions of the Chandler Bill respecting the management of the reorganized company are also of paramount importance to investors. These require, first, that the manner of the selection of the management as specified in the plan shall be in the interest of investors and consistent with public policy and second, that the judge in confirming the plan must be satisfied that the appointment of the particular individuals is likewise in the interest of investors and consistent with public policy. 77B contains no inkling as to whether or not the selection of directors and officers of the reorganized company is a matter within the court's jurisdiction. Accordingly, courts generally leave these matters to the conventions of the parties. In recognition of the principle, which has been stated so frequently as to

become commonplace, that in the eyes of investors the quality and integrity of management are as important as the allocation of the company's assets and earnings among the various classes of security holders, this defect in 77B is cured by placing the selection of management within the jurisdiction and supervision of the court.

There are other significant provisions of Chapter X of the Chandler Bill which time permits me to dwell upon but briefly. For example there is the provision granting security holders the right to be heard on all phases of the proceedings. 77B limits their right to be heard to questions of the permanent appointment of the trustee and the proposed confirmation of a plan except where formal intervention is granted. No convincing reasons appear why the real owners of the enterprise should be restricted in this fashion.

Of like importance are the steps taken to enlarge the functions of the indenture trustee, and to enable it to serve an active role in reorganizations. The indenture trustee is expressly authorized to file a petition, or an answer controverting a petition filed by others, and to file proofs of claim for all securities issued under the indenture. In addition the indenture trustee is entitled to be heard on all matters arising in the case. These provisions not only give the indenture trustee a status in the proceedings which is now uncertain under 77B, they also clothe such trustee with authority to act for the protection of the holders of securities issued under its indenture.

The revised provision respecting the venue of the proceedings deserve brief mention. 77B permits a petition to be filed with the court whose territorial jurisdiction includes the state of incorporation of the debtor. This might be far distant from the center of the corporation's activities. In restricting the venue of the proceedings to the court where the principal place of business or principal assets of the corporation are located, Chapter X insures that the proceedings will be conducted at a place which probably will be more convenient to creditors and stockholders.

Another improvement over the present procedure is provided by Section 24 of Chapter IX of the Bill which allows an appeal as of right from an order confirming or refusing to confirm a plan. Under the existing statute, an appeal can be taken from the confirmation of a plan of reorganization only if the appeal is first allowed by the appellate court. It seems indisputable that on matters as vital as these, interested parties should be entitled as a matter of right to a prompt review by a higher court.

Another salutary provision is that which permits the judge to disqualify claims or stock in computing the requisite majority for the acceptances of a plan, where the holders of such claim or stock are not acting in good faith in consenting to or rejecting the plan. This would, for example, enable the court to confirm the plan over the objection of any racketeering group engaged in a "hold-up". The courts have pointed to their lack of power to cope with this situation under 77B.

Special mention should be made of the provisions of the Chandler Bill which are aimed at the all too frequent practice of trading in the securities by those who occupy fiduciary positions in the reorganization. Under the bill the judge is directed to deny compensation for services to any person acting in a representative or fiduciary capacity if he has purchased, acquired or transferred any claims or shares of stock after the commencement of the proceeding. This measure should go far to discourage protective committeemen and other fiduciaries from buying or selling the debtor's securities on the basis of their inside information concerning its condition and prospects. This amendment cannot be regarded as novel or extreme; it merely codifies the enlightened judicial viewpoint expressed in certain 77B cases where the issue has already been presented.

The last provisions of the Chandler Bill which I shall discuss with you this morning are those which authorize the Securities and Exchange Commission to become a party in interest in the proceedings, and to prepare reports on plans. These constructive steps are taken in recognition of the fact that 77B cases involve more than mere abstract questions of law — that intricate and complex problems of business and finance are always present in reorganizations of any substantial size. Accordingly it has long been felt that the courts should receive the expert advice and technical assistance of a disinterested administrative agency on these matters.

Under the Bill the Securities and Exchange Commission is authorized to file an appearance in any case. It thereby is clothed with the status of an intervening party and has the right to be heard on all questions arising in the proceeding.

Now this does not mean that the Commission will necessarily play an active role in every reorganization. This obviously cannot be done for two reasons. In the first place the burden on the Commission of providing a sufficient personnel and adequate administrative machinery to handle all the cases would be intolerable. And in the second place many cases would not involve a sufficiently substantial or widespread investor interest to warrant our participation. While I cannot predict what experience in administering these provisions of the Act will teach us, I believe that it will be in the larger cases where the capital structure of the debtor is involved and complicated and its security holders numerous that our assistance will prove the most helpful.

The provisions of the bill authorizing the Securities and Exchange Commission to render reports on plans are designed to provide assistance to both the courts and investors. It is provided that the court in any case may refer plans to us for our scrutiny and report. In cases of major importance — that is where the scheduled liabilities exceed $3,000,000, the court is directed to submit any plan deemed worthy of consideration to us. It is believed that at the hearing specified in the bill at which the trustee submits his plan, and the security holders and the debtor may submit alternate proposals, the number of feasible plans will be reduced to very few — two or three at the most. These will be submitted to the Commission. The Commission, after making a detailed study of all available information concerning the enterprise and the plan, will render its report to the court. After receipt of our report, the judge then decides which plan (or plans) are fair and equitable, and feasible, and directs their submission to security holders for acceptance or rejection. To insure further that the creditors and stockholders will act on the basis of comprehensive and informative data, the bill requires that the opinion of the judge and the Commission's report accompany the plan. You will note that the administration procedure is purposely made flexible. The Bill makes certain that the expert knowledge and technical equipment of the Commission will be placed at the disposal of the court in the larger cases which give indication of a national interest; it also provides for such aid in necessitous cases irrespective of size.

In drafting these provisions care was taken to preserve in the court its primary responsibility to determine the fairness and feasibility of reorganization plans. The Bill provides that the Commission's report shall be advisory only. The court in its discretion may accept or reject it. Thus the uncertainty and perhaps embarrassment which might result if the court's jurisdiction were shared with an administrative agency is avoided.

It is a source of great satisfaction to the Commission that these provisions for its participation have met with widespread acceptance. Among others, many federal judges have told us that they welcome it heartily — that it fulfills a long-felt need.

From another viewpoint these provisions give us the greatest satisfaction. I have previously emphasized the fact that you, the referees, and we, the Commission, have

common interests and objectives in the reorganization field. I have referred to our mutual endeavors to improve the reorganization system — endeavors which contributed to the present Chandler Bill. Under the proposed legislation we shall both assume active duties and responsibilities — it will be your duty to hear many of the issues of the case as referees or special masters; and it will be our duty, if the situation warrants, to appear in the cause, and to prepare reports on plans. If the Bill becomes law, an even greater opportunity will be presented for our mutual cooperation in the promotion of sound and constructive corporate reorganizations.

Proceedings

(Continued from page 37)

tion of commissions today, and, also, that the relationship of this Commission with the Referees and with the National Bankruptcy Conference, has been most pleasant and most cooperative. We certainly appreciate these words of Mr. Clark. I am sorry that he was not here yesterday to hear the tribute of one of our members paid to this commission.

At this time I will call on Mr. Peter Olney of New York to say just a word.

PRESENTATION TO THE SECRETARY

MR. OLNEY: Dear Herbert, your fellow members, friends and admirers present to you this very slight token of our undying affection for you and our deep appreciation of all that you have done and are continually doing for this Association, and for each and every one of us individually. God bless you.

MR. BIERCE: Mr. President and fellow workers: I fully determined before I came here to control my emotions under any circumstances. I felt that I did not have them under control last year, and I am somewhat fearful that I do not have them now. This, as you must know, is very greatly appreciated. Years ago I used to enjoy this 25th day of September annually, but then I got down to the point where I was satisfied to see it once in a decade. To tell you the truth now I do not like it, because it happens to be the anniversary of my birth.

But I want to say that I thoroughly enjoy my relations with every member of the Association, and with the Association, which brings me in contact with the American Bar Association, the National Association of Credit Men, the Commercial Law League of America, the American Bankers Association, and all of these other organizations, and I shall be very happy to continue, as far as my ability permits, such efforts as I can put forth to further our interests in the general cause of the service to this country in the administration and development of the Bankruptcy Act.

MR. OLNEY and others: Happy birthday, Herbert. Many happy returns.

THE PRESIDENT: We will now have the report of the Committee on Legislation.

SECRETARY: I have it here.

REPORT OF COMMITTEE ON LEGISLATION

To the Association:

Since the special Conference Committee has had in charge all matters pertaining to the Chandler Bill, the Committee on Legislation makes no report thereon and contents itself with stating the measures affecting bankruptcy which have been passed by Congress and became law since our last Conference:

1. A new Municipal Debt Readjustment Bill was passed and approved August 17th, 1937, to take the place of the law on the same subject which was declared un-constitutional on May 25th, 1936;*

It provides for a voluntary procedure only. With the petition must be filed a plan of readjustment approved by 51% of the creditors. A Plan, like the Plan under 77B, may be approved and become binding after approval by 66⅔% of the creditors and if the Court finds it fair, equitable and for the best interest of creditors.

Referees have no jurisdiction under it. It terminates June 30th, 1940.

2. On August 12th, 1937, a bill was approved (HR. 4343) adding § 3½ to § 77B (c). It gives the Judge the power, believed doubtful as the law stood, to authorize the lease or sale on proper conditions of property owned by the debtor corporation if that appears to be desirable and in the best interests of the debtor and creditors.

3. There also was enacted a so-called Borah Bill (S. 2849) which prohibits parties or attorneys in bankruptcy, receivership or reorganization cases from making any agreement as to fees or compensation, to be paid out of assets in such proceedings. The Federal Judge must fix the fees regardless. This is a penal statute carrying a fine and imprisonment.

4. The Supreme Court having on March 29th, 1937, held the Amended Agricultural Extension Act constitutional * and the National Bankruptcy Conference having omitted entirely to take this enactment into account in drafting and proposing the Chandler Bill, we believe it to be of the utmost importance that this new measure be recognized and correlated in an amendment to that Bill; in any event that the Conference take recognition of it.

We say this for a number of reasons: (1st) There is a probability that Congress at the next session will pass a bill removing the time limitation on this Act (it is now limited to March 3rd, 1938) by passing the Frazier Bill (S. 2215) which has already passed the Senate (July 22nd, 1937). This will make the Agricultural Extension Act permanent legislation. (2nd) This Act provides for Conciliation Commissioners who may act even after the debtor is adjudicated a bankrupt. This Association has already gone on record (as have other organizations) as to the impropriety and undesirability of providing for such officials, combining, as they do, judicial functions with specific duties to the debtor or bankrupt. Nothing but criticism of bankruptcy administration can ensue from this incongruous arrangement. (3rd) There are pending in Congress a number of measures to extend the provision for Conciliation Commissioners now found only in agricultural extension proceedings, in the individual Debtor Relief § 74. (HR. 6007; S. 2047). This will further complicate the situation.

We recommend that such part of this report as may be regarded of value to organizations or committees interested in the administration of the Bankruptcy Law, be sent to such organizations and committees as may be decided by the President of this Association.

Respectfully submitted,

CARL D. FRIEBOLIN, chairman.

PRESIDENT: What is your pleasure, gentlemen, with reference to this report?

On motion of Mr. Olney, seconded by Mr. Woods, the report was approved.

PRESIDENT: We have a committee on Uniformity of Practice. When this Association was first organized, it developed that the practice in the United States was very very different in the several sections of the country. In fact, no two Referees followed the same course of procedure. The first three or four years of these Conferences were devoted almost entirely to working out rules to make the practice and administration of bankruptcy cases more uniform throughout the United States. I think that this Association has probably done more along that line than any other one organization or institution that I know of.

* *Ashton v. Cameron County Water Improvement District Co. One*, 298 U. S. 513, 80 L.ed. 910, 56 S.Ct. 892, 31 Am.B.R. (N.S.) 96, CCH Bankr. Serv. ¶ 4020.

* *Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke*, 300 U. S. 440, 81 L.ed. . . . , 57 S.Ct. 556, 33 Am.B.R. (N.S.) 353, CCH Bankr. Serv. ¶ 4547.

The National Bankruptcy Conference has more or less taken over that work, but we are still retaining that committee and it is still making progress. I believe that our discussions here yesterday showed that we are much more nearly in accord in our methods of practice and our methods of handling cases than we have ever been before. Of course, each of us has our own different slant on sales and on the filing of claims, and on this, that and the other methods of procedure. But it struck me very forcibly that we had made great progress in getting our practice and procedure more uniform, certainly than it was in the early days.

Referee Paul King is chairman of that Committee on Uniformity of Practice.

REPORT OF COMMITTEE ON UNIFORMITY OF PRACTICE

MR. KING: The subject of Uniformity of Practice as pointed out last year in Detroit and at prior conventions, has been rather obscured by the consideration which we have been giving to the revision of the Act itself, obscured as an independent subject, I mean, of course. I am not sure but what our new referees, that is, the referees who are attending their first convention, may have thought from the discussion yesterday morning, that there is no such thing as uniformity of practice at all. We find so much diversity in respect to some of the administrative details that one might come to that conclusion. I agree with our President that we have been making some progress. I am not sure that all of us would agree that uniformity of practice is essential. I have never gone so far myself as to insist that uniformity in every detail is a requisite of good administration. I have felt that we could reasonably go as far as to say that in the major procedures under the Act there ought to be uniformity, and for this reason, that we now have such a wide-spread diversity, geographically, of creditors, they ought to be able to feel with the major proceedings in the bankruptcy court that they could be as much at home in one jurisdiction as in another, — the practice ought to be substantially the same for their benefit.

Now, we have approached this, as you know, in the way of preparing uniform district rules and these rules are still on the "docket", so to speak. We have realized, of course, that should we finally promulgate a set of rules which might be called model rules, or standard rules of practice, there would be some considerable difficulty and delay in securing their adoption. Undoubtedly they would not be adopted in all jurisdictions, and, where adopted, might be adopted only in part. That is a rather slow and tedious process, and not very effective, and, for the very natural reason, of course, that in each jurisdiction there has grown up a certain method of doing things, and in each jurisdiction that is regarded as the best way, the real right way, and Referees are sometimes loathe to give up the way in which they have been doing things for possibly what might be even a better way. They, and the attorneys practicing before them, know the way they are doing things, and there just a natural reluctance to change. That is perfectly understandable.

In the splendid address which Judge Reeves gave to us last night, he pointed out some of the anomalies of the Bankruptcy Act. He might have adverted to the lack of uniformity in administration. I think the Act rather invites lack of uniformity. For instance, in the matter of exemptions, which is so important, leaving the property to be exempted to be defined by the statutes of the state. We know ourselves how diverse those statutes are, how they say in some states that a bankrupt can retire and live on the interest of his money, owning business blocks, and so forth, which, under the law of that state, are exempt; while in other states, exemptions are much less. So, in its operation, the Act, while supposed to be a uniform law on the subject of bankruptcy, is very un-uniform.

Another way of achieving uniformity to a degree would be through a revision of the General Orders. If the Chandler Bill should pass, or, perhaps I should say, when it passes, the Matter of the General Orders may be taken up, and perhaps we might secure an invitation from the Supreme Court to assist in a revision of the General Orders. I presume that we ought to be modest about it and not thrust ourselves forward in any way.

Take the matter of sales, which was discussed yesterday morning, the real conflict between the Act and the General Orders is very confusing. It really brings about a lack of uniformity in itself, and I do not see how it could be otherwise. You are left in a confused state of mind after reading both the Act and the General Orders. So each Referee has built up his own system of sales, which is all that he could do under the circumstances.

A third way of bringing about uniformity is in the Act itself. One of the things that Judge Sumners, Chairman of the House Judiciary Committee,— and by the way he is in the city, and I wish he could have been here this morning; an invitation was to be extended to him, I believe — asked me in the presentation of the Draft at the first hearings before the Judiciary Committee, how much of the new act is in the nature of rule-making. I had not looked at it from that standpoint, and I craved a couple of hours, during the noon recess, to determine that. I made a hasty calculation, and, much to my surprise, I found that practically one-third of the draft is given over to trying to establish uniformity throughout the United States in the administration of the Act. That will be very helpful, I think, to all of us.

I have not attempted to make any tabulation of these various provisions, but I thought you might be interested in just a few, which are purely illustrative.

For instance, under the Act, an examination of the bankrupt must take place in every case. This is now a very diverse matter, as you know. In some jurisdictions there are examinations if the creditors want them, and, in others, there must be an examination always. So, when this bill passes, we will have examinations in every case.

One thing that I think is important, which we have borrowed from the British act, is the requirement that each bankrupt shall file "a Statement of Affairs," in a form to be prescribed by a General Order of the Supreme Court. That will be filed and sworn to, to become a part of the record, so that there will be some information in a bankruptcy file about the bankrupt, and about his affairs. You go to the average file nowadays, and you cannot find much about the business that the bankrupt has been in, and how he got into the condition he is in, much about his assets — really, there is very little in the file except what you can pick up from the schedules. In those jurisdictions where there is a record kept of the testimony taken at the examination of the bankrupt, of course, you have the information, but those districts are very few and far between, as I understand it. Some districts have a stenographic record taken, but there are no transcripts unless there is occasion for use of the transcripts, which is not very frequent.

Another diversity of procedure is in the appointment of trustees. I was interested yesterday in the expression of the referees present. I think in perhaps a majority of the districts represented trustees are not elected or appointed in every case. In many districts they are so appointed. In our own jurisdiction we borrowed the idea from Referee Persons, and we like it very much. We have a trustee in every case. Under the Chandler Bill, there will be a trustee in every case.

The regulation of ancillary receiverships is a very un-uniform matter. Of course, we do not need an ancillary receivership every day, but occasionally there is a necessity for one.

The matter of final meetings is another case where there is a diversity, as indicated yesterday. The Chandler Bill

provides that where there are no assets there need not be a final meeting of the creditors.

The indemnity fund of the referees is a point where there is great diversity; in fact, I do not know of any two jurisdictions having such funds where the procedure is the same. Under our Section 62, paragraph 2, there will be a recognition of indemnity funds. Latitude is, however, here given to the several districts to regulate the matter by rule.

The matter of practice on petitions for review is very diverse, as we all know, and this has been covered in the Chandler Bill, and there will be a uniform practice, so far as the Act can provide it.

I think perhaps one of the most important things tending toward uniformity are the provisions of the Chandler Bill relating to compositions. These various forms of composition are embodied in Chapters X, XI, XII and XIII. We have several different, entirely different, methods of handling compositions under the present Act. You would hardly recognize them. Take the New York and the New Jersey rules of procedure, they are entirely different from those in Michigan and other states.

So that, as you can see from these illustrations which I have given you, there is a very well-defined trend towards uniformity, and uniformity, as I believe, in a reasonable sense. There is no necessity for being uniform in every minute detail, but, as I believe, there is a desirability of having uniformity in the major procedures.

When the Act is passed, and when the General Orders are revised, and when the model district rules are presented for consideration and adopted in all the districts, then I hope we will have uniformity of practice.

I thank you very much.

REPORT OF COMMITTEE ON ETHICS

MR. WOODS: Much to my surprise, after the last meeting of Referees, I received a notice from our President that I had been appointed chairman of the Committee on Ethics. I had attended every meeting of this Association since I became a Referee, in 1927, but I have never heard of a report, or a Committee on Ethics up to that time. Having some duties thrust upon me, I wondered what they were, and in receiving the volume of the program for the American Bar Association this year, running through it, I found and remembered then that the Federal Judges had adopted a code of professional ethics, called the Canons of Judicial Ethics, in 1934, and it seems to me that it would be a proper thing at this date to approve and adopt such as had been adopted by the Bar Association for the Federal Judges, as far as such canons were applicable to the practice of Referees in bankruptcy.

I sent a letter with this statement to the other members of the Committee, and prepared a form of report. Out of courtesy to my friend Paul King, I sent him a copy of my report, and, much to my surprise, I received from Referee King a notice that the Association of Referees in Bankruptcy already had a Code of Ethics which had been adopted at its second meeting but of this Code I have never heard a word in the meetings that I have attended.

With that preface, I will submit this report of the Committee.

The Committee on Ethics of the National Association of Referees in Bankruptcy recommends the adoption by this Association of the Canons of Judicial Ethics of the American Bar Association, as adopted on July 9, 1934, and in such form as published in Volume 61, Page 1026 of the 1936 Reports of the American Bar Association, in lieu of and as a substitute for the Code of Ethics heretofore adopted by the Association, in so far as such Canons of Judicial Ethics are applicable to the practice in Bankruptcy, and as such may be modified by the local rules of court in the several Federal Districts of the United States.

In connection with that I have prepared this:

Adoption of the Canons of Judicial Ethics by the Referees' Association would replace the Code of Ethics patterned after the Code of a service club, adopted by the Association at its second convention at Buffalo.

The recommendation is that this Committee's report be accepted, filed and held for action at the next annual convention. This recommendation is for two reasons: (1) Referees will thus have opportunity to examine and study the Canons of Judicial Ethics; and (2) the committee of the American Bar Association has recommended changes in this code which are to be acted upon at its convention next year.

So when the Canons of Judicial Ethics have been amended, the Referees can next year consider and adopt the Judicial Canons if believed suitable to their Judicial activities.

I submit this report.

PRESIDENT: You have heard the report, which recommends that no action be taken at this time thereon, but that the matter go over for action until next year.

MR. SNEDECOR: I move that the report of the Committee be received and placed on file to be acted on at the next meeting of the Association, and that the Committee be continued. Seconded.

PRESIDENT: I believe it would also be advisable to have the Code of Ethics as adopted at the Second Conference, and this Committee's report, published side by side in our JOURNAL so that we will all know what it is. Will you amend the motion to that effect?

MR. SNEDECOR: Yes.

The motion, as amended, was unanimously carried.*

PRESIDENT: We have a special committee in this organization which has been very active in formulating the Chandler Bill, and, in conjunction with the representatives of other organizations, it's what is known as the National Bankruptcy Conference. Watson Adair, of Pittsburgh, has been the chairman of our committee. I do not know whether he has a report or not.

SECRETARY: There is no report at this time. I think we can pass it.

PRESIDENT: I think, in our discussion of the Chandler Bill, that the remarks of Referee King have covered that subject, just as fully as it could possibly be done.

MR. KING: Perhaps a little tribute to Watson Adair would be appropriate at this time. He has certainly been on the job every minute. He has attended many meetings of the drafting committee. We have met with him in Pittsburgh. He has given himself most unreservedly to this work. He has been of particular value. Those who know him intimately will know what a very fine mind he has; it has a peculiar trend, and a very valuable one. The enthusiast who is looking for an affirmative proposition only sees what he wants to accomplish, naturally. Watson has the ability to see not how a thing will work, but to see how it will not work, which is equally important, and he has saved us, I am sure, many pitfalls, in the drafting of the Chandler Bill, because he has been able to visualize what some of us could not always do, just how it would not do to have a given provision in the act, and how to make it so that it would work. So I could not refrain from just saying these things in his absence. He could not be here, but he has more than made up for his absence here by the devotion which he has given to the work of the Conference.

PRESIDENT: There has been some discussion at various times about an International Bankruptcy Conference, a conference between Referees of the United States and Canada, and the administrators of bankruptcy in other countries. I appointed, at the Directors' meeting in Chicago in June, a special committee to make some investigation and report on the feasibility and the practicability of an International Conference. Referees King, Bierce and Glenn are members of that committee. While it may be a rather

* This Code will be reprinted in a later issue. ED.

distant vision, still it may be something that can be accomplished in the very near future. In any event, we have this committee with us and we will be glad to hear their report at this time.

REPORT OF SPECIAL COMMITTEE ON INTERNATIONAL CONFERENCE

MR. KING: This is positively my last appearance!

The President has referred to the action taken by the Detroit Conference, where a resolution was adopted initiating an International Conference, or its possibility. Pursuant to that action, and our appointment as a committee, we sent out a letter to certain bankruptcy leaders in various countries, with the form of questionnaire. One paragraph of this letter reads as follows:

> It has occurred to us that because of your extensive experience in bankruptcy law and administration that you might be interested in an International Conference, and on behalf of the Committee I am writing you to extend a most cordial invitation to participate in it and to serve as a member of a General Committee to arrange for it. The 1937 Conference of the National Association of Referees will be held in Kansas City, September 23, 24 and 25, next, and we would be happy, indeed, to hear from you before that time and to receive your acceptance of this invitation, if it appeals favorably to you.

We selected as persons to be invited, the authors of various articles which appeared some time ago on bankruptcy law and administration from various countries. These persons were:

William J. Reilley, Ottawa, Canada.
Wintringham Norton Stable, London, England.
C. W. Hauss, Berlin, Germany.
Achille Bossi, Milan, Italy.
Sanchez Mejorada, Pachuca, Mexico.
Martin N. Fehr, Stockholm, Sweden.
Thor Haavind, Oslo, Norway.
Johan DeVries, Zaandam, The Netherlands.
Frithjof Kemp, Copenhagen, Denmark.
Henning Holm-Neilson, Copenhagen, Denmark.
J. H. Greenberg, Toronto, Canada.
Maitre Felix Lohse, Paris, France.
Charles E. Hunt, K. C., Newfoundland.
Agis P. Tambacoupoulos, Athens, Greece.

There has not been time since the communication went out for us to receive replies from all of these gentlemen. I have had several. They are favorable. Only yesterday there came one from Maitre Felix Lohse of Paris, in French, which my good friend Baldwin fortunately could translate for us.

The first question reads, "Are you in favor of holding the proposed International Conference on the subject of bankruptcy?" The answer is, "Oui." (Yes). So on through the list. The question was asked as to the time to hold it, and he says September. He feels that we should hold it, 1, in Paris, 2, Lucerne, or 3 Brussells.

In this connection, through Mr. Baldwin's kindness, I have been put in touch with the questionnaire which has been sent out by the International Chamber of Commerce. It seems that the International Chamber of Commerce either has had, or will have a meeting in Portland this year. This reads:

> The object of this report is to furnish a brief account of the inquiry undertaken among National Committees, in accordance with recommendation passed by the International Chamber of Commerce at its Paris Congress (1935), concerning legal provisions and administrative rules in the different countries affecting the liquidation of the assets, the classification of creditors, as well as the rights of creditors in the case of liquidations of limited companies.
>
> At the Congress held by the International Chamber of Commerce in 1935 in Paris, a report was submitted on the results of an inquiry instituted among National Committees as to the legal provision made in their respective countries for the protection of the rights of creditors.
>
> The three questions put to National Committees were as follows:
>
> "1. Does your Bankruptcy Law contain any provisions to prevent a business man who anticipates bankruptcy from disposing of assets so as to save them from creditors having a claim thereto?
>
> "2. Are debtors in your country obliged to keep proper commercial books and to produce them on bankruptcy so that all transactions during a period previous to bankruptcy can be brought into account?
>
> "3. Have creditors a right to inspect these books?"
>
> After considering the National Committees' replies, which are analyzed in Document No. 7 of the Paris Congress, the International Chamber of Commerce recommended all countries to make strict provision in their laws:
>
> 1. For the keeping of proper books of account and their production on bankruptcy;
>
> 2. To avoid transfers of property before bankruptcy to the detriment of creditors.
>
> The Chamber further expressed the opinion that the scope of the initial inquiry should be enlarged, in order to provide the commercial community with information as to the legal provisions and administrative rules affecting the liquidation of the assets, the classification of creditors, as well as the rights of creditors in the case of liquidations of limited companies.
>
> In accordance with this recommendation, the National Committees of the Chamber were consulted on these three points. Nineteen replies were received — from the American, Australian, Austrian, Belgian, British, Estonian, Finnish, French, German, Greek, Italian, Luxemburg, Netherlands, Norwegian, Polish, Spanish, Swedish, Swiss and Yugoslav National Committees.
>
> The documentation thus collected was submitted for examination to a small Committee of Experts composed under the chairmanship of Dr. Velimir Baikitch, former professor at the University of Belgrade, of Messrs. Percerou, professor at the Faculty of Law in Paris, P. A. Archer, Paris representative of the Federation of British Industries, Dr. Roman Kuratow-Kuratowski, barrister, Warsaw, J. Steels, Head of the Economic Intelligence Department of the Societe de Transports et d'Enterprises industrielles, Brussels.

After considering these replies, this Committee felt that there should be a more general questionnaire, and so a draft questionnaire has been prepared and has been sent out by this International Committee, and there are six questions in it covering the subject of bankruptcy and bankruptcy administration. The purpose of my citing this is to indicate that there is an interest in this. We do not, of course, in any way or sense wish to duplicate or cover the field which this group might now be giving attention to.

My thought would be, on behalf of the Committee, that we pursue our investigation further as to the work already being done, and that in anything we may work out under our resolution we avoid any duplication of effort.

I recommend that the committee be continued, and that they be given authority to develop the idea, and to make any proper arrangements subject to the approval of our board.

MR. BURNETT: I make that as a motion. Seconded and unanimously carried.

PRESIDENT: The committee will be continued, or the incoming President may appoint a new committee. I believe it would be a mistake to change the personnel of this particular committee, because the members are very much interested in the subject. This committee will bring in a report at the next session.

Referee Kruse, at the instance of the Secretary and himself, has made quite a study of the statistical report that the Referees make to the Clerk. That report has recently been revised, but it still does not present an adequate picture of a bankruptcy case. I do not know that there is anything that we can do about it. The Department of Justice did not consult us, or did not ask for our assistance in preparing this new report of statistical data.

REPORT OF COMMITTEE ON STATISTICAL DATA

MR. KRUSE: I feel that I should offer an apology in prefacing my remarks on this report. You know, sometimes we write a report or memorandum that we think is a pretty good one, and start to pat ourselves on the back, until we reach the exceptions that have been filed by counsel, and then maybe we do not think it is so good.

I wrote out this report and handed it to Carl Friebolin and said, "I wish you would present this report; I have got enough to do with this § 75 matter, and I do not want to appear on the program too often." I was rather flattered, thinking that the keen, scintillating minded Carl Friebolin would read a report of mine. He looked it over, and when

I got it back, he had deleted about fifty per cent of it, and rewritten the most of the rest of it, so that what I am reading here now is Carl Friebolin's report.

This report grows out of the action of the Detroit Conference of 1936, which passed the following resolution:

WHEREAS we believe that possibly some changes might be made in the form of report filed by the Referees in Bankruptcy with the Clerk of the Court;

Therefore, be it

RESOLVED that we offer to the Department of Justice our services in connection with the preparation of a revised form.

The Directors of the Association at a meeting in Chicago last summer voted that the Secretary should write the Department of Justice relative to the situation, suggesting that improvement may be made in the form. The undersigned committee was appointed to draft a revised form to be submitted to the Department in the event that it is interested. The idea grows out of the general opinion among Referees that the present form does not present as complete a picture of bankruptcy statistics as is desirable. Since the foregoing action was taken, the Department has revised Form No. 1, calling the new form No. 9. This contains practically the same information, and is subject to the same improvement as Form No. 1, but is gotten up in better shape, and can be filled out on the typewriter.

In order to get the sentiment of the Referees and others interested on the subject, we mailed a letter together with a form of suggested changes, and a list of the items of statistics that would be required by § 53 of the Chandler Bill, if enacted, to all of the Referees in Bankruptcy in the United States and to nine managers of local branches of the National Association of Credit Men, whose names were supplied by the Director of the Adjustment Department of the National Association as men particularly interested in bankruptcy matters, and requested comments and suggestions.

Out of the 499 referees, we received answers from 74. Summarizing these responses as a whole, we find the following:

(1) A substantial number questioned the desirability of any more statistics.

(2) Most of them asserted that the statistics required at present presented an unfair picture of bankruptcy administration in the matter of percentage of expense and the average dividends paid to general creditors.

(3) A substantial number objected to the referees computing the percentages, stating they should be left to the Department.

(4) A number questioned the purpose of going beyond the requirements of the Chandler Bill as to the statistics to be obtained by the Attorney General.

We are attaching to this report abstract of the comments in each letter, related to the items of statistics called for on the submitted form.*

Some Referees suggested the desirability of segregating statistics as to asset cases and no-asset cases. The Committee believes there is a good deal to be said in favor of having separate statistics as to asset and no-asset cases and perhaps of asset cases involving less than $500, as it would seem that such statistics would give more useful and dependable comparative information than is presented by the present method.

Since these forms presumably should be coordinated with the pertinent provisions of the Chandler Bill, and since the Committee is not satisfied that it has found the simplest and most informative form, your Committee recommends that it be continued for further study of the question with the privilege of reporting to the Board of Directors for its consideration and such action in the matter as may be deemed advisable.

Respectfully submitted,

CARL D. FRIEBOLIN,
HARRY S. SNYDER,
FRED H. KRUSE,
Committee.

PRESIDENT: What is your pleasure, gentlemen?

MR. OLNEY: I move that the report be approved. Seconded.

MR. BRISTOW: I think the motion should carry with it the thought that the committee should be continued as recommended.

MR. KING: And with an expression of appreciation fc the work they have done.

MR. OLNEY: I accept the amendments.

PRESIDENT: I call for a report on the part of the Resolutions Committee.

MR. COVEY: The following are the resolutions:

REPORT OF COMMITTEE ON RESOLUTIONS

RESOLUTION No. 1

Be it resolved by the National Conference of Referees in Bankruptcy in conference assembled that we hereby express and acknowledge our sincere appreciation for the wholehearted reception given us by all the citizens of Kansas City, and we especially desire to express our appreciation of the entertainment provided us by the local committee and so ably handled in every detail by Chairman Elmer N. Powell and Vice Chairman A. J. Granoff and the other members of their committee.

We also desire to express our thanks to the Bar of Kansas City for the delightful dinner and entertainment tendered us Thursday evening at the Kansas City Club in conjunction with the members of the National Conference of Commissioners on Uniform Laws; to the speakers who have given so generously of their time and talents in addressing our several meetings; to Mayor Smith for his generous hospitality at his farm; to the Hotel Kansas Citian and the Convention Bureau of the Chamber of Commerce who have handled the many details of arrangements and regulations; to the newspaper of Kansas City and to the ladies committee who have so graciously entertained our ladies and guests, all of whom have contributed much to the success and pleasure of this Conference.

And be it further resolved that is the sense of this Conference that we leave Kansas City with a sincere feeling in our hearts that we have been most hospitably received and most royally entertained by our smiling host and brother Referee Fred Hudson.

RESOLUTION No. 2

Whereas, the National Bankruptcy Conference during its five years of existence has been of inestimable value to the Nation, in assisting in the formation of thoroughgoing consideration to proposed amendments to the Bankruptcy Act;

Whereas, the work of this Conference is still greatly needed to carry on the good work as started,

Now, Therefore, Be It Resolved, by the National Association of Referees in Bankruptcy that it is the sentiment of this Association that the National Bankruptcy Conference be continued as a permanent organization to assist in the shaping of Bankruptcy legislation, and

Be It Further Resolved That of our members, Referees Paul H. King, Detroit, Watson B. Adair, Pittsburgh, Peter B. Olney, Jr., New York, Carl D. Friebolin, Cleveland, and Charles True Adams, Chicago, receive the commendation and thanks of this Association for their faithful and untiring work in this National Conference and in connection with the Chandler Bill.

* Not published. ED.

RESOLUTION No. 3

Whereas, the members of this Conference believe that they have derived great benefits from the Open Forum on Bankruptcy Practice, conducted by Referee Irwin Kurtz at this Conference, and

Whereas, It is believed that the intimate discussion of practical problems met by Referees in their daily work is desired by all members.

Now, Therefore, Be It Resolved, That an Open Forum of a similar nature be adopted as a standard part of each Annual Conference.

RESOLUTION No. 4

Be It Resolved, it is hereby suggested that the Committee on Legislation urge the incorporation in the Chandler Bill of a provision that the Postal Savings Department of the Post-offices be designated as practical depositories for bankruptcy funds in addition to the other designated depositaries.

The last part of our Report perhaps overlaps somewhat with the Committee on Legislation, and I suggest that these resolutions be acted upon, and then we can discuss this last situation perhaps by itself.

MR. OLNEY: I move the adoption of the resolutions so far read. Seconded and carried.

MR. COVEY: Our last resolution which is not in final shape concerns § 75 of the Act and the office of conciliation commissioner.

Then ensued much informal discussion relative thereto which was not reported.

MR. COVEY: In respect of this subject, I have this suggestion to make, and I would like to put it in the form of a motion, that this matter be referred to our own special Conference Committee to see if this can be clarified in any way.

MR. KING: We did take that up and considered it at the Conference, and the reason it is not included is that we regarded the legislation as purely temporary, and, therefore, did not put it into the main body of the bill. But if we have got to have it, of course it should be covered.

PRESIDENT: It has been moved and supported that this resolution be adopted, and that it be referred to our special Conference Committee. Seconded and carried.

PRESIDENT: We had a special committee appointed the other day on the subject of dues, which is a very important matter. May the report be read at this time?

REPORT OF SPECIAL COMMITTEE ON DUES

The committee to consider the subject of revision of dues respectfully reports that after careful consideration it recommends the adoption of the following amendment to our constitution, as to Article IX, so that it will read as follows:

Section 1.

The dues of the members of this Association shall be computed, in the absence of other action by the board of directors, on the basis of $10.00 per annum payable September 1st of each year. The Directors are empowered to classify members up on the basis of bankruptcy income or upon the basis of the number of references received, and to fix the dues for any one year for each such class in an amount not to exceed $30 per annum nor less than $1 per annum.

Section 2.

A newly elected member shall pay in advance such dues pro rata for the balance of such fiscal year in which he is elected computed on a semi-annual basis.

Section 3.

Statements of the amount of dues shall be forwarded by the treasurer to the members of the Association during the month of August of each year.

Section 4.

Members in arrears for dues for two years shall be dropped from the membership roll but those members who shall retire as a Referee in Bankruptcy and shall not pay their dues shall thereupon be dropped.

Section 5.

The dues of all members who have retired from the office of Referee in Bankruptcy and who continue their membership shall be $5.00 per annum.

Section 6.

Honorary members shall be exempt from the obligation to pay dues.

(Signed) PETER B. OLNEY, Jr.,
Chairman.

MR. ADAMS: I move the adoption of this report and that Article IX of our constitution be amended as set up in the report.

This motion was seconded.

PRESIDENT: An amendment to the constitution may be made by a majority vote. The Secretary advises me that the prescribed notice of the consideration of this amendment was given in the call of this meeting. Are there any remarks?

Thereupon the question was put to a vote and unanimously carried.

PRESIDENT: Gentlemen, we have come to that part in our program where it is up to me to sing my "swan song." You picked me from the ranks last year and made me your President. With the able assistance of the Secretary-Treasurer, who is the backbone of the Association, I have done my best to promote the interests of the Association and to perform the duties of this office. There has been considerable work and some expense, all of which I have borne myself and do not want the Association to reimburse me. I have appreciated the honor, and I do feel that it is an honor to serve as President of this Association. I did not seek the office, I did not want it, but I have done my best to make you a good executive.

The time has now come when you are going to select officers for the ensuing year. I would like to say now that I have had the active cooperation of all of the directors of this Association, with one or two exceptions, and, except for this active cooperation of the directors, and the untiring work of our Secretary-treasurer, we would never have had the program that we have had at this Conference. I feel that in working out this symposium, where the Referees have had an opportunity, informally, to get up on their feet and do a good deal more talking, instead of being talked to so much, we have accomplished a step forward, at least the Resolutions Committee seem to feel that we have.

I will now call upon the Nominations Committee to submit their report.

REPORT OF COMMITTEE ON NOMINATIONS

SECRETARY: I have the report from Mr. Kurtz and will present it. The committee nominates the following:
For President, John Keogh, Bridgeport, Conn.
For Vice-president, Wm. Jerome Kuertz, Cincinnati.
For Secretary-treasurer, Herbert M. Bierce, Winona, Minn.

For Circuit Directors, —

First Circuit, John Howard Hill, Portland, Me.
Second Circuit, Wilmot L. Morehouse, Brooklyn, N. Y.
Third Circuit, George W. W. Porter, Newark.
Fourth Circuit, Cyrus B. Van Bibber, Huntington, W.Va.
Fifth Circuit, George E. Murphy, Beaumont, Tex.
Sixth Circuit, Fred H. Kruse, Toledo.
Seventh Circuit, Charles True Adams, Chicago.
Eighth Circuit, Horace H. Glenn, St. Paul.
Ninth Circuit, Ernest R. Utley, Los Angeles.
Tenth Circuit, James T. McConnell, Salt Lake City.

REFEREE JOHN KEOGH
Bridgeport, Conn.
President

PRESIDENT: You have heard the report of the Committee on Nominations. Are there any other nominations?

REFEREE WILLIAM A. WATTS, Duluth, Minn.: I move that the nominations be closed and that the persons named be declared elected as directors and officers for the coming year.

This motion was seconded.

PRESIDENT: You have heard the motion that the nominations be closed and that those nominated be declared elected to the respective offices as directors. As many as are in favor will say "Aye." "No?" The motion is unanimously carried. I take it that it is proper now to ask the Secretary to cast the vote of all present for the officers named.

SECRETARY: I so cast the ballot, Mr. President. The retiring President automatically becomes a director.

Thereupon President-elect Referee John Keogh was escorted to the platform and presented to the Conference by the President.

PRESIDENT-ELECT KEOGH: I appreciate the responsibility and the honor of being elected President of this organization. I think we will all agree that our jobs are becoming more and more complicated, and more and more important. Referees and lawyers generally must know more trades than a deep-sea diver. A Referee in Bankruptcy must know more trades than both combined. I think the symposium that we had yesterday will bear me out in that statement.

Gentlemen, we have a wonderful Secretary. I intend to do everything possible to work with him and with our directors to continue the success of this organization, and to increase our membership and our usefulness and our service.

I am the first officer of this Association to come from New England, and I appreciate the honor, and I am very grateful to the Referees for having conferred it upon me.

MR. KURTZ: Might I suggest that we call upon our new Vice-President for a word?

PRESIDENT: Certainly.

MR. KUERTZ: Mr. President and fellow Referees, I am deeply appreciative of the high honor which you have just conferred upon me by electing me as your Vice-president for the ensuing year. I hope that I may be able to measure up to the confidence which you have reposed in me by your action.

MR. WOODS: Last night I learned that the American Bar Association was going next year to either Cleveland or Philadelphia. On behalf of the Referees of Cleveland, I want to say that if the Bar Association does come to Cleveland, we would like to extend an invitation to you to hold our Conference in Cleveland next year, to welcome you there.

MR. OLNEY: May I, in behalf of those present, move that a vote of appreciation be extended to President Thornburgh and our Secretary-treasurer, and outgoing members of the Board of Directors for the fine work done last year, as well as to all of those who participated in it? Seconded and unanimously carried.

MR. HUDSON thanked the Conference for having come to Kansas City, and upon motion adjournment sine die was taken.

In Attendance

REFEREES IN BANKRUPTCY

ALABAMA
NORTHERN DISTRICT
¶Valentine J. Nesbit, Birmingham

ARKANSAS
EASTERN DISTRICT
†Fred C. Mullinix, Jonesboro

CALIFORNIA
SOUTHERN DISTRICT
¶Samuel F. Hollins, Fresno
§Samuel W. McNabb, Los Angeles
¶Benno M. Brink, Los Angeles
¶Ernest R. Utley, Los Angeles

COLORADO
§Frank McLaughlin, Denver

CONNECTICUT
†John Keogh, Bridgeport

FLORIDA
SOUTHERN DISTRICT
*Morgan F. Jones, Jacksonville

ILLINOIS
EASTERN DISTRICT
§Walter J. Grant, Danville
NORTHERN DISTRICT
§Charles True Adams, Chicago
§Philip H. Ward, Sterling
SOUTHERN DISTRICT
†George K. Foster, Bloomington
¶Thomas Williamson, Edwardsville
‡Edwin L. Covey, Peoria

* Has attended all Conferences.

† Attended organizing Conference in Detroit in 1926 and several subsequent Conferences.

‡ Has attended all Conferences since his first appointment as a Referee.

§ Has attended several Conferences.

¶ Attending his first Conference.

INDIANA
NORTHERN DISTRICT
†Charles A. Burnett, Lafayette

IOWA
SOUTHERN DISTRICT
¶Ray C. Fountain, Des Moines

KANSAS
¶Louis R. Gates, Kansas City
§Frank B. Bristow, Salina

MICHIGAN
EASTERN DISTRICT
*Paul H. King, Detroit

MINNESOTA
§William A. Watts, Duluth
‡Horace H. Glenn, St. Paul
*Herbert M. Bierce, Winona

MISSOURI
EASTERN DISTRICT
¶Oscar A. Knehans, Cape Girardeau
WESTERN DISTRICT
†J. C. Ammerman, Joplin
§Fred S. Hudson, Kansas City
¶Donald S. Lamm, Sedalia
¶Orin Patterson, Springfield

NEW JERSEY
§Allen B. Endicott, Jr., Atlantic City

NEW YORK
EASTERN DISTRICT
§Theodore Stitt, Brooklyn
§Wilmot L. Morehouse, Brooklyn
NORTHERN DISTRICT
†Ben Wiles, Syracuse
SOUTHERN DISTRICT
§Peter B. Olney, Jr., New York
§Irwin Kurtz, New York

NEW YORK
WESTERN DISTRICT
*James W. Persons, Buffalo

OHIO
NORTHERN DISTRICT
†Carl D. Friebolin, Cleveland
‡William B. Woods, Cleveland
‡Fred H. Kruse, Toledo
SOUTHERN DISTRICT
§Wm. Jerome Kuertz, Cincinnati

OREGON
¶Estes Snedecor, Portland

TENNESSEE
EASTERN DISTRICT
†Sam J. McAllester, Chattanooga
†John M. Thornburgh, Knoxville

WISCONSIN
WESTERN DISTRICT
†Cameron L. Baldwin, La Crosse

JUDGES

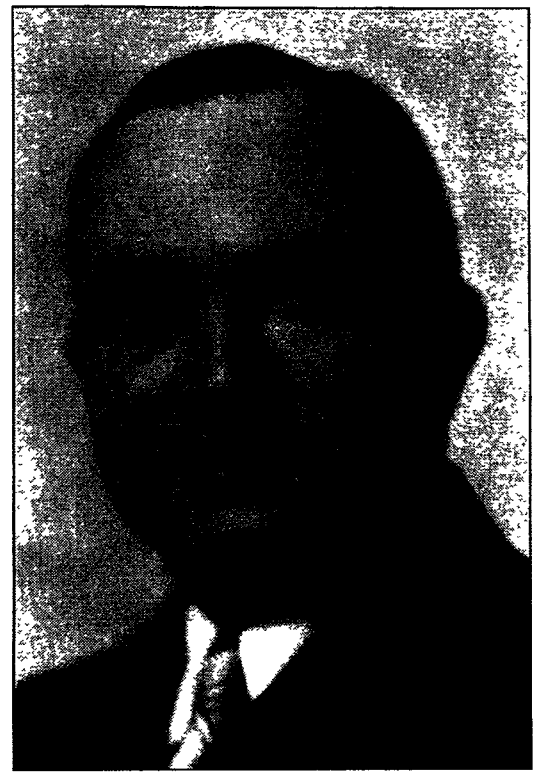
Hon. Albert L. Reeves, Kansas City, U. S. District Judge
Hon. Merrill E. Otis, Kansas City, U. S. District Judge

FORMER REFEREES IN BANKRUPTCY

Elmer N. Powell, Kansas City, Mo.
Felice Cohn, Reno, Nev.
Leigh M. Kagy, East St. Louis, Mo.

SPEAKERS

Charles F. Baldwin, Washington, National Association of Credit Men.



REFEREE WM. JEROME KUERTZ
Cincinnati
Vice-president

Mr. Kuertz is a native of Cincinnati, born May 9, 1883. He was admitted to practice in 1904 and is a member of the Bar of the U. S. Supreme Court. He has served as assistant City Solicitor and as Director of the Department of Street Railroads. Mr. Kuertz was first appointed as a Referee in Bankruptcy in October, 1930, succeeding the late Charles Theo. Greve, who served from 1898. His district includes eight counties and he has been active in the work of this Association and was host for the 1934 Conference. He is married.

Samuel O. Clark, Jr., Washington, Securities and Exchange Commission.
Reuben G. Hunt, Los Angeles, Commercial Law League of America.
Hon. George E. Q. Johnson, Chicago
W. Randolph Montgomery, New York
Rev. Harry Clayton Rogers, D.D., Kansas City
Hon. Bryce B. Smith, Mayor, Kansas City
Myron R. Sturtevant, St. Louis, American Bankers Association

REFEREES' CLERKS

Charlotte Doebler, Kansas City, Mo.
Ida M. Frame, Kansas City, Mo.
Helen T. Houtz, Kansas City, Mo.
Mrs. Viola Jeffers, Kansas City, Kan.
Helen M. Kemper, Kansas City, Mo.
Marie E. Walsh, Danville, Ill.
Stella Wees, Kansas City, Mo.

REPORTER

B. D. Connolly, Detroit

GUESTS

Mrs. J. C. Ammerman, Joplin, Mo.
Charles M. Blackman, Kansas City, Mo.
William G. Boatright, Kansas City, Mo.
Mrs. Addison Brown, Kansas City, Mo.
Henry A. Bundschue, Kansas City, Mo.
Mrs. Charles A. Burnett, Lafayette, Ind.
Mrs. Edwin L. Covey, Peoria, Ill.

Warren S. Earhart, Kansas City, Mo.
Verne D. Edwards, Kansas City, Mo.
Mrs. J. H. Finnegan, Peoria, Ill.
Mrs. George K. Foster, Bloomington, Ill.
Mrs. Ray C. Fountain, Des Moines, Ia.
Mrs. Louis R. Gates, Kansas City, Kan.
Mrs. Aurelia Gibbons, Kansas City, Mo.
Mrs. Horace H. Glenn, St. Paul, Minn.
A. J. Granoff, Kansas City, Mo.
Mrs. A. J. Granoff, Kansas City, Mo.
Mrs. John Keogh, Bridgeport, Conn.
Mrs. Oscar A. Knehans, Cape Girardeau, Mo.
Richard E. Kyle, St. Paul, Minn.
Carl H. Langknecht, Kansas City, Mo.
Jacob M. Lashly, St. Louis, Mo.
R. B. McCreight, Kansas City, Mo.
Eileen E. McFadden, Kansas City, Mo.
Tyree G. Newbill, Kansas City, Mo.
Mrs. Merrill E. Otis, Kansas City, Mo.
Arthur L. Quant, Kansas City, Mo.
Mrs. Arthur L. Reeves, Kansas City, Mo.
Joseph Riftkind, Los Angeles, Calif.
Flavel Robertson, Kansas City, Mo.
Luther D. Swanstrom, Chicago, Ill.
Sidney Teiser, Portland, Ore.
James G. Vineyard, Kansas City, Mo.
Ivor O. Wingren, Denver, Colo.

GREETINGS AND REGRETS

HOT SPRING, VIR. 1937 SEP. 22
HON. HERBERT M. BIERCE
NATIONAL ASSOCIATION REFEREES IN BANKRUPTCY
HOTEL KANSAS CITIAN KSC
ALL BEST WISHES FOR A SUCCESSFUL CONFERENCE. SORRY THAT I COULD NOT BE PRESENT MY BEST REGARDS TO ALL OF MY OLD FRIENDS.
GEORGE R. BEACH. (JERSEY CITY, N.J.)

MIAMI, FLA. 1937 SEP. 23
HON. FRED HUDSON, REFEREE IN BANKRUPTCY
710 GRAND AVE TEMPLE BLDG KSC
PLEASE CONVEY MY GREETINGS TO THE OFFICERS AND MEMBERS OF THE ASSOCIATION NOW ASSEMBLED. REGRET THAT I AM UNABLE TO ATTEND ESPECIALLY THIS CONFERENCE AT KANSAS CITY WHERE YOU ARE HOST. MY BEST WISHES FOR THE HEALTH, HAPPINESS AND SUCCESS OF EACH REFEREE AND THE CONTINUED PROGRESS OF OUR ORGANIZATION.
L. EARL CURRY.

MINEOLA, N.Y. 1937 SEP. 24
HON. HERBERT M. BIERCE, CARE NATIONAL ASSOCIATION OF REFEREES IN BANKRUPTCY
HOTEL KANSAS CITIAN KSC
I VERY MUCH REGRET MY INABILITY TO BE PRESENT AT CONFERENCE STOP PLEASE ACCEPT MY SINCERE BEST WISHES FOR A MOST SUCCESSFUL AND HAPPY CONFERENCE AND EXTEND TO ALL THOSE PRESENT THE KINDEST WISHES OF MRS. FLUCKIGER AND MYSELF.
HOWARD A. FLUCKIGER.

BUFFALO, N.Y. 1937 SEP. 25
HERBERT M. BIERCE, SECRETARY NATIONAL ASSN REFEREES IN BANKRUPTCY
HOTEL KANSAS CITIAN KSC
ONLY MAD BECAUSE WE ARENT THERE STOP THANKS FOR THE WIRES STOP PROMISE TO SEE YOU NEXT YEAR STOP AT NEW YORK CITY?
JOHNSTON SISTERS.

It was my intention to attend the American Bar Association meeting in Kansas City, and I should have been glad to accept your invitation to attend some sessions of the National Association of Referees in Bankruptcy. Unfortunately, however, I broke a bone in my foot this summer and it is impossible for me to attend a convention at this time. I remember very pleasantly my visit to Detroit, and wish indeed that I might be with you.

Florence E. Allen,
U. S. Circuit Judge, Cleveland.

. . . Regret very much that it will be impossible for me to attend. I do, however, appreciate the invitation.

Elliott Northcott,
U. S. Circuit Judge, Asheville, N. C.

Thank you very much for your invitation. . . . I wish that I could be with you, but it will be impossible for me to do so.

J. Warren Davis,
U. S. Circuit Judge, Trenton, N. J.

I have your very kind invitation to attend. . . . If I should be there I should certainly take pleasure in attending some of the sessions of your Association.

W. F. Booth,
U. S. Circuit Judge, Minneapolis.

I have your letter inviting me. . . . Unfortunately, the Conference of Senior Circuit Judges, which I am obliged to attend as Senior Circuit Judge of the Fifth Circuit, will be held on the same days that your Association meets. Under the circumstances I must with much regret decline your kind invitation.

Rufus E. Foster,
U. S. Circuit Judge, New Orleans.

The invitation is deeply appreciated. Were it at all possible, I should be only too happy to be with you at the time but the regular court terms will be in session at that time which makes it impossible to leave the city. May the Association have a pleasant and worthwhile meeting this year.

Matthew T. Abruzzo,
U. S. District Judge,
Eastern District of New York, Brooklyn.

I received your invitation to attend. I thank you for the invitation, but it will be impossible for me to attend the Conference.

John Boyd Davis,
U. S. District Judge,
District of New Jersey, Camden.

I regret to say that terms of court which must be held in my district in September will make it impossible for me to accept your invitation.

James H. Baldwin,
U. S. District Judge,
District of Montana, Butte.

Thank you for your kind invitation of the 25th to attend. . . . And I only wish it were possible for me to attend, but court duties among other things will prevent. Hope that the conference will be customarily successful and pleasurable.

Mortimer W. Byers,
U. S. District Judge,
Eastern District of New York, Brooklyn.

Your very kind invitation to be present and take part. . . . is received, but I doubt if I can be present. A term of court that week prevents my being away from the business here during that time. I hope that all the referees of this district can be present.

Chas. A. Dewey,
U. S. District Judge,
Southern District of Iowa, Des Moines.

I thank you for the invitation and regret I shall be unable to attend. I am planning to be away at that time and my plans are such that I cannot well arrange to be in Kansas on those dates.

Henry W. Goddard,
U. S. District Judge,
Southern District of New York, New York.

When I received your kind letter it seemed probable that I would be in the West in September and I made note of your conference but as matters have since shaped up I find myself anchored here until I resume sessions on Oct. 4th. I had looked forward with pleasure to the initial experience for me at a conclave of Referees in Bankruptcy and am greatly disappointed.

George Murray Hulbert,
U. S. District Judge,
Southern District of New York, New York.

Thank you for your invitation. I hope that I can make such plan as will permit me to attend as I remember my last attendance with a great deal of pleasure.

Walter C. Lindley,
U. S. District Judge,
Eastern District of Illinois, Danville.

I wish to thank you for your courteous letter of June 25, 1937, and to assure you also, that I would be pleased to attend the Annual Meeting of your Association, but that distance is so great I shall have to deny myself the pleasure of attending the American Bar Association this year. My inability to attend the Bar Association Meeting makes it obvious I cannot attend your meeting. Some year when you are nearer my base I shall be delighted to look in on you.

Isaac M. Meekins,
U. S. District Judge,
Eastern District of North Carolina, Elizabeth City.

(Continued on page 54)

Federal Judicial Appointments

WHEN the U. S. Supreme Court adjourned for its term last June it brought to a close the active judicial career of Associate Justice Willis Van Devanter, who was appointed a member of that Court by then President Taft on December 12, 1910, confirmed by the Senate on December 16th and he was sworn in on January 3, 1911. During his many years of service Judge Van Devanter wrote many opinions in interpretation of the Bankruptcy Act. At the time of his appointment he was a U. S. Circuit Judge assigned to the Eighth Circuit as it then existed, to which bench he was appointed in March previous to his selection for the Supreme Court. Prior thereto he had served as Chief Justice of the Supreme Court of Wyoming and as an assistant U. S. Attorney General assigned to the Department of the Interior. Justice Van Devanter was born in Marion, Indiana, April 17, 1859, received his education in the Indiana Asbury (now DePauw) University and was graduated from the Cincinnati Law School in 1881, practicing law at Marion until 1884 and then locating in Cheyenne, Wyo. During his residence there he was made commissioner to revise the Wyoming statutes, served as city attorney, and as a member of the Territorial legislature. DePauw University, the University of Cincinnati, Yale University, the University of Wyoming and the College of Charleston, S. C., conferred upon him the degree of LL.B. Politically he was chairman of the Republican State Committee for one term and for another term a member of the Republican National Committee and was a delegate to the Republican National Convention in 1896. For several years prior to his appointment to the Supreme Bench he was a member of the faculty of the Columbian (now George Washington) University at the national capitol. Justice Van Devanter is married and in his retirement is living on a farm in Maryland. Under the terms of the Act authorizing his retirement, he may be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any Judicial Circuit, including those of a Circuit Justice, in such Circuit as he may be willing to undertake.

As successor to Justice Van Devanter, President Roosevelt selected Hon. Hugo LaFayette Black, then a Senator from the State of Alabama, whose nomination was quite promptly confirmed by the Senate. Justice Black is a native of Alabama and was born February 27, 1886. After a public school education he received his LL.B. from the University of Alabama in 1906 and opened his law office in Birmingham. He served for eighteen months as a police justice and for one term as Solicitor (prosecuting attorney) for Jefferson County. Otherwise he was in general practice until elected to the U. S. Senate for the term commencing in 1927. In August 1917 Justice Black entered the Second Officers Training Camp at Fort Oglethorpe, Ga., and served in the 81st Field Artillery and as Adjutant of the 19th Artillery Battery. Justice Black is married and has two sons and one daughter constituting his family.

As stated in our April issue, President Roosevelt selected U. S. District Judge J. Earl Major, Hillsboro, Ill., to fill a vacancy on the bench of the Circuit Court of Appeals, Seventh Circuit. Judge Major was inducted into this office on April 13th at Chicago, Circuit Judge Evan A. Evans presiding and delivering a brief address of welcome.

Judge Major was born on January 5, 1887, near Donnellson, in Montgomery County, Ill., graduated from the high school there and read law in the office of Judge Thomas M. Jett, of Hillsboro, and studied at the old Union College of Law at Chicago. He was admitted to practice in 1909, opened his office in Hillsboro, and from 1912 to 1919 served as state's attorney for his home county. From 1923 to 1925 and again from 1927 to 1933 he was a member of the national House of Representatives, resigning the latter office to accept appointment as U. S. District Judge for the Southern District of Illinois. Judge and Mrs. Major have two daughters at home.

Courtesy Illinois Bar Journal *Illinois State Journal Photo*

HON. J. EARL MAJOR
U. S. Circuit Judge, Seventh Circuit
Judge of 7th Circuit Court of Appeals

OTHER APPOINTMENTS

Among recent appointments is that of U. S. District Judge Albert Lee Stephens, Southern District of California, to the Circuit Court of Appeals for the Ninth Circuit. Judge Stephens has served as a District Judge since 1934. He is succeeded on the District Bench by Ralph E. Jenney of San Diego, Calif. Judge Kenney was born in 1883 and admitted to practice in 1906.

Other District Court appointments include Harold P. Burke, Rochester, N. Y., for the Northern District of that state. Judge Burke was born in 1895 and admitted to practice in 1920 and was a member of the law firm of Hone & Burke. Congressman Frank L. Kloeb, Celina, Ohio, is the incoming District Judge for the Northern District of Ohio. He will make his headquarters at Toledo. At the time of his appointment he was serving as a member of the national House of Representatives. He was born in 1890 and admitted in practice in 1917 and was a member of the law firm of Loree & Kloeb. To fill the vacancy in the Eastern District of Oklahoma caused by the advancement of District Judge R. L. Williams to the Circuit Court of Appeals for the Tenth Circuit, Eugene Rice, Duncan, was appointed. Judge Rice was born in 1891 and admitted to practice in 1917. In the District of Minnesota a vacancy on the trial bench was filled by the appointment of George F. Sullivan, of Jordan. Judge Sullivan was born in 1886 and admitted to practice in 1908, and at the time of his appointment was serving as U. S. attorney.

Book Reviews and Notes

PRINCIPLES OF CORPORATE REORGANIZATION IN BANKRUPTCY, by Thomas K. Finletter. The Michie Co., Charlottesville, Va., 1937. x, 835 $10.

The reviewer has read this book with interest and profit, for it is well written by one showing an able knowledge of his subject. It is the latest text on this subject. added to the three volume work by Gerdes,* the book by Judge Johnson,† and the section in the new Gilbert's Collier.‡ This latest text has the benefit of late decisions and, moreover, discusses some phases of the subject not covered in the other works, as the recent Federal taxation laws.

The author is a member of the New York bar, being associated with Coudert Brothers of that city. He received his LL.B. at the University of Pennsylvania Law School in 1920, being editor-in-chief of its Law Review. Since 1930 he has been a member of its teaching staff giving advanced work in the law of business associations. As he says in the preface:

> The materials were collected in part in connection with current practice and in part for the purposes of the course in Corporate Reorganization

and were put into book form at the urging of Dean Herbert F. Goodrich, to whom he dedicates the work. Although the author is at time academic in his style, this is only occasional, and the work is readily readable as a treatise on the subject.

This book is a statement of the law, that is the "Principles", governing the subject of corporate reorganizations including railroads under § 77. Municipal reorganizations under § 80 are not included. Although a usable and helpful work for the practitioner, it is not primarily a book of practice. It includes no forms.

In stating the basis for his approach to the subject, the author says:

> The premise of the treatment is that the reorganization amendments to the Bankruptcy Act are codifications of the old federal equity receivership, and that the answer to most of the difficult problems which the new acts present can be found only after study of the body of precedent which constitutes the law of the equity receiverships.

So that the first chapter considers this subject of federal equity receiverships, — their origin and defects and the reasons for the use of bankruptcy power for the new legislation, in an instructive and helpful manner. Earlier bankruptcy legislation was, of course, he says, to distribute notably the debtor's estate among his creditors. "The composition amendment was a distinct advance over orthodox bankruptcy . . . " but "(I)t is not therefore because the composition section was a precedent for reorganization that the 1933 and 1934 amendments became part of that Act. The controlling factor in this choice was . . . that . . . the power of the majority to compel the minority to take securities acceptable to the majority could constitutionally be accomplished by an amendment to the Bankruptcy Act . . . "

The main portion of the book discusses the law governing as set forth in §§ 77 and 77B of the Act, for much attention is given to railroad reorganizations. The several chapter headings ably state the discussion, — The Petition and Answer, Jurisdiction of the Reorganization Court, Administration, Claims, Plan, Valuation, Intervention and Appeals, Collateral Attack and Dismissal and Liquidation. These several subjects in their natural subdivisions are ably and thoroughly discussed. The limitations of the equity practice are stated, the analogous phases of regular bankruptcy considered and the requirements of the reorganization acts fully presented. The author has the benefit of the late decisions many of which he analyzes, along with oth leading cases. Among such may be mentioned the *Flershem*,* *Shapiro*,† *Duparquet*,‡ *City Bank*,§ *Northwestern Bank*,¶ *Radford*,** *Fosdick*,†† *Boyd*,‡‡ *and Corriell* §§ cases.

The subject of valuation is fully considered as the standards concerned are peculiar to themselves and there is an interesting discussion relative to reorganizations and the several federal taxes, especially federal income and capital stock taxes.

Generally speaking, this book should be studied by lawyers who have reorganization matters presented to them that they may have a clear and comprehensive understanding of the subject.

This book is satisfactorily printed and bound, so that it is easily readable and referred to. Although there are chapter subheads, these are not numbered and the reader, then, is concerned in locating what he desires solely by the paging.

There are many case citations but the list does not profess to be exhaustive so that the reader knows that the citations given are of real value. Citations are to the official reports and the Federal Reporter system but not to the American Bankruptcy Reports although a large majority of the citations are to be found in such reports. All recognized reports publishing a case should be cited. Some cases published only by the Commerce Clearing House in its Bankruptcy Service are cited. It would have been more convenient to have cited such by the use of "CCH Bankr. Serv." in lieu of printing it out in full. A citation " — F.C.A. — " is of no help. And some citations in the text are designated "supra" but the prior reference is not always immediately at hand. No reference to case notes in Law Reviews wherein cases cited have been considered is made but such would have been helpful. Many Law Review articles, however, are cited. Such articles are listed in a Table of Articles but alphabetically by author only. This could have been augmented. The Table of Cases is complete but the words "In re" should have followed the case name instead of preceding it, for ready reference. The reference, moreover, is only "plaintiff v. defendant" so that

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* Corporate Reorganizations under § 77B of the Bankruptcy Act, John Gerdes, published in 1936. Reviewed in this JOURNAL Apr. '36, vol. 10, p. 95.

† Bankruptcy Reorganization including § 77B with Forms, George E. Q. Johnson, 1936. Reviewed in this JOURNAL Oct. '36, vol. 11, p. 58.

‡ Gilbert's Collier on Bankruptcy, 4th ed. by James Wm. Moore and Edward H. Levi (especially pp. 1399-1542 and supp. forms. Nos. 201-214), 1937. Reviewed in this JOURNAL Jan. '37, vol. 11, p. 90.

Some forms for corporate reorganizations are found in "Bankruptcy Forms and Practice," by Abraham I. Menin and Asa S. Herzog, 1936. Reviewed in this JOURNAL, Oct. '36, vol. 11, p. 58.

* *First National Bank of Cincinnati v. Flershem*, (1933) 290 U. S. 504, 78 L.ed. 465, 54 S.Ct. 298.

† *Shapiro v. Wilgus*, (1932) 287 U. S. 348, 77 L.ed. 355, 53 S.Ct. 14

‡ *Duparquet Huot & Moneuse Co. v. Evans*, (1936) 297 U. S. 21 80 L.ed. 591, 56 S Ct. 412, 30 Am.B.R. (N.S.) 329, CCH Bankr. Serv. ¶ 3809.

§ *City Bank-Farmers Trust Co. v. Irving Trust Co.*, (1937) 399 U. S. 433, 81 L.ed. 241, 57 S.Ct. 292, 32 Am.B.R. (N.S.) 477, CCH Bankr. Serv. ¶ 4353.

¶ *Lowden v. The Northwestern National Bank & Trust Co.*, (1936) 298 U. S. 160, 80 L.ed. 1114, 50 S.Ct. 696, 30 Am.B.R. (N.S.) 724, CCH Bankr. Serv. ¶ 3978.

** *Louisville Joint Stock Land Bank v. Radford*, (1935) 295 U. S. 555, 79 L.ed. 1593, 55 S.Ct. 854, 28 Am.B.R. (N.S.) 397, CCH Bankr. Serv. ¶ 3463.

†† *Fosdick v. Schall*, (1878) 99 U. S. 235, 25 L.ed. 339.

‡‡ *Northern Pacific Ry. Co. v. Boyd*, (1912) 228 U. S. 482, 57 L.ed. 931, 33 S.Ct. 554.

§§ *National Surety Co. v. Coriell*, (1933) 289 U. S. 426, 77 L.ed. 1300, 53 S.Ct. 678.

one needs to know exactly the case he is looking for in order to find it. This Table might have been more carefully checked. Thus the *Prudence Bond Corp'n* case is listed on page 762 without report designation, as being cited on pages 42 and 152 of that text. That case is the same *Prudence* case as is again listed as found in 75 F (2d) 262 as far as p. 42 is concerned and as found in 79 F (2d) 212 as far as page 152 is concerned. *In re McCrory Stores Corp.*, listed on p. 754, as cited on p. 41, places it in the CCH Bankr. Serv. ¶ 2321.01 but this is a different case from that cited on pp. 259 et al., and found in CCH Bankr. Serv. ¶ 4598. The book is satisfactorily indexed and the text is printed in full.

IN THE DAY'S WORK OF A FEDERAL JUDGE: a Miscellany of opinions, addresses and extracts from opinions and addresses, by Merrill E. Otis, A.M., LL.B., LL.D., U. S. District Judge, ed. by Prof. Alexander M. Meyer, Kansas City School of Law. The Brown-White Co., Kansas City, Mo., 1937. 357 pp., $4.00.

That federal judges cannot be relied upon to interpret the Constitution in the light of present day progress and that they are either too old or too reactionary to apply it to modern needs is a theme frequently expounded these days. It is therefore both refreshing and gratifying to come upon a book which effectively punctures the myriad arguments used by the calumniators of the federal judiciary in support of their chant of alleged incompetency. Such a book is "In the Day's Work of a Federal Judge," a miscellany of opinions, addresses and extracts from opinions and addresses by Judge Merrill E. Otis, United States District Judge for the Western District of Missouri.

Friends and observers of the work of Judge Otis the country over have long been looking forward to a book by him, or about him, which would even in a small way provide a study of the mental processes of this great jurist. Professor Meyer, in editing this work, has succeeded admirably in his task, the collection presenting a mental biography of Judge Otis with remarkable fidelity.

We have here the mature thoughts of a notable and independent spirit, applied to a wide range of subjects. These are treated in a magnificent English style, clear and limpid. We find passages of genuine eloquence again and again, touches of pathos remindful of Washington Irving at his best, and numerous displays of humor which are a joy to behold, — in short, a superiority in use of language both beautiful and enviable. Hear him on what he thinks of race and religion as an obstacle to preferment.

> I am sure that the race and religion of Cardozo were no obstacles to his preferment. He is a descendant, I suppose he is prouder of it than any other fact, a descendant of that Israel to whom in history's dawn it once was promised by Jehovah that the number of his family some day should be as the sands upon the shore, perhaps he is descended from that other Benjamin who was his father's most beloved, certainly he is kinsman, a blood relative, of Him who twenty centuries since walked and taught by "Galilee, sweet Galilee." No, these were not obstacles. The President of the United States was not influenced against him by any such considerations. No man who has been President of this republic would have been so influenced. No man worthy be a citizen of the United States ever at any time, in any place, for any purpose, is influenced against another because that other is faithful to the religion of his fathers or because a certain blood courses in his veins.

Or hear him on work:

> And the second greatest privilege has been the privilege of hard work. Life can offer nothing of greater value. Give me the maelstrom and the torrent. I shun the placid surface of the gently moving stream.

Or, let us hear him on radicalism, while keeping in mind the charge that the federal judiciary is reactionary.

> No intelligent man opposes radicalism per se, simply because it is radical. No intelligent man opposes revolution simply because it is revolutionary. Take the radicals out of history and with them the inventors, inventors in the fields of science and religion and philosophy, take the radicals and inventors out of history and you have little left. Take the radicals out of science, Copernicus, Galileo, Darwin, take the radicals out of science, and you believe that the world is flat. Take the radicals out of philosophy, Socrates, Spinoza, Kant, and you believe that every wind that blows is deity, that hobgoblins and devils surround you while you live and carry you away when you die. Take the radicals out of religion, the Hebrew prophets, Jesus of Nazareth, and you have a world barren of love and hope. Take the radicals out of politics and you are slaves again to despotic kings.

Or hear his conception of the proper judicial approach to a consideration of acts of the legislature.

> It is as much the duty of the courts to give full recognition to and to protect the powers of Congress under the Constitution as it is to safeguard from congressional usurpation the rights of other departments of government and of states and individuals under the Constitution.

Repeatedly the reader is fascinated by the reach and solidity of his thinking, and the depth of his learning. Passage after passage greets the eye, warm with symbolism and beautiful allegory. But when he chooses to release the full force of his powerful and well ordered intellect on a problem of the day we see a practical student of government who knows how to apply a principle of sociology or economics if the facts and the law justify the application.

The book is comparatively short, about 350 pages. It is full of unique and valuable information, comments on many central problems, refutations of many of the heresies of the day. In it we see references to philosophy and literature, economics and sociology, religion and ethics, and many of these are in English that can be written only by a master draughtsman. To read the thoughts of such a thinker is an intellectual picnic.

FRED S. HUDSON,
Kansas City, Missouri.

With a September dating, the American Bankruptcy Review, Inc., New York, announces the consolidation of *Corporate Reorganizations* with the *American Bankruptcy Review* the new volume being known as Vol. A1. The subscription price is fixed at $7.50 a year. In view of the probable combining of the present § 77B into the Bankruptcy Act itself, as is done in the Chandler Bill, the publisher deems this consolidation advisable in the interest of economy, consistency and convenience. In the first issue is an article on "How has 77B actually worked?" In the August issue of *Corporate Reorganizations* is an article by Percival C. Jackson on "The new deal philosophy in Corporation Reorganization." Another article "Tentative approval — its use, abuse and remedy" by James B. Alley and George C. Ellsworth is published in that issue and concluded in the consolidated magazine. R. Carter Scott, Jr., Richmond, Va., is the author of an article "Deficiency claims in bankruptcy or proof and allowance of claims in bankruptcy where property exists which the creditor claimed to apply on the debt out of which the claim arose" published in the July and August issue of the *American Bankruptcy Review*. These issues likewise give consideration to the Chandler Bill.

Since the last issue of this JOURNAL five report letters have been published by the Commerce Clearing House, Inc., Chicago, in its *Bankruptcy Law Service*. Included are revisions of the text, indices, and table of cases listing thirty-two cases pending in the U. S. Supreme Court wherein *certiorari* is asked. A transfer binder for the court decisions and notes during 1934-36 has been furnished subscribers.

An address "International Loans and the Conflict of Laws" being a comparative study of recent cases, by Dr. Martin Domke, Paris, delivered before the Grotius Society, London, July 1st last, has been published in English in pamphlet form. The subject of the address is aptly described by its title.

"The Judge to the Jury," an address delivered by Merrill E. Otis, U. S. District Judge for the Western District of Missouri, before the State Bar of California at Del Monte, September 10th, being the Alexander F. Morrison Foundation Lecture for 1937, has been published in pamphlet form and issued by the Executive Committee of the Lawyers Association of Kansas City, Mo. In its foreword the executive committee states:

This address is published as an outstanding contribution to the discussion of a subject vital to the administration of justice in the Federal Courts. We hope that those who receive it will give it the careful study which it merits. Lawyers and lawyers' organizations should not remain neutral on the subject. They should take action for or against the Bill passed by the House of Representatives and inform their Senators and the Senate Judiciary Committee of their action, so that the Senate may not act upon the Bill without discussion, as did the House.

In his address Judge Otis commented upon the proposed legislation now pending in the Senate which has passed the national House restricting the right of a federal trial judge to comment upon the evidence. In addition to the address there is an appendix giving the results of a research as to the alleged abuses of the judge's power in so commenting and the responses of Missouri lawyers to the author's inquiries on the subject. In view of the very brief consideration given the measure by the House Committee on the Judiciary, the address of Judge Otis is most pertinent at this time.

The October issue of *Current Legal Thought*, which is the first issue of Vol. IV of that publication, is the annual index number to legal periodicals. This JOURNAL is among the publications so indexed. It is a comprehensive index of the articles found in the one hundred legal publications which are so indexed, it being intended to include every Law Review and Bar Association journal in the United States. This magazine, published ten times a year, monthly October to June inclusive, bi-monthly July and August, is by Current Legal Thought, Inc., 245 Broadway, NewYork, with a subscription price of $5.00 a year.

A new journal in the field of legal literature is entitled "*The American Lawyer*," published by The American Law Book Co., Brooklyn, for circulation among its customers and friends in the legal profession. The first issue, bearing a September dating, has been received. It comprises thirty-two pages with the cover and will be issued quarterly in March, June, September and December of each year. It is said that the publication is designed to provide in abstract form papers on important law topics contributing to its readers' store of information. The editors solicit the assistance and co-operation of those who may care to contribute to its pages but as the magazine is a free publication no compensation therefor is possible.

Referee Howard T. Fleeson, Wichita, Kans., Yale '22 L., is a Regional Representative of the Yale Law School Association.

Proceedings

(Continued from page 50)

Owing to engagements which are likely to occupy all of my time on those dates, I hardly think it possible that I shall be able to attend either the conference or the convention, although I am unable to decide so far in advance. I should like very much to go, and if an opportunity should occur, of course, I shall be glad to accept your invitation and attend the conference preceding the convention.

Charles N. Pray,
District of Montana, Great Falls.

Owing to the fact that I shall be holding a stated term of court at the time set I shall be unable to attend the conference. This I sincerely regret as I realize the very substantial benefits to be derived by those attending the gathering.

Fred M. Raymond,
U. S. District Judge,
Western District of Michigan, Grand Rapids.

I am in receipt of your letter and thank you for the invitation it extended. I shall be pleased to avail myself of the opportunity of calling in at your session in case I attend the Bar Association.

Heartsill Ragon,
U. S. District Judge,
Western District of Arkansas, Fort Smith.

It would require a volume for me to explain to you all the reasons why I should like to attend the Referees' Conference in Kansas City this week; and it would require another volume for me to tell you all the different things which pull in the other direction and prevent me from following my heart out to Kansas City.

Arthur J. Tuttle,
U. S. District Judge,
Eastern District of Michigan, Detroit.

I thank you for the invitation to attend this conference, but regret to advise that I shall be unable to attend.

Harry E. Watkins,
U. S. District Judge, Northern and Southern
Districts of West Virginia, Clarksburg.

I should be very happy to attend this meeting of the Referees and also the Convention of the American Bar Association, but unfortunately it is impossible for me to attend.

Albert W. Johnson,
U. S. District Judge,
Middle District of Pennsylvania, Lewisburg.

It was a pleasure to receive your kind letter. I am forced with great regret to decline your generous invitation. I have had to cancel my earlier plans to attend the American Bar Association Convention. Pressure of work here and other commitments make it likewise impossible for me to get out to Kansas City for your convention. I wish this were not true as I would like to take that occasion to renew my most pleasant and cordial association with your distinguished group.

Wm. O. Douglas,
Commissioner, Securities and Exchange
Commission, Washington.

I am earnestly hopeful that it may be possible for me to attend but at the present time the prospects are none too bright. With all good wishes for a most successful convention and with regards to you very sincerely,

Bob (Robert A. B. Cook),
Phipps, Durgin & Cook, Boston.

Should I be able to arrange to attend the American Bar Convention I shall certainly take advantage of the invitation of the Referees' Association.

Weinstein (Jacob I. Weinstein),
Aarons, Weinstein & Goldhaber, Philadelphia.

I have your kind invitation and assure you it would be a great pleasure to be present, but I do not expect to be able to attend.

Frank (Frank W. Stonecipher),
Stonecipher & Ralston, Pittsburgh.

. . . Regret that other engagements will prevent me from attending. Kansas City is a long way from New York! I hope you will invite me again sometime when the place of convention is near New York.

John Gerdes,
Saxe, Gerdes, Bacon & O'Shea, New York.

Our law school reopens on the 20th, and my lecture duties will keep me here. Last year it so befell that your session took place during our vacation, and so I was able to attend. I hope that next year your Association will be moved to hold its conference during August or early September, . . . and may I add, in that delightful City of Detroit.

Garrard Glenn,
Professor of Law,
University of Virginia, Ivy Depot, Va.

Only wish I could look in on your conference, but my teaching and other duties here are such that it will be all I can do to get away for a couple of days at the A.B.A. Meeting, where I have to submit a report. . . . with regards to your confrerees,

Lloyd Garrison,
Dean, Law School,
University of Wisconsin, Madison.

Again I find that I personally will be unable to be present at your conference but the organization will be represented. I am asking Mr. Charles Baldwin, our Washington representative, to be on hand and, if possible, Mr. Bennitt will also be in attendance. Mr. Bennitt has been given new responsibilities in the office here and I know it is his desire to attend your conference and likewise my desire to have him go if it can be worked out without upsetting the schedules he has on his new work. I trust that you will have a very splendid conference.

Henry H. Heinmann,
Executive Manager,
National Ass'n of Credit Men, New York.

Memorials

GEORGE F. COFFIN

In the death of Referee George Francis Coffin, Easton, Pa., the passing of a veteran appointee as Referee is recorded. Mr. Coffin died October 25th. He was born at Slatington, Pa., February 13, 1870, and received his education at Lafayette College. He was admitted to practice in 1896 and became a member of the firm of Reeder & Coffin but was later associated with his son under the firm name of Coffin & Coffin. He was interested in and connected with various corporations and industries, and during his later years was particularly associated with the cement business, being at his death connected with the Nazareth Cement Company as manager-secretary-treasurer. Referee Coffin was a member of the American Bar Association and the Pennsylvania State Bar Association and a charter member of this organization.

At a special session of the Northampton County Bar Association a resolution in appreciation of the service and life of Mr. Coffin was adopted. President Judge R. C. Stewart presided and delivered an eulogy. In speaking of Mr. Coffin's work as a Referee Judge Stewart said, in part:

> Then Congress passed the Bankruptcy Act of 1898 he was appointed by the Federal Court in Philadelphia, in 1898, as official Referee and he held that office until the present time. . . . There were many changes in the Act of 1898 [from the prior Acts] and while decisions under the old law were to some extent valuable yet they were misleading because the very purpose of the new Act was to change the old law in many respects. Thus Mr. Coffin at the early age of twenty-eight became a judge of that court and his field or work was an unknown province to all of us lawyers. . . . When he took office as Referee he knew the difficulties of his new position. He was conscious of the fact that to a large estent he was sailing in an unknown sea without chart or compass and therefore he took time in making up his mind and wrote very careful opinions in bankruptcy matters. Thus his opinions were published in legal journals all over the country and were followed by many other Referees and were approved by many federal courts in different sections of the country. Those interested will find that Referee Coffin's judicial work was a foundation for much that has passed into the bankruptcy law as accepted law. . . . His outstanding position as a Referee reflects great credit on the bar of which he was a member.

HARRY M. WICK

On September 25th occurred the death of Referee Harry M. Wick, Bradford, Penna., at his home after a very brief illness of pneumonia. Mr. Wick was at his office the Thursday preceding. Referee Wick was born in Bradford, November 2, 1881, the son of pioneer residents, Joseph C. and Sina J. Wick. He attended the local high school, entered the University of Pennsylvania and was graduated from its Law School in 1903. He opened a law office in Bradford in 1908 and for twenty years was a member of the law firm of Jones & Wick after which he resumed practice alone. He was first appointed a Referee in Bankruptcy 1919, his territory comprising only McKean County, which office he continued to hold until his death. He was a charter member of this Association.

Mr. Wick took an active place in local affairs. He was one of the earlier presidents of the Rotary Club of his home city and took a special interest in the work for crippled children. He was a past master of the local Masonic Lodge, a past high priest of the Chapter and past eminent commander of Trinity Commandry No. 58, Knights Templar and was a Shriner and otherwise connected with Masonic activities. He was a director of the Bradford Building Loan & Savings Association and of the Hospital Board and a member of the First Presbyterian Church. He also had memberships in the McKean County Bar Association, the local Country Club and the Valley Hunt Club. Mr. Wick entered the oil producing business early in 1917 being connected with the Woodchuck Oil Company which still has extensive operations, and was also associated in the Bi-State Oil Co. He worked energetically in the goodroads movement and had a large part as chairman of a citizens committee which advocated the issuing of bonds to repave many of the thoroughfares of his home city. He is survived by his widow, Mrs. Gale Smith Wick, a daughter, Marjorie, and a son, Robert, as well as by a brother.

HON. JOSIAH A. VAN ORSDEL

Hon. Josiah Alexander Van Orsdel, for thirty years an Associate Justice of the Circuit Court of Appeals for the District of Columbia, died at Great Barrington, Mass., while on a visit there with Mrs. Van Orsdel, after an illness of three weeks. He was buried at Blue Springs, Nebr.

Justice Van Orsdel was born at New Bedford, Penn., November 17, 1860, was educated in the Grove City (Penn.) Normal Academy and Westminster College, and began the study of law at New Castle and later moved to Nebraska where he was admitted to practice. He began practice at Cheyenne, Wyo. in 1891. A year later he was elected prosecuting attorney of Laramie County and two years later was elected to the state legislature. In 1895 he was appointed by the governor as a member of the commission to compile, revise and codify the state laws, serving as chairman. From 1897 to 1905 he was attorney general of Wyoming and in the latter year was appointed by the governor to fill a vacancy on the state Supreme Court. The next year he was appointed assistant Attorney General and moved to Washington. In 1907 he was appointed by then President Theodore Roosevelt as a justice of the Court of Appeals for the District of Columbia, which office he continued to hold until his death, being the senior member and one of the oldest federal jurists in point of years. He served as a delegate to the International Congress of Lawyers and Jurists held at St. Louis, received the degree of LL.D. from the Grove City College and also from Westminster College. For several years he was chairman of the Wyoming Republican State Committee and was a former President-general of the National Society of the Sons of the American Revolution. He married in 1891 and is survived by his widow.

HON. JOHN WELD PECK

John Weld Peck, formerly a U. S. District Judge for the Southern District of Ohio, died at his home in Cincinnati, August 10th in his sixty-fourth year after an illness of several months. Judge Peck had a distinguished career as a leader of the Ohio Bar. He was the son of the late Judge Hiram D. Peck who was chairman of the Judiciary Committee of the Ohio Constitutional Convention of 1911. Judge Peck attended Miami University, Oxford, O., Harvard, where he received his A.B. degree, and the Cincinnati Law School receiving his LL.B. degree. In 1915 Miami University conferred upon him the honorary degree of LL.B. and for several years he served as a trustee of that institution. Since 1933 he has been a member of the Ohio State Banking Advisory Board and was also on the faculty of the University of Cincinnati Law School. Upon his admission to practice he became associated with his father's firm, which is now the firm of Peck, Shaffer & Williams. He was appointed U. S. District Judge by then President Wilson in 1919 but resigned after four years service to resume private practice.

HON. JOHN E. SATER

On July 18th, John E. Sater, formerly a U. S. District Judge for the Southern District of Ohio, died at the age of eighty-three at Dayton. He served on that bench for seventeen years resigning in 1924.

HON. THOMAS A. JONES

Hon. Thomas A. Jones, of the Supreme Court of Ohio, died at his home in Columbus August 31st. He was born on March 4, 1859 at Jefferson Furnace in Jackson County, of Welsh parentage. His father was an iron manufacturer and coal operator and served in the Civil War. Judge Jones received a rural and public school education, matriculating at Ohio University at Athens, from which he graduated in 1881 with a B.A. and was a member of Phi Beta Kappa. He later received the degrees of M.A. and LL.D. from that university. He taught country school and at the same time pursued the study of law and was admitted to practice in 1883 becoming a member of the firm of Tripp & Jones, which later was Tripp, Jones & Phillips. For a while he was mayor of Jackson and in 1900 was elected to the Circuit Bench of the Fourth Circuit of his home state, which office he occupied for fourteen years when in 1914 he was elected a member of the Supreme Court of Ohio and re-elected thereafter so that he had a judicial career for thirty-seven years. During the World War Judge Jones was appointed as a member of the State Commission for Inspection of Ohio troops located at various camps and was a member of the local district committee in charge of the enlistment of British and Canadian subjects residing in this country. He was a member of various Masonic bodies and of the Presbyterian Church and affiliated with Phi Delta Theta college fraternity and Phi Delta Phi law fraternity. He was married but his wife survived him only two weeks. Four children, two sons and two daughters, survive. One daughter died in early life. The surviving children now reside in Cleveland where the sons and sons-in-law are engaged in the practice of law, one of them, Hon. Harold G. Mosier, being a Congressmen-at-Large from Ohio.

HON. LOTT R. HERRICK

The death of Justice Lott R. Herrick of the Illinois Supreme Court occurred at a hospital in Rochester, Minn., on September 18th, following a brief illness. Justice Herrick was born at Farmer City, Ill., December 8, 1871, was educated in the public schools and graduated with honors from the University of Illinois in 1892 and received his LL.B. from the University of Michigan in 1894, being admitted to practice in Illinois the same year. He was first associated with his father but upon the latter's death his brother joined the firm. For two years he served as Judge of the County Court of DeWitt County, Ill. In 1933, he was elected to the Supreme Court of Illinois and in due course served as Chief Justice and was a member of that bench at the time of his death. For many years he was a member and president of the Moore Township High School Board of Education and was a member of Phi Beta Kappa, Sigma Chi and Phi Delta Phi fraternities as well as of the Knights of Pythias, the Elks and the Masonic fraternity. He is survived by his widow and one daughter.

J. SAM JOHNSON

The death of J. Sam Johnson, formerly a Referee in Bankruptcy, occurred at his home in Huntingdon, Tenn., last August following a prolonged illness. Mr. Johnson was born in his home town June 1, 1872, was admitted to practice in 1914 and was first appointed a Referee in Bankruptcy in 1927 after serving as a county clerk, U. S. Marshal, Master in Chancery, and Clerk of the U. S. District Court. He was for a while a member of this Association and attended the Memphis Conference but had membership in no other organization. He is survived by his widow and a son who bears his name.

RE FORM NO. 9

In the preparation of form No. 9 for statistical data in bankruptcy cases the Association is advised, in response to its inquiry relative thereto, that an error was carried forward into this form from the old form No. 1. The following instructions have been issued to the Clerks of Cou

If any moneys are paid to the referee to defray, or on account of, his expenses, include the amounts in Items 11 and 12, notwithstanding instructions to the contrary on the form, but do not so include the filing fee.

In this new form, then, as in the old one, Referees will account for the indemnity received in all no-asset cases.

CONFERENCE ABSENCE EXPLAINED

Referee L. Earl Curry, Miami, a past president of this Association, ascribes his absence from the Kansas City Conference to the arrival of a baby girl at his home on September 26th. She will bear the name of Suzanne.

CHANDLER BILL H.R. 8046

The Chandler Bill passed the national House August 10th after brief debate. It was received by the Senate the next day and was referred to its Committee on the Judiciary. A sub-committee held hearings on it and for a while it appeared as though it might receive Senate action prior to adjournment. It is now planned to seek such action at the special session.

Those interested in receiving a copy of the Bill should ask for the same from a U. S. Senator. It is identified as HR. 8046, 75th Congress, 1st Session, and the Senate print should be secured. The report printed by the House is entitled "Revision of the National Bankruptcy Act" and is Report No. 1409, 75th Congress, 1st Session. The amendments are indicated in their relationship to the present Act therein.

Copies of the bill and the report are not available to the Secretary for general distribution so inquiries should be addressed to Washington.

According to newspaper reports, the Associated Retail Credit Managers of Birmingham, Ala., have authorized its committee on bankruptcies to engage the services of one of the ablest collection attorneys of that city to investigate thoroughly every voluntary petition in bankruptcy which shall be filed and to take action to prevent fraud. It was stated at a recent meeting of the organization that there is an increased number of voluntary petitions filed in Birmingham in recent months.