would appear to be no basis for an estoppel by judgment here. However, since the confirmation proceedings determined that the arbitration had been regular, the court could have held that the affirmation decree was res judicata on that issue. The court could also have held that the arbitration award itself, although not entitled to the force of res judicata, resembled an estoppel by judgment on the patent infringement issue.[13] As the basis for this estoppel is the arbitration pursuant to the agreement to arbitrate, the court was justified in stating that the estoppel could alternatively be termed an estoppel by contract.[14] An unperformed arbitration contract cannot work an estoppel in the federal courts which refuse to enforce such contracts specifically and deny motions to stay trial on the issues which the parties had agreed to arbitrate except in cases covered by the federal arbitration statute.[15] Perhaps to avoid the pitfalls indicated in the present case the bar to future litigation on the patent infringement issue should be termed "estoppel by arbitration."

Bankruptcy—Administration of Estates—Personal Representative as Petitioner in Bankruptcy under Frazier-Lemke Act—[Utah].—Proceedings were instituted by a farmer in a United States district court under Section 75[1] of the National Bankruptcy Act and were pending when the farmer died. Thereafter, and without permission of the bankruptcy court, a bank proceeded in a state court to foreclose its mortgage on the decedent's farm and purchased the farm at the foreclosure sale. Immediately before the redemption period expired, the administrator of the decedent's estate obtained an order of the probate court giving him permission to apply to the bankruptcy court

[13] Dinerstein v. Shapiro, 147 Misc. 37, 262 N.Y.Supp. 461 (S. Ct. 1933); Cromwell v. County of Sac, 94 U.S. 351 (1876); 2 Black, Judgments §§ 526, 688 (2d ed. 1902); Sturges, op. cit. supra note 6, §§ 479–80 (1930); cf. James Richardson & Sons, Ltd. v. Hedger Transportation Corp., 98 F. (2d) 55 (C.C.A. 2d 1938); Brazill v. Isham and Earle, 12 N.Y. 9, 15 (1854); 26 Va. L. Rev. 327 (1940).

[14] The contract to submit infringement controversies to arbitration has been fulfilled and is hence binding upon the parties and should estop them from further litigation upon the same subject matter. As to subsequent infringements see American Specialty Stamping Co. v. New England Enameling Co., 178 Fed. 106 (C. C. N.Y. 1910).

[15] The Federal Arbitration Act, 43 Stat. 883 (1924), 9 U.S.C.A. §§ 1–15 (1927), provides for both specific enforcement of a contract to arbitrate (§ 4) and stay of trial (§ 3). But the jurisdiction of the federal courts in arbitration proceedings is limited to commerce and maritime questions. Hence agreements to arbitrate patent disputes are not within their jurisdiction unless diversity of citizenship or over $3,000 is involved, 36 Stat. 1091 (1911), 28 U.S.C.A. § 41 (1927). Shanferoke Coal and Supply Corp. v. Westchester Service Corp., 70 F. (2d) 297 (C.C.A. 2d 1934), aff'd 293 U.S. 449 (1935); Red Cross Lines v. Atlantic Fruit Co., 264 U.S. 109 (1924), discussed in Sturges, op. cit. supra note 6, at § 479; In re Cold Metal Process Co., 9 F. Supp. 992 (Pa. 1935); Zip Mfg. Co. v. Pep Mfg. Co., 44 F. (2d) 184 (D. C. Del. 1930); cf. Childs v. Tuttle, 54 Hun (N.Y.) 57, 7 N.Y. Supp. 59, 227 (1889); 50 Harv. L. Rev. 364 (1936).

[1] 11 U.S.C.A. § 203 (1939). This section is popularly known as the Frazier-Lemke Act although strictly the name applies only to Subsection 75(s), 11 U.S.C.A. § 203(s) (1939), under which a farmer may obtain moratorium relief as contrasted with relief through extension or composition of his debts. See, in general, Letzler, Bankruptcy Reorganizations for Farmers, 40 Col. L. Rev. 1133 (1940); Gilbert's Collier, Bankruptcy 1368–96 (Moore & Levi ed. 1937); 8 Univ. Chi. L. Rev. 539 (1941).

under Section 75(r)[2] for a revival and reinstatement of the debtor-relief proceedings. On appeal by the bank from the order of the probate court, *held*, that General Order in Bankruptcy 50(9)[3] requires an administrator's petition under Section 75(r) to be authorized by the probate court, and that the probate code does not give the probate court power to "divest itself of jurisdiction" by authorizing the administrator to subject himself and the decedent's estate to the jurisdiction of the bankruptcy court. Order of probate court reversed and set aside. *In re Harris' Estate.*[4]

The court in the principal case assumed that the bankruptcy proceedings initiated by the deceased farmer abated upon death.[5] Section 8 of the Bankruptcy Act,[6] however, expressly provides that proceedings shall not abate on the death of the bankrupt. There would seem to be no reason why Section 8 should not apply to proceedings under Section 75. Section 75(n)[7] provides, in effect, that all the general bankruptcy sections of the Bankruptcy Act shall apply to proceedings under Section 75, "except as otherwise provided." Section 75 does not make any express provision on the subject of abatement, and it contains nothing inconsistent with the application of Section 8 to a proceeding under Section 75. On the contrary, Section 75(r) declares that the personal representative of a deceased farmer is a "farmer" for the purposes of Section 75, i.e., it contemplates the initiation of farmer-relief proceedings by the personal representative of a deceased farmer, a decidedly more extreme result than the non-abatement of farmer-relief proceedings upon the death of the petitioner. Thus it seems reasonable to conclude that Section 8 applies to proceedings under Section 75, and, therefore, that the debtor's proceedings under Section 75 did not abate on the debtor's death.

If the bankruptcy proceedings in the principal case did not abate on the farmer's death, the foreclosure proceedings in the state court came squarely within Section 75(o),[8] which provides that such proceedings shall not be instituted or maintained against the farmer's property without permission of the bankruptcy court. Therefore the foreclosure, as was held in *Kalb v. Feuerstein*,[9] should be regarded as ineffective and subject to collateral attack. The bankruptcy court could have fulfilled the purposes of the pending bankruptcy proceeding by appointing a trustee to administer the property of the deceased farmer-debtor even if the personal representative of the deceased farmer failed to appear.[10] The bankruptcy court, as a court of equity, could,

[2] 54 Stat. 40 (1940), 11 U.S.C.A. § 203(r) (Supp. 1940).

[3] 11 U.S.C.A. following § 53 (Supp. 1940), promulgated by the Supreme Court to regulate procedure under § 75, provides in part that the personal representative in order to "effect" debtor relief under § 75 shall procure "an order of the probate court authorizing him to file the petition."

[4] 105 P. (2d) 461 (Utah 1940), cert. granted 85 S. Ct. 492 (1941).

[5] Ibid. [6] 52 Stat. 848 (1938), 11 U.S.C.A. § 26 (Supp. 1940).

[7] 11 U.S.C.A. § 203(n) (1939) provides that on the filing of the farmer's petition, "the jurisdiction and powers of the courts, the title, powers and duties of its officers," and the legal relations of farmer, creditors and other persons with respect to the farmer's property, shall be the same as if "a voluntary petition for adjudication had been filed and a decree of adjudication had been entered" on the day the farmer's petition was filed.

[8] 11 U.S.C.A. § 203(o) (1939).

[9] 308 U.S. 433 (1940); cf. Union Joint Stock Land Bank v. Byerly, 310 U.S. 1 (1940).

[10] Cf. In re Morgan, 15 F. Supp. 52 (N.Y. 1936).

without reference to the definition of "farmer" contained in Section 75(r), permit the personal representative to intervene as a necessary or proper party, in order to carry the proceedings before it to completion. It would seem, therefore, that General Order 50(9),[11] requiring the consent of the probate court to participation of the personal representative in farmer-relief proceedings, should be construed as inapplicable where proceedings were instituted by a deceased farmer during his life, however applicable General Order 50(9) may be where a personal representative petitions to initiate proceedings in behalf of the deceased farmer's estate.[12] And even if the general order does apply where the personal representative seeks to participate in a pending farmer-relief proceeding, the probate court should not refuse the petition, since participation offers the probate court its only opportunity to protect the various interests in the estate which might be affected by the outcome of the farmer-relief proceeding.

The court in the principal case, however, treated the administrator's petition as a request for permission of the probate court to file a petition under Section 75(r) *to initiate* proceedings under Section 75 in behalf of the deceased farmer's estate.[13] Assuming that such were the case, Section 75(r) may be interpreted in two ways: (a) it may be construed as allowing the filing of petitions by those personal representatives who are authorized by state law to file the petition and to perform the duties required of a farmer-debtor under Section 75; or (b) it may be construed to qualify as a petitioner under Section 75 anyone whom the federal courts will recognize for this purpose as a "personal representative" duly appointed by a state court. The lower federal courts seem to have adopted interpretation (a). In *In re Buxton's Estate*,[14] the administrator of a deceased farmer filed an original petition under Section 75 in behalf of the decedent's estate. The petition was approved by the bankruptcy court, but the administrator's proposal for a composition and extension of the decedent's debts was unacceptable to creditors, and the administrator presented his petition to be adjudicated a bankrupt in his representative capacity under Section 75(s).[15] The court granted the creditors' motion to dismiss the proceedings, on the ground that the proposal was too indefinite to be valid, and, furthermore, that the administrator, who under state law had neither title to nor right to possession of the decedent's real property, could not lawfully be permitted to retain possession of, to manage, and to pay a reasonable rental for the decedent's farm for three years under the Frazier-Lemke Act. The court said that it was not the purpose of Congress "to add to or remove limits from the power and authority conferred by a state statute upon a personal representative created solely by

[11] Note 3 supra.

[12] Subdivisions (9) and (10) of General Order 50, 11 U.S.C.A. following § 53 (Supp. 1940), which provide in part that the personal representative shall attach to his petition, *in lieu of schedules*, an inventory of the decedent's property, and shall convince the bankruptcy court that the decedent was a farmer within the meaning of § 75(r), and that the probate court shall certify to the bankruptcy court the claims allowed in the probate court prior to the filing of the petition, would seem to indicate that the Supreme Court was providing for an original petition of the personal representative.

[13] "Certainly if a personal representative has power to initiate he has power to revive and, if it requires an order of the probate court to permit him to initiate, it would also require an order to revive." 105 P. (2d) 461, 468 (Utah 1940).

[14] 14 F. Supp. 616 (Ill. 1936).

[15] Note 1 supra.

virtue of such statute."[16] In *Hines v. Farkas*,[17] on the other hand, a temporary administrator was empowered by state law to carry on the business of the deceased and was invested with possession of the realty for that purpose. Emphasizing these factors, the bankruptcy court held that the temporary administrator of a deceased farmer was a "personal representative" within the meaning of Section 75 and hence was authorized to file a petition thereunder.[18]

In a concurring opinion in the principal case, one judge suggested the propriety of interpretation (b) of Section 75(r). Section 75, as an exercise of the bankruptcy power, he argued, is "paramount" to state law, even in the face of a state statute expressly forbidding the petition in bankruptcy. The bankruptcy statute declares who may file petitions under it, and if it authorizes a petition by a personal representative, the limits on his powers under the probate laws have no bearing on his qualification to file the bankruptcy petition.[19] The difference in point of view between the lower federal courts and the concurring judge in the principal case finds a parallel in *Chicago Title & Trust Co. v. 4136 Wilcox Bldg. Corp.*[20] There, a corporation organized under Illinois laws had been dissolved for failure to pay franchise taxes and to file annual reports. An Illinois statute gave the corporation two years in which to collect debts due it, to sell its property, and to prosecute and defend suits in its corporate name. No proceedings could be initiated in behalf of the corporation after the two-year period, but pending proceedings could be prosecuted to completion. After the two-year period had expired, certain persons acquired the stock of the corporation, held stockholders' and directors' meetings, and passed a resolution authorizing the filing of a petition for reorganization under Section 77B of the Bankruptcy Act. The petition was filed, together with a petition for an order directing the receiver in pending state court foreclosure proceedings to turn over the property to the federal court. The Supreme Court held that the petitions should be dismissed. The Court argued, in effect, that the power of an otherwise qualified corporation to file a petition under the Bankruptcy Act depends on its authority, under state law, to initiate court actions;[21] that the dissolved corporation lacked power, under state law, to initiate *any* court proceeding; therefore, that under the Illinois statute, the two-year period having expired, the officers lacked power to file the petition for reorganization in behalf of the corporation.[22] Three judges dissented, however, on the ground that the Bankruptcy Act declares that any corporation, with certain exceptions, may become a voluntary bankrupt; the Bankruptcy

[16] 14 F. Supp. 616, 618 (Ill. 1936). This reasoning was adopted in In re Reynolds, 21 F. Supp. 369, 371 (Okla. 1937), although the court there assigned as an independent ground for its decision that the administrator's petition must be dismissed, the fact that the authorization of the probate court had not been obtained.

[17] 109 F. (2d) 289 (C.C.A. 5th 1940).

[18] The court said that the question whether § 75(r) enlarges the powers of the administrator did not, therefore, have to be decided. Ibid., at 290.

[19] 105 P. (2d) 461, 464 (Utah 1940). Cf. the statement of the court in In re Prudence Co., Inc., 79 F. (2d) 77, 80 (C.C.A. 2d 1935), cert. den. 296 U.S. 646 (1935): "A declaration by a state that a certain class of corporations is not amenable to bankruptcy is brutum fulmen, unless the Bankruptcy Act itself excepts that class."

[20] 302 U.S. 120 (1937).

[21] Cf. Royal Indemnity Co. v. American Bond & Mortgage Co., 289 U.S. 165, 171 (1933).

[22] 302 U.S. 120, 126 (1937).

Act defines "corporations" to mean "all bodies having *any* of the powers and privileges of private corporations not possessed by individuals and partnerships"; the dissolved corporation still possessed and exercised certain corporate powers, i.e., a power to defend, in its corporate name and through its corporate officials, suits then pending either in its favor or against it; and therefore, that the "dissolved" corporation was a corporation within the definition of the Bankruptcy Act.[23]

Applying the argument of the minority in the *Wilcox* case to the problem of construing Section 75(r), the simple conclusion would seem to be that of interpretation (b)—that anyone whom the federal courts will accept as the "personal representative" of a "farmer" is a qualified petitioner under Section 75. Thus, the bankruptcy court would examine whether the petitioning administrator or executor had the letters of administration or letters testamentary necessary to make him a personal representative.[24] Whether, under state law, the "personal representative" has the express power to file a bankruptcy petition or to handle the administration of the decedent's real property, as interpretation (a) requires, does not appear to be necessarily relevant. Once bankruptcy jurisdiction has attached,[25] the farmer in possession[26] (or his personal representative) becomes an officer of the bankruptcy court; a personal representative in such a position is acting as agent of the bankruptcy court, and not of the probate court which designated him administrator or executor. If, for any reason, the "farmer" (including a personal representative) in possession cannot do what is required of him by the bankruptcy statutes, the court may appoint a trustee or receiver to act for him.[27]

For reasons similar to those underlying the criticism of interpretation (a) of Section 75(r), the construction in the instant case of General Order 50(9)[28] seems doubtful. The court rested its decision on the ground that General Order 50(9) requires an administrator's original petition under Section 75(r) to be authorized by the probate court, and that the probate code of Utah, as the sole source of authority for the probate court, contained no provision empowering the court to "divest itself of jurisdiction" of the deceased farmer's estate by authorizing the filing of the petition by the administrator.[29] Since by virtue of the Bankruptcy Act, the proceedings in the probate court

[23] Ibid., at 130, 131.

[24] Thus in Bacon, Receiver v. Federal Land Bank, 109 F.(2d) 285, 288 (C.C.A. 5th 1940), the court held that a receiver appointed by a state court was not a personal representative of the decedent authorized to seek relief under § 75(r).

A variant of interpretation (b) would explain the Buxton and Hines cases as taking the view that "personal representative" in § 75(r) should be construed by the federal courts as referring only to personal representatives with powers over real estate (under state law) suitable to their task as "farmers." This view would make the probate court's consent unnecessary, but would limit the class of personal representatives capable of filing petitions under § 75. It is worth noting that neither the Buxton nor the Hines cases deals with the consent of the probate court.

[25] Section 75(n), 11 U.S.C.A. § 203(n) (1939), provides that the filing of the farmer's petition shall immediately subject the farmer and all his property to the exclusive jurisdiction of the bankruptcy court.

[26] Section 75(s), 11 U.S.C.A. § 203(s) (1939), provides that the debtor shall remain in or be restored to possession of the property subject to the supervision and control of the court.

[27] Note 7 supra. [28] Note 3 supra. [29] 105 P. (2d) 461, 464 (Utah 1940).

are superseded by the bankruptcy proceedings when a petition under Section 75 is approved by the bankruptcy court,[30] it is immaterial that the probate court lacks power under the probate code to divest itself of jurisdiction. If General Order 50(9), making the consent of the probate court a condition precedent to the filing of a petition under Section 75, is construed to permit the probate court to refuse the administrator the necessary authorization on the ground that it lacks power under state law to divest itself of jurisdiction, the general order would then require a result hitherto regarded as anomolous or improper,[31] and would certainly exceed any clear requirement of Section 75 itself. If thus construed, the general order might well be held ineffective, as being beyond the power conferred on the Supreme Court by Section 53 of the Bankruptcy Act.[32] It is possible, however, to construe General Order 50(9) consistently with Section 75(r), so as to give it effect as an attempt to promote harmonious relations between federal and state courts. It may be interpreted as recognizing that the probate court has a limited discretion in refusing to authorize personal representatives to file petitions under Section 75. The discretion thus acknowledged, however, should be confined to serious issues of state probate policy. The requirement of the probate court's authorization is a desirable safeguard against violation of the terms of the decedent's will (since the petition is a voluntary one in behalf of the decedent's estate), or of some strong state policy or positive state law on matters of local concern. But the general policy of probate proceedings to wind up decedents' affairs as quickly as possible[33] should not be sufficient to prevent a petition by the administrator under Section 75 of the Bankruptcy Act.

Under the majority view in the *Wilcox* case, it would seem that an administrator's original petition under Section 75(r) should be allowed by the bankruptcy court, perhaps even without the consent of the probate court. In the *Wilcox* case, the petitioner lacked *any* power to sue, whereas an administrator has abundant authority to sue on behalf of the decedent's estate. But this factual distinction may not be sufficient, since the majority in the *Wilcox* case depended on the principle of *Hopkins Federal Savings & Loan Ass'n v. Cleary*.[34] In that case, an act of Congress provided that any state member of a Federal Home Loan Bank could convert itself into a Federal Savings and Loan Association by a vote of a majority of its stockholders. The statute contained no provision that conversion was not to be permitted in contravention of state laws, and the Supreme Court found that Congress did not intend that the statute should be subject to such a condition. The statute was declared to be an unconstitutional encroachment on the reserved powers of the states and conversion from state into federal associations was held to be of no effect when voted against the protest of the state.[35] Building and loan associations, it was argued, are peculiarly within the regulatory powers of the state, and to interfere with the state's control over them was an interference with the state's public policy.[36]

Thus it may be argued that if construed as permitting a personal representative to file a petition under Section 75 without the consent of the probate court, Section 75(r)

[30] Note 25 supra. [31] Section 75(n), 11 U.S.C.A. § 203(n) (1939); note 25 supra.

[32] Cf. Meek v. Centre County Banking Co., 268 U.S. 426, 434 (1925).

[33] On the statutory power of administrators and the authority of courts with respect to carrying on the business of decedents, see 40 L.R.A. (N.S.) 209–11 (1912).

[34] 296 U.S. 315 (1935). [35] Ibid., at 335, 343. [36] Ibid., at 336, 337.

violates the Tenth Amendment, by interfering with the peculiarly local matter of probate administration under state law. Although the Constitution does not deny to the Federal Government power to administer the estates of decedent bankrupts and although such administration has in the past been carried out as a matter of course under Section 8 of the Bankruptcy Act, the Supreme Court has declared that the authority to make a will is derived from the state, and since the requirement of probate is but a regulation to make a will effective, probate matters proper are not within the jurisdiction of federal courts.[37] However, Section 75(r) in no way attempts to confer on the bankruptcy court power to construe wills or to determine other questions peculiarly associated with probate jurisdiction. The effect of Section 75(r) is certainly not to suspend state laws for administration of insolvent decedents' estates as being "insolvency" laws.[38] It does, however, permit a personal representative, by filing a petition in the bankruptcy court, to cause proceedings in the bankrupcty court to supersede proceedings in the probate court. The result is the same as that contemplated generally under the Bankruptcy Act; bankruptcy proceedings supersede administration via equity receiverships and general assignments as a matter of course, and without the permission of the relevant court of administration.[39] The fact that the debtor is dead and that his personal representative is an appointed agent of the state court should not be sufficient to make unconstitutional the supersession in bankruptcy of state court proceedings to administer the insolvent decedent's estate. Even though the deceased farmer cannot personally benefit from a discharge of his debts or be personally protected in his farm, the extinction or readjustment of creditor-debtor relations is sufficient to characterize the proceeding under Section 75(r) as a bankruptcy proceeding.[40] The personal representative, whose principal function it is to pay the decedent's debts and discharge his liabilities, is the proper person to represent the deceased farmer in the bankruptcy court, notwithstanding the fact that he is appointed by the probate court.

It may well be that some authorization of the personal representative's petition by the probate court is necessitated by the principle of the *Cleary* case, at least to the extent of preventing an encroachment on the strictly probate powers of the states.[41]

[37] Farrell v. O'Brien, 199 U.S. 89, 110 (1905); Byers v. McAuley, 149 U.S. 608 (1893); Ellis v. Davis, 109 U.S. 485, 497 (1883).

[38] See Effect of National Bankruptcy Act on State Power over Corporate Reorganization, 7 Univ. Chi. L. Rev. 700 (1940); Effect of National Bankruptcy Act on State Insolvency Statutes, 49 Yale L.J.1090 (1940). Cf. Hawkins v. Learned, 54 N.H. 333 (1874).

[39] Ibid.

[40] Continental Illinois Nat'l Bank & Trust Co. v. Chicago, R.I. & P. R. Co., 294 U.S. 648, 673 (1935); Hanover Nat'l Bank v. Moyses, 186 U.S. 181, 186 (1902).

[41] Cf. In re Prudence Co., Inc., 79 F. (2d) 77, 80 (C.C.A. 2d 1935), cert. den. 296 U.S. 646 (1935), where the court said that it would raise serious questions of constitutionality if the Bankruptcy Act provided that a state superintendent of banks, who had taken possession of the debtor's property under state law, could file a petition in bankruptcy which would terminate his stewardship and transfer into the custody of the bankruptcy court the property of which he was possessed. Compare also the requirement of authorization by the state for the filing of a petition by an irrigation district which is a political subdivision of the state. Ashton v. Cameron County Water Improvement District, 298 U.S. 513 (1936); United States v. Bekins, 304 U.S. 27 (1938). See in general, the Tenth Amendment as a Limitation on the Powers of Congress, 52 Harv. L. Rev. 1342 (1939).

It would seem, however, that Section 75(r) and General Order 50(9), properly construed to respect the limits of bankruptcy jurisdiction on the one hand, and probate jurisdiction on the other, represent a constitutional exercise of the bankruptcy power. Federal courts, sitting in equity, have been reluctant to interfere with proceedings in probate courts because the probate courts are convenient tribunals for such proceedings and the relief afforded by them is generally adequate.[42] But the reason for declaring personal representatives to be "farmers" under Section 75(r) seems to have been that, in the case of deceased farmers' insolvent estates, probate proceedings do not afford an adequate remedy. The probate court cannot, for example, modify the remedy of foreclosure provided under state law, in the interest of aiding embarrassed farm families. If it is a vital part of public policy to prevent the foreclosure of farm mortgages during the farmer's life, it is equally important to do so when foreclosure is threatened after his death.

Bankruptcy—Section 75(s) of the Bankruptcy Act—Right of Mortgagee to a Foreclosure Sale—[Federal].—A farmer-debtor was adjudicated a bankrupt under Section 75(s) of the Bankruptcy Act.[1] Later a mortgagee of the debtor petitioned the federal district court under the second proviso of Section 75(s)(3) for an immediate sale of the property,[2] on the ground that the debtor had no reasonable hope of financial rehabilitation and that he had failed to comply with certain court orders. The debtor by cross-petition, under the first proviso of Section 75(s)(3), sought permission to obtain the property by paying into court the appraised value.[3] The mortgagee contested the latter petition, arguing that under Section 75(s)(3) its request for a sale took precedence over the debtor's claim to acquire the property by payment of the appraised value. The district court ordered a public sale upon finding that: (1) the fair value of the property was $6,000; (2) the mortgage debt had increased to $16,000; (3) there was no evidence of the ability of the debtor to refinance himself, even at the $6,000 figure. On certiorari from the Supreme Court to review a judgment of the circuit court of appeals affirming the order, *held*, that the debtor's request for relief under the first proviso of Section 75(s)(3) cannot be defeated by a secured creditor's request for a public sale under the second proviso. Judgment modified and case remanded. *Wright v. Union Central Life Ins. Co.*[4]

The first Frazier-Lemke Act[5] permitted the farmer-debtor who had been adjudicated a bankrupt either to purchase the property at its appraised value immediately after

[42] Broderick's Will, 21 Wall. (U.S.) 503, 509 (1874). See in general, Federal Jurisdiction in Matters Relating to Probate and Administration, 43 Harv. L. Rev. 462 (1930).

[1] 49 Stat. 943 (1935), 11 U.S.C.A. § 203(s) (1939).

[2] ". . . . upon request in writing by any secured creditor . . . . the court shall order the property . . . . to be sold at public auction." 49 Stat. 943 (1935), 11 U.S.C.A. § 203(s)(3) (1939).

[3] ". . . . upon request of the debtor the court shall cause a reappraisal of the debtor's property . . . . and the debtor shall then pay the value so arrived at into court . . . . for distribution to all . . . . creditors . . . . and thereupon the court shall . . . . turn over full possession and title of said property, free and clear of encumbrances to the debtor." 49 Stat. 943 (1935), 11 U.S.C.A. § 203(s)(3) (1939).

[4] 61 S. Ct. 196 (1940).

[5] 48 Stat. 1289 (1934).