NOTES

WAGE-EARNER RECEIVERSHIPS

Among its many reforms of the bankruptcy law, the Chandler Act, in a chapter entitled "Wage-Earners' Plans," undertakes to provide a specialized mechanism designed to aid those who earn moderate wages in the adjustment and liquidation of their debts. Aid of a supervisory nature is not normally conceived to be a legitimate function of the bankruptcy court. Heretofore bankruptcy laws have been generally confined to liquidation and distribution. The basis for the novel desire to extend the helping hand of the court to the debtor seems to lie in a depression-born solicitude for those in economic difficulty and in the popularization of the sociological thesis that economic forces are to blame for many of man's shortcomings. Depression-given respectability to moratoria is perhaps an additional factor.

Another shift in policy is also apparent. In the light of the intent to aid the debtor, this change in policy is perhaps an anomalous one. In non-commercial bankruptcies emphasis in the past has been on discharge, rather than on distribution to creditors. The cause of this state of affairs, the lack of assets to distribute, has now been overcome by the utilization of a hitherto inviolate asset, future earnings, and the new policy accordingly emphasizes distribution rather than discharge.

The Wage-Earner chapter of the Chandler Act had its genesis in a comprehensive report on bankruptcy law and practice prepared by Lloyd K. Garrison under the direction of the Attorney-General and submitted to President Hoover in December of 1931. Pursuant to suggestions therein, the Hastings-Michener Bill, introduced in the first session of the Seventy-second Congress, set up a procedure permitting the wage-earner to amortize his debts by periodical payments over a period of time. This bill was never reported out of committee; on March 3, 1933, however, a new section was added to the bankruptcy law.


That is to say, bankruptcy, inability to pay debts, should not be looked upon as iniquitous. See Treiman, Acts of Bankruptcy: A Medieval Concept in Modern Bankruptcy Law, 52 Harv. L. Rev. 189 (1939).

See the Proclamation of the President, March 6, 1933, declaring a national emergency and providing for a bank moratorium. See also the Frazier-Lemke Act, 48 Stat. 1289 (1934), 1 U.S.C.A. 203 (1937).

See Local Loan Co. v. Hunt, 292 U.S. 234 (1934) holding that assignment of future wages is unenforceable after discharge in bankruptcy.


Senate Bill, S. 3866 (1932).
This section, §74,\(^8\) providing for aid to individuals and firms who were in difficulties but not insolvent, allowed payment on an installment basis through an arrangement with a majority of creditors. A few courts, notably the district court in Birmingham, Alabama, adapted this section to the relief of the financially embarrassed wage-earner.\(^9\) Effective relief necessitated special practices not legally sanctioned by the act itself.\(^10\) Immediate success was achieved; but the procedure remained cumbersome, and defects, not remediable except through Congressional action, hampered efficient operation.\(^11\)

The draftsmen of the Chandler Act have attempted, in Chapter XIII, to fashion a procedure adapted to solve the particular problems of wage-earner relief.\(^12\) A debtor who is insolvent or unable to pay his debts as they mature\(^13\) is enabled to submit a plan to adjust his debts at a meeting of creditors called by the court.\(^14\) A plan must include provisions dealing with unsecured debts generally\(^15\) and may include provisions dealing with secured debts severally.\(^16\) Future wages must be submitted to the supervision and control of the court;\(^17\) the entire scheme is predicated on the concept that a settlement will be effected out of future earnings.\(^18\) Broad discretion is given as to terms and contents of a plan. Confirmation may be received upon acceptance by a majority of the unsecured creditors and all the secured creditors with whom the plan deals,\(^19\) if the court is satisfied that the plan is fair and to the best interests of the creditors.\(^20\)

The demand for wage-earner receivership arose by reason of the conclusions reached in the Attorney-General’s report\(^21\) and again in the Congressional inquiries on the Hastings-Michener Bill\(^22\) and the Chandler Bill.\(^23\) These conclu-


\(^9\) The section was not designed for wage-earners. For its background and basis see Report to the President, note 6 supra, at 86–9.


\(^11\) See testimony of Charles True Adams, referee in bankruptcy, eastern division, northern district of Illinois, ibid.

\(^12\) For the background and theory of the wage-earner chapter see the Report to the President, note 6 supra, at 77–85; Report of the House Committee on the Judiciary, rep. no. 1409, 76th Cong. 1st Sess., 52–5 (1937).

\(^13\) § 623. Section references are to sections of the Bankruptcy Act of 1898, as amended. U.S.C.A. will not be cited. The Bankruptcy Act is contained in Title xi.

\(^14\) §§ 632, 633. 17 § 646 (4). 20 § 656.

\(^15\) § 646 (1). 18 See reports cited in note 12 supra.

\(^16\) § 646 (2). 19 § 652.

\(^20\) See Hearings before a Subcommittee of the Senate Committee on the Judiciary on S. 3866, 72d Cong. 1st Sess. (1932).

\(^21\) See Hearings before a Subcommittee of the Senate Committee on the Judiciary on H.R. 8046, 75th Cong. 2d Sess. (1937); Hearing before the House Committee on the Judiciary, note 10 supra.
sions were reaffirmed both by the experience of the Birmingham court and by other studies by interested groups.\(^4\)

It was determined that: (1) Wage-earners constitute over 50% of all bankrupts.\(^5\) (2) They are driven into bankruptcy chiefly by the pressure of garnishments, even in the midst of efforts to pay.\(^6\) (3) Many wage-earners who are now forced into bankruptcy could pay their creditors in full if given time and protection.\(^7\) (4) If the law offered this relief, a still larger number who now resort to loan sharks and gradually get in debt beyond their capacity to pay would find relief at comparatively early stages of indebtedness.\(^8\) (5) Most wage-earners desire to pay their debts and avoid the "stigma" of bankruptcy and impairment of credit standing.\(^9\) (6) A great many wage-earners deserve aid, in the sense that they have become overburdened by debt through no fault of their own.\(^10\) It was, in the main, on these conclusions that belief in the necessity for some type of wage-earner debtor relief was predicated.

It has also been suggested that the wage-earner debtor needs the offered relief in order that an opportunity be given him to scale down his debts. The theory of this suggestion rests on the argument that, since prices fluctuate with the gyrations of the business cycle, the debtor often owes money on articles whose value, at present cash rates, is far less than the amount for which he is indebted on the purchase. Since he would pay far less if he were forced into bankruptcy, the creditors have little cause to complain at scaling down. The requirements that a majority of the creditors approve the plan\(^11\) and that the court be satisfied that the plan is fair\(^12\) will be ample safeguards against abuse of this privilege.

\(^4\) Fortas, Wage Assignments in Chicago, 42 Yale L. J. 526 (1933); Nehemkis, The Boston Poor Debtor Court, 42 Yale L. J. 561 (1933); Robinson and Stearns, Ten Thousand Small Loans (1930).


\(^6\) Sturges, op. cit. supra note 25; Report to the President, op. cit. supra note 6, at 81; Nugent, Devices for Liquidating Small Claims in Detroit, 2 Law and Contemp. Prob. 59 (1935). Garnishments are the precipitating cause of most wage-earner bankruptcies. Ease of garnishment, with attendant inconvenience to employers, leads to strict rules of discharge upon garnishment. Fear of discharge may be used as a club over the debtor. Ease of garnishment also leads to a too liberal extension of credit.

\(^7\) Report to the President, op. cit. supra note 6, at 82. The experience of the American Amortization Co. of Chicago discussed in this Report is worthy of note. This company conducted very successfully a business of assisting wage-earners to amortize their debts.

\(^8\) Robinson and Stearns, op. cit. supra note 24; Robinson and Nugent, Regulation of the Small Loan Business (1933); Report to the President, op. cit. supra note 6, at 83.

\(^9\) Report to the President, op. cit. supra note 6, at 80. For a discussion and historical study of the stigma attached to one who goes through bankruptcy see Treiman, op. cit. supra note 3.


\(^11\) § 652.

\(^12\) § 656.
The procedure offered is not without advantage to creditors. After a plan is put into operation, repayment by installments is steady and certain, since the plan is binding on the debtor. The high cost of collection and the uncertainty and annoyance of the garnishment method are eliminated. Fear of bankruptcy and attendant extinguishment of the debt is ended. Perhaps these factors, rather than pure altruism, account for the wholehearted support of the American Retail Federation and the National Retail Credit Association.

The necessity, or at least the utility, of some procedure to remedy the plight of the debtor attempting to pay, yet driven into bankruptcy, is indicated. The justice of the creditor’s demand for payment is unquestioned; nor can the creditor be accused of wrongful moral conduct in pursuing his legal remedy, garnishment. It would seem then that some scheme whereby the creditor would receive protection while the debtor would be afforded an opportunity to meet his obligations freed from the necessity of dodging the installment collector would find ready justification in social benefit to both debtor and creditor. Accordingly the plan found ready endorsement by representatives of both creditor and debtor interests when drafted into the Hastings-Michener Bill and when passed as part of the Chandler Act.

II

The remedy of personal receivership is now offered to alleviate the former lack. Under the procedure set up by the Chandler Act the problems of the creditors are carefully solved and their interests more than adequately protected. Unfortunately the same is not true of the problems of debtors. The benefit of the relief afforded them is not without attendant detriment and danger. These dangers and ills are due in part to the creditor influence in the drafting of the bill and in part to a failure to scrutinize closely the possible effects of the procedure.

The initial consideration and objection, if it is an objection, is perhaps a philosophical one. The epithet of paternalism is applicable to the operation of the wage-earner provisions of the act. The court, after a plan has been consummated, assumes complete control over the economic life of the debtor for the duration of the plan. The court receives his wages directly from the employer, pays off his creditors, and retains the power to dole out more or less to the debtor as changes in circumstances warrant. The debtor is forced to live

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33 § 657.
34 See, for example, testimony of the president of the American Retail Federation, and testimony of the Washington counsel for the Nat’l Retail Credit Ass’n, Hearing before the House Committee on the Judiciary, note 10 supra, at 56 and 64.
35 See endorsements by the United Brotherhood of Carpenters and Joiners of America, the Nat’l Federation of Fed. Employees, the United Mine Workers of America, the Railway Mail Ass’n, and the A. F. of L. in Hearings before a Subcommittee of the Senate Committee on the Judiciary, note 22 supra, at 1028–30.
36 §§ 646 (4), 658 (1).
37 § 646 (5).
within his income since it is practically impossible for him to obtain credit while his wages are under the control of the court. The result may be highly beneficial in rehabilitating the improvident and imprudent debtor; the benevolent despot, however, in spite of the wisdom of his ministrations, has been said to be more harmful than beneficial in the long run. The question of the merits of the "helping hand" doctrine as opposed to the "stand on your own feet" doctrine has been a much mooted one of recent years, and needs no further delineation.38

An equally serious problem arises in connection with the realization that under the act as now drafted, once the debtor has procured confirmation of a plan, he is bound by its terms.39 As a practical matter, the voluntary nature of the choice given to the debtor to file under this chapter40 rather than under regular bankruptcy may be illusory. The debtor will be under pressure by the creditor, who is likely to be in a position to exert not a little influence as soon as the debtor falls in arrears. Public opinion, too, is likely to cause pressure, since moratorium appears more ethical than discharge. It is doubtful that in all cases the debtor will intelligently consider the future and the nature of the arrangement to which he is subjecting himself. The binding nature of the plan, coupled with the possibility that the debtor's consent may be given under pressure, or injudiciously, gives rise to trepidation for the liberty of the debtor. Future earning power is so closely bound with personal liberty that the danger of "wage-slavery" is manifest.41

This danger becomes even more acute in the light of section 66i which provides that the court may discharge the debtor if after three years he has failed to complete payments through no fault of his own. The negative corollary of this is that not only need not the court discharge him, but it may force him to continue payments by extending the duration of the plan in its discretion, or until the entire debt is paid. Of course with an enlightened court there is little danger of "wage-slavery." As the act is now cast, however, possible danger of severe treatment of the debtor is apparent.

Justification for the failure to provide for a method by which the debtor, in his sole discretion, could repudiate the plan at short intervals would seem to be lacking. He should be allowed either to go into bankruptcy or to resume his status with respect to creditors as though he had never filed under Chapter XIII. Especially is this true in the light of the fact that the creditor's position

38 See Lindeman, Public Welfare, 12 Enc. of Soc. Sci. 687 (1934); Reed, The Growing Evil of Paternalism, 10 Neb. L. B. 110 (1930); Stewart, Social Security (1937).

39 § 657.

40 While a debtor who earns over $1,500 may be adjudged an involuntary bankrupt, §§ 1(32), 4b, no provision is made for involuntary petitions under this chapter.

41 "When a person assigns future wages, he, in effect, pledges his future earning power. The power of the individual to earn a living for himself and those dependent upon him is in the nature of a personal liberty quite as much as, if not more than, it is a property right." Local Loan Co. v. Hunt, 292 U.S. 234, 245 (1934).
would be no worse than before the wage-earner filed under the Chapter. Per-
haps the dangers may be alleviated by inclusion by the well-advised debtor of a
provision in the plan for release at will; such a provision, however, might be
struck down as "inconsistent with the Chapter."42

An alternative solution to the problems assailed by this Chapter has been
suggested by former referee in bankruptcy Charles True Adams. His plan
would provide a scheme whereby after a wage-earner, who wants to avoid the
"stigma" of bankruptcy and who honestly desires to pay his debts, has been
adjudicated a bankrupt he would be given a certain period of time to repay
them. If he did so, his adjudication as a bankrupt would be set aside. This
would accomplish many objectives of the present act, without putting the
debtor into a position from which he suddenly finds it impossible to extricate
himself.

It is unfortunate that a project conceived in the desire to aid the wage-
earer, should, perhaps through strong creditor influence, create the danger of
enticing him into an irrevocable arrangement in which his future earnings are
impounded to pay his debts.

A less serious defect is encountered, as the act is now framed, in the failure on
the part of the drafting committee to define strictly the nature and incidents of
wage assignments. If a debt secured by a wage assignment is a secured claim in
states which regard them as such, it will be protected against impairment.43
Consequently, wage-earners who come into court with their wages already as-
signed will be hindered in their attempts to take advantage of the provided
procedure. In Local Loan Co. v. Hunt it was said, "The earning power of an
individual is the power to create property; but it is not translated into property
within the meaning of the bankruptcy act until it has brought earnings into
existence." The court in this case held that wage-assignments were discharged
by bankruptcy. The court refused to consider the Rules of Decisions Act as
binding and rested its decision on the clear policy of the bankruptcy act. Since
the case held that debts secured by wage-assignments were not secured claims
for the purpose of discharge, it is persuasive on the question of whether wage-
assignments are securities for the purpose of this chapter of the bankruptcy act;
the case is not, however, conclusive and the Supreme Court, from the point of
view of logic and legal scholarship, would be justified in treating debts secured
by wage-assignments as secured debts. If the court so holds, although the
obstacle will not be insurmountable, the operation of the act will be greatly
hampered.

42 § 646 (7). It is interesting to note that it was originally contemplated that the may in
§ 661, should read shall. See Hearing before the House Committee on the Judiciary, note 10
supra, at 53.

43 By the terms of the act, to avoid constitutional objection, the consent of secured creditors
to any plan which includes their claims is required. §§ 651, 652. See 74 A.L.R. 903 (1931),
and 93 A.L.R. 202 (1934).

44 292 U.S. 234, 243 (1934).
Procedurally the act seems well suited to meet its objectives. After the debtor has filed a petition containing a statement of his executory contracts, his schedules, and a statement of affairs, a meeting of creditors is called by the court. At the meeting the judge or the referee receives proofs of claim and allows or disallows them, the debtor submits a plan, obtains written acceptances, and the court sets a date for confirmation. After acceptance the court appoints a trustee to receive and distribute all moneys to be paid under the plan. When the provisions of the plan have been carried out the court discharges the debtor from all debts which were included in the plan. The procedure is simple and quick.

Cost to the debtor have been scaled down to the lowest practicable minimum. They consist of a filing fee of $15.00, distributed $5.00 to the clerk and $10.00 to the referee, a deposit for the expenses of the referee of not to exceed $15.00, a reasonable attorney’s fee to be set by the court, and commissions to the referee of 1% and to the trustee of 5% upon payments actually made by or for the debtor. Thus in a case involving a total indebtedness of $1000, the referee would receive a $10.00 fee and a $10.00 commission, and the trustee $50.00 for services extending over a period of possibly three years or more. Only the filing fee and the deposit for indemnification of the referee are payable before the plan is in operation. The other expenses are payable out of the debtor’s future wages.

The moderate cost, in connection with the efficiency of the process from the point of view of the creditor, has led to the accusation that the bankruptcy court has been transformed into a low cost collection agency for the benefit of creditor interests. The objection is also made that the officers of the court are being underpaid. Neither of these objections should be particularly persuasive. Although expenses may exceed the fees allowed, the court will probably allow the administrative officers who lose on these cases to make up their losses by allocation to them of more remunerative cases. Heretofore the costs to the wage-earner were disproportionate to the amount of his indebtedness.

The definition of wage-earners sets total earnings at a $3600 maximum for the purpose of taking advantage of the provisions of this chapter. The figure was placed at $3600 by an extremely arbitrary method of computation. Only one reason is apparent for setting any upper limit on the income of wage-earners.
those who may choose to take advantage of the relief offered by the chapter, the fact that the procedure is offered at a low cost. Even if an upper limit is necessary, a more intelligent method of arriving at the figure might be beneficial. Perhaps a sliding scale, varying with sections of the country or with the degree of urbanization of the area would best serve the ends of the act.

Inclusion of secured claims in a plan is permissive, not mandatory. This prevents a recalcitrant secured creditor from being able to block consummation of a plan. Although unsecured creditors are to be dealt with as a class and for acceptance of a plan by them it is sufficient that a majority in number and amount of claims agree, secured creditors must be dealt with individually. This method of dealing with them was thought to be necessary to prevent constitutional objections under the doctrine of the decision in Louisville Joint Stock Land Bank v. Radford. It will usually be impossible to place several secured creditors in a single class, since generally each creditor will hold a lien on a different article. As a practical matter, secured creditors are likely to join willingly in the offered plan.

Provision is made for modification of the plan, in the discretion of the court, upon notice to the parties and after hearing, so as to accord with unforeseen developments in the position of the debtor. This section will be especially protective to the debtor but will aid the creditor as well, as the changed circumstances of the debtor permit.

Very properly, provision for debts secured by real estate is not included under this chapter. Indebtedness secured by real property is usually too great to be provided for by payment out of future earnings and the peculiar incidents of and rules relating to real property are too cumbersome for a simple procedure meeting the needs of the wage-earner. Of course the wage-earner is permitted to file under Chapter XII dealing with real property.

Some less important features of the act may be commented on. Orders against employers are given the effect of judgments and may be enforced as such. This puts teeth into the act. The court is permitted to authorize rejection of executory contracts, and, while the debtor will be liable in damages, contracts which under his circumstances are too burdensome will be eliminated. Measure of damages on leases is restricted to one year's rent. This is not unjust to the creditor and makes the procedure more available to the debtor. The requirement of proof by creditors that their debts are free from usury will aid in scaling down the indebtedness of unfairly burdened individuals. The debtor is permitted to file a petition under this chapter while in a pending

59 Perhaps the conception of the act as a device to aid those of very limited means prompted the drafters to set a maximum figure.

60 § 646(2).
62 Hearing before the House Committee on the Judiciary, note 10 supra, at 63 and 259.
63 § 646(5).
64 § 406(6).
65 §§ 613(1), 646(6).
66 § 658(2).
67 §§ 642.
68 § 656(b).
bankruptcy proceeding, either before or after his adjudication.77 This will aid, in the main, that group of wage-earners whose incomes range between $1500 and $3600 and thus may have been involuntarily forced into bankruptcy. Exemptions78 and priorities73 are the same as under ordinary bankruptcy.

The lack of specific provision relating to after-acquired indebtedness is likely to lead to difficulty. It would seem that although the later creditors will be able to proceed against any other asset they will not be able to attach the wages of the debtor. From a practical viewpoint this means that a debtor will find it almost impossible to get credit.

The act also lacks a limitation on the number of times the debtor can file thereunder. If there has been no scaling-down either by the plan or by a discharge from his debts,74 but merely an extension, there is no limit on the debtor. He can, after finishing one plan, immediately begin another. This lends force to the argument that the court may be utilized as a collection agency.

The debtor has the alternative of choosing to file under Chapter XI dealing with arrangements;75 Chapter XIII, however, is far more advantageous to his need, both with respect to costs and to machinery designed for the wage-earner's special problems.

It has been suggested that the problems to be solved may be better met by state systems of personal receivership. At least five states, Michigan, Ohio, Wisconsin, Minnesota and Vermont have laws in operation providing this relief under state auspices.76 The subject has been adequately treated by Professors Douglas77 and Garrison.78

The necessity for some provision to relieve the conflict between debtor and creditor is evident. Undoubtedly this act will serve a useful purpose in providing a workable solution for the problems of many.

CORPORATIONS AMENABLE TO THE NEW BANKRUPTCY ACT

While section 77B1 was in force many questions arose as to what kinds of corporations were subject to its provisions. The problem of the amenability of a charitable corporation,7a a dissolved corporation,7b or a corporation organized

71 § 637. 72 § 659(6). 73 Pursuant to § 661. 74 § 306(3).


77 Garrison, Wisconsin's New "Personal Receivership" Law, Wis. L. Rev. 201 (1938).
80 In re 136 Wilcox Ave., 302 U.S. 120 (1938); Hammond v. Lyon Realty Co., 39 F. (2d) 592 (C.C.A. 4th 1932); Old Fort Improvement Co. v. Lea, 89 F. (2d) 286 (C.C.A. 4th 1937);