

sequences may be unfortunate. Since this note was prepared, a limit on the appropriation power has been for the first time authoritatively announced; but the scope of the remaining power is not yet clear. *U.S. v. Butler*, 296 U.S.—Chicago Daily Tribune, Jan. 7, 1936, p. 6.

Contracts—Consideration—Uniform Written Obligations Act—[Pennsylvania].—Assumpsit was brought on a note, signed by the defendant, which began with a promise to pay the plaintiff \$5,000, was followed by a pledge of collateral security, and concluded with the words “and should any balance remain unpaid, I [defendant] further promise and agree to pay the same to the holder thereof on demand.” The note was not sealed. The defendant contended that because no consideration was averred, the plaintiff did not establish a good cause of action. *Held*, the Uniform Written Obligations Act (Pa. P.L. 985 (1927)) eliminates the defense of absence of consideration where the right of action is based on a written promise which contains an additional express statement, in any form or language, that the signer intends to be legally bound. Here, the express promise to pay was followed by another promise to pay any unpaid balance. *Gilmore, ex'trx. v. Kessler*, 22 Pa. Dist & County. Rep. 274 (1935).

For discussion of the Uniform Written Obligations Act see note, Contracts without Consideration, *ante*, p. 312.

Corporate Reorganization—A Foreclosure Receivership as a “Proceeding in Equity Receivership” within the Meaning of § 77B—[Federal].—A petition was filed for involuntary reorganization proceedings under § 77B(a) of the Bankruptcy Act, the petitioner alleging that a receiver had been appointed in a pending mortgage foreclosure action which involved all of the debtor's property. *Held*, petition dismissed; a foreclosure receivership is not a pending equity receivership within the meaning of the Bankruptcy Act. *In re 2168 Broadway Corp.*, 78 F. (2d) 678 (C.C.A. 2d 1935), *cert. granted, sub nom. Duparquet Huot Moneuse Co. v. Frysinger, Evans et al.*, 56 Sup. Ct. 248 (1935).

By the terms of § 77B, subdivision (a), three creditors having a combined claim of \$1000 or more in excess of their securities, may file an involuntary petition for reorganization of a corporation. Their petition must allege, *inter alia*, that the debtor has committed an act of bankruptcy within the four preceding months or that a prior proceeding in bankruptcy or equity receivership is pending. Exactly what is meant by a “proceeding in equity receivership” has been the subject of sharp controversy. The expression “equity receivership” is broad enough to include all cases in which a receiver is appointed by a court of equity for any purpose whatsoever. 1 Clark, Receivers § 12 (2d ed. 1929). Influenced by this consideration the federal courts in the seventh circuit have held it to include a receivership in a mortgage foreclosure. *In re Granada Hotel Corp.*, 9 F. Supp. 909 (D.C. Ill. 1934), affirmed in 78 F. (2d) 409 (C.C.A. 7th 1935), *cert. granted, sub nom. Tuttle v. Harris*, 56 Sup. Ct. 150 (1935); *In re Flamingo Hotel Corp.*, 1 Corp. Reorg. Mag. 53 (D.C. Ill. 1934); *In re Surf Bldg. Corp.*, 11 F. Supp. 295 (D.C. Ill. 1934). In all of these cases the mortgage covered all or nearly all of the assets. See Spaeth and Friedberg, Early Developments under Section 77B, 30 Ill. L. Rev. 137, 139, note 6 (1935). *Cf.* Hanna, Corporate Reorganization under the Bankruptcy Act, 21 Am. B. Ass'n J. 73, 76 (1935). Among lawyers, however, the phrase “proceeding in equity receivership,” is probably regarded as referring to the

type of proceeding in which a receiver is appointed at the suit of an unsecured creditor or stockholder to take charge of a corporation in order to liquidate its assets and wind up its affairs. See Friendly, *The Corporate Reorganization Act*, 48 Harv. L. Rev. 39, 54, note 57 (1934). And some courts have refused to recognize a foreclosure receivership as coming within the meaning of this term. *In re Draco Realty Corp.*, 11 F. Supp. 405 (D.C. N.Y. 1935); *In re 2168 Broadway Corp.*, 11 F. Supp. 404 (D.C. N.Y. 1935), affirmed in the principal case. See *In re Laclede Gas Light Co.*, 1 Corp. Reorg. Mag. 50 (E.D. Mo. 1934).

The provisions permitting reorganization petitions on the application of unsecured creditors were ostensibly designed to protect unsecured creditors. Bankruptcy and general receivership proceedings, in which the affairs of insolvent or embarrassed corporations were settled before the passage of § 77B, normally result in a forced sale of the assets of the corporations. Perhaps recognizing that forced sales prejudice the interests of unsecured creditors, the draftsmen of § 77B made it possible by making those proceedings themselves the basis of a petition for reorganization. Since the possibility of forced sales is equally present and equally undesirable in proceedings for mortgage foreclosure, the policy behind the act can best be served by making foreclosure receiverships as well as general receiverships the basis of § 77B petitions. Forced sales may injure unsecured creditors whether or not they have an equity in the mortgaged property. Even if the mortgage covers only half or a quarter of the assets, if it appears that the rest of the assets are heavily mortgaged or have depreciated greatly in value, foreclosure of the mortgage may well endanger the prospects of the unsecured creditors, and reorganization proceedings should be available to them if they satisfy the other requirements of § 77B. The logic of this position does not, contrary to the view of the court in the principal case, extend to cases where a receiver is appointed for a foreclosure in which the mortgage covers but an infinitesimal part of the assets. In any particular case the courts should carefully weigh all the relevant facts, such as the market value of the mortgaged assets and of the rest of the assets, and the amount of the secured claims, to determine whether or not the foreclosure and forced sale would work such hardship on the unsecured creditors that it is fair to deprive the secured creditors of their immediate foreclosure rights in order to work out a plan for the benefit of all creditors.

In § 77B subdivision (i) it is provided that "if a receiver or trustee of all or *any part* of the property of the corporation has been appointed" in another proceeding, a petition may be filed under section 77B at any time thereafter "as provided in subdivision (a)." In the principal case the court apparently assumed that this provision might afford an independent basis for jurisdiction apart from subdivision (a) but held that the words "any part" refer only to general receiverships of assets within the court's jurisdiction. There seems little basis in the act for this view. A reading of the entire subdivision (i), which makes clear the power of the bankruptcy court in 77B proceedings to take jurisdiction over assets of the debtor which are involved in prior proceedings, makes it seem highly unlikely that subdivision (i) was meant to affect subdivision (a) in any way or to provide an alternative basis for a reorganization petition. The introductory words quoted above were probably intended only to refer to proceedings which might be brought under subdivision (a).

The court also argued that since § 3(a) (4) of the Bankruptcy Act, which declares it to be an act of bankruptcy for a receiver to be appointed for an insolvent's property, has been interpreted as not including a foreclosure receivership (see *Standard Acci-*

dent Ins. Co. v. Sheftall & Co., 53 F. (2d) 40, 41 (C.C.A. 5th 1931)), § 77B, subdivision (a) should likewise be interpreted not to include a foreclosure receivership. But the language of § 3(a) (4) speaks of a receiver's being put in charge of the insolvent's property. Those words are perhaps a stronger indication that a general liquidating receivership was contemplated than are the words of subdivision (a) of § 77B referring to a "proceeding in equity receivership." Furthermore, the necessity for forced sale attends bankruptcy proceedings quite as much as it does foreclosure proceedings. Hence, the most cogent reason for permitting a creditor to effect a transfer from a foreclosure proceeding to one under § 77B, that of avoiding a forced sale, is entirely absent in the case of ordinary bankruptcy.

[NOTE.—On February 5, 1936, after this note was set up, the Supreme Court affirmed the principal case and reversed *In re Granada Hotel Corp.*]

Corporations—Amendment of Charter—Right of Minority Stockholder to Object to Changes in Charter under Statute Subsequent to Incorporation—[Delaware].—Minority preferred stockholders of a Delaware corporation challenged the legality of an amendment to its certificate of incorporation that abolished arrearages of cumulative dividends amounting to \$21.75 per share and changed each preferred share into five common shares. The amendment was adopted by the required majority of the preferred stockholders, voting as a separate class. After the amendment was adopted, the corporation declared a dividend on the common stock without providing for payment of arrears on the preferred. The statute had provided when the corporation was organized that the corporation could amend its articles by "increasing . . . its authorized stock . . . or by making any other change or alteration of its charter of incorporation that may be desired . . . Provided, however, that if any such proposed amendment would alter or change the preferences given to any one or more classes of preferred stock . . . then the holders of . . . each class of preferred stock so affected . . . shall be entitled to vote as a class . . ." Del. Rev. Stat. (1915) c. 65, § 26. The corporation act contained also the so-called reserved power provision: "This chapter may be amended . . . and this chapter and all amendments thereof shall be a part of the charter of every . . . corporation . . ." Del. Rev. Stat. (1915) c. 65, § 82. Prior to the adoption of the charter amendment in question § 26 of the statute had been amended in 1927 so as to authorize charter amendments "reclassifying" the shares and "changing the . . . relative, participating . . . or other special rights of the shares . . ." 35 Del. Laws (1927) c. 85, § 10. The objecting preferred stockholders brought suit asking a declaration of the illegality of the amendment and for a decree ordering the payment of the arrears of dividends on their shares. On demurrer to the bill, *held*, demurrer sustained. *Keller v. Wilson & Co.*, 180 Atl. 584 (Del. Ch. 1935).

It was conceded that the charter amendment would have been unauthorized had the 1927 amendment to § 26 not been enacted. Arrearages of preferred dividends had been held something more than a "preference" and thus not subject to abolition under the prior § 26, and this apparently regardless of whether the corporation then had a surplus from which the dividends might be paid. *Morris v. Amer. Public Utilities Co.*, 14 Del. Ch. 136, 122 Atl. 696 (1923). Furthermore, as to a corporation organized after 1927, the amended § 26 has been held to authorize elimination of claims to accumulated dividends, again regardless of the corporate surplus. *Harr. v. Pioneer Mech. Corp.* 65 F. (2d) 332 (C.C.A. 2d 1933). In the principal case the court held that the same