TITLE 11.—BANKRUPTCY

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HISTORY OF BANKRUPTCY ACTS

This title constitutes the act of July 1, 1898, ch. 541, 30 Stat. 544, sometimes called the Nelson Act, and subsequent amendments to 1941. Special attention is called to the Chandler Act, act June 22, 1938, ch. 575, 52 Stat. 883, which materially amended the provisions covering corporate reorganizations.

Earlier bankruptcy laws included the following:

April 4, 1800, 2 Stat. 19, repealed December 19, 1803, 2 Stat. 248;

August 19, 1841, 5 Stat. 440, repealed March 3, 1843, 5 Stat. 614;

March 2, 1867, 14 Stat. 517, the provisions of which were incorporated in Rev. Stat. Title LXI, §§ 4972–5132, materially amended June 22, 1874, 18 Stat. 178, and were repealed June 7, 1878, 20 Stat. 99.

Chapter 1.—DEFINITIONS

§ 1. Meaning of words and phrases.

The words and phrases used in this title and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

(1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition;

(2) "Adjudication" shall mean a decree that a person is a bankrupt;

(3) "Appellate courts" shall include the circuit courts of appeals of the United States, the United States Court of Appeals of the District of Columbia, and the Supreme Court of the United States;

(4) "Bankrupt" shall include a person against whom an involuntary petition or an application to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt;

(5) "Bona-fide purchaser" shall include a bona-fide encumbrancer or pledgee and the transferee, immediate or mediate, of any of them;

(6) "Clerk" shall mean the clerk of a court of bankruptcy;

(7) "Conceal" shall include secrete, falsify, and mutilate;

(8) "Corporation" shall include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument;

(9) "Court" shall mean the judge or the referee of the court of bankruptcy in which the proceedings are pending;

(10) "Courts of bankruptcy" shall include the district courts of the United States and of the Territories and possessions to which this title is or may hereafter be applicable, and the District Court of the United States for the District of Columbia;

(11) "Creditor" shall include anyone who owns a debt, demand, or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy;

(12) "Date of adjudication" shall mean the date of entry of the decree of adjudication, or, if such decree is appealed from, then the date when such decree is finally confirmed or the appeal is dismissed;

(13) "Date of bankruptcy", "time of bankruptcy", "commencement of proceedings", or "bankruptcy", with reference to time, shall mean the date when the petition was filed;

(14) "Debt" shall include any debt, demand, or claim provable in bankruptcy;

(15) "Discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this title;

(16) "Document" shall include any book, deed, record, paper, or instrument in writing;

(17) "Farmer" shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations;

(18) "Holiday" shall include New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Armistice Day, Christmas Day, and any day appointed as a holiday or as a day of public fasting or thanksgiving by the President or the Congress of the United States, or by the Governor or the Legislature of the State in which the proceeding under this title is filed or pending;

(19) A person shall be deemed insolvent within the provisions of this title whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts;

(20) "Judge" shall mean a judge of a court of bankruptcy, not including the referee;

(21) "Oath" shall include affirmation;

(22) "Officer" shall include clerk, marshal, receiver, custodian, referee, and trustee, and the imposing of a duty upon, or the forbidding of an act by, any officer shall include his successor and any person authorized by law to perform the duties of such officer;

(23) "Persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are forbidden under this title shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees or of other similar controlling bodies of corporations;

(24) "Petition" shall mean a document filed in a court of bankruptcy or with a clerk thereof by a debtor praying for the benefits of this title, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named;

(25) "To record" shall include to register or to file for record or registration;

(26) "Referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred or anyone acting in his stead;

(27) "Relatives" shall mean persons related by affinity or consanguinity within the third degree as determined by the common law and shall include the spouse;

(28) "Secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this title or who owns such a debt for which some endorser, surety, or other person secondarily liable for the bankrupt has such security upon the bankrupt's assets;

(29) "States" shall include the Territories and possessions to which this title is or may hereafter be applicable, Alaska, and the District of Columbia;

(30) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, assignment, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise;

(31) "Trustee" shall include all of the trustees and "receiver" shall include all of the receivers of an estate;

(32) "Wage earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding $1,500 per year;

(33) Words importing the masculine gender may be applied to and include all persons;

(34) Words importing the plural number may be applied to and mean only a single person or thing; and

(35) Words importing the singular number may be applied to and mean several persons or things. (July 1, 1898, ch. 541, § 1, 30 Stat. 544; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 84; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; May 27, 1926, ch. 406, § 1, 44 Stat. 662; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; June 22, 1938, ch. 575, § 1, 52 Stat. 840.)

CHANDLER ACT; CONSTRUCTION; EFFECTIVE DATE

Sections 5-7 of act June 22, 1938, cited to text, which act is popularly known as the "Chandler Act," provided as follows:

"SEC. 5. SEVERABILITY; HEADINGS.—a. If any provision of this amendatory Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act are declared to be severable.

"b. Sections and subdivision headings shall not be taken to govern or limit the scope of the sections or subdivisions to which they relate.

"SEC. 6. EFFECT OF THIS AMENDATORY ACT.—a. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act is amendatory.

"b. Except as otherwise provided in this amendatory Act, the provisions of this amendatory Act shall govern proceedings so far as practicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto.

"SEC. 7. This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

AMENDMENTS

Paragraphs 5, 12, 17, 25, and 27 were added by act June 22, 1938, cited to text.

Paragraphs 2-4, 8-11, 13, 16, 18, 22-24, 30, 31, 33, and 34, formerly 2-4, 6-9, 10, 13, 14, 18-20, 25, 26, 28, and 29, respectively, were amended by act June 22, 1938, cited to text.

Paragraphs 1, 6, 7, 14, 15, 19-21, 26, 28, 29, 32, and 35, formerly 1, 5, 22, 11, 12, 15-17, 21, 23, 24, 27, and 30, respectively, were reenacted without change by act June 22, 1938, cited to text.

Chapter 2.—COURTS OF BANKRUPTCY

§ 11. Creation of courts of bankruptcy and their jurisdiction.

(a) The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

(1) Adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile

within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions;

(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

(3) Appoint, upon the application of parties in interest, receivers or the marshals to take charge of the property of bankrupts and to protect the interests of creditors after the filing of the petition and until it is dismissed or the trustee is qualified; and to authorize such receiver, upon his application, to prosecute or defend any pending suit or proceeding by or against a bankrupt or to commence and prosecute any suit or proceeding in behalf of the estate, before any judicial, legislative, or administrative tribunal in any jurisdiction, until the petition is dismissed or the trustee is qualified: *Provided, however,* That the court shall be satisfied that such appointment or authorization is necessary to preserve the estate or to prevent loss thereto;

(4) Arraign, try, and punish persons for violations of this title, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States;

(5) Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, and allow such officers additional compensation for such services, as provided in section 76 of this title;

(6) Bring in and substitute additional persons or parties in proceedings under this title when necessary for the complete determination of a matter in controversy;

(7) Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property of any estate, whenever under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest;

(8) Close estates, by approving the final accounts and discharging the trustees, whenever it appears that the estates have been fully administered or, if not fully administered, that the parties in interest will not furnish the indemnity necessary for the expenses of the proceeding or take the steps necessary for the administration of the estate; and reopen estates for cause shown;

(9) Confirm or reject arrangements or plans proposed under this title, set aside confirmations of arrangements or wage-earner plans and reinstate the proceedings and cases;

(10) Consider records, findings, and orders certified to the judges by referees, and confirm, modify, or reverse such findings and orders, or return such records with instructions for further proceedings;

(11) Determine all claims of bankrupts to their exemptions;

(12) Discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases;

(13) Enforce obedience by persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

(14) Extradite bankrupts from their respective districts to other districts;

(15) Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this title: *Provided, however,* That an injunction to restrain a court may be issued by the judge only;

(16) Punish persons for contempts committed before referees;

(17) Approve the appointment of trustees by creditors or appoint trustees when creditors fail so to do; and, upon complaints of creditors or upon their own motion, remove for cause receivers or trustees upon hearing after notice;

(18) Tax costs, and render judgments therefor against the unsuccessful party, against the successful party for cause, in part against each of the parties, and against estates, in proceedings under this title;

(19) Transfer cases to other courts of bankruptcy;

(20) Exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy: *Provided, however,* That the jurisdiction of the ancillary court over a bankrupt's property which it takes into its custody shall not extend beyond preserving such property and, where necessary, conducting the business of the bankrupt, and reducing the property to money, paying therefrom such liens as the court shall find valid and the expenses of ancillary administration, and transmitting the property or its proceeds to the court of primary jurisdiction; and

(21) Require receivers or trustees appointed in proceedings not under this title, assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property to deliver the property in their possession or under their control to the receiver or trustee appointed under this title or, where an arrangement or a plan under this title has been confirmed and such property has not prior thereto been delivered to a receiver or trustee appointed under this title, to deliver such property to the debtor or other person entitled to such property according to the provisions of the arrangement or plan, and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor: *Provided, however,* That such delivery and accounting shall not be required, except in proceedings under chapters 10 and 12 of this title, if the receiver or trustee was appointed, the assignment was made, or the agent was authorized more than four months prior to the date of bankruptcy. Upon such accounting, the court shall reexamine and determine the propriety and reasonableness of all disbursements made out of such property by such receiver, trustee, assignee, or agent, either to himself or to others, for services and expenses under such receivership, trus-

teeship, assignment, or agency, and shall, unless such disbursements have been approved, upon notice to creditors and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this title, surcharge such receiver, trustee, assignee, or agent the amount of any disbursement determined by the court to have been improper or excessive.

(b) Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated. (July 1, 1898, ch. 541, § 2, 30 Stat. 545; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 84; Feb. 5, 1903, ch. 487, § 1, 32 Stat. 797; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; June 25, 1910, ch. 412, §§ 1, 2, 36 Stat. 838, 839; May 27, 1926, ch. 406, § 2, 44 Stat. 662; June 22, 1938, ch. 575, § 1, 52 Stat. 842.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a), paragraph 21, was added by act June 22, 1938, cited to text.

Subdivision (a), opening paragraph and paragraphs 1, 3, 4, 7–10, 13, 15, 17, 18, 20, formerly first paragraph and clauses thereof, were amended by act June 22, 1938, cited to text.

Subdivision (a), paragraphs 2, 5, 6, 11, 12, 14, 16, 19, formerly clauses of the first paragraph, and subdivision (b), formerly the last paragraph, were reenacted without change by act June 22, 1938, cited to text.

CROSS REFERENCE

Jurisdiction and powers of bankruptcy courts in agricultural adjustment, corporate reorganization, railroad reorganization, and arrangement proceedings, see sections 203, 205, 511–521, 711–716, and 811–816 of this title.

Chapter 3.—BANKRUPTS

Sec.
21. Acts of bankruptcy.
22. Who may become bankrupts.
23. Partners.
24. Exemptions of bankrupts.
25. Duties of bankrupts.
26. Death or insanity of bankrupts.
27. Protection of bankrupts.
28. Apprehension and extradition of bankrupts.
29. Suits by and against bankrupts.
30. Compositions; when confirmed.
31. Same; when set aside.
32. Discharges, when granted.
33. Discharges, when revoked.
34. Co-debtors of bankrupts.
35. Debts not affected by a discharge.

§ 21. Acts of bankruptcy.

(a) Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt.

(b) A petition may be filed against a person within four months after the commission of an act of bankruptcy. Such time with respect to the first, second, or fourth act of bankruptcy shall not expire until four months after the date when the transfer or assignment became so far perfected that no bona-fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred or assigned superior to the rights of the transferee or assignee therein. For the purposes of this section, it is sufficient if intent under the first act of bankruptcy or if intent or insolvency under the second act of bankruptcy exists either at the time when the transfer was made or at the time when it became perfected, as hereinabove provided.

(c) It shall be a complete defense to any proceedings under the first act of bankruptcy to allege and prove that the party proceeded against was not insolvent as defined in this title at the time of the filing of the petition against him. If solvency at such date is proved by the alleged bankrupt, the proceedings shall be dismissed. In such proceedings the burden of proving solvency shall be on the alleged bankrupt.

(d) Whenever a person against whom a petition has been filed alleging the commission of the second, third, or fifth act of bankruptcy takes issue with and denies the allegation of his insolvency or his inability to pay his debts as they mature, he shall appear in court on the hearing, and prior thereto if ordered by the court, with his books, papers, and accounts, and submit to an examination and give testimony as to all matters tending to establish solvency or insolvency or ability or inability to pay his debts as they mature and, in case of his failure so to do, the burden of proving solvency or ability to pay his debts as they mature shall rest upon him. (July 1, 1898, ch. 541, § 3, 30 Stat. 546; Feb. 5, 1903, ch. 487, § 2, 32 Stat. 797; May 27, 1926, ch. 406, § 3, 44 Stat. 662; June 22, 1938, ch. 575, § 1, 52 Stat. 844.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a), clauses 1 and 2, were reenacted without change by act June 22, 1938, cited to text.

Subdivision (a), clauses 3 (formerly 3 and 4), 4 and 5 (formerly 5) and 6 (formerly 6), and subdivisions (b), (c), and (d), were amended by act June 22, 1938, cited to text.

Former subdivision (e) and the closing paragraph were not reenacted as parts of this section by act June 22, 1938, cited to text.

§ 22. Who may become bankrupts.

(a) Any person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this title as a voluntary bankrupt.

(b) Any natural person, except a wage earner or farmer, and any moneyed, business, or commercial corporation, except a building and loan association, a municipal, railroad, insurance, or banking corporation, owing debts to the amount of $1,000 or over, may

be adjudged an involuntary bankrupt upon default or an impartial trial and shall be subject to the provisions and entitled to the benefits of this title. The bankruptcy of a corporation shall not release its officers, the members of its board of directors or trustees or of other similar controlling bodies, or its stockholders or members, as such, from any liability under the laws of a State or of the United States. The status of an alleged bankrupt as a wage earner or farmer shall be determined as of the time of the commission of the act of bankruptcy. (July 1, 1898, ch. 541, § 4, 30 Stat. 547; Feb. 5, 1903, ch. 487, § 3, 32 Stat. 797; June 25, 1910, ch. 412, §§ 3, 4, 36 Stat. 839; Feb. 11, 1932, ch. 38, 47 Stat. 47; May 15, 1935, ch. 114, § 1, 49 Stat. 246; June 22, 1938, ch. 575, § 1, 52 Stat. 845.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was reenacted without change by act June 22, 1938, cited to text.

Subdivision (h), consisting of former subdivision (h) together with a concluding paragraph, was amended by act June 22, 1938, cited to text.

§ 23. Partners.

(a) A partnership, including a limited partnership containing one or more general partners, during the continuation of the partnership business or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt either separately or jointly with one or more or all of its general partners.

(b) A petition may be filed by one or more or all of the general partners in the separate behalf of a partnership or jointly in behalf of a partnership and of the general partner or partners filing the same: *Provided, however*, That where a petition is filed in behalf of a partnership by less than all of the general partners, the petition shall allege that the partnership is insolvent. A petition may be filed separately against a partnership or jointly against a partnership and one or more or all of its general partners.

(c) The creditors of the bankrupt partnership shall appoint the trustee, who shall be the trustee of the individual estate of a general partner being administered in the proceeding: *Provided, however*, That the creditors of a general partner adjudged a bankrupt may, upon cause shown, be permitted to appoint their separate trustee for his estate. In other respects, so far as possible, the partnership estate shall be administered as herein provided for other estates.

(d) The court of bankruptcy which has jurisdiction of one of the general partners may have jurisdiction of all the general partners and of the administration of the partnership and individual property.

(e) The trustee or trustees shall keep separate accounts of the partnership property and of the property belonging to the individual general partners.

(f) The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

(g) The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts and the net proceeds of the individual estate of each general partner to the payment of his individual debts. Should any surplus remain of the property of any general partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be distributed among the individual partners, general or limited, or added to the estates of the general partners, as the case may be, in the proportion of their respective interests in the partnership and in the order of distribution provided by the laws of the State applicable thereto.

(h) The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

(i) Where all the general partners are adjudged bankrupt, the partnership shall also be adjudged bankrupt. In the event of one or more, but not all of the general partners of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the general partner or partners not adjudged bankrupt; but such general partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit and account for the interest of the general partner or partners adjudged bankrupt.

(j) The discharge of a partnership shall not discharge the individual general partners thereof from the partnership debts. A general partner adjudged a bankrupt either in a joint or separate proceeding may, pursuant to the provisions of this title, obtain a discharge from both his partnership and individual debts.

(k) If a limited partnership is adjudged bankrupt, any limited partner who is individually liable under the laws of the United States or of any State for any of the partnership debts shall be deemed a general partner as to such debts and, if he is insolvent, shall be subject to the provisions and entitled to the benefits of this title, as in the case of a general partner. (July 1, 1898, ch. 541, § 5, 30 Stat. 547; June 22, 1938, ch. 575, § 1, 52 Stat. 845.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (b), (j), and (k) were added by act June 22, 1938, cited to text.

Subdivisions (a), (d), (e), (g), and (i), formerly a, c, d, f, and h, respectively, were amended by act June 22, 1938, cited to text.

Subdivisions (c), (f), and (h), formerly b, e, and g, respectively, were reenacted without change by act June 22, 1938, cited to text.

§ 24. Exemptions of bankrupts.

This title shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months

than in any other State: *Provided, however,* That no such allowance shall be made out of the property which a bankrupt transferred or concealed and which is recovered or the transfer of which is avoided under this title for the benefit of the estate, except that, where the voided transfer was made by way of security only and the property recovered is in excess of the amount secured thereby, such allowance may be made out of such excess. (July 1, 1898, ch. 541, § 6, 30 Stat. 548; June 22, 1938, ch. 575, § 1, 52 Stat. 847.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 25. Duties of bankrupts.

(a) The bankrupt shall (1) attend at the first meeting of his creditors, at the hearing upon objections, if any, to his application for a discharge and at such other times as the court shall order; (2) comply with all lawful orders of the court; (3) examine and report to his trustee concerning the correctness of all proofs of claim filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute and deliver to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt by his creditors or other persons to evade the provisions of this title coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within five days after adjudication, if an involuntary bankrupt, and with his petition, if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof and its money value, in detail; and a list of all his creditors, including all persons asserting contingent, unliquidated, or disputed claims, showing their residence, if known, or if unknown that fact to be stated, the amount due to or claimed by each of them, the consideration thereof, the security held by them, if any, and what claims, if any, are contingent, unliquidated, or disputed; and a claim for such exemptions as he may be entitled to; all in triplicate, one copy for the clerk, one for the referee, and one for the trustee: *Provided,* That the court may for cause shown grant further time for the filing of such schedules if, with his petition in a voluntary proceeding or with his application to have such time extended in an involuntary proceeding, the bankrupt files a list of all such creditors and their addresses; (9) file in triplicate with the court at least five days prior to the first meeting of his creditors a statement of his affairs in such form as may be prescribed by the Supreme Court; (10) at the first meeting of his creditors, at the hearing upon objections, if any, to his discharge and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate or the granting of his discharge; but no testimony given by him shall be offered in evidence against him in any criminal proceeding, except such testimony as may be given by him in the hearing upon objections to his discharge: *Provided, however,* That when the bankrupt is required to attend for examination, except at the first meeting and at the hearing upon objections, if any, to his discharge, he shall be paid actual and necessary traveling expenses for any distance in excess of one hundred miles from his place of residence at the date of bankruptcy: *And provided further,* That the court may for cause shown, and upon such terms and conditions as the court may impose, permit the bankrupt to be examined at such place as the court may direct whether within or without the district in which the proceedings are pending; and (11) when required by the court, prepare, verify, and file with the court in duplicate a detailed inventory, showing the cost to him of his merchandise or of such other property as may be designated, as of the date of his bankruptcy.

(b) Where the bankrupt is a corporation, its officers, the members of its board of directors or trustees or of other similar controlling bodies, its stockholders or members, or such of them as may be designated by the court, shall perform the duties imposed upon the bankrupt by this title. (July 1, 1898, ch. 541, § 7, 30 Stat. 548; May 27, 1926, ch. 406, § 4, 44 Stat. 663; June 22, 1938, ch. 575, § 1, 52 Stat. 847.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a), clauses 9 and 11, and subdivision (b) were added by act June 22, 1938, cited to the text.

Subdivision (a), clauses 1, 3, 5, 8, and 10 (formerly opening paragraph, clause 9), and closing paragraph, were amended by act June 22, 1938, cited to the text.

Subdivision (a), clauses 2, 4, 6, and 7, formerly those clauses of the opening paragraph, were re-enacted without change by act June 22, 1938, cited to the text.

§ 26. Death or insanity of bankrupts.

The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided,* That in case of death, the bankrupt's right to exemption, if any, shall be preserved, and if the exempt property has not already been set off or awarded to him, it shall upon application be ordered set off and awarded to the spouse or dependent children surviving at his death to the exclusion of his personal representatives. (July 1, 1898, ch. 541, § 8, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 27. Protection of bankrupts.

A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State court having jurisdiction, and when served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of

bankruptcy or engaged in the performance of a duty imposed by this title. (July 1, 1898, ch. 541, § 9, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

This section, formerly subdivision (a), was reenacted without change by act June 22, 1938, cited to text.

Former subdivision (b) was reenacted as subdivision (a) of section 28 of this title by act June 22, 1938, cited to text.

§ 28. Apprehension and extradition of bankrupts.

(a) The court may, during the pendency of a proceeding in bankruptcy, upon application of the receiver, trustee, or a creditor and upon satisfactory proof by affidavit that the examination of such bankrupt is necessary for the proper administration of the estate and that there is reasonable cause to believe that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, or that he has evaded service of a subpena or of an order to attend for examination, or that, having been served with a subpena or order to attend for examination, he has willfully disobeyed the same, issue to the marshal a warrant directing him to bring such bankrupt forthwith before the court for examination. If, upon hearing the evidence of the parties, it shall appear to the court that the allegations are true and that it is necessary, the court shall fix bail conditioned for his appearance for examination, from time to time not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

(b) Whenever any warrant for the apprehension of a bankrupt shall have been issued under this title, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner as persons under indictment are now extradited from one district to another.

(c) Where the bankrupt is a corporation, "bankrupt" for the purposes of this section shall include its officers and the members of its board of directors or trustees or of other similar controlling bodies. (July 1, 1898, ch. 541, § 10, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a), formerly subdivision (b) of section 27, was reenacted as a part of this section and amended by act June 22, 1938, cited to text.

Subdivision (b), formerly this entire section, was amended by act June 22, 1938, cited to text.

Subdivision (c) was added by act June 22, 1938, cited to text.

§ 29. Suits by and against bankrupts.

(a) A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until the question of his discharge is determined by the court after a hearing, or by the bankrupt's filing a waiver of, or having lost, his right to a discharge, or, in the case of a corporation, by its failure to file an application for a discharge within the time prescribed under this title: *Provided*, That such stay shall be vacated by the court if, within six years prior to the date of the filing of the petition in bankruptcy, such person has been adjudicated a bankrupt, or has been granted a discharge, or has had a composition confirmed, or has had an arrangement by way of composition confirmed, or has had a wage earner's plan by way of composition confirmed.

(b) The court may order the receiver or trustee to enter his appearance and defend any pending suit against the bankrupt.

(c) A receiver or trustee may, with the approval of the court, be permitted to prosecute as receiver or trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

(d) Suits shall not be brought against a person who has acted as a receiver or trustee of a bankrupt estate, upon any matter arising in connection with the administration thereof, subsequent to two years after the estate has been closed.

(e) A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in such proceeding or by applicable Federal or State law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case such period had not expired at the date of the filing of the petition in bankruptcy, the receiver or trustee of the bankrupt may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the bankrupt, within a period of sixty days subsequent to the date of adjudication or within such further period as may be permitted by the agreement, or in the proceeding or by applicable Federal or State law, as the case may be.

(f) The operation of any statute of limitations of the United States or of any State, affecting the debts of a bankrupt provable under this title, shall be suspended during the period from the date of the filing of the petition in bankruptcy (1) until the expiration of thirty days after the date of the entry of an order denying his discharge; or (2) if he has waived or lost his right to a discharge, then until the expiration of thirty days after the filing of such waiver or loss of such right or, in the case of a corporation, if no application for a discharge is filed within the period of six months after the adjudication, then until the expiration of thirty days after the end of such period; or (3) until thirty days after the dis-

missal of the bankruptcy proceedings, whichever may first occur. (July 1, 1898, ch. 541, § 11, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 849.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a)–(d) were amended by act June 22, 1938, cited to text.

Subdivisions (e) and (f) were added by act of June 22, 1938, cited to text.

§ 30. Compositions; when confirmed.

CHANDLER ACT

This section, act July 1, 1898, ch. 541, § 12, 30 Stat. 549, as amended by act June 25, 1910, ch. 412, § 5, 36 Stat. 839; act May 27, 1926, ch. 406, § 5, 44 Stat. 663, and sections 31, 201, 202, 206, and 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840 (Chandler Act).

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

SAVING CLAUSE

Continuance of this section in force with respect to certain proceedings, see section 799 of this title.

DISTRIBUTION

Subject matter of the various subdivisions comprising this section was distributed by act June 22, 1938, as follows:

Section 30, subdivisions:	Present sections
a	721, 725, 735, 736, 821, 825, 826, 834, 836, 906, 1024, 1025, and 1033.
b	762, 862, and 1052.
c	737 (8), 837 (3) and 1033.
d	761, 766, 867, and 1056.
e	767, 776, 881, 882, and 1066.

§ 31. Same; when set aside.

CHANDLER ACT

This section, act July 1, 1898, ch. 541, § 13, 30 Stat. 550, and sections 30, 201, 202, 206, and 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840 (Chandler Act).

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

DISTRIBUTION

Subject matter of this section is now contained in sections 736, 911, and 1071 of this title.

§ 32. Discharges, when granted.

(a) The adjudication of any person, except a corporation, shall operate as an application for a discharge: *Provided*, That the bankrupt may, before the hearing on such application, waive by writing, filed with the court, his right to a discharge. A corporation may, within six months after its adjudication, file an application for a discharge in the court in which the proceedings are pending.

(b) After the bankrupt shall have been examined, either at the first meeting of creditors or at a meeting specially fixed for that purpose, concerning his acts, conduct, and property, the court shall make an order fixing a time for the filing of objections to the bankrupt's discharge, notice of which order shall be given to all parties in interest as provided in section 94 of this title. Upon the expiration of the time fixed in such order or of any extension of such time granted by the court, the court shall discharge the bankrupt if no objection has been filed; otherwise, the court shall hear such proofs and pleas as may be made in opposition to the discharge, by the trustee, creditors, the United States attorney, or such other attorney as the Attorney General may designate, at such time as will give the bankrupt and the objecting parties a reasonable opportunity to be fully heard.

(c) The court shall grant the discharge unless satisfied that the bankrupt has (1) committed an offense punishable by imprisonment as provided under this title; or (2) destroyed, mutilated, falsified, concealed, or failed to keep or preserve books of account of records, from which his financial condition and business transactions might be ascertained, unless the court deems such acts or failure to have been justified under all the circumstances of the case; or (3) obtained money or property on credit, or obtained an extension or renewal of credit, by making or publishing or causing to be made or published in any manner whatsoever, a materially false statement in writing respecting his financial condition; or (4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay, or defraud his creditors; or (5) has within six years prior to bankruptcy been granted a discharge, or had a composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this title; or (6) in the course of a proceeding under this title refused to obey any lawful order of, or to answer any material question approved by, the court; or (7) has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities: *Provided*, That if, upon the hearing of an objection to a discharge, the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which, under this subdivision c, would prevent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt.

(d) When requested by the court, the United States attorney, located in the judicial district in which the bankruptcy proceeding is pending, or such other attorney as the Attorney General may designate, shall examine into the acts and conduct of the bankrupt and, if satisfied that probable grounds exist for the denial of the discharge and that the public interest so warrants, he shall oppose the discharge of such bankrupt in like manner as provided in the case of a trustee.

(e) If the bankrupt fails to appear at the hearing upon his application for a discharge, or having appeared refuses to submit himself to examination, or if the court finds after hearing upon notice that the bankrupt has failed without sufficient excuse to appear and submit himself to examination at the first meeting of creditors or at any meeting specially called for his examination, he shall be deemed to have waived his right to a discharge, and the court shall enter an order to that effect. (July 1, 1898, ch. 541, § 14, 30 Stat. 550; Feb. 5, 1903, ch. 487, § 4, 32 Stat. 797; June 25, 1910, ch. 412, § 6, 36 Stat. 839; May 27,

1926, ch. 406, § 6, 44 Stat. 663; June 22, 1938, ch. 575, § 1, 52 Stat. 850.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) and subdivisions (b) and (c), formerly subdivision (a) and subdivision (b), respectively, were amended by act June 22, 1938, cited to text.

Subdivisions (d) and (e) were added by act June 22, 1938, cited to text.

Former subdivision (c) was not reenacted as a provision of this section by act June 22, 1938, cited to text.

§ 33. Discharges, when revoked.

The court may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it if it shall be made to appear that it was obtained through the fraud of the bankrupt, that the knowledge of the fraud has come to the petitioners since the granting of the discharge and that the actual facts did not warrant the discharge. (July 1, 1898, ch. 541, § 15, 30 Stat. 550; June 22, 1938, ch. 575, § 1, 52 Stat. 851.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 34. Co-debtors of bankrupts.

The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt. (July 1, 1898, ch. 541, § 16, 30 Stat. 550.)

§ 35. Debts not affected by a discharge.

(a)[1] A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; (2) are liabilities for obtaining money or property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; or (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment. (July 1, 1898, ch. 541, § 17, 30 Stat. 550; Feb. 5, 1903, ch. 487, § 5, 32 Stat. 798; Mar. 2, 1917, ch. 153, 39 Stat. 999; Jan. 7, 1922, ch. 22, 42 Stat. 354; June 22, 1938, ch. 575, § 1, 52 Stat. 851.)

[1] So in original. There is no subdivision (b).

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Opening clause and clauses 1, 2, and 5 were amended by act June 22, 1938, cited to text.

Clauses 3, 4, and 6 were reenacted without change by act June 22, 1938, cited to text.

Chapter 4.—COURTS AND PROCEDURE THEREIN

Sec.
41. Process; pleadings; and adjudications.
42. Jury trials.
43. Oaths; affirmations.
44. Evidence.
45. Reference of petitions.
46. Jurisdiction of United States and State courts.
47. Jurisdiction of appellate courts.
48. Practice on appeals.
49. Arbitration of controversies.
50. Compromises.
51. Designation of newspapers.
52. Offenses.
53. Rules, forms, and orders.
54. Computation of time.
55. Transfer of cases.

§ 41. Process; pleadings; and adjudications.

(a) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpena, shall be made upon the person therein named as defendant. Upon the filing of a voluntary petition in behalf of a partnership by less than all of the general partners, service thereof, with a writ of subpena, shall be made upon the general partner or partners not parties to the filing of such petition. Such service shall be returnable within ten days, unless the court shall, for cause shown, fix a longer time, and shall be made at least five days prior to the return day, and in other respects shall be made in the same manner that service of such process is had upon the commencement of a suit in equity in the courts of the United States; but in case personal service cannot be made within the time allowed, then notice shall be given by publication in the same manner as provided by law for notice by publication in suits to enforce a legal or equitable lien in courts of the United States, except that, unless the court shall otherwise direct, the order shall be published only once and the return day shall be five days after such publication.

(b) The bankrupt and, in the case of a petition against a partnership, any general partner or, in the case of a petition in behalf of a partnership, any general partner not joining therein, may appear and plead to the petition within five days after the return day or within such further time as the court may allow.

(c) All pleadings setting up matters of fact shall be verified under oath.

(d) If a party entitled to appear and plead shall appear, within the time limited, and controvert the facts alleged in the petition, the court shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury except

in cases where a jury trial is given by this title, and make the adjudication or dismiss the petition.

(e) If on the last day within which pleadings may be filed none is filed, the court shall on the next day, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

(f) If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none has been filed, the clerk shall, if the case has not already been referred, forthwith refer it to the referee.

(g) Upon the filing of a voluntary petition, other than a petition filed in behalf of a partnership by less than all of the partners, the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed, at the time of the filing, the clerk shall forthwith refer the case to the referee. (July 1, 1898, ch. 541, § 18, 30 Stat. 551; Feb. 5, 1903, ch. 487, § 6, 32 Stat. 798; June 22, 1938, ch. 575, § 1, 52 Stat. 851.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a), (b), and (d)–(g) were amended by act June 22, 1938, cited to text.

Subdivision (c) was reenacted without change by act June 22, 1938, cited to text.

§ 42. Jury trials.

(a) A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury in respect to the question of his insolvency, except as herein otherwise provided, and of any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

(b) If a jury is not in attendance upon the court, one may be specially summoned for the trial or the case may be postponed.

(c) The right to submit to a jury matters in controversy or an alleged offense under this title shall be determined and enjoyed, except as provided by this title, according to the laws of the United States now in force or such as may be hereafter enacted in relation to trials by jury. (July 1, 1898, ch. 541, § 19, 30 Stat. 551; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167; June 22, 1938, ch. 575, § 1, 52 Stat. 852.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a) and (b) were reenacted without change by act June 22, 1938, cited to text.

Subdivision (c) was amended by act June 22, 1938, cited to text.

§ 43. Oaths; affirmations.

(a) Oaths required by this title, except upon hearing before a judge, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

(b) Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath. (July 1, 1898, ch. 541, § 20, 30 Stat. 551; June 22, 1938, ch. 575, § 1, 52 Stat. 852.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENT

Except for changes in the opening clause of subdivision (a), this section was reenacted without change by act June 22, 1938, cited to text.

§ 44. Evidence.

(a) The court may, upon application of any officer, bankrupt, or creditor, by order require any designated persons, including the bankrupt and his or her spouse, to appear before the court or before the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt: *Provided*, That the spouse may be examined only touching business transacted by such spouse or to which such spouse is a party and to determine the fact whether such spouse has transacted or been a party to any business of the bankrupt: *And provided further*, That the spouse may be so examined, any law of the United States or of any State to the contrary notwithstanding.

(b) Except as herein otherwise provided, the right to take depositions in proceedings under this title shall be determined and enjoyed according to the laws of the United States now in force, or such as may be hereafter enacted, relating to the taking of depositions.

(c) Notice of the taking of depositions shall be filed with the court and a copy of such notice shall be served upon the adverse party in every case.

(d) Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

(e) A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of his appointment and qualification.

(f) A certified copy of any order or decree entered in a proceeding under this title shall be evidence of the jurisdiction of the court, the regularity of the proceedings, the fact that the order or decree was made, and the contents thereof, and, if recorded, shall impart the same notice that a deed or other instrument affecting property, if recorded, would impart.

(g) A certified copy of the petition with the schedules omitted, of the decree of adjudication or of the order approving the trustee's bond may be recorded at any time in the office where conveyances of real property are recorded, in every county where the bankrupt owns or has an interest in real property. Such certified copy may be recorded by the bank-

rupt, trustee, receiver, custodian, referee, or any creditor, and the cost of such recording shall be paid out of the estate of the bankrupt as part of the expenses of administration. Unless a certified copy of the petition, decree, or order has been recorded in such office, in any county wherein the bankrupt owns or has an interest in real property in any State whose laws authorize such recording, the commencement of a proceeding under this title shall not be constructive notice to or affect the title of any subsequent bona-fide purchaser or lienor of real property in such county for a present fair equivalent value and without actual notice of the pendency of such proceeding: *Provided, however,* That where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. The exercise by any court of the United States or of any State of jurisdiction to authorize or effect a judicial sale of real property of the bankrupt within any county in any State whose laws authorize the recording aforesaid shall not be impaired by the pendency of such proceeding unless such copy be recorded in such county, as aforesaid, prior to the consummation of such judicial sale: *Provided, however,* That this subdivision shall not apply to the county in which is kept the record of the original proceedings under this title.

(h) A certified copy of an arrangement or wage-earner plan and of the order confirming it shall constitute evidence of the revesting in the debtor of title to the property dealt with by the arrangement or wage-earner plan, or of the vesting of title to such property in such other person as may be provided by the arrangement or wage-earner plan, and if recorded shall impart the same notice that an instrument of transfer from the trustee to the debtor or to such person if recorded would impart.

(i) A communication by a creditor, by the receiver or the trustee of a bankrupt, by the attorney for any of them, or by the referee to a creditor, to the receiver or trustee of the bankrupt, to the attorney for any of them, to the referee or to the bankrupt or his attorney, uttered in good faith and with reasonable grounds for belief in its truth, concerning the conduct, acts, or property of the bankrupt, shall be privileged and the creditor, receiver, trustee, attorney, or referee so uttering the same shall not be held liable therefor.

(j) In any proceeding or controversy, or in any plenary suit, brought under this title, if it shall appear that the interest of a witness is adverse to the party calling him, such witness may be examined as if under cross-examination and the party calling him shall not be bound by such testimony.

(k) In all proceedings under this title, the parties in interest shall be entitled to all rights and remedies granted by the rules of equity practice established from time to time by the Supreme Court pertaining to discovery, interrogatories, inspection and production of documents, and to the admission of execution and genuineness of instruments: *Provided,* That the limitations of time therein prescribed may be shortened by the court to expedite hearings.

(l) In any proceeding under this title against a bankrupt for an accounting by him for his property or the disposition thereof, or to compel a turn-over of property by him, if his books, records, and accounts shall fail to disclose the cost to him of such property sold by him during any period under consideration, it shall be presumed, until the contrary shall appear, that such property was sold at a price not less than the cost thereof to him. (July 1, 1898, ch. 541, § 21, 30 Stat. 552; Feb. 5, 1903, ch. 487, § 7, 32 Stat. 798; May 27, 1926, ch. 406, § 7, 44 Stat. 664; June 22, 1938, ch. 575, § 1, 52 Stat. 852.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (g), (j), (k), and (l) were added by act June 22, 1938, cited to text.

Subdivisions (a)–(f), (h), and (i), formerly subdivisions (a)–(f), (g), and (h), respectively, were amended by act June 22, 1938, cited to text.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44.

Proof of official records, see Rule 44, following Title 28, Judicial Code and Judiciary, § 723c.

§ 45. Reference of petitions.

(a) The judge may at any stage of a proceeding under this title refer the same to a referee, either generally or specially.

(b) The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another. (July 1, 1898, ch. 541, § 22, 30 Stat. 552; June 22, 1938, ch. 575, § 1, 52 Stat. 854.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1938, cited to text.

Subdivision (b) was reenacted without change by act June 22, 1938, cited to text.

§ 46. Jurisdiction of United States and State courts.

(a) The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this title, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b) Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this title had not been instituted, unless by consent of the defendant, except as provided in sections 96, 107, and 110 of this title. (July 1, 1898, ch. 541, § 23, 30 Stat. 552; Feb. 5, 1903, ch. 487, § 8, 32 Stat. 798; June 25, 1910, ch. 412, § 7, 36 Stat. 840; May 27, 1926, ch. 406, § 8, 44 Stat. 664; June 22, 1938, ch. 575, § 1, 52 Stat. 854.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1938, cited to text.

Subdivision (b) was amended by acts May 27, 1926, and June 22, 1938, both cited to text.

§ 47. Jurisdiction of appellate courts.

(a) The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however,* That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury, shall extend to matters of law only: *Provided further,* That when any order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court.

(b) Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

(c) The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted. (July 1, 1898, ch. 541, § 24, 30 Stat. 553; Feb. 13, 1925, ch. 229, §§ 1, 5, 13, 43 Stat. 936, 939, 941; May 27, 1926, ch. 406, § 9, 44 Stat. 664; June 7, 1934, ch. 426, 48 Stat. 926; June 22, 1938, ch. 575, § 1, 52 Stat. 854.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a), (formerly a and part of b) and (b), (formerly part of b), were amended by act June 22, 1938, cited to text.

Subdivision (c), formerly subdivision (c) of section 48 of this title, was amended by act June 22, 1938, cited to text, which act did not reenact former subdivision (c) as a part of this section. See subdivision (a) of section 48 of this title for provisions on that subject.

§ 48. Practice on appeals.

(a) Appeals under this title to the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry.

(b) Receivers and trustees shall not be required in any case to give bond when they take appeals. (July 1, 1898, ch. 541, § 25, 30 Stat. 553; Feb. 13, 1925, ch. 229, §§ 1, 13, 43 Stat. 936, 941; May 27, 1926, ch. 406, § 10, 44 Stat. 665; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENT

Act June 22, 1938, cited to text, amended this section and reenacted former subdivision (c) thereof as subdivision (c) of section 47 of this title.

§ 49. Arbitration of controversies.

(a) The receiver or trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

(b) Three arbitrators shall be chosen by mutual consent, or one by the receiver or trustee, one by the other party to the controversy, and the third by the two so chosen or, if they fail to agree in five days after their appointment, the court shall appoint the third arbitrator.

(c) The written finding of the arbitrators or of a majority of them as to the issues presented may be filed in court and shall have like force and effect as the verdict of a jury. (July 1, 1898, ch. 541, § 26, 30 Stat. 553; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a) and (b) were amended by act June 22, 1938, cited to text.

Subdivision (c) was reenacted without change by act June 22, 1938, cited to text.

§ 50. Compromises.

The receiver or trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interest of the estate. (July 1, 1898, ch. 541, § 27, 30 Stat. 553; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 51. Designation of newspapers.

The judges of courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published. (July 1, 1898, ch. 541, § 28, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 52. Offenses.

(a) A person shall be punished by imprisonment for a period of not to exceed five years or by a fine of not more than $5,000, or both, upon conviction of the

offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to the estate of a bankrupt which came into his charge as trustee, receiver, custodian, marshal, or other officer of the court.

(b) A person shall be punished by imprisonment for a period of not to exceed five years or by a fine of not more than $5,000, or both, upon conviction of the offense of having knowingly and fraudulently (1) concealed from the receiver, custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any proceeding under this title, any property belonging to the estate of a bankrupt; or (2) made a false oath or account in or in relation to any proceeding under this title; or (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in any proceeding under this title, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of a proceeding under this title, with intent to defeat this title; or (5) received or attempted to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof from any person, for acting or forebearing[1] to act in any proceeding under this title; or (6) while an agent or officer of any person or corporation, and in contemplation of a proceeding under this title by or against such person or corporation, or with intent to defeat this title, concealed or, with or without concealment, transferred any of the property of such person or corporation; or (7) after the filing of a proceeding under this title or in contemplation thereof, concealed, destroyed, mutilated, falsified, or made a false entry in any document affecting or relating to the property or affairs of a bankrupt; or (8) after the filing of a proceeding under this title, withheld from the receiver, custodian, trustee, marshal, or other officer of the court any document affecting or relating to the property or affairs of a bankrupt, to the possession of which he is entitled.

(c) A person shall be punished by fine, not to exceed $500, and shall forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, receiver, custodian, trustee, marshal, or other officer of the court, directly or indirectly, any property of the estate in a proceeding under this title, of which he is such officer; or (3) refused, while such officer, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and of the documents of, estates in his charge by parties in interest when directed by the court so to do.

(d) A person shall not be prosecuted for any offense arising under this title unless the indictment is found or the information is filed in court within three years after the commission of the offense: *Provided*, That the offense of concealment of assets of a bankrupt shall be deemed to be a continuing offense until the bankrupt shall have been finally discharged, and the period of limitations herein provided shall not begin to run until such final discharge.

(e) (1) Whenever any referee, receiver, or trustee shall have reasonable grounds for believing that any offense under this title has been committed, or that an investigation should be had in connection therewith, it shall be the duty of any such officer to report such matter to the United States attorney for the district in which it is believed such an offense has been committed, including in such report a statement of all the facts and circumstances of the case within his knowledge, the names of the witnesses and a statement as to the offense or offenses believed to have been committed: *Provided*, That where one of such officers has made such a report, the other officers named herein shall not be required to do so.

(2) It shall thereupon become the duty of the United States attorney to inquire into the facts so reported to him and report thereon to the referee, and if it appears probable that any offense under this title has been committed, in a proper case and without delay, to present the matter to the grand jury, unless upon inquiry and examination such United States attorney decides that the ends of public justice do not require that the alleged offense should be investigated or prosecuted, in which case he shall report the facts to the Attorney General for his direction in the premises.

(f) The term "bankrupt," wherever used in this section, shall include a debtor by or against whom a petition has been filed proposing an arrangement or plan under this title. (July 1, 1898, ch. 541, § 29, 30 Stat. 554; May 27, 1926, ch. 406, § 11, 44 Stat. 665; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

[1] So in original.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a)–(e) were amended by act June 22, 1938, cited to text.

Subdivision (f) was added by act June 22, 1938, cited to text.

§ 53. Rules, forms, and orders.

All necessary rules, forms, and orders as to procedure and for carrying the provisions of this title into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States. (July 1, 1898, ch. 541, § 30, 30 Stat. 554.)

§ 54. Computation of time.

Whenever time is enumerated by days in this title, or in any proceeding thereunder the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a holiday. (July 1, 1898, ch. 541, § 31, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 857.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 55. Transfer of cases.

In the event petitions are filed by or against the same person or by or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall, by order of the court first acquiring jurisdiction, be transferred to and consolidated in the court which can proceed with the same for the greatest convenience of parties in interest. (July 1, 1898, ch. 541, § 32, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 857.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

Chapter 5.—OFFICERS, THEIR DUTIES AND COMPENSATION

See.
61. Creation of two offices.
62. Referees; appointment, removal, and districts of.
63. Same; qualifications.
64. Same; oaths.
65. Same; number.
66. Same; jurisdiction.
67. Same; duties.
68. Same; compensation.
69. Same; contempts before.
70. Same; records.
71. Same; absence or disability.
72. Trustees; creditors' committees; and attorneys.
73. Receivers and trustees; qualifications.
74. Same; death or removal.
75. Trustees; duties.
76. Receivers; marshals, and trustees; compensation.
a. Receivers.
b. Marshals.
c. Trustees.
d. Apportionment of fees.
e. Withholding compensation.
f. Arrangements.
g. Plans of reorganization.
76a. Receivers and trustees; apportionment of appointments; disqualification; compensation.
77. Receivers and trustees; accounts and papers.
78. Bonds.
79. Clerks; duties.
80. Clerks and marshals; compensation.
81. Attorney General; duties.
82. Statistics of bankruptcy proceedings.

§ 61. Creation of two offices.

The offices of referee and trustee are created. (July 1, 1898, ch. 541, § 33, 30 Stat. 555.)

§ 62. Referees; appointment, removal, and districts of.

The judges of courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1) appoint referees, each for a term of two years and may, in their discretion, remove them because their services are not needed or for other cause; and (2) designate and from time to time change the limits of the districts of referees: *Provided*, That the jurisdiction of such referees in matters referred to them shall not be restricted to the districts so designated for them, but shall, unless otherwise provided in this title, be coextensive with the territorial limits of the jurisdiction of the courts of bankruptcy appointing them. (July 1, 1898, ch. 541, § 34, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 857.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 63. Same; qualifications.

Individuals shall not be eligible to appointment as referees unless they are (1) competent to perform the duties of a referee in bankruptcy; (2) not holding any office of profit or emolument under the laws of the United States or of any State other than commissioners of deeds, justices of the peace, masters in chancery or notaries public; (3) not relatives of any of the judges of the courts of bankruptcy or of the justices or judges of the appellate courts of the districts wherein they may be appointed; (4) resident within the territorial limits of the court of bankruptcy and have their offices in the districts for which they are to be appointed; and (5) members in good standing at the bar of the district court of the United States in which they are appointed: *Provided, however*, That this requirement shall not apply to referees holding office on the date when this amendatory Act takes effect. (July 1, 1898, ch. 541, § 35, 30 Stat. 555; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 22, 1938, ch. 575, § 1, 52 Stat. 857.)

CHANDLER ACT; EFFECTIVE DATE

Construction, etc., of act June 22, 1938, cited to text, see note under section 1 of this title.

"This amendatory act shall take effect and be in force on and after three months from the date of its approval." Act June 22, 1938, ch. 575, § 7, 52 Stat. 940.

AMENDMENTS

Clauses 1, 3, and 4 were amended by act June 22, 1938, cited to text.

Clause 2 was reenacted without change by act June 22, 1938, cited to text.

Clause 5 was added by act June 22, 1938, cited to text.

§ 64. Same; oaths.

Referees shall take the same oath of office as that prescribed for judges of United States courts. (July 1, 1898, ch. 541, § 36, 30 Stat. 555.)

§ 65. Same; number.

Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy, but, insofar as possible, the number shall be limited with a view to employment of referees on a full-time basis. (July 1, 1898, ch. 541, § 37, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 857.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 66. Same; jurisdiction.

Referees are hereby invested, subject always to a review by the judge, with jurisdiction to (1) consider all petitions referred to them and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or showing his sickness or

inability to act; (4) grant, deny, or revoke discharges; (5) confirm or refuse to confirm arrangements or wage-earner plans, or set aside the confirmation of arrangements or wage-earner plans and reinstate the proceedings or cases; (6) perform such of the duties as are by this title conferred on courts of bankruptcy, including those incidental to ancillary jurisdiction, and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (7) during the examination of the bankrupt, or during other proceedings, authorize the employment of stenographers for reporting and transcribing proceedings at such reasonable expense to the estate as the court may fix. (July 1, 1898, ch. 541, § 38, 30 Stat. 555; May 27, 1926, ch. 406, § 12, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 857.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Clauses 1, 6, and 7, formerly 1, 4, and 5, respectively, were amended by act June 22, 1938, cited to text.

Clauses 2 and 3 were reenacted without change by act June 22, 1938, cited to text.

Clauses 4 and 5 were added by act June 22, 1938, cited to text.

§ 67. Same; duties.

(a) Referees shall (1) give notice to creditors and other parties in interest, as provided in this title; (2) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts or cause the same to be done when the bankrupts fail, refuse, or neglect to do so; (3) examine all schedules of property, lists of creditors, and statements of affairs, filed as provided under this title, and cause such as are incomplete and defective to be amended; (4) furnish or cause to be furnished such information concerning proceedings before them as may be requested by parties in interest; (5) declare dividends and cause to be prepared dividend sheets showing the dividends declared and to whom payable; (6) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts and secure the return of such papers after they have been used, or, if it be impractical to transmit the original papers, transmit certified copies thereof by mail; (7) upon application of any party in interest, preserve the evidence taken, or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; (8) prepare promptly and transmit to the clerks certificates on petitions for review of orders made by them, together with a statement of the questions presented, the findings and orders thereon, the petition for review, a transcript of the evidence or a summary thereof, and all exhibits; (9) transmit forthwith to the clerks all bonds filed with and approved by them, the originals of all orders made by them granting adjudications or dismissing the petitions as provided in this title, and certified copies of all orders made and entered by them, granting, denying, or revoking discharges, or confirming or refusing to confirm arrangements or plans or setting aside the confirmation of arrangements or wage-earner plans and reinstating the proceedings or cases, and reports of the completion thereof; and (10) safely keep, perfect, and transmit to the clerks, when the cases are concluded, the records herein required to be kept by them.

(b) Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practice as attorneys and counselors at law in any proceeding under this title; or (3) purchase, directly or indirectly, any property of an estate in any proceeding under this title.

(c) A person aggrieved by an order of a referee may, within ten days after the entry thereof, or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest. (July 1, 1898, ch. 541, § 39, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 858.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1938, cited to text. Clause 9 was added. Clauses 1, 3, 4, 5, 6, 8, and 10, formerly 4, 2, 3, 1, 8, 5, and 7, respectively, were amended. Clauses 2 and 7, formerly 6 and 9, respectively, were reenacted without change. Former clause 10 was not reenacted as part of this section.

Subdivision (b) was reenacted without change by act June 22, 1938, cited to text.

Subdivision (c) was added by act June 22, 1938, cited to text.

§ 68. Same; compensation.

(a) Referees shall receive as full compensation for their services, payable after they are rendered, a fee of $15, deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt; a fee of 25 cents for every proof of claim filed for allowance, to be paid from the estate, if any, as a part of the cost of administration; and from estates which have been administered before them, 1 per centum commissions on all moneys disbursed to creditors by the trustees or, upon confirmation of an arrangement, one-half of 1 per centum on the amount to be paid to creditors in respect to the composition of debts and one-half of 1 per centum on the amount of the debts whose maturity is to be extended and of the debts, if any, to be paid in full. Referees in ancillary proceedings shall receive as full compensation for their services, payable after they are rendered, a fee of $15 deposited in each case with the clerk of the ancillary court at the time the ancillary proceeding is instituted, and 1 per centum commission on all moneys disbursed in the ancillary proceeding to lien creditors, as well as on all moneys transmitted and on the fair value of all property turned over in kind by the court of the ancillary jurisdiction to the court

of primary jurisdiction. The judge may, however, by standing rule or otherwise, fix a lower rate of compensation, so that no referee shall receive excessive compensation during his term of office, and, in any case of an extension, the judge may prescribe terms and conditions for the payment of the referee's compensation.

(b) Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

(c) In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee. (July 1, 1898, ch. 541, § 40, 30 Stat. 556; Feb. 5, 1903, ch. 487, § 9, 32 Stat. 799; June 22, 1938, ch. 575, § 1, 52 Stat. 859.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1938, cited to text.

Subdivisions (b) and (c) were reenacted without change by act June 22, 1938, cited to text.

§ 69. Same; contempts before.

(a) A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpenaed, or, upon appearing, refuse to take the oath as a witness, or having taken the oath, refuse to be examined according to law: *Provided*, That a person other than a bankrupt or, where the bankrupt is a corporation, its officers, or the members of its board of directors or trustees or of other similar controlling bodies, shall not be required to attend as a witness before a referee at a place more than one hundred miles from such person's place of residence or unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

(b) The referee shall forthwith certify the facts to the judge, if any person shall do any of the things forbidden in this section, and he may serve or cause to be served upon such person an order requiring such person te appear before the judge upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before him, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of the court of bankruptcy or in the presence of the judge. (July 1, 1898, ch. 541, § 41, 30 Stat. 556; June 22, 1938, ch. 575, § 1, 52 Stat. 859.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 723c of Title 28, Judicial Code and Judiciary.

§ 70. Same; records.

(a) The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are kept in equity cases in district courts of the United States.

(b) A separate record shall be kept of the proceedings in each case and shall, together with the papers on file, constitute the records of the case.

(c) The record of the proceedings shall, when the case is concluded before the referee, be certified to by him and shall, together with such papers as are on file before him, be transmitted to the clerk and shall remain in the office of the clerk as a part of the records of the court. (July 1, 1898, ch. 541, § 42, 30 Stat. 556; June 22, 1938, ch. 575, § 1, 52 Stat. 860.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 71. Same; absence or disability.

Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy. (July 1, 1898, ch. 541, § 43, 30 Stat. 557.)

§ 72. Trustees; creditors' committees; and attorneys.

(a) The creditors of a bankrupt, exclusive of the bankrupt's relatives or, where the bankrupt is a corporation, exclusive of its stockholders or members, its officers, and the members of its board of directors or trustees or of other similar controlling bodies, shall, at the first meeting of creditors after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, appoint a trustee or three trustees of such estate. If the creditors do not appoint a trustee or if the trustee so appointed fails to qualify as herein provided, the court shall make the appointment. If the bankrupt is a face-amount certificate company, as defined in section 80a–4 of title 15, the court alone shall make the appointment; but the court shall not make such appointment without first notifying the Securities and Exchange Commission and giving it an opportunity to be heard.

(b) Such creditors may, at their first meeting, also appoint a committee of not less than three creditors, which committee may consult and advise with the trustee in connection with the administration of the estate, make recommendations to the trustee in the performance of his duties and submit to the court any question affecting the administration of the estate.

(c) An attorney shall not be disqualified to act as attorney for a receiver or trustee merely by reason of his representation of a general creditor. (July 1, 1898, ch. 541, § 44, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860; Aug. 22, 1940, ch. 686, Title I, § 20 (b), 54 Stat. 835.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

EFFECTIVE DATE

Effective date of act Aug. 29, 1940, see section 80a-52 of Title 15, Commerce and Trade.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1938, cited to text, and last sentence was added by act Aug. 22, 1040, cited to text. The last sentence was enacted as a part of the Investment Company Act of 1940, see section 80a-1 et seq. of Title 15, Commerce and Trade.

Subdivisions (b) and (c) were added by act June 22, 1938, cited to text.

§ 73. Receivers and trustees; qualifications.

Receivers and trustees shall be (1) individuals who are competent to perform their duties and who reside or have an office in the judicial district within which they are appointed; or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed. (July 1, 1898, ch. 541, § 45, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Opening phrase and clause (1) were amended by act June 22, 1938, cited to text.

Clause (2) was reenacted without change by act June 22, 1938, cited to text.

Act June 22, 1938, cited to text, completely revised this section.

§ 74. Same; death or removal.

The death or removal of a receiver or trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint receiver or joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint receiver or joint trustee alone or by such successor. (July 1, 1898, ch. 541, § 46, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 75. Trustees; duties.

(a) Trustees shall (1) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estates as expeditiously as is compatible with the best interests of the parties in interest; (2) deposit all money received by them in designated depositories; (3) account for and pay over to the estates under their control all interest received by them upon funds belonging to such estates; (4) disburse money only by check or draft on such depositories; (5) keep records and accounts showing all amounts and items of property received and from what sources, all amounts expended and for what purposes and all items of property disposed of; (6) set apart the bankrupts' exemptions allowed by law, if claimed, and report the items and estimated value thereof to the courts as soon as practicable after their appointment; (7) examine the bankrupts (a) at the first meetings of creditors or at other meetings specially fixed for that purpose, unless they shall already have been fully examined by the referees, receivers, or creditors, and (b) upon the hearing of objections, if any, to their discharges, unless otherwise ordered by the court; (8) examine all proofs of claim and object to the allowance of such claims as may be improper; (9) oppose at the expense of estates the discharges of bankrupts when they deem it advisable to do so; (10) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (11) pay dividends within ten days after they are declared by the referees; (12) report to the courts in writing the condition of the estates, the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; (13) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; and (14) lay before the final meetings of the creditors detailed statements of the administration of the estates.

(b) Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

(c) The trustee shall, within ten days after his qualification, record a certified copy of the order approving his bond in the office where conveyances of real estate are recorded in every county where the bankrupt owns real property or an interest therein, not exempt from execution, and pay the fee for such filing. He shall receive a compensation of 50 cents for each copy so filed which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the expenses of administration. (July 1, 1898, ch. 541, § 47, 30 Stat. 557; Feb. 5, 1903, ch. 487, § 10, 32 Stat. 799; June 25, 1910, ch. 412, § 8, 36 Stat. 840; June 22, 1938, ch. 575, § 1, 52 Stat. 860.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1938, cited to text. Clauses 1-6, formerly 2, 8, 1, 4, 6, and 11, respectively, were amended. Clauses 7-9 were added. Clauses 10-14, formerly 5, 9, 10, 8, and 7, respectively, were reenacted without change.

Subdivision (b) was reenacted without change by act June 22, 1938, cited to text.

Subdivision (c) was amended by act June 22, 1938, cited to text.

§ 76. Receivers; marshals, and trustees; compensation.

(a) Receivers.

The compensation of receivers appointed under this title, for their services payable after they are rendered, shall be as follows:

(1) As custodians.

Receivers appointed pursuant to clause (3) of section 11 of this title who serve as mere custodians shall receive such amount as may be allowed by the court, but in no event to exceed 2 per centum on the

first $1,000 or less and one-half of 1 per centum on all above $1,000 on moneys disbursed by them or turned over by them to any persons, including lienholders and also upon moneys turned over by them to the trustees and on money subsequently realized from property turned over by them in kind to the trustee.

(2) With full powers.

Receivers appointed pursuant to clause (3) of section 11 of this title who serve otherwise than as mere custodians shall receive compensation by way of commissions upon the moneys disbursed or turned over to any persons, including lienholders, by them and also upon the moneys turned over by them or afterward realized by the trustees from property turned over in kind by them to the trustees, such amount as the court may allow, but in no event to exceed 6 per centum on the first $500 or less, 4 per centum on all in excess of $500 but not more than $1,500, 2 per centum on all above $1,500 and not more than $10,000, and 1 per centum on all above $10,000.

(3) Conducting business.

Receivers appointed pursuant to clause (3) of section 11 of this title who conduct the business of the bankrupt as provided in clause (5) of section 11 of this title, shall receive such amount as may be allowed by the court, but in no event to exceed twice the maximum allowance permitted by paragraph (2) of this subdivision a.

(4) Ancillary receivers.

The compensation of ancillary receivers appointed pursuant to this title shall be such amount as may be allowed by the court of ancillary jurisdiction, but in no event to exceed the maximum compensation permitted by paragraphs (1), (2), or (3) of this subdivision a, as the case may be, based upon assets in such ancillary jurisdiction.

b. Marshals.

The compensation of marshals, payable after their services are rendered, shall be such amount as may be allowed by the court, but in no event to exceed the maximum allowance permitted for receivers for like services.

c. Trustees.

The compensation of trustees for their services, payable after they are rendered, shall be a fee of $5 for each estate, deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and such further sum as the court may allow, as follows:

(1) Normal administration.

When the trustee does not conduct the business of the bankrupt, such sum as the court may allow, but in no event to exceed 6 per centum on the first $500 or less, 4 per centum on moneys in excess of $500 and not more than $1,500, 2 per centum on moneys in excess of $1,500, and not more than $10,000, and 1 per centum on moneys in excess of $10,000, upon all moneys disbursed or turned over by them to any persons, including lienholders: *Provided, however,* That if in any case, after the trustee has paid all expenses of administration and has realized upon all available assets, the maximum compensation allowable to him hereunder does not exceed $100, the court may of its own motion allow the trustee a fee which with the commissions, if any, paid or to be paid him, shall not exceed $100.

(2) Conducting business.

Trustees who conduct the business of the bankrupts as provided in clause (5) of section 11 of this title shall receive such amount as may be allowed by the court, but in no event to exceed twice the maximum allowance permitted by paragraph (1) of this subdivision c.

d. Apportionment of fees.

In the event of the appointment, concurrently or successively, of more than one receiver of an estate or of more than one ancillary receiver in the same jurisdiction, or in the event of the administration of an estate by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions among such receivers, ancillary receivers, or trustees, as the case may be, according to the services actually rendered, so that there shall not be paid to any such group a greater amount than that to which one receiver, ancillary receiver, or trustee, respectively, would be entitled.

e. Withholding compensation.

The court may, in its discretion, withhold all compensation from any receiver, trustee, attorney, or any other person who has been removed from office or dismissed because of the unlawful sharing of fees or for any other cause.

f. Arrangements.

In the case of an arrangement confirmed under this title, the compensation of a marshal, receiver, or trustee in a prior pending bankruptcy proceeding superseded by the arrangement proceeding, or of a receiver appointed in an original proceeding for an arrangement under this title, shall be the same as hereinabove provided for a marshal, receiver, or trustee, as the case may be, for like services. Such compensation shall be computed upon all moneys disbursed or turned over by him to any persons, including lienholders, upon all moneys to be paid to unsecured creditors upon the confirmation of the arrangement and thereafter, pursuant to the terms of the arrangement, and where under the arrangement any part of the consideration to be paid is other than money, upon the amount of the fair value of such consideration: *Provided, however,* That the court may, in respect to all moneys to be paid to such unsecured creditors after the confirmation of the arrangement, prescribe such time for the payment of the compensation computed thereon as in the particular case may be fair and equitable.

g. Plans of reorganization.

In the case of a plan of reorganization confirmed under this title, the compensation of a marshal, receiver, or trustee, in a prior pending bankruptcy proceeding superseded by the reorganization proceeding shall be the same as hereinabove provided for a marshal, receiver, or trustee, as the case may be, for like services. Such compensation shall be computed upon all moneys disbursed or turned over by him to any persons, including lienholders, upon all moneys

to be paid to unsecured creditors upon the consummation of the plan of reorganization and thereafter, pursuant to the terms of the plan of reorganization, and where under the plan of reorganization any part of the consideration to be paid to unsecured creditors is other than money, upon the amount of the fair value of such consideration: *Provided, however,* That the court may, in respect to the moneys to be paid to such unsecured creditors after the consummation of the plan of reorganization, prescribe such time for the payment of the compensation computed thereon as in the particular case may be fair and equitable. (July 1, 1898, ch. 541, § 48, 30 Stat. 557; Feb. 5, 1903, ch. 487, § 11, 32 Stat. 799; June 25, 1910, ch. 412, § 9, 36 Stat. 840; June 22, 1938, ch. 575, § 1, 52 Stat. 861.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENT

Act June 22, 1938, cited to text, completely revised this section.

§ 76a. Receivers and trustees; apportionment of appointments; disqualification; compensation.

In the administration of this title the district court or any judge thereof shall, in its or his discretion, so apportion appointments of receivers and trustees among persons, firms, or corporations, or attorneys therefor, within the district, eligible thereto, as to prevent any person, firm, or corporation from having a monopoly of such appointments within such district. No person shall be appointed as a receiver or trustee who is a near relative of the judge of the court making such appointment. The compensation allowed a receiver or trustee or an attorney for a receiver or trustee shall in no case be excessive or exorbitant, and the court in fixing such compensation shall have in mind the conservation and preservation of the estate of the bankrupt and the interests of the creditors therein. (June 7, 1934, ch. 424, § 3, 48 Stat. 923.)

CROSS REFERENCE

For prohibition of appointment of relative as receiver or trustee generally, see section 631 of Title 28, Judicial Code and Judiciary.

§ 77. Receivers and trustees; accounts and papers.

The accounts and papers of receivers and trustees shall be open to the inspection of officers and all parties in interest. (July 1, 1898, ch. 541, § 49, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 863.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 78. Bonds.

(a) Referees, before assuming the duties of their offices and within such time as the district courts of the United States having jurisdiction shall prescribe, shall qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed $5,000, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

(b) Receivers and trustees, before entering upon the performance of their official duties and within five days after their appointment or within such further time, not to exceed five days, as the court may permit, shall qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

(c) The court shall fix the amount of receivers' and trustees' bonds and may increase or decrease the amounts at any time when cause therefor appears.

(d) The court shall require evidence as to the actual value of the property of sureties.

(e) There shall be at least two sureties upon each bond, except as provided in subdivision g of this section.

(f) The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

(g) Corporations organized for the purpose of becoming sureties on bonds or authorized by law to do so may be accepted as sole sureties upon the bonds of referees, receivers, and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

(h) Bonds of referees, receivers, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be proceeded upon in the name of the United States for the use of any person injured by a breach of their conditions or may be enforced as provided in subdivision n of this section.

(i) Receivers or trustees shall not be liable personally or on their bonds to the United States for any penalties or forfeitures incurred by the bankrupts under this title of whose estates they are receivers or trustees.

(j) Joint receivers or trustees may give joint or several bonds.

(k) If any referee, receiver, or trustee shall fail to give bond as herein provided and within the time limited, he shall be deemed to have declined his appointment and such failure shall create a vacancy in his office.

(l) Proceedings upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

(m) Proceedings upon receivers' or trustees' bonds shall not be brought subsequent to two years after their respective discharges.

(n) In the event of the breach of any obligation of a bond furnished pursuant to this title, the court may, upon application of any party in interest and after notice, summarily determine the damages and by appropriate process enforce the collection thereof from those liable on the bond. (July 1, 1898, ch. 541, § 50, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 863.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a), (d), and (e) were reenacted without change by act June 22, 1938, cited to text.

Subdivisions (b), (c), (e), and (g)–(m) were amended by act June 22, 1938, cited to text.

Subdivision (n) was added by act June 22, 1938, cited to text.

§ 79. Clerks; duties.

Clerks shall (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without and cannot obtain the money with which to pay such fees; (3) collect the fees of the clerk and referee in each ancillary proceeding before filing the petition whereby the ancillary proceeding is instituted; (4) deliver to the referees all papers which may be referred to them or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail and in like manner return papers which were received from such referees after they have been used; and (5) within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him and to the trustee the fee collected for him at the time of filing the petition. (July 1, 1898, ch. 541, § 51, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 864.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Clauses 1, 2, and 5, formerly 1, 2, and 4, respectively, were reenacted without change by act June 22, 1938, cited to text.

Clause 3 was added by act June 22, 1938, cited to text.

Clause 4, formerly 8, was amended by act June 22, 1938, cited to text.

§ 80. Clerks and marshals; compensation.

(a) Clerks shall charge and collect for their service to each estate, whether in a court of primary or ancillary jurisdiction, a filing fee of $10, except when a fee is not required from a voluntary bankrupt.

(b) Marshals shall charge the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to charge for the performance of the same or similar services in other cases in accordance with laws in force on July 1, 1898, or such as may be thereafter enacted, fixing the compensation of marshals. (July 1, 1898, ch. 541, § 52, 30 Stat. 559; Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; Feb. 11, 1921, ch. 46, 41 Stat. 1099; June 22, 1938, ch. 575, § 1, 52 Stat. 864.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCES

Compensation of marshals, see section 76 (b) of this title.

Fees of clerks of district courts, see sections 548-555 of Title 28, Judicial Code and Judiciary.

§ 81. Attorney General; duties.

The Attorney General annually shall lay before Congress statistical tables showing for the whole country and by States and Federal districts and divisions thereof the number of voluntary and involuntary cases referred, a classification of the bankrupts therein by occupations, the number of cases concluded, the number of discharges granted and denied, the net total of proceeds realized, the average amount realized per case, the amount of the administration expenses, total and classified, and the percentages of such total and classified expenses as compared with the total net realization, the total amounts paid to creditors of all classes and the amounts paid to each class, the percentages in a comparison of the total amount and the amount of each class with such total net realization, and the amount of the obligations owing to creditors in total and by classes and the amounts and percentages paid on such total and to such classes out of such net realization. Like information relative to cases arising under the provisions of chapters 8, 9, 10, 11, 12, and 13 of this title shall be compiled and included in such tables. (July 1, 1898, ch. 541, § 53, 30 Stat. 559; June 22, 1938, ch. 575, § 1, 52 Stat. 864.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 82. Statistics of bankruptcy proceedings.

Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney General, for statistical purposes, within ten days after being requested by him to do so. (July 1, 1898, ch. 541, § 54, 30 Stat. 559.)

Chapter 6.—CREDITORS

Sec.
91. Meetings of creditors.
92. Same; voters at.
93. Proof and allowance of claims.
93a. Same; limitation on time of proving certain claims.
94. Notices.
95. Who may file and dismiss petitions.
96. Preferred creditors.

§ 91. Meetings of creditors.

(a) The court shall cause the first meeting of the creditors of a bankrupt to be held not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

(b) At the first meeting of creditors, the judge or referee shall preside and, before proceeding with other business, may allow or disallow the claims of creditors there presented, and shall publicly examine the bankrupt or cause him to be examined, and may permit creditors to examine him.

(c) The creditors shall at each meeting take such steps as may be pertinent and necessary for the pro-

motion of the best interests of the estate and the enforcement of this title.

(d) The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proved their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to he held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

(e) Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered: *Provided, however*, That a no-asset case may be closed without ordering such final meeting. (July 1, 1898, ch. 541, § 55, 30 Stat. 559; June 22, 1938, ch. 575, § 1, 52 Stat. 865.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (b) and (e), formerly (b) and (f), respectively, were amended by act June 22, 1938, cited to text.

Subdivisions (a), (c), and (d), formerly (a), (c), and (e), respectively, were reenacted without change by act June 22, 1938, cited to text.

Former subdivision (d) was not reenacted as a part of this section by act June 22, 1938, cited to text.

§ 92. Same; voters at.

(a) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and who are present, except as herein otherwise provided.

(b) Except as otherwise provided in this title, creditors holding claims which are secured or have priority shall not in respect to such claims be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

(c) Claims of $50 or less shall not be counted in computing the number of creditors voting or present at creditors' meetings, but shall be counted in computing the amount. (July 1, 1898, ch. 541, § 56, 30 Stat. 560; June 22, 1938, ch. 575, § 1, 52 Stat. 865.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was reenacted without change by act June 22, 1938, cited to text.

Subdivision (b) was amended by act June 22, 1938, cited to text.

Subdivision (c) was added by act June 22, 1938, cited to text.

§ 93. Proof and allowance of claims.

(a) A proof of claim shall consist of a statement under oath, in writing and signed by a creditor, setting forth the claim; the consideration therefor; whether any and, if so, what securities are held therefor; and whether any and, if so, what payments have been made thereon; and that the claim is justly owing from the bankrupt to the creditor.

(b) Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court upon leaving a copy thereof on file with the claim.

(c) Proofs of claim may, for the purpose of allowance, be filed by the claimants in the court of bankruptcy where the proceedings are pending or before the referee if the case has been referred.

(d) Claims which have been duly proved shall be allowed upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest or unless their consideration be continued for cause by the court upon its own motion: *Provided, however*, That an unliquidated or contingent claim shall not be allowed unless liquidated or the amount thereof estimated in the manner and within the time directed by the court; and such claim shall not be allowed if the court shall determine that it is not capable of liquidation or of reasonable estimation or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under this title.

(e) Claims of secured creditors and those who have priority may be temporarily allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be thus temporarily allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

(f) Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

(g) The claims of creditors who have received or acquired preferences, liens, conveyances, transfers, assignments or encumbrances, void or voidable under this title, shall not be allowed unless such creditors shall surrender such preferences, liens, conveyances, transfers, assignments, or encumbrances.

(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors, or by such creditors and the trustee by agreement, arbitration, compromise or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance. Such determination shall be under the supervision and control of the court.

(i) Whenever a creditor whose claim against a bankrupt estate is secured by the individual undertaking of any person fails to prove and file such claim, such person may do so in the creditor's name and, if he discharge such undertaking in whole or in

part, he shall be subrogated to that extent to the rights of the creditor.

(j) Debts owing to the United States or any State or subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

(k) Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part according to the equities of the case, before but not after the estate has been closed.

(l) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part, and the trustee may also recover any excess dividend paid to any creditor. The court shall have summary jurisdiction of a proceeding by the trustee to recover any such dividends.

(m) The claim of any estate which is being administered in bankruptcy against any like estate may be proved and filed by the receiver or trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

(n) Except as otherwise provided in this title, all claims provable under this title, including all claims of the United States and of any State or subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed: *Provided, however,* That the court may, upon application before the expiration of such period and for cause shown, grant a reasonable fixed extension of time for the filing of claims by the United States or any State or subdivision thereof: *Provided further,* That, except in proceedings under chapters 10, 11, 12, and 13 of this title, the right of infants and insane persons without guardians, without notice of the bankruptcy proceedings, may continue six months longer: *And provided further,* That a claim arising in favor of a person by reason of the recovery by the trustee from such person of money or property, or the avoidance by the trustee of a lien held by such person, may be filed within thirty days from the date of such recovery or avoidance, but if the recovery is by way of a proceeding in which a final judgment has been entered against such person, the claim shall not be allowed if the money is not paid or the property is not delivered to the trustee within thirty days from the date of the rendering of such final judgment, or within such further time as the court may allow. When in any case all claims which have been duly allowed have been paid in full, claims not filed within the time hereinabove prescribed may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case. (July 1, 1898, ch. 541, § 57, 30 Stat. 560; Feb. 5, 1903, ch. 487, § 12, 32 Stat. 799; May 27, 1926, ch. 406, § 13, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 866.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a), (c)–(e), (g)–(j), and (l)–(n) were amended by act June 22, 1938, cited to text.

Subdivisions (b), (f), and (k) were reenacted without change by act June 22, 1938, cited to text.

CROSS REFERENCE

Tax imposed by sections 1600–1611 of Title 26, Internal Revenue Code, and sections 1101–1110 of Title 42, The Public Health and Welfare, as penalty or forfeiture, see notes under section 1600 of Title 26, Internal Revenue Code, and section 1101 of Title 42, The Public Health and Welfare.

§ 93a. Same; limitation on time of proving certain claims.

This section, act June 5, 1936, ch. 512, § 2, 49 Stat. 1476, related to proving claims at any time within 60 days after June 5, 1936.

§ 94. Notices.

(a) Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt or as afterward filed with the papers in the case by the creditors, of (1) all examinations of the bankrupt, if the court so directs; (2) all hearings upon applications for the confirmation of arrangements and wage-earner plans; (3) all meetings of creditors; (4) all proposed sales of property: *Provided,* That the court may, upon cause shown, shorten such time or order an immediate sale without notice; (5) the filing of all accounts of the receiver and trustee, for which confirmation is asked, and the time when they will be examined and passed upon; (6) the proposed compromise of any controversy in which the amount claimed by either party in money or value exceeds $1,000; (7) the proposed dismissal of the proceedings, in cases where notice is required by subdivision g of section 95 of this title; and (8) all applications by receivers, ancillary receivers, marshals, trustees, and attorneys for compensation from the estate for services rendered, specifying the amount and by whom made: *Provided,* That where a creditors' committee has been appointed pursuant to this Act, the notice required by clauses (1), (4) and (6) of this subdivision shall be sent only to such committee and to the creditors who have filed with the court a demand that all notices under this subdivision be mailed to them.

(b) The court shall give at least thirty days' notice by mail of the last day fixed by its order for the filing of objections to a bankrupt's discharge (1) to the creditors, in the manner prescribed in subdivision a of this section; (2) to the trustee and his attorney, at their respective addresses as filed by them with the court; and (3) to the United States attorney of the judicial district wherein the proceeding is pending. The court shall also give at least thirty days' notice by mail of the time and place of a hearing upon objections to a bankrupt's discharge (1) to the bankrupt, at his last known address as appears in his petition, schedules, list of creditors, or statement of affairs, or, if no address so appears, to his last-known address as furnished by the trustee or other party

after inquiry; (2) to the bankrupt's attorney, if any, at his address as filed by him with the court; and (3) to the objecting parties and their attorneys, at their respective addresses as filed by them with the court.

(c) All notices shall be given by the referee unless otherwise ordered by the judge. Any notice required by this title may be waived in writing by any person entitled thereto.

(d) Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

(e) The clerk shall mail to the Commissioner of Internal Revenue a certified copy of every order of adjudication forthwith upon the entry thereof. The court shall, in every case, mail or cause to be mailed a copy of the notice of the first meeting of creditors to the Commissioner of Internal Revenue and to the collector of internal revenue for the district in which the court is located. (July 1, 1898, ch. 541, § 58, 30 Stat. 561; June 25, 1910, ch. 412, § 9½, 36 Stat. 841; June 22, 1938, ch. 575, § 1, 52 Stat. 867.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1938, cited to text. Opening clause was amended and in part reenacted as a portion of subdivision (c). Clauses 1, 2, 4, and 5–7, formerly 1, 2, 4, and 6–8, were amended. Clause 8 was reenacted without change. Former clause 5 was not reenacted as a part of this section. Clause 9 was added, and former clause 9 was reenacted in subdivision (b).

Subdivision (b), formerly clause 9 of (a), was amended by act June 22, 1938, cited to text.

Subdivision (c), formerly (c) and part of opening clause of (a), was amended by act June 22, 1938, cited to text.

Subdivision (d), formerly (b), was reenacted without change by act June 22, 1938, cited to text.

Subdivision (e) was added by act June 22, 1938, cited to text.

§ 95. Who may file and dismiss petitions.

(a) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b) Three or more creditors who have provable claims fixed as to liability and liquidated as to amount against any person which amount in the aggregate in excess of the value of securities held by them, if any, to $500 or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

(c) Petitions shall be filed in triplicate, one copy for the clerk, one for service on the bankrupt, and one for the referee.

(d) If it be averred in the petition that the creditors of the bankrupt, computed as provided in subdivision e of this section, are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses and a brief statement of the nature of their claims and the amounts thereof, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that the parties in interest shall have an opportunity to be heard. If upon such hearing it shall appear that a sufficient number of qualified creditors have joined in such petition or, if prior to or during such hearing, a sufficient number of qualified creditors shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, there shall not be counted (1) such creditors as were employed by the bankrupt at the time of the filing of the petition; (2) creditors who are relatives of the bankrupt or, if the bankrupt is a corporation, creditors who are stockholders or members, officers or members of the board of directors or trustees or of other similar controlling bodies of such bankrupt corporation; (3) creditors who have participated, directly or indirectly, in the act of bankruptcy charged in the petition; (4) secured creditors whose claims are fully secured; and (5) creditors who have received preferences, liens, or transfers void or voidable under this title.

(f) Creditors other than the original petitioners may at any time enter their appearance and join in the petition.

(g) A voluntary or involuntary petition shall not be dismissed upon the application of the petitioner or petitioners, or for want of prosecution, or by consent of parties, until after notice to the creditors as provided in section 94 of this title, and to that end the court shall, upon entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, shall cause such notice to be sent to the creditors of the pendency of such application and shall delay the hearing thereon for a reasonable time to allow all creditors and parties in interest an opportunity to be heard. If the bankrupt shall fail to file such list within the time fixed by the court, such list may be filed by the petitioning creditors according to the best of their knowledge, information, and belief: *Provided, however*, That in the case of a dismissal for failure to pay the costs of the bankruptcy proceedings, such notice of dismissal shall not be required.

(h) A creditor shall not be estopped to act as a petitioning creditor because he participated in any prior matter or judicial proceeding, having for its purpose the adjustment or settlement of the affairs of the debtor or the liquidation of his property, or to allege such prior matter or proceeding as an act of bankruptcy, unless he has consented thereto in writing with knowledge of the facts, if any, which would be a bar to the discharge of the debtor under this title. (July 1, 1898, ch. 541, § 59, 30 Stat. 561; June 25, 1910, ch. 412, § 10, 36 Stat. 841; June 22, 1938, ch. 575, § 1, 52 Stat. 868.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was reenacted without change by act June 22, 1938, cited to text.

Subdivisions (b)–(g) were amended by act June 22, 1938, cited to text.

Subdivision (h) was added by act June 22, 1938, cited to text.

§ 96. Preferred creditors.

(a) A preference is a transfer, as defined in this title, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition in bankruptcy, or of the original petition under chapter 10, 11, 12, or 13 of this title, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class. For the purposes of subdivisions a and b of this section, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona-fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, and, if such transfer is not so perfected prior to the filing of the petition in bankruptcy or of the original petition under chapter 10, 11, 12 or 13 of this title, it shall be deemed to have been made immediately before bankruptcy.

(b) Any such preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent. Where the preference is voidable, the trustee may recover the property or, if it has been converted, its value from any person who has received or converted such property, except a bona-fide purchaser from or lienor of the debtor's transferee for a present fair equivalent value: *Provided, however,* That where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order such lien or title to be preserved for the benefit of the estate, in which event such lien or title shall pass to the trustee. For the purpose of any recovery or avoidance under this section, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(c) If a creditor has been preferred, and afterward in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estate, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

(d) If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be reexamined by the court on petition of the trustee or any creditor and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

(e) (1) Where the bankrupt is a stockbroker, the following definitions and provisions of this subdivision shall apply: "Property" shall include cash, securities, whether or not negotiable, and all other property of similar character; "customers" of a stockbroker shall include persons who have claims on account of securities received, acquired, or held by the stockbroker from or for the account of such persons (a) for safekeeping, or (b) with a view to sale, or (c) to cover consummated sales, or (d) pursuant to purchases, or (e) as collateral security, or (f) by way of loans of securities by such persons to the stockbroker, and shall include persons who have claims against the stockbroker arising out of sales or conversions of such securities; "cash customers" shall mean customers entitled to immediate possession of such securities without the payment of any sum to the stockbroker; the same person may be a cash customer with reference to certain securities and not a cash customer with reference to other securities; the "net equity" of a customer's account shall be determined by excluding any specifically identifiable securities reclaimable by the customer and by subtracting the indebtedness of the customer to the stockbroker from the sum which would have been owing by the stockbroker to the customer had the stockbroker liquidated, by sale or purchase on the date of bankruptcy, the remaining securities or security commitments of the customer.

(2) All property at any time received, acquired, or held by a stockbroker from or for the account of customers, except cash customers who are able to identify specifically their property in the manner prescribed in paragraph (4) of this subdivision and the proceeds of all customers' property rightfully transferred or unlawfully converted by the stockbroker, shall constitute a single and separate fund; and all customers except such cash customers shall constitute a single and separate class of creditors, entitled to share ratably in such fund on the basis of their respective net equities as of the date of bankruptcy: *Provided, however,* That such fund shall to the extent approved by the court be subject to the priority of payment of the costs and expenses enumerated in clauses (1) and (2) of subdivision a of section 104 of this title. If such fund shall not be sufficient to pay in full the claims of such class of creditors, such creditors shall be entitled, to the extent only of their respective unpaid balances, to share in the general estate with the general creditors.

(3) Any property remaining after the liquidation of a pledge made by a stockbroker shall be apportioned between his general estate and such single and separate fund in the proportion in which the general property of the stockbroker and the property of his customers contributed to such pledge.

(4) No cash received by a stockbroker from or for the account of a customer for the purchase or sale of securities, and no securities or similar property received by a stockbroker from or for the account of a cash customer for sale and remittance or pursuant to

purchase or as collateral security, or for safekeeping, or any substitutes therefor or the proceeds thereof, shall for the purposes of this subdivision e be deemed to be specifically identified, unless such property remained in its identical form in the stockbroker's possession until the date of bankruptcy, or unless such property or any substitutes therefor or the proceeds thereof were, more than four months before bankruptcy or at a time while the stockbroker was solvent, allocated to or physically set aside for such customer, and remained so allocated or set aside at the date of bankruptcy.

(5) Where such single and separate fund is not sufficient to pay in full the claims of such single and separate class of creditors, a transfer by a stockbroker of any property which, except for such transfer, would have been a part of such fund may be recovered by the trustee for the benefit of such fund, if such transfer is voidable or void under the provisions of this title. For the purpose of such recovery, the property so transferred shall be deemed to have been the property of the stockbroker and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding. If any securities received or acquired by a stockbroker from a cash customer are transferred by the stockbroker, such customer shall not have any specific interest in or specific right to any securities of like kind on hand at the time of bankruptcy, but such securities of like kind or the proceeds thereof shall become part of such single and separate fund: *Provided, however,* That a customer shall have a specific title to securities (a) which have been physically set aside by a stockbroker, more than four months before his bankruptcy or while solvent, in safekeeping for such customer, and so retained until the date of bankruptcy, regardless of the name in which such securities are registered, or (b) which a stockbroker, more than four months before his bankruptcy or while solvent, caused to be registered in the name of such customer. (July 1, 1898, ch. 541, § 60, 30 Stat. 562; Feb. 5, 1903, ch. 487, § 13, 32 Stat. 799; June 25, 1910, ch. 412, § 11, 36 Stat. 842; May 27, 1926, ch. 406, § 14, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 869.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a) and (b) were amended by act June 22, 1938, cited to text.

Subdivisions (c) and (d) were reenacted without change by act June 22, 1938, cited to text.

Subdivision (e) was added by act June 22, 1938, cited to text.

Chapter 7.—ESTATES

Sec.
101. Depositories for money.
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§ 101. Depositories for money.

The judges of the several courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of estates under this title, as convenient as may be to the residences of receivers and trustees, and shall require from each such banking institution a good and sufficient bond with surety, to secure the prompt repayment of the deposit. Said judges may, in accordance with the provisions of, and the authority conferred in section 15 of Title 6, accept the deposit of the securities therein designated, in lieu of a surety or sureties upon such bond and may, from time to time as occasion may require, by like order increase or decrease the number of depositories or the amount of any bond or other security or change such depositories: *Provided,* That no security in the form of a bond or otherwise shall be required in the case of such part of the deposits as are insured under section 264 of Title 12, as amended. *And provided further,* That depository banks shall place such securities, accepted for deposit in lieu of a surety or sureties upon depository bonds, in the custody of Federal Reserve banks or branches thereof designated by the judges of the several courts of bankruptcy, subject to the orders of such judges. All national banking associations designated as depositories, pursuant to the provisions of this section of this title, are authorized to give such security as may be required. All pledges of securities heretofore made for the purposes herein named are hereby ratified, validated and approved. (July 1, 1898, ch. 541, § 61, 30 Stat. 562; Aug. 23, 1935, ch. 614, § 340, 49 Stat. 721; June 22, 1938, ch. 575, § 1, 52 Stat. 872.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 101a. Deposits in postal savings depositories authorized.

In all bankruptcy proceedings the officers and agents in charge of the bankrupt funds are authorized to deposit the same without limit as to amount in the postal savings depositories at the prescribed interest rate in all cases where local banks are unable or unwilling to give the required security. Such deposit or any portion thereof may be withdrawn as required in the bankruptcy proceedings. (Mar. 3, 1933, ch. 204, § 3, 47 Stat. 1482.)

§ 102. Expenses of administering estates; unauthorized sharing of fees; withholding allowances.

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

(b) When approved by the judge, the necessary costs and expenses of referees incidental to the

prosecution of proceedings and the administration of estates pending before them may be apportioned to and paid out of such estates by such method as may be authorized by rule prescribed by the judge. In the case of referees whose offices are exclusively devoted to the conduct of the business of the court, such costs and expenses shall include necessary disbursements approved by the judge for the establishing, equipping, and maintaining of such offices, and any property acquired for such offices shall belong to the United States for the use and be under the control of the court.

(c) A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, rendering services in a proceeding under this title or in connection with such proceeding, shall not in any form or guise share or agree to share his compensation for such services with any person not contributing thereto, or share or agree to share in the compensation of any person rendering services in a proceeding under this title or in connection with such proceeding, to which services he has not contributed: *Provided, however*, That an attorney-at-law may share such compensation with a law partner or with a forwarding attorney-at-law, and may share in the compensation of a law partner.

(d) A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, seeking compensation for services rendered by him in a proceeding under this title or in connection with such proceeding, shall file with the court his petition setting forth the value and extent of the services rendered, the amount requested and what allowances, if any, have theretofore been made to him. Such petition shall be accompanied by his affidavit stating whether an agreement or understanding exists between the petitioner and any other person for a division of compensation and, if so, the nature and particulars thereof. If satisfied that the petitioner has, in any form or guise, shared or agreed to share his compensation or in the compensation of any other person contrary to the provisions of this subdivision, the court shall withhold all compensation from such petitioner. (July 1, 1898, ch. 541, § 62, 30 Stat. 562; June 22, 1938, ch. 575, § 1, 52 Stat. 872.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a), formerly entire section, was amended by act June 22, 1938, cited to text.

Subdivisions (b)–(d) were added by act June 22, 1938, cited to text.

§ 103. Debts which may be proved.

(a) Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) costs taxable against a bankrupt who was at the time of the filing of the petition by or against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a probable[1] debt; (4) an open account, or a contract express or implied; (5) provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments; (6) an award of an industrial-accident commission, body, or officer of any State having jurisdiction to make awards of workmen's compensation in case of injury or death from injury, if such injury occurred prior to adjudication; (7) the right to recover damages in any action for negligence instituted prior to and pending at the time of the filing of the petition in bankruptcy; (8) contingent debts and contingent contractural liabilities; or (9) claims for anticipatory breach of contracts, executory in whole or in part, including unexpired leases of real or personal property: *Provided, however*, That the claim of a landlord for damages for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall in no event be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after bankruptcy, plus an amount equal to the unpaid rent accrued, without acceleration, up to such date: *And provided further*, That in the case of an assignment of any such claim for damages, the court shall, in determining the amount thereof, examine the circumstances of the assignment and the consideration paid or to be paid therefor, and may allow the claim of the assignee in such amount, subject to the provisions of the foregoing proviso of this clause (9), as will be fair and equitable.

(b) In the interval after the filing of an involuntary petition and before the appointment of a receiver or the adjudication, whichever first occurs, a claim arising in favor of a creditor by reason of property transferred or services rendered by the creditor to the bankrupt for the benefit of the estate shall be provable to the extent of the value of such property or services.

(c) Notwithstanding any State law to the contrary, the rejection of an executory contract or unexpired lease, as provided in this title, shall constitute a breach of such contract or lease as of the date of the filing of the petition in bankruptcy, or of the original petition under chapter 10, 11, 12, or 13 of this title.

(d) Where any contingent of unliquidated claim has been proved, but, as provided in subdivision d of section 93 of this title, has not been allowed, such claim shall not be deemed proved under this title. (July 1, 1898, ch. 541, § 63, 30 Stat. 562; June 7, 1934, ch. 424, § 4 (a), 48 Stat. 923; June 18, 1934, ch. 580, 48 Stat. 991; June 5, 1936, ch. 512, § 1, 49 Stat. 1475; June 22, 1938, ch. 575, § 1, 52 Stat. 873.)

[1] So in original. Probably should read "provable".

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1938, cited to text. Clause 7 was formerly 6½. Clause 8 was added. Clause 9 was formerly 7.

Subdivision (b) and (c) were added by act June 22, 1938, cited to text.

Subdivision (d), formerly (b), was amended by act June 22, 1938, cited to text.

§ 103a. Same; application of section 103.

This section, act June 7, 1934, ch. 424, section 4 (b), 48 Stat. 924, related to priority of workmen's compensation claims. It was omitted from this title in the general amendment thereof by act June 22, 1938, ch. 575, 52 Stat. 840. It provided as follows: "The provisions of clause (6) of section 103 (a) of this title shall apply to estates pending on June 7, 1934, and claims provided for in such clause (6) shall have the priority provided for in clause (7) of section 104 (b) of this title."

§ 104. Debts which have priority.

(a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow; (2) wages, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; (3) where the confirmation of an arrangement or wage-earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under this title, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof: *Provided*, That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court: *And provided further*, That, in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; and (5) debts owing to any person, including the United States, who by the laws of the United States in[1] entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law: *Provided, however*, That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

(b) Debts contracted while a discharge is in force or after the confirmation of an arrangement shall, in the event of a revocation of the discharge or setting aside of the confirmation, have priority and be paid in full in advance of the payment of the debts which were provable in the bankruptcy or arrangement proceeding, as the case may be. (July 1, 1898, ch. 541, § 64, 30 Stat. 563; Feb. 5, 1903, ch. 487, § 14, 32 Stat. 800; June 15, 1906, ch. 3333, 34 Stat. 267; May 27, 1926, ch. 406, § 15, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 874.)

[1] So in original. Probably should read "is."

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a), formerly (a) and (b), was amended by act June 22, 1938, cited to text. Clause 1 was formerly clauses 1, 2, and 3, of subdivision (b). Clauses 2 and 3 were formerly clauses 5 and 4, respectively, of subdivision (b). Clause 4 was formerly subdivision (a) and clause 6 of subdivision (b). Clause 5 was formerly clause 7 of subdivision (b).

Subdivision (b), formerly (c), was amended by act June 22, 1938, cited to text.

CROSS REFERENCE

Rights of holders of valid liens, see section 107 of this title.

§ 105. Declaration and payments of dividends.

(a) Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

(b) The first dividends shall be declared within thirty days after the first date set for the first meeting of creditors, if the money of the estate in excess of the amount necessary to pay the debts which have priority equals 5 per centum or more of the allowed claims and such claims as have not been but probably will be allowed. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal 10 per centum or more, and upon closing the estate. Dividends may be declared oftener and in smaller proportions, if the court shall so order: Unless six months have expired since the first date set for the first meeting, the first dividend, including such sum as would be required to pay a like dividend upon such claims as probably will be allowed, shall not include more than 50 per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority, and the final dividend shall not be declared until three months after the first dividend

shall be declared: *Provided*, That after the expiration of six months following the first date set for the first meeting only one dividend need be declared.

(c) The rights of creditors who have received dividends or in whose favor final dividends have been declared shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors, if the estate equals so much, before such other creditors are paid any further dividends.

(d) Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such courts shall be paid any amounts.

(e) A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this title. (July 1, 1898, ch. 541, § 65, 30 Stat. 563; Feb. 5, 1903, ch. 487, § 15, 32 Stat. 800; June 22, 1938, ch. 575, § 1, 52 Stat. 875.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivisions (a) and (c)–(e) were reenacted without change by act June 22, 1938, cited to text.

Subdivision (b) was amended by act June 22, 1933, cited to text.

§ 106. Unclaimed moneys.

(a) Dividends or other moneys which remain unclaimed for sixty days after the final dividend has been declared and distributed shall be paid by the trustee into the court of bankruptcy; and at the same time the trustee shall file with the clerk a list of the names and post-office addresses, as far as known, of the persons entitled thereto, showing the respective amounts payable to them.

(b) Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: *Provided*, That, in case unclaimed dividends belong to minors, such minors may have one year after arriving at majority to claim such dividends. (July 1, 1898, ch. 541, § 66, 30 Stat. 564; June 22, 1938, ch. 575, § 1, 52 Stat. 875.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 107. Liens and fraudulent transfers.

(a) (1) Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition in bankruptcy or of an original petition under chapter 10, 11, 12, or 13 of this title by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this title: *Provided, however*, That if such person is not finally adjudged a bankrupt in any proceeding under this title and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

(2) If any lien deemed null and void under the provisions of paragraph (1) of this subdivision a, has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any of the nonexempt property of a person before the filing of a petition in bankruptcy or of an original petition under chapter 10, 11, 12, or 13 of this title by or against him, such indemnifying transfer or lien shall also be deemed null and void: *Provided, however*, That if such person is not finally adjudged a bankrupt in any proceeding under this title, and if no arrangement or plan is proposed and confirmed, such transfer or lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

(3) The property affected by any lien deemed null and void under the provisions of paragraphs (1) and (2) of this subdivision a shall be discharged from such lien, and such property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the trustee or debtor, as the case may be, except that the court may on due notice order any such lien to be preserved for the benefit of the estate, and the court may direct such conveyance as may be proper or adequate to evidence the title thereto of the trustee or debtor, as the case may be: *Provided, however*, That the title of a bona-fide purchaser of such property shall be valid, but if such title is acquired otherwise than at a judicial sale held to enforce such lien, it shall be valid only to the extent of the present consideration paid for such property.

(4) The court shall have summary jurisdiction of any proceeding by the trustee or debtor, as the case may be, to hear and determine the rights of any parties under this subdivision (a). Due notice of any hearing in such proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of such property or lien, and if such value is less than the amount for which such property is indemnity or than the amount of such lien, the transferee or lienholder may elect to retain such property or lien upon payment of its value, as ascertained by the court, to the trustee or debtor, as the case may be, within such reasonable times as the court shall fix.

(5) The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and voided by the trustee or debtor, or, where the property is retained pursuant to the provisions of paragraph (4)

of this subdivision (a), to the extent of the amount paid to the trustee or debtor.

(b) The provisions of section 96 of this title to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy or of the original petition under chapter 10, 11, 12, or 13 of this title, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

(c) Where not enforced by sale before the filing of a petition in bankruptcy or of an original petition under chapter 10, 11, 12, or 13 of this title, though valid under subdivision b of this section, statutory liens, including liens for taxes or debts owing to the United States or to any State or subdivision thereof, on personal property not accompanied by possession of such property, and liens whether statutory or not, of distress for rent shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision (a) of section 104 of this title, and, except as against other liens, such liens for wages or for rent shall be restricted in the amount of their payment to the same extent as provided for wages and rent respectively in subdivision (a) of section 104 of this title.

(d) (1) For the purposes of, and exclusively applicable to, this subdivision (d): (a) "Property" of a debtor shall include only his nonexempt property; (b) "debt" is any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent; (c) "creditor" is a person in whose favor a debt exists; (d) a person is "insolvent" when the present fair salable value of his property is less than the amount required to pay his debts; and to determine whether a partnership is insolvent, there shall be added to the partnership property the present fair salable value of the separate property of each general partner in excess of the amount required to pay his separate debts, and also the amount realizable on any unpaid subscription to the partnership of each limited partner; and (e) consideration given for the property or obligation of a debtor is "fair" (1) when, in good faith, in exchange and as a fair equivalent therefor, property is transferred or an antecedent debt is satisfied, or (2) when such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property or obligation obtained.

(2) Every transfer made and every obligation incurred by a debtor within one year prior to the filing of a petition in bankruptcy or of an original petition under chapter 10, 11, 12, or 13 of this title by or against him is fraudulent (a) as to creditors existing at the time of such transfer or obligation, if made or incurred without fair consideration by a debtor who is or will be thereby rendered insolvent, without regard to his actual intent; or (b) as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to engage in such business or transaction, for which the property remaining in his hands is an unreasonably small capital, without regard to his actual intent; or (c) as to then existing and future creditors, if made or incurred without fair consideration by a debtor who intends to incur or believes that he will incur debts beyond his ability to pay as they mature; or (d) as to then existing and future creditors, if made or incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either existing or future creditors.

(3) Every transfer made and every obligation incurred by a debtor within four months prior to the filing of a petition in bankruptcy or of an original petition under chapter 10, 11, 12, or 13 of this title by or against him is fraudulent, as to then existing and future creditors, if made or incurred with intent to use the consideration, obtained for the transfer or obligation, to effect a preference to a third person voidable under section 96 of this title. The remedies of the trustee for the avoidance of such transfer or obligation and of such preference shall be cumulative: *Provided, however*, That the trustee shall be entitled to only one satisfaction with respect thereto.

(4) Every transfer of partnership property and every partnership obligation incurred within one year prior to the filing of a petition in bankruptcy or of an original petition under chapter 11 or 12 of this title by or against the partnership, when the partnership is insolvent or will be thereby rendered insolvent, is fraudulent as to partnership creditors existing at the time of such transfer or obligation, without regard to actual intent if made or incurred (a) to a partner, whether with or without a promise by him to pay partnership debts, or (b) to a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

(5) For the purposes of this subdivision d, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona-fide purchaser from the debtor and no creditor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, but, if such transfer is not so perfected prior to the filing of the petition in bankruptcy or of the original petition under chapter 11 or 12 of this title, it shall be deemed to have been made immediately before the filing of such petition.

(6) A transfer made or an obligation incurred by a debtor adjudged a bankrupt under this title, which is fraudulent under this subdivision d against creditors of such debtor having claims provable under this title, shall be null and void against the trustee, except as to a bona-fide purchaser, lienor, or obligee for a present fair equivalent value: *Provided, however*, That such purchaser, lienor, or obligee, who

without actual fraudulent intent has given a consideration less than fair, as defined in this subdivision d, for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

(7) Nothing contained in this subdivision (d) shall be construed to validate a transfer which is voidable under section 96 of this title.

(e) For the purpose of any recovery or avoidance under this section, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(f) (1) For the purposes of, and exclusively applicable to, this subdivision (f): (a) "debtor" shall mean a face-amount certificate company as defined in section 80a–4 of Title 15; (b) "face-amount certificate" shall mean a face-amount certificate as defined in section 80a–[illegible] of Title 15; (c) "depositary" is a person or State agency with whom securities or other property of a debtor is deposited or to whom property of a debtor is transferred, in trust or otherwise, pursuant to the requirements of a State law or an agreement by the debtor providing for the distribution of such property or its proceeds to creditors or security holders of the debtor in the event of the insolvency of the debtor or under other specified circumstances; (d) "deposit creditor" is a creditor who, under the provisions of a State law or agreement providing for a deposit with or transfer to a depositary, has rights as to the securities or property so deposited or transferred which exceed the rights of a general creditor; and (e) "State agency" is an official or agency of a State designated to act as depositary or to distribute property or the proceeds of property held by a depositary.

(2) Every deposit or transfer of securities or other property made by or on behalf of a debtor with or to any depositary for the benefit or protection of or to secure the holder of any security sold by or on behalf of the debtor on or after January 1, 1941, shall be voidable as against the trustee of such debtor if the property of the estate is insufficient for the full payment and discharge of all claims on account of all face-amount certificates sold by or on behalf of the debtor, and such deposit or transfer and every lien created thereby shall thereupon be avoided by the trustee subject to the provisions of paragraph 3 of this subdivision (f).

(3) In the event any deposit or transfer described in paragraph 2 of this subdivision (f) shall be avoided the trustee shall segregate the property received by the trustee from the depositary and charge the same with the costs and expenses of maintenance and liquidation and distribute the net proceeds thereof to the creditors who would have been entitled thereto under the provisions of the law or agreement providing for the deposit or transfer of the property, and each such creditor shall thereafter be entitled to dividends from the estate only after all creditors of the same rank shall have received the same percentage.

(4) The court shall have summary jurisdiction of any proceedings to hear and determine the rights of any parties under this subdivision (f) and to hear and determine the sufficiency of the property of the estate for the full payment and discharge of all claims on account of all face-amount certificates sold by or on behalf of the debtor. Due notice of any hearing in such proceedings shall be given to every depositary and State agency which is a party in interest.

(5) Where the provisions of subsection (c) of section 28[1] are not applicable, the provisions of this section will not apply. (July 1, 1898, ch. 541, § 67, 30 Stat. 564; Feb. 5, 1903, ch. 487, § 16, 32 Stat. 800; June 25, 1910, ch. 412, § 12, 36 Stat. 842; June 7, 1934, ch. 424, § 5, 48 Stat. 924; June 22, 1938, ch. 575, § 1, 52 Stat. 875; Aug. 22, 1940, ch. 686, title I, § 29 (a), 54 Stat. 835.)

[1] So in original. Reference would seem to be to subsec. (c) of sec. 28 of the Bankruptcy Act, constituting section 51 of this title. However, since that section contains no subsec. (c) and relates to different subject matter, reference to section 80a–28 of Title 15, Commerce and Trade, was probably intended, that being section 28 of the Investment Company Act of 1940, which enacted subdivision f of this section.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

EFFECTIVE DATE

Effective date of act Aug. 29, 1940, see section 80a–52 of Title 15, Commerce and Trade.

AMENDMENTS

This section was radically revised by act June 22, 1938, cited to text.

Subdivision (f) was added by act Aug. 22, 1940, cited to text. It was enacted as part of the Investment Company Act of 1940, section 80a–1 et seq. of Title 15, Commerce and Trade.

§ 108. Set-offs and counterclaims.

(a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(b) A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate and allowable under subdivision g of section 93 of this title; or (2) was purchased by or transferred to him after the filing of the petition or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent or had committed an act of bankruptcy. (July 1, 1898, ch. 541, § 68, 30 Stat. 565; June 22, 1938, ch. 575, § 1, 52 Stat. 878.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENT

Act June 22, 1938, cited to text, except for amending subdivision (b) (1), reenacted this section without change.

§ 109. Taking possession of property; receivers.

(a) Whenever a petition is filed to have a person adjudged a bankrupt and an application is made to have a receiver or a marshal take charge of the property of the bankrupt, or any part thereof, prior to the adjudication, the applicant shall file in the same court a bond in such amount as the court shall fix, with such surety as the court shall approve, con-

ditioned to indemnify the bankrupt for such costs, counsel fees, expenses, and damages as may be occasioned by such seizure, taking, and detention of such property: *Provided,* That such property shall be released, if the bankrupt shall file a counter-bond in the same court in such amount as the court shall fix, with such surety as the court shall approve, conditioned that he account for and turn over such property or pay the value thereof in money at the time of seizure to the trustee, in the event the adjudication is made.

(b) If the petition for adjudication be dismissed, or withdrawn by the petitioners, the court shall fix and allow to the bankrupt, to be paid by the obligors on such bond, the costs, counsel fees, expenses and damages occasioned by such seizure, taking or detention of his property, in the manner provided by section 78, subdivision n, of this title.

(c) The judge of any court of bankruptcy which has jurisdiction over a bankrupt's property within its territorial limits may, in aid of a receiver appointed in a bankruptcy proceeding pending in any other court of bankruptcy, appoint for cause shown one or more ancillary receivers. The primary receiver or, if there be more than one primary receiver, then at least one of them, shall be appointed the ancillary receiver, or, if more than one is appointed, one of the ancillary receivers. Ancillary receivers shall be subject to the jurisdiction of the ancillary court, which shall determine and may allow their costs, expenses, and compensation in like manner as provided in the case of receivers.

(d) Upon the filing of a petition under this title, a receiver or trustee, not appointed under this title, of any of the property of a bankrupt shall be accountable to the bankruptcy court, in which the proceeding under this title is pending, for any action taken by him subsequent to the filing of such bankruptcy petition, and shall file in such bankruptcy court a sworn schedule setting forth a summary of the property in his charge and of the liabilities of the estate, both as of the time of and since his appointment, and a sworn statement of his administration of the estate. Such receiver or trustee, with knowledge of the filing of such bankruptcy proceeding, shall not make any disbursements or take any action in the administration of such property without first obtaining authorization therefor from the bankruptcy court. (July 1, 1898, ch. 541, § 69, 30 Stat. 565; June 22, 1938, ch. 575, § 1, 52 Stat. 879.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a), formerly entire section, was amended by act June 22, 1938, cited to text.

Subdivisions (b)–(d) were added by act June 22, 1938, cited to text.

§ 110. Title to property.

(a) The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition in bankruptcy or of the original petition proposing an arrangement or plan under this title, except insofar as it is to property which is held to be exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks, and in applications therefor: *Provided,* That in case the trustee, within thirty days after appointment and qualification, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection, the bankrupt may apply to the court for an order revesting him with the title thereto, which petition shall be granted unless for cause shown by the trustee the court grants further time to the trustee for making such election; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon revesting the bankrupt with such title, shall direct the trustee to execute proper instruments of transfer to make the same effective in law and upon the records; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised solely for some other person; (4) property transferred by him in fraud of his creditors; (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered: *Provided,* That rights of action ex delicto for libel, slander, injuries to the person of the bankrupt or of a relative, whether or not resulting in death, seduction, and criminal conversation shall not vest in the trustee unless by the law of the State such rights of action are subject to attachment, execution, garnishment, sequestration, or other judicial process: *And provided further,* That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; (6) rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property; (7) contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, and like interests in real property, which were nonassignable prior to bankruptcy and which, within six months thereafter, become assignable interests or estates or give rise to powers in the bankrupt to acquire assignable interests or estates; and (8) property held by an assignee for the benefit of creditors appointed under an assignment which constituted an act of bankruptcy, which property shall, for the purposes of this title, be deemed to be held by the assignee as the agent of the bankrupt and shall be subject to the summary jurisdiction of the court. All property which vests in the bankrupt within six months after

bankruptcy by bequest, devise, or inheritance shall vest in the trustee and his successor and successors, if any, upon his or their appointment and qualification, as of the date when it vested in the bankrupt, and shall be free and discharged from any transfer made or suffered by the bankrupt after bankruptcy. All property in which the bankrupt has at the date of bankruptcy an estate or interest by the entirety and which within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt shall, to the extent it becomes so transferable, vest in the trustee and his successor and successors, if any, upon his or their appointment and qualification, as of the date of bankruptcy. The title of the trustee shall not be affected by the prior possession of a receiver or other officer of any court.

(b) Within sixty days after the adjudication, the trustee shall assume or reject any executory contract, including unexpired leases of real property: *Provided, however,* That the court may for cause shown extend or reduce such period of time. Any such contract or lease not assumed or rejected within such time, whether or not a trustee has been appointed or has qualified, shall be deemed to be rejected. A trustee shall file, within sixty days after adjudication, a statement under oath showing which, if any, of the contracts of the bankrupt are executory in whole or in part, including unexpired leases of real property, and which, if any, have been rejected by the trustee: *Provided, however,* That the court may for cause shown extend or reduce such period of time. Unless a lease of real property shall expressly otherwise provide, a rejection of such lease or of any covenant therein by the trustee of the lessor shall not deprive the lessee of his estate. A general covenant or condition in a lease that it shall not be assigned shall not be construed to prevent the trustee from assuming the same at his election and subsequently assigning the same; but an express covenant that an assignment by operation of law or the bankruptcy of a specified party thereto or of either party shall terminate the lease or give the other party an election to terminate the same shall be enforceable. A trustee who elects to assume a contract or lease of the bankrupt and who subsequently, with the approval of the court and upon such terms and conditions as the court may fix after hearing upon notice to the other party to the contract or lease, assigns such contract or lease to a third person, shall not be liable for breaches occurring after such assignment.

(c) The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitation, statutes of frauds, usury, and other personal defenses; and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee, as to all property in the possession or under the control of the bankrupt at the date of bankruptcy or otherwise coming into the possession of the bankruptcy court, shall be deemed vested as of the date of bankruptcy with all the rights, remedies, and powers of a creditor then holding a lien thereon by legal or equitable proceedings, whether or not such a creditor actually exists; and, as to all other property, the trustee shall be deemed vested as of the date of bankruptcy with all the rights, remedies, and powers of a judgment creditor then holding an execution duly returned unsatisfied, whether or not such a creditor actually exists.

(d) After bankruptcy and either before adjudication or before a receiver takes possession of the property of the bankrupt, whichever first occurs—

(1) A transfer of any of the property of the bankrupt, other than real estate, made to a person acting in good faith shall be valid against the trustee if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien upon the property so transferred;

(2) A person indebted to the bankrupt or holding property of the bankrupt may, if acting in good faith, pay such indebtedness or deliver such property, or any part thereof, to the bankrupt or upon his order, with the same effect as if the bankruptcy were not pending;

(3) A person having actual knowledge of such pending bankruptcy shall be deemed not to act in good faith unless he has reasonable cause to believe that the petition in bankruptcy is not well founded;

(4) The provisions of paragraphs (1) and (2) of this subdivision shall not apply where a receiver or trustee appointed by a United States or State court is in possession of all or the greater portion of the nonexempt property of the bankrupt;

(5) A person asserting the validity of a transfer under this subdivision shall have the burden of proof. Except as otherwise provided in this subdivision and in subdivision (g) of section 44 of this title, no transfer by or in behalf of the bankrupt after the date of bankruptcy shall be valid against the trustee: *Provided, however,* That nothing in this title shall impair the negotiability of currency or negotiable instruments.

(e) (1) A transfer made or suffered or obligation incurred by a debtor adjudged a bankrupt under this title which, under any Federal or State law applicable thereto, is fraudulent as against or voidable for any other reason by any creditor of the debtor, having a claim provable under this title, shall be null and void as against the trustee of such debtor.

(2) All property of the debtor affected by any such transfer shall be and remain a part of his assets and estate, discharged and released from such transfer and shall pass to, and every such transfer or obligation shall be avoided by, the trustee for the benefit of the estate. The trustee shall reclaim and recover such property or collect its value from and avoid such transfer or obligation against whomever may hold or have received it, except a person as to whom the transfer or obligation specified in paragraph (1) of this subdivision e is valid under applicable Federal or State laws.

(3) For the purpose of such recovery or of the avoidance of such transfer or obligation, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(f) The court shall appoint a competent and disinterested appraiser and upon cause shown may appoint additional appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised value. Whenever any sale of real or personal property of any bankrupt is made by or through any auctioneer employed by the court, receiver, or trustee, such auctioneer, if an individual or a partnership, shall be a bona-fide resident and citizen of the judicial district in which the property to be sold is situated, or, if a corporation, shall be lawfully domesticated and authorized to transact such business in the State in which said judicial district is located.

(g) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

(h) Whenever an arrangement or wage-earner plan shall be set aside or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the arrangement or wage-earner plan or revoking the discharge.

(i) Upon the confirmation of an arrangement or plan, or at such later time as may be provided by the arrangement or plan, or in the order confirming the arrangement or plan, the title to the property dealt with shall revest in the bankrupt or debtor, or vest in such other person as may be provided by the arrangement or plan or in the order confirming the arrangement or plan. (July 1, 1898, ch. 541, § 70, 30 Stat. 565; Feb. 5, 1903, ch. 487, § 16, 32 Stat. 800; May 27, 1926, ch. 406, § 16, 44 Stat. 667; June 22, 1938, ch. 575, § 1, 52 Stat. 879.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

AMENDMENTS

Subdivision (a) was amended by act June 22, 1038, cited to text. Clauses 7 and 8 were added. Clauses 2, 3, 5, and 6 were amended. Clauses 1 and 4 were reenacted without change.

Subdivisions (b)–(d) were added by act June 22, 1938, cited to text.

Subdivisions (e), (f), (h), and (i), formerly (e), (b), (d), and (f), respectively, were amended by act June 22, 1938, cited to text.

Subdivision (g), formerly (c), was reenacted without change by act June 22, 1938, cited to text.

§ 111. Clerk's indexes; certificates of search; dockets.

The clerks of the several district courts of the United States shall prepare and keep in their respective offices complete and convenient indexes of all proceedings and discharges under this title heretofore or hereafter filed in the said courts and shall, when requested so to do, issue certificates of search certifying as to whether or not any such proceedings or discharges have been filed. The clerks shall be entitled to receive for such certificates the same fees as may be allowed by law for certificates as to judgments in such courts. Such indexes and dockets shall at all times be open to inspection and examination by all persons without any fee or charge therefor. (July 1, 1898, ch. 541, § 71; Feb. 5, 1903, ch. 487, § 17, 32 Stat. 800; Feb. 11, 1925, ch. 204, § 8, 43 Stat. 858; June 22, 1938, ch. 575, § 1, 52 Stat. 882.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 112. Limitation of compensation of officers of court.

No referee, receiver, marshal, or trustee shall in any form or guise receive, nor shall the court allow him, any other or further compensation for his services as required by this title than that expressly authorized and prescribed in this title. (July 1, 1898, ch. 541, § 72; Feb. 5, 1903, ch. 487, § 18, 32 Stat. 800; June 25, 1910, ch. 412, § 13, 36 Stat. 842; June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

Chapter 8.—PROVISIONS FOR THE RELIEF OF DEBTORS

Sec.

201. Additional jurisdiction.
202. Compositions and extensions.
202a Personal representatives.
203. Agricultural compositions and extensions.
- (a) Conciliation Commissioners; appointment; qualifications; term of office.
- (b) Fee on filing petition; compensation and fees of conciliation commissioners; general orders to govern office of commissioner.
- (c) Limitation on time for filing petition; schedules; stay of adjudication order.
- (d) Filing inventory of estate.
- (e) Meeting of creditors; notice; examination of farmer; time for application for confirmation; control of property.
- (f) Final inventory.
- (g) Acceptance by creditors as prerequisite to filing application for confirmation.
- (h) Date and place of hearing on application for confirmation.
- (i) Confirmation of proposal; conditions precedent.
- (j) Terms of proposal; payments; supervision of property; exemptions to debtors.
- (k) Binding effect of confirmation; impairment of liens of secured creditors; reduction in interest rate.
- (l) Distribution of consideration on confirmation; priority of debts; modification after confirmation.
- (m) Setting aside confirmation for fraud.
- (n) Jurisdiction of court over debtor and property on filing of petition or answer; extension of periods of redemption.
- (o) Exemption of farmer and property from proceedings for enforcement of claims.
- (p) Application of exemptions from proceedings to enforce claims.
- (q) Conciliation commissioner to assist in filing petition and subsequent proceedings without services of attorney.
- (r) Farmer defined.
- (s) Adjudication as bankrupt on failure of proposal; stay of other proceedings against debtor; purchase of property by debtor; application of section to former cases.

203a. Same; conciliation commissioners; franking privileges.

Sec.
204 Repealed.
205. Reorganization of railroads engaged in interstate commerce.
(a) Petition for reorganization by railroad, subsidiary or creditors; venue; proceedings thereon; jurisdiction of court over debtor and property.
(b) Plan of reorganization, contents; "securities", "stockholders", "creditors", "claims" defined; suspension of statutes of limitation.
(c) Proceedings after approval of petition.
(d) Time for filing plan of reorganization; hearings by Commission; certification of approval to court.
(e) Court hearing after approval by Commission; acceptance of plan by creditors and stockholders; confirmation of plan by court; valuation of property.
(f) Binding effect of confirmation; discharge of debtor from liabilities; issuance of securities.
(g) Dismissal of proceedings because of undue delay in reorganization.
(h) Revenue acts inapplicable to issuance, etc., of securities.
(i) Transfer of title between receivers and trustees or to debtor; "Federal Court" defined.
(j) Restraining or staying commencement or continuation of proceedings against debtor; removal of causes; owners' rights to equipment leased or conditionally sold unaffected.
(k) Certified copy of order confirming plan or directing conveyance of property as evidence.
(l) Jurisdiction of court, duties of debtor and rights of creditors same as in voluntary bankruptcy.
(m) "Railroad corporation" and "person" defined.
(n) Claims of employees for personal injuries and claims of sureties as preferred claims; change in wages or working conditions regulated; moving shops, etc., regulated.
(o) Abandonment or sale of lines or property.
(p) Solicitation of proxies or authorizations.
(q) Application of law granting powers to Commission.
(r) Separability clause.
(s) Pending proceedings as governed by amendment of section.
205a. Same; removal to district court.
206. Additional jurisdiction.
207. Corporate reorganization.

§ 201. Additional jurisdiction.

CHANDLER ACT

This section, act July 1, 1898, ch. 541, § 73, as added by act Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1467, and sections 30, 31, 202, 206, 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

SAVING CLAUSE

Continuance of this section in force with respect to certain proceedings, see sections 799, 926, and 1086 of this title.

§ 202. Compositions and extensions.

CHANDLER ACT

This section, act July 1, 1898, ch. 541, § 74, as added by act Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1467, and amended by act June 7, 1934, ch. 424, § 2, 48 Stat. 922; act May 15, 1935, ch. 114, § 2, 49 Stat. 246, and sections 30, 31, 201, 206, 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

SAVING CLAUSE

Continuance of this section in force with respect to certain proceedings, see sections 799, 926, and 1086, of this title.

DISTRIBUTION

Subject matter of the various subdivisions comprising this section were distributed by act June 22, 1938, as follows:

Section 202, subdivisions:	Present sections
a	707, 722–725, 753, 806, 822–826, 858, 1006, and 1023–1025
b	732, 733, 737, 743, 837 (1), and 875
c	734, 735, 834, 835, and 1032
d	713, 736, 738, 813, 836, and 1033
e	737, 761, 762, 837, 866, 868, and 1052
f	737 (3), 837 (3), and 1033
g	766, 867, 872, 1051, 1056 (a), and 1056 (b)
h	756, 757, 861, 1037, and 1046
i	767, 873, and 1057
j	755, 767, 768, 872, 1058, and 1059
k	786, 911, and 1071
l	727, 776, 777, 779, 827, 881 882, and 884
m	711, 712, 716, 741, 752, 811, 812, 816, 843, 857, 883, 906, 907, 1011, 1012, 1016, 1036, and 1041
n	714, 814, and 1014
o	731, 831, and 1031
p	779 and 884

§ 202a. Personal representatives.

Section 202 of this title shall include the personal representative of a deceased individual for the purpose of effecting settlement or composition with the creditors of the estate: *Provided, however,* That such personal representative shall first obtain the consent and authority of the court which has assumed jurisdiction of said estate to invoke the relief provided by this title. (June 7, 1934, ch. 424, § 2, 48 Stat. 922.)

REFERENCE IN TEXT

Section 202 of this title, to which reference is made in this section, was amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, Chandler Act. See distribution table under section 202.

§ 203. Agricultural compositions and extensions. (a) Conciliation Commissioners; appointment; qualifications; term of office.

Within thirty days after June 7, 1934, every court of bankruptcy of which the jurisdiction or territory includes a county or counties having an agricultural population (according to the last available United States census) of five hundred or more farmers shall appoint one or more referees to be known as "conciliation commissioners", one such conciliation commissioner to be appointed for each county having an agricultural population of five hundred or more farmers according to said census: *Provided further,* That where any county in any such district contains a smaller number of farmers according to said census, for the purposes of this paragraph such county shall be included with one or more adjacent counties where the population of the counties so combined includes five hundred or more farmers, according to said census. In case more than one conciliation commissioner is appointed for a county, each commissioner shall act separately and shall have such territorial jurisdiction within the county as the court shall specify. A conciliation commissioner shall have a

term of office of one year and may be removed by the court if his services are no longer needed or for other cause. No individual shall be eligible to appointment as a conciliation commissioner unless he is eligible for appointment as a referee and in addition is a resident of the county, familiar with agricultural conditions therein and not engaged in the farm-mortgage business, the business of financing farmers or transactions in agricultural commodities or the business of marketing or dealing in agricultural commodities or of furnishing agricultural supplies. In each judicial district the court may, if it finds it necessary or desirable, appoint a suitable person as a supervising conciliation commissioner. The supervising conciliation commissioner shall have such supervisory functions under this section as the court may by order specify.

(b) Fee on filing petition; compensation and fees of Conciliation Commissioners; general orders to govern office of commissioner.

Upon filing of any petition by a farmer under this section there shall be paid a fee of $10, to be transmitted to the clerk of the court and covered into the Treasury. The conciliation commissioner shall receive as compensation for his services a fee of $25 for each case submitted to him, to be paid out of the Treasury when the conciliation commissioner completes the duties assigned to him by the court. A supervising conciliation commissioner shall receive, as compensation for his services, a per diem allowance to be fixed by the court in an amount not in excess of $5 per day, together with subsistence and travel expenses in accordance with the law applicable to officers of the Department of Justice. Such compensation and expenses shall be paid out of the Treasury. If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer, as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. Nothing contained in this section shall prevent a conciliation commissioner who supervises such farming operations from receiving such compensation therefor as may be so agreed upon. No fees, costs, or other charges shall be charged or taxed to any farmer or to his creditors by any conciliation commissioner or with respect to any proceeding under this section, except as hereinbefore in this section provided. The conciliation commissioner may accept and avail himself of office space, equipment, and assistance furnished him by other Federal officials, or by any State, county, or other public officials. The Supreme Court is authorized to make such general orders as it may find necessary properly to govern the administration of the office of conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived.

(c) Limitation on time for filing petition; schedules; stay of adjudication order.

At any time prior to March 4, 1944, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section.

(d) Filing inventory of estate.

After the filing of such petition or answer by the farmer, the farmer shall, within such time and in such form as the rules provide, file an inventory of his estate.

(e) Meeting of creditors; notice; examination of farmer; time for application for confirmation; control of property.

The conciliation commissioner shall promptly call the first meeting of creditors, stating in the notice that the farmer proposes to offer terms of composition or extension, and inclosing with the notice a summary of the inventory, a brief statement of the farmer's indebtedness as shown by the schedules, and a list of the names and addresses of the secured creditors and unsecured creditors, with the amounts owing to each as shown by the schedules. At the first meeting of the creditors the farmer may be examined, and the creditors may appoint a committee to submit to the conciliation commissioner a supplementary inventory of the farmer's estate. The conciliation commissioner shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made, and may later extend such time for cause shown. After the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the court, the court shall exercise such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors.

(f) Final inventory.

There shall be prepared by, or under the supervision of, the conciliation commissioner a final inventory of the farmer's estate, and in the preparation of such inventory the commissioner shall give due consideration to the inventory filed by the farmer and to any supplementary inventory filed by a committee of the creditors.

(g) Acceptance by creditors as prerequisite to filing application for confirmation.

An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing, by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims.

(h) Date and place of hearing on application for confirmation.

A date and place, with reference to the convenience of the parties in interest, shall be fixed for a hearing

upon each application for the confirmation of the composition or extension proposal and upon such objections as may be made to its confirmation.

(i) Confirmation of proposal; conditions precedent.

The court shall confirm the proposal, if satisfied that (1) it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer; (2) it is for the best interests of all creditors; and (3) the offer and its acceptance are in good faith, and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden. In applications for extensions the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt is contracted.

(j) Terms of proposal; payments; supervision of property; exemptions to debtors.

The terms of a composition or extension proposal may extend the time of payment of either secured or unsecured debts, or both, and may provide for priority of payments to be made during the period of extension as between secured and unsecured creditors. It may also include specific undertakings by the farmer during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period, and for the termination of such period of supervision or control under conditions specified: *Provided,* That the provisions of this section shall not affect the allowances and exemptions to debtors as are provided for bankrupts under section 24 of this title, and such allowances and exemptions shall be set aside for the use of the debtor in the manner provided for bankrupts.

(k) Binding effect of confirmation; impairment of liens of secured creditors; reduction in interest rate.

Upon its confirmation, a composition or extension proposal shall be binding upon the farmer and his secured and unsecured creditors affected thereby: *Provided, however,* That such extension and/or composition shall not reduce the amount of or impair the lien of any secured creditor below the fair and reasonable market value of the property securing any such lien at the time that the extension and/or composition is accepted, but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured.

(l) Distribution of consideration on confirmation; priority of debts; modification after confirmation.

Upon the confirmation of a composition the consideration shall be distributed under the supervision of the conciliation commissioner as the court shall direct, and the case dismissed: *Provided,* That the debts having priority of payment under section 104 of this title, for bankrupt estates, shall have priority of payment in the same order as set forth in said section 104 under the provisions of this section in any distribution, assignment, composition or settlement herein provided for. Upon the confirmation of an extension proposal the court may dismiss the proceeding or retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate and enforce through the conciliation commissioner the terms of the extension proposal. The court may, after hearing and for good cause shown, at any time during the period covered by an extension proposal that has been confirmed by the court, set the same aside, reinstate the case, and modify the terms of the extension proposal.

(m) Setting aside confirmation for fraud.

The judge may, upon the application of any party in interest, file at any time within six months after the composition or extension proposal has been confirmed, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition or extension, and that knowledge thereof has come to the petitioners since the confirmation thereof.

(n) Jurisdiction of court over debtor and property on filing of petition or answer; extension of periods of exemption.

The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words "period of redemption" wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, 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 when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court.

(o) Exemption of farmer and property from proceedings for enforcement of claims.

Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

(1) Proceedings for any demand, debt, or account, including any money demand;

(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

(3) Proceedings to acquire title to land by virtue of any tax sale;

(4) Proceedings by way of execution, attachment, or garnishment;

(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

(p) Application of exemptions from proceedings to enforce claims.

The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in this section.

(q) Conciliation commissioner to assist in filing petition and subsequent proceedings without services of attorney.

A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section.

(r) Farmer defined.

For the purposes of this section and section 22 (b) the term "farmer" includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.

(s) Adjudication as bankrupt on failure of proposal; stay of other proceedings against debtor; purchase of property by debtor; application of section to former cases.

Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this title. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this title: *Provided*, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning

capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this title, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.

(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: *Provided*, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this title. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this title.

(4) The conciliation commissioner, appointed under subsection (a) of this section, as amended, shall continue to act, and act as referee, when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of this subsection, and continue so to act until the case has been finally disposed of. The conciliation commissioner, as such referee, shall receive such an additional fee for his services as may be allowed by the court, not to exceed $35 in any case, to be paid out of the bankrupt's estate. No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt, under this subsection, but all such additional filing fees or costs of administration or supervision shall be charged against the bankrupt's estate. Conciliation commissioners and referees appointed under this section shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices to creditors. If, at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession, and the property returned to the possession of such farmer, under the provisions of this title. The provisions of this title shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition.

(5) This Act [1] shall be held to apply to all existing cases now pending in any Federal Court, under this Section, as well as to future cases. All cases under this Section that have been dismissed by any conciliation commissioner, referee, or Federal Court because such Court erroneously assumed or held that Subsection (s) of this section was unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this title shall not be grounds for denying him the benefits of this section.

(6) This Act [1] is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate. (July 1, 1898, ch. 541, § 75, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1470, and amended June 7, 1934, ch. 424, §§ 8, 9, 48 Stat. 925; June 28, 1934, ch. 869, 48 Stat. 1289; May 15, 1935, ch. 114, § 3, 49 Stat. 246; Aug. 28, 1935, ch. 792, §§ 1–6, 49 Stat. 942–945; Mar. 4, 1938, ch. 41, §§ 1, 2, 52 Stat. 84, 85; June 22, 1938, ch. 575, § 2 (b), 52 Stat. 939; Mar. 4, 1940, ch. 39, §§ 1, 2, 54 Stat. 40.)

[1] The words, "This Act," are quoted from acts Aug. 28, 1935, and Mar. 4, 1938, cited to text. Since said acts were amendments to the Bankruptcy Act of 1898, these words might be considered as a reference to the entire Bankruptcy Act as set out in this title.

CHANDLER ACT

Act June 22, 1938, cited to text, in addition to amending the second sentence of subsection (b) of this section, provided, in section 2 (a) of said act, as follows: "Any farmer who filed a petition under section 75 of the act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, as amended, and in whose case a bankruptcy court has, under subsection (s) thereof, granted a stay of proceedings may, if the period for which such stay was granted has expired or is about to expire, make application to such court for an extension of such stay. If the court finds that such farmer has substantially complied with the provisions of paragraph (2) of subsection (s) of

section 75 of such act, as amended, during the period of such stay, the court may extend the period of such stay to November 1, 1939." For effective date, construction, etc., of said act June 22, 1938, see note under section 1 of this title.

AMENDMENTS

Subsection (c) was amended by act Mar. 4, 1940, § 1, cited to text, which substituted "Mar. 4, 1944" for "Mar. 4, 1940."

Subsection (r) was amended by act Mar. 4, 1940, § 2, cited to text, which deleted "and section 202."

CROSS REFERENCE

Application of section to Bankhead-Jones Farm Tenant Act (sections 1000–1029 of Title 7), see section 1003 (d) of Title 7, Agriculture.

§ 203a. Same; conciliation commissioners; franking privileges.

Conciliation commissioners appointed under section 203 of this title shall be entitled to transmit in the mails free of postage under cover of a penalty envelope all matters which relate exclusively to the business of the Government, including notices to creditors. (June 7, 1934, ch. 424, § 6, 48 Stat. 924.)

§ 204. Repealed. June 22, 1938, ch. 575, § 4, 52 Stat. 940.

Section, act July 1, 1898, ch. 541, § 76, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1474; and amended June 7, 1934, ch. 424, § 10, 48 Stat. 925, extended the extension provisions of section 203 to persons secondarily liable for debt.

Effective date and construction of repealing act, see note under section 1 of this title.

§ 205. Reorganization of railroads engaged in interstate commerce. (a) Petition for reorganization by railroad, subsidiary or creditors; venue; proceedings thereon; jurisdiction of court over debtor and property.

Any railroad corporation may file a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction such corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission (hereinafter called the "Commission"): *Provided,* That when any railroad, although engaged in interstate commerce, lies wholly within one State, such proceedings shall be brought in the Federal district court of the district in which its principal operating office in such State during the preceding six months or the greater portion thereof has been located. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this title. Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. Process of the court shall extend to and be valid when served in any judicial district. The Supreme Court of the United States shall promulgate rules relating to the service of process outside of the district in which the proceeding is pending, and any other rules which it may deem advisable in order to aid district courts and circuit courts of appeal in exercising the jurisdiction herein conferred upon them. The railroad corporation shall be referred to in the proceedings as a "debtor." Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor may file, with the court in which such other debtor has filed such a petition, and in the same proceeding, a petition, a copy of which shall also be filed at the same time with the Commission, stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a reorganization in connection with, or as a part of the plan of reorganization of such other debtor; and upon the filing of such petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it if not so satisfied, and thereupon such court, if it approves such petition, shall have the same jurisdiction with respect to such debtor, its property and its creditors and stockholders, as the court has with respect to such other debtor. Creditors of any railroad corporation, having claims aggregating not less than 5 per centum of all the indebtedness of such corporation as shown in the latest annual report which it has filed with the Commission at the time when the petition is filed, may, if such corporation has not filed a petition under this section, file with the court in which such corporation might file a petition under this section, a petition stating that such corporation is insolvent or unable to meet its debts as they mature and that such creditors have claims aggregating not less than 5 per centum of all such indebtedness of such corporation and propose that it shall effect a reorganization; copies of such petition shall be filed at the same time with the Commission and served upon such corporation. Such corporation shall, within ten days after such service, answer such petition. If such answer shall admit the jurisdiction of the court and the material allegations of the petition, the judge shall enter an order approving the petition as properly filed if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if not so satisfied. If such answer shall deny either the jurisdiction of the court or any material allegation of the petition the judge shall summarily determine the issues presented by the pleadings without the intervention of a jury and if he shall find that the material allegations are sustained by the proofs and that the petition complies with this section and has been filed in good faith, the judge shall enter an order approving the petition; otherwise he shall dismiss the petition. If any such petition shall be so

approved, the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section. In case any petition shall be dismissed, neither the petition nor the answer of a debtor shall constitute an act of bankruptcy or an admission of insolvency or of inability to meet maturing obligations or be admissible in evidence, without the debtor's consent, in any proceedings then or thereafter pending or commenced under this title or in any State or Federal court. If, in any case in which the issues have not already been tried under the provisions of this subdivision, any of the creditors shall, prior to the hearing provided for in paragraph (1) of subsection (c) of this section, appear and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, and, unless the material allegations of the petition are sustained by the proofs, shall dismiss the petition.

(b) Plan of reorganization, contents; "securities," "stockholders," "creditors," "claims" defined; suspension of statutes of limitation.

A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section.

The adoption of an executory contract or unexpired lease by the trustee or trustees of a debtor shall not preclude a rejection of such contract or lease in a plan of reorganization approved hereunder, and any claim resulting from such rejection shall not have priority over any other claims against the debtor because such contract or lease had been previously adopted. The term "securities" shall include evidences of indebtedness either secured or unsecured, bonds, stock, certificates of beneficial interest therein, certificates of beneficial interest in property, options, and warrants to receive, or to subscribe for, securities. The term "stockholders" shall include the holders of voting-trust certificates. The term "creditors" shall include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act, including the holder of a claim under a contract executory in whole or in part including an unexpired lease.

The term "claims" includes debts, whether liquidated or unliquidated, securities (other than stock and option warrants to subscribe to stock), liens, or other interests of whatever character. For all purposes of this section unsecured claims, which would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the day of the approval of the petition, shall be entitled to such priority and the holders of such claims shall be treated as a separate class or classes of creditors. In case an executory contract or unexpired lease of property shall be rejected, or shall not have been adopted by a trustee appointed under this section, or shall have been rejected by a receiver in equity in a proceeding pending prior to the institution of a proceeding under this section, or shall be rejected by any plan, any person injured by such nonadoption or rejection shall for all purposes of this section be deemed to be a creditor of the debtor to the extent of the actual damage or injury determined in accordance with principles obtaining in equity proceedings. The provisions of section 96 of this title shall apply to a proceeding under this section. For all purposes of this section any creditor or stockholder may act in person or by an attorney at law or by a duly authorized agent or committee subject to the provisions of subsection (p) of this section. The running of all statutes of limitation shall be suspended during the pendency of a proceeding under this section.

(c) Proceedings after approval of petition.

After approving the petition:

(1) The judge shall forthwith (and in pending proceedings immediately upon August 27, 1935) re-

quire the debtor to give such notice as the order may direct to the mortgage trustees, creditors and stockholders, and to cause publication thereof for such period and in such newspapers as the judge may direct, of a hearing to be held not later than thirty days after the date of such order, at which hearing or any adjournment thereof the judge shall appoint one or more trustees of the debtor's property. Such appointments shall become effective upon ratification thereof by the Commission without a hearing, unless the Commission shall deem a hearing necessary. Where a trustee is appointed who within one year prior thereto has been an officer, director, or employee of the debtor corporation, any subsidiary corporation, or any holding company connected therewith, the judge, subject to ratification by the Commission as herein provided, shall appoint another trustee or trustees who shall not have had any such affiliations: *Provided,* That the appointment of such additional trustee or trustees shall not be required for a debtor the annual operating revenues of which were less than $1,000,000 for the previous calendar year.

(2) The judge shall fix the amount of the bond of every trustee. He may thereafter terminate any such appointments on cause shown, and may in that event and in the event of a vacancy from any other cause, in the manner and within the qualifications herein provided for the appointment of trustees, appoint a substitute trustee or trustees, and in the same manner and within the same qualifications may appoint an additional trustee, and shall fix the amount of the bond of every such substitute or additional trustee or trustees. The judge shall in his discretion confirm the appointment of such legal counsel for the trustees as they shall select, with power of removal. The trustee or trustees and their counsel shall receive only such compensation from the estate of the debtor as the judge may from time to time allow within such maximum limits as may be approved by the Commission as reasonable. The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor. Prior to the appointment of a trustee, the debtor on behalf of the court shall continue in the possession of the property and shall operate the business thereof during such period, and shall have all the title to the property and shall exercise all power consistent with the provisions of this section, subject at all times to the control of the judge, and to such limitations, restrictions, terms, and conditions as he may from time to time impose and prescribe.

(3) The judge may, upon not less than fifteen days' notice published in such manner and in such newspapers as the judge may in his discretion determine, which notice so determined shall be sufficient, for cause shown, and with the approval of the Commission, in accordance with section 20a of Title 49, as on August 27, 1935 or thereafter amended, authorize the trustee or trustees to issue certificates for cash, property, or other consideration approved by the judge, for such lawful purposes and upon such terms and conditions and with such security and such priority in payments over existing obligations, secured or unsecured, or receivership charges, as might in an equity receivership be lawful.

(4) The judge shall require the officers of the debtor or the trustee or trustees, at such time or times as the judge may direct, and in lieu of the schedules required by section 25 of this title, to file with the court such schedules and submit such other information as may be necessary to disclose the conduct of the debtor's affairs and the fairness of any proposed plan; and shall direct the officers of the debtor, or the trustee or trustees, within such time as the judge shall set, to prepare and file with the court a list of all known bondholders and creditors of the debtor, and the amounts and character of their debts, claims, and securities, and the last known post-office address or place of business of each bondholder and creditor, and a list of all known stockholders of the debtor, with the last known post-office address or place of business of each, which lists the judge may require to be brought down to date at any time. The contents of such lists shall not constitute admissions by the debtor or the trustees in a proceeding under this section or otherwise.

(5) It shall be the duty of anyone having information as to the names and addresses of the holders of any securities of the debtor to divulge such information to the trustee or trustees, upon written request therefor and, upon petition by any party in interest, and after hearing, the judge may order the production of any such information by anyone having and refusing to divulge it to any trustee, upon written request therefor. The judge may direct that the cost of preparing such information shall be borne by the debtor's estate.

(6) If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of Title 49, as amended.

(7) The judge shall promptly determine and fix a reasonable time within which the claims of creditors may be filed or evidenced and after which no claim not so filed or evidenced may participate except on order for cause shown, the manner in which such claims may be filed or evidenced and allowed, and for the purposes of the plan and its acceptance, after notice and hearing, the division of creditors

and stockholders into classes according to the nature of their respective claims and interests. Such division shall not provide for separate classification unless there be substantial differences in priorities, claims, or interests. The trustee or trustees under any mortgage, deed of trust, or indenture outstanding against the property may, within the time prescribed, file a verified claim in behalf of all bonds or securities outstanding under such mortgage, deed of trust, or indenture, in which event it shall be unnecessary for the holders of such bonds or securities to file claims in their own behalf, but nothing herein shall constitute such trustee or trustees the representative or representatives of such holders for the purpose of accepting or rejecting any plan of reorganization.

(8) The judge shall cause reasonable notice of the period in which claims may be filed, of hearings on application for the dismissal of the proceedings, or for the final allowance of fees or expenses to be given creditors and stockholders by publication or otherwise.

(9) The judge shall direct the trustee or trustees, and may request the Commission through such of its agencies as it may designate, to report to him any facts pertaining to irregularities, fraud, misconduct, or mismanagement, as a consequence of which the debtor may have a cause of action arising therefrom against any person or corporation.

(10) The judge may direct the debtor or the trustee or trustees to keep such records and accounts, in addition to the accounts prescribed by the Commission, as will permit of such a segregation and allocation, as the necessities of the case may require, of the earnings and expenses between and to the divisions and parts of the railroad or other property of the debtor which are separately subject to the liens of the various mortgages or deeds of trust, or are separately subject to lease, and may refer to the Commission for its recommendations after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made; and thereafter such segregation and allocation may be made at the expense of the debtor's estate.

(11) The Commission may direct such of its agencies as it may designate to file in the proceedings before the Commission a report, and additional or supplemental reports at such time or times as the Commission shall designate, of such data with reference to the property, business, earnings, and corporate organization of the debtor and such other facts as the Commission, after hearing if it deems necessary, shall determine to be necessary or helpful information for the purposes of the preparation of reorganization plans, and for the purpose of aiding in determining the method or formula of allocating earnings permitted by subdivision (10) of this subsection (c). Such report or reports shall be prima facie evidence of the facts therein stated in any proceeding under this section. The actual cost of preparing said report or reports shall be certified by the Commission and shall be borne by the debtor's estate.

(12) Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the judge may especially employ. Appeals from orders of the court fixing such allowances may be taken to the circuit court of appeals independently of other appeals in the proceeding and shall be heard summarily. The Commission shall, at such time or times as it may deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subsection (c) and, after hearing if the Commission shall deem it necessary, the maximum compensation which may be allowed by the court pursuant to the provisions of paragraph (2) of this subsection (c).

(13) The judge may on his own motion or at the request of the Commission refer any matters for consideration and report, either generally or upon specified issues, to one of several special masters who shall have been previously designated to act as special masters in any proceedings under this section by order of any circuit court of appeals and may allow such master a reasonable compensation for his services and actual and reasonable expenses. The circuit court of appeals of each circuit shall designate three or more members of the bar as such special masters whom they deem qualified for such services, and shall from time to time revise such designations by changing the persons designated or their number, as the public interest may require: *Provided, however,* That there shall always be three of such special masters qualified for appointment in each circuit who shall hear any matter referred to them under this section by a judge of any district court. The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either or the trustee or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, upon petition therefor and cause shown, any such person or any other interested party may be permitted to intervene. The judge may, after hearing, make reasonable rules defining the matters upon which notice shall be given to other than interveners and the manner of giving such notice.

(d) Time for filing plan of reorganization; hearings by Commission; certification of approval to court.

The debtor, after a petition is filed as provided in subsection (a) of this section, shall file a plan of reorganization within six months of the entry of the order by the judge approving the petition as properly filed, or if heretofore approved, then within six

months of August 27, 1935, and not thereafter unless such time is extended by the judge from time to time for cause shown, no single extension at any one time to be for more than six months. Such plan shall also be filed with the Commission at the same time. Such plans may likewise be filed at any time before, or with the consent of the Commission during, the hearings hereinafter provided for, by the trustee or trustees, or by or on behalf of the creditors being not less than 10 per centum in amount of any class of creditors, or by or on behalf of any class of stockholders being not less than 10 per centum in amount of any such class, or with the consent of the Commission by any party in interest. After the filing of such a plan, the Commission, unless such plan shall be considered by it to be prima facie impracticable, shall, after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings, at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

The Commission may thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification. The Commission, if it approves a plan, shall thereupon certify the plan to the court together with a transcript of the proceedings before it and a copy of the report and order approving the plan. No plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court.

(e) Court hearing after approval by Commission; acceptance of plan by creditors and stockholders; confirmation of plan by court; valuation of property.

Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in subsection (c), paragraph (12) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is hereby given power to approve the same.

If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received. If the proceedings are referred back to the Commission, it shall proceed to a reconsideration of the proceedings under the provisions of subsection (d) of this section. If the judge shall approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor, and enter an order to that effect, and shall send a certified copy of such opinion and order to the Commission. The plan shall then be submitted by the Commission to the creditors of each class whose claims have been filed and allowed in accordance with the requirements of subsection (c) of this section, and to the stockholders of each class, and/or to the committees or other representatives thereof, for acceptance or rejection, within such time as the Commission shall specify, together with the report or reports of the Commission thereon or such a summarization thereof as the Commission may approve, and the opinion and order of the judge: *Provided*, That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, (a) that at the time of the finding the corporation is insolvent, or that at the time of the finding the equity of such class of stockholders has no value, or that the plan provides for the payment in cash to such class of stockholders of an amount not less than the value of their equity, if any, or (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance: *Provided further*, That submission to any class of creditors shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by the plan, or that at the time of the finding the interests of such class of creditors have no value, or that the plan provides for the payment in cash to such class of

creditors of an amount not less than the value of their interests. For the purpose of this section the acceptance or rejection by any creditor or stockholder shall be in writing, executed by him or by his duly authorized attorney, committee, or representative. If the United States of America, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States of America, is a creditor or stockholder, the interests or claims thereof shall be deemed to be affected by the plan, and the President of the United States, or any officer or agency he may designate, is hereby authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. The expense of such submission shall be certified by the Commission and shall be borne by the debtor's estate. The Commission shall certify to the judge the results of such submission.

Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subsection holding more than two-thirds in amount of the total of the allowed claims of such class which have been reported in said submission as voting on said plan, and by or on behalf of stockholders of each class to which submission is required under this subsection holding more than two-thirds of the stock of such class which has been reported in said submission as voting on said plan; and that such acceptances have not been made or procured by any means forbidden by law: *Provided*, That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of this subsection (e): *Provided further*, That if, in any reorganization proceeding under this section, the United States is a creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against, the debtor, as creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance, certified to the court, of a lesser amount by the President of the United States or the officer or agency designated by him pursuant to the provisions of the preceding paragraph hereof: *Provided further*, That if the President of the United States or such officer or agency shall fail to accept or reject such lesser amount for more than ninety days after receipt of written notice so to do from the court, accompanied by a certified copy of the plan, the consent of the United States insofar as its claims for taxes or customs duties are concerned shall be conclusively presumed. If the judge shall confirm the plan, he shall enter an order and file an opinion with a statement of his conclusions and his reasons therefor. If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder.

If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the court in its report on the plan. The value of any property used in railroad operation shall be determined on a basis which will give due consideration to the earning power of the property, past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts.

(f) Binding effect of confirmation; discharge of debtor from liabilities; issuance of securities.

Upon confirmation by the judge, the provisions of the plan and of the order of confirmation shall, subject to the right of judicial review, be binding upon the debtor, all stockholders thereof, including those who have not, as well as those who have, accepted it, and all creditors secured or unsecured, whether or not adversely affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it. Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding. The property dealt with by the plan, when transferred and conveyed to the debtor or to the other corporation or corporations provided for by the plan, or when retained by the debtor pursuant to the plan, shall be free and clear of all claims of the debtor, its stockholders and creditors, and the debtor shall be discharged from its debts and liabilities, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention, and the judge may require the trustee or trustees appointed hereunder, the debtor, any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties, to make any such transfer or conveyance, and may require the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, and making

such provisions as may be equitable, by way of injunction or otherwise, and closing the case. Upon confirmation of a plan the Commission shall, without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation or merger of the debtor's property, or pooling of traffic, to the extent contemplated by the plan and not inconsistent with the provisions and purposes of chapter 1 of Title 49 as on August 27, 1935, or thereafter amended. The provisions of sections 77a to 77aa of Title 15 shall not apply to the issuance, sale, or exchange of any of the following securities, which securities and transactions therein shall, for the purposes of said sections, be treated as if they were specifically mentioned in sections 77c and 77d of Title 15, respectively: (1) All securities issued pursuant to any plan of reorganization confirmed by the judge in accordance with the provisions of this section; (2) all securities issued pursuant to such plan for the purpose of raising money for working capital and other purposes of such plan; (3) all securities issued by the debtor or by the trustee or trustees pursuant to subsection (c), clause (3) of this section; (4) all certificates of deposit representing securities of, or claims against, the debtor, with the exception of such certificates of deposit as are issued by committees not subject to subsection (p) of this section. The provisions of subdivision (a) of section 78n of Title 15 shall not be applicable with respect to any action or matter which is within the provisions of subsection (p) of this section.

(g) Dismissal of proceedings because of undue delay in reorganization.

If in the light of all the existing circumstances there is undue delay in a reasonably expeditious reorganization of the debtor, the judge, in his discretion, shall, on motion of any party in interest or on his own motion, after hearing and after consideration of the recommendation of the Commission, dismiss the proceedings. Upon the filing of such an order of dismissal, all right, title, or interest of the trustee or trustees shall vest by operation of law in the debtor unless otherwise provided by such order.

(h) Revenue acts inapplicable to issuance, etc., of securities.

The provisions of subdivisions 1, 2, and 3 of schedule A of Title VIII of the Revenue Act of 1926, as amended by sections 721, 722, and 723 of the Revenue Act of 1932, and the provisions of subdivisions 8 and 9 of the same schedule A, as added by sections 724 and 725 of the Revenue Act of 1932, and any amendments thereto unless specifically providing to the contrary, shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any plan of reorganization confirmed under the provisions of this section.

(i) Transfer of title between receivers and trustees or to debtor; "Federal court" defined.

If a receiver or trustee of all or any part of the property of a debtor has been appointed by a Federal or State court, whether before or after August 27, 1935, a petition or answer may be filed under this section at any time thereafter by such debtor, or its creditors as provided in subsection (a) of this section, and if such petition is approved, the trustee or trustees appointed under this section, or the debtor until such trustee or trustees are appointed, shall be entitled forthwith to possession of and be vested with title to such property, and the judge shall make such orders as he may deem equitable for the protection of obligations incurred by the receiver or receivers or prior trustee or trustees and for the payment of such reasonable administrative expenses and allowances in the prior proceedings as may be fixed by the court appointing such receiver or trustee. Whether or not a receiver or trustee has been appointed by a Federal or State court prior or subsequent to the institution of a proceeding under this section and upon the dismissal of such proceeding under this section, the judge may include in the order of dismissal appropriate provisions directing the trustee or trustees, or the debtor if no trustee has been appointed, at the time of such order of dismissal, to transfer possession of the debtor's property within the territorial jurisdiction of such Federal or State court to the prior receiver or trustee, if a prior receiver or trustee has been so appointed by such Federal or State court, or to a receiver or trustee appointed by such Federal or State court, upon such terms as the court in the proceeding under this section may deem equitable for the protection of the obligations incurred by any trustee or trustees appointed under this section and for the payment of administrative expenses and allowances in the proceedings hereunder. Upon the filing of such order of dismissal all title to the property in the trust estate shall vest as therein provided. For the purposes of this section the words "Federal court" shall include the district courts of the United States and of the Territories and possessions to which this title is or may hereafter be applicable, the Supreme Court of the District of Columbia, and the United States Court of Alaska.

(j) Restraining or staying commencement or continuation of proceedings against debtor; removal of causes; owners' rights to equipment leased or conditionally sold unaffected.

In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree: *Provided*, That suits or claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction and any order staying the prosecution of any such cause of action or appeal shall be vacated. Proceedings under this section prior to its amendment by Act of August 27, 1935, or under this section as amended by such Act, shall not be grounds for the removal of any cause of action to the United States District Court which was not removable before March 3, 1933 and any order removing any cause of action or enjoining the prosecution of any such cause of action

in any court is null and void and any cause of action heretofore removed from a State court on account of this section prior to its amendment by Act of August 27, 1935, shall be remanded to the court from which it was removed. The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this section.

(k) Certified copy of order confirming plan or directing conveyance of property as evidence.

A certified copy of the final order confirming a plan of reorganization, or of any other order or decree entered in a proceeding under this section, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order or decree was made. A certified copy of an order directing the transfer and conveyance of the property dealt with by the plan as provided in subsection (*f*) of this section, or as specified in an order dismissing the proceedings as provided in subsection (*i*), shall be evidence of the transfer and conveyance of title accordingly, and if recorded shall impart the same notice that a deed, if recorded, would impart.

(*l*) Jurisdiction of court, duties of debtor and rights of creditors same as in voluntary bankruptcy.

In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its 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 when the debtor's petition was filed.

(m) "Railroad corporation" and "person" defined.

The term "railroad corporation" as used in this section means any common carrier by railroad engaged in the transportation of persons or property in interstate commerce, except a street, a suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment. Wherever used in this section the term "person" shall include an individual, corporation, partnership, association, joint-stock company, unincorporated organization, or a government or political subdivision thereof.

(n) Claims of employees for personal injuries and claims of sureties as preferred claims; change in wages or working conditions regulated; moving shops, etc., regulated.

In proceedings under this section, and in equity receiverships of railroad corporations now or hereafter pending in any court of the United States, claims for personal injuries to employees of a railroad corporation, claims of personal representatives of deceased employees of a railroad corporation, arising under State or Federal laws, and claims now or hereafter payable by sureties upon supersedeas, appeal, attachment, or garnishment bonds, executed by sureties without security, for and in any action brought against such railroad corporation or trustees appointed pursuant to this section, shall be preferred and paid out of the assets of such railroad corporation as operating expenses of such railroad. No judge or trustee acting under this title shall change the wages or working conditions of railroad employees except in the manner prescribed in sections 151 to 163 of Title 45, as amended June 21, 1934, or as they may be hereafter amended. No reorganization effected under this title and no order of the court or Commission in connection therewith shall relieve any carrier from the obligation of any final judgment of any Federal or State court rendered prior to January 1, 1929, against such carrier or against one of its predecessors in title, requiring the maintenance of offices, shops, and roundhouses at any place, where such judgment was rendered on account of the making of a valid contract or contracts by such carrier or one of its predecessors in title.

(*o*) Abandonment or sale of lines or property.

The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by chapter 1 of Title 49, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subsection at public or private sale and subject to or free from liens. The proceeds derived from any such sales shall be received by the trustee or trustees subject, in case the property was sold free from lien, to any liens thereon at the time of sale, and shall be applied or disposed of in such manner as the judge by further order shall direct. The expense of such sale shall be borne in such manner as the judge may determine to be equitable. The judge may order the trustee or trustees of the debtor to deposit such proceeds with any mortgage trustee entitled thereto, to be applied in payment of all or part of such mortgage.

(p) Solicitation of proxies or authorizations.

It shall be unlawful for any person, during the pendency of proceedings under this section or of receivership proceedings against a railroad corporation in any State or Federal court, (a) to solicit, or permit the use of his name to solicit, from any creditor

or shareholder of any railroad corporation by or against whom such proceedings have been instituted, any proxy or authorization to represent any such creditor or shareholder in such proceedings or in any matters relating to such proceedings, or to vote on his behalf for or against, or to consent to or reject, any plan of reorganization proposed in connection with such proceedings; or (b) to use, employ, or act under or pursuant to any such proxy or authorization from any such creditor or shareholder which has been solicited or obtained prior to the institution of such proceedings; or (c) to solicit the deposit by any such creditor, or shareholder, of his claim against or interest in such railroad corporation, or any instrument evidencing the same, under any agreement authorizing anyone other than such depositor to represent such depositor in such proceedings or in any matters relating to such proceedings, including any matters relating to the deposited security or claim; or to vote such claim or interest or to consent to or reject any such plan of reorganization; or (d) to use, employ, or act under or pursuant to any such agreement with such depositor which has been solicited or obtained prior to the institution of such proceedings; unless and until, upon proper application by any person proposing to make such solicitation or to use, employ, or act under or pursuant to such proxies, authorizations, or deposit agreements, and after consideration of the terms and conditions (including provisions governing the compensation and expenses to be received by the applicant, its agents and attorneys, for their services) upon which it is proposed to make such solicitation or to use, employ, or act under or pursuant to such proxies, authorizations, or deposit agreements, the Commission after hearing by order authorizes such solicitation, use, employment, or action: *Provided, however,* That nothing contained in this section shall be applicable to or construed to prohibit any person, when not part of an organized effort, from acting in his own interest, and not for the interest of any other, through a representative or otherwise, or from authorizing a representative to act for him in any of the foregoing matters, or to prohibit groups of not more than twenty-five bona fide holders of securities or claims or groups of mutual institutions from acting together for their own interests and not for others through representatives or otherwise or from authorizing representatives of such groups to act for them in respect to any of the foregoing matters. The Commission shall make such order only if it finds that the terms and conditions upon which such solicitation, use, employment or action is proposed are reasonable, fair, and in the public interest, and conform to such rules and regulations as the Commission may provide. The Commission shall have the power to make such rules and regulations respecting such solicitation, use, employment, or action and with respect to the terms and the provisions of such proxies, authorizations, and deposit agreements, and with respect to such other matters in connection with the administration of this subsection as it deems necessary or desirable to promote the public interest, and to insure proper practices in the representation of creditors and stockholders through the use of such proxies, authorizations, or deposit agreements and in the solicitation thereof. It shall be unlawful for any person to solicit any such proxy, authorization, or the deposit of any such claim or interest or to use, employ, or act under or pursuant to any such proxy, authorization, or deposit agreement which has been solicited or obtained prior to the institution of such proceedings in violation of the rules and regulations so prescribed.

Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application shall be made under oath, signed by, or on behalf of, the applicant by a duly authorized agent having knowledge of the matters therein set forth. The Commission may modify any order authorizing such solicitation, use, employment, or action by a supplemental order, but no such modification shall invalidate action previously taken, or rights or obligations which have previously arisen, in conformity with the Commission's prior order or orders authorizing such solicitation, use, employment, or action.

The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this subsection (p) or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath, or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to publish information concerning any such violations, and to investigate any such facts, conditions, practices, or matters as it may deem necessary or proper to aid in the enforcement of the provisions of this subsection (p), in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this subsection relates.

Any person who willfully violates any provision of this subsection, or any rule or regulation made thereunder the violation of which is made unlawful, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed hereunder or under any rule or regulation authorized hereby, which statement is false or misleading with respect to any material fact, shall be guilty of a misdemeanor, and on conviction in any United States court having jurisdiction, shall be punished by a fine of not less than $1,000 nor more than $10,000 or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

The provisions of this subsection (p) shall not be applicable to any person or committee which has begun to solicit, obtain, or use proxies, authorizations, or deposit agreements prior to August 27, 1935, in connection with proceedings under this section as in force prior to such date or receivership proceedings against a railroad then pending in any State or Fed-

eral court, unless such person or committee makes application to the Commission and receives authority to act as in this subsection provided, in which event the provisions of this subsection (p) shall be applicable to such person or committee, but such authorization shall not be upon terms which shall invalidate any action theretofore taken, or any rights or obligations which have theretofore arisen: *Provided,* That with respect to committees which are not subject to this subsection (p) the judge shall scrutinize and may disregard any limitations or provisions of any deposit agreements, committee, or other authorizations affecting any creditor or stockholder acting under this section and may enforce an accounting thereunder or restrain the exercise of any power which he finds to be unfair or not consistent with public policy, including the collection of unreasonable amounts for compensation and expenses.

(q) Application of law granting powers to Commission.

The provisions of section 12 of Title 49 shall be applicable to enable the Commission to perform its duties under this section and the provisions of such section shall apply to the debtor, any subsidiary or affiliated company, or any other person as herein defined.

(r) Separability clause.

If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of this section, or application of such provision to other persons or circumstances, shall not be affected thereby.

(s) Pending proceedings as governed by amendment of section.

Proceedings pending under this section on August 27, 1935, shall continue under, and be governed by, the provisions of this section as amended by Act of August 27, 1935: *Provided,* That the amendment of this section by Act of August 27, 1935, shall not invalidate any action taken before August 27, 1935, pursuant to this section as it existed prior to such date. (July 1, 1898, ch. 541, § 77, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1474, and amended Aug. 27, 1935, ch. 774, 49 Stat. 911; June 26, 1936, ch. 833, 49 Stat. 1969; Aug. 11, 1939, ch. 689, 53 Stat. 1406.)

REPEAL

Insofar as subsection (h) of this section related exclusively to Internal Revenue it was repealed and incorporated as section 1808 (e) of Title 26, Internal Revenue Code. See section 4 (a) of enacting sections of Internal Revenue Code preceding section 1 of Title 26, Internal Revenue Code.

AMENDMENTS

1939, act Aug. 11, 1939, ch. 689, 53 Stat. 1406, affected subsection (n) of this section; 1936, act June 26, 1936, ch. 833, 49 Stat. 1969, affected subsection (e) of this section.

CLAIMS OF UNITED STATES

By Executive Order No. 7263, promulgated January 4, 1936, the Secretary of the Treasury was designated and authorized to act in respect of the interest or claims, within the purview of subsection (e) of this section, as amended, of the United States, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States.

REFERENCES IN TEXT

The subject matter of Revenue Acts 1926 and 1932, to which reference is made in subsection (h) of this section, is now incorporated in sections 1800–1802, 3480–3482 of Title 26, Internal Revenue Code.

CROSS REFERENCES

Railroad adjustments, see sections 1200 et seq. of this title.

Reconstruction Finance Corporation, claims of, see section 606g of Title 15, Commerce and Trade.

§ 205a. Same; removal to district court.

Proceedings under section 205 of this title shall not be grounds for the removal of any cause of action to the United States district court which was not removable before the passage and approval of said section, and any cause of action heretofore removed from a State court on account of said section shall be remanded to the court from which it was removed, and such order of removal vacated. (June 7, 1934, ch. 424, § 7, 48 Stat. 924.)

§ 206. Additional jurisdiction.

CHANDLER ACT

This section, act July 1, 1898, ch. 541, § 77A, as added by act June 7, 1934, ch. 424, § 1, 48 Stat. 912, and sections 30, 31, 201, 202, and 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, otherwise known as the Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

SAVING CLAUSE

Continuance of this section in force with respect to certain proceedings, see section 676 of this title.

§ 207. Corporate reorganization.

CHANDLER ACT

This section, act July 1, 1898, ch. 541, § 77B, as added by act June 7, 1934, ch. 424, § 1, 48 Stat. 912, and amended by act Aug. 20, 1935, ch. 577, 49 Stat. 664; act Aug. 29, 1935, ch. 809, 49 Stat. 965; act Aug. 12, 1937, ch. 569, § 1, 50 Stat. 622, and sections 30, 31, 201, 202, and 206 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, otherwise known as the Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

SAVING CLAUSE

Continuance of this section in force with respect to certain proceedings, see section 676 of this title.

DISTRIBUTION

Subject matter of the various subdivisions of this section was distributed by act June 22, 1938, as follows:

Section 207, subdivisions:	Present sections
a	511, 515, 518, 526–532, 536, 537, 542, 543, 544, and 662.
b	506, 507, 602, 609, 612, 616, and 661.
c	516, 517, 556, 559, 560, 561, 562, 563, 564, 571, 586–589, 591, 596, 597, 606, 607, 636, 637, 638, 640, 641–643, 647, and 650.
d	570.
e	577–579, and 599.
f	621–624, and 667.
g	224.
h	626, 627, 628, and 664.
i	644, 645, 646, 657, 658, and 659.
k	502, 636, and 638.
l	672.
m	672.
n	663.
o	512, 514, and 600.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see Rule 44, following § 723c of Title 28, Judicial Code and Judiciary.

Chapter 9.—COMPOSITION OF INDEBTEDNESS OF LOCAL TAXING AGENCIES

Sec.
301–303. Unconstitutional.
401. Jurisdiction; saving clause.
402. Definitions.
403. Compositions.
(a) Petition; plan of composition; creditors.
(b) Hearing.
(c) Ancillary injunctions.
(d) Acceptance of plan by creditors.
(e) Fraudulent practices; confirmation of plan; modifications; appeal.
(f) Final decree.
(g) Evidence of proceedings.
(h) Laws affected.
(i) State powers unaffected.
(j) Effect of partial completion or execution of plan.
404. Termination of jurisdiction.

This chapter, formerly chapter 10, was renumbered chapter 9 by act June 22, 1938, ch. 575, § 3 (a), 52 Stat. 939, which provided that the Bankruptcy Act of 1898 as amended by act Aug. 16, 1937, ch 657, 50 Stat. 653, should be "further amended by striking out the heading 'Chapter X' before section 81 of said act [sec. 401 of this title] and inserting in lieu thereof 'Chapter IX'."

§§ 301–303. Unconstitutional.

Former chapter 9 of this title, sections 301–303, as added by act May 24, 1934, ch. 345, 48 Stat. 798, and amended by acts Apr. 10, 1936, ch. 186, 49 Stat. 1198 and Apr. 11, 1936, ch. 210, 49 Stat. 1203, entitled "Provisions for the Emergency Temporary Aid of Public Debtors," extended the benefits of the Bankruptcy Act to political subdivisions of state. It was declared unconstitutional by the Supreme Court in *Ashton* v. *Cameron County Water Improvement Dist. No. 1*, Tex. 1936, 56 S. Ct. 892, 298 U. S. 513, 80 L. Ed. 1309, 31 Am. Bankr. Rep. N. S., 96.

§ 401. Jurisdiction; saving clause.

This Act[1] and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said taxing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d) from any combination thereof: (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts, such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts, such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts, such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any county or parish or any city, town, village, borough, township, or other municipality: *Provided, however*, That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding. (July 1, 1898, ch. 541, § 81, as added Aug. 16, 1937, ch. 657, 50 Stat. 654, and amended June 28, 1940, ch. 438, § 1, 54 Stat. 667.)

[1] Reference is probably intended to this "chapter."

§ 402. Definitions.

The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

That the term "petitioner" shall include any taxing agency or instrumentality referred to in section 401 of this chapter.

The term "security" shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

The term "creditor" means the holder of a security or securities.

Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

The term "security affected by the plan" means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.

The singular number includes the plural and the masculine gender the feminine. (July 1, 1898, ch. 541, § 82, as added Aug. 16, 1937, ch. 657, 50 Stat. 654.)

§ 403. Composition.

(a) Petition; plan of composition; creditors.

Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a

filing fee of $100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of this title, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), have accepted it in writing. There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

Wherever the petition seeks to effect a plan for the composition of obligations represented by securities, or evidences in any form of rights to payment, issued by the petitioner to defray the cost of local improvements and payable out of the proceeds of special assessments or special taxes levied by the petitioner, it shall be sufficient if the petitioner aver that the property liable for the payment of such securities, principal, and interest, is not of sufficient value to pay same, and that the accrued interest on such securities is past due and in default; and the list of creditors to be filed with such petition need contain only the known claimants of rights based on those securities evidencing the obligations sought to be composed under this chapter, and such list shall include separately the names and addresses of those creditors who have accepted the plan of composition. A list of the record owners or holders of title, legal, or equitable, to any real estate involved in the proceeding, shall also be filed with the petition, and such record owners or holders of title shall be notified in the manner provided in this section for creditors and be entitled to hearing by the court upon reasonable application therefor.

The "plan of composition", within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

For all purposes of this chapter any creditor may act in person or by an attorney or a duly authorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

(b) Hearing.

Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed at least sixty days before the date fixed for the hearing.

At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge

shall decide the issues presented and unless the material allegations of the petition are sustained shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interests: *Provided, however,* That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

At the hearing, or a continuance thereof, the judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing: *Provided, however,* That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States circuit court of appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

On thirty days' notice by any creditor to petitioner, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

(c) Ancillary injunctions.

Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides.

(d) Acceptance of plan by creditors.

The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner: *Provided, however,* That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.

(e) Fraudulent practices; confirmation of plan; modifications; appeal.

Before concluding the hearing, the judge shall carefully examine all of the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, specifically for the purpose of ascertaining if the fiscal agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, has been or is to be compensated, directly or indirectly, by both the petitioner and the creditors thereof, or any of such creditors—either by fee, commission, or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue—and shall take evidence under oath to make certain whether or not any such practice obtains or might obtain.

After such examination the judge shall make an adjudication of this issue, as a separate part of his interlocutory decree, and if it be found that any such practice be possible, he shall forthwith dismiss the proceeding and tax all of the costs against such fiscal agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, or against the petitioner, unless such plan be modified within the time to be allowed by the judge so as to eliminate the possibility of any such practice, in which event the judge may proceed to further consideration of the confirmation of the plan. If it be found that no such practice is possible, then the judge may proceed to further consideration of the confirmation of the plan.

At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if satisfied that (1) it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: *Provided, however,* That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action.

(f) Final decree.

If an interlocutory decree confirming the plan is entered as provided in subdivision (e) of this section, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it.

(g) Evidence of proceedings.

A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

(h) Laws affected.

This chapter shall not be construed as to modify or repeal any prior, existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts: *Provided, however,* That the initiation of proceedings or the filing of a petition under section 303 of this title shall not constitute a bar to the same taxing agency or instrumentality initiating a new proceeding under section 401 of this chapter.

(i) State powers unaffected.

Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

(j) Effect of partial completion or execution of plan.

The partial completion or execution of any plan of composition as outlined in any petition filed under the terms of this title by the exchange of new evidences of indebtedness under the plan for evidences of indebtedness covered by the plan, whether such partial completion or execution of such plan of composition occurred before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this title, and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition. (July 1, 1898, ch. 541, § 83, as added Aug. 16, 1937, ch. 657, 50 Stat. 655, and amended June 22, 1938, ch. 575, § 3 (b), 52 Stat. 940; Mar. 4, 1940, ch. 41, § 1, 54 Stat. 44; June 28, 1940, ch. 438, §§ 2, 3, 54 Stat. 668, 669.)

REFERENCES IN TEXT

Section 303 of this title, to which reference is made in subsection (h) of this section was declared unconstitutional by the Supreme Court in *Ashton v. Cameron County Water Improvement Dist. No. 1,* Tex. 1936, 56 S. Ct. 892, 298 U. S. 513, 80 L. Ed. 1309, 31 Am. Bankr. Rep. N. S. 90.

CHANDLER ACT

Act June 22, 1938, cited to text, added subsection (j). For effective date, construction, etc., of said act June 22, 1938, see note under section 1 of this title.

AMENDMENTS

Subsection (a) was amended by act March 4, 1940, cited to text, which inserted second paragraph.

Subsections (b) and (e) were amended by sections 2 and 3, respectively, of act June 28, 1940, cited to text.

Section 2 of act Mar. 4, 1940, cited to text, provided that second paragraph, which was added to subsection (a) by

section 1 of said act, should be deemed to be additional and cumulative and not in diminution of any of the powers conferred by the Bankruptcy Act.

§ 404. Termination of jurisdiction.

Jurisdiction conferred on any court by section 401 shall not be exercised by such court after June 30, 1942, except in respect of any proceeding initiated by filing a petition under section 403 (a) on or prior to June 30, 1942. (July 1, 1898, ch. 541, § 84, as added Aug. 16, 1937, ch. 657, 50 Stat. 659, and amended June 28, 1940, ch. 438, § 4, 54 Stat. 670.)

AMENDMENT

Act June 28, 1940, cited to text, substituted "1942" for "1940."

Chapter 10.—CORPORATE REORGANIZATIONS

FORMER CHAPTER 10

Former chapter 10 was renumbered 9 by act June 22, 1938, ch. 575, § 3 (a), 52 Stat. 839. For effective date, construction, etc., of said act, see note under section 1 of this title.

SIMILAR PROVISIONS

Prior provisions on the subject of this article were contained in former section 207.

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SUBCHAPTER I.—CONSTRUCTION

§ 501. Exclusive application of chapter.

The provisions of this chapter shall apply exclusively to proceedings under this chapter. (July 1, 1898, ch. 541, § 101, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 502. Application of other provisions.

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however*, That section 46, subdivisions h and n of section 93, section 104, and subdivision f of section 110, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7, inclusive. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 528 of this title, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 527 or 528 of this title except where an adjudication had previously been entered. (July 1, 1898, ch. 541, § 102, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Somewhat similar provisions were contained in former section 207 (k).

SUBCHAPTER II.—DEFINITIONS

§ 506. In general.

For the purposes of this chapter, unless inconsistent with the context—

(1) "claims" shall include all claims of whatever character against a debtor or its property, except stock, whether or not such claims are provable under section 103 of this title and whether secured or unsecured, liquidated or unliquidated fixed or contingent;

(2) "commission" shall mean any commission or public authority created by any law of the United States or of any State, having regulatory jurisdiction over a public-utility corporation;

(3) "corporation" shall mean a corporation, as defined in this title, which could be adjudged a bankrupt under this title, and any railroad corporation excepting a railroad corporation authorized to file a petition under section 205 of this title;

(4) "creditor" shall mean the holder of any claim;

(5) "debtor" shall mean a corporation by or against which a petition has been filed under this chapter;

(6) "debts" shall include all claims;

(7) "executory contracts" shall include unexpired leases of real property;

(8) "indenture trustee" shall mean a trustee under a mortgage, deed of trust, or indenture, pursuant to which there are securities outstanding, other than voting-trust certificates, constituting claims against

a debtor or claims secured by a lien upon any of its property;

(9) "petition" shall mean a petition filed under this chapter by a debtor, creditors, or indenture trustee proposing that a plan of reorganization be effected;

(10) "plan" shall mean a plan of reorganization proposed in a proceeding under this chapter;

(11) "securities" shall include notes, bonds, and other evidences of indebtedness, either secured or unsecured, and stock;

(12) "stock" shall include membership, shares, and similar interests in a debtor, certificates and other evidences of such membership, shares or interests, and voting-trust certificates;

(13) "subsidiary" shall mean a corporation substantially all of whose properties are operated under lease or operating agreement, or the majority of whose stock having power to vote for the election of directors, trustees, or other similar controlling bodies is owned, directly or indirectly, through an intervening corporation or other medium, by another parent corporation, a petition by or against which has been approved. (July 1, 1898, ch. 541, § 106, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from part of former section 207 (b).
Paragraph (4) was from part of former section 207 (b).
Paragraph (5) was from part of former section 207 (a).
Paragraph (11) was from part of former section 207 (b).

§ 507. Creditors affected by plan; determination.

Creditors or stockholders or any class thereof shall be deemed to be "affected" by a plan only if their or its interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor or stockholder or class is so affected. (July 1, 1898, ch. 541, § 107, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the second sentence of former section 207 (b).

SUBCHAPTER III.—JURISDICTION AND POWERS OF COURT

§ 511. Exclusive jurisdiction over debtor and property.

Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located. (July 1, 1898, ch. 541, § 111, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 512. Matters prior to approval of petition; jurisdiction, powers and duties.

Prior to the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication. (July 1, 1898, ch. 541, § 112, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 207 (o).

§ 513. Same; temporary stay of actions.

Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed, of a prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property, and may upon cause shown enjoin or stay until the petition is approved or dismissed the commencement or continuation of a suit against a debtor. (July 1, 1898, ch. 541, § 113, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 514. Matters upon approval of petition; jurisdiction, powers, and duties.

Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication. (July 1, 1898, ch. 541, § 114, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 207 (o).

§ 515. Same; jurisdiction as in insolvency.

Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature. (July 1, 1898, ch. 541, § 115, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 516. Same; additional jurisdiction over administration of estate.

Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties here-

inabove and elsewhere in this chapter conferred and imposed upon him and the court—

(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;

(2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable;

(3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve; and

(4) in addition to the relief provided by section 29 of this title, enjoin or stay until final decree the commencement or continuation of a suit against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor. (July 1, 1898, ch. 541, § 116, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from clause (5) of the first sentence of former section 207 (c).

Paragraph (2) was from clause (3) of the first sentence of former section 207 (c).

Paragraph (3) was from clause (3½) of the first sentence of former section 207 (c).

Paragraph (4) was from clause (10) of the first sentence of former section 207 (c).

§ 517. Reference to referee or special master; appointment of receiver.

The judge may, at any stage of a proceeding under this chapter, refer the proceeding to a referee in bankruptcy to hear and determine any or all matters not reserved to the judge by the provisions of this chapter, or he may refer the proceeding to a special master, who may be a referee in bankruptcy, to hear and report generally or upon specified matters. The appointment of a receiver in a proceeding under this chapter shall be by the judge. (July 1, 1898, ch. 541, § 117, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from clause (11) of the first sentence of former section 207 (c).

§ 518. Transfer of proceedings to another district.

The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district, regardless of the location of the principal assets of the debtor or its principal place of business, if the interests of the parties will be best served by such transfer. (July 1, 1898, ch. 541, § 118, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the third sentence of former section 207 (a).

§ 519. Extensions of time.

Whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time. (July 1, 1898, ch. 541, § 119, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 520. Notices.

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices to be given under this chapter. (July 1, 1898, ch. 541, § 120, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 521. Appellate jurisdiction.

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 121, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER IV.—PETITION

§ 526. Filing petition; persons entitled.

A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to $5,000 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter. (July 1, 1898, ch. 541, § 126, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 527. Same; pending bankruptcy proceeding.

A petition may be filed in a pending bankruptcy proceeding either before or after the adjudication

of a corporation. (July 1, 1898, ch. 541, § 127, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 528. Same; original petition.

If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction. (July 1, 1898, ch. 541, § 128, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the second sentence of former section 207 (a).

§ 529. Same; subsidiary corporation.

If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 528 of this title or in the court which has approved the petition by or against its parent corporation. (July 1, 1898, ch. 541, § 129, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 207 (a).

§ 530. Contents.

Every petition shall state—

(1) that the corporation is insolvent or unable to pay its debts as they mature;

(2) the applicable jurisdictional facts requisite under this chapter;

(3) the nature of the business of the corporation;

(4) the assets, liabilities, capital stock, and financial condition of the corporation;

(5) the nature of all pending proceedings affecting the property of the corporation known to the petitioner or petitioners and the courts in which they are pending;

(6) the status of any plan of reorganization, readjustment, or liquidation affecting the property of the corporation, pending either in connection with or without any judicial proceeding;

(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter 11 of this title; and

(8) the desire of the petitioner or petitioners that a plan be effected. (July 1, 1898, ch. 541, § 130, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of the first sentence of former section 207 (a).

§ 531. Same; additional contents of creditors' or indenture trustees' petition.

A creditors'[1] or indenture trustee's petition shall, in addition to the allegations required by section 530 of this title, state—

(1) that the corporation was adjudged a bankrupt in a pending proceeding in bankruptcy; or

(2) that a receiver or trustee has been appointed for or has taken charge of all or the greater portion of the property of the corporation in a pending equity proceeding; or

(3) that an indenture trustee or a mortgagee under a mortgage is, by reason of a default, in possession of all or the greater portion of the property of the corporation; or

(4) that a proceeding to foreclose a mortgage or to enforce a lien against all or the greater portion of the property of the corporation is pending; or

(5) that the corporation has committed an act of bankruptcy within four months prior to the filing of the petition. (July 1, 1898, ch. 541, § 131, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

[1] So in original. Probably should read "creditor's."

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 532. Fees for filing.

The filing of a petition under this chapter shall be accompanied by payment to the clerk of a filing fee of $100 if no bankruptcy proceeding is pending, otherwise $70. Where $100 has been paid and an adjudication is entered under this chapter, $30 thereof shall be distributed by the clerk as in the case of a bankruptcy proceeding; but, if the proceeding under this chapter is dismissed and no order of adjudication is entered thereunder, such sum of $30 shall be refunded to the person paying it. (July 1, 1898, ch. 541, § 132, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the fourth sentence of former section 207 (a).

§ 533. Service of copy of petition and subpena on debtor.

Upon the filing of a petition by creditors or an indenture trustee, a copy thereof, together with a subpena returnable within ten days or such longer time as the court for cause shown may have fixed, shall be served upon the debtor, as provided in subdivision a of section 41 of this title for service of a petition and subpena for involuntary bankruptcy. (July 1, 1898, ch. 541, § 133, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER V.—ANSWER

§ 536. Debtor's answer.

Within ten days after the service of the subpena and of a copy of the petition, or within such further time as the court may for cause shown allow, an answer controverting the facts alleged in the petition may be filed by the debtor. (July 1, 1898, ch. 541, § 136, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 537. Creditor's, indenture trustee's, or stockholder's answer.

Prior to the first date set for the hearing provided in section 561 of this title, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent, by any stockholder of the debtor. (July 1, 1898, ch. 541, § 137, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

SUBCHAPTER VI.—APPROVAL OR DISMISSAL OF PETITION

§ 541. Petition of debtor.

Upon the filing of a petition by a debtor, the judge shall enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith, or dismissing it if not so satisfied. (July 1, 1898, ch. 541, § 141, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 542. Failure of debtor to answer; non-controversial answer.

If an answer is not filed by a debtor to a petition against it, or if the answer filed does not controvert any material allegation of the petition, the judge shall enter an order approving the petition if satisfied that it complies with the requirements of this chapter and has been filed in good faith, or dismissing it if not so satisfied. (July 1, 1898, ch. 541, § 142, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 543. Controversial answer by debtor; determination of issues.

If the answer of a debtor shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied. (July 1, 1898, ch. 541, § 143, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 544. Controversial answer by creditor, indenture trustee, or stockholder; determination of issues.

If an answer filed by any creditor, indenture trustee, or stockholder shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied. (July 1, 1898, ch. 541, § 144, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 545. Finality of determinations.

If any issue raised in an answer filed under section 536 or 537 of this title has, after hearing upon notice to the debtor, creditors, indenture trustees, and stockholders entitled to controvert the allegations of the petition, already been tried and finally determined under the provisions of section 543 or 544 of this title, such final determination shall be conclusive for all purposes under this chapter. (July 1, 1898, ch. 541, § 145, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 546. Good faith of petition.

Without limiting the generality of the meaning of the term "good faith", a petition shall be deemed not to be filed in good faith if—

(1) the petitioning creditors have acquired their claims for the purpose of filing the petition; or

(2) adequate relief would be obtainable by a debtor's petition under the provisions of chapter 11 of this title; or

(3) it is unreasonable to expect that a plan of reorganization can be effected; or

(4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding. (July 1, 1898, ch. 541, § 146, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 547. Amendment of petition to comply with provisions governing arrangements.

A petition filed under this chapter improperly because adequate relief can be obtained by the debtor under chapter 11 of this title may, upon the application of the debtor, be amended to comply with the requirements of chapter 11 for the filing of a debtor's petition, and shall thereafter for the purposes of chapter 11 be deemed to have been originally filed thereunder. (July 1, 1898, ch. 541, § 147, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 548. Order of approval as stay of other proceedings.

Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure, or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property. (July 1, 1898, ch. 541, § 148, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 549. Final order of approval as determinative of court's jurisdiction.

An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court. (July 1, 1898, ch. 541, § 149, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER VII.—PROCEEDINGS SUBSEQUENT TO APPROVAL OF PETITION

§ 556. Appointment of trustees; continuance of debtor in possession.

Upon the approval of a petition, the judge shall, if the indebtedness of a debtor, liquidated as to amount and not contingent as to liability, is $250,000 or over, appoint one or more trustees. Any trustee appointed under this chapter shall be disinterested and shall have the qualifications prescribed in section 73 of this title, except that the trustee need not reside or have his office within the district. If such indebtedness is less than $250,000, the judge may appoint one or more such trustees or he may continue the debtor in possession. In any case where a trustee is appointed the judge may, for the purposes specified in section 589 of this title, appoint as an additional trustee a person who is a director, officer, or employee of the debtor. (July 1, 1898, ch. 541, § 156, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c).

§ 557. Attorney for trustee.

An attorney appointed to represent a trustee under this chapter shall also be a disinterested person: *Provided, however*, That for any specified purposes other than to represent a trustee in conducting the proceeding under this chapter the trustee may, with the approval of the judge, employ an attorney who is not disinterested. (July 1, 1898, ch. 541, § 157, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 558. Interest of persons.

A person shall not be deemed disinterested, for the purposes of section 556 and section 557 of this title, if—

(1) he is a creditor or stockholder of the debtor; or

(2) he is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the date of the filing of the petition was the underwriter of any securities of the debtor; or

(3) he is, or was within two years prior to the date of the filing of the petition, a director, officer, or employee of the debtor or any such underwriter, or an attorney for the debtor or such underwriter; or

(4) it appears that he has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such underwriter, or for any reason an interest materially adverse to the interests of any class of creditors or stockholders. (July 1, 1898, ch. 541, § 158, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 559. Termination of trustee's appointment or debtor's possession.

Where the indebtedness of a debtor is less than $250,000, the judge may at any time terminate the appointment of a trustee and restore the debtor to the possession of its property, or, if the debtor has been continued in possession, terminate its possession and appoint a trustee. (July 1, 1898, ch. 541, § 159, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c).

§ 560. Appointment of additional trustees; removal and substitution of trustees.

In any case, the judge at any time, without or upon cause shown, may appoint additional trustees or remove trustees and appoint substitute trustees. (July 1, 1898, ch. 541, § 160, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c).

Appeals in bankruptcy, generally, see sections 47 and 48 of this title.

§ 561. Hearing; time and notice.

The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapors of general circulation as the judge may designate. (July 1, 1898, ch. 541, § 161, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c).

§ 562. Same; objections to trustee or possession of debtor.

At the hearing required by section 561 of this title, or at any adjournment thereof, or, upon application, at any other time, the judge may hear objections to the continuance of the debtor in possession, or to the retention in office of a trustee upon the ground that he is not qualified or not disinterested as provided in section 558 of this title. (July 1, 1898, ch. 541, § 162, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c).

§ 563. Schedules; debtor continued in possession.

Upon the approval of a petition, where the debtor is continued in possession, the debtor shall, at the expense of the estate, prepare, make oath to, and file in court, within such time as the court shall fix—

(1) a schedule of its property, showing the location, quantity, and money value thereof;

(2) a schedule of its creditors of each class, showing the amounts and character of their claims and securities and, so far as known, the name and post-office address or place of business of each creditor; and

(3) a schedule of its stockholders of each class showing the number and kind of shares registered in the name of each stockholder, and the last-known post-office address or place of business of each stockholder. (July 1, 1898, ch. 541, § 163, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (4) of the first sentence of former section 207 (c).

§ 564. Same; debtor not continued in possession.

Upon the approval of a petition, where a debtor is not continued in possession, the court shall fix a time within which the trustee shall prepare and file in court a list of the creditors of each class, showing the amounts and character of their claims and securities and, so far as known, the name and the post-office address or place of business of each creditor; and a list of the debtor's stockholders of each class, showing the number and kind of shares registered in the name of each stockholder and the last-known post-office address or place of business of each stockholder. (July 1, 1898, ch. 541, § 164, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (4) of the first sentence of former section 207 (c).

§ 565. Information of third persons as to security holders.

If in any case it appears that a person, other than the debtor or its trustee, has in his possession or under his control a list of security holders of the debtor or information in respect to their names, addresses or the securities held by any of them, and such list or information is necessary in order to disclose the names and addresses of the beneficial owners of such securities, or to prepare or complete the schedules required to be filed under section 563 of this title or the lists required to be filed under section 564 of this title, the court shall direct such person, after a hearing upon notice to him, to produce such list or a true and correct copy thereof, or to furnish such information, or to permit the inspection or use thereof, as may be deemed by the court necessary for the foregoing purposes. (July 1, 1898, ch. 541, § 165, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 566. Impounding schedules, lists, copies, or information; inspection or use.

The court may, upon cause shown, direct the impounding of the schedules, lists, copies, or information filed under sections 563, 564, and 565 of this title, but shall permit their inspection or use by the trustee, any indenture trustee or any creditor or stockholder upon such terms as the court may prescribe: *Provided*, That the court may refuse to permit such inspection by any creditor or stockholder who acquired his claim or stock within three months preceding the filing of the petition under this chapter or during the pendency of the proceeding. (July 1, 1898, ch. 541, § 166, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 567. Powers and duties; trustee.

The trustee upon his appointment and qualification—

(1) shall, if the judge shall so direct, forthwith investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan, and report thereon to the judge;

(2) may, if the judge shall so direct, examine the directors and officers of the debtor and any other witnesses concerning the foregoing matters or any of them;

(3) shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities, and to any causes of action available to the estate;

(4) may, subject to the approval of the judge, employ such person or persons as the judge may deem necessary for the purpose of assisting the trustee in performing the duties imposed upon him under this chapter;

(5) shall, at the earliest date practicable, prepare and submit a brief statement of his investigation of the property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, in such form and manner as the judge may direct, to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate; and

(6) shall give notice to the creditors and stockholders that they may submit to him suggestions for the formulation of a plan, or proposals in the form of plans, within a time therein named. (July 1, 1898, ch. 541, § 167, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 568. Same; disinterested person where debtor is in possession.

If a debtor is continued in possession, the judge may at any time appoint a disinterested person as examiner to prepare and file a plan and to perform the duties imposed upon a trustee under paragraphs (1) to (5), inclusive, of section 567 of this title, or to perform any of such duties. (July 1, 1898, ch. 541, § 168, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 569. Preparation, filing, and hearing on plan; trustee appointed.

Where a trustee has been appointed the judge shall fix a time within which the trustee shall prepare and file a plan, or a report of his reasons why a plan cannot be effected, and shall fix a subsequent time for a hearing on such plan or report and for the consideration of any objections which may be made or of such amendments or plans as may be proposed by the debtor or by any creditor or stockholder. (July 1, 1898, ch. 541, § 169, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 570. Same; debtor continued in possession.

Where a debtor is continued in possession, a plan or plans may be filed, within a time fixed by the judge—

(1) by the debtor;

(2) by any creditor or indenture trustee;

(3) by any stockholder, if the debtor is not found to be insolvent;

(4) by the examiner, if so directed by the judge. The judge shall fix a subsequent time for a hearing on such plans and for the consideration of any objections or amendments thereto. (July 1, 1898, ch. 541, § 170, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 571. Notice and time of hearing on plan.

Notice of the time of any hearing, as provided in section 569 or section 570 of this title, shall be given to the debtor, the creditors and stockholders, the indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the court may designate. The judge may, upon the application of the trustee, any creditor, indenture trustee, or stockholder, advance the time of such hearing. (July 1, 1898, ch. 541, § 171, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 207 (c) (7).

§ 572. Submission of plans to Securities and Exchange Commission for report.

After the hearing, as provided in section 569 or section 570 of this title, and before the approval of any plan, as provided in section 574 of this title, the judge may, if the scheduled indebtedness of the debtor does not exceed $3,000,000, and shall, if such indebtedness exceeds $3,000,000, submit to the Securities and Exchange Commission for examination and report the plan or plans which the judge regards as worthy of consideration. Such report shall be advisory only. (July 1, 1898, ch. 541, § 172, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 573. Approval of plan; order to await report of Commission.

The judge shall not enter an order approving a plan submitted to the Securities and Exchange Commission until after the Securities and Exchange Commission has filed its report thereon or has notified the judge that it will not file a report, or until the expiration of such reasonable time for the filing of such

report as the judge has fixed, whichever first occurs. (July 1, 1898, ch. 541, § 173, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 574. Same; entry of order and fixing time for acceptance of plan.

After the hearing, as provided in section 569 or section 570 of this title, and, if a plan has been submitted to the Securities and Exchange Commission, as provided in section 572 of this title, then after the filing of the report or notice that it will not be filed, or after the expiration of the time for its filing, whichever first occurs, the judge shall enter an order approving the plan or plans which in his opinion comply with the provisions of section 616 of this title, and which are fair and equitable, and feasible, and shall fix a time within which the creditors and stockholder affected thereby may accept the same. (July 1, 1898, ch. 541, § 174, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 575. Submission of information to creditors and stockholders after approval.

Upon the approval of a plan by the judge, the trustee or the debtor in possession shall transmit, by mail or otherwise, to all creditors and stockholders who are affected by any such plan—

(1) the plan or plans so approved, together with a summary thereof approved by the judge;

(2) the opinion of the judge, if any, approving the plan, or plans, or a summary thereof approved by the judge;

(3) the report, if any, filed in the proceeding by the Securities and Exchange Commission, as provided in section 572 of this title, or a summary thereof prepared by the Securities and Exchange Commission; and

(4) such other matters as the judge may deem necessary or desirable for the information of creditors and stockholders. (July 1, 1898, ch. 541, § 175, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 576. Soliciting acceptance of plan before order of approval.

No person shall, without the consent of the court, solicit any acceptance, conditional or unconditional, of any plan, or any authority, conditional or unconditional, to accept any plan, whether by proxy, deposit, power of attorney or otherwise, until after the entry of an order approving such plan and the transmittal thereof to the creditors and stockholders, as provided in section 575 of this title; and any such authority or acceptance given, procured, or received by reason of a solicitation prior to such approval and transmittal shall be invalid, unless such consent of the court has been so obtained. (July 1, 1898, ch. 541, § 176, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 577. Approval of plan for public utility.

In case a debtor is a public-utility corporation, subject to the jurisdiction of a commission having regulatory jurisdiction over the debtor, a plan shall not be approved, as provided in section 574 of this title, until—

(1) it shall have been submitted to each such commission;

(2) an opportunity shall have been afforded each such commission to suggest amendments or offer objections to the plan; and

(3) the judge shall have considered such amendments or objections at a hearing at which such commission may be heard. (July 1, 1898, ch. 541, § 177, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the first sentence of clause (2) of former section 207 (e).

§ 578. Same; intrastate public utility.

In case a debtor is a public utility corporation, wholly intrastate, subject to the jurisdiction of a State commission having regulatory jurisdiction over such debtor, a plan shall not be approved, as provided in section 574 of this title, unless such State commission shall have first certified its approval of such plan as to the public interest therein and the fairness thereof. Upon its failure to certify its approval or disapproval within thirty days, or such further time as the court may prescribe, after the submission of the plan to it, as provided in section 577 of this title, the public interest shall, for the purposes of such approval and of the confirmation of the plan, not be deemed to be affected by the plan. (July 1, 1898, ch. 541, § 178, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the second sentence of subdivision (2) of former section 207 (e).

§ 579. Acceptance of plan; hearing for confirmation.

After a plan has been accepted in writing, filed in court, by or on behalf of creditors holding two-thirds in amount of the claims filed and allowed of each class, and, if the debtor has not been found to be insolvent, by or on behalf of stockholders holding the majority of stock, of which proofs have been filed and allowed, of each class, exclusive of creditors or stockholders or of any class of them who are not affected by the plan or whose claims or stock are disqualified pursuant to section 603 of this title, or for whom payment or protection has been provided as prescribed in paragraphs (7) and (8) of section 616 of this title, the judge shall fix a hearing, upon

notice to the debtor, creditors, stockholders, indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the judge may designate, for the consideration of the confirmation of the plan and of such objections as may be made to the confirmation. (July 1, 1898, ch. 541, § 179, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of subdivision (1) of former section 207 (c).

§ 580. Same; effect of order of approval on right to object to confirmation.

The order of the judge approving a plan, as provided in section 574 of this title, shall not affect the right of the debtor, a creditor, indenture trustee, or stockholder to object to the confirmation of the plan. (July 1, 1898, ch. 541, § 180, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER VIII.—TITLE, RIGHTS, AND POWERS OF TRUSTEES AND DEBTORS IN POSSESSION

§ 586. Trustee; title.

A trustee, upon his appointment and qualification, shall be vested with such title as a trustee appointed under section 72 of this title would have. (July 1, 1898, ch. 541, § 186, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CHANDLER ACT

Effective date and construction of act June 22 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (2) of the first sentence of former section 207 (c).

§ 587. Same; rights, powers, and duties.

Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the same rights, be subject to the same duties, and exercise the same powers as a trustee appointed under section 72 of this title, and, if authorized by the judge, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of the debtor. (July 1, 1898, ch. 541, § 187, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (2) of the first sentence of former section 207 (c).

§ 588. Debtor in possession; title, rights, duties, and powers.

A debtor continued in possession of its property shall have all the title, be vested with all the rights, be subject to all the duties, and exercise all the powers of a trustee appointed under this chapter, subject, however, at all times to the control of the judge and to such limitations, restrictions, terms, and conditions as the judge may from time to time prescribe. (July 1, 1898, ch. 541, § 188, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (c).

§ 589. Operation of business and management of property; reports.

A trustee or debtor in possession, upon authorization by the judge, shall operate the business and manage the property of the debtor during such period, limited or indefinite, as the judge may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate. (July 1, 1898, ch. 541, § 189, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (c).

§ 590. Reports; form; contents; inspection; distribution.

The reports of the trustee or debtor in possession shall be in such form and contain such information as the court may prescribe and shall at all times be open to the examination of any party in interest. The court shall direct copies or summaries of annual reports, and may direct copies or summaries of other reports, to be mailed to the creditors, stockholders, and indenture trustees, and may also direct the publication of summaries of any such reports in such newspaper or newspapers of general circulation as the court may designate. The Securities and Exchange Commission may recommend the form of such reports and summaries. (July 1, 1898, ch. 541, § 190, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 591. Employment of officers of debtor.

A trustee or debtor in possession may employ officers of the debtor at rates of compensation to be approved by the court. No person shall become an officer or director of the debtor, to fill a vacancy or otherwise, without the prior approval of the court. (July 1, 1898, ch. 541, § 191, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (c).

SUBCHAPTER IX.—CREDITORS AND STOCKHOLDERS

§ 596. Filing and allowing proofs of claims; objections to allowances.

After the approval of the petition the judge shall prescribe the manner in which and fix a time within which the proofs of claim of creditors and of the interests of stockholders may be filed and allowed. Objections by any party in interest to the allowance of any such claims or interests shall be heard and summarily determined by the court. (July 1, 1898, ch. 541, § 196, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (6) of the first sentence of former section 207 (c).

§ 597. Classification of creditors and stockholders.

For the purposes of the plan and its acceptance, the judge shall fix the division of creditors and stockholders into classes according to the nature of their respective claims and stock. For the purposes of such classification, the judge shall, if necessary, upon the application of the trustee, the debtor, any creditor, or an indenture trustee, fix a hearing upon notice to the holders of secured claims, the debtor, the trustee, and such other persons as the judge may designate, to determine summarily the value of the security and classify as unsecured the amount in excess of such value. (July 1, 1898, ch. 541, § 197, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (6) of the first sentence of former section 207 (c).

§ 598. Claims by indenture trustee for all holders under trust.

An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee, who have not filed claims: *Provided, however,* That in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof, and allowed, shall be included. (July 1, 1898, ch. 541, § 198, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 599. United States as creditor.

If the United States is a secured or unsecured creditor or stockholder of a debtor, the claims or stock thereof shall be deemed to be affected by a plan under this chapter, and the Secretary of the Treasury is hereby authorized to accept or reject a plan in respect of the claims or stock of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against the debtor, as secured or unsecured creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided,* That if the Secretary of the Treasury shall fail to accept or reject a plan for more than ninety days after receipt of written notice so to do from the court to which the plan has been proposed, accompanied by a certified copy of the plan, his consent shall be conclusively presumed. (July 1, 1898, ch. 541, § 199, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of subdivision (1) of former section 207 (e).

§ 600. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, before the approval of the petition, as in a bankruptcy proceeding before adjudication and, upon the approval of the petition, as in a bankruptcy proceeding upon adjudication. (July 1, 1898, ch. 541, § 200, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 207 (o).

§ 601. Provability of claims arising after petition.

All claims arising after the filing of a petition under this chapter and before the qualification of a receiver or trustee or before the petition is approved and the debtor continued in possession, whichever first occurs, shall be provable. (July 1, 1898, ch. 541, § 201, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 602. Rejection of executory contract or unexpired lease; assignment of future rent claim.

In case an executory contract shall be rejected pursuant to the provisions of a plan or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the plan, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first oc-

curs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to such date of surrender or reentry: *Provided*, That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof. (July 1, 1898, ch. 541, § 202, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (b).

§ 603. Disqualification of votes on acceptance in absence of good faith.

If the acceptance or failure to accept a plan by the holder of any claim or stock is not in good faith, in the light of or irrespective of the time of acquisition thereof, the judge may, after hearing upon notice, direct that such claim or stock be disqualified for the purpose of determining the requisite majority for the acceptance of a plan. (July 1, 1898, ch. 541, § 203, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 604. Surrender, etc., of claims upon distribution under plan.

Upon distribution, as provided in section 624 of this title, the judge may, upon notice to all persons affected, fix a time, to expire not sooner than five years after the final decree closing the estate, within which, as provided in the plan or final decree—

(1) the creditors, other than holders of securities, shall file, assign, transfer, or release their claims; and

(2) the holders of securities shall present or surrender their securities. After such time no such claim or stock shall participate in the distribution under the plan. (July 1, 1898, ch. 541, § 204, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 605. Same; unclaimed cash and securities.

The securities or cash remaining unclaimed at the expiration of the time fixed as provided in section 604 of this title, or of any extension thereof, shall become the property of the debtor or of the new corporation acquiring the assets of the debtor under the plan, as the case may be, free and clear of any and all claims and interests. (July 1, 1898, ch. 541, § 205, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 606. Persons entitled to hearings.

The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter. The judge may, for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees. (July 1, 1898, ch. 541, § 206, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (c).

§ 607. Intervention of parties; notices generally.

The judge may for cause shown permit a party in interest to intervene generally or with respect to any specified matter. Except where otherwise provided in this chapter, the judge may from time to time enter orders designating the matters in respect to which, the persons to whom, and the form and manner in which notice shall be given. (July 1, 1898, ch. 541, § 207, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (c).

§ 608. Intervention of Securities and Exchange Commission.

The Securities and Exchange Commission shall, if requested by the judge, and may, upon its own motion if approved by the judge, file a notice of its appearance in a proceeding under this chapter. Upon the filing of such a notice, the Commission shall be deemed to be a party in interest, with the right to be heard on all matters arising in such proceeding, and shall be deemed to have intervened in respect of all matters in such proceeding with the same force and effect as if a petition for that purpose had been allowed by the judge; but the Commission may not appeal or file any petition for appeal in any such proceeding. (July 1, 1898, ch. 541, § 208, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 609. Representation in proceedings.

Any creditor or stockholder may in a proceeding under this chapter act in person, by an attorney at law, or by a duly authorized agent or committee. (July 1, 1898, ch. 541, § 209, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (b).

§ 610. Same; statement by attorney.

An attorney for creditors or stockholders shall not be heard unless he has first filed with the court a statement setting forth the names and addresses of such creditors or stockholders, the nature and

amounts of their claims or stock, and the time of acquisition thereof, except as to claims or stock alleged to have been acquired more than one year prior to the filing of the petition. (July 1, 1898, ch. 541, § 210, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 611. Same; statement by committees, etc., and indenture trustees.

Every person or committee, representing more than twelve creditors or stockholders, and every indenture trustee, who appears in the proceeding shall file with the court a statement, under oath, which shall include—

(1) a copy of the instrument, if any, whereby such person, committee, or indenture trustee is empowered to act on behalf of creditors or stockholders;

(2) a recital of the pertinent facts and circumstances in connection with the employment of such person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or formed or agreed to act;

(3) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the proceeding of any indenture trustee, a showing of the amounts of claims or stock owned by such person, the members of such committee or such indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof; and

(4) a showing of the claims or stock represented by such person or committee and the respective amounts thereof, with an averment that each holder of such claims or stock acquired them at least one year before the filing of the petition or with a showing of the times of acquisition thereof. (July 1, 1898, ch. 541, § 211, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 612. Same; regulation by court.

The judge may examine and disregard any provision of a deposit agreement, proxy, power or warrant of attorney, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, by the terms of which an agent, attorney, indenture trustee, or committee purports to represent any creditor or stockholder, may enforce an accounting thereunder, may restrain the exercise of any power which he finds to be unfair or not consistent with public policy and may limit any claim or stock acquired by such person or committee in contemplation or in the course of the proceeding under this chapter to the actual consideration paid therefor. (July 1, 1898, ch. 541, § 212, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (b).

§ 613. Same; establishment of compliance with laws.

Without limiting the powers of the judge under section 612 of this title, an agent, indenture trustee, or committee, purporting to represent creditors or stockholders, shall not be heard or allowed to intervene in a proceeding under this chapter until such person or persons shall have satisfied the court that they have complied with all applicable laws regulating the activities and personnel of such persons. (July 1, 1898, ch. 541, § 213, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER X.—PROVISIONS OF PLAN

§ 616. Provisions of plan.

A plan of reorganization under this chapter—

(1) shall include in respect to creditors generally or some class of them, secured or unsecured, and may include in respect to stockholders generally or some class of them, provisions altering or modifying their rights, either through the issuance of new securities of any character or otherwise;

(2) may deal with all or any part of the property of the debtor;

(3) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge;

(4) may provide for the rejection of any executory contract except contracts in the public authority;

(5) shall specify what claims, if any, are to be paid in cash in full;

(6) shall specify the creditors or stockholders or any class of them not to be affected by the plan and the provisions, if any, with respect to them;

(7) shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either as provided in the plan or in the order confirming the plan, (a) by the transfer or sale, or by the retention by the debtor, of such property subject to such claims; or (b) by a sale of such property free of such claims, at not less than a fair upset price, and the transfer of such claims to the proceeds of such sale; or (c) by appraisal and payment in cash of the value of such claims; or (d) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection;

(8) shall provide for any class of stockholders which is affected by the plan and does not accept the plan by the majority of the stock required under this chapter, adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor dealt with by the plan, either as provided in the plan or in the order confirming the plan, (a) by the sale of such property at not less than a fair upset price; or (b) by appraisal and payment in cash of the value of their stock; or (c) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly

provide such protection: *Provided, however,* That such protection shall not be required if the judge shall determine that the debtor is insolvent;

(9) may include, where any indebtedness is created or extended under the plan for a period of more than five years, provisions for the retirement of such indebtedness by stated or determinable payments out of a sinking fund or otherwise, (a) if secured, within the expected useful life of the security therefor, or (b) if unsecured, or if the expected useful life of the security is not fairly ascertainable, then within a specified reasonable time, not to exceed forty years;

(10) shall provide adequate means for the execution of the plan, which may include: the retention by the debtor of all or any part of its property; the sale or transfer of all or any part of its property to one or more other corporations theretofore organized or thereafter to be organized; the merger or consolidation of the debtor with one or more other corporations; the sale of all or any part of its property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein; the satisfaction or modification of liens; the cancelation or modification of indentures or of other similar instruments; the curing or waiver of defaults; the extension of maturity dates and changes in interest rates and other terms of outstanding securities; the amendment of the charter of the debtor; the issuance of securities of the debtor or such other corporations for cash, for property, in exchange for existing securities, in satisfaction of claims or stock or for other appropriate purposes;

(11) shall include provisions which are equitable, compatible with the interests of creditors and stockholders, and consistent with public policy, with respect to the manner of selection of the persons who are to be directors, officers, or voting trustees, if any, upon the consummation of the plan, and their respective successors;

(12) shall provide for the inclusion in the charter of the debtor, or any corporation organized or to be organized for the purpose of carrying out the plan, of—

(a) provisions prohibiting the debtor or such corporation from issuing non-voting stock, and providing, as to the several classes of securities of the debtor or of such corporation possessing voting power, for the fair and equitable distribution of such power among such classes, including, in the case of any class of stock having a preference over other stock with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; and

(b) (1) provisions which are fair and equitable and in accordance with sound business and accounting practice, with respect to the terms, position, rights, and privileges of the several classes of securities of the debtor or of such corporation, including, without limiting the generality of the foregoing, provisions with respect to the issuance, acquisition, purchase, retirement or redemption of any such securities, and the declaration and payment of dividends thereon; and (3) in the case of a debtor whose indebtedness, liquidated as to amount and not contingent as to liability, is $250,000 or over, provisions with respect to the making, not less than once annually, of periodic reports to security holders which shall include profit and loss statements and balance sheets prepared in accordance with sound business and accounting practice;

(13) may include provisions for the settlement or adjustment of claims belonging to the debtor or to the estate; and shall provide, as to such claims not settled or adjusted in the plan, for their retention and enforcement by the trustee or, if the debtor has been continued in possession, by an examiner appointed for that purpose; and

(14) may include any other appropriate provisions not inconsistent with the provisions of this chapter. (July 1, 1898, ch. 541, § 216, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from clauses (1) and (2) of the first sentence of former section 207 (b).

Paragraph (2) was from part of clause (10) of the first sentence of former section 207 (b).

Paragraph (3) was from clause (3) of the first sentence of former section 207 (b).

Paragraph (4) was from clause (6) of the first sentence of former section 207 (b).

Paragraph (5) was from clause (8) of the first sentence of former section 207 (b).

Paragraph (6) was from clause (7) of the first sentence of former section 207 (b).

Paragraph (7) was from clause (5) of the first sentence of former section 207 (b).

Paragraph (8) was from clause (4) of the first sentence of former section 207 (b).

Paragraph (10) was from clause (9) of the first sentence of former section 207 (b).

Paragraph (14) was from part of clause (10) of the first sentence of former section 207 (b).

SUBCHAPTER XI.—CONFIRMATION AND CONSUMMATION OF PLAN

§ 621. Confirmation by court.

The judge shall confirm a plan if satisfied that—

(1) the provisions of subchapter VII, section 599, and subchapter X of this chapter have been complied with;

(2) the plan is fair and equitable, and feasible;

(3) the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by this title;

(4) all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge; and

(5) the identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, upon the consummation of the plan, have been fully disclosed, and that the

appointment of such persons to such offices, or their continuance therein, is equitable, compatible with the interests of the creditors and stockholders and consistent with public policy. (July 1, 1898, ch. 541, § 221, as added June 22, 1938, ch. 575, § 1, 52 Stat. 897.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from clauses (2), (3), and (4) of the first sentence of former section 207 (f).

Paragraph (2) was from clause (1) of the first sentence of former section 207 (f).

Paragraph (3) was from clause (6) of the first sentence of former section 207 (f).

Paragraph (4) was from clause (5) of the first sentence of former section 207 (f).

§ 622. Alteration or modification of plan.

A plan may be altered or modified, with the approval of the judge, after its submission for acceptance and before or after its confirmation if, in the opinion of the judge, the alteration or modification does not materially and adversely affect the interests of creditors or stockholders. If the judge finds that the proposed alteration or modification, filed with his approval, does materially and adversely affect the interests of creditors or stockholders, he shall fix a hearing for the consideration, and a subsequent time for the acceptance or rejection, of such alteration or modification. The requirements in regard to notice of hearing, to submission to the Securities and Exchange Commission, to acceptance, to filing and hearing of objections to confirmation and to the confirmation, as prescribed in subchapter VII of this chapter in regard to the plan proposed to be altered or modified, shall be complied with. (July 1, 1898, ch. 541, § 222, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of the second sentence of former section 207 (f).

§ 623. Same; acceptance by creditors and stockholders.

Any creditor or stockholder who has previously accepted the plan proposed to be altered or modified and who does not file a written rejection of the proposed alteration or modification within the time fixed by the judge, shall be deemed to have accepted the alteration or modification and the plan so altered or modified unless the previous acceptance provides otherwise. (July 1, 1898, ch. 541, § 223, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title

SIMILAR PROVISIONS

This section was from part of the second sentence of former section 207 (f).

§ 624. Effect of confirmation.

Upon confirmation of a plan—

(1) the plan and its provisions shall be binding upon the debtor, upon every other corporation issuing securities or acquiring property under the plan, and upon all creditors and stockholders, whether or not such creditors and stockholders are affected by the plan or have accepted it or have filed proofs of their claims or interests and whether or not their claims or interests have been scheduled or allowed or are allowable;

(2) the debtor and every other corporation organized or to be organized for the purpose of carrying out the plan shall comply with the provisions of the plan and with all orders of the court relative thereto and shall take all action necessary to carry out the plan, including, in the case of a public-utility corporation, the procuring of authorization, approval, or consent of each commission having regulatory jurisdiction over the debtor or such other corporation;

(3) if the judge shall so direct, there shall be deposited and distributed, in such manner as the judge may direct, the moneys for all payments which by the provisions of the plan or under this chapter are required to be made in cash; and

(4) distribution shall be made, in accordance with the provisions of the plan, to creditors and stockholders (a) proofs of whose claims or stock have been filed prior to the date fixed by the judge and are allowed, or (b) if not so filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession as fixed claims or stock, liquidated in amount and not disputed. (July 1, 1898, ch. 541, § 224, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from former section 207 (g).

Paragraph (2) was from part of former section 207 (f).

§ 625. Objections to distribution.

Where the claims or stock specified in paragraph (4), clause (b), of section 624 of this title are objected to by any party in interest, the objection shall be heard and summarily determined by the court. (July 1, 1898, ch. 541, § 225, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 626. Property to be free of claims; exceptions.

The property dealt with by the plan, when transferred by the trustee to the debtor or other corporation or corporations provided for by the plan, or when transferred by the debtor in possession to such other corporation or corporations, or when retained by the debtor in possession, as the case may be, shall be free and clear of all claims and interests of the debtor, creditors, and stockholders, except such claims and interests as may otherwise be provided for in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of such property. (July 1, 1898, ch. 541, § 226, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of the first sentence of former section 207 (h).

§ 627. Execution of instruments, satisfaction of liens, etc.

The court may direct the debtor, its trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of property dealt with by a plan which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the plan. (July 1, 1898, ch. 541, § 227, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of the first sentence of former section 207 (h).

§ 628. Final decree on consummation of plan.

Upon the consummation of the plan, the judge shall enter a final decree—

(1) discharging the debtor from all its debts and liabilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

(2) discharging the trustee, if any;

(3) making such provisions by way of injunction or otherwise as may be equitable; and

(4) closing the estate. (July 1, 1898, ch. 541, § 228, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the second and third sentences of former section 207 (h).

SUBCHAPTER XII.—DISMISSALS AND ADJUDICATIONS

§ 636. Failure to effectuate plan or consummation.

If no plan is proposed within the time fixed or extended by the judge, or if no plan proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

(1) where the petition was filed under section 527 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition was filed under section 528 of this title, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders. (July 1, 1898, ch. 541, § 236, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Somewhat similar provisions were contained in former section 207 (c) (8) and (k).

§ 637. Dismissal of original petition; discharge of trustee and closing of estate.

Upon the dismissal of a proceeding under this chapter, where the petition was filed under section 528 of this title, the judge shall enter a final decree discharging the trustee, if any, and closing the estate, except as otherwise provided by section 659 of this title. (July 1, 1898, ch. 541, § 237, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 207 (c) (8).

§ 638. Effect of order directing proceeding with bankruptcy.

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) where the petition was filed under section 527 of this title, the bankruptcy proceeding shall be deemed reinstated and shall thereafter be conducted, so far as possible, as if the petition under this chapter had not been filed; or where the petition was filed under section 528 of this title, the proceeding shall thereafter be conducted so far as possible, in the same manner and with like effect as if an involuntary petition for adjudication had been filed at the time when the petition under this chapter was filed, and a decree of adjudication had been entered at the time when the petition under this chapter was approved;

(2) a trustee shall be appointed pursuant to section 72 of this title and shall supersede any trustee previously appointed; and

(3) only such claims as are provable under section 103 of this title shall be allowed, and claims not already filed may be filed prior to the expiration of three months after the first date set for the first meeting of creditors as provided in section 91 of this title, or, if such date has been previously set, then prior to the expiration of three months after the mailing of notices to creditors of the entry of the order directing that bankruptcy be proceeded with. (July 1, 1898, ch. 541, § 238, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Somewhat similar provisions were contained in former sections 207 (c) (8) and (k).

SUBCHAPTER XIII.—COMPENSATION AND ALLOWANCES

§ 641. Petitioning creditors; court officers; attorneys therefor.

The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—

(1) by a referee;

(2) by a special master;

(3) by the trustee and other officers, and the attorneys for any of them;

(4) by the attorney for the debtor; and

(5) by the attorney for the petitioning creditors.

Such compensation of referees and trustees shall not be governed by sections 68 and 76 of this title. (July 1, 1898, ch. 541, § 241, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c).

§ 642. Representatives and other parties in interest; attorneys therefor.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with a plan approved by the judge, whether or not accepted by creditors and stockholders or finally confirmed by the judge—

(1) by indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors or stockholders;

(2) by any other parties in interest except the Securities and Exchange Commission; and

(3) by the attorneys or agents for any of the foregoing except the Securities and Exchange Commission. (July 1, 1898, ch. 541, § 242, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c).

§ 643. Creditors and stockholders; attorneys therefor.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred by creditors and stockholders, and the attorneys for any of them, in connection with the submission by them of suggestions for a plan or of proposals in the form of plans, or in connection with objections by them to the confirmation of a plan, or in connection with the administration of the estate. In fixing any such allowances, the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate, and to the proper costs and expenses incidental thereto. (July 1, 1898, ch. 541, § 243, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c).

§ 644. Petition filed in pending bankruptcy proceeding.

Where a petition is filed under section 527 of this title, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in the pending bankruptcy proceeding—

(1) by a marshal, receiver, or trustee, as provided in subdivision g of section 76 of this title, and the attorneys for any of them;

(2) by the attorney for the petitioning creditors;

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this title to compensation or reimbursement in such bankruptcy proceeding. (July 1, 1898, ch. 541, § 244, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 207 (i).

§ 645. Same; referee in bankruptcy.

Where a petition is filed in a pending bankruptcy proceeding, the judge may allow reasonable compensation for services rendered and the proper costs and expenses incurred in such bankruptcy proceeding by a referee in bankruptcy. In fixing such compensation, the judge shall not be restricted by the provisions of section 68 of this title. (July 1, 1898, ch. 541, § 245, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 207 (i).

§ 646. Dismissal of proceeding or adjudication of bankruptcy.

Upon the dismissal of a proceeding under this chapter, or the entry of an order adjudging the debtor a bankrupt, the judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such proceeding prior to such dismissal or order of adjudication by any persons entitled thereto, as provided in this chapter, and shall make provision for the payment thereof, and for the payment of all proper costs and expenses incurred by officers in such proceedings. (July 1, 1898, ch. 541, § 246, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 207 (1).

§ 647. Hearing of applications.

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate, except that, in the case of allowances for services and reimbursement in a superseded bankruptcy proceeding, notice need be given only to the applicants, the debtor, the trustee, and the unsecured creditors, and may be given to such other classes of creditors or other persons as the judge may designate. In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that bankruptcy be proceeded with, notice of the hearing to consider allowances need not be given to stockholders. (July 1, 1898, ch. 541, § 247, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 207 (c) (7).

§ 648. Dismissal of proceeding and reinstatement of bankruptcy; charging of allowances in bankruptcy.

In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the judge, in the course of the proceeding under this chapter, to the referee, marshal, receiver, or trustee in the bankruptcy proceeding for services rendered by them in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceeding, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this title fixing their compensation in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 248, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 649. Statement of claims or stock acquired or transferred after commencement of proceeding.

Any persons seeking compensation for services rendered or reimbursement for costs and expenses incurred in a proceeding under this chapter shall file with the court a statement under oath showing the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the commencement of such proceeding. No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred. (July 1, 1898, ch. 541, § 249, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 650. Appeals.

Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this title, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers. (July 1, 1898, ch. 541, § 250, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c).

SUBCHAPTER XIV.—PRIOR PROCEEDINGS

§ 656. Right to petition for reorganization during pendency of prior proceedings.

A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any State in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made. (July 1, 1898, ch. 541, § 256, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 657. Trustee or debtor in possession vested with rights of prior fiduciary.

The trustee appointed under this chapter, upon his qualification, or if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage. (July 1, 1898, ch. 541, § 257, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of the first sentence of former section 207 (1).

§ 658. Protection of obligations of prior fiduciary; payment of costs and expenses.

The judge shall make such provision as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable costs and expenses incurred therein as may be allowed by the judge. (July 1, 1898, ch. 541, § 258, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (i).

§ 659. Reinstatement of prior proceeding on dismissal of reorganization; reorganization allowances and obligations.

Upon a dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated, and the judge shall allow the reasonable costs and expenses under this chapter, including the allowances provided for in subchapter XIII of this chapter, and shall make appropriate provision for the retransfer of such property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred in the proceedings under this chapter by the trustee or debtor in possession, and for the payment of the costs and expenses of the proceedings. (July 1, 1898, ch. 541, § 259, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of the second sentence of former section 207 (i).

SUBCHAPTER XV.—GENERAL PROVISIONS

§ 661. Suspension of statutes of limitations, etc.

All statutes of limitation affecting claims and interests provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences, and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed. (July 1, 1898, ch. 541, § 261, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the last sentence of former section 207 (b).

§ 662. Petition as act of bankruptcy if dismissed.

If a proceeding under this chapter shall be dismissed, the filing of the petition shall not constitute an act of bankruptcy by the debtor. (July 1, 1898, ch. 541, § 262, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (a).

§ 663. Inapplicability to National Housing Act insured mortgage.

Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any corporation under a mortgage insured pursuant to the National Housing Act and Acts amendatory thereof and supplementary thereto. (July 1, 1898, ch. 541, § 263, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

REFERENCE IN TEXT

The National Housing Act, to which reference is made in this section, is set out as sections 371, 1131gg, 1422, 1426, 1430a, 1431, 1462, 1463, and 1701 et seq. of Title 12, Banks and Banking; section 206 of Title 18, Criminal Code and Criminal Procedure; section 22 of Title 41, Public Contracts; and section 22 of Title 49, Transportation.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from part of former section 207 (n).

§ 664. Unregistered securities; use of mails and interstate commerce.

(a) The provisions of section 77e of Title 15 shall not apply to—

(1) any security issued by the receiver, trustee, or debtor in possession pursuant to paragraph (2) of section 516 of this title; or

(2) any transaction in any security issued pursuant to a plan in exchange for securities of or claims against the debtor or partly in such exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (a) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the plan, and (b) transactions by a dealer as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the plan.

(b) As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of Title 15. (July 1, 1898, ch. 541, § 264, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

REFERENCE IN TEXT

Definition of "Securities Act of 1933" has been omitted at the end of subsection (b) of this section as unnecessary in view of translations in text to Title 15.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in the last sentence of former section 207 (h).

§ 665. Securities and Exchange Commission; notices, information and assistants.

(a) In addition to the notices elsewhere expressly provided the Securities and Exchange Commission

shall be given notice of all other steps taken in connection with a proceeding under this chapter. Any notice which this chapter requires to be given to the Securities and Exchange Commission shall be deemed to have been sufficiently given if it is given by registered first-class mail, postage prepaid, addressed to the Securities and Exchange Commission at Washington, District of Columbia, or at such other place as the Securities and Exchange Commission shall designate by written notice filed in the proceeding and served upon the parties thereto. The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Securities and Exchange Commission copies of (1) every petition filed under this chapter; (2) the answers thereto, if any; (3) the orders approving or dismissing petitions; (4) the orders appointing trustees or continuing debtors in possession; (5) the orders determining the time within which the claims of creditors may be filed and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and stock; (6) the orders approving any plan or plans, together with copies of such plans; (7) the orders approving alterations or modifications in plans, together with copies of such alterations or modifications; (8) the orders confirming plans, together with copies of such plans; (9) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; (10) the orders adjudging debtors to be solvent or insolvent; (11) the orders directing liquidations of estates or dismissing proceedings; (12) and such other papers filed in the proceedings as the Securities and Exchange Commission may request or which the court may direct be transmitted to it. Copies of the opinions or reports, if any, of the judge, referee, or special master, with respect to the matters enumerated, shall also be transmitted to the Securities and Exchange Commission.

(b) The provisions of section 78d (b) of Title 15 shall be applicable with respect to the power of the Securities and Exchange Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts, and such other officers and employees, as may be necessary for carrying out its functions under this chapter. (July 1, 1898, ch. 541, § 265, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 666. Secretary of Treasury; notices and information to.

In addition to the notices elsewhere expressly provided, the clerk and, in the case of a reference, the referee, after such reference, shall forthwith transmit to the Secretary of the Treasury copies of all petitions, answers, orders, and applications, as more specifically enumerated in section 665 of this title, and copies of such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct be transmitted to him. Copies of the opinions or reports, if any, of the judge, referee, or special master, with respect to the matters so enumerated, shall also be transmitted to the Secretary of the Treasury. Any order fixing the time for confirming a plan which affects claims or stock of the United States shall include a notice to the Secretary of the Treasury of not less than thirty days. (July 1, 1898, ch. 541, § 266, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 667. Taxes; exemption from stamp taxes.

The issuance, transfer, or exchange of securities, or the making or delivery of instruments of transfer under any plan confirmed under this chapter, shall be exempt from any stamp taxes now or hereafter imposed under the laws of the United States or of any State. (July 1, 1898, ch. 541, § 267, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the last sentence of former section 207 (f).

§ 668. Same; income or profit from modification of indebtedness.

Except as provided in section 670 of this title, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in a plan under this chapter, or by a corporation organized or made use of for effectuating a plan under this chapter by reason of a modification in or cancelation in whole or in part of any of the indebtedness of the debtor in a proceeding under this chapter. (July 1, 1898, ch. 541, § 268, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to plans confirmed under former section 207, see section 676 of this title.

§ 669. Same; plan to avoid taxes; objection to confirmation.

Where it appears that a plan has for one of its principal purposes the avoidance of taxes, objection to its confirmation may be made on that ground by the Secretary of the Treasury, or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the plan, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the plan. (July 1, 1898, ch. 541, § 269, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to plans confirmed under former section 207, see section 676 of this title.

§ 670. Same; income tax property basis adjustment.

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the plan. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section. (July 1, 1898, ch. 541, § 270, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904, and amended July 1, 1940, ch. 500, § 1, 54 Stat. 709.)

EFFECTIVE DATE

Act July 1, 1940, cited to text, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to plans confirmed under former section 207, see section 676 of this title.

§ 671. Same; assessment and payment or acceptance of plan by taxing agency.

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter and have not been assessed prior to the date of the confirmation of a plan under this chapter, and all taxes which may become owing to the United States or any State from a receiver or trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from and shall be paid by the debtor or the corporation organized or made use of for effectuating a plan under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any plan dealing with the assumption, settlement, or payment of any such tax. (July 1, 1898, ch. 541, § 271, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 672. Labor and company unions; right to organize or join.

The right of employees or of persons seeking employment on the property of a debtor under the jurisdiction of the court to join a labor organization of their choice, or to refuse to join or remain members of a company union, shall be free from interference, restraint, or coercion by the court, a debtor, or trustee. It shall be the duty of a debtor or trustee to report to the judge any agreement restricting or interfering with such right, and the judge shall thereupon enter an appropriate order for the termination of such agreement and for notice to the employees that the same is no longer binding upon them. No funds of the estate shall be used by a debtor or a trustee for the purpose of maintaining company unions. (July 1, 1898, ch. 541, § 272, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from subsections (*l*) and (m) of former section 207.

CROSS REFERENCE

National Labor Relations Act to prevail over paragraphs (*l*) and (m) of former section 207 of this title, from which this section was derived, see section 164 of Title 29, Labor.

SUBCHAPTER XVI.—WHEN CHAPTER TAKES EFFECT

§ 676. Proceedings to which chapter applies.

(a) This chapter shall apply to debtors by whom or against whom petitions are filed on and after the effective date of this amendatory Act and to the creditors and stockholders thereof, whether their rights, claims, or interests of any nature whatsoever have been acquired or created before or after such date;

(b) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on such date, and a petition may be filed under this chapter notwithstanding the pendency on such date of a proceeding in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment application has been made in a court of the United States or of any State;

(c) the provisions of sections 206 and 207 of chapter 8, as amended, of this title, shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act, except that—

(1) if the petition in such proceedings was approved within three months prior to the effective date of this amendatory Act, the provisions of this chapter shall apply in their entirety to such proceedings; and

(2) if the petition in such proceedings was approved more than three months before the effective date of this amendatory Act, the provisions of this chapter shall apply to such proceedings to the extent that the judge shall deem their application practicable; and

(3) sections 668 and 670 of this title shall apply to any plan confirmed under section 207 before the effective date of this amendatory Act and to any plan which may be confirmed under section 207 on and after such effective date, except that the exemp-

tion provided by section 668 of this title may be disallowed if it shall be made to appear that any such plan had for one of its principal purposes the avoidance of income taxes, and except further that where such plan has not been confirmed on and after such effective date, section 669 of this title shall apply where practicable and expedient. (July 1, 1898, ch. 541, § 276, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

CHANDLER ACT, EFFECTIVE DATE; CONSTRUCTION

Section 7 of act June 22, 1938, cited to text, provided as follows: "This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

Construction and operation of said act June 22, 1938, see note under section 1 of this title.

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CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 702. Application of other provisions.

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent with or in conflict with the provisions of this chapter, apply in proceedings under this chapter. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing

of an original petition under section 722 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 721 or 722 of this title except where an adjudication had previously been entered. (July 1, 1898, ch. 541, § 302, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER II.—DEFINITIONS

§ 706. In general.

For the purposes of this chapter, unless inconsistent with the context—

(1) "arrangement" shall mean any plan of a debtor for the settlement, satisfaction, or extension of the time of payment of his unsecured debts, upon any terms;

(2) "consideration" shall include evidences of indebtedness, either secured or unsecured, stock and certificates of beneficial interest therein, and certificates of beneficial interest in property;

(3) "debtor" shall mean a person who could become a bankrupt under section 22 of this title and who files a petition under this chapter;

(4) "executory contracts" shall include unexpired leases of real property; and

(5) "petition" shall mean a petition filed under this chapter by a debtor proposing an arrangement. (July 1, 1898, ch. 541, § 306, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (3) was from fifth sentence of former section 202 (a).

§ 707. Creditors; debts; claims.

Unless inconsistent with the context and for the purposes of an arrangement providing for an extension of time for payment of debts in full and applicable exclusively to the debts to be extended—

(1) "creditors" shall include the holders of all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 103 of this title and whether liquidated or unliquidated, fixed or contingent; and

(2) "debts" or "claims" shall include all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 103 of this title and whether liquidated or unliquidated, fixed or contingent. (July 1, 1898, ch. 541, § 307, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from sixth sentence of former section 202 (a).

Paragraph (2) was from second sentence of former section 202 (a).

§ 708. Creditors affected by arrangement; determination.

A creditor shall be deemed to be "affected" by an arrangement only if his interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor is so affected. (July 1, 1898, ch. 541, § 308, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CHANDLER ACT

Effective date and construction of act June 22, 1938 cited to text, see note under section 1 of this title.

SUBCHAPTER III.—JURISDICTION, POWERS, AND DUTIES OF THE COURT

§ 711. Exclusive jurisdiction of debtor and property.

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located. (July 1, 1898, ch. 541, § 311, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (m).

§ 712. Jurisdiction, powers, and duties.

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed; or

(2) where a petition is filed under section 722 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 312, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from second sentence of former section 202 (m).

§ 713. Same; administration of estate.

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) upon such notice as the court may prescribe and upon cause shown, authorize the receiver or trustee, or the debtor in possession, to lease or sell any property of the debtor, whether real or personal,

upon such terms and conditions as the court may approve;

(3) whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time. (July 1, 1898, ch. 541, § 313, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (3) was from last sentence of former section 202 (d).

§ 714. Stay of actions.

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor. (July 1, 1898, ch. 541, § 314, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202 (n).

§ 715. Notices.

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter. (July 1, 1898, ch. 541, § 315, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 716. Appellate jurisdiction.

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 316, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from second sentence of former section 202 (m).

SUBCHAPTER IV.—PETITION AND STAY

§ 721. Filing petition; pending bankruptcy proceeding.

A debtor may file a petition under this chapter in a pending bankruptcy proceeding either before or after his adjudication. (July 1, 1898, ch. 541, § 321, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 30 (a).

§ 722. Same; original petition.

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication. (July 1, 1898, ch. 541, § 322, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (a).

§ 723. Contents of petition.

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature, and shall set forth the provisions of the arrangement proposed by him. (July 1, 1898, ch. 541, § 323, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (a).

§ 724. Statements and fees accompanying petition.

The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor;

(2) the schedules and statement of affairs, if not previously filed; and

(3) payment to the clerk of the fees, if not already paid, required by this title. (July 1, 1898, ch. 541, § 324, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (2) was from first sentence of former section 202 (a).

§ 725. Petition in pending bankruptcy proceedings as stay.

A petition filed under section 721 of this title shall not act as a stay of adjudication or of the administration of the estate, but the court may, upon application of the debtor and upon notice to all parties in interest, including the creditors' committee and the receiver or trustee, if any such has been appointed, grant a stay of adjudication or of the administration of the estate upon such terms as may be proper for the protection of the estate and for indemnity against loss thereto or diminution thereof. (July 1, 1898, ch. 541, § 325, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from fourth sentence of former section 202 (a) and second sentence of former section 30 (a).

§ 726. Bond of debtor in original petition.

Where a petition is filed under section 722 of this title, the court may, upon hearing and after notice to the debtor and to such other persons as the court may direct, order the debtor to file a bond or undertaking, with such sureties as may be approved by the court and in such amount as the court may fix, to indemnify the estate against subsequent loss thereto or diminution thereof until, in the event of the entry of an order of adjudication under this chapter, the entry of such order. (July 1, 1898, ch. 541, § 326, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from fourth sentence of former section 202 (a) and second sentence of former section 30 (a).

§ 727. Same; failure to file bond.

Upon failure of the debtor to comply with such order for indemnity, as prescribed in section 726 of this title, the court may, after hearing upon notice to the debtor, the creditors' committee, if any has been appointed, and to such other persons as the court may direct, either adjudge the debtor a bankrupt and direct that bankruptcy be proceeded with pursuant to the provisions of this title or dismiss the proceedings under this chapter, as in the opinion of the court may be in the interest of the creditors. (July 1, 1898, ch. 541, § 327, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (*l*).

SUBCHAPTER V.—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

§ 731. Reference to referee.

The judge may refer the proceeding to a referee. (July 1, 1898, ch. 541, § 331, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202, (c).

§ 732. Appointment of receiver or continuance of trustee in possession.

The court may, upon the application of any party in interest, appoint, if necessary, a receiver of the property of the debtor, or, if a trustee in bankruptcy has previously been appointed, shall continue such trustee in possession. (July 1, 1898, ch. 541, § 332, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202 (b).

§ 733. Appointment of appraisers.

The court may, upon the application of the receiver, trustee, or any party in interest, appoint, if not previously appointed, one or more appraisers who shall prepare and file under oath an inventory and appraisal of the property of the debtor, and may prescribe how such inventory and appraisal shall be made. (July 1, 1898, ch. 541, § 333, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 734. Meeting of creditors; time; notice.

The court shall promptly call a meeting of creditors, upon at least ten days' notice by mail to the debtor, the creditors, and other parties in interest. (July 1, 1898, ch. 541, § 334, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (c) and second sentence of former section 30 (a).

§ 735. Same; contents of notice and accompanying information.

The notice of such meeting of creditors shall be accompanied by a copy of the proposed arrangement, a summary of the liabilities as shown by the schedules and a summary of the appraisal, if one has been made, or, if not made, a summary of the assets as shown by the schedules. Such notice may also name the time for the filing of the application to confirm the arrangement and the time for the hearing of the confirmation and of such objections as may be made to the confirmation. (July 1, 1898, ch. 541, § 335, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (c).

§ 736. Same; conduct and business generally.

At such meeting, or at any adjournment thereof, the judge or referee—

(1) shall preside;

(2) may receive proofs of claim and allow or disallow them;

(3) shall examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding; and

(4) shall receive and determine the written acceptances of creditors on the proposed arrangement, which acceptances may be obtained by the debtor before or after the filing of a petition under this

chapter. (July 1, 1898, ch. 541, § 336, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from second sentence of former section 30 (a).

Paragraph (3) was from first sentence of former section 202 (d) and second sentence of former section 30 (a).

§ 737. Same; conduct and business after acceptance of arrangement.

At such meeting, or at any adjournment thereof, the judge or referee shall, after the acceptance of the arrangement—

(1) appoint the receiver or trustee, if any, or otherwise appoint some other person, to receive and distribute, subject to the control of the court, the moneys and consideration, if any, to be deposited by the debtor; require such person to give bond with surety to be approved by the court in such amount as the court shall fix; and fix the amount or rate of such person's compensation, not in excess of the compensation allowable to a receiver under this title;

(2) fix a time within which the debtor shall deposit, in such place as shall be designated by and subject to the order of the court, the consideration, if any, to be distributed to the creditors, the money necessary to pay all debts which have priority, unless such priority creditors shall have waived their claims or such deposit, or consented in writing to any provision of the arrangement for otherwise dealing with such claims, and the money necessary to pay the costs and expenses of the proceedings and the actual and necessary expenses incurred in connection with the proceedings and the arrangement by the committee of creditors and the attorneys or agents of such committee, in such amount as the court may allow; and

(3) fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof or any objections to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it. (July 1, 1898, ch. 541, § 337, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from former section 202 (b).

Paragraph (2) was from second clause of first sentence of former section 202 (e).

Paragraph (3) was from former section 202 (f) and former section 30 (c).

§ 738. Same; appointment of creditors committee; nomination of trustee.

At such meeting the creditors may appoint a committee, if none has previously been appointed under this title, and, if a trustee has not previously been appointed, may nominate a trustee who shall thereafter be appointed by the court in case it shall become necessary to administer the estate in bankruptcy as provided under this chapter. (July 1, 1898, ch. 541, § 338, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from second clause of first sentence of former section 202 (d).

SUBCHAPTER VI.—TITLE, RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

§ 741. In general.

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and, subject to the approval of the court, their fees, and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 722 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 341, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from last sentence of former section 202 (m).

§ 742. Continuance of debtor in possession.

Where no receiver or trustee is appointed, the debtor shall continue in possession of his propetry[1] and shall have all the title and exercise all the powers of a trustee appointed under this title, subject, however, at all times to the control of the court and to such limitations, restrictions, terms, and conditions as the court may from time to time prescribe. (July 1, 1898, ch. 541, § 342, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

[1] So in original.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 743. Operation of business and management of property; reports.

The receiver or trustee, or the debtor in possession, shall have the power, upon authorization by and subject to the control of the court, to operate the business and manage the property of the debtor during such period, limited or indefinite, as the court may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate. (July 1, 1898, ch. 541, § 343, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202 (b).

§ 741. Issuance of certificates of indebtedness.

During the pendency of a proceeding for an arrangement, or after the confirmation of the arrangement where the court has retained jurisdiction, the court may upon cause shown authorize the receiver or trustee, or the debtor in possession, to issue certificates of indebtedness for cash, property, or other consideration approved by the court, upon such terms and conditions and with such security and priority in payment over existing obligations as in the particular case may be equitable. (July 1, 1898, ch. 541, § 344, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER VII.—CREDITORS AND CLAIMS

§ 751. Classification of creditors.

For the purposes of the arrangement and its acceptance, the court may fix the division of creditors into classes and, in the event of controversy, the court shall after hearing upon notice summarily determine such controversy. (July 1, 1898, ch. 541, § 351, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 752. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 722 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 352, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from last sentence of former section 202 (m).

§ 753. Rejection of executory contract or unexpired lease; assignment of future rent claim.

In case an executory contract shall be rejected pursuant to the provisions of an arrangement or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or a receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the arrangement, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided*, That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof. (July 1, 1898, ch. 541, § 353, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from the last two sentences of former section 202 (a).

§ 754. Expiration of time for filing claims in pending bankruptcy.

If the time for filing claims in a pending bankruptcy proceeding has expired prior to the filing of a petition under this chapter, claims provable under section 103 of this title, and not filed within the time prescribed by subdivision n of section 93 of this title, shall not be allowed in the proceedings or participate in an arrangement under this chapter, and shall not be allowed in the bankruptcy proceeding when reinstated as provided in this chapter. (July 1, 1898, ch. 541, § 354, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 755. Allowance of claims upon order to proceed with bankruptcy.

Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only such claims as are provable under section 103 of this title shall be allowed and, except as provided in section 754 of this title, claims not already filed may be filed within three months after the first date set for the first meeting of creditors, held pursuant to section 91 of this title, or, if such date has previously been set, then within three months after the mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with. (July 1, 1898, ch. 541, § 355, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from proviso to first sentence of former section 202 (j).

SUBCHAPTER VIII.—PROVISIONS OF ARRANGEMENT

§ 756. Modification of rights of unsecured creditors.

An arrangement within the meaning of this chapter shall include provisions modifying or altering the rights of unsecured creditors generally or of some class of them, upon any terms or for any consideration. (July 1, 1898, ch. 541, § 356, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first and second sentences of former section 202 (h).

§ 757. Permissive provisions.

An arrangement within the meaning of this chapter may include—

(1) provisions for treatment of unsecured debts on a parity one with the other, or for the division of such debts into classes and the treatment thereof in different ways or upon different terms;

(2) provisions for the rejection of any executory contract;

(3) provisions for specific undertakings of the debtor during any period of extension provided for by the arrangement, including provisions for payments on account;

(4) provisions for the termination, under specified conditions, of any period of extension provided by the arrangement;

(5) provisions for continuation of the debtor's business with or without supervision or control by a receiver or by a committee of creditors or otherwise;

(6) provisions for payment of debts incurred after the filing of the petition and during the pendency of the arrangement, in priority over the debts affected by such arrangement;

(7) provisions for retention of jurisdiction by the court until provisions of the arrangement, after its confirmation, have been performed; and

(8) any other appropriate provisions not inconsistent with this chapter. (July 1, 1898, ch. 541, § 357, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraphs (3) and (5) were from second sentence of former section 202 (h).

SUBCHAPTER IX.—CONFIRMATION OF ARRANGEMENT

§ 761. Unanimously accepted arrangement; confirmation upon deposit by debtor.

An arrangement which at the meeting of creditors, as provided in section 736 of this title, has been accepted in writing by all creditors affected thereby, whether or not their claims have been proved, shall be confirmed by the court when the debtor shall have made the deposit required under this chapter and under the arrangement, and if the court is satisfied that the arrangement and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by this title. (July 1, 1898, ch. 541, § 361, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section in part was from former section 202 (g) (4) and former section 30 (d) (3).

§ 762. Majority accepted arrangement; application for confirmation.

If an arrangement has not been so accepted, an application for the confirmation of the arrangement may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing by a majority in number of all creditors or, if the creditors are divided into classes, by a majority in number of all creditors of each class, affected by the arrangement, whose claims have been proved and allowed before the conclusion of the meeting, which number shall represent a majority in amount of such claims generally or of each class of claims, as the case may be; and

(2) the debtor has made the deposit required under this chapter and under the arrangement. (July 1, 1898, ch. 541, § 362, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

CHANDLER ACT

Effective date and construction of act June 22, 1938 cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (e).

§ 763. Alterations or modifications prior to confirmation.

Alterations or modifications of an arrangement may be proposed in writing by a debtor, with leave of court, at any time before the arrangement is confirmed. (July 1, 1898, ch. 541, § 363, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 764. Same; acceptance.

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the arrangement and who fails to file with the court, within such time as shall be fixed in the order, his rejection of the altered or modified arrangement, shall be deemed to have accepted the alteration or modification and the arrangement so altered or modified, unless the previous acceptance provides otherwise. (July 1, 1898, ch. 541, § 364, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 765. Same; notice.

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the debtor, the creditors, and other parties in interest. (July 1, 1898, ch. 541, § 365, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 766. Requisites for confirmation.

The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors;

(3) it is fair and equitable and feasible;

(4) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and

(5) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title. (July 1, 1898, ch. 541, § 366, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202 (g).

§ 767. Effect of confirmation.

Upon confirmation of an arrangement—

(1) the arrangement and its provisions shall be binding upon the debtor, upon any person issuing securities or acquiring property under the arrangement and upon all creditors of the debtor, whether or not they are affected by the arrangement or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed and are allowable;

(2) the money deposited for priority debts and for the costs and expenses shall be disbursed to the persons entitled thereto;

(3) the consideration deposited, if any, shall be distributed and the rights provided by the arrangement shall inure to the creditors affected by the arrangement whose claims are not barred by the provisions of section 754 of this title, and (a) have been proved prior to the date of confirmation and are allowed, or (b) whether or not proved, have been scheduled by the debtor as fixed liabilities, liquidated in amount, and are not disputed; and

(4) except as otherwise provided in sections 769 and 770 of this title, the case shall be dismissed. (July 1, 1898, ch. 541, § 367, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from first sentence of former section 202 (i).

Paragraphs (3) and (4) were from first sentence of former section 202 (j) and first sentence of former section 30 (e).

§ 768. Retention of jurisdiction; provision in arrangement.

The court shall retain jurisdiction, if so provided in the arrangement. (July 1, 1898, ch. 541, § 368, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from last sentence of former section 202 (j).

§ 769. Same; until final allowance or disallowance of debts.

The court shall in any event retain jurisdiction until the final allowance or disallowance of all debts, affected by the arrangement and not barred by the provisions of section 752 of this title, which—

(1) have been proved, but not allowed or disallowed, prior to the date of confirmation; or

(2) are disputed or unliquidated, have been scheduled by the debtor, and are proved within such time as the court may direct; or

(3) arise from the rejection of executory contracts by the debtor and are proved within such time as the court may direct. (July 1, 1898, ch. 541, § 369, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 770. Allowance of debts; distribution of deposited consideration.

Upon the allowance of any debts specified in paragraphs (1), (2), and (3) of section 769 of this title, the consideration, if any, deposited for them shall be distributed and the rights provided by the arrangement shall inure to the creditors to whom such debts are owing. (July 1, 1898, ch. 541, § 370, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

CHANDLER ACT

Effective date and construction of act June 22, 1938 cited to text, see note under section 1 of this title.

§ 771. Discharge of unsecured debts upon confirmation.

The confirmation of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, including the claims specified in section 754 of this title, but excluding such debts as, under section 35 of this title, are not dischargeable. (July 1, 1898, ch. 541, § 371, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 772. Final decree upon consummation of arrangement.

Upon the consummation of a proceeding under this chapter after confirmation of an arrangement, the court shall enter a final decree discharging the receiver or trustee, if any; closing the estate; and making such provisions, by way of injunction or otherwise, as may be equitable. (July 1, 1898, ch. 541, § 372, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 776. Abandonment or rejection of arrangement before confirmation.

If an arrangement is withdrawn or abandoned prior to its acceptance, or is not accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall—

(1) where the petition was filed under section 721 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this Act; or

(2) where the petition was filed under section 722 of this title, enter an order, upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors. (July 1, 1898, ch. 541, § 376, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first and second sentences of former section 202 (*l*) and former section 30 (e).

§ 777. Termination or default after confirmation.

Where the court has retained jurisdiction after the confirmation of an arrangement and the debtor defaults in any of the terms thereof or the arrangement terminates by reason of the happening of a condition specified in the arrangement, the court upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct shall—

(1) where the petition has been filed under section 721 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt, if not previously so adjudged, and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 722 of this title, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors. (July 1, 1898, ch. 541, § 377, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first and second sentences of former section 202 (*l*) and former section 30 (e).

§ 778. Procedure upon order directing that bankruptcy be proceeded with.

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 721 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed; and

(2) in the case of a petition filed under section 722 of this title, the proceeding shall be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered on the day when the petition under this chapter was filed; and the trustee nominated by creditors under this chapter shall be appointed by the court, or, if not so nominated or if the trustee so nominated falls to qualify within five days after notice to him of the entry of such order, a trustee shall be appointed as provided in section 72 of this title. (July 1, 1898, ch. 541, § 378, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (2) was from first sentence of former section 202 (*l*) and second sentence of former section 202 (m).

§ 779. Adjudication against wage earner or farmer; consent.

No adjudication shall be entered under this chapter against a wage earner or farmer unless such person shall in writing file with the court consent to the adjudication. (July 1, 1898, ch. 541, § 379, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from last sentence of former section 202 (*l*), and former section 202 (p).

§ 780. Final decree upon dismissal of original petition.

Upon the dismissal of a proceeding originated by a petition filed under section 722 of this title, the court shall enter a final decree discharging the receiver, if any, and closing the estate. (July 1, 1898, ch. 541, § 380, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER XI.—ARRANGEMENTS, WHEN SET ASIDE OR MODIFIED

§ 786. Fraud in procuring arrangement.

If, upon the application of parties in interest filed at any time within six months after an arrangement has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such arrangement and that knowledge of such fraud has come to the petitioners since the confirmation of such arrangement—

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon, (a) where the petition was filed under section 721 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt, if he has not already been so adjudged, and direct that the bankruptcy proceeding be proceeded with, or (b) where the petition was filed under section 722 of this title, reinstate the proceeding, adjudge the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the arrangement for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under this chapter and modify or alter the arrangement for the purpose of correcting the fraud, but may not materially modify or alter the arrangement adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person, who, for value, subsequent to the confirmation, acquired rights in reliance upon it. (July 1, 1898, ch. 541, § 386, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202 (k) and former section 31.

SUBCHAPTER XII.—GENERAL PROVISIONS

§ 791. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed. (July 1, 1898, ch. 541, § 391, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 792. Notices; manner of giving.

Unless otherwise directed by the court, all notices required by this chapter may be given by mail to the parties entitled thereto to their addresses ascertained in the manner prescribed for other notices in section 94 of this title. (July 1, 1898, ch. 541, § 392, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 793. Unregistered securities; use of mails and interstate commerce.

(a) The provisions of section 77e of Title 15 shall not apply to—

(1) any security issued by a receiver, trustee, or debtor in possession pursuant to section 744 of this title; or

(2) any transaction in any security issued pursuant to an arrangement in exchange for securities of or claims against the debtor or partly in such exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (a) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the arrangement, and (b) transactions by a dealer as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the arrangement.

(b) As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of Title 15. (July 1, 1898, ch. 541, § 393, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914.)

REFERENCE IN TEXT

Definition of "Securities Act of 1933" has been omitted at the end of subsection (b) of this section as unnecessary in view of translations in text to Title 15.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 794. Secretary of Treasury; notices and information to.

The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Secretary of the Treasury copies of—

(1) all petitions filed under sections 721 and 722 of this title;

(2) all notices given in a proceeding under this chapter;

(3) all orders dismissing proceedings or directing that bankruptcy be proceeded with, discharging debtors, closing estates, and setting aside confirmations;

(4) all orders appointing receivers or continuing debtors in possession;

(5) all orders confirming arrangements, together with copies of such arrangements;

(6) all orders approving alterations or modifications in arrangements, together with copies of such alterations or modifications;

(7) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; and

(8) such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

Any order fixing the time for confirming an arrangement which affects claims of the United States shall include a notice to the Secretary of the Treasury of not less than fifteen days. (July 1, 1898, ch. 541, § 394, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 795. Taxes; income or profit from modification of indebtedness.

Except as provided in section 796 of this title, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor or a corporation organized or made use of for effectuating an arrangement under this chapter by reason of a modification in or cancellation in whole or in part of any such indebtedness in a proceeding under this chapter: *Provided, however,* That if it shall be made to appear that the arrangement had for one of its principal purposes the evasion of any income tax, the exemption provided by this section shall be disallowed. (July 1, 1898, ch. 541, § 395, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to compositions and extensions confirmed under former sections 30 and 202, see section 799 (4) of this title.

§ 796. Same; income tax; property basis adjustment.

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income-tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section. (July 1, 1898, ch. 541, § 396, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915, and amended July 1, 1940, ch. 500, § 2, 54 Stat. 709.)

EFFECTIVE DATE

Act July 1, 1940, cited to text, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to compositions and extensions confirmed under former sections 30 and 202, see section 799 (4) of this title.

§ 797. Same; assessment and payment or acceptance of arrangement by taxing agency.

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter, and have not been assessed prior to the date of the confirmation of an arrangement under this chapter, and all taxes which may become owing to the United States or any State from a receiver or trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from, and shall be paid by the debtor or the corporation organized or made use of for effectuating an arrangement under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any arrangement dealing with the assumption, settlement, or payment of any such tax. (July 1, 1898, ch. 541, § 397, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER XIII.—WHEN CHAPTER TAKES EFFECT

§ 799. Proceedings to which chapter applies.

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on the effective date of this amendatory Act;

(3) the provisions of sections 30, 201, and 202, as amended, of this title, shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act; and

(4) sections 795 and 796 of this title shall apply to compositions and extensions confirmed under sections 30 and 202 before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under sections 30 and 202 on and after such effective date. (July 1, 1898, ch. 541, § 399, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

CHANDLER ACT; EFFECTIVE DATE

Section 7 of act June 22, 1938, cited to text, provided as follows:

"This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

Construction and operation of said act June 22, 1938, see note under section 1 of this title.

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SUBCHAPTER I.—CONSTRUCTION

§ 801. Exclusive application of chapter.

The provisions of this chapter shall apply exclusively to proceedings under this chapter. (July 1, 1898, ch. 541, § 401, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 802. Application of other provisions.

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply to proceedings under this chapter: *Provided, however,* That subdivision n of section 93 shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7, inclusive. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors," and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 822 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 821 or 822 of this title. (July 1, 1898, ch. 541, § 402, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER II.—DEFINITIONS

§ 806. In general.

For the purposes of this chapter, unless inconsistent with the context—

(1) "arrangement" shall mean any plan which has for its primary purpose the alteration or modification of the rights of creditors or of any class of them, holding debts secured by real property or a chattel real of which the debtor is the legal or equitable owner;

(2) "claims" shall include all claims of whatever character, against a debtor or his property, whether or not such claims are provable under section 103 of this title and whether secured or unsecured, liquidated or unliquidated, fixed or contingent;

(3) "consideration" shall include evidences of indebtedness, either secured or unsecured, stock and certificates of beneficial interest therein, and certificates of beneficial interest in property;

(4) "executory contracts" shall include unexpired leases of real property;

(5) "creditors" shall mean the holders of claims;

(6) "debtor" shall mean a person, other than a corporation as defined in this title, who could become a bankrupt under section 22 of this title, who files a petition under this chapter and who is the legal or equitable owner of real property or a chattel real which is security for any debt, but shall not include a person whose only interest in property proposed to be dealt with by the arrangement is a right to redeem such property from a sale had before the filing of such petition;

(7) "debts" shall include all claims;

(8) "indenture trustee" shall mean a trustee under a mortgage, deed of trust, or indenture, pursuant to which there are securities outstanding, other than voting trust certificates, constituting debts against a debtor or debts secured by a lien upon real property or a chattel real of which such debtor is the legal or equitable owner; and

(9) "petition" shall mean a petition filed under this chapter proposing an arrangement by a debtor. (July 1, 1898, ch. 541, § 406, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (5) was from sixth sentence of former section 202 (a).

Paragraph (6) was from fifth sentence of former section 202 (a).

Paragraph (7) was from second sentence of former section 202 (a).

§ 807. Creditors affected by arrangement; determination.

Creditors or any class thereof shall be deemed to be "affected" by an arrangement only if their or its interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor or class is so affected. (July 1, 1898, ch. 541, § 407, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER III.—JURISDICTION, POWERS, AND DUTIES OF THE COURT

§ 811. Exclusive jurisdiction of debtor and property.

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located. (July 1, 1898, ch. 541, § 411, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (m).

§ 812. Jurisdiction, powers, and duties.

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the bankruptcy proceeding at the time the petition under this chapter was filed; and

(2) where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 412, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (m).

§ 813. Same; administration of estate.

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) upon such notice as the court may prescribe and upon cause shown, authorize the trustee or debtor in possession to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the court may approve;

(3) whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time. (July 1, 1898, ch. 541, § 413, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from last sentence of former section 202 (d).

§ 814. Stay of actions.

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits against a debtor and may, upon notice for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon any property of a debtor. (July 1, 1898, ch. 541, § 414, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202 (n).

§ 815. Notices.

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter. (July 1, 1898, ch. 541, § 415, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 816. Appellate jurisdiction.

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 416, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from second sentence of former section 202 (m).

SUBCHAPTER IV.—PETITION AND STAY

§ 821. Filing petition; pending bankruptcy proceeding.

A debtor may file a petition under this chapter in a pending bankruptcy proceeding before his adjudication. (July 1, 1898, ch. 541, § 421, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 30 (a).

§ 822. Same; original petition.

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication. (July 1, 1898, ch. 541, § 422, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (a).

§ 823. Contents of petition.

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature, and shall set forth the terms of the arrangement proposed by him. (July 1, 1898, ch. 541, § 423, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (a).

§ 824. Statements and fees to accompany petition.

The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor;

(2) the schedules and statement of affairs, if not previously filed; and

(3) payment to the clerk of the fees, if not already paid, required to be collected by the clerk under this title. (July 1, 1898, ch. 541, § 424, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (a).

§ 825. Petition in pending bankruptcy proceeding as stay of adjudication or administration.

A petition filed under section 821 of this title shall not act as a stay of adjudication or of the adminis-

tration of the estate, but the court may, upon application of the debtor and upon notice to all parties in interest, including the creditors' committee and the receiver or trustee, if any such has been appointed, grant a stay of adjudication or of the administration of the estate upon such terms as may be proper for the protection of the estate. (July 1, 1898, ch. 541, § 425, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from fourth sentence of former section 202 (a) and second sentence of former section 30 (a).

§ 826. Bond of debtor in original petition.

Where a petition is filed under section 822 of this title, the court may, upon hearing and after notice to the debtor and to such other persons as the court may direct, order the debtor to file a bond or undertaking, with such sureties as may be approved by the court and in such amount as the court may fix, to indemnify the estate against subsequent loss in the event of the entry of an order of adjudication under this chapter. (July 1, 1898, ch. 541, § 426, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from fourth sentence of former section 202 (a) and second sentence of former section 30 (a).

§ 827. Same; failure to give bond.

Upon failure of the debtor to comply with such order for indemnity, as provided in section 826 of this title, the court may, after hearing upon notice to the debtor, the creditors' committee, if any has been appointed, and to such other persons as the court may direct, either adjudge the debtor a bankrupt and direct that bankruptcy be proceeded with pursuant to the provisions of this title or dismiss the proceedings under this chapter, as in the opinion of the court may be in the interest of the creditors. (July 1, 1898, ch. 541, § 427, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section in part was from first sentence of former section 202 (*l*).

§ 828. Petition as stay of actions.

Unless and until otherwise ordered by the court, upon hearing and after notice to the debtor and all other parties in interest, the filing of a petition under this chapter shall operate as a stay of any act or proceeding to enforce any lien upon the real property or chattel real of a debtor. (July 1, 1898, ch. 541, § 428, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER V.—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

§ 831. Reference of proceeding to referee.

The judge may refer the proceeding to a referee. (July 1, 1898, ch. 541, § 431, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202 (o).

§ 832. Appointment of trustee.

The court may, upon the application of any party in interest, appoint a trustee of the property of the debtor. (July 1, 1898, ch. 541, § 432, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 833. Appointment of appraisers.

The court may, upon the application of the trustee or any party in interest, appoint one or more appraisers who shall prepare and file under oath an inventory and appraisal of the property of the debtor, and may prescribe how such inventory and appraisal shall be made. (July 1, 1898, ch. 541, § 433, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 834. Meeting of creditors; time; notice.

The court shall promptly call a meeting of creditors, upon at least ten days' notice by mail to the debtor, the creditors, and other parties in interest. (July 1, 1898, ch. 541, § 434, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section in part was from first sentence of former section 202 (c) and second sentence of former section 30 (a).

§ 835. Same; information accompanying notice; contents of notice.

The notice of such meeting of creditors shall be accompanied by a copy of the proposed arrangement, a summary of the liabilities as shown by the schedules and a summary of the appraisal, if one has been made, or, if not made, a summary of the assets as shown by the schedules. Such notice may also name the time for the filing of the application to confirm the arrangement and the time for the hearing of the confirmation and of such objections as may be made to the confirmation. (July 1, 1898, ch. 541, § 435, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (c).

§ 836. Same; conduct generally.

At such meeting, or at any adjournment thereof, the judge or referee—

(1) shall preside;

(2) may receive proofs of claim and allow or disallow them;

(3) shall examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding; and

(4) shall receive and determine the written acceptances of creditors on a proposed arrangement, which acceptances may be obtained before or after the filing of a petition under this chapter. (July 1, 1898, ch. 541, § 436, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from second sentence of former section 30 (a).

Paragraph (3) was from first sentence of former section 202 (d) and second sentence of former section 30 (a).

§ 837. Same; conduct and business after acceptance of arrangement.

At such meeting, or at any adjournment thereof, the judge or referee shall, after acceptance of the arrangement—

(1) appoint the trustee, if any, or otherwise appoint some other person, to receive and distribute, subject to the control of the court, the moneys and consideration, if any, to be deposited, require such person to give bond with surety to be approved by the court in such amount as the court shall fix and fix the amount or rate of such person's compensation;

(2) fix a time within which there shall be deposited, in such place as shall be designated by and subject to the order of the court, the consideration, if any, to be distributed to creditors, the money necessary to pay the costs, expenses, and compensation allowed by the court, unless and to the extent that such deposit shall be waived by the persons entitled to such costs, expenses, and compensation, and unless and to the extent that the court shall, in its discretion, allow security to be entered or deposited, upon such terms and conditions as the court may prescribe, in lieu of the deposit of such money;

(3) fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof and on any objections to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it. (July 1, 1898, ch. 541, § 437, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from former section 202 (b).

Paragraph (2) was from first sentence of former section 202 (c).

Paragraph (3) was from former section 202 (f) and former section 30 (c).

SUBCHAPTER VI.—TITLE, RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

§ 811. Trustee; title.

A trustee, upon his appointment and qualification, shall be vested with the title of a trustee appointed under section 72 of this title. (July 1, 1898, ch. 541, § 441, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 842. Same; rights, duties, and powers.

Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the rights, be subject to the duties, and exercise the powers of a trustee appointed under section 72 of this title, and, if authorized by the court, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of a debtor. (July 1, 1898, ch. 541, § 442, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 843. Powers, rights, and duties to be same as if bankruptcy adjudged.

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the pending bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 443, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from last sentence of former section 202 (m).

§ 844. Continuance of debtor in possession.

Where no trustee is appointed, the debtor shall continue in possession of his property and shall have all the title and exercise all the powers of a trustee appointed under this chapter, subject, however, at all times to the control of the court and to such limitations, restrictions, terms, and conditions as the court may from time to time prescribe. (July 1, 1898, ch. 541, § 444, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 845. Operation of business and management of property; reports.

The trustee or the debtor in possession shall have the power, upon authorization by and subject to the control of the court, to operate the business and manage the property of the debtor during such period, limited or indefinite, as the court may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate. (July 1, 1898, ch. 541, § 445, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former section 202 (b).

§ 846. Issuance of certificates of indebtedness.

During the pendency of a proceeding for an arrangement, or after the confirmation of the arrangement where the court has retained jurisdiction, the court may upon cause shown authorize the trustee or debtor in possession to issue certificates of indebtedness for cash, property, or other consideration approved by the court, upon such terms and conditions and with such security and priority in payment over existing obligations as in the particular case may be equitable. (July 1, 1898, ch. 541, § 446, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER VII.—CREDITORS AND CLAIMS

§ 851. Filing proofs of claims; manner; time; objections to allowance.

The court shall prescribe the manner in which and fix a time within which the proofs of claim of creditors may be filed and allowed. Objections by any party in interest to the allowance of any such claims shall be heard and summarily determined by the court. (July 1, 1898, ch. 541, § 451, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 852. Classification of creditors.

For the purposes of the arrangement and its acceptance, the court may fix the division of creditors into classes according to the nature of their respective claims, and, in the event of controversy, the court shall after hearing upon notice summarily determine the controversy. (July 1, 1898, ch. 541, § 452, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 853. Same; hearing.

For the purposes of the classification, as provided in section 852 of this title, the court shall, if necessary, upon the application of the trustee, the debtor, any creditor, or an indenture trustee, fix a hearing upon notice to the holders of secured claims, the debtor, the trustee, and such other persons as the court may designate, to determine summarily the value of the security and classify as unsecured the amount in excess of such value. (July 1, 1898, ch. 541, § 453, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 854. Indenture trustee; filing claims.

An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee, who have not filed claims: *Provided, however,* That in computing the majority necessary for the acceptance of the arrangement only the claims filed by the holders thereof, and allowed, shall be included. (July 1, 1898, ch. 541, § 454, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 855. United States as creditor.

If the United States is a secured or unsecured creditor of a debtor, the claim thereof shall be deemed to be affected by an arrangement under this chapter, and the Secretary of the Treasury is hereby authorized to accept or reject an arrangement in respect of the claims of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against the debtor, as a secured or unsecured creditor), no arrangement which does not provide for the payment thereof shall be confirmed by the court, except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided,* That if the Secretary of the Treasury shall fail to accept or reject an arrangement for more than sixty days after receipt of written notice so to do from the court to which the arrangement has been proposed, accompanied by a certified copy of the arrangement, his consent shall be conclusively presumed. (July 1, 1898, ch. 541, § 455, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 856. Creditor may act in person or by agent.

A creditor may act in person, by an attorney-at-law, or by a duly authorized agent or committee and, if he shall act by an agent or committee, the court shall examine and may disregard any provision of a power or warrant of attorney, deposit agreement, trust indenture and committee, or other authorization affecting such creditor, and enforce an accounting thereunder and restrain the exercise of any power which it finds to be unfair or not consistent

with public policy. (July 1, 1898, ch. 541, § 456, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 857. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the pending bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 457, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from last sentence of former section 203 (m).

§ 858. Rejection of executory contract or unexpired lease; assignment of future rent claim rights of injured party.

In case an executory contract shall be rejected pursuant to the provisions of an arrangement or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the arrangement, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided*, That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof. (July 1, 1898, ch. 541, § 458, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section in part was from last two sentences of former section 202 (a).

§ 859. Allowance of claims upon order to proceed with bankruptcy.

Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only such claims as are provable under section 103 of this title shall be allowed, and claims not already filed may be filed within three months after the first date set for the first meeting of creditors, held pursuant to section 91 of this title. (July 1, 1898, ch. 541, § 459, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER VIII.—PROVISIONS OF ARRANGEMENT

§ 861. Contents of arrangement.

An arrangement—

(1) shall include provisions modifying or altering the rights of creditors who hold debts secured by real property or a chattel real of a debtor, generally or of a class of them, either through the issuance of new securities of any character or otherwise;

(2) shall provide for the rights of all other creditors of a debtor who may be affected by the arrangement;

(3) may provide for treatment of unsecured debts on a parity one with the other, or for the division of such debts into classes and the treatment thereof in different ways or upon different terms;

(4) may provide for the rejection of any executory contract;

(5) may provide for the continuation of debtor's business and the management of his property with or without supervision or control by a trustee or by a committee of creditors or otherwise;

(6) may provide for payment of debts incurred after the filing of the petition and during the pendency of the arrangement, in priority over the debts affected by such arrangement;

(7) may deal with all or any part of his property;

(8) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge;

(9) shall specify what debts, if any, are to be paid in cash in full;

(10) shall specify the creditors or any class of them not to be affected by the arrangement and the provisions, if any, with respect to them;

(11) shall provide for any class of creditors which is affected by and does not accept the arrangement by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their debts against the property dealt with by the arrangement and affected by such debts, either, as provided in the arrangement or in the order confirming the arrangement, (a) by the transfer or sale, or by the retention by the debtor, of such property subject to such debts; or (b) by a sale of such property free of such debts, at not less than a fair upset price, and the transfer of such debts to the proceeds of such sale; or (c) by appraisal and payment in cash of the value of such debts; or (d) by such method as will, under and consistent with the

circumstances of the particular case, equitably and fairly provide such protection;

(12) shall provide adequate means for the execution of the arrangement, which may include: the retention by the debtor of all or any part of his property; the sale or transfer of all or any part of his property in trust or to one or more corporations theretofore organized or thereafter to be organized; the sale of all or any part of his property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein; the satisfaction or modification of liens; the cancelation or modification of indentures or of other similar instruments; the curing or waiver of defaults; the extension of maturity dates and changes in interest rates and other terms of outstanding securities; the issuance of trust securities or securities of the debtor or of such corporation or corporations for cash, for property, in exchange for existing securities, in satisfaction of debts, or for other appropriate purposes; and

(13) may include any other appropriate provisions not inconsistent with the provisions of this chapter. (July 1, 1898, ch. 541, § 461, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section in part was from former section 202 (h).

SUBCHAPTER IX.—PROPOSAL, CONFIRMATION, AND CONSUMMATION OF ARRANGEMENT

§ 866. Proposal of approved arrangement.

An arrangement which has been approved by creditors affected thereby, who hold debts against the property dealt with therein, amounting to 25 per centum or more of the debts of some class of such creditors and 10 per centum or more of the debts of all such creditors, may be proposed by any such creditor. (July 1, 1898, ch. 541, § 466, as added June 22, 1938, ch. 575, § 1, 52 Stat. 922.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from second sentence of former section 202 (c).

§ 867. Unanimously accepted arrangement; confirmation upon deposit by debtor.

An arrangement which at the meeting of creditors, as provided in section 836 of this title, has been accepted in writing by all creditors affected thereby, whether or not their claims have been proved, shall be confirmed by the court when there shall have been made the deposit required under this chapter and under the arrangement, and if the court is satisfied that the arrangement and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title. (July 1, 1898, ch. 541, § 467, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from fourth sentence of former section 202 (g) and third clause of former section 30 (d).

§ 868. Majority accepted arrangement; application for confirmation.

If an arrangement has not been so accepted, an application for the confirmation of an arrangement may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing by the creditors of each class, holding two-thirds in amount of the debts of such class affected by the arrangement proved and allowed before the conclusion of the meeting, or before such other time as may be fixed by the court, exclusive of creditors or of any class of them who are not affected by the arrangement or for whom payment or protection has been provided as prescribed in paragraph (11) of section 861 of this title; and

(2) the deposit required under this chapter and under the arrangement has been made. (July 1, 1898, ch. 541, § 468, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first and second sentences of former section 202 (e).

§ 869. Alterations or modifications; proposal.

Alterations or modifications of an arrangement may be proposed in writing, with leave of court, either before or after its confirmation, by a debtor, or by any creditor as provided in section 866 of this title. (July 1, 1898, ch. 541, § 469, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 870. Same; acceptance.

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the arrangement and who fails to file with the court, within such time as shall be fixed in the order, his rejection of the altered or modified arrangement, shall be deemed to have accepted the alteration or modification and the arrangement so altered or modified, unless the previous acceptance provides otherwise. (July 1, 1898, ch. 541, § 470, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 871. Same; notice.

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the debtor, the creditors, and other parties in interest. (July 1, 1898, ch. 541, § 471, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 872. Requisites for confirmation.

The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of creditors;

(3) it is fair and equitable, and feasible;

(4) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt;

(5) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title; and

(6) all payments made or promised by the debtor, by any person issuing securities or acquiring property under the arrangement or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with and incident to the arrangement, have been fully disclosed to the court and are reasonable, or, if to be fixed after confirmation of the arrangement, will be subject to the approval of the court. (July 1, 1898, ch. 541, § 472, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section, except paragraph (6), was from former section 202 (g).

§ 873. Effect of confirmation.

Upon confirmation of an arrangement—

(1) the arrangement and its provisions shall be binding upon the debtor, upon any person issuing securities or acquiring property under the arrangement, and upon all creditors of the debtor, whether or not they are affected by the arrangement or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed and are allowable;

(2) the debtor, and any corporation or trust organized or to be organized for the purpose of carrying out the arrangement, shall comply with the provisions of the arrangement and with all the orders of the court relative thereto and shall take all action necessary to carry out the arrangement;

(3) distribution shall be made, in accordance with the provisions of the arrangement, to the creditors, proofs of whose claims have been filed prior to the date fixed by the court and are allowed, or, if not so filed, whose claims have been scheduled by the debtor as fixed debts, liquidated in amount and not disputed: *Provided, however,* That where such debts are objected to by any party in interest, the objections shall be heard and summarily determined by the court. (July 1, 1898, ch. 541, § 473, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (1) was from first sentence of former section 202 (i).

Paragraph (3) was from former section 202 (j).

§ 874. Property to be free of debts affected by arrangement.

Upon confirmation of an arrangement, the property dealt with by the arrangement, when transferred by the trustee appointed under this chapter to the debtor, or to a trustee or corporation provided for by the arrangement, or, if no trustee has been appointed under this chapter, when transferred by the debtor to a trustee or corporation provided for by the arrangement, or when retained by the debtor, as the case may be, shall be free and clear of all debts affected by the arrangement, except such debts as may otherwise be provided for in the arrangement or in the order confirming the arrangement or in the order directing or authorizing the transfer or retention of such property. (July 1, 1898, ch. 541, § 474, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 875. Execution of instruments; satisfaction of liens, etc.

The court may direct the debtor, his trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of the property dealt with by the arrangement which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the arrangement. (July 1, 1898, ch. 541, § 475, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 876. Discharge of debts upon confirmation.

The confirmation of an arrangement shall discharge a debtor from his debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, excluding such debts as are not dischargeable under section 35 of this title. (July 1, 1898, ch. 541, § 476, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 877. Final decree upon consummation of arrangement.

Upon the consummation of a proceeding under this chapter, after confirmation of an arrangement, the

court shall enter a final decree discharging the trustee, if any, closing the estate, and making such provisions, by way of injunction or otherwise, as may be equitable. (July 1, 1898, ch. 541, § 477, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 881. Abandonment or rejection of arrangement before confirmation.

If an arrangement is withdrawn or abandoned prior to its acceptance and no other arrangement is pending, or if no arrangement is accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall—

(1) where the petition was filed under section 821 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition was filed under section 822 of this title, enter an order upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors. (July 1, 1898, ch. 541, § 481, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first and second sentences of former section 202 (*l*) and from former section 30 (e).

§ 882. Termination or default after confirmation.

Where the court has retained jurisdiction after the confirmation of an arrangement and the debtor defaults in any of the terms thereof or the arrangement terminates by reason of the happening of a condition specified in the arrangement, the court upon hearing after notice to the debtor, the creditors and such other persons as the court may direct shall—

(1) where the petition has been filed under section 821 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt and directing that the bankruptcy proceeding be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 822 of this title, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this Act or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors. (July 1, 1898, ch. 541, § 482, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section in part was from first and second sentences of former section 202 (*l*) and from former section 30 (e).

§ 883. Procedure upon order directing that bankruptcy be proceeded with.

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 821 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed; and

(2) in the case of a petition filed under section 822 of this title, the proceeding shall thereafter be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when such original petition under this chapter was filed. (July 1, 1898, ch. 541, § 483, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Paragraph (2) was from second sentence of former section 202 (m).

§ 884. Adjudication against wage earner or farmer; consent.

No adjudication shall be entered under this chapter against a wage earner or farmer unless such person shall in writing filed with the court consent to the adjudication. (July 1, 1898, ch. 541, § 484, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from last sentence of former section 202 (*l*) and, in part, from former section 202 (p).

§ 885. Final decree upon dismissal of original petition.

Upon the dismissal of a proceeding originated by a petition filed under section 822 of this title, the court shall enter a final decree discharging the trustee, if any, and closing the estate. (July 1, 1898, ch. 541, § 485, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER XI.—COMPENSATION AND ALLOWANCES

§ 891. Court officers and attorneys.

The judge may allow reasonable compensation for services rendered and reimbursement for proper

costs and expenses incurred in a proceeding under this chapter—

(1) by a referee;

(2) by the trustee and other officers, and the attorneys for any of them; and

(3) by the attorney for the debtor.

Such compensation of referees and trustees shall not be governed by sections 68 and 76 of this title. (July 1, 1898, ch. 541, § 491, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 892. Other parties in interest.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with an arrangement confirmed by the court—

(1) by indenture trustees, depositaries, reorganization managers and committees or representatives of creditors;

(2) by any other parties in interest; and

(3) by the attorneys or agents for any of the foregoing. (July 1, 1898, ch. 541, § 492, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 893. Petition filed in pending bankruptcy proceeding.

Where a petition is filed under section 821 of this title, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such bankruptcy proceeding—

(1) by a marshal or receiver, as provided in subdivision f of section 76 of this title, and the attorney for any of them;

(2) by the attorney for the petitioning creditors;

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this title to compensation or reimbursement in such bankruptcy proceeding. (July 1, 1898, ch. 541, § 493, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 894. Same; referee in bankruptcy.

Where a petition is filed under section 821 of this title, the judge may allow reasonable compensation for services rendered and the proper costs and expenses incurred in such bankruptcy proceeding by a referee in bankruptcy. In fixing such compensation, the judge shall not be restricted by the provisions of section 68 of this title. (July 1, 1898, ch. 541, § 494, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 895. Dismissal of proceeding or adjudication of bankruptcy; arrangement allowances.

Upon the dismissal of a proceeding under this chapter or the entry of an order adjudging the debtor a bankrupt, the judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such proceeding prior to such dismissal or order of adjudication by any persons entitled thereto, as provided in this chapter, and shall make provision for the payment thereof and for the payment of all proper costs and expenses incurred by officers in such proceedings. (July 1, 1898, ch. 541, § 495, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 896. Hearing of applications.

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, the indenture trustees, and such other persons as the judge may designate, except that, in the case of allowances for services and reimbursement in a superseded bankruptcy proceeding, notice need be given only to the applicants, the debtor, the trustee, and the unsecured creditors, and may be given to such other classes of creditors or other persons as the judge may designate. (July 1, 1898, ch. 541, § 496, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 897. Dismissal of proceeding and reinstatement of bankruptcy; charging of allowances in bankruptcy.

In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the judge, in the course of the proceeding under this chapter, to the referee, marshal, or receiver in the bankruptcy proceeding for services rendered by him in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceeding, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this title fixing their compensation in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 497, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 898. Appeals.

Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this title, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon

the original papers. (July 1, 1898, ch. 541, § 498, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER XII.—PRIOR PROCEEDINGS

§ 906. Right to petition during pendency of prior proceedings.

A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any State in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made. (July 1, 1898, ch. 541, § 506, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from first sentence of former section 202 (m) and second sentence of former section 30 (a).

§ 907. Stay; rights of trustee or debtor in possession.

Such prior proceeding shall be stayed by the filing of a petition under this chapter. The trustee appointed under this chapter, upon his qualification, or, if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all real property and chattels real of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage. (July 1, 1898, ch. 541, § 507, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section in part was from first sentence of former section 202 (m) and second sentence of former section 30 (a).

§ 908. Protection of obligations of prior fiduciary; payment of costs and expenses.

The judge shall make such provision as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable compensation for services rendered and of the proper costs and expenses incurred therein as may be allowed by the judge. (July 1, 1898, ch. 541, § 508, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 909. Reinstatement of prior proceeding on dismissal of arrangement proceeding; allowances.

Upon a dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated and the judge shall allow the reasonable costs and expenses under this chapter, including the allowances provided for in subchapter XI of this chapter, and shall make appropriate provision for the retransfer of such property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred in the proceedings under this chapter by the trustee or debtor in possession, and for the payment of the costs and expenses of the proceedings. (July 1, 1898, ch. 541, § 509, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER XIII.—ARRANGEMENTS, WHEN SET ASIDE OR MODIFIED

§ 911. Fraud in procuring arrangement.

If, upon the application of parties in interest filed at any time within six months after an arrangement has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such arrangement and that knowledge of such fraud has come to the petitioners since the confirmation of such arrangement:

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon (a) where the petition was filed under section 821 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt and direct that the bankruptcy proceeding be proceeded with; or (b) where the petition was filed under section 822 of this title, reinstate the proceeding, adjudge the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the arrangement for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under this chapter and modify or alter the arrangement for the purpose of correcting the fraud, but may not materially modify or alter the arrangement adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person who, for value, subsequent to the confirmation, acquired rights in reliance upon it. (July 1, 1898, ch. 541, § 511, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

This section was from former sections 202 (k) and 31.

SUBCHAPTER XIV.—GENERAL PROVISIONS

§ 916. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of

time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences, and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed. (July 1, 1898, ch. 541, § 516, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 917. Inapplicability to obligations held by certain Federal agencies.

Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any debtor under a mortgage insured pursuant to the National Housing Act and Acts amendatory thereof and supplementary thereto; nor shall its provisions be deemed to allow extension or impairment of any secured obligation held by Home Owners' Loan Corporation or by any Federal Home Loan Bank or member thereof. (July 1, 1898, ch. 541, § 517, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

REFERENCE IN TEXT

The National Housing Act, to which reference is made in this section, is set out as sections 371, 1131gg, 1422, 1426, 1430a, 1431, 1462, 1463, and 1701 et seq. of Title 12, Banks and Banking; section 206 of Title 18, Criminal Code and Criminal Procedure; section 22 of Title 41, Public Contracts; and section 22 of Title 49, Transportation.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 918. Unregistered securities; use of mails and interstate commerce.

a. The provisions of section 77e of title 15 shall not apply to—

(1) any security issued by a trustee or debtor in possession pursuant to section 846 of this title; or

(2) any transaction in any security issued pursuant to an arrangement in exchange for securities of or claims against the debtor or partly in such exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (a) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the arrangement, and (b) transactions by a dealer as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the arrangement.

b. As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of Title 15. (July 1, 1898, ch. 541, § 518, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

REFERENCES IN TEXT

Definition of "Securities Act of 1933" has been omitted at end of subsection (b) of this section as unnecessary in view of translations in text to Title 15.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 919. Secretary of Treasury; notices and information to.

The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Secretary of the Treasury copies of—

(1) all petitions filed under sections 821 and 822 of this title;

(2) all notices given in a proceeding under this chapter;

(3) all orders dismissing proceedings or directing that bankruptcy be proceeded with, discharging debtors, closing estates and setting aside confirmations;

(4) all orders appointing trustees or continuing debtors in possession;

(5) all orders determining the time within which claims of creditors may be filed and allowed and the division of creditors into classes;

(6) all orders confirming arrangements, together with copies of such arrangements;

(7) all orders approving alterations or modifications in arrangements, together with copies of such alterations or modifications;

(8) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; and

(9) such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

Any order fixing the time for confirming an arrangement which affects claims of the United States shall include a notice to the Secretary of the Treasury of not less than thirty days. (July 1, 1898, ch. 541, § 519, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 920. Taxes; income or profit from modification of indebtedness.

Except as provided in section 922 of this title, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in an arrangement under this chapter, or by a corporation organized or made use of for effectuating an arrangement under this chapter by reason of a modification in or cancelation in whole or in part of any of the indebtedness of the debtor in an arrangement consummated under this chapter. (July 1, 1898, ch. 541, § 520, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to compositions and extensions confirmed under former section 202, see section 926 of this title.

§ 921. Same; arrangement to avoid.

Where it appears that an arrangement has for one of its principal purposes the evasion of taxes, objec-

tion to its confirmation may be made on that ground by the Secretary of the Treasury or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the arrangement, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the arrangement. (July 1, 1898, ch. 541, § 521, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to compositions and extensions confirmed under former section 202, see section 926 of this title.

§ 922. Same; income tax; property basis adjustment.

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income-tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section. (July 1, 1898, ch. 541, § 522, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929, and amended July 1, 1940, ch. 500, § 3, 54 Stat. 710.)

EFFECTIVE DATE

Act July 1, 1940, cited to text, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to compositions and extensions confirmed under former section 202, see section 926 of this title.

§ 923. Same; assessment and payment or acceptance of arrangement by taxing agency.

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter and have not been assessed prior to the date of the confirmation of an arrangement under this chapter, and all taxes which may become owing to the United States or any State from a trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from and shall be paid by the debtor, or the corporation organized or the trustee or corporation made use of for effectuating an arrangement under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any arrangement dealing with the assumption, settlement, or payment of any such tax. (July 1, 1898, ch. 541, § 523, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER XV.—WHEN CHAPTER TAKES EFFECT

§ 926. Proceedings to which chapter applies.

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on such date, and a petition may be filed under this chapter notwithstanding the pendency on such date of a proceeding in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment application has been made in a court of the United States or of any State;

(3) the provisions of sections 201 and 202, as amended, shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act; and

(4) sections 920 and 922 of this title shall apply to compositions and extensions confirmed under section 202 before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 202 on and after such effective date, except that the exemption provided by section 920 of this title may be disallowed if it shall be made to appear that such composition or extension, or composition and extension, had for one of its principal purposes the avoidance of income taxes, and except further that where such composition or extension, or composition and extension, has not been confirmed on or after such effective date, section 921 of this title shall apply where practicable and expedient. (July 1, 1898, ch. 541, § 526, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

CHANDLER ACT; EFFECTIVE DATE

Section 7 of act June 22, 1938, cited to text, provided as follows: "This amendatory act shall take effect and be in force on and after three months from the date of its approval."

Construction and operation of said act June 22, 1938, see note under section 1 of this title.

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SUBCHAPTER XIII.—WHEN CHAPTER TAKES EFFECT

1086. Proceedings to which chapter applies.

SUBCHAPTER I.—CONSTRUCTION

§ 1001. Exclusive application of chapter.

The provisions of this chapter shall apply exclusively to proceedings under this chapter. (July 1, 1898, ch. 541, § 601, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1002. Application of other provisions.

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That subsection f of section 110 shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7, inclusive. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 1022 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 1021 or 1022 of this title except where an adjudication had previously been entered. (July 1, 1898, ch. 541, § 602, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER II.—DEFINITIONS

§ 1006. In general.

For the purposes of this chapter, unless inconsistent with the context—

(1) "claims" shall include all claims of whatever character against the debtor or his property, whether or not provable as debts under section 103 of this title and whether secured or unsecured, liquidated or unliquidated, fixed or contingent, but shall not include claims secured by estates in real property or chattels real;

(2) "creditor" shall mean the holder of any claim;

(3) "debtor" shall mean a wage earner who filed a petition under this chapter;

(4) "debts" shall include all claims;

(5) "executory contracts" shall include unexpired leases of real property;

(6) "petition" shall mean a petition filed under this chapter by a wage earner desiring to effect a

plan for a composition or extension of time for the payment of his debts, or both;

(7) "plan" shall mean a plan for a composition or extension, or both, proposed in a proceeding under this chapter; and

(8) "wage earner" shall mean an individual who works for wages, salary, or hire at a rate of compensation which, when added to all his other income, does not exceed $3,600 per year. (July 1, 1898, ch. 541, § 606, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1007. Creditors affected by plan; determination.

A creditor shall be deemed to be "affected" by a plan only if his interest shall be materially and adversely affected thereby. In the event of controversy, the court shall, after hearing upon notice, summarily determine whether any creditor is so affected. (July 1, 1898, ch. 541, § 607, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER III.—JURISDICTION, POWERS, AND DUTIES OF THE COURT

§ 1011. Exclusive jurisdiction of debtor, property, and earnings.

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located, and of his earnings and wages during the period of consummation of the plan. (July 1, 1898, ch. 541, § 611, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in the first sentence of former section 202 (m).

§ 1012. Jurisdiction, powers, and duties.

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or

(2) where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 612, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in the second sentence of former section 202 (m).

§ 1013. Same; administration of estate.

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) extend upon cause shown any time which under this chapter the court is required or permitted to fix for any purpose. (July 1, 1898, ch. 541, § 613, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1014. Stay of actions.

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor. (July 1, 1898, ch. 541, § 614, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (n).

§ 1015. Notices.

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter. (July 1, 1898, ch. 541, § 615, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1016. Appellate jurisdiction.

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding. (July 1, 1898, ch. 541, § 616, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in the second sentence of former section 202 (m).

SUBCHAPTER IV.—PETITION AND STAY

§ 1021. Filing petition; pending bankruptcy proceeding.

A debtor may file a petition under this chapter in a pending bankruptcy proceeding either before or after his adjudication. (July 1, 1898, ch. 541, § 621, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1022. Same; original petition.

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication. (July 1, 1898, ch. 541, § 622, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1023. Contents of petition.

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature and that he desires to effect a composition or an extension, or both, out of his future earnings or wages. (July 1, 1898, ch. 541, § 623, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (a).

§ 1024. Statements and fees accompanying petition.

The petition shall be accompanied—

(1) by a statement of the executory contracts of the debtor;

(2) by the schedules and statement of affairs, if not previously filed; and

(3) where a petition is filed under section 1022 of this title, by payment to the clerk of $15 to be distributed, $10 to the referee and $5 to the clerk in lieu of the fees of $15 and $10 as prescribed in sections 68 and 80 of this title. (July 1, 1898, ch. 541, § 624, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and 202 (a).

§ 1025. Petition in pending bankruptcy proceedings as stay.

A petition filed under section 1021 of this title shall act as a stay of adjudication or of administration of the estate. (July 1, 1898, ch. 541, § 625, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and 202 (a).

§ 1026. Bond of debtor; failure to file.

The court may, upon hearing after notice to the debtor and such other persons as the court may designate, require the debtor to file, within such time as the court may fix, a bond or undertaking with such sureties, as may be approved by the court, or without sureties, as the court may order, and in such amount as the court may fix, to indemnify the estate against loss thereto or diminution thereof during the period of such stay. Upon the failure of the debtor to comply with such requirement the proceeding under this chapter shall be dismissed. (July 1, 1898, ch. 541, § 626, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER V.—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

§ 1031. Reference to referee.

The judge may refer the proceeding to a referee. (July 1, 1898, ch. 541, § 631, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (c).

§ 1032. Meeting of creditors; time; notice.

The judge or referee shall promptly call a meeting of creditors, upon at least ten days' notice by mail to the debtor and his creditors. (July 1, 1898, ch. 541, § 632, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (c).

§ 1033. Same; conduct and business generally.

At such meeting, or at any adjournment thereof—

(1) the judge or referee shall preside, receive proofs of claim, and allow or disallow them, and examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding;

(2) the debtor shall submit his plan, and deposit with the referee, if any, such sum, as the referee may require, not to exceed $15, as indemnity for the expenses of the referee;

(3) the court shall receive and determine the written acceptances of creditors on the proposed plan, which acceptances may be obtained by the debtor before or after the filing of a petition under this chapter;

(4) the court shall, if the plan is accepted, appoint a trustee to receive and distribute, subject to the control of the court, all moneys to be paid under the plan and shall require such trustee to give bond with surety to be approved by the court in such amount as the court shall fix; and

(5) the court shall fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof or any objection to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it. (July 1, 1898, ch. 541, § 633, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and (c), and 202 (d) and (f).

SUBCHAPTER VI.—RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

§ 1036. In general.

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 636, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (m).

§ 1037. Exemptions.

The allowance of exemptions to a debtor shall be the same as provided for a bankrupt under this title, and such exemptions shall be set aside to the debtor in like manner as provided for a bankrupt. (July 1, 1898, ch. 541, § 637, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in the proviso to former section 202 (h).

SUBCHAPTER VII.—CREDITORS AND CLAIMS

§ 1041. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed. (July 1, 1898, ch. 541, § 641, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (m).

§ 1042. Rejection of executory contract or unexpired lease; assignment of future rent claims.

In case an executory contract shall be rejected pursuant to the provisions of a plan or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or receiver in bankruptcy in a prior pending proceeding, any person injured by such rejection shall, for the purpose of this chapter and of the plan, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided*, That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof. (July 1, 1898, ch. 541, § 642, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1043. Expiration of time for filing claims in pending bankruptcy.

If the time for filing claims in a pending bankruptcy proceeding has expired prior to the filing of a petition under this chapter, claims provable under section 103 of this title and not filed within the time prescribed by subdivision n of section 93 of this title, shall not be allowed in the proceedings or participate in a plan under this chapter, and shall not be allowed in the bankruptcy proceeding when reinstated as provided in this chapter. (July 1, 1898, ch. 541, § 643, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1044. Allowance of claims upon order to proceed with bankruptcy.

Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only such claims as are provable under section 103 of this title shall be allowed and, except as provided in section 1043 of this title, claims not already filed may be filed within three months after the first date set for the first meeting of creditors, held pursuant to section 91 of this title, or, if such date has previously been set, then within three months after the mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with. (July 1, 1898, ch. 541, § 644, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER VIII.—PROVISIONS OF PLAN

§ 1016. Contents generally.

A plan under this chapter—

(1) shall include provisions dealing with unsecured debts generally, upon any terms;

(2) may include provisions dealing with secured debts severally, upon any terms;

(3) may provide for priority of payment during the period of extension as between the secured and unsecured debts affected by the plan;

(4) shall include provisions for the submission of future earnings or wages of the debtor to the supervision and control of the court for the purpose of enforcing the plan;

(5) shall provide that the court may from time to time during the period of extension increase or reduce the amount of any of the installment payments provided by the plan, or extend or shorten the time for any such payments, where it shall be made to appear, after hearing upon such notice as the court may designate, that the circumstances of the debtor so warrant or require;

(6) may include provisions for the rejection of executory contracts of the debtor; and

(7) may include any other appropriate provisions not inconsistent with this chapter. (July 1, 1898, ch. 541, § 646, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (h).

SUBCHAPTER IX.—CONFIRMATION AND CONSUMMATION OF PLANS

§ 1051. Unanimously accepted plan; confirmation upon deposit by debtor.

A plan which at the meeting of creditors, as provided in section 1033 of this title, has been accepted in writing by all creditors affected thereby, whether or not their claims have been proved, shall be confirmed by the court when the debtor shall have made the deposit required under this chapter and under the plan, and if the court is satisfied that the plan and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by this title. (July 1, 1898, ch. 541, § 651, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (g).

§ 1052. Majority accepted plan; application for confirmation.

If a plan has not been so accepted, an application for the confirmation of the plan may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing, if unsecured creditors are affected by the plan, by a majority in number of all such creditors whose claims have been proved and allowed before the conclusion of the meeting, which number shall represent a majority in amount of such claims, and by the secured creditors whose claims are dealt with by the plan; and

(2) the debtor has made the deposit of moneys required of him under this chapter and under the plan. (July 1, 1898, ch. 541, § 652, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former sections 30 (b) and 202 (e).

§ 1053. Alterations or modifications prior to confirmation.

Alterations or modifications of a plan may be proposed in writing by a debtor, with leave of court, at any time before the plan is confirmed. (July 1, 1898, ch. 541, § 653, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1054. Same; acceptance.

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a rejection of the altered or modified plan, shall be deemed to have accepted the alterations or modifications and the plan so altered or modified, unless the previous acceptance provides otherwise. (July 1, 1898, ch. 541, § 654, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1055. Same; notice.

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the creditors and other parties in interest. (July 1, 1898, ch. 541, § 655, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1056. Requisites for confirmation.

(a) The court shall confirm a plan if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors;

(3) it is fair and equitable, and feasible;

(4) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and

(5) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title.

(b) Before confirming any such plan the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt was contracted. (July 1, 1898, ch. 541, § 656, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former sections 30 (d) and 202 (g).

§ 1057. Binding effect of confirmation.

Upon confirmation of a plan, the plan and its provisions shall be binding upon the debtor and upon all creditors of the debtor, whether or not they are affected by the plan or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed or are allowable. (July 1, 1898, ch. 541, § 657, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (i).

§ 1058. Powers of court during extension period.

During the period of extension, the court—

(1) shall retain jurisdiction of the debtor and his property for all purposes of the plan and its consummation and shall have supervision and control of any agreement or assignment, provided for in the plan, in respect to any future earnings or wages of the debtor; and

(2) may issue such orders as may be requisite to effectuate the provisions of the plan, including orders directed to any employer of the debtor. An order directed to such employer may be enforced in the manner provided for the enforcement of judgments. (July 1, 1898, ch. 541, § 658, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (j).

§ 1059. Priority of payment.

In advance of distribution to creditors, there shall first be paid in full, out of the moneys paid in by or for the debtor, and the order of payment shall be—

(1) the actual and necessary costs and expenses of the referee;

(2) the actual and necessary costs and expenses of the trustee;

(3) the commissions to the referee of 1 per centum, to be computed upon and payable out of the payments actually made by or for a debtor under the plan, which commissions shall be in addition to the fee of $10 to be paid to the referee out of the fees deposited by the debtor with the clerk of the court, and commissions to the trustee of 5 per centum to be computed upon and payable out of the payments actually made by or for a debtor under the plan;

(4) such reasonable fee to the attorney for the debtor as the court may allow for the professional services actually rendered by such attorney to the debtor in and in connection with the proceedings under this chapter;

(5) in the case of a pending bankruptcy proceeding superseded by a proceeding under this chapter, the costs, expenses, and fees of such bankruptcy proceeding; and

(6) the debts entitled to priority, in the order of priority, as provided by subdivision a of section 104 of this title. (July 1, 1898, ch. 541, § 659, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former section 202 (j).

§ 1060. Discharge of debtor.

Upon compliance by the debtor with the provisions of the plan and upon the completion of all payments to be made thereunder, the court shall enter an order discharging the debtor from all his debts and liabilities provided for by the plan, and all debts denied participation in the plan by section 1043 of this title, but excluding debts which are not dischargeable under section 35 of this title held by creditors who have not accepted the plan. (July 1, 1898, ch. 541, § 660, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1061. Discharge of debtor at expiration of three years.

If at the expiration of three years after the confirmation of a plan the debtor has not completed his payments thereunder, the court may nevertheless,

upon the application of the debtor and after hearing upon notice, if satisfied that the failure of the debtor to complete his payments was due to circumstances for which he could not be justly held accountable, enter an order discharging the debtor from all his debts and liabilities provided for by the plan, and all debts denied participation in the plan by section 1043 of this title, but excluding debts which are not dischargeable under section 35 of this title held by creditors who have not accepted the plan. (July 1, 1898, ch. 541, § 661, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1062. Final decree.

Upon the consummation of a proceeding under this chapter, as provided either in section 1060 or section 1061 of this title, the court shall enter a final decree discharging the trustee, closing the estate and making such provision, by way of injunction or otherwise, as may be equitable. (July 1, 1898, ch. 541, § 662, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 1066. Procedure upon withdrawal, abandonment, or failure to accept plan.

If a plan is not proposed at the meeting of creditors or within such further time as the court may fix, or if the plan is withdrawn or abandoned prior to its acceptance, or if the plan is not accepted at the meeting of creditors or within such further time as the court may fix, or if the deposit required under this chapter and under the plan is not made or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the plan is refused, or if after confirmation a debtor defaults in any of the terms of the plan, or if the plan terminates by reason of the happening of a condition specified in the plan, the court shall—

(1) where the petition has been filed under section 1021 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt, if not previously so adjudged, and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 1022 of this title, enter an order dismissing the proceeding under this chapter or, with the consent of the debtor, adjudging him a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title. (July 1, 1898, ch. 541, § 666, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1067. Procedure upon order directing bankruptcy to be proceeded with.

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 1021 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed; or

(2) in the case of a petition filed under section 1022 of this title, if an order has been entered adjudging the debtor a bankrupt, as provided in paragraph (2) of section 1066 of this title, the proceeding shall thereafter be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered on the day when the petition under this chapter was filed. (July 1, 1898, ch. 541, § 667, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1068. Exclusive method of adjudication.

Except as provided in section 1066 of this title and elsewhere in this chapter, a debtor shall not be adjudged a bankrupt either in a proceeding under this chapter or in any proceeding instituted under this title, during the pendency of a proceeding under this chapter. (July 1, 1898, ch. 541, § 668, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER XI.—PLANS, WHEN SET ASIDE OR MODIFIED

§ 1071. Fraud in procuring plan.

If, upon the application of parties in interest filed at any time within six months after a plan has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such plan and that knowledge of such fraud has come to the petitioners since the confirmation of such plan—

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon (a) where the petition was filed under section 1021 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt, if he has not already been so adjudged, and direct that the bankrupty[1] proceeding be proceeded with, or (b) where the petition was filed under section 1022 of this title, reinstate the proceeding, adjudge the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the plan for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under this chapter and modify or alter the plan for the purpose of correcting the fraud, but may not materially modify or alter the plan adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person who, for value, subsequent to the confirmation, acquired rights in reliance upon it. (July 1, 1898, ch. 541, § 671, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

[1] So in original.

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SIMILAR PROVISIONS

Provisions on this subject were contained in former sections 31 and 202 (k).

SUBCHAPTER XII.—GENERAL PROVISIONS

§ 1076. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed. (July 1, 1898, ch. 541, § 676, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1077. Notice by mail.

Unless otherwise directed by the court, all notices required by this chapter may be given by mail to the parties entitled thereto to their addresses ascertained in the manner prescribed for other notices in section 94 of this title. (July 1, 1898, ch. 541, § 677, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1078. Secretary of Treasury; notices and information to.

The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Secretary of the Treasury copies of—

(1) all petitions filed under sections 1021 and 1022 of this title;

(2) all notices given in a proceeding under this chapter;

(3) all orders dismissing proceedings or directing that bankruptcy be proceeded with, discharging debtors, closing estates and setting aside confirmations;

(4) all orders approving modifications or alterations in plans, together with copies of such alterations or modifications;

(5) all orders confirming plans, together with copies of such plans;

(6) all orders increasing or reducing the amount of installment payments under plans, and all orders extending or shortening the time for such payments; and

(7) such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

Any order fixing the time for confirming an arrangement which affects claims of the United States shall include a notice to the Secretary of the Treasury of not less than ten days. (July 1, 1898, ch. 541, § 678, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1079. Taxes; income or profit from modification of indebtedness.

No income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor by reason of a modification in or cancelation in whole or in part of any such indebtedness in a proceeding under this chapter: *Provided, however,* That if it shall be made to appear that the plan had for one of its principal purposes the evasion of any income tax, the exemption provided by this section shall be disallowed. (July 1, 1898, ch. 541, § 679, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

CROSS REFERENCE

Application of this section to compositions and extensions confirmed under former section 202, see section 1086 of this title.

§ 1080. Same; payment; acceptance of arrangement by taxing agency.

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter, and have not been assessed prior to the date of the confirmation of a plan under this chapter, and all taxes which may become owing to the United States or any State from a debtor shall be assessed against, may be collected from, and shall be paid by the debtor: *Provided, however,* That the United States or any State may in writing accept the provisions of any plan dealing with the assumption, settlement, or payment of any such tax. (July 1, 1898, ch. 541, § 680, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

SUBCHAPTER XIII.—WHEN CHAPTER TAKES EFFECT

§ 1086. Proceedings to which chapter applies.

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and

interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on the effective date of this amendatory Act;

(3) the provisions of sections 201 and 202, as amended, of this title, shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act;

(4) section 1079 of this title shall apply to compositions and extensions confirmed under section 202 before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 202 on and after such effective date; and

(5) confirmation of a plan under this chapter shall not be refused because of a discharge granted or a composition confirmed prior to the effective date of this amendatory Act. (July 1, 1898, ch. 541, § 686, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

CHANDLER ACT; EFFECTIVE DATE

Section 7 of act June 22, 1938, cited to text, provided as follows: "This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

Construction and operation of said act June 22, 1938, see note under section 1 of this title.

Chapter 14.—MARITIME COMMISSION LIENS

Sec.
1101. United States Maritime Commission as trustee or receiver; corporations operating vessels to foreign countries.
1102. Continued operation of vessels; payment of operating loss.
1103. Injunction powers; United States as creditor under preferred ship mortgage.

§ 1101. United States Maritime Commission as trustee or receiver; corporations operating vessels to foreign countries.

Notwithstanding any provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of chapter 27 of Title 46, may constitute and appoint the United States Maritime Commission as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Commission as trustee or receiver shall become effective upon the ratification thereof by the Commission without a hearing, unless the Commission shall deem a hearing necessary. In no such proceeding shall the Commission be constituted as trustee or receiver without its express consent. (July 1, 1898, ch. 541, § 701, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1102. Continued operation of vessels; payment of operating loss.

If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Commission certifies to the court that the continued operation of such vessels is, in the opinion of the Commission, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of chapter 27 of Title 46, as amended, the court may permit the Commission to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Commission, if the Commission undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of chapter 20 of Title 46. The Commission shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Commission may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Commission on account of the operation of such vessels. (July 1, 1898, ch. 541, § 702, as added June 22, 1938, ch. 575, § 1, 52 Stat. 939.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

§ 1103. Injunction powers; United States as creditor under preferred ship mortgage.

No injunction powers vested in the courts of bankruptcy under this title shall be construed or be deemed to affect or apply to the United States as a creditor under a preferred ship mortgage, as defined in Chapter 25 of Title 46, as amended, unless the Commission files with the court a written waiver of the provisions of this section. (July 1, 1898, ch. 541, § 703, as added June 22, 1938, ch. 575, § 1, 52 Stat. 939.)

CHANDLER ACT

Effective date and construction of act June 22, 1938, cited to text, see note under section 1 of this title.

Chapter 15.—RAILROAD ADJUSTMENTS

§§ 1200–1255. Jurisdiction; definitions; petitions; hearings; proceedings; etc.

This chapter, sections 1200, 1205, 1206, 1210–1215, 1220–1222, 1225–1229, 1235–1238, 1240, 1245, 1246, 1250, 1255, added to the Bankruptcy Act by act July 28, 1939, 9:45 a. m. E. S. T., ch. 393, 53 Stat. 1184, was terminated on July 31, 1940, under the provisions of section 1255 of this title "except in respect of any proceeding initiated by filing a petition under section 1210 hereof on or before July 31, 1940."