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NOTES

VENUE UNDER THE CHANDLER BILL IN CORPORATE BANKRUPTCY AND REORGANIZATION PROCEEDINGS

The venue provisions of the Chandler Bill applicable to corporations allow filing in several places. For bankruptcy,[1] it may be done in the principal place of business, the residence or the domicile.[2] This continues a provision existing since 1898.[3] For reorganization, filing is permitted in the place of principal assets, or in the principal place of business.[4] This involves an important restriction on the comparable existing reorganization provision[5] which, in addition to permitting filing in these places, also allows it in any district of the state of incorporation.[6]

[1] Sec. 2 of H.R. 8046, 75th Cong., Ist Sess. (1935).

[2] For venue purposes, residence and domicile are synonymous, so the residence provisions require no separate discussion. Galveston Ry. v. Gonzales, 151 U.S. 496 (1894).

[3] 30 Stat. 545 (1898), 11 U.S.C.A. Sec. 11 (1927). [4] Sec. 128.

[5] That the limitation was intentional, because Congress believed there was too much latitude in the existing provisions, see the Committee print of the Analysis of H.R. 12889, p. 61, note 7 (1937).

[6] 48 Stat. 912 (1934), 11 U.S.C.A. Sec. 207 (1937).

These choices increase the possibility of the filing of petitions in several districts, which in turn must involve a waste of time, effort and expense in court proceedings to determine which district is to hear the matter. For example, in one recent bankruptcy proceeding, it took two years from the time the first petition was filed to get a final decision as to where the administration was to occur,[7] and in a reorganization proceeding eighteen months.[8] As no material benefits are gained by having several districts to file in since service can be had in any of them, and since removal may be necessary in any case if it proves convenient, Congress should end this possibility of concurrent jurisdiction in two or more districts by restricting filing in all cases to the principal place of business only, to the domicile, *i.e.*, place of incorporation, only, or to the place of the principal assets, but in no event should it be allowed in more than one of these places. That is, whichever district Congress deems preferable should be the only district in which filing of any bankruptcy or reorganization petition should be allowed.

An examination into the rules and decisions concerning venue in the administration of bankrupt estates will prove helpful in determining to which of the three suggested districts filing should be restricted. The court in which the first petition is filed does not thereby acquire exclusive jurisdiction over the matter. By General Order VI in Bankruptcy,[9] of the United States Supreme Court, where two or more petitions are filed against[10] the same individual[11] in different districts, the first hearing must in be the district of the domicile of the debtor. Proceedings on other petitions "may" be stayed pending an adjudication on the petition first heard (persumably the one heard by the domiciliary court).[12] The court making the first adjudication is to retain jurisdiction till the

[7] The following cases were involved: Royal Indemnity Co. v. American Bond Co., 58 F. (2d) 379 (D.C. Maine 1932); *In re* American Bond & Mtge. Co., 61 F. (2d) 875 (C.C.A. 7th 1932), *aff'd.* sub. nom. Royal Indemnity Co. v. American Bond Co., 289 U.S. 165 (1933); Royal Indemnity Co. v. American Bond Co., 65 F. (2d) 455 (C.C.A. 1st 1933), *cert. den.* 290 U.S. 680 (1933); and one unreported case.

[8] The following cases were involved: Hamilton Gas Co. v. Watters, 75 F. (2d) 176 (C.C.A. 4th 1935); Watters v. Hamilton Gas Co., 10 F. Supp. 323 (W.Va. 1935); *In re* Hamilton Gas Co., 79 F. (2d) 97 (C.C.A. 2d 1935), *cert. den.* 296 U.S. 647 (1935); Hamilton Gas Co. v. Watters, 79 F. (2d) 438 (C.C.A. 4th 1935), *cert. den.* 296 U.S. 647 (1935); and one unreported case.

[9] 172 U.S. 653 (1898).

[10] "Against" includes "by," Sec. 1, Chandler Bill (1935); Sec. 1, 30 Stat. 544 (1898), 11 U.S.C.A. Sec. 1 (1927).

[11] "Individual" includes "corporation," Sec. 1 Chandler Bill (1935).

[12] It has been held that this provision prevented another court from stealing a march on the domicile by making a prior adjudication and thus taking jurisdiction. *In re* Elmira Steel Co., 109 Fed. 456 (D.C. N.Y. 1901); *In re* Tybo Mining Co., 132 Fed. 697 (D.C. Nev. 1904); but see *contra*, Hamilton Gas Co. v. Watters, 75 F. (2d) 176 (C.C.A. 4th 1935); *In re* Kelly-Springfield Tire Co., 10 F. Supp. 419 (N.Y. 1935); see also *In re* Sears & Co., 128 Fed. 275 (C.C.A. 2d 1904).

end of the proceedings, unless it is satisfied that a transfer would be "for the greatest convenience of the parties in interest."

The Order is obviously still applicable to bankruptcy proceedings under the Chandler Bill, since filing in the domicile is still permitted. It has been held applicable to proceedings under the existing reorganization statute,[13] which permits filing in the domicile,[14] but should not apply in reorganization proceedings under the bill, since it does not provide for filing in the domicile in its reorganization sections.[15]

The Order is not the only applicable transfer provision. Section 32 of the Chandler Bill, applying to bankruptcy, reenacts the existing law,[16] providing for transfer to the court which "can proceed . . . . for the greatest convenience of parties in interest"; and for reorganization, Section 118 permits transfer to any district "if the interests of the parties will be best served by such transfer." These provisions indicate that transfer is discretionary;[17] so that if any marked tendency can be found in the existing cases, it would evidence which type of district the courts themselves believe most suitable to handle such proceedings. Both the bankruptcy and the reorganization cases show that, in general, transfer from the domicile to the principal place of business has been requested and granted.[18] In other cases, courts have indicated a willingness to transfer, if they could be convinced that the district to which transfer was requested was in fact the principal place of business.[19] It seems reasonable to infer, therefore, that the principal place of business is, in the opinion of those courts best able to judge, the best place to administer bankrupt estates.

[13] Hamilton Gas Co. v. Watters, *supra* note 12.

[14] That is, the statute permits filing in the state of incorporation, which is held to be the domicile. Restatement, Conflict of Laws, § 41 (1934); Shaw v. Quincy Mining Co., 145 U.S. 444 (1892).

[15] Note, however, it has been indicated in one decision that even though no question of domicile was involved still that part of the order giving the court making the first adjudication exclusive and final jurisdiction could apply. Hamilton Gas Co. v. Watters, *supra* note 12. However, a careful reading of the order shows it was not intended to be thus severable.

[16] 30 Stat. 554 (1898), 11 U.S.C.A. Sec. 55 (1927).

[17] Although General Order VI on its face appears to limit the discretion of the courts, the statutory transfer provisions control the order wherever there is a conflict. Thus the limitation is not as striking as it would appear. *In re* American Bond Co., 58 F. (2d) 379 (D.C. Maine 1932), *aff'd.* sub. nom. Royal Indemnity Co. v. American Bond Co., 65 F. (2d) 455 (C.C.A. 1st 1933), *cert. den.* 290 U.S. 680 (1933); *In re* Okmulgee Products Co., 265 Fed. 736 (D.C. Del. 1920).

[18] *In re* General Metals Co., 133 Fed. 84 (D.C. N.Y. 1904); *In re* Okmulgee Products Co., 265 Fed. 736 (D.C. Del. 1920); *In re* Statewide Theaters Corp., 4 F. Supp. 86 (Del. 1933); *In re* Botany Consolidated Mills, 10 F. Supp. 267 (Del. 1935); *In re* Sierra Salt Corp., 8 F. Supp. 922 (Nev. 1934); *In re* Consolidated Gas Utilities Co., 8 F. Supp. 385 (Del. 1934); *In re* Syndicate Oil Corp., 9 F. Supp. 127 (Del. 1934); *In re* American Bond Co., *supra* note 17.

[19] *In re* Tybo Mining Co., 132 Fed. 978 (D.C. Maine 1904); *In re* United Button Co., 137 Fed. 668 (D.C. Del. 1904); *In re* Pennington, 228 Fed. 388 (D.C. Ky. 1915).

The location of the principal place of business is a question of fact to be determined in each case.[20] In settling on it, the criteria used by the courts have been those of practical convenience. Thus, where there are several scattered plants of about equal size, and the affairs of all of them are run from one office, that office has been held to be the principal place of business.[21] On the other hand, if one plant overshadows the rest in size and output, it has been denominated the principal place of business.[22] Or, where there was only one big plant and a separate office, held, the plant was the principal place of business.[23] In all of these cases the practical nerve-center of the business was well-chosen as the place of administration under the application of the principal place of business doctrine.

However, under General Order VI—evidently, under the Chandler Bill, still applicable in bankruptcy—the first hearing is domiciliary, so that courts must transfer proceedings to the domicile[24] even though the first petition was filed in the logical place of administration, *i.e.*, the principal place of business. In one case it was admitted that the only connection between the bankrupt and the domicile was that it was incorporated there, and therefore any receiver appointed by the domicile would have only nominal duties as domiciliary receiver and and the actual administration of the estate would have to be undertaken through ancillary proceedings in other states. Nevertheless, the domiciliary court said it would appoint a receiver in order to make possible the appointment of ancillary receivers, if receivership was necessary.[25] Ordinarily no legitimate objection can be made to domiciliary control over an individual who is bankrupt, since there is an intimate connection between him and his domicile. But there is a real objection where corporations are involved, since it is common knowledge that many corporations are domiciled in districts in which they do little or no business—the many Delaware corporations furnishing an excellent example. To insist on domicilliary proceedings on the basis of so flimsy a connection is hardly justifiable.

One further possibility remains, and that is to make the place of principal assets a proper district for filing. As indicated, both by the existing statute and the Chandler Bill, this is permitted only in reorganization proceedings. But

[20] Chicago Bank of Commerce v. Carter, 61 F. (2d) 986 (C.C.A. 8th 1932).

[21] *In re* Matthews Consolidated Slate Co., 144 Fed. 724 (D.C. Mass. 1905), *aff'd* sub. nom. Burdick v. Dillon, 144 Fed. 737 (C.C.A. 1st 1907), appeal dismissed 205 U.S. 550 (1907).

[22] Dryden v. Ranger Refining Co., 280 Fed. 257 (C.C.A. 5th 1922), *cert. den.* 260 U.S. 726 (1922); Lawrence v. Atlantic Paper Corp., 298 Fed. 246 (C.C.A. 5th 1924), *cert. den.* 266 U.S. 606 (1924); *In re* Lincoln Mining Co., 204 Fed. 568 (C.C.A. 8th 1913).

[23] *In re* Pusey-Jones & Co., 286 Fed. 88 (C.C.A. 2d 1922), *cert. den.* 261 U.S. 623 (1923).

[24] *In re* Globe Securities Co., 132 Fed. 709 (D.C. N.Y. 1904); *In re* New Era Novelty Co., 241 Fed. 298 (D.C. N.J. 1916); *In re* Stanley Shoe Co., 8 F. Supp. 681 (N.H. 1934); *In re* United Button Co., 132 Fed. 378 (D.C. N.Y. 1904). Later a transfer from the domiciliary court was asked and refused, partly because that court misunderstood the holding in this case to mean that N.Y. was not the principal place of business.

[25] *In re* American Bond & Mtge. Co., 50 F. (2d) 441 (D.C. Maine 1931).

many difficulties arise under this approach to venue. What type of assets are the principal ones? How is valuation to be determined? Where is the situs of a debt or any other intangible? And yet, in contrast to the abundance of authority aiding in determining where the principal place of business is, the almost complete lack of authority[26] as to the location of the principal assets makes the solutions to the distressing problems that arise therefrom merely unsatisfactory surmises.[27]

Further to illustrate the problem of principal assets, if, for example, it is held that the assets of the largest value are the principal ones, impractical administration may result because of the rule that a debt has its situs at the domicile of the debtor.[28] To illustrate, suppose a corporation has a large account receivable outstanding in a certain district at the time of filing, which constitutes the major portion of its assets in terms of value, that district would have jurisdiction, since it would be the place of principal assets. Yet all the management, creditors, and all the physical properties may be in another district which is probably the principal place of business. Other unfortunate results can follow. Assume, for example, that the debt was not due at the time of the filing, was undisputed, and was owed by a responsible debtor who would undoubtedly pay when it became due, and that no other connection existed between the corporation and the domicile of the debtor. The application of the principal assets rule here would lead to an unjust result, because the debt is collectible regardless of which court administers the estate, and once it is collected, all connection with the district

[26] The only case found on this point did not prove helpful, since there was no discussion of the many problems involved. *In re* Kelly-Springfield Tire Co., 10 F. Supp. 414 (Md. 1935).

[27] The difficulties inherent in attempts to fix the situs of intangibles have been the subject of limitless discussion. See, for example, Goodrich, Conflict of Laws 83 ff. (1927); 1 Gerdes, Corporate Reorganization 202 ff. (1936); Beale, Conflict of Laws 7 (1 vol. ed. 1935) (Prof. Beale comes to the conclusion that a chose in action has no situs). The existing law compels courts to grapple with these involved problems even in the jurisdictional stage. For example, in taxation cases, the situs of a debt has sometimes been held to be at the domicile of the debtor, Blackstone v. Miller, 188 U.S. 189 (1903); and sometimes at the domicile of the creditor, Kirtland v. Hotchkiss, 100 U.S. 491 (1879); or, if the debt is represented by a tangible chose, at the place where the document is kept. Wheeler v. Sohmer, 233 U.S. 434 (1914). On the other hand, situs was set at the domicile of the debtor when a question of supervision of the administration of an estate was involved. Wyman v. Halstead, 109 U.S. 654 (1884). Widely divergent rules regarding the situs of corporate stock have been expressed, the results usually depending at least in part on whether the problem at hand was a taxation or a garnishment one. Hawley v. Malden, 232 U.S. 1 (1914) (shares held taxable at domicile of owner); but see Grayson v. Robertson, 122 Ala. 330 (1898) (for purpose of administrative control, situs set at domicile of issuing corporation) and *cf.* Baker v. Baker, Eccles & Co., 242 U.S. 394 (1917). Goodwill and franchise value have been apportioned for purposes of taxation. Adams Express Co. v. Ohio State Auditor, 165 U.S. 194 (1897); Schwab v. Richardson, 263 U.S. 88 (1923). The presence of these analogies may well have a misleading effect. The possibility that they will be held as controlling when similar questions come up in reorganization proceedings must be faced if the place of principal assets is retained as a basis for venue by the Chandler Bill.

[28] See *supra* note 27.

ends. Yet, to carry on the administration there may be an undue strain on the more numerous interests centered in the principal place of business. If a court decides to abandon the ordinary rule and to say instead that the debt is located where the creditor is, it will probably decide that the creditor is at the principal place of business, and administer there. The situation may be further complicated if the existence and amount of the debt are in dispute.[29] As a matter of fact, difficult questions of evaluation will have to be met in any case under the principal assets doctrine.[30]

To allow such difficulties to swallow up time, energy and expense in merely the jurisdictional phase seems a useless impediment to proceedings whose value is inversely proportional to the time and money expended therein. In any event, to allocate a corporation's assets to whichever district they happen to be in at the time of filing, and then to say that the district having the largest portion of these assets is the proper place for filing, is to completely lose sight of the purpose of bankruptcy and reorganization legislation. The possibility of such allocation arises not only from the statute itself, but also from the existence of taxation analogies.[31] which really have no bearing on the matter since the primary consideration is not to preserve the rights of any state against the corporation, but rather to efficiently administer the corporate estate.

If a court in determining which district is the place of principal assets takes a practical point of view, the chances are that the same district would be settled on as would in fact be chosen under the principal place of business doctrine.[32] Only when the court is led astray by the technical difficulties of situs

[29] For a case in which it was virtually impossible to fix a value for various debts, see *In re* Fred D. Jones Co., 268 Fed. 818 (C.C.A. 7th 1920), *cert. den.* sub. nom. Heldman v. Central Trust Co., 257 U.S. 664 (1921). While valuation must occur during the course of bankruptcy proceedings, it is highly objectionable to require it to be done merely for the purpose of determining which court has jurisdiction.

[30] For example, if productive property is involved, the value may be based on either the cost of reproduction less depreciation as in rate cases, (Smyth v. Ames, 169 U.S. 466 (1898)), or on the earning capacity of the assets. See Galveston Ry. v. Texas, 210 U.S. 217 (1908). Great difficulties exist. If the first method suggested is used, a thorough appraisal will be necessary. If the latter is used, at what rate should earning capacity be capitalized? Moreover, it is unreasonable to thus evaluate the property in each state, since it is the earning capacity of the corporation as a unit which should determine the value of its property.

Bankruptcy courts have laid down various rules in determining the fair value of property. It has been held to be the general market value, *In re* Hines, 144 Fed. 142 (Ore. 1906); the fair cash value, Chicago Motor Vehicle Co. v. American Oak Leather Co., 141 Fed. 518 (C.C.A. 7th 1905); the going value, *In re* Kobre, 224 Fed. 106 (N.Y. 1915); Bergdoll v. Harrigan, 217 Fed. 943 (C.C.A. 3d 1914), aff'd 238 U.S. 609 (1915).

If part of the assets consists of choses in action, added problems are raised. The amount may be in dispute, or the debtor irresponsible. For an excellent discussion, see Finletter, Principles of Corporate Reorganization c. 7 (1937).

[31] See *supra* note 27.

[32] Consider the cases cited in *supra* notes, 21, 22 and 23.

and valuation inherent in the principal assets doctrine, would it settle on a different district. To eliminate the possibility of such mistakes, the district of the principal place of business should be the only district in which filing is permitted.[33]

While this rule will end the possibility of filing in districts of concurrent jurisdiction, it will not preclude the possibility that two or more persons may assert that different districts are in fact the principal place of business. This problem presents few real difficulties. A rule has been laid down that where there is a *conflict* of jurisdiction, the court in which the first petition is filed will determine which district is the principal place of business.[34] This is entirely satisfactory, since it insures a speedy settlement of the venue question. It might be argued that the corporate management, by picking out an inconvenient district for other interested parties, could rush a petition through without opposition and thereby gain the advantage of having the proceedings held in a place where for some reason or other the management preferred that they occur. But the contention may be answered in several ways. First, the discretion of the courts, sitting as courts of equity, could be relied on to prevent such "railroading."[35] Moreover, some help is furnished by the Chandler Bill, which, as regards reorganization, requires that the petition state the jurisdictional facts.[36] If this provision were extended to bankruptcy cases as well, it would follow that in both types of cases flagrant misuse of the courts of any district might be thwarted.

The court in which the first petition is filed should be empowered to stay proceedings on subsequent petitions in other districts and to force all interested parties to appear before it. Section 111 of the Chandler Bill, which unfortunately applies only to reorganization proceedings, may be important in this connection. It provides that the court in which a petition is *filed*, "shall have exclusive jurisdiction over the debtor and its property, wherever located." Under a similar statutory provision[37] which gave exclusive jurisdiction over the debtor's property only upon *approval* of a petition by the court, the Supreme Court held that as a necessary consequence of such jurisdiction that court had the power to preserve the estate, and could enjoin interference with the debtor's property wherever located, and therefore had the power to send its process for service on

[33] It might be contended that a limitation to one district would defeat the policy in favor of protecting local creditors where a foreign corporation has assets within a particular district. *Cf.*, for instance, decedent estate's cases where administration is based on state laws. Shegogg v. Perkins, 34 Ark. 117 (1879). However, the policy of the national bankruptcy laws is to establish uniform administration involving equal treatment for all creditors, which is, of course, inconsistent with any notion of local preferences.

[34] *In re* Continental Coal Corp., 238 Fed. 113 (C.C.A. 6th 1916).

[35] Such "railroading" was prevented in *In re* Hamilton Gas Co., 79 F. (2d) 97 (C.C.A. 2d 1935), *cert. den.* 296 U.S. 647 (1935).

[36] Sec. 130(2).

[37] 48 Stat. 923 (1934); 11 U.S.C.A. sec. 202(m) (1937).

those to be enjoined throughout the United States.[38] Since Section 111 gives exclusive jurisdiction on *filing*, it must follow that it permits the court in which the first petition is filed to bring in all interested parties, and in order to eliminate undue interference with the administration of the debtor's estate, to stay by injunction proceedings any attempt to prosecute a second petition in another court.

One matter remains. Under unusual circumstances, it may be desirable to have the administration occur in some district other than that of the principal place of business. This possibility can be met by liberal statutory transfer provisions. In this respect, Section 118 of the Chandler Bill seems adequate. It allows for transfer by the judge to a court of bankruptcy in any other district, regardless of the location of the principal assets, or of the principal place of business, if the interests of the parties will be best served by such a transfer. This broad provision, applying to reorganizations only under the bill, was included to end a restrictive interpretation of the transfer sections of the existing statute[39] under which transfer has been allowed only to those jurisdictions in which an original petition might have been filed.[40] A similar restriction made with regard to bankruptcy transfer[41] is not changed by the Chandler Bill, which allows transfer whenever it is for the "greatest convenience of the parties in interest" from one court having jurisdiction to another one having jurisdiction.[42] If the principle of Section 118 is extended by Congress to both bankruptcy and reorganization proceedings, the danger of hardship in any case is greatly lessened.

SUMMARY

Although venue in bankruptcy and reorganization proceedings should be limited to one type of district only, the Chandler Bill provides for several. A limitation to the principal place of business only seems desirable, and in case of any conflict as to where that is, the court in which the first petition is filed should settle the matter. If it should transpire that the principal place of business is not the proper place to conduct the proceedings, the court should be allowed to transfer to whatever district it believes best suited to handle the matter.

[38] Continental Illinois National Bank v. Chicago R.I. & P. Ry., 294 U.S. 648 (1935); accord, *In re* Midland United Co., 12 F. Supp. 502, (Del. 1935); Thomas v. Winslow, 11 F. Supp. 839 (N.Y. 1935); *In re* Norfolk Weavers, 12 F. Supp. 495 (Del. 1935); *In re* Greyling Realty Corp., 74 F. (2d) 734 (C.C.A. 2d 1935).

[39] 48 Stat. 912 (1934); 11 U.S.C.A. Sec. 207(a) (1937).

[40] *In re* Syndicate Oil Corp., 9 F. Supp. 127 (Del. 1934); *In re* Midland United Co., 8 F. Supp. 92 (Del. 1934).

[41] *In re* American Bond Co., 58 F. (2d) 379 (D.C. Me. 1932).

[42] Section 32. An unsound interpretation of this provision can be found in *In re* Southern States Finance Co., 19 F. (2d) 959 (D.C. Del. 1927), in which the court said that after one court made an adjudication of bankruptcy, no other court could possibly get jurisdiction, so that transfer after adjudication was impossible. This goes flatly contra to the intent of Congress.