TITLE 11.—BANKRUPTCY

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HISTORY OF BANKRUPTCY ACTS

This title is composed of the Bankruptcy Act of July 1, 1898, ch. 541, 30 Stat. 544, as amended, sometimes called the Nelson Act.

Special attention is directed to the Chandler Act of June 22, 1938, ch. 575, 52 Stat. 883, which revised this title generally and materially amended the provisions covering corporate reorganizations. See note under section 1 of this title.

Earlier bankruptcy laws included the following acts:

Apr. 4, 1800, ch. 19, 2 Stat. 19, repealed Dec. 19, 1803, ch. 6, 2 Stat. 248;

Aug. 19, 1841, ch. 9, 5 Stat. 440, repealed Mar. 3, 1843, ch. 82, 5 Stat. 614;

Mar. 2, 1867, ch. 176, 14 Stat. 517, the provisions of which were incorporated in Rev. Stat. Title LXI, §§ 4972—5132, were materially amended June 22, 1874, ch. 390, 18 Stat. 178, and were repealed June 7, 1878, ch. 160, 20 Stat. 99.

Chapter 1.—DEFINITIONS

Sec.
1. Meaning of words and phrases.

§ 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 United States courts of appeals 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;

(5a) "Circuit" shall mean judicial circuit;

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

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

(7a) "Conference" shall mean the Judicial Conference of the United States;

(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;

(8a) "Council" shall mean the Judicial Council of the circuit;

(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 United States district courts and the district courts of the Territories and possessions to which this title is or may hereafter be applicable;

(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;

(14a) "Director" shall mean the Director of the Administrative Office of the United States Courts;

(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 initiating a proceeding under this title;

(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; the retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by such debtor;

(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; June 28, 1946, ch. 512, § 1, 60 Stat. 323; July 7, 1952, ch. 579, § 1, 66 Stat. 420.)

AMENDMENTS

1952—Pars. (3), (5a), (7a), (8a), (10), (14a), (24), and (30) amended by act July 7, 1952, to redefine the terms contained within said paragraphs.

1946—Pars. (5a), (7a), (8a), and (14a), added by act June 28, 1946, as explanatory definitions of terms in current use.

1938—Pars. (5), (12), (17), (25), and (27), added by act June 22, 1938.

Pars. (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, amended by act June 22, 1938.

Pars. (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, reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 57 of act July 7, 1952, provided that: "This amendatory Act [Act July 7, 1952] shall take effect and be in force on and after three months from the date of its approval [July 7, 1952]."

EFFECTIVE DATE OF 1946 AMENDMENT

Section 18 of act June 28, 1946, provided in part that the amendment of this section by said act June 28, 1946, should be effective on June 28, 1946.

SHORT TITLE

Congress by act Dec. 20, 1950, ch. 1138, 64 Stat. 1113, amended act July 1, 1898, to authorize that said act July 1, 1898, this title, be popularly known as the "Bankruptcy Act".

REPEALS; SAVINGS CLAUSE

Section 55 of act July 7, 1952, provided that:

"(a) All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [Act July 7, 1952] are hereby repealed.

"(b) If any provision of this amendatory Act [Act July 7, 1952] 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 [Act July 7, 1952] which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act [Act July 7, 1952] are declared to be severable."

EFFECT OF 1952 AMENDATORY ACT

Section 56 of act July 7, 1952, provided that: "(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 [Act July 7, 1952] is amendatory.

"(b) The provisions of this amendatory Act [Act July 7, 1952] shall govern proceedings so far as practicable and applicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act [Act July 7, 1952] 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."

CHANDLER ACT; CONSTRUCTION; EFFECTIVE DATE

Sections 5—7 of act June 22, 1938, which act is popularly known as the "Chandler Act," provided that:

"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."

CROSS REFERENCES

Repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

Chapter 2.—COURTS OF BANKRUPTCY

Sec.

11. Creation of courts of bankruptcy and their jurisdiction.

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

(a) The courts of the United States hereinbefore defined as courts of bankruptcy are created courts of bankruptcy and are 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, or in any cases transferred to them pursuant to this title;

(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 in 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; and where in a controversy arising in a proceeding under this title an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy, by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion or other pleading to which he is adverse, he shall be deemed to have consented to such jurisdiction;

(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 section 205 and 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, trusteeship, 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; July 7, 1952, ch. 579, § 2, 66 Stat. 420.)

AMENDMENTS

1952—Subd. (a) (1), amended by act July 7, 1952, § 2 (a), to add "or who have * * * pursuant to this title;".

Subd. (a) (7), amended by act July 7, 1952, § 2 (b), to add "and where in a * * * to such jurisdiction;".

Subd. (a) (21), amended by act July 7, 1952, § 2 (c), amended to insert "section 205" immediately preceding "chapters 10 and 12 of this title".

1938—Subd. (a) (21), added by act June 22, 1938.

Subd. (a), opening paragraph and (1), (3), (4), (7)—(10), (13), (15), (17), (18), (20), formerly first paragraph and clauses thereof, amended by act June 22, 1938.

Subd. (a) (2), (5), (6), (11), (12), (14), (16), (19), formerly clauses of the first paragraph, and subd. (b), formerly the last paragraph, reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Jurisdiction and powers of bankruptcy courts in agricultural adjustment, corporate reorganization, railroad reorganization, and arrangement proceedings, see sections 203, 205, 511—517, 519—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, guarantors or sureties for 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) 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 made or suffered a transfer of any of his property, fraudulent under the provisions of section 107 or 110 of this title; or (2) made or suffered a preferential transfer, as defined in subdivision (a) of section 96 of this title; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings or distraint 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 dispostion 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 third act of bankruptcy shall expire four months after the date the lien through legal proceedings or distraint was obtained and, with respect to the first or fourth act of bankruptcy, such time 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 could thereafter have acquired any rights in the property so transferred or assigned superior to the rights of the transferee or assignee therein, and such time with respect to the second act of bankruptcy shall not expire until four months after the date when the transfer became perfected as prescribed in subdivision (a) of section 96 of this title. For the purposes of this section, it is sufficient if intent to hinder, delay or defraud under the first act of bankruptcy, where such intent is an element of such act, or if 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; July 7, 1952, ch. 579, § 3, 66 Stat. 421.)

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, § 3 (a), to correlate the first two acts of bankruptcy as set out in this subdivision with sections 96, 107, and 110 of this title, and to make a distraint under a landlord's warrant a legal proceeding.

Subd. (b), amended by act July 7, 1952, § 3 (b), to start a four-month period, for the purpose of the third act of bankruptcy, from the date the lien was obtained and to make over clarifying and conforming facts.

1938—Subd. (a) (1) and (2), reenacted without change by act June 22, 1938.

Subd. (a) (3) (formerly (3) and (4), (4) and (5) formerly (5)), and (6) (formerly (6)), and subds. (b), (c), and (d), amended by act June 22, 1938.

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

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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.)

AMENDMENTS

1938—Subd. (a) reenacted without change by act June 22, 1938.

Subd. (b), consisting of former subd. (b) together with a concluding paragraph, amended by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Farmer defined, see section 203 (r) of this title.

§ 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.)

AMENDMENTS

1938—Subds. (b), (j), and (k) added by act June 22, 1938.

Subds. (a), (d), (e), (g), and (i), formerly (a), (c), (d), (f), and (h), respectively, amended by act June 22, 1938.

Subds. (c), (f), and (h), formerly (b), (e), and (g), respectively, reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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.)

AMENDMENTS

1938—Act June 22, 1938, amended section by allowing exemptions prescribed by the laws of the United States, by rewording provision relating to portion of the domiciliary period, and by adding the proviso.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 residences or places of business, 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, however,* 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; July 7, 1952, ch. 579, § 4, 66 Stat. 422.)

AMENDMENTS

1952—Subd. (a) (8), amended by act July 7, 1952, to permit the list of creditors to contain either their residence or place of business instead of only their residence as previously required.

1938—Subd. (a) (9) and (11), and subd. (b) added by act June 22, 1938.

Subd. (a) (1), (3), (5), (8) and (10) (formerly opening paragraph (9)), and closing paragraph, amended by act June 22, 1938.

Subd. (a) (2), (4), (6), and (7), formerly those clauses of the opening paragraph, reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22. 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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.)

AMENDMENTS

1938—Act June 22, 1938, amended section by substituting proviso for last sentence relating to widow's and children's rights to dower and allowance fixed by State laws.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

AMENDMENTS

1938—Section, formerly subd. (a), reenacted without change by act June 22, 1938.

Former subd. (b) reenacted as subd. (a) of section 28 of this title by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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.)

AMENDMENTS

1938—Subd. (a), formerly subd. (b) of section 27, reenacted as a part of this section and amended by act June 22, 1938.

Subd. (b), formerly this entire section, amended by act June 22, 1938.

Subd. (c) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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 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, however,* That such stay shall be vacated by the court if, in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy, such person 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 dismissal 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; July 7, 1952, ch. 579, § 5, 66 Stat. 422.)

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, to delete from the proviso "has been adjudicated a bankrupt or" following "such person".

1938—Subds. (a)—(d) amended by act June 22, 1938. Subds (e), (f) added by act of June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 30. Compositions; when confirmed.

CODIFICATION

Section, acts July 1, 1898, ch. 541, § 12, 30 Stat. 549; June 25, 1910, ch. 412, § 5, 36 Stat. 839; 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 of this title, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840 (Chandler Act).

Subject matter of the various subdivisions comprising this section was distributed by said 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 (3), 837 (3) and 1033.
d	761, 766, 867, and 1056.
e	767, 776, 881, 882, and 1066.

SAVINGS CLAUSE

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

§ 31. Same; when set aside.

CODIFICATION

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). Subject matter of section is now contained in sections 786, 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 section 152 of Title 18; 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) in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy had 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, 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 the objections to 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; May 24, 1949, ch. 139, § 130, 63 Stat. 107; July 7, 1952, ch. 579, § 6, 66 Stat. 422.)

AMENDMENTS

1952—Subd. (c) (5) amended by act July 7, 1952, § 6 (a), to make the six year period within which objection can be made to a discharge in a bankruptcy proceeding run from the date of the commencement of the prior proceeding rather than the date of the discharge or its equivalent.

Subd. (e) amended by act July 7, 1952, § 6 (b), to substitute "hearing upon the objection to his application for a discharge," in lieu of "hearing upon his application for a discharge".

1949—Subd. (c) (1) amended by act May 24, 1949, which substituted "section 152 of Title 18" for "this Act".

1938—Subd. (a) and subds. (b) and (c), formerly (a) and (b), respectively, amended by act June 22, 1938.

Subds. (d) and (e) added by act June 22, 1938.

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

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Adjudication of bankruptcy, see Form 11, following section 53 of this title.

Adjudications, see section 41 of this title.

Amendments, see Gen. Ord. 11, following section 53 of this title.

Arrangements, see section 701 et seq. of this title.

Concealment of assets; false oaths and claims; bribing, see section 152 of Title 18, Crimes and Criminal Procedure.

Debtors petition and schedules, see Form 1, following section 53 of this title.

Debts not affected by discharge, see section 35 of this title.

Definitions—

Adjudication, see section 1 (2) of this title.

Bankruptcy, see section 1 (4) of this title.

Creditor, see section 1 (11) of this title.

Discharge, see section 1 (15) of this title.

Discharge in bankruptcy as affirmative defense, see Rule 8 (c) of the Federal Rules of Civil Procedure, 28 U. S. C.

Discharge of bankrupt, see Form 45, following section 53 of this title.

Duty of bankrupt to answer questions generally, see sections 25 (a) and 44 (a) of this title.

Duty of bankrupt to comply with lawful orders, see section 25 (2) of this title.

Jurisdiction of referee to grant discharge, see section 66 (4) of this title.

Meeting of creditors, see section 91 of this title.

Notice of order fixing time for filing objections to discharge, see Form 43, following section 53 of this title.

Notices to creditors for filing objections to discharge, see section 94 (b) of this title.

Opposition to discharge, see Gen. Ord. 32, following section 53 of this title.

Order fixing time for filing objections to discharge, see Form 42, following section 53 of this title.

Partnership petition, see Form 4, following section 53 of this title.

Petition for discharge, see Gen. Ord. 31 and Form 41, following section 53 of this title.

Refusal to obey lawful orders or to appear and testify, as contempt, see section 69 (a) of this title.

Release of directors and stockholders from liability by discharge of corporation, see section 22 of this title.

Revocation of discharges, see section 33 of this title.

Specification of objections to discharge, see Form 44, following section 53 of this title.

Trustee's duty to oppose discharges when advisable to do so, see section 75 (9) of this title.

Wage earners' plans, see section 1001 et seq. of this title.

§ 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.)

AMENDMENTS

1938—Act June 22, 1938, amended section by substituting "court" for "judge" and deleting "upon a trial" after "revoke it."

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 34. Co-debtors, guarantors or sureties for 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.)

CROSS REFERENCES

Action to proceed against bankrupt to save rights against sureties, see section 29 of this title.

Bankruptcy of partnerships and partners, see section 23 of this title.

Effect of discharge of corporations on liability of officers and stockholders, see section 22 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Discharge in bankruptcy as affirmative defense, see Rule 8 (c) following section 2072 of Title 28, Judiciary and Judicial Procedure.

§ 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, ser-

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

vants, 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.)

AMENDMENTS

1938—Opening clause and clauses (1), (2), and (5) amended by act June 22, 1938.

Clauses (3), (4), and (6) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Debts which may be proved, see section 103 of this title.
Discharge, when granted, see section 32 of this title.

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. Repealed.
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 summons is had upon the commencement of a civil action 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; July 7, 1952, ch. 579, § 7, 66 Stat. 423.)

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, to make the section conform to the Federal Rules of Civil Procedure.

1938—Subds. (a), (b), and (d)—(g) amended by act June 22, 1938.

Subd. (c) reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Adjudication—
Bankruptcy, see Form 11, following section 53 of this title.
Debtor is not bankrupt, see Form 10, following section 53 of this title.
Amendments, see Gen. Ord. 11, following section 53 of this title.
Answer of alleged bankrupt, see Form 7, following section 53 of this title.
Creditor's petition, see Form 5, following section 53 of this title.
Debtor's petition and schedules, see Form 1, following section 53 of this title.
Debtor's petition in proceedings under section 75 of the Bankruptcy Act [11 U. S. C. § 203], see Gen. Ord. 50 and Form 63, following section 53 of this title.
Definitions—
Adjudication, see section 1 (2) of this title.
Bankrupt, see section 1 (4) of this title.
Court, see section 1 (9) of this title.
Creditor, see section 1 (11) of this title.
Petition, see section 1 (24) of this title.

Designation of newspapers, see section 51 of this title.
Domicile, residue, or place of business of bankrupt as affecting jurisdiction, see section 11 (a) (1) of this title.
Federal Rules of Civil Procedure, applicability of, see Gen. Ord. 37, following section 53 of this title.
Form of petitions and other papers, see Gen. Ord. 5, following section 53 of this title.
Jurisdiction and power to issue process, see section 11 (a) (15) of this title.
Jury trial, see section 42 of this title.
Original petition in proceedings under—
Chapter XI, see Gen. Ord. 48 and Form 48, following section 53 of this title.
Chapter XII, see Gen. Ord. 54 and Form 53 following section 53 of this title.
Chapter XIII, see Gen. Ord. 55 and Form 58, following section 53 of this title.
Partnership petition, see Form 4, following section 53 of this title.
Petition in corporate reorganization proceedings, see section 526 et seq. of this title.
Proceedings under Chapter X of the Act [11 U. S. C. § 501 et seq.], see Gen. Ord. 52, following section 53 of this title.
Process, see Gen. Ord. 3, following section 53 of this title.
Reference after adjudication, see section 45 of this title.
Subpoena for alleged bankrupt, see Form 6, following section 53 of this title.
Who may—
Become bankrupt, see section 22 of this title.
File and dismiss petitions, see section 95 of this title.

§ 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.)

AMENDMENTS

1938—Subds. (a) and (b) reenacted without change by act June 22, 1938.
Subd. (c) amended by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Acts of bankruptcy, see section 21 of this title.
Federal Rules of Civil Procedure as applicable to bankruptcy proceedings, see Gen. Ord. 37, following section 53 of this title.
Insolvency defined, see section 1 (19) of this title.

FEDERAL RULES OF CIVIL PROCEDURE

July trial in civil actions, see Rules 38 and 39 following section 2072 of Title 28, Judiciary and Judicial Procedure.

§ 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.)

AMENDMENTS

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

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Affidavit of laws of negotiable instrument, see Form 32, following section 53 of this title.
Appointment and oath of appraiser, see Form 12, following section 53 of this title.
Consular officer authorized to administer oath or affirmation, see section 1195 of Title 22, Foreign Relations and Intercourse.
False oaths and claim in bankruptcy proceedings, see section 152 of Title 18, Crimes and Criminal Procedure.
Notary public and other officers authorized to administer oaths, see sections 92 and 92a of Title 5, Executive Departments and Government Officers and Employees.
Perjury generally, see section 1621 of Title 18, Crime and Criminal Procedure.
Proof of claim under oaths, see section 93 of this title, and Forms 28—31 following section 53 of this title.
Referee—
Administration of oath to parties or witnesses, see Gen. Ord. 22, following section 53 of this title.
Oath of office, see Form 15, following section 53 of this title.
Verification of petitions, schedules, etc., see Gen. Ord. 38 and Form 1 et seq. following section 53 of this title.

§ 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 bankrupt, 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 Civil Procedure for the United States District Courts 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, however,* 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; July 7, 1952, ch. 579, § 8, 66 Stat. 423.)

AMENDMENTS

1952—Subd. (k) amended by act July 7, 1952, to make the section conform to the Federal Rules of Civil Procedure.

1938—Subds. (g), (j), (k), and (*l*) added by act June 22, 1938.

Subds. (a)—(f), (h), and (i), formerly subds. (a)—(f), (g), and (h), respectively, amended by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Contempt, see section 69 of this title.

Court defined, see section 1 (9) of this title.

Effect of Rule 44 on this section, see note by Advisory Committee under Rule 44, Title 28 U. S. C.

Examination of bankrupt, see section 25 (10) of this title.

Proof of official records, see Rule 44.

Referee authorized to employ stenographer, see section 66 (7) of this title.

Taking of testimony, see Gen. Ord. 22, following section 53 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under said Rule 44, set out following section 2072 of Title 28, Judiciary and Judicial Procedure.

Proof of official record, see said Rule 44.
Reference to master in civil actions, see Rule 53 of Federal Rules of Civil Procedure, 28 U. S. C.

§ 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.)

AMENDMENTS

1938—Subd. (a) amended by act June 22, 1938.
Subd. (b) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Contempt committed before referee, see section 69 of this title.
Copy of order of reference mailed to referee, see Gen. Ord. 12, following section 53 of this title.
Duties and compensation of referees, see sections 67 and 68 of this title.
Filing papers after reference, see Gen. Ords. 2 and 20, following section 53 of this title.
Judge defined, see section 1 (20) of this title.
Order of General Reference, see Form 13 following section 53 of this title.
Powers of referee, see section 66 of this title, and Gen. Ord. 22, following section 53 of this title.
Proceedings referable to referee—
- Arrangements, see section 731 of this title.
- Corporate reorganization, see section 517 of this title.
- Real property arrangements, see section 831 of this title.
- Wage earners' plans, see section 1031 of this title.

Referee not to practice as an attorney in any proceeding, see section 67 (b) of this title.
Restriction on compensation of referee, see section 112 of this title.

§ 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.)

AMENDMENTS

1938—Subd. (a) amended by act June 22, 1938.
Subd. (b) amended by act June 22, 1938.
1926—Subd. (b) amended by act May 27, 1926.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Ancillary jurisdiction in aid of receiver or trustee, see section 11 (20) of this title.
Authority of receivers to prosecute or defend proceedings, see section 11 (3) of this title.
Civil action, see Rule 2 of Federal Rules of Civil Procedure, 28 U. S. C.
Concurrent jurisdiction of plenary proceedings—
- Recovery or avoidance of preferences, see section 96 (b) of this title.
- Recovery or avoidance of liens and fraudulent transfers, see section 107 (e) of this title.
- Recovery or avoidance of transfer or obligation, see section 110 (e) (3) of this title.

Duties of trustee, see section 75 of this title.
Exclusive jurisdiction—
- Arrangement proceedings, see section 711 of this title.
- Corporate reorganization proceedings, see section 511 of this title.
- Real property arrangement proceedings, see section 811 of this title.
- Wage earners' plans proceedings, see section 1011 of this title.

Jurisdiction—
- Action involving diversity of citizenship, see section 1332 of Title 28, Judiciary and Judicial Procedure.
- Bankruptcy courts generally, see section 11 of this title.
- To enter turn-over orders, see section 11 (15) of this title.

Summary jurisdiction to determine rights of lienholders, see section 107 (a) (4) of this title.
Title to bankrupts property vested in trustee, see section 110 of this title.

§ 47. Jurisdiction of appellate courts.

(a) The United States courts of appeals, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are 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: *And 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 vested with jurisdiction to review judgments, decrees, and orders of the United States courts of appeals 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; 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; June 25, 1948, ch. 646, § 39, 62 Stat. 992; July 7, 1952, ch. 579, § 9, 66 Stat. 423.)

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, § 9 (a), to delete reference to United States court of appeals for the District of Columbia as such court is now contained within the reference to "United States courts of appeals".

Subd. (c) amended by act July 7, 1952, § 9 (b), to delete reference to the United States Courts of Appeals for the District of Columbia as such court is now contained within the reference to "United States courts of appeals."

1938—Subds. (a) (formerly (a) and part of (b)), and (b) (formerly part of (b)), amended by act June 22, 1938.

Subd. (c), formerly subd. (c) of section 48 of this title, amended by act June 22, 1938, which act did not reenact former subd. (c) as a part of this section. See subd. (a) of section 48 of this title for provisions on that subject.

CHANGE OF NAME

Act June 7, 1934, changed the name of "Court of Appeals of the District of Columbia" to "United States Court of Appeals for the District of Columbia".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

REPEALS

Act Mar. 3, 1911, ch. 231, § 128 (c), as added by act Feb. 13, 1925, ch. 229, § 1, 43 Stat. 936, was repealed by act June 25, 1948. Said act of 1925 provided that: "The circuit courts of appeal shall also have an appellate and supervisory jurisdiction under sections 24 and 25 of the Bankruptcy Act of July 1, 1898 [this section and section 48 of this title], over all proceedings, controversies, and cases had or brought in the district courts under that Act or any of its amendments, and shall exercise the same in the manner prescribed in those sections; and the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit in this regard shall cover the courts of bankruptcy in Alaska and Hawaii, and that of the Circuit Court of Appeals for the First Circuit shall cover the court of bankruptcy in Porto Rico."

Act Feb. 13, 1925, ch. 229, § 13, 43 Stat. 941, provided for the repeal of so much of sections 24 and 25 [this section and section 48 of this title] "as regulates the mode of review by the Supreme Court in the proceedings, controversies, and cases therein named."

COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Act Feb. 13, 1925, ch. 229, § 5, 43 Stat. 939, provided that: "The Court of Appeals of the District of Columbia shall have the same appellate and supervisory jurisdiction over proceedings, controversies, and cases in bankruptcy in the District of Columbia that a circuit court of appeals has over such proceedings, controversies, and cases within its circuit, and shall exercise that jurisdiction in the same manner as a circuit court of appeals is required to exercise it."

CROSS REFERENCES

Appeals, see Gen. Ord. 36, following section 53 of this title.

Final decisions of district court appealable to courts of appeals, see section 1291 of Title 28, Judiciary and Judicial Procedure.

Interlocutory decisions of district courts appealable to courts of appeals, see section 1292 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction of Supreme Court to review cases from courts of appeals, see section 1254 of Title 28, Judiciary and Judicial Procedure.

Time for appeal from bankruptcy judgment, order or decree, see section 48 (a) of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Notice of appeal, see Rule 73 of Federal Rules of Civil Procedure, 28 U. S. C.

§ 48. Practice on appeals.

(a) Appeals under this title to the United States courts of appeals 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; May 27, 1926, ch. 406, § 10, 44 Stat. 665; June 7, 1934, ch. 426, 48 Stat. 926; June 22, 1938, ch. 575, § 1, 52 Stat. 855; June 25, 1948, ch. 646, §§ 23, 39, 62 Stat. 990, 991, 992; July 7, 1952, ch. 579, § 10, 66 Stat. 424.)

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, to delete reference to the United States Court of Appeals for the District of Columbia as such court is now contained within the reference to "United States courts of appeals".

1948—Sections 23, 39 of act June 25, 1948, eff. Sept. 1, 1948, repealed act Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54, and substituted appeal for writ of error.

1938—Act June 22, 1938, amended this section and reenacted former subd. (c) thereof as subd. (c) of section 47 of this title.

CHANGE OF NAME

Act June 7, 1934, changed the name of "Court of Appeals of the District of Columbia" to "United States Court of Appeals for the District of Columbia."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

REPEALS

Act Feb. 13, 1925, ch. 229, § 13, 43 Stat. 941, provided for the repeal of so much of sections 24 and 25 [section 47 of this title and this section] "as regulates the mode of review by the Supreme Court in the proceedings, controversies, and cases therein named."

CROSS REFERENCES

Arbitration and compromise, see Gen. Ord. 33, following section 53 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.)

AMENDMENTS

1938—Subds. (a) and (b) amended by act June 22, 1938.

Subd. (c) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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.)

AMENDMENTS

1938—Act June 22, 1938, amended section to include receiver.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Arbitration and compromise, see Gen. Ord. 33, following section 53 of this title.

Notice to creditors of proposed compromise exceeding $1,000, see section 94 (a) (6) 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.)

AMENDMENTS

1938—Act June 22, 1938, amended first sentence by adding "the judges of" preceding "courts of bankruptcy" and omitting "required to be published by this Act" after "in which notices."

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 52. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section, acts July 1, 1898, ch. 541, § 29, 30 Stat. 554; May 27, 1926, ch. 406, § 11, 44 Stat. 665, relating to offenses, is now covered by sections 151–154 and 3057 of Title 18, Crimes and Criminal Procedure.

§ 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.)

CROSS REFERENCES

District Court of Guam, rules promulgated under this section as applicable, see section 1424 of Title 48, Territories and Insular Possessions.

GENERAL ORDERS AND FORMS IN BANKRUPTCY

Promulgated Nov. 28, 1898. Effective Jan. 2, 1899

As amended to Jan. 1, 1953.

GENERAL ORDERS IN BANKRUPTCY

Order

1. Docket.
2. Filing of Papers.
3. Process.
4. Conduct of Proceedings.
5. Form of Petitions and other Papers.
6. Petitions in Different Courts.
7. Priority of Petitions.
8. Proceedings in Partnership Cases. Abrogated May 25, 1925.
9. List of Creditors in Involuntary Bankruptcy.
10. Indemnity for Expenses.
11. Amendments.
12. Duties of Referee.
13. Appointment and Removal of Trustee. Abrogated Jan. 16, 1939.
14. No Official or General Trustee.
15. Trustee not Appointed in Certain Cases.
16. Notice to Trustee of his Appointment.
17. Duties of Trustee.
18. Sale of Property.
19. Accounts of Marshal.
20. Papers Filed after Reference.
21. Proofs of Claim.
22. Taking of Testimony.
23. Orders of Referee.
24. List of Proved Claims and Interests.
25. Special Meeting of Creditors.
26. Accounts of Referee.
27. Review by Judge. Abrogated Jan. 16, 1939.
28. Redemption of Property and Compounding of Claims.
29. Payment of Moneys Deposited.
30. Imprisoned Debtor.
31. Petition for Discharge.
32. Opposition to Discharge.
33. Arbitration and Compromise.
34. Costs in Contested Proceedings.
35. Compensation of Clerks, Referees, Receivers, and Trustees.
36. Appeals.
37. General Provisions.
38. Forms.
39. Representation of Creditors by Receivers or Their Attorneys.
40. Receivers and Marshals as Custodians.
41. Waiver of Right to Share in Deposits or in Payments under an Arrangement or Plan.
42. Compensation of Attorneys.
43. Fees and Expenses of Attorneys for Petitioning Creditors.
44. Appointment of Attorneys.
45. Auctioneers, Accountants and Appraisers.
46. Banking Institution as Custodian, Receiver or Trustee. Abrogated Jan. 16, 1939.
47. Reports of Referees and Special Masters.
48. Proceedings under Chapter XI of the Act [11 U. S. C. § 701 et seq.].
49. Proceedings under Section 77 of the Act [11 U. S. C. § 205].
50. Proceedings under Section 75 of the Act [11 U. S. C. § 203].
51. Ancillary Receiverships Limited.
52. Proceedings under Chapter X of the Act [11 U. S. C. § 501 et seq.].
53. Bond of Designated Depository under Section 61 [11 U. S. C. § 101].
54. Proceedings under Chapter XII of the Act [11 U. S. C. § 801 et seq.].
55. Proceedings under Chapter XIII of the Act [11 U. S. C. § 1001 et seq.].
56. Rules by Courts of Bankruptcy.

ESTABLISHMENT OF GENERAL ORDERS

The Supreme Court, under the Bankruptcy Act of 1898, promulgated thirty-eight General Orders by an order dated November 28, 1898, 18 Supreme Court IV, which provided in part that:

"In pursuance of the powers conferred by the Constitution and laws upon the Supreme Court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled 'An act to establish a uniform system of bankruptcy throughout the United States [this title],' it is ordered, on this 28th day of November, 1898, that the following rules be adopted and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867 and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary or proper to carry into force and effect the bankrupt act of 1898 and the general orders of this court."

The Orders of the Supreme Court which promulgated, added, amended, or abrogated the General Orders and Forms in Bankruptcy are as follows:

1898—Nov. 28, 1898, 18 S. Ct. iv—xlviii, 172 U. S. 653—723; 210 U. S. 567—585.

1905—Dec. 11, 1905, 37 S. Ct. iii, 210 U. S. 581, 582.

1915—Nov. 1, 1915, 36 S. Ct. vi.

1917—June 4, 1917, 37 S. Ct. iii.

1925—Apr. 13, 1925, 267 U. S. 613—616; May 25, 1925, 268 U. S. 712.

1930—Jan. 13, 1930, 280 U. S. 617.

1931—June 1, 1931, 283 U. S. 870.

1932—May 31, 1932, 52 S. Ct. xxxv, 286 U. S. 573.

1933—April 17, 1933, 53 S. Ct. xxxi—xxxvi, 288 U. S. 621—636; April 24, 1933, 53 S. Ct. xxxvi—xliii, 288 U. S. 636—654; May 15, 1933, 53 S. Ct. xliii, 288 U. S. 655.

1935—May 13, 1935, 55 S. Ct. xl.

1936—Mar. 30, 1936, 56 S. Ct. xlv; June 1, 1936, 56 S. Ct. xlvii—liii, 298 U. S. 695—706.

1937—Apr. 5, 1937, 57 S. Ct. lix; Nov. 16, 1937, 58 S. Ct. cxxvi; Dec. 7, 1937, 58 S. Ct. cxxvi.

1936—Feb. 7, 1938, 58 S. Ct. cxxvi; Mar. 14, 1938, 58 S. Ct. cxxvii.

1939—Jan. 16, 1939, 59 S. Ct. clxxvii—ccxxxii, 305 U. S. 681—785.

1940—June 3, 1940, 60 S. Ct. clx.

1947—June 23, 1947, 67 S. Ct. clxvii.

For additions, amendments and abrogations of specific orders, see Notes under particular Orders.

Order 1. Docket

The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon; of the reference of the case, if any reference is made, to the referee; of the transmission by the referee to the clerk of all bonds, orders and reports, and of the referee's certified record of the proceedings; and of all proceedings in the case except those duly entered on the referee's docket. The clerk's docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection. If the proceeding is brought under sections 75 or 77,[1] or under Chapters IX, X, XI, XII, or XIII, of the Act,[2] the docket shall so indicate.

[1] 11 U. S. C. §§ 203, 205.

[2] 11 U. S. C. §§ 401—1086.

The referee, in all cases referred to him shall keep a docket of all proceedings before him substantially in the manner indicated by Form No. 70. Such docket shall at all times be open to public inspection. The original referee's docket or a certified copy thereof shall be transmitted to the clerk for preservation by him when the case is closed. (As amended Apr. 17, 1933; Jan. 16, 1939; June 23, 1947, effective July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, inserted "clerks" preceding "docket" in next to last sentence of first paragraph and added last paragraph.

1939—Amendment Jan. 16, 1939, changed the second sentence to read as set out in the text, and added the last sentence.

1933—Amendment Apr. 17, 1933, effected slight changes in the second sentence.

ORIGINAL ORDER

As originally promulgated this order read: "The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection."

Order 2. Filing of Papers

The clerk or the referee shall indorse on each paper filed with him the day, and in the case of the original petition, the day and hour, of filing. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, inserted ", and in the case of the original petition, the day", and struck out ", and a brief statement of its character" which appeared at the end of this Order as promulgated originally.

Order 3. Process

All process, summonses, and subpoenas, except such as are issued by the Interstate Commerce Commission in the performance of its duties under section 77 of the Act,[1] shall issue out of the court, under the seal thereof, and be tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees. (As amended Apr. 17, 1933, eff. Apr. 24, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order, as amended, without change.

1933—Amendment Apr. 17, 1933, inserted "except such as are issued by the Interstate Commerce Commission in the performance of its duties under section 77 of the Act".

Order 4. Conduct of Proceedings

Proceedings may be conducted by the bankrupt or debtor in person in his own behalf, or by a creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the district court. The name of the

[1] 11 U. S. C. § 205.

attorney or counselor, with his business address, shall be entered upon the docket, with the date of the entry. Orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the Act or by these general orders, required to be served on the party personally may be served upon his attorney. (As amended Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "business address" for "place of business" in third sentence, and substituted "Orders" for "All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders" in fourth sentence.

1933—Amendment Apr. 17, 1933, inserted "or debtor" in first sentence, and struck out "circuit or" before "district court" in second sentence.

Order 5. Form of Petitions and Other Papers

(1) All petitions and schedules shall be printed or written out plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference.

(2) Petitioners in involuntary proceedings for adjudication, whose claims rest upon assignment or transfer from other persons, shall annex to one of the triplicate petitions all instruments of assignment or transfer, and an affidavit setting forth the true consideration paid for the assignment or transfer of such claims and stating that the petitioners are the bona fide holders and legal and beneficial owners thereof and whether or not they were purchased for the purpose of instituting bankruptcy proceedings.

(3) Each paper filed shall contain a caption setting forth the name of the court, the title of the proceeding, the docket number, and a brief statement of the character of the paper.

(4) Proceedings shall be entitled "In Bankruptcy," "In Proceedings for a Composition or Extension," "In Proceedings for the Reorganization of a Railroad," "In Proceedings for a Composition by a Public Debtor," "In Proceedings for the Reorganization of a Corporation," "In Proceedings for an Arrangement," "In Proceedings for a Real Property Arrangement," or "In Proceedings for a Wage Earner Plan," as the case may be.

(5) In proceedings under chapter VIII, X, XI, XII, or XIII, of the Act,[1] unless and until the debtor is adjudicated a bankrupt he shall be referred to as a "debtor." In proceedings under chapter IX,[2] the debtor shall be referred to as the "petitioner." (As amended Apr. 13, 1925; Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "triplicate petitions" for "duplicate petitions" in par. (2), changed par. (3) to read as set out in the text, and added pars. (4) and (5).

1933—Amendment Apr. 17, 1933, inserted "for adjudication" in par. (2) and added par. (3).

1925—Amendment Apr. 13, 1925, added par. (2).

ORIGINAL ORDER

As promulgated originally, "and schedules" read "and the schedules filed therewith," in the first paragraph.

[1] 11 U. S. C. §§ 201—207, 501—1086.

[2] 11 U. S. C. §§ 401—404.

Order 6. Petitions in Different Courts

If two or more 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 court first acquiring jurisdiction shall, upon application by any party in interest and after a hearing upon reasonable notice to parties in interest, determine the court in which the cases can proceed with the greatest convenience to parties in interest, and the proceedings upon the other petitions shall be stayed by the courts in which such petitions have been filed until such determination is made. If the court first acquiring jurisdiction determines that it shall hear the cases, it shall make its order to that effect, and other courts in which petitions have been filed, upon exhibition of a certified copy of such order, shall order the cases before them transferred to the court first acquiring jurisdiction. If the court first acquiring jurisdiction determines that the cases shall be heard by another court, it shall make its order to that effect and that the case before it be transferred to such court; and other courts in which petitions have been filed, upon exhibition of a certified copy of such order, shall order the cases before them transferred to the court named in the order of the court first acquiring jurisdiction. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

ORIGINAL ORDER

As promulgated originally this Order read: "In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile, and the petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different members of the same partnership for an adjudication of the bankruptcy of said partnership, the court in which the petition is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest that another of said courts should proceed with the cases, order them to be transferred to that court."

Order 7. Priority of Petitions

If two or more petitions are filed in the same court against the same person, and the debtor appears and shows cause against an adjudication of bankruptcy on the petitions, the petitions shall be heard and tried in the order of their filing: *Provided*, That the court, in its discretion, may order the proceedings consolidated. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

ORIGINAL ORDER

As promulgated originally this Order read: "Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated."

Order 8. Abrogated May 25, 1925

ORIGINAL ORDER

As promulgated Nov. 28, 1898, this Order read: "Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankruptcy, and to make all defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made."

Order 9. List of Creditors in Involuntary Bankruptcy

In all cases of involuntary bankruptcy in which the bankrupt is absent or cannot be found, it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a list of the names and places of residence of all the creditors of the bankrupt, according to the best information of the petitioning creditor. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

ORIGINAL ORDER

As promulgated originally this Order read: "In all cases of involuntary bankruptcy in which the bankrupt is absent or can not be found, it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a schedule giving the names and places of residence of all the creditors of the bankrupt, according to the best information of the petitioning creditor. If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or may himself furnish such schedule as aforesaid."

Order 10. Indemnity for Expenses

Before incurring any expense in procuring the attendance of witnesses or in perpetuating testimony, the clerk, marshal, or referee may require, from the bankrupt, debtor, or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt, debtor, or other person shall be repaid him out of the estate as part of the cost of administering the same. (As amended April 17, 1933; January 16, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, omitted "in publishing or mailing notices, or in traveling, or" following "any expense" in first sentence.

1939—Amendment Jan. 16, 1939, restated this Order, as amended, without change.

1933—Amendment Apr. 17, 1933, amended this Order by inserting "debtor" in first and second sentences.

Order 11. Amendments

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules, and filed in triplicate. If amendments are made to separate schedules, the same must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, added the words "and filed in triplicate" at the end of the second sentence. With that exception, this Order reads as promulgated originally.

Order 12. Duties of Referee

(1) A copy of the order referring a proceeding to a referee shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the Act or by these general orders to be had before the judge, shall be had before the referee; and the bankrupt or debtor may receive from the referee a protection against arrest to continue, unless suspended or vacated by order of the court, until the final adjudication on his application for a discharge or for the confirmation of an arrangement or plan.

(2) The times when and places where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the Act to perform.

(3) If a bankrupt files the list of creditors in advance of his schedules, the referee shall promptly call the first meeting of creditors without awaiting the filing of schedules.

(4) The referee, except in no asset cases, shall mail a summary of the trustee's final report and account to the creditors with the notice of the final meeting, together with a statement of the amount of claims proved and allowed. (As amended Apr. 17, 1933, eff. Apr. 24, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

ORIGINAL ORDER

As promulgated originally this Order read as follows:

"1. The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all matters relating to his

bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

"2. The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

"3. Applications for a discharge, or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States or of a State, shall be heard and decided by the Judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts."

AMENDMENTS

1939—Amendment Jan. 16, 1939, cited to text, changed this Order to read as now set out in the text.

1936—Amendment June 1, 1936, added reference "and section 77B" following reference "section 77" in subd. 3.

1933—Amendment Apr. 17, 1933, changed this Order as indicated below by subdivisions thereof:

Subd. 1. Amended first sentence to read: "The order referring a case to a referee shall name a day upon which the bankrupt or debtor shall attend before the referee, and from that day the bankrupt or debtor shall be subject to the orders of the court in all matters relating to the proceedings, and may receive from the referee a protection against arrest to continue, unless suspended or vacated by order of the court, until the final adjudication on his application for a discharge or for the confirmation of a composition or extension proposal."

Subd. 3. Amended to read:

"3. Applications for a discharge, or for confirmation of a composition where the proceeding is had under section 12 of the Act, or for an injunction to stay proceedings of a court or officer of the United States or of a State, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee, or in proceedings under section 77 of the Act, to a special master, to ascertain and report the facts. Unless otherwise ordered by the judge, applications for the confirmation of a debtor's proposal under section 74 of the Act, and all objections thereto, shall be heard and decided by the referee."

Subd. 4. Added.

CROSS REFERENCES

Additional duties of referee, see section 67 of this title.

Order 13. Abrogated. Jan. 16, 1939, eff. Feb. 13, 1939

ORIGINAL ORDER

As promulgated Nov. 28, 1898, this Order read: "The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only."

Order 14. No Official or General Trustee

No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases. (As amended Apr. 17, 1933, eff. Apr. 24, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

1936—Amendment June 1, 1936, struck out the sentence which had been added by the 1933 amendment so as to make this Order read as promulgated originally.

1933—Amendment Apr. 17, 1933, added a second sentence as follows: "This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

This Order as promulgated originally read as set out in the text.

Order 15. Trustee Not Appointed in Certain Cases

If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 16. Notice to Trustee of his Appointment

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 17. Duties of Trustee

(1) The trustee shall, immediately upon entering upon his duties, send notice by mail to the Commissioner of Internal Revenue, Washington, D. C., of the adjudication of bankruptcy, and prepare a complete inventory of all the property of the bankrupt or debtor that comes into his possession.

(2) The trustee shall make report to the court, within five days after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act,[1] with the estimated value of each article; and any creditor or the bankrupt or debtor may file objections to the determination of the trustee within ten days after the filing of the report, unless further time is granted by the court.

(3) In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the Act or by these general orders, within five days after the same shall be due, it shall be the duty of the court to make an order requiring the trustee to show cause, at a time specified in the order, why he should not be removed from office. The court shall cause a copy of the order to be served upon the trustee at least three days before the time fixed for the hearing.

(4) All accounts of trustees and receivers shall be referred as of course to the referee for audit, unless otherwise specially ordered by the judge. (As amended Apr. 17, 1933, eff. Apr. 24, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

[1] 11 U. S. C. § 75.

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, changed subd. 1 of this Order as amended in 1933 to read as above set forth, and subd. 7 to read: "This general order shall not apply to reorganization proceedings under section 77 or section 77B of the Act."

1933—Amendment Apr. 17, 1933, changed this Order to read:

"1. The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt or debtor that comes into his possession.

"2. The trustee shall make report to the court, within five days after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act, with the estimated value of each article, and any creditor or the bankrupt or debtor may take exceptions to the determination of the trustee within ten days after the filing of the report, unless further time is granted by the court. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party.

"3. The accounts of the trustee, required by section 47 of the Act, shall include a statement of all items of property received and of all items of property disposed of; his final report shall include such accounts, and the referee, except in no asset cases, shall mail a summary of said report and accounts to the creditors with the notice of the final meeting, together with a statement of the amount of claims proved and allowed.

"4. The trustee shall examine the correctness of all proofs of claim filed against estates and object to the allowance thereof if he deems them improper.

"5. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the Act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before him, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least three days before the time fixed for the hearing.

"6. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

"7. This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

As promulgated originally this Order read: "The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty-days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before the judge, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court."

Order 18. Sale of Property

(1) All sales shall be by public auction unless otherwise ordered by the court. Where the property is sold by an auctioneer he shall, upon completion of the sale, file with the court and also furnish the receiver or trustee an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot, or for the property as a whole if it is sold in bulk.

(2) Upon application to the court, and for good cause shown, the receiver or trustee may be authorized to sell the property of the estate or any specified portion thereof at private sale; in which case he shall keep an accurate and itemized account of all property sold, of the price received therefor, and to whom sold; which account he shall forthwith file with the court. (As amended Apr. 17, 1933; June 1, 1936; Nov. 16, 1937; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order to read as above set forth.

1937—Amendment Nov. 16, 1937, changed subd. 4 of this Order, as amended, to read: "This general order shall not apply to reorganization proceedings under section 77 of the Act."

1936—Amendment June 1, 1936, changed subd. 4 of this Order as amended in 1933 by inserting "or section 77B" after "section 77".

1933—Amendment Apr. 17, 1933, changed this Order to read:

"1. All sales shall be by public auction unless otherwise ordered by the court. Where the property is sold by an auctioneer he shall, upon completion of the sale, furnish the receiver or trustee with an itemized statement of the property sold, the name of each purchaser, and the price received for each item, or for the property as a whole if it is sold in bulk.

"2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

"3. Upon petition by a bankrupt, debtor, creditor, receiver, or trustee, setting forth that a part or the whole of the estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

"4. This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

As promulgated originally this Order read:

"1. All sales shall be by public auction unless otherwise ordered by the court.

"2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

"3. Upon petition by a bankrupt, creditor, receiver or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court."

Order 19. Accounts of Marshal

The marshal shall make return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 20. Papers Filed after Reference

Proofs of claim and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 21. Proofs of Claim

(1) A proof of claim against an estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership it shall state that the deponent is a member of the partnership; when made by an agent, it shall state the reason the proof is not made by the claimant in person; and when made to prove a debt due to a corporation, the proof shall be made by a duly authorized officer of the corporation. A proof of claim for a debt founded upon an open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which no interest shall be allowed. Each such proof of claim shall state whether a note or other negotiable instrument has been received for such account or any part thereof, or whether any judgment has been rendered thereon. If a note or other negotiable instrument has been received, it shall be filed with the proof of claim. Proofs of claim received by any trustee shall be delivered to the referee to whom the cause is referred.

(2) Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at a designated address; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed. In other cases notices shall be addressed to each creditor at the place designated in the proof of claim, or, if no proof of claim has been filed or if filed and no address is therein stated, at the place shown in the list of creditors.

(3) If a claim has been assigned after the commencement of the proceedings but before proof of claim has been filed, the proof of claim therefor shall be supported by an affidavit of the owner at the time of the commencement of proceedings, setting forth the true consideration for the debt, what payments have been made thereon, and that it is entirely unsecured, or if secured, the security as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim, proof of which has been filed, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment and that objection thereto must be made within ten days. If no objection be made within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

(4) The claims of persons contingently liable for the bankrupt or debtor may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish pro tanto the original debt.

(5) The execution of any power of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before any of the officers enumerated in section 20 of the Act.[1] When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

(6) When the trustee or any creditor or the bankrupt or debtor shall desire the reconsideration of any claim allowed against the estate, he may apply by petition to the referee to whom the case is referred for an order for such reconsideration, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witness that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly. (As amended Nov. 1, 1915; Apr. 17, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, changed subd. 8 as added by the 1933 amendment, to read: "The provisions of this general order shall not apply to reorganization proceedings under section 77 or 77B of the Act."

1933—Amendment Apr. 17, 1933, effected the following changes in this Order as amended in 1915: The last three sentences in subd. 1 were restated without change, the preceding sentences being changed to read: "Depositions to prove claims against an estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by a duly authorized officer of the corporation."

Subds. 2, 3, 4, and 5 were restated without change.

[1] 11 U. S. C. § 43.

In subd. 6, first sentence, "the estate" was substituted for "the bankrupt's estate", and in the second sentence "witness" was substituted for "witnesses".

Subds. 7 and 8, were added, which read:

"7. Every proof of debt filed in extension proceedings under section 74 of the Act shall, unless the court is satisfied from its other allegations that the claim is not based upon money loaned or upon any bond, note, or other obligation, contain proof that the claim is free from usury as defined by the laws of the place where the debt is contracted.

"8. The provisions of this general order shall not apply to proceedings under section 77 of the Act."

1915—Amendment Nov. 1, 1915, added the following in the first paragraph of the original Order: "Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred."

ORIGINAL ORDER

As promulgated originally this Order read:

"1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer. If the treasurer or corresponding officer is not within the district wherein the bankruptcy proceedings are pending the deposition may be made by some officer or agent of the corporation having knowledge of the facts.

"2. Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the post office box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

"3. Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt and that it is entirely unsecured, or if secured, the security, as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

"4. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish pro tanto the original debt.

"5. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

"6. When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witnesses that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly."

Order 22. Taking of Testimony

The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and shall be governed by the Rules of Civil Procedure for the District Courts of the United States,[1] in so far as they are not inconsistent with the Act or with these general orders. The referee may rule upon the admissibility of evidence and may put witnesses on oath and may himself examine them and may call any party to the proceedings and examine him under oath. If an objection to a question propounded to a witness is sustained by the referee, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The referee may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. Upon the request of any party, however, the referee shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

REFERENCES IN TEXT

"Rules of Civil Procedure for the District Courts of the United States", referred to in the text, were changed to "Rules of Civil Procedure for the United States District Courts" by Supreme Court order Dec. 29, 1948.

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

ORIGINAL ORDER

As promulgated originally this Order read: "The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just."

FEDERAL RULES OF CIVIL PROCEDURE

See Rules following section 2072 of Title 28, Judiciary and Judicial Procedure.

Order 23. Orders of Referee

In all orders made by a referee, it shall be recited, according as the fact may be, that notice was given

[1] 28 U. S. C. following § 2072.

and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 24. List of Proved Claims and Interests

The person with whom proofs of claim or of interest are filed shall maintain open to inspection a list of the claims and interests proved against the estate, with the names and addresses of the owners thereof, as given by them. The list of claims or of interests shall be maintained substantially in the manner indicated by Form No. 71. The original list or a certified copy thereof shall be transmitted to the clerk for preservation by him when the case is closed. (As amended April 17, 1933; January 16, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, added last two sentences.

1939—Amendment Jan. 16, 1939, changed this Order to read as above set forth.

1933—Amendment Apr. 17, 1933, changed this Order to read: "The referee shall maintain open to inspection a list of the claims proved against an estate, with the names and addresses of the proving creditors."

ORIGINAL ORDER

As promulgated originally this Order read: "The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors."

Order 25. Special Meeting of Creditors

Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the Act, the court may call such a meeting, specifying in the notice the purpose for which it is called. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 26. Accounts of Referee

Every referee shall maintain, substantially in the manner indicated by Form No. 46, a cash book or a record in which he shall keep an accurate and itemized account showing (1) all moneys received by him in his official capacity as referee in bankruptcy and the case number of the proceeding to which each receipt is credited; and (2) the disposition made of such moneys, showing the case number of the proceeding, if any, on account of which each sum is disbursed. All moneys received as aforesaid shall be deposited forthwith to the credit of the referee in his official capacity in a depository designated by the court for the purpose, and shall be disbursed only by checks signed by the referee in his official capacity. Within thirty days after the expiration of each six months period ending June thirtieth and December thirty-first of each year, each referee shall submit to the district court a report substantially in the manner indicated by Form No. 47 containing (1) a financial statement showing all moneys received and disbursed in his official capacity as referee in bankruptcy during the period covered by the report; (2) an analysis of the unexpended balance in his official account at the end of the period; (3) a statement showing the number of cases handled during the period; and (4) a list of the proceedings referred to him which have remained open for more than eighteen months, giving the reasons in each instance why they have not been closed. The statements so submitted shall be in duplicate and verified; and one copy shall be transmitted by the clerk, forthwith upon its receipt, to the Administrative Office of the United States Courts. (As amended Apr. 17, 1933; Jan. 16, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, changed this Order to read as above set forth.

1939—Amendment Jan. 16, 1939, changed this Order to read as above set forth.

1933—Amendment Apr. 17, 1933, changed this Order to read: "Every referee shall keep an accurate and itemized account showing, with respect to each case referred to him, his receipts and expenditures and their nature. Within sixty days after the expiration of each six months period ending January thirty-first and July thirty-first respectively, in each year, he shall submit to the district court (1) a transcript of such account, with proper vouchers when vouchers can be procured; (2) a statement showing the unexpended balance, if any, of moneys received as indemnity or charges for expenses; (3) if the referee devotes part time to his duties, a statement showing the extent to which and the method by which any overhead expenses have been allocated to and reimbursed out of the cases referred to him; (4) the particular rule or method by which the amount of expense charges against individual estates is computed or fixed; (5) a statement of the cases referred to him which have remained open for more than eighteen months, giving the reasons in each instance why they have not been closed. The accounts and statements so submitted shall be in duplicate and verified; one copy shall be transmitted by the clerk, forthwith upon its receipt, to the Attorney General."

ORIGINAL ORDER

As promulgated originally this Order read: "Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or other officer attending him in the performance of his duties in any case which may be referred to him; and shall make return of the same under oath to the judge, with proper vouchers when vouchers can be procured, on the first Tuesday in each month."

Order 27. Abrogated Jan. 16, 1939, eff. Feb. 13, 1939

ORIGINAL ORDER

As promulgated, Nov. 28, 1898, this Order read: "When a bankrupt, creditor, trustee, or other person shall desire a review by the judge of any order made by the referee, he shall file with the referee his petition therefor, setting out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon."

CROSS REFERENCES

Review of orders of referee, see subd. (c) of section 67 of this title.

Order 28. Redemption of Property and Compounding of Claims

Whenever it may be deemed for the benefit of an estate to redeem and discharge any mortgage, pledge, deposit or lien, upon any property, real or personal, or to compound and settle any debts or other claims due or belonging to the estate, the receiver or trustee, or the bankrupt or debtor, or any creditor who has proved his claim, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing or directing such an act on the part of the receiver or trustee: *Provided,* That the court may, upon cause shown, order an immediate redemption of property without notice. (As amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, inserted in the last sentence of this Order, as added by the 1933 amendment, "or section 77B".

1933—Amendment Apr. 17, 1933, inserted "or debtor," before "or any creditor" in this Order, and added at the end a new sentence "This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

This Order, as promulgated originally, read: "Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee."

Order 29. Payment of Moneys Deposited

No moneys deposited as required by the Act shall be drawn from the depository unless by check or draft, signed by the clerk of the court or by a receiver or trustee, and countersigned by the judge, or by a referee, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn. An entry of the substance of each check or draft, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the receiver or trustee; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any clerk authorized to countersign said checks. (As amended Apr. 17, 1933; May 13, 1935; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, added "reorganization" in the last sentence of this Order added by 1933 Amendment.

1935—Amendment May 13, 1935, inserted "or section 77B" in the last sentence of this Order added by the 1933 Amendment.

1933—Amendment Apr. 17, 1933, added a final sentence which read: "This general order shall not apply to proceedings under section 77 of the Act."

ORIGINAL ORDER

This Order as promulgated originally read: "No moneys deposited as required by the act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks."

Order 30. Imprisoned Debtor

If, at the time of the commencement of the proceedings under this Act, the bankrupt or debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailer or any officer in whose custody he may be, before the court, for the purpose of testifying in any manner relating to said proceedings; and, if committed after the commencement of said proceedings upon process in any civil action founded upon a claim provable under the Act, the judge may, upon like application, discharge him from such imprisonment. If the bankrupt or debtor, during the pendency of said proceedings, be arrested or imprisoned upon process in any civil action, the judge, upon his application, may issue a writ of habeas corpus to bring him before the judge to ascertain whether such process has been issued for the collection of any claim provable under the Act, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge, the judge shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order. (As amended Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "judge" for "the district court," and "court" in the second and third sentences of this Order as amended in 1933, so as to read as set out in the text.

1933—Amendment Apr. 17, 1933, changed this Order to read: "If, at the time of the commencement of proceedings under this Act, the bankrupt or debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailer or any officer in whose custody he may be, before the court, for the purpose of testifying in any manner relating to said proceedings; and, if committed after the commencement of said proceedings upon process in any civil action founded upon a claim provable under the Act, the court

may, upon like application, discharge him from such imprisonment. If the bankrupt or debtor, during the pendency of said proceedings be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of habeas corpus to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable under the Act, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge, the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order."

ORIGINAL ORDER

This Order as promulgated originally, read: "If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailor or any officer in whose custody he may be, before the referee, for the purpose of testifying in any matter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of habeas corpus to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order."

Order 31. Petition for Discharge

The petition of a bankrupt corporation for a discharge shall state concisely, in accordance with the provisions of the Act and the orders of the court, the proceedings in the case and the acts of the bankrupt. (As amended Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order to read as set out in the text, substituting "bankrupt corporation" and "bankrupt" for "bankrupt or debtor" at the beginning and end, respectively, of the Order.

1933—Amendment Apr. 17, 1933, substituted "bankrupt or debtor" for "bankrupt".

ORIGINAL ORDER

As promulgated originally this Order read as set out in the text except that the word "corporation" was not included.

Order 32. Opposition to Discharge

Any person opposing a discharge shall, on or before the time fixed for the filing of objections to the discharge, file a specification in writing of the grounds of his opposition. (As amended June 4, 1917; Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order, as amended, to read as set out in the text.

1933—Amendment Apr. 17, 1933, changed this Order to read: "A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall at the same time file a specification in writing of the grounds of his opposition."

1917—Amendment June 4, 1917, substituted "shortened or enlarged" for "enlarged" in the original Order.

ORIGINAL ORDER

As promulgated originally this Order read: "A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge."

Order 33. Arbitration and Compromise

Whenever a receiver, trustee or debtor in possession shall make application to the court for authority to submit to arbitration any controversy arising in the settlement of an estate, or for authority to compromise any such controversy, the application shall clearly and distinctly set forth the subject matter of the controversy, and the reasons why it is proper and for the best interest of the estate that the controversy should be settled by arbitration or compromise. (As amended Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order, as amended, to read as set out in the text.

1933—Amendment Apr. 17, 1933, substituted "an estate" for "a bankrupt's estate".

ORIGINAL ORDER

As promulgated originally, this Order read: "Whenever a trustee shall make application to the court for authority to submit a controversy arising in the settlement of a demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject-matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise."

Order 34. Costs in Contested Proceedings

In cases of involuntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a civil action cognizable as a case in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "civil action cognizable as a case" for "suit", which is the only change made in this Order as promulgated originally.

Order 35. Compensation of Clerks, Referees, Receivers, and Trustees

(1) The fees allowed by the Act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the Act to be filed with them, or in certifying or delivering papers or copies of records to referees or other officers, or in receiving or paying out moneys; but shall not include copies furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

(2) The compensation of referees, prescribed by the Act, shall be in full compensation for all services performed by them under the Act, or under these general orders; but shall not include expenses neces-

sarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the Act and allowed by special order of the judge.

(3) The compensation allowed to receivers or trustees by the Act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

(4) The petition in a voluntary proceeding under Chapters I to VII or Chapter XIII of the Act[1] may be accepted for filing by the clerk if accompanied by a verified petition of the bankrupt or debtor stating that the petitioner is without and cannot obtain the money with which to pay the filing fees in full at the time of filing. Such petition shall state the facts showing the necessity for the payment of the filing fees in installments and shall set forth the terms upon which the petitioner proposes to pay the filing fees.

a. At the first meeting of creditors or any adjournment thereof, the court after hearing and examination of the bankrupt or debtor, shall enter an order fixing the amount and date of payment of such installments. The final installment shall be payable not more than six months after the date of filing of the original petition; provided, however, that for cause shown the court may extend the time of payment of any installment for a period not to exceed three months.

b. Upon the failure of a bankrupt or debtor to pay any installment as ordered, the court may dismiss the proceeding for failure to pay costs as provided in Section 59, sub. g. of the Act.[2] If a proceeding is dismissed or closed without the payment of the filing fees in full, the amount collected in installments, including any payment made at the time the original petition is filed, shall be divided between the clerk, the referees' salary fund, the referees' expense fund and the trustee, if any, in the same proportion as such filing fees would be distributed if paid in full.

c. No proceedings upon the discharge of a bankrupt or debtor shall be instituted until the filing fees are paid in full. (As amended Dec. 11, 1905; Jan. 10, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, changed subd. (4) to read as above set forth.

1939—Amendment Jan. 16, 1939, restated subds. (1) and (2) without change and substituted in subd. (3) "receivers or trustees" for "trustees", and in subd. (4) "receivers and trustees" for "trustees".

1905—Amendment Dec. 11, 1905, added the following sentence to subd. 4: "He may also, pending such proceedings, both in voluntary and involuntary cases, order the commissions of referees and trustees to be paid immediately after such commissions accrue and are earned."

ORIGINAL ORDER

As promulgated originally, subds. 1 and 2 of this Order read as set out in the text: subds. 3 and 4 read:

"3. The compensation allowed to trustees by the act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

"4. In any case in which the fees of the clerk, referee and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees to be paid out of the estate; or may, after notice to the bankrupt, and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed."

[1] 11 U. S. C., §§ 1—112, 1001—1086.

[2] 11 U. S. C., § 95 (g).

Order 36. Appeals

Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in civil actions in the courts of the United States, including the Rules of Civil Procedure for the District Courts of the United States. (As amended Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

REFERENCES IN TEXT

"Rules of Civil Procedure for the District Courts of the United States," referred to in the text, was changed to "Rules of Civil Procedure for the United States District Courts" by Supreme Court order Dec. 29, 1948.

AMENDMENTS

1939—Amendment Jan. 16, 1939, substituted "civil actions in the courts of the United States, including the Rules of Civil Procedure for the District Courts of the United States" for "equity in Courts of the United States."

1933—Amendment Apr. 17, 1933, amended this Order to read: "Appeals shall be regulated, except as otherwise provided in the Act, by the rules governing appeals in equity in courts of the United States."

ORIGINAL ORDER

As promulgated originally, this Order read:

"1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

"2. Appeals under the act to the Supreme Court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the supreme court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from, or by a justice of the Supreme Court of the United States.

"3. In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States, the court from which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts, and its conclusions of law thereon, stated separately; and the record transmitted to the Supreme Court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law."

FEDERAL RULES OF CIVIL PROCEDURE

See Rules following section 2072 of Title 28, Judiciary and Judicial Procedure.

Order 37. General Provisions

In proceedings under the Act the Rules of Civil Procedure for the District Courts of the United States[1] shall, in so far as they are not inconsistent with the Act or with these general orders, be followed as nearly as may be. But the court may shorten the limitations of time prescribed so as to expedite hear-

[1] 28 U. S. C. following § 2072.

ings, and may otherwise modify the rules for the preparation or hearing of any particular proceeding. (As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

REFERENCES IN TEXT

"Rules of Civil Procedure for the District Courts of the United States", referred to in the text, was changed to "Rules of Civil Procedure for the United States District Courts" by Supreme Court order Dec. 29, 1948.

AMENDMENTS

1939—Amendment Jan. 16, 1939, amended this Order to read as set out in the text.

ORIGINAL ORDER

As promulgated originally, this Order read: "In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing."

FEDERAL RULES OF CIVIL PROCEDURE

See Rules following section 2072 of Title 28, Judiciary and Judicial Procedure.

Order 38. Forms

The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case. (As amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order as promulgated originally.

1936—Amendment June 1, 1936, added in this Order, as amended in 1933, "or in proceedings for the reorganization of a corporation," after "railroad", in the second sentence.

1933—Amendment Apr. 17, 1933, changed this Order to read: "The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case. In proceedings under any of the sections of Chapter VIII of the Bankruptcy Act, unless and until the debtor is adjudicated a bankrupt all forms used shall refer to him as a 'debtor' and not a 'bankrupt' and shall be captioned 'In proceedings for a composition or extension' or 'In proceedings for the reorganization of a railroad,' as the case may be, and not 'In bankruptcy.' "

ORIGINAL ORDER

As promulgated originally this Order read as set out in the text.

Order 39. Representation of Creditors by Receivers or Their Attorneys

Neither a receiver nor his attorney shall solicit any proof of claim, power of attorney, or other authority to act for or represent any creditor for any purpose in connection with the administration of an estate or the acceptance or rejection of any arrangement or plan. (Added Apr. 13, 1925; as amended Jan. 13, 1930; Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order as promulgated originally with the following substitutions: "claim," for "debt,"; "an estate" for "the estate in bankruptcy"; and "arrangement or plan," for "composition offered by a bankrupt."

1933—Amendment Apr. 17, 1933, amended this Order to read: "Neither a receiver nor his attorney shall solicit any proof of debt, power of attorney, or other authority to act for, or represent, any creditor for any purpose in connection with the administration of an estate or the acceptance or rejection of any composition or extension proposal. The local bankruptcy court may, however, whenever a banking institution is under local rule or practice always appointed receiver in cases requiring the services of a receiver, by local rule approved by a majority of the circuit judges of the circuit, provide that notice may be given to the creditors of the availability of such institution to act as trustee if elected, and may provide means to facilitate the creditors in filing and voting their claims in favor of the election of such institution as trustee."

1930—Amendment Jan. 13, 1930, amended this Order to read: "Neither a receiver nor his attorney shall solicit any proof of debt, power of attorney or other authority to act for or represent any creditor for any purpose in connection with the administration of the estate in bankruptcy or the acceptance or rejection of any composition offered by a bankrupt. The local Bankruptcy Court may, however, whenever a banking institution is under local rule or practice always appointed receiver in cases requiring the services of a receiver, by local rule approved by a majority of the Circuit Judges of the Circuit, provide that notice may be given to the creditors of the availability of such institution to act as trustee if elected, and may provide means to facilitate the creditors in filing and voting their claims in favor of the election of such institution as trustee."

ORIGINAL ORDER

As promulgated originally this Order read: "Neither a receiver nor his attorney shall solicit any proof of debt, power of attorney, or other authority to act for, or represent any creditor for any purpose in connection with the administration of the estate in bankruptcy or the acceptance or rejection of any composition offered by a bankrupt."

Order 40. Receivers and Marshals as Custodians

A receiver or marshal appointed by the court to take charge of the property of a bankrupt after the filing of a petition, shall be deemed to be a mere custodian within the meaning of section 48 of the Act[1], unless his duties and compensation are specifically enlarged by order of the court, upon proper cause shown, either at the time of the appointment or later. (Added Apr. 13, 1925; as amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

Order 41. Waiver of Right to Share in Deposits or in Payments under an Arrangement or Plan

Before confirming an arrangement or plan the court shall require all creditors and other persons who may have waived their right to share in the distribution of the deposit or in payments under the arrangement or plan, for claims, fees or otherwise, to set forth in writing and under oath all agreements with respect thereto with the debtor, his attorney or other person, and shall also require an affidavit by the debtor that he has not directly or indirectly paid or promised any consideration to any attorney, trustee, receiver, creditor, or other person in connection with the proceedings except as set forth in such

[1] 11 U. S. C. § 76.

affidavit or in the arrangement or plan, and that he has no knowledge of any such payment or promise by any other party. (Added Apr. 13, 1925; as amended Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order as amended in 1933, without change.

1933—Amendment Apr. 17, 1933, substituted "an arrangement or plan" for "a composition or extension proposal" for "extension", and for "offer of composition and extension"; and "debtor," and "debtor" for "bankrupt or debtor.".

Order 42. Compensation of Attorneys

No allowance of compensation shall be made to any attorney for a receiver, trustee or debtor in possession except for professional services. (Added Apr. 13, 1925; as amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order, as amended in 1936, without change.

1936—Amendment June 1, 1936, changed this Order to read as above set forth.

1933—Amendment Apr. 17, 1933, changed this Order to read:

"1. Every attorney, receiver, and trustee seeking an allowance of compensation from an estate for services rendered, or reimbursement for expenses incurred in the proceedings, shall file with the court a petition under oath, setting forth a full and detailed statement of such services and expenses and the amount claimed therefor, and, in the case of an attorney or receiver, the amount of the partial allowance, if any, theretofore made. And such petition shall be accompanied by an affidavit of the applicant stating that no agreement has been made, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and the receiver, the trustee, the bankrupt, the debtor, or the attorney of any of them. In the absence of such petition and affidavit no allowance of compensation shall be made; and no allowance shall be made to any attorney for a receiver or trustee except for professional services.

"2. Except in proceedings under section 77 of the Act, such petition shall be heard at a meeting of creditors, and the referee in sending the notice of such meeting prescribed by section 58 of the Act shall state by whom and in what amount the allowance of the compensation or reimbursement for expenses is asked."

ORIGINAL ORDER

As promulgated originally this Order read:

"1. Every attorney, receiver and trustee seeking an allowance of compensation from a bankrupt estate for services rendered, shall file with the referee a petition under oath, setting forth a full and detailed statement of such services and the amount claimed therefor, and, in the case of an attorney or receiver, the amount of the partial allowance, if any, theretofore made. And such petition shall be accompanied by an affidavit of the applicant stating that no agreement has been made, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and the receiver, the trustee, the bankrupt, or the attorney of any of them. In the absence of such petition and affidavit no allowance of compensation shall be made.

"2. Such petition shall be heard at a meeting of creditors; and the referee in sending the notice of such meeting prescribed by section 58 of the Bankruptcy Act, shall state by whom and in what amount the allowance of the compensation is asked."

Order 43. Fees and Expenses of Attorneys for Petitioning Creditors

The court may deny the allowance of any fee to the attorney for petitioning creditors or the reimbursement of his expenses, or both, if it shall appear that the proceedings were instituted in collusion with the bankrupt or were not instituted in good faith. (Added Apr. 13, 1925; as amended Apr. 17, 1933; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order without change.

1933—Amendment Apr. 17, 1933, restated this Order as promulgated originally, without change.

Order 44. Appointment of Attorneys

No attorney for a receiver, trustee or debtor in possession shall be appointed except upon the order of the court, which shall be granted only upon the verified petition of the receiver, trustee or debtor in possession, stating the name of the counsel whom he wishes to employ, the reasons for his selection, the professional services he is to render, the necessity for employing counsel at all, and to the best of the petitioner's knowledge all of the attorney's connections with the bankrupt or debtor, the creditors or any other party in interest, and their respective attorneys. If satisfied that the attorney represents no interest adverse to the receiver, the trustee, or the estate in the matters upon which he is to be engaged, and that his employment would be to the best interests of the estate, the court may authorize his employment, and such employment shall be for specific purposes unless the court is satisfied that the case is one justifying a general retainer. If without disclosure any attorney acting for a receiver or trustee or debtor in possession shall have represented any interest adverse to the receiver, trustee, creditors or stockholders in any matter upon which he is employed for such receiver, trustee, or debtor in possession, the court may deny the allowance of any fee to such attorney, or the reimbursement of his expenses, or both, and may also deny any allowance to the receiver or trustee if it shall appear that he failed to make diligent inquiry into the connections of said attorney.

Nothing herein contained shall prevent the judge, in proceedings under section 77 of the Act,[1] from authorizing the employment of attorneys who are attorneys of the corporation, or associated with its legal department, in connection with the operation of the business of the corporation by a trustee or trustees under subsection (c) of section 77, when such employment is found by the judge to be in the public interest in relation to such operation and is not adverse to the interests of the trustee or trustees or of the creditors of the corporation. (Added Apr. 13, 1925; as amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, amended this order to read as set out in the text.

1936—Amendment June 1, 1936, struck out the first paragraph of this Order as amended in 1933, and changed the second paragraph, then constituting entire order to read: "Nothing herein contained shall prevent the court, in proceedings under section 77 or section 77B of the Act, from authorizing the employment of attorneys who are attorneys of the corporation, or associated with

[1] 11 U. S. C. § 205.

its legal department, in connection with the operation of the business of the corporation by a trustee or trustees under subsection (c) of section 77 and subsection (c) of section 77B, when such employment is found by the court to be in the public interest in relation to such operation and is not adverse to the interests of the trustee or trustees or of the creditors of the corporation."

1933—Amendment Apr. 17, 1933, amended this Order to read:

"No attorney for a receiver or a trustee shall be appointed except upon the order of the court, which shall be granted only upon the verified petition of the receiver or trustee, stating the name of the counsel whom he wishes to employ, the reasons for his selection, the professional services he is to render, the necessity for employing counsel at all, and to the best of the petitioner's knowledge all of the attorney's connections with the bankrupt or debtor, the creditors or any other parties to the proceedings, and their respective attorneys. If satisfied that the attorney represents no interest adverse to the receiver, trustee, or any creditor in the matters upon which he is to be engaged, and that his employment would be to the best interests of the estate, the court may authorize his employment, and such employment shall be for specific purposes unless the court is satisfied that the case is one justifying a general retainer. If without disclosure any attorney acting for a receiver or trustee shall have represented any interest adverse to the receiver, trustee, or any creditor in any matter upon which he is employed for such receiver or trustee, the court may deny the allowance of any fee to such attorney, or the reimbursement of his expenses, or both, and may also deny any allowance to the receiver or trustee if it shall appear that he failed to make diligent inquiry into the connections of said attorney.

"Nothing herein contained shall prevent the court, in proceedings under section 77 of the Act, from authorizing the employment of attorneys who are attorneys of the railroad corporation, or associated with its legal department, in connection with the operation of the business of the corporation by a trustee or trustees under paragraph (c) of section 77, when such employment is found by the court to be in the public interest in relation to such operation and is not adverse to the interests of the trustee or trustees or of the creditors of the corporation."

ORIGINAL ORDER

As promulgated originally this Order read as follows: "In any district in which there is a city having at the last federal census a population of 250,000 or more, no attorney for a receiver or a trustee shall be appointed except upon the order of the court, which shall be granted only upon the petition of the receiver or trustee, stating the name of the counsel whom he wishes to employ, the reasons for his selection, and the necessity for employing counsel at all; and there shall be submitted with this petition an affidavit of the person recommended showing that he is not employed by or connected with the bankrupt or any person having an interest adverse to the receiver, trustee or creditors."

Order 45. Auctioneers, Accountants and Appraisers

No auctioneer or accountant shall be employed by a receiver, trustee or debtor in possession except upon an order of the court expressly fixing the amount of the compensation or the rate or measure thereof. The compensation of appraisers shall be provided for in like manner in the order appointing them. (Added Apr. 13, 1925; as amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, struck out "or" after "receiver" and added "or debtor in possession" after "trustee".

Order 46. Abrogated Jan. 16, 1939, eff. Feb. 13, 1939

AMENDMENTS

1931—Amendment June 1, 1931, amended this Order to read: "Whenever a custodian, receiver, or trustee is a banking institution designated and qualified pursuant to § 61 of the Act to act as depositary for money, said banking institution may, if authorized by rule of the local Bankruptcy Court approved by a majority of the Circuit Judges of the Circuit, keep on deposit with itself money received by it as custodian, receiver, or trustee, if said banking institution under the local laws of the state of its domicile is permitted to keep on deposit with itself money collected and received by it acting as receiver or trustee under the appointment of any court. Such local rule shall contain such provisions for the supervision and control of such deposits as the court may deem adequate, and on all sums of money not less than $100 so kept on deposit interest shall be allowed by such banking institution at such rate as may from time to time be directed by such local rule."

ORIGINAL ORDER

As promulgated, Jan. 13, 1930, this Order read: "Whenever a custodian, receiver or trustee is a banking institution designated and qualified pursuant to section 61 of the Act to act as depositary for money, said banking institution may, if authorized by rule of the local Bankruptcy Court approved by a majority of the Circuit Judges of the Circuit, keep on deposit with itself money received by it as custodian, receiver or trustee, if said banking institution under the local laws of the state of its domicile is permitted to keep on deposit with itself money collected and received by it acting as receiver or trustee under the appointment of any court. Such local rule shall contain such provisions for the supervision and control of such deposits as the court may deem adequate, and on all sums of money not less than $100 so kept on deposit interest shall be allowed by such banking institution at such rate, not less than two per centum per annum, as may from time to time be directed by local rule."

Order 47. Reports of Referees and Special Masters

Unless otherwise directed in the order of reference the report of a referee or of a special master shall set forth his findings of fact and conclusions of law, and the judge shall accept his findings of fact unless clearly erroneous. The judge after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions. (Added May 31, 1932; as amended Apr. 17, 1933; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order to read as set out in the text.

1936—Amendment June 1, 1936, inserted "and section 77B" after "section 77".

1933—Amendment Apr. 17, 1933, substituted "under section 77 of the Act," for "in bankruptcy", and inserted "or master" after "referee".

ORIGINAL ORDER

As promulgated originally this Order read: "The reports of referees in all cases and proceedings in bankruptcy shall be deemed presumptively correct, but shall be subject to review by the court, and the court may adopt the same, or may modify or reject the same in whole or in part when the court in the exercise of its judgment is fully satisfied that error has been committed: Provided, That when any matter is referred by consent of all parties in interest and the intention is plainly expressed in the consent order that the submission is to the referee as an arbitrator, the court may review the same only in accordance with the principles governing a review of an award and decision by an arbitrator."

Order 48. Proceedings under Chapter XI of the Act [11 U. S. C. § 701 et seq.]

(1) This general order shall apply to proceedings under chapter XI of the Act.[1]

[1] 11 U. S. C. § 701 et seq.

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of chapter XI or of this general order, apply to proceedings under chapter XI: *Provided*, That General Orders 18, 28 and 29 shall not apply to such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of the Act.

(3) The clerk shall forthwith transmit to the Collector of Internal Revenue for the district in which the proceedings are brought a copy of each petition filed under section 321 or 322 of the Act.[2]

(4) All papers filed shall be accompanied by such copies as the clerk or referee may require to enable him to comply with the provisions of the Act and of this general order. (Added Apr. 24, 1933; as amended May 13, 1935; June 1, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, changed this Order to read as set out in the text.

1936—Amendment June 1, 1936, changed this Order to read:

"1. Notice to creditors of the proposed appointment of a custodian or receiver may, in the interests of expedition, be given by publication instead of in writing, if the court so directs.

"2. If a custodian or receiver is appointed, the notice of the first meeting which he is required to prepare shall be in form approved by the referee and the date of the meeting shall be fixed by the referee.

"3. If the debtor is a wage-earner or a farmer, and any happenings occur which under the provisions of subdivision (1) of said section would otherwise be followed by an order of liquidation, and the debtor does not consent to liquidation, the court shall dismiss the proceedings and notify the creditors accordingly. If a composition or extension proposal is set aside for fraud as provided in subdivision (k) of said section, the case shall be reinstated and such proceedings shall be had as upon denial of confirmation under subdivision (1).

"4. The commissions of the referee and of the custodian or receiver shall not exceed those payable to referees and receivers under sections 40 and 48 of the Act in the event of a composition in bankruptcy, and the amount of the debts whose maturity is to be extended shall be included for that purpose as part of 'the amount to be paid creditors' within the meaning of those sections, but if the compensation so computed shall appear to be in excess of what is fair and reasonable it shall be correspondingly reduced, the intent of this provision being that the amount of such fees shall be subject at all times to the approval of the court. If the estate is liquidated under the provisions of subdivision (1) of section 74 of the Act, the referee shall return to the estate any commissions previously received and shall be entitled to commissions on all moneys disbursed to creditors by the trustee as provided in section 40 of the Act.

"5. The personal representative of a deceased individual who desires in his representative capacity to effect, under section 74, a settlement or composition of the debts of the estate, shall attach to his petition, in lieu of schedules, the following papers, certified as correct by the court which appointed him (hereinafter referred to as the probate court): (a) a copy of the order of his appointment, (b) a copy of an order of the probate court authorizing him to file the petition, (c) a detailed inventory of so much of the property constituting the estate as under the laws of the State of which the decedent died a resident would be available for creditors, and (d) a list of the names and addresses of the creditors, showing the amounts allowed or apparently owing to each, the nature of the securities or liens, if any, held by each, and the claims which are entitled to priority. If the petition is approved by the judge as properly filed under section 74, the clerk shall file a certified copy of the order of approval with the probate court, and from the date of such order until the case is dismissed the district court shall exercise exclusive jurisdiction over the property required to be listed in the inventory as above provided.

"6. Upon the approval of a personal representative's petition the case shall be referred to a referee and proceeded with as in all other cases under section 74 and this general order, except that (a) the original and any amended or supplementary inventory filed by the petitioner with the approval of the probate court shall be deemed to be correct, and no inventory shall be made by the custodian or receiver; (b) all claims allowed by the probate court, and only such claims, shall be allowed by the referee; (c) the petitioner shall file with the application for confirmation a completed list of the claims allowed up to the date of the application, certified as correct by the probate court; and (d) the clerk shall file with the probate court certified copies of all orders of the referee or judge confirming or denying the proposal, dismissing the proceedings before or after confirmation, or directing liquidation of the estate."

1935—Amendment May 13, 1935, changed this Order as amended in 1933, to read: "4. The commissions of the referee and of the custodian or receiver shall not exceed those payable to referees and receivers under sections 40 and 48 of the Act in the event of a composition in bankruptcy, and the amount of the debts whose maturity is to be extended shall be included for that purpose as part of 'the amount to be paid creditors' within the meaning of those sections, but if the compensation so computed shall appear to be in excess of what is fair and reasonable it shall be correspondingly reduced, the intent of this provision being that the amount of such fees shall be subject at all times to the approval of the court. If the estate is liquidated under the provisions of subdivision (1) of section 74 of the Act, the referee shall return to the estate any commissions previously received and shall be entitled to commissions on all moneys disbursed to creditors by the trustee as provided in section 40 of the Act."

ORIGINAL ORDER

As promulgated originally this Order read:

"1. Notice to creditors of the proposed appointment of a custodian or receiver may, in the interests of expedition, be given by publication instead of in writing, if the court so directs.

"2. If a custodian or receiver is appointed, the notice of the first meeting which he is required to prepare shall be in form approved by the referee and the date of the meeting shall be fixed by the referee.

"3. If the debtor is a wage-earner or a person engaged chiefly in farming or the tillage of the soil, and any happenings occur which under the provisions of subdivision (1) of said section would otherwise be followed by an order of liquidation, and the debtor does not consent to liquidation, the court shall dismiss the proceedings and notify the creditors accordingly. If a composition or extension proposal is set aside for fraud as provided in subdivision (k) of said section, the case shall be reinstated and such proceedings shall be had as upon denial of confirmation under subdivision (1).

"4. For the purposes of computing the commissions of the referee and of the custodian or receiver the term 'composition' as used in sections 40 and 48 of the Act shall be deemed to include an extension proposal, and the amount of the debts whose maturity is to be extended thereunder and of the debts, if any, to be paid in full on the confirmation, shall be deemed to be 'the amount to be paid creditors' within the meaning of said sections. If the estate is liquidated under the provisions of subdivision (1) of section 74 of the Act, the referee shall return to the estate any commissions previously received and shall be entitled to commissions on all moneys disbursed to creditors by the trustee as provided in section 40 of the Act."

[2] 11 U. S. C. §§ 721, 722.

Order 49. Proceedings under Section 77 of the Act [11 U. S. C. § 205]

(1) This general order shall apply to proceedings under section 77 of the Act.[1]

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of section 77 or of this general order, apply to proceedings under section 77: *Provided,* That General Orders 17, 18, 21, 28, 29 and 41 shall not apply to such proceedings.

(3) Each circuit court of appeals shall cause written notice to be given to the judges of the district courts within the circuit of the names and addresses of the persons from time to time designated and qualified to act as special masters under the provisions of subsection (c) of section 77.

(4) The clerk of the district court in which proceedings under section 77 are brought shall forthwith transmit to the Interstate Commerce Commission copies of (a) the answer, if any, of the railroad corporation, or the pleading of any creditor controverting facts alleged in the petition; (b) the order approving or dismissing the petition; (c) any order (1) directing the debtor to give notice and fixing the date of a hearing on the appointment of a trustee or trustees, (2) appointing or removing a trustee, or (3) confirming the appointment of legal counsel for the trustee or trustees, or removing such counsel; (d) any application by a trustee for authority to issue certificates, and any order authorizing such issuance; (e) such schedules and reports as may be submitted by the officers of the corporation or trustees with respect to the conduct of the debtor's affairs and the fairness of any proposed plan, and all orders issued to the trustee or trustees with respect to the operation of the corporation's business, together with the petitions upon which the orders were based; (f) the lists of bondholders, creditors, and stockholders required to be filed under paragraph (4) of subsection (c) of section 77, and any other information concerning the security holders filed pursuant to the order of the court; (g) any order determining the time within which, and the manner in which, claims may be filed or evidenced and allowed, and the division of creditors and stockholders into classes, and any order respecting the exercise of any power by any person or committee representing any creditor or stockholder; (h) any order allowing or rejecting such claims, or extending the time within which they may be filed or evidenced; (i) any order directing the trustee or trustees to report facts pertaining to irregularities, fraud, misconduct, or mismanagement, and any report made pursuant to such order; (j) any order directing the debtor or the trustee or trustees to keep records and accounts, in addition to those prescribed by the commission, for the segregation and allocation of earnings and expenses; (k) any order approving the special employment of assistants requested by the commission; (*l*) any application for allowances of compensation and expenses under the provisions of paragraphs (2) and (12) of subsection (c) of section 77, upon receipt of which the commission shall determine the maximum limits of such allowances and file with the court its report and order thereon, and any order making allowances for compensation and expenses under said paragraph; (m) any order issued upon the petition of the commission for the reference of particular matters to a special master, and the report of such master thereon; (n) any order allowing interested parties to intervene in the proceedings, any minute of appearance by a person other than interveners, and any rule defining matters upon which notice shall be given to other than interveners; (o) any order extending the time for filing a plan; (p) any motion to dismiss the proceedings because of undue delay in a reasonably expeditious reorganization of the debtor, and notice of any hearing with reference to dismissing the proceedings for such cause; (q) any notice of the time within which parties in interest may file with the court objections to the plan approved by the commission, and any objection to such plan and any claim for equitable treatment filed by a party in interest; (r) any order affirming a finding of the commission affecting the requirement that the plan be submitted to creditors or stockholders as provided in the second paragraph of subsection (e) of section 77; (s) any order entered on the disapproval of the plan and the judge's opinion stating his conclusions and reasons for such disapproval; (t) if the plan is not confirmed, the order, with the judge's opinion stating his conclusions and reasons therefor, dismissing the proceedings or referring the case back to the commission for further proceedings, and, if the case is referred back to the commission, a copy of the evidence received in any hearings with reference to confirmation; (u) the order confirming the plan, with the judge's opinion stating his conclusions and reasons therefor, and any order directing the transfer or other disposition of the property; (v) the final decree; and (w) such other papers filed in the proceedings as the commission may request of the clerk or the court may direct him to transmit.

(5) The Interstate Commerce Commission shall forthwith cause to be filed in the district court having jurisdiction of the proceedings copies of (a) any order ratifying the appointment of a trustee or trustees; (b) each report and order authorizing the issue of trustees' certificates; (c) each order or call for a hearing, with a statement of its purposes; (d) each plan of reorganization, other than the debtor's, filed with the commission; (e) any report finding a plan to be prima facie impracticable; (f) any order refusing to approve a plan, together with the commission's report stating fully the reasons for its conclusions; (g) any petition for further hearing on a plan, and any supplemental order modifying any plan, together with the report stating the reasons for such modification; (h) the written acceptances of any plan which is finally approved; (i) any order granting authority for the issuance of securities or for other steps contemplated by the plan; (j) any order issued to the trustee or trustees with respect to the operation of the corporation's business; (k) any order issued under the provisions of subsection (p)

[1] 11 U. S. C. § 205.

of section 77 authorizing the solicitation, use, employment or action under or pursuant to proxies, authorizations, or deposit agreements; and (*l*) such other papers filed in the proceedings as the court may direct or the commission deem pertinent.

(6) The clerk of the district court in which proceedings under section 77 are brought shall forthwith transmit to the Secretary of the Treasury copies of (a) any petition filed under subsection (a) of section 77; (b) the answer, if any, of the railroad corporation; (c) the order approving or dismissing the petition; (d) any order appointing or removing a trustee; (e) any application by a trustee for authority to issue certificates, and any order authorizing or refusing to authorize such issuance; (f) any order determining the time within which, and the manner in which, claims may be filed or evidenced and allowed, and the division of creditors and stockholders into classes; (g) any plan of reorganization filed with the court; (h) any order approving a plan, or referring the proceedings back to the commission for further action; (i) the order confirming a plan; (j) any application for allowances of compensation and expenses, and any order making or refusing to make such allowances; (k) the order dismissing the proceedings; (*l*) the final decree; (m) any opinion of the court, or report of a special master, with respect to the matters above enumerated; and (n) such other papers filed in the proceedings as the Secretary of the Treasury may request or the court may direct to be transmitted to him: *Provided,* That if the Secretary of the Treasury shall determine that the transmission of any such papers is unnecessary, he shall so notify the clerk, whereupon the clerk may dispense with the transmittal of further papers.

The clerk shall also transmit to the Collector of Internal Revenue for the district in which the proceedings are pending a copy of any petition filed under subsection (a) of section 77.

(7) The Interstate Commerce Commission shall forthwith cause to be transmitted to the Secretary of the Treasury copies of (a) any order ratifying the appointment of a trustee; (b) any plan of reorganization, other than the debtor's, filed with the commission; (c) any petition for alteration or modification of a plan; (d) any supplemental report and order modifying a plan; and (e) the plan certified by the commission to the court, together with the report and order approving the plan: *Provided,* That if the Secretary of the Treasury shall determine that the transmission of any such papers is unnecessary, he shall so notify the commission, whereupon the commission may dispense with the transmittal of further papers.

(8) All papers filed with the court and with the Interstate Commerce Commission shall have attached thereto such copies as may be required to carry out this general order.

(9) Any order fixing the time for a hearing on the approval or confirmation by the court of a plan which affects claims or stock of the United States shall include a reasonable notice to the Secretary of the Treasury of not less than thirty days.

(10) All proceedings before the commission under section 77 shall be conducted in accordance with its rules of practice and such special instructions, rules, and regulations as it may issue pursuant to the provisions of said section.

(11) All process to be served outside of the district in which proceedings under section 77 are pending shall be returnable at such time as the judge shall determine, and shall be directed to and served by the United States marshal for the district in which service is to be effected. (Added Apr. 24, 1933; as amended Mar. 30, 1936; Jan. 16, 1939, eff. Feb. 13, 1939.)

REFERENCES IN TEXT

"Circuit court of appeals", referred to in text, was changed to "court of appeals" by act June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991, as amended May 24, 1949, ch. 139, § 127, 63 Stat. 107.

AMENDMENTS

1939—Amendment Jan. 16, 1939, amended order to read as now set out, effecting changes as indicated below under subdivisions thereof, respectively:

Subd. 1. Added. Somewhat similar provisions were contained in introductory clause of 1936 Amendment, which read as follows: "The following additional rules shall apply to proceedings under section 77 of the Act:"

Subd. 2. Added.

Subd. 3. Renumbered. Prior thereto constituted par. 1.

Subd. 4. Renumbered. Prior thereto constituted par. 2. Text unchanged except for clause (g), which, prior thereto, read as follows: "(g) any order determining the time within which the claims of creditors may be filed or evidenced, the manner in which such claims may be filed or evidenced and allowed, and the division of creditors and stockholders into classes, and any order respecting the exercise of any power by any person or committee representing any creditor or stockholder;"

Subd. 5. Renumbered. Prior thereto constituted par. 3. Text unchanged except for transfer of former last sentence to par. 10.

Subds. 6—9. Added.

Subd. 10. Renumbered. Prior thereto constituted last sentence of par. 3.

Subd. 11. Renumbered. Prior thereto constituted par. 4.

1936—Amendment Mar. 30, 1936, amended order to read as now set out, except for changes made by 1939 Amendment, infra, this note.

ORIGINAL ORDER

As promulgated originally this Order read:

"1. Each Circuit Court of Appeals shall cause written notice to be given the judges of the district courts within the circuit of the names and addresses of the persons from time to time designated and qualified to act as special masters under the provisions of subdivision (c) of section 77.

"2. The clerk of the district court in which proceedings under section 77 are brought shall forthwith transmit to the Interstate Commerce Commission copies of (a) the petition of a railroad corporation, or of creditors thereof, desiring to effect a plan of reorganization; (b) the answer, if any, of the corporation, upon receipt of which the commission shall file with the court its recommendations as to the disposition of the answer; (c) the order approving or dismissing the petition; (d) any order appointing or removing a temporary or permanent trustee; (e) the order fixing the date for a hearing on the appointment of permanent trustees; (f) any application by a trustee for authority to issue certificates, upon receipt of which the commission shall file with the court an order approving or disapproving such issuance; (g) any order authorizing such issuance; (h) such schedules and reports as may be submitted by the corporation with respect to the conduct of its affairs and the fairness of any proposed plan; (i) the lists of creditors and stockholders required to be filed by the trustee or the corporation, and the order determining the time within which the claims and interests of creditors and stockholders may be filed or evidenced,

the manner in which such claims and interests may be filed or evidenced and allowed, and the division of creditors and stockholders into classes, upon receipt of which papers the commission may hold a public hearing for the presentation of plans of reorganization as provided in subdivision (d) of section 77; (j) all orders allowing or rejecting such claims and interests, or extending the time within which they may be filed or evidenced; (k) any petition for the fixing of a reasonable time within which a plan of reorganization shall be proposed or accepted, upon receipt of which the commission shall recommend to the court what in its judgment a reasonable time would be; (*l*) any orders fixing or extending such time, or dismissing the proceedings for failure to comply with such orders; (m) any order issued upon the petition of the commission for the reference of particular matters to a special master, and the report of such master thereon; (n) all orders referring to the commission for its determination, under the fifth or sixth clauses of subdivision (g) of section 77, the fixing of an upset price or the appraisal of securities, upon receipt of which orders the commission shall make the necessary determinations and report thereon to the court; (o) any orders approving the special employment of assistants requested by the commission; (p) all applications for allowances of fees and expenses in the proceeding or in any prior receivership proceeding, upon receipt of which the commission shall determine the maximum limits of such allowances and file with the court its report thereon; (q) any order adjudging the corporation to be solvent or insolvent; (r) the order confirming or disapproving the plan and, if it is disapproved, the judge's opinion stating his reasons for such disapproval; (s) any orders issued to the trustee or trustees with respect to the operation of the corporation's business; (t) the order dismissing the proceedings, if the plan is disapproved, or if it is confirmed directing the transfer or other disposition of the property; (u) the final decree; and (v) such other papers filed in the proceedings as the commission may request of the clerk or the court may direct him to transmit. All papers filed with the court shall have attached thereto such copies as the clerk may require in carrying out this general order.

"3. The commission shall forthwith cause to be filed in the district court having jurisdiction of the proceedings, copies of (a) any order approving the filing of a petition by creditors under subdivision (a) of section 77; (b) each plan of reorganization presented at the hearing provided for in subdivision (d) of section 77; (c) each order or call for a hearing, with a statement of its purposes; (d) the plan subsequently recommended by the commission, together with the report and any supplemental report thereon; (e) in addition to the papers required to be submitted to the court under the provisions of subdivision (f) of said section, the written acceptances of any plan which is finally approved, together with a certificate of the commission that in its judgment the debtor and every other corporation issuing securities or acquiring property under the plan is authorized by its charter or by applicable State or Federal Laws, upon confirmation of the plan, to carry out the plan; (f) any orders granting authority, subject to the confirmation of the plan, for the issuance of securities or other steps contemplated by the plan; (g) any orders issued to the trustee or trustees with respect to the operation of the corporation's business; and (h) such other papers filed in the proceedings as the court may direct or the commission deem pertinent. All proceedings before the commission under section 77 shall be conducted in accordance with its rules of practice.

"4. Upon application of the commission prior to its approval of a plan of reorganization the court, after a hearing upon notice to the stockholders and to all parties who have appeared in the proceedings, shall determine whether or not the corporation is insolvent."

Order 50. Proceedings under Section 75 of the Act [11 U. S. C. § 203]

The following rules shall apply to proceedings under section 75 of the Act.[1]

(1) Upon the expiration of the term of office of a conciliation commissioner, the judge may reappoint him or appoint other or additional conciliation commissioners.

(2) Every petition for relief filed under subdivision (c) of section 75 [1] shall specify the county or counties in which any land used in the petitioner's farming operations is situated, and shall not be granted unless a conciliation commissioner for such county, or for one of such counties, has previously been appointed. The clerk shall not accept the petition unless it is accompanied by the filing fee and the schedules, which shall be in duplicate. Upon the filing of the petition the judge shall enter an order either approving it as properly filed under the section, or dismissing it for want of jurisdiction. If the petition is approved, the case shall be referred, and one of the duplicate schedules delivered, to a conciliation commissioner appointed for service in said county or in one of said counties.

(3) Within ten days after the approval of the petition, or within such further time as the judge for cause shown may allow, the farmer shall file with the conciliation commissioner an inventory of his estate, and the commissioner shall thereupon call the first meeting of creditors, to be held before him at such place as he deems most convenient for the parties in interest, upon written and published notice as provided in section 58 of the Act.[2] Prior to the meeting he shall set off to the farmer the exemptions to which the farmer is entitled.

(4) If the farmer has not applied for confirmation within such reasonable time as has been finally fixed therefor, which shall be not later than three months after the date of the first meeting, the conciliation commissioner shall, unless the judge for cause shown shall have permitted a further extension, forthwith report the facts to the judge, who shall thereupon dismiss the proceedings.

(5) The money to be paid upon the confirmation of a composition shall be placed in a depository to be designated by order of the judge, subject to withdrawal by the depositor upon the countersignature of the conciliation commissioner. The judge shall furnish a copy of this general order to the depositories and also the name of any conciliation commissioner whose countersignature is authorized.

(6) Application for confirmation shall be filed with the conciliation commissioner who shall forthwith transmit it to the judge with (a) the acceptances, (b) the proofs of claims which have been allowed and those which have been disallowed, (c) a list of the debts having priority, (d) a list of the secured debts, with a description of the security of each, (e) the final inventory, with a list of the exemptions, and (f) a report of the commissioner recommending or opposing confirmation and, in the case of an extension, stating to what extent, if any, it would be desirable for the court after confirmation to retain jurisdiction of the farmer and his property.

(7) The judge shall fix a date and place for a hearing before him upon the application for con-

[1] 11 U. S. C. § 203.

[2] 11 U. S. C. § 94.

firmation. At the hearing any creditor opposing confirmation shall file a written specification of the grounds of his opposition. If the judge does not confirm the proposal he may dismiss the proceedings, or refer the specifications to the commissioner for testimony and report and thereafter confirm the proposal or dismiss the proceedings.

(8) If a composition or extension proposal is set aside for fraud under the provisions of subdivision (m) of section 75 the case may be dismissed and the clerk shall notify the creditors accordingly. Whenever the terms of the proposal are modified under the provisions of subdivision (*l*) of said section, the clerk shall send a written notice of the modifications to the creditors.

(9) The personal representative of a deceased farmer who desires in his representative capacity to effect, under section 75, a composition or extension of the debts of the estate, shall attach to his petition, in lieu of schedules, the following papers, certified as correct by the court which appointed him (hereinafter referred to as the probate court): (a) a copy of the order of his appointment, (b) a copy of an order of the probate court authorizing him to file the petition, (c) a detailed inventory of so much of the property constituting the estate as under the laws of the State of which the decedent died a resident would be available for creditors, and (d) a list of the names and addresses of the creditors, showing the amounts allowed or apparently owing to each, the nature of the securities or liens, if any, held by each, and the claims which are entitled to priority. The petition shall show to the satisfaction of the district court that the decedent at the time of his death was a farmer within the meaning of subdivision (r) of section 75, and shall specify the county or counties in which at the time of the decedent's death his farming operations occurred. If the petition is approved by the district court as properly filed under section 75, the clerk shall file a certified copy of the order of approval with the probate court, and from the date of such order until the case is dismissed the district court shall exercise exclusive jurisdiction over the property required to be listed in the inventory as above provided.

(10) Upon the approval of a personal representative's petition the case shall be referred to a conciliation commissioner and proceeded with as in all other cases under section 75 and this general order, except that (a) the original and any amended or supplementary inventory filed by the petitioner with the approval of the probate court shall be deemed to be correct, and no inventory shall be made by the commissioner; (b) all claims allowed by the probate court, and only such claims, shall be allowed by the commissioner or the district court; (c) the petitioner shall file with the application for confirmation a completed list of the claims allowed up to the date of the application, certified as correct by the probate court; and (d) the clerk shall file with the probate court certified copies of all orders of the judge confirming or denying the proposal, modifying its terms, or dismissing the proceedings before or after confirmation.

(11) Insofar as is consistent with the provisions of section 75 and of this general order, the conciliation commissioner shall have all the powers and duties of a referee in bankruptcy and the general orders in bankruptcy shall apply to proceedings under said section. A supervisory conciliation commissioner, if appointed, shall exercise such supervision and control over the conduct of proceedings by conciliation commissioners as the judge may from time to time direct.

(12) The twenty-five dollar fees of the conciliation commissioner, and the fees and expenses of the supervisory conciliation commissioner, shall be payable out of appropriated funds in accordance with such instructions as may be issued from time to time by the Director of the Administrative Office of the United States Courts. (Added Apr. 24, 1933; as amended June 1, 1936; Jan. 16, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, substituted "Director of the Administrative Office of the United States Courts" for "Attorney General" in par. (12).

1939—Amendment Jan. 16, 1939, changed this Order to read as above set forth, and constitutes a restatement of the order as promulgated originally with the exceptions explained in Original Order, supra this note.

1936—Amendment June 1, 1936, changed this Order to read:

"1. Upon the expiration of the term of office of a conciliation commissioner, the judge may reappoint him or appoint other or additional conciliation commissioners.

"5. The money to be paid upon the confirmation of a composition shall be placed in a depository to be designated by order of the judge, subject to withdrawal by the depositor upon the countersignature of the conciliation commissioner. The judge shall furnish a copy of this general order to the depositories and also the name of any conciliation commissioner whose countersignature is authorized.

"6. Application for confirmation shall be filed with the conciliation commissioner who shall forthwith transmit it to the judge with (a) the acceptances, (b) the proofs of claims which have been allowed and those which have been disallowed, (c) a list of the debts having priority, (d) a list of the secured debts, with a description of the security of each, (e) the final inventory, with a list of the exemptions, and (f) a report of the commissioner recommending or opposing confirmation and, in the case of an extension, stating to what extent, if any, it would be desirable for the court after confirmation to retain jurisdiction of the farmer and his property.

"12. The twenty-five dollar fees of the conciliation commissioner, and the fees and expenses of the supervisory conciliation commissioner, shall be payable out of appropriated funds in accordance with such instructions as may be issued from time to time by the Attorney General."

ORIGINAL ORDER

As promulgated originally, this order read as now set out except as indicated below under paragraphs thereof, respectively:

Par. (1). Originally read:

"1. A petition for the appointment within a particular county of a conciliation commissioner must show to the satisfaction of the judge that each petitioner, within the meaning of subdivision (r) of section 75 is a farmer and a resident of the county, and must allege that each petitioner is insolvent or unable to meet his debts as they mature, and that he intends to file a petition for relief under said section. Having granted the petition and appointed a conciliation commissioner for such county, the judge may, without further petition, reappoint him or appoint other or additional conciliation commissioners for such county'

Par. (2). Words "subdivision (c)" originally read "subdivision (b)".

Par. (5). Originally read: "5. The deposit required by subdivision (g) of section 75 shall be made in any one of the designated depositories, subject to withdrawal by the depositor upon the countersignature of the conciliation commissioner. The judge shall furnish a copy of this general order to the depositories and also the name of any conciliation commissioner whose countersignature is authorized."

Par. (6). Clause (f), originally read: "(f) a certificate of the depository showing that the required deposit has been made, and"

In par. (12) "twenty-five dollar fees" originally read "ten dollar fees".

Other provisions of this Order as promulgated originally read as set out in the text.

Order 51. Ancillary Receiverships Limited

No ancillary receiver shall be appointed in any district court of the United States in any bankruptcy proceeding pending in any other district of the United States except (1) upon the application of the primary receiver, or (2) upon the application of any party in interest with the consent of the primary receiver, or by leave of a judge of the court of original jurisdiction. No application for the appointment of such ancillary receiver shall be granted unless the petition contains a detailed statement of the facts showing the necessity for such appointment, which petition shall be verified by the party in interest, or the primary receiver, or by an agent of the party in interest or primary receiver specifically authorized in writing for that purpose and having knowledge of the facts. Such authorization shall be attached to the petition. (Added May 15, 1933; as amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, struck out "or a judge thereof." at end of first sentence of Order as promulgated originally.

Order 52. Proceedings under Chapter X of the Act [11 U. S. C. § 501 et seq.]

(1) This general order shall apply to proceedings under chapter X of the Act.[1]

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of chapter X or of this general order, apply to proceedings under chapter X: *Provided,* That General Orders 12, 16, 17, 18, 20, 21, 28, 29 and 41 shall not apply to such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of the Act.

(3) The clerk shall forthwith transmit to the Collector of Internal Revenue for the district in which the proceedings are brought a copy of each petition filed under section 127 or 128 of the Act.[2]

(4) Whenever, under the provisions of chapter X, a copy of any paper is required to be transmitted to the Securities and Exchange Commission, two copies thereof shall be transmitted.

(5) All papers filed shall be accompanied by such copies as the clerk or referee may require to enable him to comply with the provisions of the Act and of this general order. (Added May 13, 1935; as amended Nov. 16, 1937; Dec. 7, 1937; Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, restated this Order to read as set out in the text.

1937—Amendment Nov. 16, 1937, added the following new paragraph: "4. Not less than ten days' notice of hearing upon any application for the sale or lease of property of the debtor pursuant to section 77B (c) (3½) [11 U. S. C. A. § 207 (c) (3½)], except sales of perishable property, shall be given by mail to all creditors and stockholders of the debtor, addressed to them at their last known addresses appearing upon the records of the debtor or of the trustee, or to their attorneys of record. Paragraphs 1, 2 and 3 of General Order XVIII shall be applicable to such sales."

Amendment Dec. 7, 1937, amended par. 4 of this Order by adding at end of first sentence the following: ", or, for good cause shown, by advertisement in the manner and for the time directed by the District Court."

ORIGINAL ORDER

As promulgated originally this Order read: "1. The clerk of the district court in which proceedings under section 77B are brought shall forthwith transmit to the Secretary of the Treasury copies of (a) the petition of the corporation, or of the creditors thereof desiring to effect a plan of reorganization; or (b) the answer, if any, of the corporation in those cases in which an involuntary proceeding is pending; (c) the order approving or dismissing the petition; (d) any order determining the time in which the claims and interests of creditors may be filed or evidenced and allowed, the division of creditors and stockholders into classes according to the nature of the respective claims and interests, and all orders extending the time in which such claims may be filed or evidenced; (e) any order for a hearing issued upon the report of the special master; (f) the plan of reorganization, amendments, or modifications; (g) any order (1) fixing the time for confirming the plan or dismissing the proceedings; (2) adjudging the corporation to be solvent or insolvent; (3) confirming the plan or directing the liquidation of the estate; (h) such other papers filed in the proceedings as the Secretary of the Treasury may request of the clerk or the court may direct him to transmit. The clerk shall also transmit to the Collector of Internal Revenue for the district in which the proceedings are pending copies of the petition or answer above described in subdivisions (a) and (b):

"Provided, however, that if the Secretary of the Treasury, upon receipt of the petition or answer, shall ascertain that the United States has no interest in the proceeding, he shall so notify the clerk, whereupon the clerk may dispense with the transmittal of further papers. All papers filed with the court shall have attached thereto such copies as the clerk may require for carrying out this general order.

"2. Any order fixing the time for confirming any plan which deals with the interests or claims of the United States shall include a reasonable notice to the Secretary of the Treasury of at least thirty days.

"3. The provisions of this general order shall not apply to any action heretofore taken; and failure to comply with any provision hereof, in any proceeding heretofore or hereafter instituted, shall not deprive the District Court of jurisdiction of such proceeding or invalidate any action taken by the Court, but shall be the subject of such consideration and remedial action as justice may require."

CROSS REFERENCES

Further provisions on this subject, see section 666 of this title.

Order 53. Bond of Designated Depository under Section 61 [11 U. S. C. § 101]

(1) The bond required of a banking institution designated as a depository shall be given with an

[1] 11 U. S. C. § 501 et seq.

[2] 11 U. S. C. §§ 527, 528.

authorized fidelity or bonding company as surety, or with approved individual sureties who are residents of the judicial district in which the court of bankruptcy or the banking institution is located, and two of whom are neither officers nor directors of the institution designated as a depository: *Provided*, That the judge may, in accordance with the provisions of, and the authority conferred in section 1126 of the Revenue Act of 1926, as amended (U. S. C., Title 6, section 15), accept the deposit of the securities therein designated, in lieu of a surety or sureties upon such bond.

(2) The condition of bonds hereafter given shall be substantially to the effect that the banking institution, so designated, shall well and truly account for and pay over all moneys deposited with it as such depository, and shall pay out such moneys only as provided by the bankruptcy law and applicable general orders and court rules, and shall abide by all orders of the court in respect of such moneys, and shall otherwise faithfully perform all duties pertaining to it as such depository; 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 12B of the Federal Reserve Act, as amended.

(3) As one means of bringing before the judge of the bankruptcy court information respecting possible occasions for requiring a depository to give a new bond with different sureties, it shall be the duty of each depository to file with the bankruptcy court during the month of January in each year a sworn statement in writing disclosing

(a) Whether any of the individual sureties on its bond has removed from the judicial district of which he was a resident, or has died; and

(b) Whether the financial worth of any of its individual sureties has become materially impaired.

(4) As one means of bringing before the judge of the bankruptcy court information respecting occasions for requiring a depository to give a new bond in an increased amount, it shall be the duty of any depository, when its total of bankruptcy deposits equals ninety-five per centum of the amount of its current depository bond, forthwith to file a written statement with the bankruptcy court, setting forth the total amount of such deposits and the amount of its current bond.

(5) No receiver, trustee or debtor in possession shall deposit with any one depository funds committed to his custody as such receiver, trustee or debtor in possession in excess of the amount of the bond of such depository then in force.

(6) It shall be the duty of the judge to require a depository to give a new bond whenever it appears that the prior bond is not sufficient in amount, in view of present and prospective deposits, or that a surety has died or has removed from the judicial district of which he was a resident, or whenever there is otherwise occasion to believe that the prior bond does not constitute adequate security.

(7) It shall be the duty of the judge to require each depository to give a new bond within five years after the giving of its last prior bond.

(8) A surety, or the personal representative of a deceased surety, on the bond of a depository may, by a petition setting forth the grounds therefor, request the judge to require the depository to give a new bond and thereby to relieve such surety, or his estate, from responsibility and liability as respects any future default of the depository, and, if upon a hearing had after reasonable notice to the depository, to other sureties on the bond, and to the trustees or other representatives of estates having deposits in such depository, it appears to the judge that the petition can be granted without injury to any party in interest, the judge shall require the depository to give a new bond.

(9) A new bond given under any subdivision of this general order shall, from the time of its approval by the judge, be regarded as taking the place of the preceding bond as respects any subsequent default of the depository; and, upon approving the new bond, the judge shall enter an order relieving the sureties on the prior bond, and the estate of any deceased surety, from responsibility and liability thereon as respects any default of the depository occurring thereafter.

(10) If any depository, when required to give a new bond, fails to comply with that requirement within the time fixed therefor by this general order or by the judge, it shall be the duty of the judge to order such depository to pay over all moneys on deposit with it as such depository, and to revoke its designation as depository. (Added Apr. 5, 1937; as amended Feb. 7, 1938; Jan. 16, 1939; June 3, 1940, eff. June 3, 1940).

REFERENCES IN TEXT

"Section 12B of the Federal Reserve Act, as amended", referred to in the text, was formerly classified to section 264 of Title 12, Banks and Banking, and was withdrawn from the Federal Reserve Act, of which it was a part, and made a separate act to be known as the Federal Deposit Insurance Act by section 1 of act Sept. 21, 1950, ch. 967, 64 Stat. 873. The Federal Deposit Insurance Act is now classified to chapter 16 of Title 12, Banks and Banking.

AMENDMENTS

1940—Amendment June 3, 1940, amended subd. (2) of this Order by adding the proviso.

1939—Amendment Jan. 16, 1939, amended this Order to read as above set forth with the exception that the proviso in subd. (2) was not included.

1938—Amendment Feb. 7, 1938, amended this Order to read:

"1. The bond required of a banking institution designated as a depository shall be given with an authorized fidelity or bonding company as surety, or with approved individual suretles who are residents of that judicial district and two of whom are neither officers nor directors of the institution designated as a depository.

"2. The condition of bonds hereafter given shall be substantially to the effect that the banking institution, so designated, shall well and truly account for and pay over all monies deposited with it as such depository, and shall pay out such monies only as provided by the bankruptcy law and applicable general orders and court rules, and shall abide by all orders of the bankruptcy court in respect of such monies, and shall otherwise faithfully perform all duties pertaining to it as such depository.

"3. As one means of bringing before the bankruptcy court information respecting possible occasions for requiring a depository to give a new bond with different sureties, it shall be the duty of each depository to file with the bankruptcy court during the month of January in each year a sworn statement in writing disclosing

"(a) Whether any of the individual sureties on its bond has ceased to be a resident of that judicial district, or has died; and

"(b) Whether the financial worth of any of its individual sureties has become materially impaired.

"4. As one means of bringing before the bankruptcy court information respecting occasions for requiring a depository to give a new bond in an increased amount, it shall be the duty of any depository, when its total of bankruptcy deposits equals ninety-five per centum of the amount of its current depository bond, forthwith to file a written statement with the bankruptcy court, setting forth the total amount of such deposits and the amount of its current bond.

"5. No trustee or receiver shall deposit with any one depository funds committed to his custody as such receiver or trustee in excess of the amount of the bond of such depository then in force.

"6. It shall be the duty of the bankruptcy court to require a depository to give a new bond whenever it appears that the prior bond is not sufficient in amount, in view of present and prospective deposits, or that a surety has died or ceased to be a resident of that judicial district, or whenever there is otherwise occasion to believe that the prior bond does not constitute adequate security.

"7. It shall be the duty of the bankruptcy court to require each depository in its district to give a new bond within five years after the giving of its last prior bond.

"8. A surety, or the personal representative of a deceased surety, on the bond of a depository may, by a petition setting forth the grounds therefor, request the bankruptcy court to require the depository to give a new bond and thereby to relieve such surety, or his estate, from responsibility and liability as respects any future default of the depository, and, if upon a hearing had after reasonable notice to the depository, to other sureties on the bond, and to the trustees or other representatives of bankrupt estates having deposits in such depository, it appears to the court that the petition can be granted without injury to any party in interest, the court shall require the depository to give a new bond.

"9. A new bond given under any subdivision of this general order shall, from the time of its approval by the bankruptcy court, be regarded as taking the place of the preceding bond as respects any subsequent default of the depository; and, upon approving the new bond, the court shall enter an order relieving the sureties on the prior bond, and the estate of any deceased surety, from responsibility and liability thereon as respects any default of the depository occurring thereafter.

"10. If any depository, when required to give a new bond, fails to comply with that requirement within the time fixed therefor by this general order or by the bankruptcy court, it shall be the duty of that court to order such depository to pay over all monies on deposit with it as such depository, and to revoke its designation as depository."

ORIGINAL ORDER

As promulgated originally this Order read: "1. The bond required of a banking institution designated as a depository shall be given with an authorized fidelity or bonding company as surety, or with approved individual sureties who are residents of that judicial district and two of whom are neither officers nor directors of the institution designated as a depository.

"2. The condition of bonds hereafter given shall be substantially to the effect that the banking institution, so designated, shall well and truly account for and pay over all monies deposited with it as such depository, and shall pay out such monies only as provided by the bankruptcy law and applicable general orders and court rules, and shall abide by all orders of the bankruptcy court in respect of such monies, and shall otherwise faithfully perform all duties pertaining to it as such depository.

"3. As one means of bringing before the bankruptcy court information respecting possible occasions for requiring a depository to give a new bond in an increased amount, or a new bond with different sureties, it shall be the duty of each depository to file with the bankruptcy court during the month of January in each year a sworn statement in writing disclosing

"(a) The amount of monies on deposit with it as such depository on the last business day of each month in the preceding calendar year;

"(b) Whether any of the individual sureties on its bond has ceased to be a resident of that judicial district, or has died; and

"(c) Whether the financial worth of any of its individual sureties has become materially impaired.

"4. It shall be the duty of the bankruptcy court to require a depository to give a new bond whenever it appears that the prior bond is not sufficient in amount, in view of present and prospective deposits, or that a surety has died or ceased to be a resident of that judicial district, or whenever there is otherwise occasion to believe that the prior bond does not constitute adequate security.

"5. It shall be the duty of the bankruptcy court to require each depository in its district to give a new bond within five years after the giving of its last prior bond.

"6. A surety, or the personal representative of a deceased surety, on the bond of a depository may, by a petition setting forth the grounds therefor, request the bankruptcy court to require the depository to give a new bond and thereby to relieve such surety, or his estate, from responsibility and liability as respects any future default of the depository, and, if upon a hearing had after reasonable notice to the depository, to other sureties on the bond, and to the trustees or other representatives of bankrupt estates having deposits in such depository, it appears to the court that the petition can be granted without injury to any party in interest, the court shall require the depository to give a new bond.

"7. A new bond given under any subdivision of this general order shall, from the time of its approval by the bankruptcy court, be regarded as taking the place of the preceding bond as respects any subsequent default of the depository; and, upon approving the new bond, the court shall enter an order relieving the sureties on the prior bond, and the estate of any deceased surety, from responsibility and liability thereon as respects any default of the depository occurring thereafter.

"8. If any depository, when required to give a new bond, fails to comply with that requirement within the time fixed therefor by this general order or by the bankruptcy court, it shall be the duty of that court to order such depository to pay over all monies on deposit with it as such depository, and to revoke its designation as a depository."

SUSPENSION

On March 14, 1938, it was ordered: "In view of pending legislation General Order No. LIII in Bankruptcy is hereby suspended until further order of the Court."

Order 54. Proceedings under Chapter XII of the Act [11 U. S. C. § 801 et seq.]

(1) This general order shall apply to proceedings under chapter XII of the Act.[1]

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of chapter XII or of this general order, apply to proceedings under chapter XII: *Provided,* That General Orders 17, 18, 21, 28 and 29 shall not apply to such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of the Act.

(3) The clerk shall forthwith transmit to the Collector of Internal Revenue for the district in which the proceedings are brought a copy of each petition filed under section 421 or 422 of the Act.[2]

(4) All papers filed shall be accompanied by such copies as the clerk or referee may require to enable him to comply with the provisions of the Act and of this general order. (As added Jan. 16, 1939, eff. Feb. 13, 1939.)

[1] 11 U. S. C. § 801 et seq.

[2] 11 U. S. C. §§ 821, 822.

Order 55. Proceedings under Chapter XIII of the Act [11 U. S. C. § 1001 et seq.]

(1) This general order shall apply to proceedings under chapter XIII of the Act.[3]

(2) The general orders in bankruptcy shall, in so far as they are not inconsistent with the provisions of chapter XIII or of this general order, apply to proceedings under chapter XIII: *Provided*, That General Orders 14, 18 and 28 shall not apply to such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of the Act.

(3) The clerk shall forthwith transmit to the Collector of Internal Revenue for the district in which the proceedings are brought a copy of each petition filed under section 621 or 622 of the Act.[4]

(4) All papers filed shall be accompanied by such copies as the clerk or referee may require to enable him to comply with the provisions of the Act and of this general order.

(5) Each proof of claim shall, unless the court is satisfied from its other allegations that the claim is not based upon money loaned or upon any bond, note or other obligation, contain proof that the claim is free from usury as defined by the laws of the place where the debt was contracted. (Added Jan. 16, 1939, eff. Feb. 13, 1939.)

Order 56. Rules by Courts of Bankruptcy

Each court of bankruptcy, by action of a majority of the judges thereof, may from time to time make and amend rules governing its practice in proceedings under the Act not inconsistent with the Act or with these general orders. Copies of rules and amendments so made by any court of bankruptcy shall, upon their promulgation, be furnished to the Supreme Court of the United States and the Administrative Office of the United States Courts. (Added Jan. 16, 1939; as amended June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, added "and the Administrative Office of the United States Courts" at end of last sentence.

FORMS IN BANKRUPTCY

(N. B.—Oaths required by the Act, except upon hearing before a judge, may be administered by referees, by 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 by diplomatic or consular officers of the United States in any foreign country.

Each paper filed should have a caption, similar to that of the Debtor's Petition, Form No. 1, as prescribed in General Order 5.)

Form

1. Debtor's Petition.
   - — Schedule A.—Statement of All Debts of Bankrupt.
   - — Schedule B.—Statement of All Property of Bankrupt.
   - — Summary of Debts and Assets.
2. Statement of Affairs (For Bankrupt or Debtor Not Engaged in Business).
3. Statement of Affairs (For Bankrupt of Debtor Engaged in Business).
4. Partnership Petition.
5. Creditors' Petition.
6. Subpœna to Alleged Bankrupt.
7. Answer of Alleged Bankrupt.
8. Bond of Applicant for a Receiver or Marshal.
9. Counterbond to Receiver or Marshal.
10. Adjudication that Debtor Is Not a Bankrupt.
11. Adjudication of Bankruptcy.
12. Appointment and Oath of Appraiser.
13. Order of General Reference.
14. Order of Reference in Judge's Absence.
15. Referee's Oath of Office.
16. Bond of Referee.
17. Notice of First Meeting of Creditors.
18. Power of Attorney.
19. Special Power of Attorney.
20. Order Approving Appointment of Trustee.
21. Appointment of Trustee by Referee.
22. Notice to Trustee of His Appointment.
23. Bond of Receiver or Trustee.
24. Order Approving Trustee's Bond.
25. Order that no Trustee be Appointed.
26. Order for Examination of Bankrupt.
27. Subpœna to Witness.
28. Proof of Claim by Individual.
29. Proof of Claim by Corporation.
30. Proof of Claim by Partnership.
31. Proof of Claim by Agent or Attorney.
32. Affidavit of Loss of Negotiable Instrument.
33. Order Expunging or Reducing Claim.
34. Order for Payment of Dividends.
35. Petition for Sale of Real Estate.
36. Order for Sale of Real Estate.
37. Petition for Redemption of Property.
38. Order for Redemption of Property.
39. Trustee's Report of Exempt Property.
40. Report of Trustee in No Asset Case.
41. Petition for Discharge.
42. Order Fixing Time for Filing Objections to Discharge.
43. Notice of Order Fixing Time for Filing Objections to Discharge.
44. Specification of Objections to Discharge.
45. Discharge of Bankrupt.
46. Referee's Cash Book.
47. Referee's Semi-Annual Report.
48. Original Petition in Proceedings Under Chapter XI.
49. Notice of Meeting of Creditors in Proceedings Under Chapter XI.
50. Application for Confirmation of an Arrangement Under Chapter XI.
51. Order Confirming an Arrangement Under Chapter XI. (Where all Affected Creditors Have Accepted.)
52. Order Confirming an Arrangement Under Chapter XI. (Where Less Than all Affected Creditors Have Accepted.)
53. Original Petition in Proceedings Under Chapter XII.
54. Notice of Meeting of Creditors in Proceedings Under Chapter XII.
55. Application for Confirmation of an Arrangement Under Chapter XII.
56. Order Confirming an Arrangement Under Chapter XII. (Where all Affected Creditors Have Accepted.)
57. Order Confirming an Arrangement Under Chapter XII. (Where Less Than all Affected Creditors Have Accepted.)
58. Original Petition in Proceedings Under Chapter XIII.
59. Notice of Meeting of Creditors in Proceedings Under Chapter XIII.
60. Application for Confirmation of an Arrangement Under Chapter XIII.
61. Order Confirming a Plan Under Chapter XIII. (Where All Affected Creditors Have Accepted.)
62. Order Confirming a Plan Under Chapter XIII. (Where Less Than All Affected Creditors Have Accepted.)
63. Debtor's Petition in Proceedings Under Section 75 of the Bankruptcy Act [11 U. S. C. § 203].

[3] 11 U. S. C. § 1001 et seq.
[4] 11 U. S. C. §§ 1021, 1022.

Form
64. Order Approving Debtor's Petition in Proceedings Under Section 75 [11 U. S. C. § 203].
65. Order of Reference in Proceedings Under Section 75 [11 U. S. C. § 203].
66. Bond of Conciliation Commissioner.
67. Notice of First Meeting of Creditors in Proceedings Under Section 75 [11 U. S. C. § 203].
68. Application for Confirmation of a Composition or Extension Proposal Under Section 75 [11 U. S. C. § 203].
69. Order Confirming a Composition or Extension Proposal Under Section 75 [11 U. S. C. § 203].
70. [Bankruptcy Docket of Referee.]
71. [Referee's Claim Register.]
72. Order Allowing Claims.

CODIFICATION

Forms 1—63. General Order XXXVIII of the Supreme Court, 18 S. Ct. x, dated, Nov. 28, 1898, annexed Forms Nos. 1—63, inclusive.

Forms 64—75. These Forms were approved by Order of the Supreme Court dated Apr. 17, 1933, 53 S. Ct. xxxix.

Forms 65, 72—74. These forms were amended by Order of the Supreme Court dated Mar. 30, 1936, 56 S. Ct. xlix-li.

Form 76. This form was approved by Order of the Supreme Court dated Mar. 30, 1936, 56 S. Ct. 1, lii.

Abrogation and replacement. The Order of the Supreme Court dated May 25, 1925, 268 U. S. 712, abrogated Form 2. Order dated Jan. 16, 1939, 59 S. Ct. clxxvii, abrogated Forms 4, 7, 8, 19, 29, 32, 36, 39, 41, 44—46, 49—56, 60—64, 66, 70, 72 and 73.

Forms 1—69 were replaced and restated by said Order, 59 S. Ct. cxcii—ccxxxii.

Form 75 was abrogated by Order of the Supreme Court dated June 1, 1936, 56 S. Ct. lii. It was not replaced.

See respective Notes under Forms.

CHANGE OF NAME

Wherever in the following Forms the name "District Court of the United States for the —— District of ——" is used, the correct name for individual district courts is now "United States District Court for the —— District of ——." See section 132 (a) of Title 28, Judiciary and Judicial Procedure.

FORM 1. DEBTOR'S PETITION

In the District Court of the United States for the _____ District of _____.

In the matter of _____, *Bankrupt.* } In Bankruptcy No. _____.

PETITION.

To the Honorable _____ _____,
Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, residing at No. _____ _____ Street, in _____, County of _____, State of _____, by occupation a _____, and employed by ____ [*or* engaged in the business of _____], respectfully represents:

1. Your petitioner has had his principal place of business [*or* has resided, *or* has had his domicile] at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said act.

_____ _____,
Petitioner.

_____ _____, *Attorney.*

State of _____ } *ss.*
County of _____ }

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A-1.

Statement of all creditors to whom priority is secured by the act.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated.)	When and where incurred or contracted.	Whether claim is contingent, unliquidated or disputed.	Nature and consideration of the debt, and whether incurred or contracted as partner or joint contractor and, if so, with whom.	Amount due or claimed.
a.—Wages due 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, to an amount not exceeding $600 each, earned within three months before filing the petition.							$
b.—Taxes due and owing to— (1) The United States. (2) The State of ——. (3) The county, district or municipality of ——, State of ——.							
c.—(1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority. (2) Rent owing to a landlord who is entitled to priority by the laws of the State of ——, accrued within three months before filing the petition, for actual use and occupancy.						Total.....	

------ ------, *Petitioner.*

SCHEDULE A-2.

Creditors holding securities.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Act of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.]

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated).	Description of securities.	When and where debts were contracted, and nature and consideration thereof.	Whether claim is contingent, unliquidated or disputed.	Value of securities.	Amount due or claimed.
					Total....	$	$

------ ------, *Petitioner.*

SCHEDULE A-3.

Creditors whose claims are unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated).	When and where contracted.	Whether claim is contingent, unliquidated or disputed.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount due or claimed.
						$
					Total.....	

...., *Petitioner.*

SCHEDULE A-4.

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or indorsers.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, acceptors, or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars shall be stated as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher	Names of holders as far as known.	Residences (if unknown, that fact must be stated).	Place where contracted.	Whether claim is disputed.	Nature and consideration of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount due or claimed.
						$
					Total.....	

...., *Petitioner.*

SCHEDULE A-5.

Accommodation paper.

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.]

Reference to ledger or voucher.	Names of holders.	Residences (if unknown, that fact must be stated).	Names and residences of persons accommodated.	Place where contracted.	Whether claim is disputed.	Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount due or claimed.
							$
						Total	

------, *Petitioner.*

State of ------ }
County of ------ } ss.

OATH TO SCHEDULE A.

I, ------, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

------, *Petitioner.*

Subscribed and sworn to before me this ------ day of ------, 19--.

------,

[*Official character.*]

SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

SCHEDULE B-1.

Real estate.

Location and description of all real estate owned by debtor, or held by him, whether under deed, lease or contract.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value of debtor's interest.
			$
		Total	

------, *Petitioner.*

SCHEDULE B-2.

Personal property.

a.—Cash on hand		$
b.—Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately)		
c.—Stock in trade, in —— business of ——, at ——, of the value of ——		
d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person		
e.—Books, prints, and pictures		
f.—Horses, cows, sheep, and other animals (with number of each)		
g.—Automobiles and other vehicles		
h.—Farming stock and implements of husbandry		
i.—Shipping, and shares in vessels		
j.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated		
k.—Patents, copyrights, and trade-marks		
l.—Goods or personal property of any other description, with the place where each is situated		
	Total	

------, *Petitioner.*

SCHEDULE B-3.
Choses in action.

		$	
a.—Debts due petitioner on open account			
b.—Policies of insurance			
c.—Unliquidated claims of every nature, with their estimated value			
d.—Deposits of money in banking institutions and elsewhere			
	Total		

------ ------, *Petitioner.*

SCHEDULE B-4.

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

General interest.	Particular description.	Estimated value of interest.
Interest in land		$
Personal property		
Property in money, stock, shares, bonds, annuities, etc		
Rights and powers, legacies and bequests		
	Total	
Property heretofore conveyed for benefit of creditors.		
Portion of debtor's property conveyed by deed of assignment, or otherwise, for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to debtor		Amount realized as proceeds of property conveyed.
Attorney's fees.		
Sum or sums paid to counsel, and to whom, for filing fees or costs and for services rendered or to be rendered in this bankruptcy		
	Total	

------ ------, *Petitioner.*

SCHEDULE B-5.

Property claimed as exempt from the operation of the act of Congress relating to bankruptcy.

[N. B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location, description and present use.]

		Valuation.
Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption		$
Property claimed to be exempt by State laws, with reference to the statute creating the exemption		
	Total	

------ ------, *Petitioner.*

SCHEDULE B-6.

Books, papers, deeds and writings relating to debtor's business and estate.

The following is a true list of all books, papers, deeds and writings relating to petitioner's trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books.	
Deeds.	
Papers.	

------ ------, *Petitioner.*

OATH TO SCHEDULE B.

State of ----------
County of ---------- } *ss.*

I, ------, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

------ ------, *Petitioner.*

Subscribed and sworn to before me this ------ day of ------, 19...

------ ------,

[*Official character.*]

Summary of debts and assets.

[From the statements of the debtor in Schedules A and B.]

Schedule A-----	1-a	Wages----------		
Schedule A-----	1-b (1)	Taxes due United States----------		
Schedule A-----	1-b (2)	Taxes due States----------		
Schedule A-----	1-b (3)	Taxes due counties, districts and municipalities----------		
Schedule A-----	1-c (1)	Debts due any person, including the United States, having priority by laws of the United States----------		
Schedule A-----	1-c (2)	Rent having priority----------		
Schedule A-----	2	Secured claims----------		
Schedule A-----	3	Unsecured claims----------		
Schedule A-----	4	Notes and bills which ought to be paid by other parties thereto----------		
Schedule A-----	5	Accommodation paper----------		
		Schedule A, total----------		
Schedule B-----	1	Real estate----------		
Schedule B-----	2-a	Cash on hand----------		
Schedule B-----	2-b	Negotiable and non-negotiable instruments and securities----		
Schedule B-----	2-c	Stock in trade----------		
Schedule B-----	2-d	Household goods----------		
Schedule B-----	2-e	Books, prints, and pictures-----		
Schedule B-----	2-f	Horses, cows, and other animals.		
Schedule B-----	2-g	Automobiles and other vehicles.		
Schedule B-----	2-h	Farming stock and implements..		
Schedule B-----	2-i	Shipping and shares in vessels..		
Schedule B-----	2-j	Machinery, fixtures, and tools..		
Schedule B-----	2-k	Patents, copyrights, and trademarks----------		
Schedule B-----	2-l	Other personal property--------		
Schedule B-----	3-a	Debts due on open accounts----		
Schedule B-----	3-b	Policies of insurance----------		
Schedule B-----	3-c	Unliquidated claims----------		
Schedule B-----	3-d	Deposits of money in banks and elsewhere----------		
Schedule B-----	4	Property in reversion, remainder, expectancy or trust.		
Schedule B-----	5	Property claimed as exempt----		
Schedule B-----	6	Books, deeds and papers-------		
		Schedule B, total----------		

(As amended Jan. 16, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, changed Schedule B-4 by inserting "for filing fees or costs and" preceding "for services" in items listed under "Attorney's fees".

1939—Amendment Jan. 16, 1939, restated prior Form 1.

FORM 2. STATEMENT OF AFFAIRS

(For Bankrupt or Debtor Not Engaged in Business.)

(Note.—Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term, "original petition," as used in the following questions, shall mean the petition filed under section 3b or 4a of chapter III, section 322 of chapter XI, section 422 of chapter XII, or section 622 of chapter XIII.[1])

1. Name and residence.

a. What is your full name?

b. Where do you now reside?

c. Where else have you resided during the six years immediately preceding the filing of the original petition here?

2. Occupation and income.

a. What is your occupation?

b. Where are you now employed?

(Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed.)

c. Have you been in partnership with anyone, or engaged in any business, during the six years immediately preceding the filing of the original petition herein?

(If so, give particulars, including names, dates and places.)

d. What amount of income have you received from your trade or profession during each of the two years immediately preceding the filing of the original petition herein?

e. What amount of income have you received from other sources during each of these two years?

(Give particulars including each source, and the amount received therefrom.)

3. Income tax returns.

a. Where did you file your last federal and state income tax returns, and for what years?

4. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein?

(Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or

[1] 11 U. S. C. §§ 21 (b), 22 (a), 722, 822, 1022.

used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein?

(Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when surrendered, or, if transferred, when transferred and the name and address of the transferee.)

5. Books and records.

a. Have you kept books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein?

b. In whose possession are these books or records?

(Give names and addresses.)

c. Have you destroyed any books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein?

(If so, give particulars, including date of destruction and reason therefor.)

6. Property held in trust.

a. What property do you hold in trust for any other person?

(Give name and address of each person, and a description of the property and the amount or value thereof.)

7. Prior Bankruptcy or other proceedings; assignments for benefit of creditors.

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein?

(Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition, arrangement or plan was or was not confirmed.)

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee?

(If so, give the name and location of the court, the nature of the proceeding, a brief description of the property, and the name of the receiver or trustee.)

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein?

(If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.)

8. Suits, executions and attachments.

a. Have you been party plaintiff or defendant in any suit within the year immediately preceding the filing of the original petition herein?

(If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

b. Has any execution or attachment been levied against your property within the four months immediately preceding the filing of the original petition herein?

(If so, give particulars, including property seized and at whose suit.)

9. Loans repaid.

a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein?

(Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship.)

10. Transfer of property.

a. What property have you transferred or otherwise disposed of during the year immediately preceding the filing of the original petition herein?

(Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

11. Losses.

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the original petition herein?

(If so, give particulars, including dates, and the amounts of money or value and general description of property lost.)

------ ------,
Bankrupt [or *Debtor*].

State of ----------
County of ----------
} *ss.*

I, ------ ------, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information, and belief.

------ ------,
Bankrupt [or *Debtor*].

Subscribed and sworn to before me this ------ day of ------, 19--.

------ ------,
------ ------.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 2, covering partnership petitions, was abrogated by Order of May 25, 1925, and replaced by Form 4.

FORM 3. STATEMENT OF AFFAIRS

(For Bankrupt or Debtor Engaged in Business.)

(Note.—Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached.

If the bankrupt or debtor is a partnership or a corporation, the questions shall be deemed to be addressed to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be verified by a member of the partnership or by a duly authorized officer of the corporation.

The term, "original petition," as used in the following questions, shall mean the petition filed under section 3b or 4a of chapter III, section 322 of chapter XI, section 422 of chapter XII, or section 622 of chapter XIII.[1])

1. Nature, location and name of business.
   a. What business are you engaged in?
      (If business operations have been terminated, give the date of such termination.)
   b. Where, and under what name, do you carry on such business?
   c. When did you commence such business?
   d. Where else, and under what other names, have you carried on business within the six years immediately preceding the filing of the original petition herein?
      (Give street addresses, the names of any partners, joint adventurers, or other associates, the nature of the business, and the periods for which it was carried on.)

2. Books and records.
   a. By whom, or under whose supervision, have your books of account and records been kept during the two years immediately preceding the filing of the original petition herein?
      (Give names, addresses, and periods of time.)
   b. By whom have your books of account and records been audited during the two years immediately preceding the filing of the original petition herein?
      (Give names, addresses, and dates of audits.)
   c. In whose possession are your books of account and records?
      (Give names and addresses.)

3. Financial statements.
   a. Have you issued any financial statements within the two years immediately preceding the filing of the original petition herein?
      (Give dates, and the names and addresses of the persons to whom issued, including mercantile and trade agencies.)

4. Inventories.
   a. When was the last inventory of your property taken?
   b. By whom, or under whose supervision, was this inventory taken?
   c. What was the amount, in dollars, of the inventory?
      (State whether the inventory was taken at cost, market, or otherwise.)
   d. When was the next prior inventory of your property taken?
   e. By whom, or under whose supervision, was this inventory taken?
   f. What was the amount, in dollars, of the inventory?
      (State whether the inventory was taken at cost, market, or otherwise.)
   g. In whose possession are the records of the two inventories above referred to?
      (Give names and addresses.)

5. Income other than from operation of business.
   a. What amount of income, other than from the operation of your business, have you received during each of the two years immediately preceding the filing of the original petition herein?
      (Give particulars, including each source, and the amount received therefrom.)

6. Income tax returns.
   a. Where did you file your last federal and state income tax returns, and for what years?

7. Bank accounts and safe deposit boxes.
   a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein?
      (Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.)
   b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein?
      (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when surrendered, or, if transferred, when transferred and the name and address of the transferee.)

8. Property held in trust.
   a. What property do you hold in trust for any other person?
      (Give name and address of each person, and a description of the property and the amount or value thereof.)

[1] 11 U. S. C. §§ 21 (b), 22 (a), 722, 822, 1022.

9. Prior bankruptcy or other proceedings; assignments for benefit of creditors.

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein?

(Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition, arrangement or plan was or was not confirmed.)

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee?

(If so, give the name and location of the court, the nature of the proceeding, a brief description of the property, and the name of the receiver or trustee.)

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein?

(If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.)

10. Loans repaid.

a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein?

(Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship. If the bankrupt or debtor is a partnership, state whether the lender is or was a partner or a relative of a partner, and, if so, the relationship. If the bankrupt or debtor is a corporation, state whether the lender is or was an officer, director or stockholder, or a relative of an officer, director or stockholder, and, if so, the relationship.)

11. Transfer of property.

a. What property have you transferred or disposed of, other than in the ordinary course of business, during the year immediately preceding the filing of the original petition herein?

(Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

12. Accounts receivable.

a. Have you assigned any of your accounts receivable during the year immediately preceding the filing of the original petition herein?

(If so, give names and addresses of assignees.)

13. Losses.

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the petition herein?

(If so, give particulars, including dates, and the amounts of money or value and general description of property lost.)

(If the bankrupt or debtor is a partnership or corporation the following additional questions should be answered.)

14. Withdrawals.

a. What personal withdrawals, including loans, have been made by each member of the partnership, or by each officer, director or managing executive of the corporation, during the year immediately preceding the filing of the original petition herein?

(Give the name of each person, whether a partner, officer, director or manager, the dates and amounts of withdrawals, and the nature or purpose thereof.)

15. Members of partnership; officers, directors, managers, and principal stockholders of corporation.

a. What are the names and addresses of each member of the partnership, or the names, titles and addresses of each officer, director and managing executive, and of each stockholder holding 25 per cent. or more of the issued and outstanding stock, of the corporation?

_____ _____,
Bankrupt [or *Debtor*].

State of _____ } *ss.*
County of _____ }

I, _____ _____, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information, and belief.

_____ _____,
Bankrupt [or *Debtor*].

Subscribed and sworn to before me this _____ day of _____, 19____.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 3 is replaced by Form 5.

FORM 4. PARTNERSHIP PETITION

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, and _____ _____, of _____, respectfully represents:

1. Your petitioners are copartners, trading under the firm name of _____ _____, and file this petition jointly in behalf of said partnership and of themselves, individually.

2. The said partnership and your petitioners have had their principal place of business at _____, within the above judicial district, for a longer por-

tion of the six months immediately preceding the filing of this petition than in any other judicial district.

3. The said partnership and your petitioners owe debts.

4. Your petitioners are willing to surrender all of the property of said partnership and all of their individual property for the benefit of the creditors of said partnership and of their creditors, except such property as is exempt by law, and desire to obtain the benefit of the Act of Congress relating to bankruptcy.

5. The schedule hereto annexed, marked Schedule A, and verified by the oaths of your petitioners, contains a full and true statement of all the debts of said partnership, and, so far as it is possible to ascertain, the names and places of residence of its creditors, and such further statements concerning said debts as are required by the provisions of said Act.

6. The schedule hereto annexed, marked Schedule B, and verified by the oaths of your petitioners, contains an accurate inventory of all the property, real and personal, of said partnership, and such further statements concerning said property as are required by the provisions of said Act.

7. The schedule hereto annexed, marked Schedule C, and verified by the oath of your petitioner, ------ ------, contains a full and true statement of all his individual debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

8. The schedule hereto annexed, marked Schedule D, and verified by the oath of your petitioner, ------ ------, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

9. The schedule hereto annexed, marked Schedule E, and verified by the oath of your petitioner, ------ ------, contains a full and true statement of all his individual debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

10. The schedule hereto annexed, marked Schedule F, and verified by the oath of your petitioner, ------ ------, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioners pray that the said partnership, and each of your petitioners, may be adjudged by the court to be a bankrupt within the purview of said Act.

------ ------,
------ ------,
Petitioners.

------ ------, *Attorney.*

State of---------- } *ss.*
County of---------- }

------ ------ and ------ ------, the petitioners named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information, and belief.

------ ------,
------ ------,
Petitioners.

Subscribed and sworn to before me this ------ day of ------, 19--.

------ ------,
------ ------.
[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 4, covering Orders to show cause on creditor's petition, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

1939—Form replaces prior Form 2, abrogated by Order of May 25, 1925.

FORM 5. CREDITORS' PETITION

To the Honorable ------ ------, Judge of the District Court of the United States for the ------ District of ------:

The petition of ------- -------, of -------, and ------- -------, of -------, and ------- -------, of ------, respectfully represents:

1. ------ ------, of ------, has had his principal place of business [*or* has resided *or* has had his domicile] at ------, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Said ------ ------ owes debts to the amount of $1000, and is not a wage-earner or a farmer.

3. Your petitioners are creditors of said ------ ------, having provable claims against, him, fixed as to liability and liquidated in amount, amounting in the aggregate, in excess of the value of securities held by them, to $500. The nature and amount of your petitioners' claims are as follows:

---

4. Within four months next preceding the filing of this petition, the said ------ ------ committed an act of bankruptcy, in that he did heretofore, to wit, on the ------ day of ------, 19---, ----------

---

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon said ------, as provided in the Act of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said Act.

------ ------,
------ ------,
------ ------,
Petitioners.

------ ------, *Attorney.*

State of-------- } *ss.*
County of------ }

------ ------, ------ ------, and ------ ------,

the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

_____ _____,
_____ _____,
_____ _____,
Petitioners.

Subscribed and sworn to before me this _____ day of _____, 19___.

_____ _____,
_____ _____.
[*Official character.*]

As amended Jan. 16, 1939, eff. Feb. 13, 1939.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 3. Prior Form 5 is replaced by Form 6.

FORM 6. SUBPOENA TO ALLEGED BANKRUPT

United States of America, _____ District of _____.
To _____, in said district:

A petition in bankruptcy having been filed on the _____ day of _____, 19___, before the District Court of the United States within and for the _____ District of _____, as a court of bankruptcy, praying that you may be adjudged a bankrupt under the Act of Congress relating to bankruptcy,

You are hereby summoned and required to appear and plead to said petition, on or before the _____ day of _____, 19___; and, if you fail to do so, you may be adjudged a bankrupt by default.

Witness the Honorable _____ _____, judge of said court, and the seal thereof, at _____, this _____ day of _____, 19___.

_____ _____,
Clerk.

[SEAL OF THE COURT]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 5. Prior Form 6 is replaced by Form 7.

FORM 7. ANSWER OF ALLEGED BANKRUPT

A petition having been filed in the above court on the _____ day of _____, 19___, praying that your respondent, the alleged bankrupt above named, be adjudged a bankrupt, your respondent now appears and answers the said petition as follows:

1. Respondent admits the allegations contained in paragraphs _____ of the petition.

2. Respondent denies each and every allegation contained in paragraphs _____ of the petition.

Wherefore your respondent prays that a hearing may be had on said petition and this answer, and that the issues presented thereby may be determined by the court [*or* by a jury].

_____ _____

State of _____} *ss.*
County of _____}

I, _____ _____, the respondent named in the foregoing answer, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19___.

_____ _____,
_____ _____.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 7, covering Order for jury trial, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form extended prior Form 6 which covered only denial of bankruptcy.

FORM 8. BOND OF APPLICANT FOR A RECEIVER OR MARSHAL

Know all men by these presents: That we, _____ _____, as principal, and _____ _____, as surety, are held and firmly bound unto _____ _____, in the sum of _____ dollars, to be paid to the said _____ _____, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, 19___.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the District Court of the United States for the _____ District of _____ against the said _____ _____, and the said _____ _____ has applied to that court to have a receiver [*or* marshal] take charge of the property of said _____ _____, subject to the further order of said court;

Now, therefore, if said property be taken in charge by said receiver [*or* marshal], and if the said _____ _____ shall indemnify the said _____ _____ for such costs, counsel fees, expenses, and damages as may be occasioned by such seizure, taking, and detention of such property in the event the said petition is dismissed or withdrawn by the petitioners, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of

_____ _____ _____ _____ [SEAL]
_____ _____ _____ _____ [SEAL]

Approved this _____ day of _____, 19___.

_____ _____,
District Judge or *Referee in Bankruptcy.*

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 8, covering special warrant to marshal, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 9.

FORM 9. COUNTERBOND TO RECEIVER OR MARSHAL

Know all men by these presents: That we _____ _____, as principal, and _____ _____, as surety, are held and firmly bound unto _____ _____, marshal of the United States of the _____ District of _____ [*or* the receiver appointed by the District Court of the United States for the _____ District

of _____ to take charge of the property of _____ _____], in the sum of _____ dollars, lawful money of the United States, to be paid to the said _____ _____, his successors in office or assigns, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Signed and sealed this _____ day of _____, 19__.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the said district court against the said _____ _____, and the said court has ordered said _____ _____ to take charge of the property of the said _____ _____, subject to the further order of the court, and the said district court upon a petition of said _____ _____ has ordered the said property to be released to him.

Now, therefore, if the said property shall be released accordingly to the said _____ _____, and the said _____ _____, being adjudged a bankrupt, shall account for and turn over said property or pay the value thereof in money at the time of seizure to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of

_____ _____ _____ _____ [SEAL].
_____ _____ _____ _____ [SEAL].

Approved this _____ day of _____, 19__.

_____ _____,
District Judge or *Referee in Bankruptcy.*

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 10. Prior Form 9 is replaced by Form 8.

FORM 10. ADJUDICATION THAT DEBTOR IS NOT A BANKRUPT

At _____, in said district, on the _____ day of _____, 19__.

This cause having been heard at _____, in said court, upon the petition of _____ _____, _____ _____, and _____ _____, that _____ _____ be adjudged a bankrupt under the Act of Congress relating to bankruptcy; and [*here state the proceedings, whether there was no opposition, or, if opposed, what proceedings were had*];

And, upon consideration of the proofs in said cause [*and the arguments of counsel thereon, if any*], it having been found that the material facts alleged in said petition were not proved;

It is adjudged that said _____ _____ is not a bankrupt as alleged, and that said petition be dismissed, with costs.

_____ _____,
District Judge or *Referee in Bankruptcy.*

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 11. Prior Form 10 is replaced by Form 9.

FORM 11. ADJUDICATION OF BANKRUPTCY

At _____, in said district, on the _____ day of _____, 19__.

The petition of _____ _____, filed on the _____ day of _____, 19__, that _____ _____ be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and [*here state the proceedings, whether there was no opposition, or, if opposed, what proceedings were had*];

It is adjudged that the said _____ _____ is a bankrupt under the Act of Congress relating to bankruptcy.

_____ _____,
District Judge or *Referee in Bankruptcy.*

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 12. Prior Form 11 is replaced by Form 10.

FORM 12. APPOINTMENT AND OATH OF APPRAISER

_____ _____, of _____, a disinterested person, is hereby appointed appraiser, forthwith to appraise, after having been duly sworn, all the items of real and personal property belonging to the estate of the said bankrupt, and to prepare and file with the court a report of said appraisal.

[Here set out the amount of compensation or the rate or measure thereof to be paid and such instructions as may be deemed appropriate for the appraisal of the property of the particular estate.]

Dated at _____, this _____ day of _____, 19__.

_____,
Referee in Bankruptcy.

United States of America }
_____ District of _____ } ss.

I, _____, the person above named, do hereby make solemn oath that I will fully and fairly appraise the aforesaid property according to my best skill and judgment.

_____.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____,
_____.
[*Official character.*]

(As amended Jan. 16, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, inserted "the amount of compensation or the rate or measure thereof to be paid and" preceding "such instructions" in the bracketed sentence and a line of dashes indicating the place for the signature of the appraiser in the oath.

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 13. Prior Form 12 is replaced by Form 11.

FORM 13. ORDER OF GENERAL REFERENCE

At _____, in said district, on the _____ day of _____, 19__.

Whereas a petition was filed in this court, on the _____ day of _____, 19__, by [*or* against] _____ _____, the bankrupt [*or* alleged bankrupt] above named, praying that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy; [*If the debtor has been adjudged a bankrupt, add:*

and whereas the said _____ _____ was adjudged a bankrupt, upon said petition, on the _____ day of _____, 19__;]

It is ordered that the above entitled proceeding be, and it hereby is, referred to _____ _____, one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said _____ _____ shall henceforth attend before the said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

_____ _____,
District Judge.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 14. Prior Form 13 is replaced by Form 12.

FORM 14. ORDER OF REFERENCE IN JUDGE'S ABSENCE

At _____, in said district, on the _____ day of _____, 19__.

Whereas a petition was filed in this court on the _____ day of _____, 19__, by [*or* against] _____ _____, the alleged bankrupt above named, praying that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy; and whereas the judge of said court was absent from said district [*or* said division of said district] at the time of the filing of said petition [*or, in case of involuntary bankruptcy,* on the next day after the last day on which pleadings might have been filed, and none have been filed by the alleged bankrupt];

It is ordered that the above entitled proceeding be, and it hereby is, referred to _____, one of the referees in bankruptcy of this court, to consider said petition and take such proceedings therein as are required and permitted by said Act, and that the said _____, shall henceforth attend before said referee.

Witness my hand and the seal of the said court.

_____,
Clerk.

[SEAL OF THE COURT]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 15. Prior Form 14 is replaced by Form 13.

FORM 15. OATH OF OFFICE FOR REFEREES IN BANKRUPTCY

I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

_____.

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 19__.

_____,

_____.

(As amended Jan. 16, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, permitted the oath to be affirmed or sworn to, substituted a line of dashes for "referee in bankruptcy" following "upon me as", inserted "and that I will * * * about to enter" following "laws of the United States", and substituted a line of dashes for "District Judge" at the end of oath.

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 16. Prior Form 15 is replaced by Form 14.

FORM 16. BOND OF REFEREE

Know all men by these presents: That we, _____ _____, of _____, as principal, and _____ _____, of _____, and _____ _____, of _____, as sureties, are held and firmly bound to the United States of America in the sum of _____ dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, 19__.

The condition of this obligation is such that whereas the said _____, has been on the _____ day of _____, 19__, appointed by the Honorable _____, Judge of the District Court of the United States for the _____ District of _____, a referee in bankruptcy in said district, under the Act of Congress relating to bankruptcy;

Now, therefore, if the said _____ shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of

_____ _____, [L. S.]
_____ _____, [L. S.]
_____. [L. S.]

Approved this _____ day of _____, 19__.

_____ _____,
District Judge.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 17. Prior Form 16 is replaced by Form 15.

FORM 17. NOTICE OF FIRST MEETING OF CREDITORS

(Caption as in Form No. 1)

To the creditors of _____,
of _____, a bankrupt:

Notice is hereby given that said _____ has been duly adjudged a bankrupt on a petition

filed by [or against] him on _____, 19__, and that the first meeting of his creditors will be held at _____, in _____, on _____, 19__, at ____ o'clock __ m., at which place and time the said creditors may attend, prove their claims, appoint a trustee, appoint a committee of creditors, examine the bankrupt, and transact such other business as may properly come before said meeting.

Dated at _____, 19__.

_____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939; June 23, 1947, eff. July 1, 1947.)

AMENDMENTS

1947—Amendment June 23, 1947, changed manner of indicating dates and time of day.

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 18. Prior Form 17 is replaced by Form 16.

FORM 18. POWER OF ATTORNEY

To _____ _____ and _____ _____:

I, _____ _____, of _____, in the County of _____, State of _____, do hereby authorize you, or any one of you, with full power of substitution, to attend all meetings of creditors of the bankrupt aforesaid, and all adjournments thereof, at the places and times appointed by the court, and for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Act of Congress relating to bankruptcy, to vote for a trustee or trustees of the estate of the said bankrupt and for a committee of creditors, to accept any arrangement or wage-earner's plan proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends, and payment or delivery of money or of other consideration due me under such arrangement or wage-earner's plan, and for any other purpose in my interest whatsoever; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid.

In witness whereof I have hereunto signed my name and affixed my seal the _____ day of _____, 19__.

_____ _____, [L. S.]

Signed, sealed and delivered in the presence of

_____ _____.

Acknowledged before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Amendment Jan. 16, 1939, replaced prior Form 20. Prior Form 18 is replaced by Form 17.

FORM 19. SPECIAL POWER OF ATTORNEY

To _____ _____ and _____ _____:

I hereby authorize you, or any one of you, to attend the meeting of creditors of the bankrupt aforesaid, advertised or directed to be held at _____, on the _____ day of _____, before _____, or any adjournment thereof, and then and there for me and in my name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

It witness whereof I have hereunto signed my name and affixed my seal the _____ day of _____, 19__.

_____ _____, [L. S.]

Signed, sealed and delivered in the presence of

_____ _____.

Acknowledged before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 19, covering list of debts proved at first meeting, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 21.

FORM 20. ORDER APPROVING APPOINTMENT OF TRUSTEE

At _____, in said district, on the _____ day of _____, 19__.

_____ _____, of _____, having been appointed trustee of the estate of the above named bankrupt by the creditors of said bankrupt, as provided in the Act of Congress relating to bankruptcy,

It is ordered that the appointment of said _____ _____, as trustee be, and it hereby is, approved, and the amount of his bond is fixed at _____ dollars.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 22. Prior Form 20 is replaced by Form 18.

FORM 21. APPOINTMENT OF TRUSTEE BY REFEREE

At _____, in said district, on the _____ day of _____, 19__.

The creditors of the above named bankrupt having failed to appoint a trustee as provided in the Act of Congress relating to bankruptcy, I hereby appoint _____ _____, of _____, trustee of the estate of said bankrupt, and fix the amount of his bond at _____ dollars.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 23. Prior Form 21 is replaced by Form 19.

FORM 22. NOTICE TO TRUSTEE OF HIS APPOINTMENT

To _____ _____, of _____:

I hereby notify you that you were duly appointed trustee [*or* one of the trustees] of the estate of the above named bankrupt at the first meeting of creditors, on the _____ day of _____, 19__, and I have approved said appointment. The amount of your bond as such trustee has been fixed at _____ dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at _____, the _____ day of _____, 19__.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 24. Prior Form 22 is replaced by Form 20.

FORM 23. BOND OF RECEIVER OR TRUSTEE

Know all men by these presents: That we _____ _____, of _____, as principal, and _____ _____, of _____, and _____ _____, of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, 19__.

The condition of this obligation is such that whereas the above named _____ _____ was, on the _____ day of _____, 19__, appointed receiver [*or* trustee] in the case pending in bankruptcy in said court, wherein _____ _____ is the bankrupt, and he, the said _____ _____, has accepted said trust with all the duties and obligations pertaining thereunto;

Now, therefore, if the said _____ _____, receiver [*or* trustee] as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said receiver [*or* trustee], then this obligation to be void; otherwise, to remain in full force and virtue.

Signed and sealed in the presence of

_____ _____ _____ _____ [SEAL]
_____ _____ _____ _____ [SEAL]
_____ _____ [SEAL]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 25. Prior Form 23 is replaced by Form 21.

FORM 24. ORDER APPROVING TRUSTEE'S BOND

At _____, in said district, on the _____ day of _____, 19__.

The above named _____ _____, having been duly adjudged a bankrupt on a petition filed by [*or* against] him on the _____ day of _____, 19__; and _____ _____, of _____, in said district, having been duly appointed trustee of the estate of said bankrupt, and having duly qualified by giving a bond with sufficient sureties for the faithful performance of his official duties in the amount fixed by the order of this court, viz., _____ dollars;

It is ordered that the said bond be, and it hereby is, approved.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 26. Prior Form 24 is replaced by Form 22.

FORM 25. ORDER THAT NO TRUSTEE BE APPOINTED

At _____, in said district, on the _____ day of _____, 19__.

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 27. Prior Form 25 is replaced by Form 23.

FORM 26. ORDER FOR EXAMINATION OF BANKRUPT

At _____, in said district, on the _____ day of _____, 19__.

Upon the application of _____ _____, trustee of said bankrupt [*or* a creditor of said bankrupt], it is ordered that said bankrupt attend before _____ _____, one of the referees in bankruptcy of this court, at _____, on the _____ day of _____, at __ o'clock in the _____ noon, to submit to examination under the Act of Congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 28. Prior Form 26 is replaced by Form 24.

FORM 27. SUBPOENA TO WITNESS

To _____ _____:

Whereas the above entitled proceeding is pending in the District Court of the United States for the _____ District of _____;

You are hereby commanded personally to be and appear before _____ _____, one of the referees in bankruptcy of said court, at _____, on the _____ day of _____, at __ o'clock in the _____ noon, [and bring with you _____ _____,] then and there to be examined in relation to said proceeding.

Witness the Honorable _____ _____, judge of said court, and the seal thereof, at _____, this _____ day of _____, 19__.

_____ _____,
Clerk.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 30. Prior Form 27 is replaced by Form 26.

FORM 28. PROOF OF CLAIM BY INDIVIDUAL

State of _____ }
County of _____ } *ss.*

_____ _____, of No. — _____ Street, in _____, County of _____, State of _____, being duly sworn, deposes and says:

1. That _____ _____, the above named bankrupt, was at and before the filing by [*or* against] him of the petition for adjudication of bankruptcy, and stili is, justly and truly indebted [*or* liable] to said deponent in the sum of _____ dollars.

2. That the consideration of said debt [*or* liability] is as follows: _____ _____.

3. That no part of said debt [*or* liability] has been paid, except _____ _____.

4. That there are no set-offs or counterclaims to said debt [*or* liability] except _____ _____.

5. That deponent does not hold, and has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received, any security or securities for said debt [*or* liability], except _____ _____.

6. [*If the debt or liability is founded upon an instrument of writing*] That the instrument upon which said debt [*or* liabiiity] is founded is attached hereto [*or* is iost or destroyed, as set forth in the affidavit attached hereto].

7. [*If the debt is founded upon an open account*] That the said debt was [*or* will become] due on _____ [*or* that the average due date thereof is _____]; that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the said debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except _____ _____.

_____ _____,
Creditor.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form covered subject matter of prior Forms 31, 32, Proof of Unsecured and Secured Debts. Prior Form 28 is replaced by Form 26.

FORM 29. PROOF OF CLAIM BY CORPORATION

State of _____ }
County of _____ } *ss.*

_____ _____, of _____, in the County of _____, State of _____, being duly sworn, deposes and says:

1. That he is the _____ of _____, a corporation organized and existing under the laws of the State of _____, and carrying on business at No. — _____ Street, in _____, County of _____, State of _____, and is duly authorized to make this proof of claim on its behaif.

2. That _____ _____, the above named bankrupt, was at and before the filing by [*or* against] him of the petition for adjudication of bankruptcy, and still is, justly and truly indebted [*or* liable] to said corporation in the sum of _____ doliars.

3. That the consideration of said debt [*or* liability] is as follows: _____ _____.

4. That no part of said debt [*or* liability] has been paid, except _____ _____.

5. That there are no set-offs or counterclaims to said debt [*or* liability], except _____ _____.

6. That said corporation does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received, any security or securities for said debt [*or* liability] except _____ _____.

7. [*If the debt or liability is founded upon an instrument of writing*] That the instrument upon which said debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

8. [*If the debt is founded upon an open aecount*] That the said debt was [*or* will become] due on _____ [*or* that the average due date thereof is _____]; that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the said debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except _____ _____.

_____ _____,
_____ *of Said Corporation.*

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 33. Prior Form 29, covering examination of bankrupt or witness, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 30. PROOF OF CLAIM BY PARTNERSHIP

State of _____ }
County of _____ } *ss.*

_____ _____, of _____, in the County of _____, State of _____, being duly sworn, deposes and says:

1. That he is a member of _____, a copartnership composed of deponent and _____ _____, of _____, in the County of _____, State of _____, and carrying on business at No. __ _____ Street, in _____, County of _____, State of _____.

2. That _____ _____, the above named bankrupt, was at and before the filing by [*or* against] him of the petition for adjudication of bankruptcy, and still is, justly and truly indebted [*or* liable] to said copartnership in the sum of _____ dollars.

3. That the consideration of said debt [*or* liability] is as follows: _____

4. That no part of said debt [*or* liability] has been paid, except _____.

5. That there are no set-offs or counterclaims to said debt [*or* liability], except _____
_____.

6. That said copartnership does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received, any security or securities for said debt [*or* liability], except _____.

7. [*If the debt or liability is founded upon an instrument of writing*]. That the instrument upon which said debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

8. [*If the debt is founded upon an open account*] That the said debt was [*or* will become] due on _____ [*or* that the average due date thereof is _____]; that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the said debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except _____
_____.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 34. Prior Form 30 is replaced by Form 27.

FORM 31. PROOF OF CLAIM BY AGENT OR ATTORNEY

State of _____ }
County of _____ } *ss.*

_____ _____, of _____, in the County of _____, State of _____, being duly sworn, deposes and says:

1. That he is the attorney [*or* agent] of _____ _____, of No. __ _____ Street, in _____, County of _____, State of _____; that deponent is duly authorized by said _____ _____ to make this proof of claim in his behalf; and that said proof cannot be made by said _____ _____ in person because _____
_____
_____.

2. That _____ _____, the above named bankrupt, was at and before the filing by [*or* against] him of the petition for adjudication of bankruptcy, and still is, justly and truly indebted [*or* liable] to said _____ _____ in the sum of _____ dollars.

3. That the consideration of said debt [*or* liability] is as follows: _____
_____.

4. That no part of said debt [*or* liability] has been paid, except _____
_____.

5. That there are no set-offs or counterclaims to said debt [*or* liability] except _____
_____.

6. That said _____ _____ does not hold, and has not, nor has any person by his order, or to deponent's knowledge or belief, for his use, had or received, any security or securities for said debt [*or* liability], except _____
_____.

7. [*If the debt or liability is founded upon an instrument of writing*] That the instrument upon which said debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

8. [*If the debt is founded upon an open account*] That the said debt was [*or* will become] due on _____ [*or* that the average due date thereof is _____]; that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the said debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except _____
_____.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 35. Prior Form 31 is replaced by Form 28.

FORM 32. AFFIDAVIT OF LOSS OF NEGOTIABLE INSTRUMENT

State of _____ }
County of _____ } *ss.*

_____ _____, of _____, in the County of _____, State of _____, being duly sworn, deposes and says that the note [*or other negotiable instrument*], the particulars whereof are underwritten, has been lost under the following circumstances: _____ _____; and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said _____ _____, or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said note [*or other negotiable instrument*], nor in any manner parted with or assigned the legal or beneficial interests therein, or any part thereof; that he, this deponent, is the person now legally and beneficially interested in the same; and that the particulars of the said instrument are as follows:

Date.	When due.	Drawer or maker.	Acceptor.	Prior indorser or indorsers if any.	Amount.

_____ _____.

Subscribed and sworn to before me, this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 37. Prior Form 32, covering proof of secured debt, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 33. ORDER EXPUNGING OR REDUCING CLAIM

At _____, in said district, on the _____ day of _____, 19__.

The petition for reconsideration of the claim of _____ _____ against the estate of the above named bankrupt in the amount of _____ dollars having been heard on the _____ day of _____, 19__; and due notice of said hearing having been given [*here state the manner of notice*] to said claimant; and upon the evidence submitted to this court upon said claim [*and, if the fact be so, upon hearing counsel thereon*];

It is ordered that the said claim of _____ _____ be, and it hereby is, expunged from the list of claims in this proceeding [*or,* reduced to _____ dollars and allowed at said amount].

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Forms 38–39. Prior Form 33 is replaced by Form 29.

FORM 34. ORDER FOR PAYMENT OF DIVIDENDS

At _____, in said district, on the _____ day of _____, 19__.

It appearing that, pursuant to the provisions of section 65 of the Act of Congress relating to bankruptcy,[1] a first [*or* further, *or* final] dividend should be declared and paid herein;

It is ordered that a first [*or* second, *etc., or* final] dividend of _____ per cent. be, and it hereby is, declared on all unsecured claims, not entitled to priority, allowed against the estate of the above named bankrupt, in accordance with the following dividend sheet:

No.	Creditors. (The names of all parties to the proof to be set forth.)	Amount of Claim Allowed.	Amount of Dividend.
		$	$

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Forms 40—41. Prior Form 34 is replaced by Form 30.

FORM 35. PETITION FOR SALE OF REAL ESTATE

The petition of _____ _____, trustee of the estate of the above named bankrupt, respectfully represents:

1. A portion of said bankrupt's estate consists of the following described real estate: [*Here describe the property and any mortgages or liens thereon, and give its appraised or estimated value.*]

2. In the judgment of your petitioner it will be for the benefit of said estate to sell said property at public auction, upon the following terms and conditions: _____ _____

Wherefore your petitioner prays that he may be authorized to make sale by public auction of said real estate as aforesaid.

_____ _____,
Trustee.

State of _____ }
County of _____ } *ss.*

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form, together with Form 36, replaced prior Form 42. Prior Form 35 is replaced by Form 31.

[1] 11 U. S. C. § 105.

FORM 36. ORDER FOR SALE OF REAL ESTATE

At ------, in said district, on the ------ day of ------, 19--.

The petition of ------ ------, trustee of the estate of the above named bankrupt, filed on the ------ day of ------, 19--, that said trustee be authorized to sell at public auction certain real estate belonging to said estate, having come on for hearing before me, of which hearing [*here set forth to whom notice was given and the manner thereof*], now after due hearing, no adverse interest being represented thereat [*or* after hearing ------ ------ in favor of said petition and -------- -------- in opposition hereto];

It is ordered that the said trustee be, and he hereby is, authorized to sell at public auction all that certain real estate, belonging to the estate of said bankrupt, mentioned in said petition and described as follows: ----------; upon terms and conditions as follows: ---------- ----------; and that the said trustee shall keep an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall forthwith file with this court.

------ ------,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 36, covering proof of secured debt by agent, adopted Nov. 28, was abrogated by order January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

Under Amendment Jan. 16, 1939, this form, together with Form 35, replaced prior Form 42.

FORM 37. PETITION FOR REDEMPTION OF PROPERTY

The petition of ------ ------, trustee of the estate of the above named bankrupt, respectfully represents:

1. A portion of said bankrupt's estate consists of the following described property: [*Here describe the property and give its appraised or estimated value.*]

2. Said property is subject to the following described mortgage [*or* lien *or* pledge]: ---------- ----------

3. In the judgment of your petitioner it will be for the benefit of the estate to redeem said property from said mortgage [*or* lien *or* pledge], for the following reasons: ---------- ----------

Wherefore your petitioner prays that he may be authorized to pay out of the assets of said estate the sum of ------ dollars, being the amount of said mortgage [*or* lien *or* pledge], to redeem said property therefrom.

------ ------,
Trustee.

State of ----------
County of ---------- } *ss.*

I, ------ ------, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

------ ------.

Subscribed and sworn to before me this ------ day of ------, 19--.

------ ------,
------ ------.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form, together with Form 38, replaced prior Form 43. Prior Form 37 is replaced by Form 32.

FORM 38. ORDER FOR REDEMPTION OF PROPERTY

At ------, in said district, on the ------ day of ------, 19--.

The petition of ------ ------, trustee of the estate of the above named bankrupt, filed on the ------ day of ------, 19 --, that said trustee be authorized to redeem certain property belonging to said estate, having come on for hearing before me, of which hearing [*here set forth to whom notice was given and the manner thereof*], now, after due hearing, no adverse interest being represented thereat [*or* after hearing ------ ------ in favor of said petition and ------ ------ in opposition thereto];

It is ordered that the said trustee be, and he hereby is, authorized to redeem that certain property, belonging to said estate, mentioned in said petition and described as follows: ---------- ---------- ----------

from the mortgage [*or* lien *or* pledge] so mentioned and described as follows: ----------, and for that purpose to pay out of the assets of said estate the said sum of ------ dollars.

------ ------,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form, together with Form 37, replaced prior Form 43. Prior Form 38 is replaced by Form 33.

FORM 39. TRUSTEE'S REPORT OF EXEMPT PROPERTY

To ------ ------, Referee in Bankruptcy:

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the Act of Congress relating to bankruptcy, as his exemptions allowed by law and claimed by him in his schedules filed in the above entitled proceeding.

General head.	Particular description.	Estimated value.
Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption----------		$
Property claimed to be exempt by State laws, with reference to the statute creating the exemption----------		

Dated this _____ day of _____, 19__.

_____ _____,
Trustee.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 39, covering order expunging claim, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1931, effective February 13, 1939, and was not replaced.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 47.

FORM 40. REPORT OF TRUSTEE IN NO ASSET CASE

To _____ _____, Referee in Bankruptcy:

_____ _____, of _____, in the County of _____, State of _____, trustee of the estate of the above named bankrupt, respectfully reports that he has neither received any property nor paid any moneys on account of said estate; that he has made diligent inquiry into the whereabouts of property belonging to the said estate; and that there are no assets in said estate over and above the exemptions claimed by, and by him set aside to, the said bankrupt.

Wherefore he prays that this report be approved, and that he be discharged of his trust.

_____ _____,
Trustee.

State of _____}
County of_____} *ss.*

I, _____ _____, the trustee named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 48. Prior Form 40 is replaced by Form 34.

FORM 41. PETITION FOR DISCHARGE

The petition of _____ _____, the bankrupt above named, a corporation organized and existing under the laws of the State of _____, respectfully represents that on the _____ day of _____, 19__, a petition was filed by [*or* against] it, praying that it be adjudged a bankrupt under the Act of Congress relating to bankruptcy; that on the _____ day of _____, 19__, it was duly adjudged a bankrupt under said Act; that it has duly surrendered all its property and rights of property, and has fully complied with all the requirements of said Act, and with all the orders of the court pertaining to its bankruptcy.

Wherefore your petitioner prays that it may be decreed by this court to have a discharge from all debts provable against its estate under said Act, except such debts as are excepted by said Act from such discharge.

_____ _____,
By _____ _____,
_____ *of said corporation.*

State of _____}
County of _____} *ss.*

_____ _____, being duly sworn, deposes and says that he is the _____ of _____ _____, the petitioner named in the foregoing petition, and is duly authorized to make this affidavit on its behalf, and that the statements contained in said petition are true according to the best of his knowledge, information, and belief.

_____ _____.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 41, covering notice of dividend, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 57.

FORM 42. ORDER FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE

At _____, in said district, on the _____ day of _____, 19__.

It appearing that the above named bankrupt has been duly adjudged a bankrupt and has been duly examined at a meeting of creditors as required by the Act of Congress relating to bankruptcy; [*if the bankrupt is a corporation, add:* and it further appearing that said bankrupt filed its application for a discharge on the _____ day of _____, 19__];

It is ordered that the _____ day of _____, 19__, be, and it hereby is, fixed as the last day for the filing of objections to the discharge of said bankrupt.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 42 is replaced by Forms 35, 36.

FORM 43. NOTICE OF ORDER FIXING TIME FOR FILING OBJECTIONS TO DISCHARGE

To the creditors of the above named bankrupt and other parties in interest:

Notice is hereby given that on the _____ day of _____, 19__, an order was made in the above entitled proceeding, fixing the _____ day of _____, 19__, as the last day for the filing of objections to the discharge of said bankrupt.

Dated this _____ day of _____, 19__.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 43 was replaced by Forms 37, 38.

FORM 44. SPECIFICATION OF OBJECTIONS TO DISCHARGE

------ ------, of ------, in the County of ------, State of ------, the trustee of the estate [*or* a creditor] of the above named bankrupt [*or* the United States attorney for said district [*or* the attorney designated by the Attorney General of the United States], having examined into the acts and conduct of said bankrupt and being satisfied that probable grounds exist for the denial of the discharge of said bankrupt and that the public interest so warrants], does hereby oppose the granting to said bankrupt of a discharge from his debts, and specifies the following as grounds of objection: [*Here specify in separately numbered paragraphs the grounds of objection.*]

------ ------,
Trustee [or *creditor, etc.*]

State of ----------
County of ----------} *ss.*

I, ------ ------, the trustee [*or* creditor, *etc.*] named in the foregoing petition do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

------ ------,
------ ------.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 44, covering petition and order for sale subject to lien, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 58.

FORM 45. DISCHARGE OF BANKRUPT

At ------, in said district, on the ------ day of ------, 19--.

It appearing that ------ ------, of ------, in the County of ------, State of ------, was duly adjudged a bankrupt on a petition filed by [*or* against] him on the ------ day of ------, 19--; and

It further appearing that, after due notice by mail, no objection to the discharge of said bankrupt was filed within the time fixed by the court [*or* objections to the discharge of the said bankrupt were filed and, after due notice by mail, were heard and were not sustained];

It is ordered that the said ------ ------ be, and he hereby is, discharged from all debts and claims which are made provable by said Act against his estate, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy.

------ ------,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 45, covering petition and order for private sale, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

1939—Under Amendment Jan. 16, 1939, this form replaced prior Form 59.

FORM NO. 46. REFEREE'S CASH BOOK

Receipts							Disbursements									
Date	Title of Case and Case No.	From Whom Received	Indemnity for Witnesses and Testimony	Moneys Collected for Clerk	Moneys Held in Trust	Misc. Receipts	Date	Payee	Check No.	Title of Case and Case No.	Witnesses	Testimony	Moneys Disbursed to Clerk	Refunds	Moneys Held in Trust	Misc. Disbursements
Amounts brought forward							Amounts brought forward									
Amounts carried forward							Amounts carried forward									

(As amended Jan. 16, 1939; June 23, 1947, eff. July 1, 1947.)

CODIFICATION

Prior Form 46, covering petition and order for sale of perishable property, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

AMENDMENTS

1947—Amendment June 23, 1947, made numerous changes in items to be carried in cash book.

FORM 47. REFEREE'S SEMI-ANNUAL REPORT

IN THE DISTRICT COURT OF THE UNITED STATES

_____ District of _____

To the Honorable _____, Judge of said court:

I, _____, Referee in Bankruptcy of said court, beg to submit herewith, in duplicate, my report in compliance with General Order No. 26 of the Supreme Court, covering the period from _____, to _____, inclusive.

Attached hereto and made a part of this report are the following exhibits:

1. A financial statement showing all moneys received and disbursed during the period covered by this report.

2. An analysis of the unexpended balance in my official account at the end of the period.

3. Statement of the number of cases handled during the period.

4. A list of proceedings referred to me which have remained open for more than eighteen months, giving the reason in each instance why they have not been closed.

Respectfully submitted, this _____ day of _____, 19____.

_____

State of _____ } ss.
County of _____ }

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, who after being sworn by me, upon his oath states that the statements contained in the foregoing instrument, and all exhibits thereto attached, are true and correct, to the best of his knowledge and belief.

_____

Subscribed and sworn to before me by _____, this the _____ day of _____, 19__.

_____

(As amended Jan. 16, 1939; June 23, 1947, eff. July 1, 1947.)

CODIFICATION

Prior Form 47 replaced by Form 39.

AMENDMENTS

1947—Amendment June 23, 1947, changed this entire form by substituting Referees Semi-Annual Report for Referees Financial Statement.

FORM 48. ORIGINAL PETITION IN PROCEEDINGS UNDER CHAPTER XI

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, in the County of _____, State of _____, by occupation a _____ [*or* engaged in the business of _____], respectfully represents:

1. Your petitioner has had his principal place of business [*or* has resided, *or* has had his domicile] at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. No bankruptcy proceeding, initiated by a petition by or against your petitioner, is now pending.

3. Your petitioner is insolvent [*or* unable to pay his debts as they mature], and proposes the following arrangement with his unsecured creditors: ____

_____.

4. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of the Act of Congress relating to bankruptcy.

5. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

6. The statement hereto annexed, marked Exhibit 1, and verified by your petitioner's oath, contains a full and true statement of all his executory contracts, as required by the provisions of said Act.

7. The statement hereto annexed, marked Exhibit 2, and verified by your petitioner's oath, contains a full and true statement of his affairs, as required by the provisions of said Act.

Wherefore your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of chapter XI of the Act of Congress relating to bankruptcy.[1]

_____ _____,
Petitioner.

_____ _____, *Attorney.*

State of _____ } *ss.*
County of _____ }

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 48 is replaced by Form 40.

[1] 11 U. S. C. § 701 et seq.

FORM 49. NOTICE OF MEETING OF CREDITORS IN PROCEEDINGS UNDER CHAPTER XI

To the creditors of _____ _____, of _____, in the County of _____, and district aforesaid:

Notice is hereby given that on the _____ day of _____, 19__, the said _____ _____ filed a petition in this court proposing an arrangement with his unsecured creditors under the provisions of chapter XI of the Act of Congress relating to bankruptcy,[1] and that a meeting of his creditors will be held at _____, in _____, on the _____ day of _____, 19__, at __ o'clock in the _____ noon, at which place and time the said creditors may attend, prove their claims, nominate a trustee, appoint a committee of creditors, examine the debtor, present written acceptances of the proposed arrangement, and transact such other business as may properly come before said meeting.

Annexed hereto is a copy of said proposed arrangement, a summary of the liabilities of said debtor as shown by his schedules, and a summary of the appraisal of the property of said debtor [*or* a summary of the assets of said debtor as shown by his schedules].

[*If appropriate, the following may be added:*]

Notice is also hereby given that the application to confirm said arrangement shall be filed with this court on or before the _____ day of _____, 19__; and that the hearing on the confirmation and objections thereto, if any, will be held at _____, in _____, on the _____ day of _____, 19__, at __ o'clock in the _____ noon.

Dated this _____ day of _____, 19__.

____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 49, covering account of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 50. APPLICATION FOR CONFIRMATION OF AN ARRANGEMENT UNDER CHAPTER XI

To _____ _____, Referee in Bankruptcy:

_____ _____, the above named debtor, respectfully represents that the arrangement under chapter XI of the Act of Congress relating to bankruptcy,[1] proposed in the petition filed by him on the _____ day of _____, 19__, has been duly accepted, in accordance with the provisions of said chapter, and that the deposit required by the provisions of said chapter and by the said arrangement, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court.

Wherefore the said _____ prays that the said arrangement be confirmed by the court.

_____ _____,
Debtor.

State of _____ }
County of _____ } *ss.*

I, _____ _____, the debtor named in the foregoing application, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Debtor.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 50 covering oath to final account of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 51. ORDER CONFIRMING AN ARRANGEMENT UNDER CHAPTER XI. (WHERE ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At _____, in said district, on the _____ day of _____, 19__.

A petition having been filed herein on the _____ day of _____, 19__, by the above named debtor, proposing an arrangement under chapter XI of the Act of Congress relating to bankruptcy,[1] and said arrangement having been accepted in writing by all creditors affected thereby, at a meeting of creditors held on the _____ day of _____, 19__, of which meeting _____ days' notice by mail was given to said debtor, to his creditors, and to other parties in interest; and

It appearing that the deposit required by the provisions of said chapter and by said arrangement, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court, and that said arrangement and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act;

It is ordered that the said arrangement be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 51, covering order allowing account and discharging trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 52. ORDER CONFIRMING AN ARRANGEMENT UNDER CHAPTER XI. (WHERE LESS THAN ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At _____, in said district, on the _____ day of _____, 19__.

The application of _____ _____, the above named debtor, for confirmation of the arrangement under chapter XI of the Act of Congress relating to bankruptcy [1], proposed by said debtor in the petition filed by him on the _____ day of _____, 19__, having

[1] 11 U. S. C. § 701 et seq.

[1] 11 U. S. C. § 701 et seq.

been heard and duly considered; and due notice of said hearing having been given [*here state the manner of notice*]; and [*here state the proceedings, whether there was no opposition, or if opposed, what proceedings were had*]; and

It appearing that said arrangement has been duly accepted in accordance with the provisions of said chapter, and that the said deposit required by the provisions of said chapter and by said arrangement, amounting to the sum of _____ dollars, has been deposited, subject to the order of the court, in _____, of _____, the depository designated by the court; and

It further appearing that the provisions of said chapter have been complied with; that the arrangement is for the best interests of the creditors of said debtor; that the arrangement is fair and equitable, and feasible; that 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 that the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act;

It is ordered that the said arrangement be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 52, covering petition for removal of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 53. ORIGINAL PETITION IN PROCEEDINGS UNDER CHAPTER XII

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, in the County of _____, State of _____, by occupation a _____ [*or* engaged in the business of _____], respectfully represents:

1. Your petitioner has had his principal place of business [*or* has resided, *or* has had his domicile] at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner is the legal [*or* equitable] owner, as more fully set forth in the arrangement hereinafter proposed, of the real property [*or* chattel real] described in, and which is security for debts dealt with by, said arrangement, and has an interest in said property other than a right to redeem it from a sale had before the filing of this petition.

3. No bankruptcy proceeding, initiated by a petition by or against your petitioner, is now pending.

4. Your petitioner is insolvent [*or* unable to pay his debts as they mature], and proposes the following arrangement with his creditors: _____

_____

_____

5. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of the Act of Congress relating to bankruptcy.

6. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

7. The statement hereto annexed, marked Exhibit 1, and verified by your petitioner's oath, contains a full and true statement of all his executory contracts, as required by the provisions of said Act.

8. The statement hereto annexed, marked Exhibit 2, and verified by your petitioner's oath, contains a full and true statement of his affairs, as required by the provisions of said Act.

Wherefore your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of chapter XII of the Act of Congress relating to bankruptcy.[1]

_____ _____,
Petitioner.

_____ _____, *Attorney.*

State of _____ } *ss.*
County of _____ }

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 53, covering notice of petition for removal of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 54. NOTICE OF MEETING OF CREDITORS IN PROCEEDINGS UNDER CHAPTER XII

To the creditors of _____ _____, of _____, in the County of _____, in the district aforesaid:

Notice is hereby given that on the _____ day of _____, 19__, the said _____ _____ filed a petition in this court proposing an arrangement with his creditors under the provisions of chapter XII of the Act of Congress relating to bankruptcy,[1] and that a meeting of his creditors will be held at _____, in _____, on the _____ day of _____, 19____, at __ o'clock in the _____ noon, at which place and time

[1] 11 U. S. C. § 801 et seq.

the said creditors may attend, prove their claims, examine the debtor, present written acceptances of the proposed arrangement, and transact such other business as may properly come before said meeting.

Annexed hereto is a copy of said proposed arrangement, a summary of the liabilities of said debtor as shown by his schedules, and a summary of the appraisal of the property of said debtor [*or* a summary of the assets of said debtor as shown by his schedules].

[*If appropriate, the following may be added:*]

Notice is also hereby given that the application to confirm said arrangement shall be filed with this court on or before the ____ day of ______, 19__; and that the hearing on the confirmation and objections thereto, if any, will be held at ______, in ______, on the ______ day of ______, 19__, at __ o'clock in the ______ noon.

Dated this ______ day of ______, 19__.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 54, covering order for removal of trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 55. APPLICATION FOR CONFIRMATION OF AN ARRANGEMENT UNDER CHAPTER XII

To _____ _____, Referee in Bankruptcy:

_____ _____, the above named debtor, respectfully represents that the arrangement under chapter XII of the Act of Congress relating to bankruptcy,[1] proposed in the petition filed by him on the ______ day of ______, 19__, has been duly accepted, in accordance with the provisions of said chapter, and that the deposit required by the provisions of said chapter and by the said arrangement, amounting to the sum of ______ dollars, has been deposited, subject to the order of the court, in ______, of ______, the depository designated by the court.

Wherefore the said _____ _____ prays that the said arrangement be confirmed by the court.

_____ _____,
Debtor.

State of _____ }
County of _____ } *ss.*

I, ____ _____, the debtor named in the foregoing application, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Debtor.

Subscribed and sworn to before me this ______ day of ______, 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 55, covering order for choice of new trustee, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

[1] 11 U. S. C. § 801 et seq.

FORM 56. ORDER CONFIRMING AN ARRANGEMENT UNDER CHAPTER XII. (WHERE ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At ______, in said district, on the ______ day of ______, 19__.

A petition having been filed herein on the ______ day of ______, 19__, by the above named debtor, proposing an arrangement under chapter XII of the Act of Congress relating to bankruptcy,[1] and said arrangement having been accepted in writing by all creditors affected thereby, at a meeting of creditors held on the ______ day of ______, 19__, of which meeting ______ days' notice by mail was given to said debtor, to his creditors, and to other parties in interest; and

It appearing that the deposit required by the provisions of said chapter and by said arrangement, amounting to the sum of ______ dollars, has been deposited, subject to the order of the court, in ______, of ______, the depository designated by the court, and that said arrangement and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act;

It is ordered that the said arrangement be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 56, covering certificate by referee to judge, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 57. ORDER CONFIRMING AN ARRANGEMENT UNDER CHAPTER XII. (WHERE LESS THAN ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At ______, in said district, on the ______ day of ______, 19__.

The application of _____ _____, the above named debtor, for confirmation of the arrangement under chapter XII of the Act of Congress relating to bankruptcy,[1] proposed by said debtor in the petition filed by him on the ______ day of ______, 19__, having been heard and duly considered; and due notice of said hearing having been given [*here state the manner of notice*]; and [*here state the proceedings, whether there was no opposition, or if opposed, what proceedings were had*]; and

It appearing that said arrangement has been duly accepted in accordance with the provisions of said chapter, and that the deposit required by the provisions of said chapter and by said arrangement, amounting to the sum of ______ dollars, has been deposited, subject to the order of the court, in ______, of ______, the depository designated by the court; and

It further appearing that the provisions of said chapter have been compiied with; that the arrangement is for the best interests of the creditors of said debtor; that the arrangement is fair and equitable,

[1] 11 U. S. C. § 801 et seq.

and feasible; that 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; that the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act; and that 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, this 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];

It is ordered that the said arrangement be, and it hereby is, confirmed.

_____ _____,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 57 is replaced by Form 41.

FORM 58. ORIGINAL PETITION IN PROCEEDINGS UNDER CHAPTER XIII

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, in the County of _____, State of _____, by occupation a_____, and employed by _____ _____, respectfully represents:

1. Your petitioner has resided [*or* has had his domicile] at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner works for wages [*or* salary, *or* hire] at a rate of compensation which, when added to all his other income, does not exceed $3,600 per year.

3. No bankruptcy proceedings, initiated by a petition by or against your petitioner, is now pending.

4. Your petitioner is insolvent [*or* unable to pay his debts as they mature], and desires to effect a composition [*or* an extension of time to pay his debts, *or* a composition and an extension of time to pay his debts] out of his future earnings.

5. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of the Act of Congress relating to bankruptcy.

6. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

7. The statement hereto annexed, marked Exhibit 1, and verified by your petitioner's oath, contains a full and true statement of all his executory contracts, as required by the provisions of said Act.

8. The statement hereto annexed, marked Exhibit 2, and verified by your petitioner's oath, contains a full and true statement of his affairs, as required by the provisions of said Act.

Wherefore your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of chapter XIII of the Act of Congress relating to bankruptcy.[1]

_____ _____,
Petitioner.

_____ _____, *Attorney.*

State of _____ }
County of _____ } *ss.*

I, _____ _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, 19__.

_____ _____,
_____ _____.
[*Official character.*]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 58 is replaced by Form 44.

FORM 59. NOTICE OF MEETING OF CREDITORS IN PROCEEDINGS UNDER CHAPTER XIII

To the creditors of _____, of _____:

Notice is hereby given that on _____, 19__, the said _____ filed a petition in this court stating that he desires to effect a composition or an extension of time to pay his debts out of his future earnings in accordance with the provisions of chapter XIII of the Bankruptcy Act[1]; and that a meeting of his creditors will be held at _____, in _____, on _____, 19__, at ____ o'clock __. m., at which place and time the said debtor shall submit his plan for a composition or extension, and the said creditors may attend, prove their claims, examine the debtor, present written acceptances of the plan proposed by him, and transact such other business as may properly come before said meeting.

[If appropriate, the following may be added]

Notice is also hereby given that the application to confirm said plan shall be filed with this court on or before _____, 19__; and that the hearing on the confirmation and objections thereto, if any, will be held at _____, in _____, on _____, 19__, at __. m.

Dated this _____ day of _____, 19__.

_____
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 59 is replaced by Form 45.

[1] 11 U. S. C. § 1001 et seq.

AMENDMENTS

1947—Amendment June 23, 1947, among other changes, omitted "and praying that proceedings be had upon his petition" following "future earnings", substituted "Bankruptcy Act" for "Act of Congress relating to bankruptcy" following "Chapter XIII of the", and changed manner of indicating dates and times of day.

FORM 60. APPLICATION FOR CONFIRMATION OF AN ARRANGEMENT UNDER CHAPTER XIII

To ------ ------, Referee in Bankruptcy:

------ ------, the above named debter, respectfully represents that the plan under chapter XIII of the Act of Congress relating to bankruptcy,[1] submitted by him at a meeting of his creditors on the ------ day of ------, 19--, has been duly accepted, in accordance with the provisions of said chapter, and that he has made the deposit of moneys required by the provisions of said chapter [*If it be the fact, add:* and that the deposit required by the provisions of said plan, amounting to the sum of ------ doilars, has been deposited, subject to the order of the court, in ------, of ------, the depository designated by the court].

Wherefore the said ------ ------ prays that the said plan be confirmed by the court.

------ ------,
Debtor.

State of --------
County of ------ } *ss.*

I, ------ ------, the debtor named in the foregoing application, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

------ ------,
Debtor.

Subscribed and sworn to before me this ------ day of ------, 19--.

------ ------,
------ ------.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 60, covering petition for meeting to consider composition, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 61. ORDER CONFIRMING A PLAN UNDER CHAPTER XIII. (WHERE ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At ------, in said district, on the ------ day of ------, 19--.

The plan of ------ ------, the above named debtor, under chapter XIH of the Act of Congress relating to bankruptcy,[1] submitted by him at a meeting of his creditors on the ------ day of ------, 19 --, of which meeting ------ days' notice by mail was given to the said debtor and to his creditors, having been accepted in writing at said meeting by all creditors affected thereby; and

It appearing that said plan and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act; and that the deposit required by the provisions of said chapter has been made; [*If it be the fact, add:* and that the deposit required by the provisions of said plan, amounting to the sum of ------ dollars, has been deposited, subject to the order of the court, in ------, of ------, the depository designated by the court;]

It is ordered that the said plan be, and it hereby is, confirmed.

------ ------,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 61, covering application for confirmation of composition, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 62. ORDER CONFIRMING A PLAN UNDER CHAPTER XIII. (WHERE LESS THAN ALL AFFECTED CREDITORS HAVE ACCEPTED.)

At ------, in said district, on the ------ day of ------, 19--.

The application of ------ ------, the above named debtor, for confirmation of the plan under chapter XIII of the Act of Congress relating to bankruptcy,[1] submitted by said debtor at a meeting of his creditors on the ------ day of ------, 19--, having been heard and duly considered; and due notice of said hearing having been given [*here state the manner of notice*]; and [*here state the proceedings, whether there was no opposition, or if opposed, what proceedings were had*]; and

It appearing that said plan has been duly accepted in accordance with the provisions of said chapter, and that the deposit required by the provisions of said chapter has been made; [*If it be the fact, add:* and that the deposit required by the provisions of said plan, amounting to the sum of ------ dollars, has been deposited, subject to the order of the court, in ------, of ------, the depository designated by the court;] and

It further appearing that the provisions of said chapter have been complied with; that the plan is for the best interests of the creditors of said debtor; that the plan is fair and equitable, and feasible; that 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 that the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by said Act;

It is ordered that the said plan be, and it hereby is, confirmed.

------ ------,
Referee in Bankruptcy.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

Prior Form 62, covering order confirming composition, adopted Nov. 28, 1898, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

[1] 11 U. S. C. § 1001 et seq.

[1] 11 U. S. C. § 1001 et seq.

FORM 63. DEBTOR'S PETITION IN PROCEEDINGS UNDER SECTION 75 OF THE BANKRUPTCY ACT [11 U. S. C. § 203]

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

The petition of _____ _____, of _____, in the county of _____, and district and State of _____, respectfully represents:

That he is primarily bona fide personally engaged in producing products of the soil [*or* that he 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] as follows: _____ _____ _____;

that such operations occur in the county [*or* counties] of _____, within said judicial district; that he is insolvent [*or* unable to meet his debts as they mature]; and that he desires to effect a composition or extension of time to pay his debts under section 75 of the Bankruptcy Act.[1]

That the schedule hereto annexed, marked "A", and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

That the schedule hereto annexed, marked "B", and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that his petition may be approved by the court and proceedings had in accordance with the provisions of said section.

_____ _____,
Petitioner.

_____ _____, Attorney.

United States of America,
District of _____, ss:

I, _____ _____, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

_____ _____,
Petitioner.

Subscribed and sworn to before me this _____ day of _____, A. D. 19__.

_____ _____,
_____ _____.
[*Official character.*]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

This form replaced prior Form 65, which was added April 17, 1933, and amended June 1, 1936. Prior Form 63, as adopted Nov. 28, 1898, and amended June 1, 1936, covering order of distribution on composition, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

[1] 11 U. S. C. § 203.

FORM 64. ORDER APPROVING DEBTOR'S PETITION IN PROCEEDINGS UNDER SECTION 75 [11 U. S. C. § 203]

At _____, in said district, on the _____ day of _____, 19__, before the Honorable _____ _____, judge of said court, the petition of _____ _____, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act,[1] having been heard and duly considered, is approved as properly filed under said section.

Witness the Honorable _____ _____, judge of said court, and the seal thereof, at _____, in said district, on the _____ day of _____, 19__.

_____ _____,
Clerk.

[SEAL OF THE COURT.]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

This form replaced prior Form 67, which was added April 17, 1933. Prior Form 64, as added April 17, 1933, covering debtor's petition in proceedings under section 74 of the Bankruptcy Act [11 U. S. C. § 202], was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 65. ORDER OF REFERENCE IN PROCEEDINGS UNDER SECTION 75 [11 U. S. C. § 203]

Whereas the petition of _____ _____, filed in this court on the _____ day of _____, 19__, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act,[1] having been duly approved by order of this court on the _____ day of _____, 19__, it is thereupon ordered, that said matter be referred to _____ _____, one of the conciliation commissioners of this court, to take such further proceedings therein as are required by said section; and that the said _____ _____ shall attend before said conciliation commissioner on the _____ day of _____, at _____, and thenceforth shall submit to such orders as may be made by said conciliation commissioner or by this court relating to the proceedings under said section.

Witness the Honorable _____ _____, judge of the said court, and the seal thereof, at _____, in said district, on the _____ day of _____, 19__.

_____ _____,
Clerk.

[SEAL OF THE COURT.]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

This Form replaced prior Form 68, which was added April 17, 1933. Prior Form 65 as added April 17, 1933, and amended June 1, 1936, is replaced by Form 63.

FORM 66. BOND OF CONCILIATION COMMISSIONER

Know all men by these presents: That we _____ _____, of _____, as principal, and _____ _____, of

[1] 11 U. S. C. § 203.

_____ and _____ _____, of _____, as sureties, are held and firmly bound to the United States of America in the sum of _____ dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, A. D. 19__.

The condition of this obligation is such that whereas the said _____ _____ has been on the _____ day of _____, A. D. 19__, appointed by the Honorable _____ _____, judge of the District Court of the United States for the _____ District of _____, a conciliation commissioner under section 75 of the Bankruptcy Act,[1] in and for the county of _____, in said district:

Now, therefore, if the said _____ _____ shall well and faithfully discharge and perform all the duties pertaining to the said office of conciliation commissioner, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of—

_____ _____ _____ _____ [L. S.]
_____ _____ _____ _____ [L. S.]
_____ _____ [L. S.]

Approved this _____ day of _____.

_____ _____,
District Judge.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

This form replaced prior Form 69 which was added April 17, 1933. Prior Form 66, as added April 17, 1933, covering answer under Section 74 [11 U. S. C. § 202] to involuntary petition, was abrogated by Order of January 16, 1939, effective February 13, 1939, and was not replaced.

FORM 67. NOTICE OF FIRST MEETING OF CREDITORS IN PROCEEDINGS UNDER SECTION 75 [11 U. S. C. § 203]

To the creditors of _____ _____, of _____, in the county of _____, and district aforesaid:

Notice is hereby given that on the _____ day of _____, A. D. 19__, the petition of the said _____ _____, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act,[1] was approved by this court as properly filed under said section; and that the first meeting of his creditors will be held at _____ in _____, on the _____ day of _____, A. D. 19__, at __ o'clock in the _____ noon, at which time the said creditors may attend, prove their claims, examine the debtor, and transact such other business as may properly come before said meeting.

_____ _____,
Conciliation Commissioner.

_____ __, 19__.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

This form replaced prior Form 71 which was added April 17, 1933. Prior Form 67 as added April 17, 1933, is replaced by Form 64.

[1] 11 U. S. C. § 203.

FORM 68. APPLICATION FOR CONFIRMATION OF A COMPOSITION OR EXTENSION PROPOSAL UNDER SECTION 75 [11 U. S. C. § 203]

To the Honorable _____ _____, Judge of the District Court of the United States for the _____ District of _____:

At _____, in said district, on the _____ day of _____, A. D. 19__, now comes _____ _____, the above-named debtor, and respectfully represents to the court that, after he had filed in court a schedule of his property and a list of his creditors, as required by law, he offered a proposal for a composition or an extension to his creditors, which proposal has been accepted in writing by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are to be affected by the proposal, which number represents a majority in amount of such claims.

Wherefore the said _____ _____ respectfully asks that the said proposal be confirmed by the court.

_____ _____,
Debtor.

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

This form replaced prior Form 76, which was added April 17, 1933, and amended June 1, 1936. Prior Form 68, as added April 17, 1933, is replaced by Form 65.

FORM 69. ORDER CONFIRMING A COMPOSITION OR EXTENSION PROPOSAL UNDER SECTION 75 [11 U. S. C. § 203]

An application for the confirmation of the proposal offered by the debtor under section 75 of the Bankruptcy Act[1] having been filed in court, and it appearing that the proposal has been accepted by a majority in number of creditors whose claims have been allowed, including secured creditors whose claims are to be affected by the proposal, which number represents a majority in amount of such claims; and it also appearing that the proposal includes an equitable and feasible method of liquidation for secured creditors whose claims are affected and of financial rehabilitation for the debtor; that it is for the best interests of all creditors; and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of Congress relating to bankruptcy: It is therefore hereby ordered that the said proposal be, and it hereby is, confirmed.

Witness the Honorable _____ _____, judge of said court, and the seal thereof, this _____ day of _____, A. D. 19__.

_____ _____,
Clerk.

[SEAL OF THE COURT.]

(As amended Jan. 16, 1939, eff. Feb. 13, 1939.)

CODIFICATION

This form replaced prior Form 74, which was added April 17, 1933, and amended June 1, 1936. Prior Form 69 as added April 17, 1933, is replaced by Form 66.

[1] 11 U. S. C. § 203.

FORM 70. [BANKRUPTCY DOCKET OF REFEREE]

Bankruptcy docket of_____ Referee_____ Cause No. ____

In the matter of	Petition Filed_____	Vol_____
	Adjudicated_____	Pov_____
	1st Meeting_____	Inv_____
	Last Day Filing Claims_____	Ch_____
Address_____	Discharge_____	Sec_____
Occupation_____		
Employer_____	Is Any Interest in Real Estate Involved?_____	
Receiver_____	Dividends Paid (Date and Percent)	
Addr_____		
Trustee_____		
Addr_____		
Attorneys for	Other Items	
Pet Cr_____		
Addr_____		
Bkpt_____		
Addr_____		
Recvr_____		
Addr_____		
Trustee_____		
Addr_____		

Date	Proceedings	Receipts		Disbursements	

(Added June 23, 1947, eff. July 1, 1947.)

CODIFICATION

Prior Form 70, promulgated Apr. 17, 1933, relating to notice of first meeting of creditors in proceedings under section 74 of the Bankruptcy Act [11 U. S. C. § 202], was abrogated Jan. 16, 1939, eff. Feb. 13, 1939, and was not replaced.

FORM 71. [REFEREE'S CLAIM REGISTER]

Referee's claim register re_____ Cause No._____

Date Filed	No.	Name and Address of Claimant and Attorney	Amount Filed and Allowed	Remarks
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	
			Filed	
			Allowed	

(Added June 23, 1947, eff. July 1, 1947.)

CODIFICATION

Prior Form 71, promulgated Apr. 17, 1933, was replaced by Form 67.

FORM 72. ORDER ALLOWING CLAIMS

At _____ in said district on _____, 19__.

Upon the proofs of claim of the creditors hereinafter set out, duly filed herein, no objection having been filed to the allowance thereof by parties in interest, and it appearing that the said claims have been duly proven and should be allowed, and no adverse interest being represented, now it is ORDERED that said claims be and the same hereby are allowed as unsecured claims in the respective sums set opposite the several names, as follows, to wit:

_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ _____

Referee in Bankruptcy.

(Added June 23, 1947, eff. July 1, 1947)

CODIFICATION

Prior Form 72, promulgated Apr. 17, 1933, as amended Mar. 30, 1936, relating to application for confirmation of a composition or extension proposal under section 74 or section 75 [11 U. S. C. §§ 202, 203], was abrogated Jan. 16, 1939, eff. Feb. 13, 1939, and was not replaced.

Form 73, promulgated Apr. 17, 1933, as amended Mar. 30, 1936, was abrogated Jan. 16, 1939, eff. Feb. 13, 1939, and was not replaced.

Form 74, promulgated Apr. 17, 1933, was replaced by Form 69.

Form 75, promulgated Apr. 16, 1933, was abrogated June 1, 1936, and not replaced.

Form 76, promulgated Apr. 17, 1933, was replaced by Form 68.

§ 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.)

AMENDMENTS

1938—Act June 22, 1938, reenacted section without change.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 55. Transfer of cases.

(a) 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.

(b) Where venue in any case filed under this title is laid in the wrong court of bankruptcy, the judge may, in the interest of justice, upon timely

and sufficient objection to venue being made, transfer the case to any other court of bankruptcy in which it could have been brought.

(c) The judge may transfer any case under this title to a court of bankruptcy in any other district, regardless of the location of the principal assets of the bankrupt, or his principal place of business, or his residence, if the interests of the parties will be best served by such transfer. (July 1, 1898. ch. 541, § 32, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 857; July 7, 1952, ch. 579, § 11, 66 Stat. 424.)

AMENDMENTS

1952—Act July 7, 1952, amended section by lettering former section as subdivision (a) and by adding subdivisions (b) and (c).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

Chapter 5.—OFFICERS, THEIR DUTIES AND COMPENSATION

Sec.
61. Creation of two offices.
62. Appointment, reappointment, and removal of referees.
(a) Appointment.
(b) Removal.
63. Qualifications of referees.
64. Oaths of referees.
65. Number and territories of referees.
66. Jurisdiction of referees.
67. Duties of referees; prohibition against practices of law.
68. Compensation of referees; referees' salary and expense funds; retirement of referees.
69. Contempts before referees.
70. Records of referees.
71. Vacancies; referee's 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. Statistics.
82. Repealed.

§ 61. Creation of two offices.

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

§ 62. Appointment, reappointment, and removal of referees—(a) Appointment.

The judges of the several courts of bankruptcy shall appoint referees. Where there is more than one judge of a court of bankruptcy, or where the territory to be served by a referee includes territory in more than one judicial district, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such court or of the courts of bankruptcy of such judicial districts, and where there is no such concurrence, then by the senior judge. Except as otherwise provided in section 65 of this title, each appointment and reappointment shall be for a term of six years. Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies provided the filling of the vacancy has been authorized by the Conference as provided in subdivision (b) of section 71 of this title.

(b) Removal.

Removal of a referee during the term for which he is appointed shall be only for incompetency, misconduct, or neglect of duty: *Provided, however,* That, in the case of a part-time referee, an additional cause for removal shall be that his services are not needed. Any cause for removal in respect of any referee coming to the knowledge of the Director shall be reported by him to the judge or judges of the judicial district or districts in which such referee serves, and a copy of such report shall at the same time be transmitted to the council and to the referee. Such judge or judges may, upon receipt of such report, or upon their own motion, remove the referee for any one or more of the above mentioned causes; where there is more than one judge, such removal shall be by a concurrence of a majority of the judges, and where there is no such concurrence, then by the council. Before any order of removal shall be entered, except in the case of a part-time referee where the cause for removal is that his services are not needed, a full specification of the charges shall be furnished to the referee, and he shall be accorded by the removing judge or judges an opportunity to be heard on the charges. (July 1, 1898, ch. 541, § 34, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 857; June 28, 1946, ch. 512, § 2, 60 Stat. 324; May 16, 1951, ch. 81, 65 Stat. 42.)

AMENDMENTS

1951—Subd. (a) amended by act May 16, 1951, which added last sentence which provides that upon the expiration of bankruptcy referee's term of office he shall continue to serve until a successor is appointed.

1946—Act June 28, 1946, amended section generally to provide that where there is more than one district judge in a territory, the appointments of referees are to be made by a concurrence of a majority, to extend the term of office from 2 to 6 years, and to provide for removal during term of office only for incompetency, misconduct, or neglect of duty, except in the case of a part-time referee who may be removed at any time if his services are no longer needed.

EFFECTIVE DATES OF 1946 AMENDMENT

Section 18 of act June 28, 1946, provided:

"Sections 1 and 10 of this amendatory Act [section 1 (5a), (7a), (8a), (14a) of this title and repeal of section 82 of this title] and so much of section 4 of this amendatory Act as amends subdivision (b) of section 37 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended [subd. (b) of section 65 of this title], shall be effective upon approval of this amendatory Act

[June 28, 1946]. All other provisions of this amendatory Act [sections 62, 63, 65 (a), 67 (b), 68, 71, 79 (2), (5), 80 (a), 102 (a), (b), 104 (a) (1), 112, 517, 1024 (3), 1033 (2), 1059 (1), (3) of this title] shall become effective sixty days after promulgation of the determinations of the conference, as provided in the said subdivision (b) of section 37, as amended by this amendatory Act [subd. (b) of section 65 of this title]: *Provided, however,* That the references contained in paragraph (1) of subdivision (b) of section 37 as amended by this amendatory Act [subd. (b) of section 65 of this title] to 'subdivision (a) of this section, and required for subdivisions (a) and (c) of section 40 [section 68 of this title], paragraph (2) of section 633 [section 1033 of this title], and paragraph (3) of section 659 of this Act' [section 1059 of this title] are intended to refer to those subdivisions and paragraphs as they will be amended when sections 6, 16, and 17 of this amendatory Act [sections 68, 1033, and 1059 of this title] become effective, and section 4 of this amendatory Act [section 65 of this title] becomes fully effective."

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

REPEALS; SAVINGS CLAUSE; SECTION AND SUBDIVISION CATCHLINES

Section 19 of act June 28, 1946, provided:

"a. All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [sections 1 (5a), (7a), (8a), (14a), 62, 63, 65 (a), (c), 67 (b), 68, 71, 79 (2), (5), 80 (a), 102 (a), (b), 104 (a) (1), 112, 517, 1024 (3), 1033 (2), 1059 (1), (3) of this title] are hereby repealed.

"b. 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 [said sections] is amendatory.

"c. If any provision of this amendatory Act [said sections] 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 [said sections] which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act [said sections] are declared to be severable.

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

§ 63. Qualifications of referees.

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 or subdivision thereof other than conciliation commissioner or special master under this title: *Provided, however,* That part-time referees may be commissioners of deeds, United States commissioners, justices of the peace, masters in chancery, notaries public, retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Marine Corps, and Coast Guard, members of the National Guard of the United States and of the National Guard of a State, Territory, or the District of Columbia, except the National Guard disbursing officers who are on a full time salary basis, or either conciliation commissioners or supervising conciliation commissioners but not both; (3) at the time when originally appointed 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 and have their offices within the judicial district of the court or one of the courts of bankruptcy under which they are to hold appointment: *Provided, however,* That where a referee shall be temporarily transferred or permanently appointed to another judicial district, residence or office in such other district shall not be requisite for eligibility; and (5) members in good standing at the bar of the district court of the United States in which they are first appointed or, if appointed to serve in territory within more than one judicial district, at the bar of one of such district courts: *Provided, however,* That the requirement of membership at such bar 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; June 28, 1946, ch. 512, § 3, 60 Stat. 324; June 30, 1947, ch. 182, 61 Stat. 213.)

REFERENCES IN TEXT

"This amendatory Act", referred to in the text, refers to act June 28, 1946.

AMENDMENTS

1947—Act June 30, 1947, amended section to enlarge the category of official and quasi-official positions, the holding of which would not bar an appointment as a part-time referee to include retired officers and enlisted men of the Regular and Reserve components of the Army, Navy, etc. including the National Guard.

1946—Act June 28, 1946, amended section to prohibit a referee from holding any office other than a conciliation commissioner or special master under this title, but allows a part-time referee to be a United States commissioner, justice of peace, master in chancery, notary public or either a conciliation commissioner or supervising conciliation commissioner, but not both, and made conforming changes in clauses (4) and (5).

1938—Clauses (1), (3), and (4) amended by act June 22, 1938.

Clause (2) reenacted without change by act June 22, 1938.

Clause (5) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF AMENDMENTS

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes under section 62 of this title.

Effective date, construction, etc., of act June 22, 1938, known as the Chandler Act, see notes under section 1 of this title.

§ 64. Oaths of referees.

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.)

CROSS REFERENCES

Oaths of judges of United States courts, see section 453 of Title 28, Judiciary and Judicial Procedure.

§ 65. Number and Territories of Referees.

(a) The Director shall recommend to the district judges, the councils and the conference the number of referees to hold appointment and the territory which each shall serve, after he has made a careful study of conditions throughout the country as a whole, and of local conditions, including the estimated amount of funds available for salaries, the areas and the populations to be served, the transportation and communication facilities, the previous

types and amount of business under this title in such areas and where such business is centered, the existing personnel, and any other material factors. The territory of a referee may, if it is deemed advisable, lie within more than one judicial district, but shall be within one circuit: *Provided, however,* That the jurisdiction of a referee in any matter referred to him shall not be restricted to the territory to be served by him but shall, unless otherwise provided in this title, be coextensive with the territorial jurisdiction of the court or courts of bankruptcy whose judges participated in appointing him.

(b) (1) The Director shall, within one year immediately following June 28, 1946, make the initial surveys required by subdivision (a) of this section, and required for subdivisions (a) and (c) of section 68 of this title, paragraph (2) of section 1033 of this title, and paragraph (3) of section 1059 of this title. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient. In the course of such surveys, the Director shall give consideration to suggestions from any interested parties, including district judges, referees, bar associations, trade associations, and the like. The surveys shall be made with a view toward creating and maintaining a system of full-time referees. However, should the Director find, as a result of any such surveys, any area in which the employment of a full-time referee would not be feasible because of the small amount of business under this title and the extent of the territory to be served, he shall also report separately thereon, with a statement of all the pertinent facts and data and his recommendations and the reasons therefor. Upon the completion of the initial surveys, the Director shall report to the district judges, the councils and the conference concerning the number of referees, their respective territories, the amounts of their respective salaries, and the schedules of additional fees to be charged in asset, arrangement and wage-earner cases. The district judges shall advise their respective councils, and the councils shall advise the conference, in respect thereto, stating their recommendations and their reasons therefor. The conference shall determine, in the light of the recommendations of the Director and of the councils, the number of referees, full-time and part-time, to be appointed, the respective territories which they shall serve, including the regular place of office and the places at which courts shall be held, their respective salaries, and schedules of graduated additional fees to be charged in asset, arrangement and wage-earner cases, and such determinations shall become effective sixty days after they are promulgated by the conference.

(2) The Director shall upon such promulgation divide by lot the total number of referees first to be appointed as equally as possible into three classes. The initial terms of the referees in the first class shall expire at the end of the second year, in the second class at the end of the fourth year, and in the third class at the end of the sixth year.

(3) Thereupon the Director shall report in writing to the judge or judges of the several courts of bankruptcy the number of referees to be appointed by them in each of the three classes above specified, the respective territories which such referees shall serve, and the respective salaries to be paid to them. The judge or judges shall thereupon appoint, pursuant to subdivision (a) of section 62 of this title such referees in each of the specified classes for terms commencing sixty days after such promulgation of the determinations of the conference, and shall select them as far as practicable from the referees then in office within their respective judicial districts.

(c) Except as otherwise provided in this title, the conference may, from time to time, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, change the number of referees and the extent of the respective territories to be served by them, as the expeditious transaction of the business of the several courts of bankruptcy may require. (July 1, 1898, ch. 541, § 37, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 857; June 28, 1946, ch. 512, § 4, 60 Stat. 325.)

AMENDMENTS

1946—Act June 28, 1946, amended section to authorize the Director of the Administrative Office to make a survey of the entire country within one year in order to ascertain the number of referees needed and the territories they are to serve, and to stagger the initial terms of the first appointees so that one-third will expire every two years but that all subsequent appointments shall be for a full term.

EFFECTIVE DATES; REPEALS, ETC. OF 1946 AMENDMENT

Section 18 of act June 28, 1946 provided in part that subd. (b) of this section, as amended by said act June 28, 1946, should be effective on June 28, 1946. Said section 18 further provided that subds. (a) and (c) of this section should become effective sixty days after June 28, 1946.

Repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 66. Jurisdiction of referees.

Referees are 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.)

AMENDMENTS

1938—Clauses (1), (6), and (7), formerly (1), (4), and (5), respectively, amended by act June 22, 1938.

Clauses (2) and (3) reenacted without change by act June 22, 1938.

Clauses (4) and (5) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 67. Duties of referees; prohibition against practice of law.

(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 by them, granting, denying, or revoking discharges or adjudging that bankrupts have waived their right to a discharge, confirming or refusing to confirm, or setting aside the confirmation of, arrangements or wage earner plans, and reinstating the proceedings or cases; 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; or (2) purchase, directly or indirectly, any property of an estate in any proceeding under this title. Active full-time referees shall not exercise the profession or employment of counsel or attorney, or be engaged in the practice of law. Active part-time referees, and referees receiving benefits under paragraph (1) of subdivision (d) of section 68 of this title, shall not practice as counsel or attorney 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; June 28, 1946, ch. 512, § 5, 60 Stat. 326; July 7, 1952, ch. 579, § 12, 66 Stat. 424.)

AMENDMENTS

1952—Subd. (a) (9) amended by act July 7, 1952, to clarify the duties of referees.

1946—Subd. (b) amended by act June 28, 1946, to prohibit full-time referees from practicing law, but to permit part-time referees and retired referees to practice law except in proceedings under this title.

1936—Subd. (a) amended by act June 22, 1938. Clause (9) added. Clauses (1), (3), (4), (5), (6), (8), and (10), formerly (4), (2), (3), (1), (8), (5), and (7), respectively, amended. Clauses (2) and (7), formerly (6) and (9), respectively, reenacted without change. Former clause (10) was not reenacted as part of this section.

Subd. (b) reenacted without change by act June 22, 1938.

Subd. (c) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATES; REPEALS; ETC. OF 1946 AMENDMENT

Effective dates; repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 68. Compensation of referees; referees' salary and expense funds; retirement of referees.

(a) Referees shall receive as full compensation for their services salaries to be fixed by the conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, at rates not more than $12,500 per annum for full-time referees, and not more than $6,000 per annum

for part-time referees. In fixing the amount of salary to be paid to a referee, consideration shall be given to the average number and the types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the referee is to serve, during the last preceding period of ten years, and to such other factors as may be material. Disbursement of such salaries shall be made monthly by or pursuant to the order of the Director.

(b) The conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease any salary, within the limits prescribed in subdivision (a) of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries: *Provided, however,* That during the tenure of any full-time referee his salary shall not be reduced below that at which he was originally appointed under this amendatory Act, and during any term of any such referee his salary shall not be reduced below the salary fixed for him at the beginning of that term: *And provided further,* That no salary fixed under the provisions of this section for a full-time referee shall be changed more often than once in any two years or in an amount of less than $250.

(c) (1) Except as otherwise provided in this title, there shall be deposited with the clerk, at the time the petition is filed in each case, and at the time an ancillary proceeding is instituted, (a) $17 for each estate for the referees' salary fund, and (b) $15 for each estate for the referees' expense fund, as hereinbelow established: *Provided, however,* That in cases of voluntary bankruptcy such fees, as well as the filing fees of the clerk and trustee, may be paid in installments if so authorized by General Order of the Supreme Court of the United States.

(2) Additional fees for the referees' salary fund and for the referees' expense fund shall be charged, in accordance with the schedules fixed by the conference (a) against each estate wholly or partially liquidated in a bankruptcy proceeding, and be computed upon the net proceeds realized; (b) against each case in an arrangement confirmed under chapter 11 of this title, and be computed upon the amount to be paid to the unsecured creditors upon 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 distributed is other than money, upon the amount of the fair value of such consideration; and (c) against each case in a wage-earner plan confirmed under chapter 13 of this title, and be computed upon the payments actually made by or for a debtor under the plan. Such schedules of fees may be revised by the Director, with the approval of the conference, not more than once during each calendar year, so that the total amount of fees, allowances and charges collected and to be collected from all sources for the referees' salary fund and for the referees' expense fund will, as near as may be, equal for each fund, respectively, the total amount of salaries paid and to be paid to referees in active service, and the total amount of their expenses: *Provided, however,* That such schedules of fees shall not be so revised for any year that the total collections estimated by the Director for such year shall exceed by more than 10 per centum the total collections in the preceding year. The Director, with the approval of the conference, may make, and from time to time amend, rules and regulations prescribing methods for determining net proceeds realized in asset cases, fair values of considerations, other than money, distributable in arrangement cases, and payments actually made by or for a debtor under the plan in wage-earner cases; prescribing the procedure for collection by the clerk of fees and allowances for the referees' salary fund and the referees' expense fund; and providing for the effective administration of the provisions of this paragraph.

(3) Charges for the expense of special services relating to or in connection with proceedings before referees shall be made and collected by the referees in accordance with regulations to be prescribed by the Director, with the approval of the conference, and the proceeds shall be paid by the referees to the clerk for transmission to the Treasury of the United States for deposit in the referees' expense fund.

(4) A referee's salary fund and a referee's expense fund shall be established in the Treasury of the United States, and the amounts of the various fees and allowances collected by the clerks for the services of referees, and for their expenses, including the fees, allowances and charges for their services and expenses as conciliation commissioners and as special masters under this title, shall be covered into the Treasury of the United States for the account of such salary fund and expense fund. The salaries of the referees in active service shall be paid out of annual appropriations from such salary fund, and the expenses of the referees, including the salaries of their clerical assistants, shall be paid out of annual appropriations from such expense fund, by the United States. Any deficiencies of such salary fund or expense fund shall be paid out of any funds in the Treasury of the United States not otherwise appropriated, and appropriations to pay such deficiencies are authorized: *Provided, however,* That there shall be covered into miscellaneous receipts of the Treasury of the United States in any subsequent year so much of the surplus, if any, arising in the salary fund or expense fund respectively as may be necessary to reimburse the Treasury of the United States for payments made on account of such respective funds in any prior year.

(5) As of the day preceding the date when the referees, as provided by paragraph (2) of subdivision (b) of section 65 of this title, are to take office, an allocation shall be made by the judge or judges of the several courts of bankruptcy of all filing and other fees, commissions, and allowances, and of all expense funds, due the then existing referees for services rendered and expenses incurred in the cases pending before them, whether as referee, conciliation commissioner, or special master under this title.

The balances of such filing and other fees, commissions, and allowances and the expense surpluses shall be covered into the Treasury of the United States by the referees and the clerks, to be deposited to the credit of the respective salary and expense funds. All cases pending before outgoing referees shall be rereferred, and no additional filing fees shall be required, but additional salary and expense charges may be assessed in such cases in such amounts as the judge or judges of the several courts of bankruptcy may deem equitable, taking into consideration the schedules of additional fees fixed by the Director and the payments previously made therein.

(d) (1) All referees in bankruptcy and employees in the offices of such referees shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of section 693 of Title 5.

(2) Any referee who has retired or been retired under the provisions of paragraph (1) of this subdivision may, if called upon by a judge of a court of bankruptcy, perform, without compensation, such duties of a referee, conciliation commissioner or special master under this title, within the jurisdiction of such court, as such referee may be able and willing to undertake: *Provided, however,* That when so acting, compensation for his services shall be allowed and paid or deposited and his expenses shall be allowed and paid, as in the case of an active 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; June 28, 1946, ch. 512, § 6, 60 Stat. 326; July 7, 1952, ch. 580, 66 Stat. 438.)

REFERENCES IN TEXT

"This amendatory Act", referred to in text in subd. (b), refers to act June 28, 1946.

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, to increase salaries of full-time referees from $10,000 to $12,500 per annum, and part-time referees from $5,000 to $6,000 per annum.

1946—Act June 28, 1946, amended section generally to place all referees upon a salary basis, to simplify the charges for referees' expenses and compensation so that they will be easily computed and uniform, and to finance the bankruptcy system on a national basis instead of having each referee responsible for the financing of his office as an individual unit.

EFFECTIVE DATES; REPEALS; ETC. OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Compensation of referee in corporate reorganization proceeding where petition filed in pending bankruptcy proceeding, judge not restricted by this section, see section 645 of this title.

Compensation of referee in real property arrangements where petition filed in pending bankruptcy proceeding, judge not restricted by this section, see section 894 of this title.

Compensation of referees and special masters in composition proceedings of local taxing agencies not governed by this section, see section 403 (b) of this title.

Compensation of referees and trustees in corporate reorganization proceedings not governed by this section and section 76 of this title, see section 641 of this title.

Compensation of referees and trustees in real property arrangements not governed by this section and section 76 of this title, see section 891 of this title.

§ 69. Contempts before referees.

(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 to 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see Rule 45, following section 2072 of Title 28, Judiciary and Judicial Procedure.

§ 70. Records of referees.

(a) The records of all proceedings in each case before a referee shall be kept in the manner as prescribed by the Supreme Court 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 until no longer needed in conducting current business 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; Oct. 25, 1951, ch. 562, § 2 (2), 65 Stat. 639; July 7, 1952, ch. 579, § 13, 66 Stat. 424.)

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, to provide that records of referees shall be kept in the manner prescribed by the United States Supreme Court.

1951—Subd. (c) amended by act Oct. 25, 1951, which inserted "until no longer needed in conducting current business".

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

CROSS REFERENCES

Management and disposition of records, see chapters 10 and 11 of Title 44, Public Printing and Documents.

§ 71. Vacancies; referee's absence or disability.

(a) Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the clerk of the district court in which the territory or any part of the territory served by such referee is located shall immediately notify the Director of such fact.

(b) Whenever the office of a referee is vacant, the Director shall recommend to the district judges, the councils and the conference whether a new appointment should be made, and no such appointment shall be made until authorized by the conference.

(c) Whenever the office of a referee is vacant or its occupant is temporarily absent or disqualified to act, or whenever the expeditious transaction of the business of the court or courts of bankruptcy may require, the judge, or any one of the judges, may act; or the judge or the chief judge of the district may designate and assign temporarily any referee of the district to act; or the chief judge of the circuit may designate and assign temporarily one or more referees within the circuit to act upon presentation of a certificate of necessity by the judge or chief judge of the district wherein the need arises, or the chief judge of the circuit may order that pending cases be rereferred and future cases referred to one or more referees within the circuit; or the Chief Justice of the United States may designate and assign temporarily a referee from another circuit to act upon presentation of a certificate of necessity by the chief judge of the circuit wherein the need arises. No designation and assignment shall be made without the consent of the chief judge or judicial council of the circuit from which a referee is to be designated and assigned. All designations and assignments of referees shall be filed with the clerks and entered on the minutes of the courts from and to which made. The Chief Justice of the United States or a chief judge of a circuit or a judge or chief judge of a district may make new designations and assignments in accordance with the provisions of this subdivision, and may revoke those previously made by him. (July 1, 1898, ch. 541, § 43, 30 Stat. 557; June 28, 1946, ch. 512, § 7, 60 Stat. 328; Sept. 19, 1950, ch. 954, 64 Stat. 866.)

AMENDMENTS

1950—Subd. (c) amended by act Sept. 19, 1950, to provide for temporary designations and assignments of referees by the judge or chief justice of the district, the chief judge of the circuit, and the Chief Justice of the United States, instead of the judge or a majority of judges of the district, the council, and the conference, respectively, to provide for consent of the chief judge or judicial council of the circuit, and to provide for filing and entry of designations and assignments.

1946—Act June 28, 1946, amended section to provide for the notification to the Director of the Administrative Office by the clerk of the court of any vacancy, absence, or disqualification of a referee, to provide for the designation of another referee from the same or another circuit, and to prohibit the filling of a permanent vacancy unless authorized by the conference of judges.

EFFECTIVE DATE; REPEALS; ETC.

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

§ 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, § 29 (b), 54 Stat. 835.)

AMENDMENTS

1940—Subd. (a) amended by act Aug. 22, 1940, which added last sentence relating to appointment of trustees for face-amount certificate company.

1938—Subd. (a) amended by act June 22, 1938.

Subds. (b) and (c) added by act June 22, 1938.

EFFECTIVE DATE OF 1940 AMENDMENT

Effective date of act Aug. 22, 1940, see section 80a–52 of Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

CROSS REFERENCES

Title, rights, powers, and duties of trustee in corporate reorganization proceeding same as trustee appointed under this section, see sections 586 and 587 of this title.

Title, rights, powers, and duties of trustee in real property arrangements same as trustee appointed under this section, see sections 841 and 842 of this title.

§ 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.)

AMENDMENTS

1938—Opening phrase and clause (1) amended by act June 22, 1938.

Clause (2) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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.)

AMENDMENTS

1938—Act June 22, 1938, amended section to include receiver.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

AMENDMENTS

1938—Subd. (a) amended by act June 22, 1938. Clauses 1—6, formerly 2, 3, 1, 4, 6, and 11, respectively, amended. Clauses 7—9 added. Clauses 10—14, formerly 5, 9, 10, 8, and 7, respectively, reenacted without change.

Subd. (b) reenacted without change by act June 22, 1938.

Subd. (c) amended by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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 subdivision (a) 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 subdivision (a) 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 subdivision (a) of section 11 of this title who conduct the business of the bankrupt as provided in clause (5) of subdivision (a) 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.

(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, 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 subdivision (a) 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.

(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, re-

ceiver, 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.)

AMENDMENTS

1938—Act June 22, 1938, completely revised this section.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Compensation of referees and trustees in corporate reorganization proceedings not governed by this section and section 68 of this title, see section 641 of this title.

Compensation of referees and trustees in real property arrangements not governed by this section and section 68 of this title, see section 891 of this title.

§ 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.)

CODIFICATION

Section was not enacted as a part of the Bankruptcy Act which comprises this title.

CROSS REFERENCES

Nepotism in appointment of receiver or trustee generally, see section 1910 of Title 18, Crimes and Criminal Procedure.

§ 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.)

AMENDMENTS

1938—Act June 22, 1938, amended section to include receivers.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

AMENDMENTS

1938—Subds. (a), (d), and (e) reenacted without change by act June 22, 1938.

Subds. (b), (c), (e), and (g)—(m) amended by act June 22, 1938.

Subd. (n) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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 and trustee and the fees for the referees' salary fund and referees' expense fund provided in paragraph (1) of subdivision (c) of section 68 of this title in each case instituted before filing the petition, except where installment payments may be authorized pursuant to section 68 of this title, and collect the various other fees, allowances and charges for the services of referees and for their expenses, including their services and expenses as conciliation commissioners and as special masters under this title; (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) transmit to the Treasury of the United States all fees, allowances and charges collected for the referees' salary fund and the referees' expense fund, and transmit to the trustee, within ten days after a case has been closed, the fee collected for him at the time of the filing of the petition. (July 1, 1898, ch. 541, § 51, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 864; June 28, 1946, ch. 512, § 8, 60 Stat. 329.)

AMENDMENTS

1946—Act June 28, 1946 amended clauses (2) and (5) to place upon the clerk the duty of collecting the various fees and allowances for the compensation and expenses of referees, and of covering them into the Treasury for the respective salary and expense funds.

1936—Clauses 1, 2, and 5, formerly 1, 2, and 4, respectively, reenacted without change by act June 22, 1938.

Clause 3 added by act June 22, 1938.

Clause 4, formerly 3, amended by act June 22, 1938.

EFFECTIVE DATES; REPEALS; ETC. OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 80. Clerks and marshals; compensation.

(a) Clerks shall charge and collect for their services to each estate, whether in a court of primary or ancillary jurisdiction, a filing fee of $8. The clerk may collect this amount in installments when such installment payments have been authorized by General Order of the Supreme Court of the United States.

(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; June 28, 1946, ch. 512, § 8a, 60 Stat. 329.)

AMENDMENTS

1946—Subd. (a) amended by act June 28, 1946, which reduced the filing fee from $10 to $8, omitted "except when a fee is not required from a voluntary bankrupt" and added provision concerning installments.

EFFECTIVE DATES; REPEALS; ETC. OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 1914, 1917 of Title 28, Judiciary and Judicial Procedure.

§ 81. Statistics.

The Director annually shall lay before Congress statistical tables which will accurately reflect the business transacted by the several bankruptcy courts, a statement of the amounts received and disbursed for the referees' salary fund and referees' expense fund, and all other pertinent data. (July 1, 1898, ch. 541, § 53, 30 Stat. 559; June 22, 1938, ch. 575, § 1, 52 Stat. 864; June 28, 1946, ch. 512, § 9, 60 Stat. 329.)

AMENDMENTS

1946—Act June 28, 1946, amended section generally to impose upon the Director of the Administrative Office the duty to gather all statistics with regard to the operation of this title, and to submit annual reports to Congress.

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 82. Repealed. June 28, 1946, ch. 512, § 10, 60 Stat. 329.

Section, act July 1, 1898, ch. 541, § 54, 30 Stat. 559, required officers to furnish information for statistical purposes. For effective date of repealing act, see note under section 62 of this title.

Chapter 6.—CREDITORS

Sec.
91. Meetings of creditors.
92. Voters at creditors' meeting.
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 place or at one of the places designated by the conference pursuant to paragraph (1) of subdivision (b) of section 65 of this title as a place at which court shall be held within the judicial district in which the proceeding is pending or if that place would be unreasonably inconvenient as a place of meeting for the parties in interest, the court shall fix a place for the meeting within said judicial district which is not unreasonably inconvenient for the 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 promotion 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 be 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; May 16, 1951, ch. 82, 65 Stat. 42.)

AMENDMENTS

1951—Subd. (a) amended generally by act May 16, 1951, to permit the court to fix the place for the holding of the first meeting of the creditors.

1938—Subds. (b) and (e), formerly (b) and (f), respectively, amended by act June 22, 1938.

Subds. (a), (c), and (d), formerly (a), (c), and (e), respectively, reenacted without change by act June 22, 1938.

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

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 92. Voters at creditors' meeting.

(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.)

AMENDMENTS

1938—Subd. (a) reenacted without change by act June 22, 1938.

Subd. (b) amended by act June 22, 1938.

Subd. (c) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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 unliqui-

dated 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 to any State or any 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 on the amount of such loss 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 any 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 any subdivision thereof: *Provided further,* That 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; July 7, 1952, ch. 579, § 14, 66 Stat. 424.)

AMENDMENTS

1952—Subd. (j) amended by act July 7, 1952, § 14 (a), to clarify the fact that the limitation on interest "up to the date of bankruptcy" relates only to interest on "pecuniary loss".

Subd. (n) amended by act July 7, 1952, § 14 (b), to delete "except proceedings under chapters 10—13 of this title" preceding "the right of infants" in the second proviso.

1938—Subds. (a), (c)—(e), (g)—(j), and (*l*)—(n) amended by act June 22, 1938.

Subds. (b), (f), and (k) reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Tax imposed by sections 1600—1611 of Title 26, Internal Revenue Code, as penalty or forfeiture, see notes under section 1600 of Title 26, Internal Revenue Code.

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

CODIFICATION

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, committees, and attorneys for compensation from the estate for services rendered, specifying the amount and by whom made: *Provided, however*, That where a creditors' committee has been appointed pursuant to this title, 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) Notices to creditors may be published as the court shall direct.

(e) The clerk shall mail to the Commissioner of Internal Revenue and to the Comptroller General of the United States a certified copy of every order of adjudication forthwith upon the entry thereof. The court shall, in every case instituted under any provisions of this title, mail, or cause to be mailed, a copy of the notice of the first meeting of creditors to the Commissioner of Internal Revenue, to the collector of internal revenue for the district in which the court is located, and to the Comptroller General of the United States. Whenever the schedules of the bankrupt, or the list of creditors of the bankrupt, or any other papers filed in the case disclose a debt to the United States acting through any department, agency, or instrumentality thereof, a notice of the first meeting shall be mailed as well to the head of such department, agency, or instrumentality. (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; July 3, 1951, ch. 205, 65 Stat. 114; July 7, 1952, ch. 579, § 15, 66 Stat. 425.)

AMENDMENTS

1952—Subd. (a) (8) amended by act July 7, 1952, to make section applicable to "committees".

1951—Subd. (d) amended by act July 3, 1951, to make publication of notices of first meeting of creditors discretionary instead of mandatory.

Subd. (e) amended by act of July 3, 1951, to require the mailing of a copy of the notice of first meeting of creditors to Comptroller General and to the head of any department, agency, or instrumentality of the United States disclosed to be a creditor as well as to the Commissioner of Internal Revenue.

1938—Subd. (a) amended by act June 22, 1938. Opening clause amended and in part reenacted as a portion of subd. (c). Clauses 1, 2, 4, and 5—7, formerly 1, 2, 4, and 6—8, amended. Clause 3 reenacted without change. Former clause 5 was not reenacted as a part of this section. Clause 9 added, and former clause 9 reenacted in subd. (b).

Subd. (b), formerly clause 9 of subd. (a), amended by act June 22, 1938.

Subd. (c), formerly subd. (c) and part of opening clause of subd. (a), amended by act June 22, 1938.

Subd. (d), formerly subd. (b), reenacted without change by act June 22, 1938.

Subd. (e) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Internal Revenue, and the collectors, referred to in this section, are officials of the Treasury Department.

§ 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 liquidated as to amount and not contingent as to liability 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 or more of such creditors whose claim or claims equal 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; July 7, 1952, ch. 579, § 16, 66 Stat. 425.)

AMENDMENTS

1952—Subd. (b) amended by act July 7, 1952, to substitute "not contingent" in lieu of "fixed" following "amount".

1938—Subd. (a) reenacted without change by act June 22, 1938.

Subds. (b)—(g) amended by act June 22, 1938.

Subd. (h) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 96. Preferred creditors.

(a) (1) 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 initiating a proceeding under 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.

(2) For the purposes of subdivisions (a) and (b) of this section, a transfer of property other than real property shall be deemed to have been made or suffered at the time when it became so far perfected that no subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee. A transfer of real property shall be deemed to have been made or suffered when it became so far perfected that no subsequent bona fide purchase from the debtor could create rights in such property superior to the rights of the transferee. If any transfer of real property is not so perfected against a bona fide purchase, or if any transfer of other property is not so perfected against such liens by legal or equitable proceedings prior

to the filing of a petition initiating a proceeding under this title, it shall be deemed to have been made immediately before the filing of the petition.

(3) The provisions of paragraph (2) of this subdivision shall apply whether or not there are or were creditors who might have obtained such liens upon the property other than real property transferred and whether or not there are or were persons who might have become bona fide purchasers of such real property.

(4) A lien obtainable by legal or equitable proceedings upon a simple contract within the meaning of paragraph (2) of this subdivision is a lien arising in ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(5) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchase could create rights superior to the rights of a transferee within the meaning of paragraph (2) of this subdivision, if such consequences would follow only from the lien or purchase itself, or from such lien or purchase followed by any step wholly within the control of the respective lien holder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become so superior and such a purchase could not create such superior rights for the purposes of paragraph (2) of this subdivision through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action, or ruling.

(6) The recognition of equitable liens where available means of perfecting legal liens have not been employed is declared to be contrary to the policy of this section. If a transfer is for security and if (A) applicable law requires a signed and delivered writing, or a delivery of possession, or a filing or recording, or other like overt action as a condition to its full validity against third persons other than a buyer in the ordinary course of trade claiming through or under the transferor and (B) such overt action has not been taken, and (C) such transfer results in the acquisition of only an equitable lien, then such transfer is not perfected within the meaning of paragraph (2) of this subdivision. Notwithstanding the first sentence of paragraph (2) of this subdivision, it shall not suffice to perfect a transfer which creates an equitable lien such as is described in the first sentence of this paragraph, that it is made for a valuable consideration and that both parties intend to perfect it and that they take action sufficient to effect a transfer as against liens by legal or equitable proceedings on a simple contract: *Provided, however,* That where the debtor's own interest is only equitable, he can perfect a transfer thereof by any means appropriate fully to transfer an interest of that character: *And provided further,* That nothing in this paragraph shall be construed to be contrary to the provisions of paragraph (7) of this subdivision.

(7) Any provision in this subdivision to the contrary notwithstanding if the applicable law requires a transfer of property other than real property for or on account of a new and contemporaneous consideration to be perfected by recording, delivery, or otherwise, in order that no lien described in paragraph (2) of this subdivision could become superior to the rights of the transferee therein, or if the applicable law requires a transfer of real property for such a consideration to be so perfected in order that no bona fide purchase from the debtor could create rights in such property superior to the rights of the transferee, the time of transfer shall be determined by the following rules:

I. Where (A) the applicable law specifies a stated period of time of not more than twenty-one days after the transfer within which recording, delivery, or some other act is required, and compliance therewith is had within such stated period of time; or where (B) the applicable law specifies no such stated period of time or where such stated period of time is more than twenty-one days, and compliance therewith is had within twenty-one days after the transfer, the transfer shall be deemed to be made or suffered at the time of the transfer.

II. Where compliance with the law applicable to the transfer is not had in accordance with the provisions of subparagraph (I) of this paragraph, the transfer shall be deemed to be made or suffered at the time of compliance therewith, and if such compliance is not had prior to the filing of the petition initiating a proceeding under this title, such transfer shall be deemed to have been made or suffered immediately before the filing of such petition.

(8) If no such requirement of applicable law specified in paragraph (7) of this subdivision exists, a transfer wholly or in part, for or on account of a new and contemporaneous consideration shall, to the extent of such consideration and interest thereon and the other obligations of the transferor connected therewith, be deemed to be made or suffered at the time of the transfer. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(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 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; Mar. 18, 1950, ch. 70, § 1, 64 Stat. 25.)

AMENDMENTS

1950—Subd. (a) amended by act Mar. 18, 1950, to clarify its provisions, eliminate confusions that have arisen by reason of certain court decisions, and remove doubts existing among banks, factors, and other extenders of credit regarding the validity of security taken in good faith and for present value.

1938—Subds. (a) and (b) amended by act June 22, 1938.

Subds. (c) and (d) reenacted without change by act June 22, 1938.

Subd. (e) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

EFFECT OF 1950 AMENDMENT

Section 4 of act Mar. 18, 1950, provided that:

"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 [sections 96 and 110 of this title].

"b. The provisions of this amendatory Act [sections 96 and 110 of this title] shall govern proceedings so far as practicable and applicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act [sections 96 and 110 of this title] are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898 [this title], and the Acts amendatory thereof and supplementary thereto."

REPEALS; SEPARABILITY PROVISIONS

Section 3 of act Mar. 18, 1950, provided that:

"a. All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [sections 96 and 110 of this title] are hereby repealed.

"b. If any provision of this amendatory Act [sections 96 and 110 of this title] 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 [sections 96 and 110 of this title] 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."

Chapter 7.—ESTATES

Sec.
101. Depositories for money.
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102. Expenses of administering estates; unauthorized sharing of fees; withholding allowances.
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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 1821 of Title 12: *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, are authorized to give such security as may be required. All pledges of securities heretofore made for the purposes herein named are 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; July 7, 1952, ch. 579, § 16a, 66 Stat. 425.)

AMENDMENTS

1952—Act July 7, 1952, amended section by substituting "section 1821 of Title 12" in lieu of "section 264 of Title 12."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

CODIFICATION

This section was not enacted as part of the Bankruptcy Act which comprises this title.

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

(a) (1) The actual and necessary costs and expenses incurred by officers, other than referees, 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.

(2) The actual and necessary office and other expenses of referees shall be allowed when authorized

and approved by the Director, including compensation of clerical, stenographic and other assistants of referees at rates to be fixed by the Director, taking into consideration the rates for comparable services prevailing in the respective offices of the clerks of the several district courts, and the costs of establishing and maintaining their offices with equipment and supplies adequate for their efficient and economical operation, including mechanical equipment and devices and law libraries. Such expenses may be allowed when authorized by a judge of the judicial district or districts in which a referee serves in cases of emergency where it is not feasible to secure prior authorization of the Director. The Director, with the approval of the conference, may prescribe such rules and regulations as may be necessary for the purpose of carrying out the provisions of this paragraph.

(3) When, in the opinion of the Director, the public interest requires it, he may, on the recommendation of a referee, which recommendation shall state facts showing the necessity for the same, allow the referee to employ necessary clerical, stenographic, and other assistants. The referee may at his pleasure remove any assistant in his employ. If the office of a referee shall become vacant, the employment of his assistants shall not thereupon be terminated: *Provided, however,* That during such vacancy the Director may terminate the employment of any assistant, if, in his opinion, the services of such assistant are no longer needed.

(4) Referees and special masters under 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 courts, including notices in proceedings under this title.

(b) (1) When authorized and approved by the Director, the actual expenses of travel, and the actual expenses for lodging and subsistence not to exceed $7 per day, shall be allowed a referee while absent from his regular place of office on official business.

(2) When authorized and approved by the Director, the assistants of referees shall be entitled to the same travel allowances as are provided for employees of the executive branch of the United States Government under the standardized Government travel regulations issued by the President, while absent from their regular place of employment on official business.

(3) Payment of the expenses allowed or per diem granted under this subdivision and paragraph (2) of subdivision (a) of this section shall be by or pursuant to the order of the Director.

(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 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 subdivision (c) of this section, 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; June 28, 1946, ch. 512, § 11, 60 Stat. 329; July 7, 1952, ch. 579, § 17, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (d) amended by act July 7, 1952, to substitute "subdivision (c) of this section" in lieu of "this subdivision."

1946—Subd. (a) amended by act June 28, 1946, which brings all expenditures within the jurisdiction of the Director of the Administrative Office in order to secure uniform supervision together with standard auditing and bookkeeping procedures, and provides for the hiring of clerical assistants by the referee.

Subd. (b) amended by act June 28, 1946, which provides for a maximum of $7 per day for travel and subsistence allowance for referees, makes all expenditures subject to the authorization and approval of the Director, and provides for travel and subsistence allowances for assistants.

1938—Subd. (a), formerly entire section, amended by act June 22, 1938.

Subds. (b)—(d) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATES; REPEALS; ETC. OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

INCREASES IN COMPENSATION RATES

Increases in compensation rates fixed under subd. (a) (2) of this section, see note under section 603 of Title 28, Judiciary and Judicial Procedure.

INITIAL ADJUSTMENT OF 1951 PAY INCREASES

Initial adjustment of rates of pay of employees affected by act Oct. 24, 1951, see note under section 1113 of Title 5, Executive Departments and Government Officers and Employees.

§ 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 contractual 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, 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 initiating a proceeding under this title.

(d) Where any contingent or 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; July 7, 1952, ch. 579, § 18, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (c) amended by act July 7, 1952, to substitute "this title" in lieu of "chapters 10, 11, 12 or 13 of this title".

1938—Subd. (a) amended by act June 22, 1938. Clause (7) was formerly (6½). Clause (8) was added. Clause (9) was formerly (7).

Subds. (b) and (c) added by act June 22, 1938.

Subd. (d), formerly (b), amended by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 103a. Same; application of section 103.

CODIFICATION

Section, act June 7, 1934, ch. 424, § 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 that: "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 fees for the referees' salary fund and for the referees' expense fund; the filing fees paid by creditors in involuntary cases or by persons other than the bankrupts in voluntary 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 or in connection with the criminal prosecution of an offense punishable under chapter 9 of Title 18, or an offense concerning the business or property of the bankrupt punishable under other laws, Federal or State; 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 peti-

[1] So in original.

tioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow: *Provided, however,* That where an order is entered in a proceeding under any chapter of this title directing that bankruptcy be proceeded with, the costs and expenses of administration incurred in the ensuing bankruptcy proceeding shall have priority in advance of payment of the unpaid costs and expenses of administration, including the allowances provided for in such chapter, incurred in the superseded proceeding and in the suspended bankruptcy proceeding, if any; (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 chapter 9 of Title 18, 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) Repealed. July 7, 1952, ch. 579, § 19 (b), 66 Stat 426.

(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; June 28, 1946, ch. 512, § 12, 60 Stat. 330; May 24, 1949, ch. 139, § 131, 63 Stat. 108; July 7, 1952, ch. 579, § 19, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (a) (1) amended by act July 7, 1952, § 19 (a), to permit filing fees advanced by banks to be reimbursed out of the estate, to broaden the base of compensable services, and to add last proviso

Subd. (b) repealed by act July 7, 1952, § 19 (b).

1949—Subd. (a) (3) amended by act May 24, 1949, by substituting "Chapter 9 of Title 18" in lieu of "this Act."

1946—Subd. (a) (1) amended by act June 28, 1946, which accords priority to fees for salary and expense funds of referees, as an administration expense, on a parity with other items set forth therein.

1938—Subd. (a), formerly (a) and (b), amended by act June 22, 1938. Clause (1) was formerly clauses (1), (2), and (3), of subd. (b). Clauses (2) and (3) were formerly clauses (5) and (4), respectively, of subd. (b). Clause (4) was formerly subd. (a) and clause (6) of subd. (b). Clause (5) was formerly clause (7) of subd. (b).

Subd. (b), formerly (c), amended by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

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, all creditors with claims allowed by the court of bankruptcy who have

[1] So in original.

not had a dividend paid or declared in their favor by the court without the United States shall first be paid a dividend equal to that paid or declared in such foreign court in favor of other creditors of the same class under this title, before creditors who have had a dividend paid or declared in their favor by such foreign court shall be paid any amount in the court of bankruptcy.

(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; July 7, 1952, ch. 579, § 20, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (d) amended by act July 7, 1952, to make more effective the policy of effectuating equal distribution between foreign and domestic creditors.

1938—Subds. (a) and (c)—(e) reenacted without change by act June 22, 1938.

Subd. (b) amended by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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.)

AMENDMENTS

1938—Subd. (a) amended by act June 22, 1938, to include other moneys as well as dividends, to reduce waiting period from six months to sixty days, and to require filing of list of persons.

Subd. (b) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 initiating a proceeding under 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, 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 initiating a proceeding under 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 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. 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 re-

tained pursuant to the provisions of paragraph (4) of this subdivision, 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 to any State or any 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 initiating a proceeding under 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 initiating a proceeding under this title, and except where the estate of the bankrupt is solvent: (1) though valid against the trustee under subdivision (b) of this section, statutory liens, including liens for taxes or debts owing to the United States or to any State or any 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 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; and (2) the provisions of subdivision (b) of this section to the contrary notwithstanding, statutory liens created or recognized by the laws of any State for debts owing to any person, including any State or any subdivision thereof, on personal property not accompanied by possession of, or by levy upon or by sequestration or distraint of, such property, shall not be valid against the trustee: *Provided, however,* That so much of clause (1) of this subdivision as restricts liens for wages and rent and clause (2) of this subdivision shall not apply in proceedings under chapter 10 of this title, unless an order shall be entered therein directing that bankruptcy be proceeded with, or in proceedings under section 205 of this title. The court may on due notice order so much of any lien in excess of the restricted amount under clause (1) of this subdivision and any lien invalid under clause (2) of this subdivision to be preserved for the benefit of the estate and, in any such event, such lien for the excess and such invalid lien, as the case may be, shall pass to the trustee.

(d) (1) For the purposes of, and exclusively applicable to, this subdivision: (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 initiating a proceeding under 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 who is or will thereby be rendered insolvent, within four months prior to the filing of a petition initiating a proceeding under this title by or against him is fraudulent, as to then existing and future creditors: (a) if made or incurred in contemplation of the filing of a petition initiating a proceeding under this title by or against the debtor or in contemplation of liquidation of all or the greater portion of the debtor's property, with intent to use the consideration obtained for such transfer or obligation to enable any creditor of such debtor to obtain a greater percentage of his debt than some other creditor of the same class, and (b) if the transferee or obligee of such transfer or obligation, at the time of such transfer or obligation, knew or believed that the debtor intended to make such use of such consideration. The remedies of the trustee for the avoidance of such transfer or obligation and of any ensuing 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 initiating a proceeding under 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, 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 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 initiating a proceeding under 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 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 the court may, on due notice, order such transfer or obligation to be preserved for the benefit of the estate and, in such event, the trustee shall succeed to and may enforce the rights of such transferee or obligee: *And provided further,* That such purchaser, lienor, or obligee, who without actual fraudulent intent has given a consideration less than fair, as defined in this subdivision, for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

(7) Nothing contained in this subdivision 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: (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–2 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.

(3) In the event any deposit or transfer described in paragraph (2) of this subdivision 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 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; July 7, 1952, ch. 579, § 21, 66 Stat. 427.)

AMENDMENTS

Subd. (a) amended by act July 7, 1952, § 21 (a), (b), which substituted "initiating a proceeding under this

[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.

title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" wherever appearing in paragraphs (1) and (2).

Subd. (b) amended by act July 7, 1952, § 21 (c), to substitute "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title".

Subd. (c) amended by act July 7, 1952, § 21 (d), to substitute "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" and to provide that the restrictable excess of the lien may be effected for the benefit of the estate.

Subd. (d) (2) amended by act July 7, 1952, § 21 (e), to substitute "initiating a proceeding under this title", in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title".

Subd. (d) (3) amended by act July 7, 1952, § 21 (f), to substitute "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" and to clarify fraudulent transfers made with intent to use the consideration to effect a voidable preference.

Subd. (d) (4) amended by act July 7, 1952, § 21 (g), to substitute "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 11 or 12 of this title".

Subd. (d) (5) amended by act July 7, 1952, § 21 (h), to substitute "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 11 or 12 of this title" and to delete "and no creditor" following "from the debtor".

Subd. (d) (6) amended by act July 7, 1952, § 21 (i), to add last proviso.

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

1938—Section was radically revised by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

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

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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.)

AMENDMENTS

1938—Act June 22, 1938, except for amending subd. (b) (1), reenacted this section without change.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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, conditioned 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 subdivision (n) of section 78 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, appointed in proceedings not under this title, of any of the property of a bankrupt, an assignee for the benefit of creditors of a bankrupt, or an agent authorized to take possession of or to liquidate 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 becoming receiver, trustee, assignee, or agent, and a sworn statement of his administration of the estate. Such receiver, trustee, assignee, or agent, 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; July 7, 1952, ch. 579, § 22, 66 Stat. 429.)

AMENDMENTS

1952—Subd. (d) amended by act July 7, 1952, to conform the scope of this section to that of section 11 (21) of this title.

1938—Subd. (a), formerly entire section, amended by act June 22, 1938.

Subds. (b)—(d) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 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 initiating a proceeding under this title, except insofar as it is to property which is held to be exempt, to all of the following kinds of property wherever located (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, wherever located, except insofar as it is property which is held to be exempt, which vests in the bankrupt within six months after bankruptcy by bequest, devise or inheritance shall vest in the trustee and his successor or 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, wherever located, except insofar as it is property which is held to be exempt, 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 or 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, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, 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: *Provided, however,* That the court may on due notice order such transfer or obligation to be preserved for the benefit of the estate and in such event the trustee shall succeed to and may enforce the rights of such transferee or obligee. The trustee shall reclaim and recover such property or collect its value from and avoid such transfer or obligation against whoever may hold or have received it, except a person as to whom the transfer or obligation specified in paragraph (1) of this subdivision 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) Repealed. July 7, 1952, ch. 579, § 23(g), 66 Stat. 430.

(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; Mar. 18, 1950, ch. 70, § 2, 64 Stat. 23; July 7, 1952, ch. 579, § 23, 66 Stat. 429.)

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, § 23(a)—(d), to make it clear that a trustee in bankruptcy is vested with the title of the bankrupt in property which is located without, as well as within, the United States.

Subd. (c) amended by act July 7, 1952, § 23(e), to clarify the fact that a trustee has the rights of a lien creditor upon property in which the bankrupt has an interest or as to which the bankrupt may be the ostensible owner.

Subd. (e) (2) amended by act July 7, 1952, § 23 (f) to provide that a transfer or obligation which is void or voidable against the trustee may be preserved for the benefit of the estate.

Subd. (h) repealed by act July 7, 1952, § 23 (g).

1950—Subd. (c) amended by act Mar. 18, 1950, to place the trustee in bankruptcy in the position of a lien creditor with respect to all of the bankrupt's property.

1938—Subd. (a) amended by act June 22, 1938. Clauses (7) and (8) added. Clauses (2), (3), (5), and (6) amended. Clauses (1) and (4) reenacted without change.

Subds. (b)—(d) added by act June 22, 1938.

Subds. (e), (f), (h), and (i), formerly (e), (b), (d), and (f), respectively, amended by act June 22, 1938.

Subd. (g), formerly (c), reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECT OF 1950 AMENDMENT

For effect of act Mar. 18, 1950, see note set out under section 96 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

REPEALS; SEPARABILITY PROVISIONS OF 1950 AMENDMENT

For repeals and separability provisions of act Mar. 18, 1950, see note set out under section 96 of this title.

§ 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 until no longer needed in conducting current business 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, as added Feb. 5, 1903, ch. 487, § 17, 32 Stat. 800, and amended June 22, 1938, ch. 575, § 1, 52 Stat. 882; Oct. 25, 1951, ch. 562, § 2 (3), 65 Stat. 639.)

AMENDMENTS

1951—Act Oct. 25, 1951 inserted "until no longer needed in conducting current business".

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Management and disposition of records, see chapters 10 and 11 of Title 44, Public Printing and Documents.

§ 112. Limitation of compensation of officers of court.

No 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.

No referee shall receive any compensation for his services under this title other than his salary; and allowances made to a referee for compensation or expense while acting as a conciliation commissioner under section 203 of this title, or as a referee or special master under any chapter or section of this title, shall be paid to the clerk, and by him transmitted to the Treasury of the United States for deposit in the referees' salary fund and referees' expense fund, respectively. (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; June 28, 1946, ch. 512, § 13, 60 Stat. 330.)

AMENDMENTS

1946—Act June 28, 1946, amended section by adding second paragraph which reiterates that salaries of referees shall be full compensation and that any other compensation or expenses allowance received while acting as a conciliation commissioner, referee, or special master shall be covered into the Treasury.

EFFECTIVE DATE; REPEALS; ETC. OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

Chapter 8.—PROVISIONS FOR THE RELIEF OF DEBTORS

Sec.

201. Additional jurisdiction.
202. Compositions and extensions.
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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 petitions; schedules; stay of adjudication order.
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(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.
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(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.

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203. Agricultural compositions and extensions—Con.
(m) Setting aside confirmation for fraud.
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(o) Exemption of farmer and property from proceedings for enforcement of claims.
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(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.
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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.
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(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.
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(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.
Sec.
208. Petition subsequent to certification of reorganization plan.
(a) Duty of Commission to report changes, development, etc., to court; remand of plan to Commission; procedure of subsequent proceedings; referral of petition.
(b) Supplemental report and order of Commission; certification of modified plan; transcript of proceeding denying modification; review by court.

§ 201. Additional jurisdiction.

SAVINGS CLAUSE

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

CHANDLER ACT; EFFECTIVE DATE AND CONSTRUCTION

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, Chandler Act.

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

§ 202. Compositions and extensions.

SAVINGS CLAUSE

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

CHANDLER ACT; EFFECTIVE DATE AND CONSTRUCTION

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 acts June 7, 1934, ch. 424, § 2, 48 Stat. 922; 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 of this title, 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 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 845
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.)

REFERENCES IN TEXT

Section 202 of this title, referred to in the text, 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, the Chandler Act. See distribution table under section 202.

CODIFICATION

This section was not enacted as a part of the Bankruptcy Act which comprises this title.

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

Every United States district court of bankruptcy shall appoint not more than twenty persons in any one district to be known as "conciliation commissioners". One such commissioner shall be appointed from each division or for the territory served by the city where terms of court are held. The court shall designate the territorial district of each such commissioner. A conciliation commissioner's term of office shall be two years, but he 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 referee and in addition is a resident of the district, 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 $25 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 $10 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 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 petitions; schedules; stay of adjudication order.

At any time prior to March 1, 1949, a petition may be filed by any farmer in the district court of the district in which he resides, stating that such 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. 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 [1] 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 redemption.

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

[1] So in original.

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 subdivision (o) of this section 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 concillation 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) of this title 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 subdivision (a) of this section, 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 subdivision, 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 subdivision, 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 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 subdivision (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 is 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; Mar. 11, 1944, ch. 87, 58 Stat. 113; June 3, 1946, ch. 280, 60 Stat. 230; Apr. 21, 1948, ch. 225, 62 Stat. 198.)

REFERENCES IN TEXT

Words, "This Act," in pars. (5) and (6) of subd. (s) are from acts Aug. 28, 1935, and Mar. 4, 1938, which were amendments to the Bankruptcy Act of 1898.

AMENDMENTS

1948—Subd. (c) amended by act Apr. 21, 1948, which extended filing date for petition from Mar. 31, 1947, to Mar. 1, 1949, and inserted phrase "in the district court of the district in which he resides".

1948—Subd. (c) amended by act June 3, 1946, which extended filing date for petition from Mar. 4, 1946, to Mar. 31, 1947.

1944—Subds. (a), (b), (c) amended by act Mar. 11, 1944. Subd. (a) amended by providing for the appointment of not more than 20 persons in any one district as conciliation commissioners and making their term of office for two years. Subd. (b) amended by changing filing fee from $10 to $25. Subd. (c) amended by extending filing date for petitions from Mar. 4, 1944, to Mar. 4, 1946.

1940—Subd. (c) amended by act Mar. 4, 1940, § 1, which substituted "March 4, 1944" for "March 4, 1940."

Subd. (r) amended by act Mar. 4, 1940, § 2, which deleted "and section 202."

CHANDLER ACT; EFFECTIVE DATE AND CONSTRUCTION

Act June 22, 1938, in addition to amending the second sentence of subd. (b) of this section, provided, in section 2 (a) of said act, that: "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.

CROSS REFERENCES

Application of section to Bankhead-Jones Farm Tenant Act, sections 1000 et seq. 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.)

CODIFICATION

Section was not enacted as a part of the Bankruptcy Act which comprises this title.

CROSS REFERENCES

Similar provisions, see subd. (s) (4) of section 203 of this title.

§ 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 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 subdivision (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 title, 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 subdivision (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) require 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 now or hereafter 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. Where such certificates are authorized to provide funds to pay for the acquisition, assembly or installation of safety equipment or materials related thereto, or for the purpose of reimbursing the trustee or trustees for funds so expended, the judge may direct (without limitation of his power to make such direction in the absence of this provision) that the certificates shall have such lien on the property of the debtor

and shall be entitled to such priority in payments over existing obligations, secured or unsecured, and receivership charges and present or future duties, debts or taxes or other obligations in favor of or payable to any State or any subdivision, agency or instrumentality thereof and interest or penalties, and to such parity with all or any portion of the other costs or expenses of administration or operation as in the particular case the judge may find equitable at the time of authorizing the issuance of such certificates, regardless of whether such obligations, charges, costs or expenses, duties, debts, or taxes constitute or are secured by liens on real or personal property or shall have become payable before or after the issuance of such certificates.

(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.

(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 paragraph (10) of this

subdivision. 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 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 subdivision 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 subdivision.

(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 court of appeals and may allow such master a reasonable compensation for his services and actual and reasonable expenses. The 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 subdivision (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 subdivisions (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 subdivision (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 paragraph (12) of subdivision (c) 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 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 subdivision (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 subdivision (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 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 subdivision 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 subdivision 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)—(3) of the first paragraph of this subdivision: *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—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 clause (3) of subdivision (c) 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 subdivision (p) of this section. The provisions of subsection (a) of section 78n of Title 15 shall not be applicable with respect to any action or matter which is within the provisions of subdivision (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)—(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 subdivision (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 United States District Court for 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 subdivision (f) of this section, or as specified in an order dismissing the proceedings as provided in subdivision (i) of this section, 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—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 subdivision 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 subdivision 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 subdivision 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 subdivision, 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 subdivision relates.

Any person who willfully violates any provision of this subdivision, 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 subdivision 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 Federal court, unless such person or committee makes application to the Commission and receives authority to act as in this subdivision provided, in which event the provisions of this subdivision 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 subdivision 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; June 25, 1948, ch. 646, § 32 (a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 24, 1951, ch. 543, § 1, 65 Stat. 606.)

REFERENCES IN TEXT

United States Court of Alaska, referred to in subd. (i), is the district court for the District of Alaska. See section 101 of Title 48, Territories and Insular Possessions.

The subject matter of Revenue Acts 1926 and 1932, referred to in subd. (h), is now incorporated in sections 1800—1802 and 3480—3482 of Title 26, Internal Revenue Code.

AMENDMENTS

1951—Subd. (c) (3) amended by act Oct. 24, 1951, to permit the financing of safety equipment by a railroad by directing that certificates issued for such purpose may be given priority over existing obligations, receivership charges, and past or future state or local taxes, and also shall be entitled to such parity with costs of administration and operation as the judge finds equitable.

1939—Subd. (n) amended by act Aug. 11, 1939.

1936—Subd. (e) amended by act June 26, 1936.

CHANGE OF NAME

Section 32 (a) of act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" in lieu of "circuit court of appeals".

Section 32 (b) of act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" in lieu of "Supreme Court of the District of Columbia".

EFFECTIVE DATE OF 1951 AMENDMENT

Section 2 of act Oct. 24, 1951, provided that: "This Act [amendment of subd. (c) (3) of this section] shall take effect immediately upon the date of its approval and shall apply to any authorization given by the judge, regardless of whether such authorization shall have been given before or shall be given after such date. Neither the enactment of this Act [amendment of subd. (c) (3) of this section] nor anything herein contained shall be construed as implying that, prior to the date of approval of this Act [Oct. 24, 1951], the judge was not vested with the power which is expressly granted to him by this Act [amendment of subd. (c) (3) of this section]."

REPEALS

Insofar as subd. (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.

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 subd. (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.

CROSS REFERENCES

Application of internal revenue laws to issuance, transfer or exchange of securities or filing of conveyances to effectuate plan of reorganization, see section 1808 of Title 26, Internal Revenue Code.

Bankruptcy law not applicable to railroads, see section 22 of this title.

§ 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 removed prior to June 7, 1934, 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.)

CODIFICATION

Section was not enacted as a part of the Bankruptcy Act which comprises this title.

CROSS REFERENCES

Later provisions concerning removal of causes, see subd. (j) of section 205 of this title.

§ 206. Additional jurisdiction.

SAVINGS CLAUSE

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

CHANDLER ACT; EFFECTIVE DATE AND CONSTRUCTION

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.

§ 207. Corporate reorganization.

SAVINGS CLAUSE

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

CHANDLER ACT; EFFECTIVE DATE AND CONSTRUCTION

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 acts Aug. 20, 1935, ch. 577, 49 Stat. 664; Aug. 29, 1935, ch. 809, 49 Stat. 965; Aug. 12, 1937, ch. 589, § 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.

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, 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, 641—643, 647, and 650.
d	570.
e	577—579, and 599.
f	621—624, and 667.
g	624.
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 section 2072 of Title 28, Judiciary and Judicial Procedure.

§ 208. Petition subsequent to certification of reorganization plan—(a) Duty of Commission to report changes, developments, etc., to court; remand of plan to Commission; procedure of subsequent proceedings; referral of petition.

Notwithstanding any other provision of law—

(1) with respect to any plan of reorganization or modified plan of reorganization approved by the Interstate Commerce Commission under the provisions of section 205 of this title, subsequent to April 9, 1948, it shall be the duty of the Commission, upon petition of any party to the proceeding filed at any time more than eighteen months after certification by the Commission to the court of the plan or of an order disposing of a like petition, but before any order confirming the plan shall have been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, to report to the court in which consideration of such plan is then pending, any changes, facts, or developments which have occurred since the approval of such plan by the Commission, which were not provided for in the plan, and which in the opinion of the Commission make it necessary or expedient for the Commission to reexamine or reconsider and, if necessary, to revise such plan in order to insure that such plan, if consummated and put into effect, shall then, in the opinion of the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section and section 205 of this title. Upon the filing of any such report by the Commission with the court, the court shall remand the plan to the Commission for such reexamination, reconsideration, and possible revision;

(2) if, with respect to any plan of reorganization or modified plan of reorganization approved by the Commission subsequent to April 9, 1948, the court before which such plan is then pending, for approval or confirmation, no order of confirmation having been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, upon petition of any party to the proceeding and either with or without a hearing, shall find that changes, facts, or developments have occurred since the approval of such plan by the Commission which were not provided for in the plan and which make it necessary or expedient, in the opinion of the court, that the Commission reexamine and reconsider and revise such plan in order to insure that the plan consummated and put into effect shall then, in the opinion of the court and the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section, and section 205 of this title, the court shall return the plan to the Commission for such reexamination, reconsideration and possible revision;

(3) with respect to any plan of reorganization or modified plan of reorganization which, on April 9, 1948, is before any district court for approval or confirmation, no order of confirmation having been entered, or, such order having been entered, if an appeal from said order is pending in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such an appeal or to file such petition has not expired, it shall be the duty of the Commission, upon petition of any party to the proceeding, to report to such court any changes, facts, or developments which have occurred since December 31, 1939, which were not provided for in the plan and which, in the opinion of the Commission, make it necessary or expedient for the Commission to reexamine or reconsider and, if necessary, to revise such plan in order to insure that if consummated and put into effect, such plan shall then, in the opinion of the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section and section 205 of this title. Upon the filing of any such report by the Commission with the court, the court shall remand the plan to the Commission for such reexamination, reconsideration, and possible revision;

(4) in the event of the return of a plan to the Commission pursuant to the provisions of this subdivision, the proceedings with respect thereto shall be governed by the provisions of subdivision (d) of section 205 of this title;

(5) each petition filed under the provisions of paragraph (1) or (3) of this subdivision shall be filed with the court before which is pending the plan which is the subject of the petition and such petition shall be referred by the court to the Commission. Upon the filing of such petition with the court all further proceedings for confirmation of the plan shall be suspended pending disposition of the petition by the Commission and certification of its action thereon to the court.

(b) Supplemental report and order of Commission; certification of modified plan; transcript of proceeding denying modification; review by court.

As to any plan so returned to the Commission by the court, the Commission, upon further hearing at which all parties may appear and submit evidence as to prospective earning power and other relevant facts, and upon consideration of all changes, facts, and developments which have occurred since the date of approval of the plan by the Commission (or which have occurred since December 31, 1939, in the case of plans which on April 9, 1948, were pending before, but had not been confirmed by, the court by order which shall have become final), including, without limitation, for such period total railway operating revenues, operating expenses and other charges, net earnings, the full effect of amortization deductions on earnings of past and future years, improvements to property, the effect of released col-

lateral through past or future payments of loans, cash and net current assets, retirements and purchases of debt, including retirements and purchases at a discount that have been made or that can reasonably be made, adjustment and reduction of interest rates on outstanding debt that may be made, shall, in a supplemental report and order, modify, or refuse to modify, any plan which it has approved, stating the reasons for such modification or for its refusal to modify the plan. The Commission, if it modifies the plan, shall certify the modified plan to the court, together with a transcript of the proceeding before it and a copy of its report and order approving the modified plan. Thereafter proceedings upon the plan shall be governed by the provisions of subdivision (e) of section 205 of this title, and of this section. If the Commission refuses to modify the plan, it shall transmit to the court a copy of its report and order, together with a transcript of the proceedings before it. Thereafter, if the court shall find that the refusal of the Commission to modify the plan is based on sufficient findings and is supported by the record, the proceeding upon the plan shall continue as if the plan had not been returned to the Commission; otherwise the court shall return the plan to the Commission for further consideration. Upon such consideration, the Commission shall again certify the plan to the court with such modifications, if any, as it may find necessary, and thereafter further proceedings upon the plan shall be as provided in subdivision (e) of section 205 of this title and in this section. (Apr. 9, 1948, ch. 180, § 3, 62 Stat. 167, amended June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

This section was not enacted as a part of the Bankruptcy Act which comprises this title.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" in lieu of "circuit court of appeals".

SEPARABILITY CLAUSE

For separability of provisions of act Apr. 9, 1948, see note set out under section 20b of Title 49, Transportation.

Chapter 9.—COMPOSITION OF INDEBTEDNESS OF LOCAL TAXING AGENCIES

Sec.

301—303. Unconstitutional.
401. Jurisdiction; saving clause.
402. Definitions.
403. Composition.
(a) Petition; plan of composition; creditors.
(b) Hearing.
(c) Ancillary injunctions; preliminary stay of proceedings.
(d) Acceptance of plan by creditors.
(e) Fraudulent practices; confirmation of plan; sufficiency of findings; modifications; appeal.
(f) Final decree; validity of securities delivered under plan.
(g) Evidence of proceedings.
(h) Laws affected.
(i) Effect on State powers.
(j) Effect of partial completion or execution of plan.
404. Termination of jurisdiction.

CHAPTER RENUMBERED

This chapter, formerly chapter 10, was renumbered chapter 9 by act June 22, 1933, 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.

CODIFICATION

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 title 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 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 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 agencies or instrumentalities from any income-producing property, whether or not secured by a lien upon such property: (1) Drainage, drainage and levee, 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) incorporated authorities, commissions, or similar public agencies organized for the purpose of constructing, maintaining, and operating revenue-producing enterprises; or (7) 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 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 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; July 1, 1946, ch. 532, § 1, 60 Stat. 409.)

AMENDMENTS

1946—Act July 1, 1946, amended section to make it applicable to any type of revenue bond issued by a city, town, county, etc., and to make it applicable to "authorities".

§ 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:

The term "petitioner" shall include any agency or instrumentality referred to in section 401 of this title.

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, and amended July 1, 1946, ch. 532, § 1, 60 Stat. 409.)

AMENDMENTS

1946—Act July 1, 1946, amended section by striking out "taxing" preceding "agency" in second sentence.

§ 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.

Whenever 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 which are payable solely out of the proceeds of special assessments or special taxes levied by the petitioner, or issued by the petitioner to finance one or more revenue-producing enterprises payable solely out of the revenues of such enterprise or enterprises, it shall be sufficient if the petitioner aver that the property liable for, or the revenues pledged to the payment of such securities, principal, and interest is not of sufficient value, or that the revenues of the enterprise or enterprises are inadequate 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. If the plan of composition sought to be effected requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some of the lands will be different from the proportion in effect at the time the petition is filed, a list of the record owners or holders of title, legal or equitable, to any real estate adversely affected 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 interest: *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 special issues of fact to a referee in bankruptcy or a special master for consideration, the taking of testimony, and a report upon such special issues of fact, if the judge finds that the condition of his docket is such that he cannot take such testimony without unduly delaying the dispatch of other business pending in his court, and if it appears that such special issues are necessary to the determination of the case. Only under special circumstances shall references be made to a special master who is not a referee in bankruptcy. A general reference of the case to a master shall not be made, but the reference, if any, shall be only in the form of requests for findings of specific facts.

The court may allow reasonable compensation for the services performed by such referee in bankruptcy or 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 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.

Such compensation of referees in bankruptcy and special masters shall not be governed by section 68 of this title.

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; preliminary stay of other proceedings.

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.

Any agency or instrumentality referred to in section 401 of this title may file a petition for a preliminary stay with the court referred to in subdivision (a) of this section stating (a) that the petitioner is insolvent or unable to meet its debts as they mature; (b) that it desires to effect a plan for the composition of its debts, a copy of which is filed and submitted with the petition; (c) that a creditor of the petitioner holding a security affected by the plan or a person claiming to be such a creditor (naming him and giving his address and the name and address of his attorney of record, if any), is attempting or threatening to obtain payment of said security in preference to other creditors by means of the commencement or continuation of a suit or process of the class hereinbefore in this subdivision described; (d) that efforts are being made in good faith to the end 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) shall accept it in writing; (e) that there is a reasonable prospect of such acceptance within a reasonable time; (f) that upon such acceptance the petitioner intends to file a petition under subdivision (a) of this section; and (g) that the petitioner prays that the judge will upon notice enjoin or stay the commencement or continuation of said suit or process. A single petition may seek the preliminary stay of several suits or processes brought or threatened by the same or different creditors or persons claiming to be creditors. The petition shall be accompanied by the filing fee required in subdivision (a) of this section, unless such fee shall have been paid upon the filing of an earlier petition for a preliminary stay involving the same plan, and no further fee shall be required upon the subsequent filing of a petition under subdivision (a) of this section. Upon such petition the judge shall fix a time and place for hearing and direct that notice thereof shall be given in such manner as he shall prescribe to said creditor or person claiming to be a creditor and to any other person deemed by him to be interested. After such hearings, and upon being satisfied of the truth of the allegations of the petition, the judge may, in his discretion, except where rights have become vested, enjoin or stay the commencement and continuation of said suit or process until a date fixed by him in his order not exceeding sixty days from the date of entry thereof. The judge shall retain jurisdiction to vacate said injunction or stay, or to extend the period thereof for one additional period of not exceeding sixty days, upon good cause shown.

(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; sufficiency of findings; 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 exists, he shall forthwith dismiss the proceeding and tax all of the costs against such fiscal agent, attorney, or other person, firm, or corpora-

tion 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 exists, 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 he finds and is 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. No case shall be reversed or remanded for want of specific or detailed findings unless it is found that the evidence is insufficient to support one or more of the general findings required in this section.

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; validity of securities delivered nnder plan.

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. If securities are deposited by the petitioner with the court or disbursing agent for delivery to the creditors, such final decree shall not be entered unless the court finds and adjudicates that said securities have been lawfully authorized and, upon delivery, will constitute valid obligations of the petitioner, and that the provisions made to pay and secure payment thereof are valid.

(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 80 of this Act shall not constitute a bar to the same agency or instrumentality initiating a new proceeding under section 401 of this title.

(i) Effect on State powers.

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: *Provided, however,* That no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.

(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; July 1, 1946, ch. 532, § 1, 60 Stat. 409; June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

REFERENCES IN TEXT

Section 80 of this act, referred to in text of subd. (h), was formerly classified to section 303 of this title but 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.

AMENDMENTS

1946—Subd. (a) amended by act July 1, 1946, which added a sentence to second paragraph to clarify the procedure to be followed in filing a list of the record owners and holders of title to lands affected by a plan of composition.

Subd. (b) amended by act July 1, 1946, to provide that only references on special issues of fact, as distinguished from general references, may be made to a referee in bankruptcy or a special master for the taking of testimony and a report on the specific facts.

Subd. (c) amended by act July 1, 1946, which added the last paragraph to permit an agency or instrumentality to file an application for a temporary stay of proceeding against it, prior to the filing of a petition for the composition of its indebtedness.

Subd. (e) amended by act July 1, 1946, which added a new sentence at the end of the third paragraph to provide that no case shall be reversed or remanded for want of specific or detailed findings unless it is ascertained that the evidence is insufficient to support one or more of the general findings required.

Subd. (f) amended by act July 1, 1946, which added last sentence to provide that the court must determine the validity of the new bonds which the final decree will require the creditors to accept, and the validity of the provisions for payment of the new bonds.

Subd. (i) amended by act July 1, 1946, which added proviso that only under Federal law could a creditor be forced to accept a composition without his consent.

1940—Subd. (a) amended by act Mar. 4, 1940, which inserted second paragraph. Section 2 of said act provided that said second paragraph of subd. (a) should be deemed to be additional and cumulative and not in diminution of any of the powers conferred by this title.

Subds. (b) and (e) amended by sections 2 and 3, respectively, of act June 28, 1940.

1938—Act June 22, 1938, the Chandler Act, added subd. (j). For effective date, construction, etc., of said act see note under section 1 of this title.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" in lieu of "circuit court of appeals".

§ 404. Repealed. July 1, 1946, ch. 532, § 2, 60 Stat. 416.

Section, act 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; June 22, 1942, ch. 434, 56 Stat. 377, provided for termination of jurisdiction of courts under section 401 of this title on June 30, 1946, except in respect of proceedings begun before that date.

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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.

PRIOR PROVISIONS

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

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, § I, 52 Stat. 883.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 502. Application of other provisions.

The provisions of chapters 1—7 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 of this title, 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—7 of this title. 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 sections 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Pars. (1) (4) were from part of former section 207 (b) of this title.

Par. (5) was from part of former section 207 (a) of this title.

Par. (11) was from part of former section 207 (b) of this title.

CROSS REFERENCES

Corporations—

Capability of being adjuged a bankrupt, see section 22 of this title.

Definition of, see section 1 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

CROSS REFERENCES

Approval of petition as conclusive determination of jurisdiction, see section 549 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (o) of this title.

CROSS REFERENCES

Jurisdiction in ordinary bankruptcy proceedings, see sections 11 and 46 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Stay of actions upon approval of petition, see sections 516 and 548 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (o) of this title.

CROSS REFERENCES

Approval of petition as conclusive determination of jurisdiction, see section 549 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

§ 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 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from clause (5) of the first sentence of former section 207 (c) of this title.

Par. (2) was from clause (3) of the first sentence of former section 207 (c) of this title.

Par. (3) was from clause (3½) of the first sentence of former section 207 (c) of this title.

Par. (4) was from clause (10) of the first sentence of former section 207 (c) of this title.

CROSS REFERENCES

Definition of executory contract, see section 506 of this title.

Rejection of executory contract as breach thereof, see section 103 of this title.
Stay of actions—
Approval of petition as stay, see section 548 of this title.
Prior to approval of petition, see section 513 of this title.

§ 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 and all matters not reserved to the judge by the provisions of this chapter, or to a referee as special master, to hear and report generally or upon specified matters. Only under special circumstances shall references be made to a special master who is not a referee. 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, and amended June 28, 1946, ch. 512, § 14, 60 Stat. 331.)

AMENDMENTS

1946—Act June 28, 1946, amended section to provide that only under unusual circumstances should special references be made to anyone other than a referee.

EFFECTIVE DATES; REPEAL; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from clause (11) of the first sentence of former section 207 (c) of this title.

§ 518. Repealed. July 7, 1952, ch. 579, § 24, 66 Stat. 440.

Section, act July 1, 1898, ch. 541, § 118, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885, related to transfer of proceedings to another district.

EFFECTIVE DATE OF REPEAL

Repeal of section as effective three months after July 7, 1952, see note under section 1 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

General provisions concerning notices, see section 607 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Allowances, appeal from orders concerning, see section 650 of this title.
Appeals in bankruptcy proceedings, generally, see sections 47 and 48 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

CROSS REFERENCES

Prior proceedings pending, filing petition, see section 656 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the second sentence of former section 207 (a) of this title.

CROSS REFERENCES

Prior proceedings pending, filing petition, see sections 527 and 656 of this title.

Transfer of proceedings regardless of location of business or assets, see section 518 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the first sentence of former section 207 (a) of this title.

§ 531. Same; additional contents of creditors' or indenture trustee's petition.

A creditors' 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the fourth sentence of former section 207 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

CROSS REFERENCES

Approval or dismissal of petition after debtor's answer, see sections 542 and 543 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

CROSS REFERENCES

Approval or dismissal of petition after answer, see section 544 of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

CROSS REFERENCES

Right of debtor to answer, see section 536 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

CROSS REFERENCES

Right of debtor to answer, see section 536 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

CROSS REFERENCES

Right to answer, see section 537 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 said chapter 11 for the filing of a debtor's petition, and shall thereafter for the purposes of said 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Power of judge to stay actions—
Prior to approval of petition, see section 513 of this title.
Upon approval of petition, see section 516 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Jurisdiction of court generally, see section 511 et seq. 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Employment of persons to assist trustee, see section 567 of this title.

§ 558. Interest of persons.

A person shall not be deemed disinterested, for the purposes of sections 556 and 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) 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 newspapers 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (4) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (4) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

CROSS REFERENCES

Employment of officers of debtor, see section 591 of this title.

Operation of business and management of property, see section 589 of this title.

Plan, preparation and filing, see section 569 of this title.

Reports, see section 590 of this title.

Schedules and lists, preparation and filing, see section 564 of this title.

Title, rights, and powers of trustees, see section 686 et seq. 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)—(5) 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Creditors and stockholders, trustee to notify of right to propose plans, see section 567 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

PRIOR PROVISIONS

This section was from former section 207 (c) (7) of this title.

§ 572. Submission of plans to Securities and Exchange Commission for report.

After the hearing, as provided in section 569 or 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

§ 574. Same; entry of order and fixing time for acceptance of plan.

After the hearing, as provided in section 569 or 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 stockholders affected thereby may accept the same. (July 1, 1898, ch. 541, § 174, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their

performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

CROSS REFERENCES

Acceptance of plan—
Confirmation, acceptance as prerequisite, see sections 579 and 621 of this title.
Form and manner, see section 579 of this title.
Approval of plan, public utility, see section 577 of this title.
Confirmation of plan by judge, see section 621 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Form and manner of acceptance, see section 579 of this title.
Good faith of acceptance—
Disqualification of votes in absence of, see section 603 of this title.
Prerequisite to confirmation, see section 621 of this title.
Time for acceptance, see section 574 of this title.

§ 577. Approval of plan for public ntility.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the first sentence of clause (2) of former section 207 (e) of this title.

§ 578. Same; intrastate public ntility.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the second sentence of paragraph (2) of former section 207 (e) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

PRIOR PROVISIONS

This section was from part of paragraph (1) of former section 207 (e) of this title.

CROSS REFERENCES

Acceptance of plan—
- Alteration or modification of plan, see sections 622 and 623 of this title.
- Classification of creditors and stockholders, see section 597 of this title.
- Good faith as prerequisite to confirmation, see section 621 of this title.
- Good faith, disqualification of votes in absence, see section 603 of this title.
- Indenture trustee, see section 598 of this title.
- Rejected executory contract holder, see section 602 of this title.
- Soliciting acceptance before approval, see section 576 of this title.
- Time for acceptance, see section 574 of this title.
- United States as creditor, see section 599 of this title.

Confirmation of plan by judge, see section 621 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (2) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (2) of the first sentence of former section 207 (c) of this title.

CROSS REFERENCES

Generally, see section 567 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (6) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (6) of the first sentence of former section 207 (c) of this title.

CROSS REFERENCES

Acceptance of plan—
Form and manner, see section 579 of this title.
Indenture trustee, acceptance by, see section 598 of this title.
Rejected executory contract holder, see section 602 of this title.
United States as creditor, see section 599 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 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 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of paragraph (1) of former section 207 (e) of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (o) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 occurs, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (b) of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

Creditor, definition of, see section 506 of this title.

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Confirmation, good faith of acceptance as prerequisite, see section 621 of this title.

Form and manner, generally, of acceptance, see section 579 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

CROSS REFERENCES

Labor unions, organization and membership, see section 672 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (c) of this title.

CROSS REFERENCES

Notices, general provisions concerning, see section 520 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (b) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 mem-

bers 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (b) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 (2) 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from clauses (1) and (2) of the first sentence of former section 207 (b) of this title.

Par. (2) was from part of clause (10) of the first sentence of former section 207 (b) of this title.

Par. (3) was from clause (3) of the first sentence of former section 207 (b) of this title.

Par. (4) was from clause (6) of the first sentence of former section 207 (b) of this title.

Par. (5) was from clause (8) of the first sentence of former section 207 (b) of this title.

Par. (6) was from clause (7) of the first sentence of former section 207 (b) of this title.

Par. (7) was from clause (5) of the first sentence of former section 207 (b) of this title.

Par. (8) was from clause (4) of the first sentence of former section 207 (b) of this title.

Par. (10) was from clause (9) of the first sentence of former section 207 (b) of this title.

Par. (14) was from part of clause (10) of the first sentence of former section 207 (b) of this title.

CROSS REFERENCES

Compensation and allowances, general provisions, see section 641 et seq. of this title.

Rejection of executory contracts as breach therof, see section 103 of this title.

SUBCHAPTER XI.—CONFIRMATION AND CONSUMMATION OF PLAN

§ 621. Confirmation by court.

The judge shall confirm a plan if satisfied that—

(1) the provisions of subchapters VII and X of this chapter and section 599 of this title 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from clauses (2), (3), and (4) of the first sentence of former section 207 (f) of this title.

Par. (2) was from clause (1) of the first sentence of former section 207 (f) of this title.

Par. (3) was from clause (6) of the first sentence of former section 207 (f) of this title.

Par. (4) was from clause (5) of the first sentence of former section 207 (f) of this title.

CROSS REFERENCES

Acceptance of plan—
Altered or modified plan, see sections 622 and 623 of this title.
Form and manner, see section 579 of this title.
Good faith, disqualification of votes in absence, see section 603 of this title.
Time for acceptance, see section 574 of this title.
United States as creditor, see section 599 of this title.
Application of internal revenue laws to issuance, transfer or exchange of securities, or to conveyances to effectuate plan of reorganization, see section 1808 of Title 26, Internal Revenue Code.
Approval of plan by judge, see section 574 of this title.
Compensation and allowances, general provisions, see section 641 et seq. of this title.
Executory contracts—
Court, power to reject, see section 516 of this title.
Rejected holder of, as creditor, see section 602 of this title.
Hearing for confirmation of plan, see section 579 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance, by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

PRIOR PROVISIONS

This section was from part of the second sentence of former section 207 (f) of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the second sentence of former section 207 (f) of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

§ 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 and are not contingent, unliquidated or disputed. (July 1, 1898, ch. 541, § 224, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898, and amended July 7, 1952, ch. 579, § 25, 66 Stat. 430.)

AMENDMENTS

1952—Par. (4) amended by act July 7, 1952, to substitute "and are not contingent, unliquidated or disputed" in lieu of "as fixed claims or stock, liquidated in amount and not disputed".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from former section 207 (g) of this title.
Par. (2) was from part of former section 207 (f) of this title.

CROSS REFERENCES

Creditors, surrender, etc., of claims, see section 604 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the first sentence of former section 207 (h) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the first sentence of former section 207 (h) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the second and third sentences of former section 207 (h) of this title.

§ 629. Acts deemed consummating plan; order declaring consummation; substantial alteration or modification.

(a) A plan shall be deemed to have been substantially consummated if, insofar as applicable, each of the following events has occurred:

(1) transfer, sale or other disposition of all or substantially all of the property dealt with by the plan pursuant to the provisions of the plan;

(2) assumption of operation of the business and management of all or substantially all of the property dealt with by the plan by the debtor or by the corporation used for the purpose of carrying out the plan; and

(3) commencement of the distribution to creditors and stockholders, affected by the plan, of the cash and securities specified in the plan as provided for in section 624 of this title.

(b) Upon notice to the trustee, the debtor, the Securities and Exchange Commission and such other persons as the judge may designate, the trustee, the debtor in possession, the corporation to which the assets of the debtor are to be transferred under the plan, or any other party in interest may apply to the judge for an order declaring the plan to have been substantially consummated under the provisions of subdivision (a) of this section.

(c) When a plan has been substantially consummated as defined in subdivision (a) of this section, or an order has been entered under subdivision (b) of this section, the plan may not thereafter be altered or modified if the proposed alteration or modification materially and adversely affects the participation provided for any class of creditors or stockholders by the plan. (July 1, 1898, ch. 541, § 229, as added July 7, 1952, ch. 579, § 26, 66 Stat. 431.)

EFFECTIVE DATE OF SECTION

Section as effective three months after July 7, 1952, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance, by any officer, employee or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Somewhat similar provisions were contained in former section 207 (c) (8) and (k) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 207 (c) (8) of this title.

§ 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 claims for taxes legally due and owing to the United States or any State or any subdivision thereof at the time of the filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition was filed under section 527 of this title and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors: *Provided, however,* That if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title, shall not be allowed in the reinstated bankruptcy proceeding. (July 1, 1898, ch. 541, § 238, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899, and amended July 7, 1952, ch. 579, § 27, 66 Stat. 431.)

AMENDMENTS

1952—Par. (3) amended by act July 7, 1952, to permit claims to be filed within six months rather than three months when bankruptcy ensues upon the failure of the plan and to make claims for taxes receive parallel treatment.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Somewhat similar provisions were contained in former section 207 (c) (8) and (k) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

PRIOR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 207 (1) of this title.

CROSS REFERENCES

Prior proceedings, allowance of costs and expenses in, see section 658 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 207 (1) of this title.

CROSS REFERENCES

Prior proceedings, allowance of costs and expenses in, see section 658 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 207 (i) of this title.

CROSS REFERENCES

Dismissal of proceeding and reinstatement of bankruptcy, see section 648 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

PRIOR PROVISIONS

This section was from former section 207 (c) (7) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Dismissal of proceeding or adjudication of bankruptcy, see section 646 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 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; June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" in lieu of "circuit court of appeals".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of clause (9) of the first sentence of former section 207 (c) of this title.

CROSS REFERENCES

Appeals generally, see section 521 of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Bankruptcy pending, filing petition, see section 527 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the first sentence of former section 207 (i) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (1) of this title.

CROSS REFERENCES

Bankruptcy, compensation and allowances when superseded by reorganization, see sections 644 and 645 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of the second sentence of former section 207 (1) of this title.

SUBCHAPTER XV.—GENERAL PROVISIONS

§ 661. Suspension of statutes of limitation, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the last sentence of former section 207 (b) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

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

§ 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.)

REFERENCES IN TEXT

The National Housing Act, referred to in the text, is classified to sections 371, 1131g–1, 1422, 1426, 1430, 1431, 1462, 1463, 1701, 1702, 1703, 1705, 1706, 1706b—1715, 1715b—1715h, 1716, 1717—1721, 1724—1730, 1732—1734, 1736—1748h, and 1750—1750g of Title 12, Banks and Banking, section 22 of Title 41, Public Contracts, section 484d of Title 48, Territories and Insular Possessions, and section 22 of Title 49, Transportation.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from part of former section 207 (n) of this title.

§ 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.)

CODIFICATION

Definition of "Securities Act of 1933" has been omitted at the end of subd. (b) of this section as unnecessary in view of translations in text to Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the last sentence of former section 207 (h) of this title.

CROSS REFERENCES

Definitions generally, see section 506 et seq. of this title.

§ 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 that bankruptcy be proceeded with, or adjudging the debtors bankrupt and directing that bankruptcy be proceeded with, 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, and amended July 7, 1952, ch. 579, § 28, 66 Stat. 431.)

AMENDMENTS

1952—Subd. (a) (11) amended by act July 7, 1952, to make it clear that the "order" either directs reinstatement of a suspended bankruptcy proceeding or an adjudication in bankruptcy or a dismissal of proceeding in the case of an original petition.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

§ 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 trans-

mitted 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the last sentence of former section 207 (f) of this title.

CROSS REFERENCES

Exemption from taxation of securities issued, transferred, or exchanged pursuant to reorganization plan, see section 1808 (f) of Title 26, Internal Revenue Code.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, 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.)

AMENDMENTS

1940—Act July 1, 1940, added "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" to the first sentence and inserted second sentence.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from subds. (*l*) and (m) of former section 207 of this title.

CROSS REFERENCES

Hearing on soundness of plan, right of labor union, see section 606 of this title.

National Labor Relations Act to prevail over provisions of this section, see section 165 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 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 of this title before the effective date of this amendatory Act and to any plan which may be confirmed under section 207 of this title on and after such effective date, except that the exemption 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, provided that: "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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799. Proceedings to which chapter applies.

SUBCHAPTER I.—CONSTRUCTION

§ 701. Exclusive application of chapter.

The provisions of this chapter shall apply exclusively to proceedings under this chapter. (July 1, 1898, ch. 541, § 301, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 702. Application of other provisions.

The provisions of chapters 1—7 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Paragraph (3) was from fifth sentence of former section 202 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from sixth sentence of former section 202 (a) of this title.

Par. (2) was from second sentence of former section 202 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second sentence of former section 202 (m) of this title.

§ 713. Same; administration of estate.

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties conferred and imposed upon it by this chapter—

(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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (3) was from last sentence of former section 202 (d) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (n) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second sentence of former section 202 (m) of this title.

SUBCHAPTER IV.—PETITION AND STAY

§ 721. Filing petition; peuding 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

CROSS REFERENCES

Amendment of petition in corporate reorganization proceeding to comply with requirements of this chapter, see section 547 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

§ 724. Statements and fees accompanying petition.

The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statements of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

(2) 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, and amended July 7, 1952, ch. 579, § 29, 66 Stat. 432.)

AMENDMENTS

1952—Act July 7, 1952, amended section by incorporating former pars. (1) and (2) into par. (1) and adding a proviso, and by renumbering former par. (3) to be par. (2).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (2) was from first sentence of former section 202 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (a) of this title and second sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (a) of this title and second sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (*l*) of this title.

§ 728. Dismissal proceedings; amended petition.

The judge may, upon application of the Securities and Exchange Commission or any party in interest, and upon such notice to the debtor, to the Securities and Exchange Commission, and to such other persons as the judge may direct, if he finds that the proceedings should have been brought under chapter 10 of this title, enter an order dismissing the proceedings under this chapter, unless, within such time as the judge shall fix, the petition be amended to comply with the requirement of chapter 10 of this title for the filing of a debtor's petition or a creditors' petition under such chapter, be filed. Upon the filing of such amended petition, or of such creditors' petition, and the payment of such additional fees as may be required to comply with section 532 of this title, such amended petition or creditors' petition shall thereafter, for all purposes of chapter 10 of this title, be deemed to have been originally filed under such chapter. (July 1, 1898, ch. 541, § 328, as added July 7, 1952, ch. 579, § 30, 66 Stat. 432.)

EFFECTIVE DATE OF SECTION

Section as effective three months after July 7, 1952, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 10, §§ 1, 2, eff. May 24, 1950, 15 F. R. 3175, 64 Stat. 1265, set out in note under section 78d of Title 15, Commerce and Trade.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (o) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (b) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (c) of this title and second sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from second sentence of former section 30 (a) of this title.

Par. (3) was from first sentence of former section 202 (d) of this title and second sentence of former section 30 (a) of this title.

§ 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, in such amount as the court may allow, incurred after its appointment by a committee appointed pursuant to section 738 of this title, or incurred before or after the filing of the petition under this chapter by a committee designated in writings filed with the court and signed and acknowledged by a majority in amount of unsecured creditors whose claims have been scheduled otherwise than as contingent, unliquidated or disputed and who would not be disqualified by section 72 of this title to participate in the appointment of a trustee: *Provided, however,* That in fixing any such allowances the court shall give consideration only to the services which contributed to the arrangement confirmed or to the refusal of confirmation of an arrangement, or which were beneficial in the administration of the estate, and the proper costs and expenses incidental thereto; 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, and amended July 7, 1952, ch. 579, § 31, 66 Stat. 432.)

AMENDMENTS

1952—Par. (2) amended by act July 7, 1952, to substitute "in such amount * * * expenses incidental thereto; and" in lieu of "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".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from former section 202 (b) of this title.

Par. (2) was from second clause of first sentence of former section 202 (e) of this title.

Par. (3) was from former section 202 (f) of this title and former section 30 (c) of this title.

§ 738. Same; appointment of creditors committee; nomination of trustee.

At such meeting the creditors may appoint a committee, if none has previously been designated or

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, and amended July 7, 1952, ch. 579, § 32, 66 Stat. 432.)

AMENDMENT

1952—Act July 7, 1952, amended section by inserting "designation or" preceding "appointed under this title".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second clause of first sentence of former section 202 (d) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

[1] So in original.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (b) of this title.

§ 744. 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 adjudica-

tion 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from the last two sentences of former section 202 (a) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 754. Repealed. July 7, 1952, ch. 579, § 33, 66 Stat. 433.

Section, act July 1, 1898, ch. 541, § 354, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910, related to expiration of time for filing claims in pending bankruptcy.

EFFECTIVE DATE OF REPEAL

Repeal of section as effective three months after July 7, 1952, 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 claims for taxes legally due and owing to the United States or any State or any subdivision thereof at the time of the filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition was filed under section 721 of this title and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors: *Provided, however*, That if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title shall not be allowed in the reinstated bankruptcy proceeding. (July 1, 1898, ch. 541, § 354, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910, and amended July 7, 1952, ch. 579, § 34, 66 Stat. 433.)

AMENDMENTS

1952—Act July 7, 1952, renumbered former section 355 of act July 1, 1898, as added by act June 22, 1938, to be section 354 of said act July 1, 1898, and inserted "claims for taxes * * * petition under this title" and all text following "shall be allowed;".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from proviso to first sentence of former section 202 (j) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former section 202 (h) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Pars. (3) and (5) were from second sentence of former section 202 (h) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from former sections 30 (d) (3) and 202 (g) (4) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (e) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 and is feasible;

(3) 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

(4) 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.

Confirmation of an arrangement shall not be refused solely because the interest of a debtor, or if the debtor is a corporation, the interests of its stockholders or members will be preserved under the arrangement. (July 1, 1898, ch. 541, § 366, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911, and amended July 7, 1952, ch. 579, § 35, 66 Stat. 433.)

AMENDMENTS

1952—Act July 7, 1952, amended section by striking out the provisions relating to the proposed plan being "fair and equitable" and added the last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (g) of this title.

§ 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 (a) have been filed prior to the date of confirmation and are allowed or (b) whether or not filed have been scheduled by the debtor and are not contingent, unliquidated, or 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, and amended July 7, 1952, ch. 579, § 36, 66 Stat. 433.)

AMENDMENTS

1952—Par. (3) amended by act July 7, 1952, by striking out "are not barred by the provisions of section 754 of this title" following "whose claims", substituted "filed" in lieu of "proved" in two places and substituted "and are not contingent, unliquidated, or disputed;" in lieu of "as fixed liabilities, liquidated in amount, and are not disputed;".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from first sentence of former section 202 (i) of this title.

Pars. (3) and (4) were from first sentence of former section 202 (j) of this title and first sentence of former section 30 (e) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (j) of this title.

§ 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 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, and amended July 7, 1952, ch. 579, § 37, 66 Stat. 433.)

AMENDMENTS

1952—Act July 7, 1952, amended the first unnumbered paragraph of section by striking out "and not barred by the provisions of section 752 of this title."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 770. Allowance of debts; distribution of deposited consideration.

Upon the allowance of any debts specified in paragraphs (1)—(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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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, 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, and amended July 7, 1952, ch. 579, § 38, 66 Stat. 433.)

AMENDMENTS

1952—Act July 7, 1952, amended section by striking out "including the claims specified in section 754 of this title" following "the arrangement".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 776. Abandonment or rejection of arrangement before confirmation.

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 724 of this title, are not duly filed, or 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 title; 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, and amended July 7, 1952, ch. 579, § 39, 66 Stat. 434.)

AMENDMENTS

1952—Act July 7, 1952, amended section by adding "If a statement * * * are not duly filed or".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former section 202 (*l*) of this title and former section 30 (e) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former section 202 (*l*) of this title and former section 30 (e) of this title.

§ 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 bank-

ruptcy 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 fails 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (2) was from first sentence of former section 202 (*l*) of this title and second sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (*l*) of this title and former section 202 (p) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 781. Proceedings after confirmation of arrangement.

Where, after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement or in the order confirming the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

(3) the provisions of chapters 1—7 of this title, shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with. (July 1, 1898, ch. 541, § 381, as added July 7, 1952, ch. 579, § 40, 66 Stat. 434.)

EFFECTIVE DATE OF SECTION

Section as effective three months after July 7, 1952, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former sections 31 and 202 (k) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

CODIFICATION

Definition of "Securities Act of 1933" has been omitted at the end of subd. (b) of this section as unnecessary in view of translations in text to Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former sections 30 and 202 of this title, 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.)

AMENDMENTS

1940—Act July 1, 1940, added "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" in the first sentence and inserted second sentence.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280 set out under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former sections 30 and 202 of this title, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 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 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under sections 30 and 202 of this title 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, provided that: "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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 802. Application of other provisions.

The provisions of chapters 1—7 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 of this title 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—7 of this title. 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (5) was from sixth sentence of former section 202 (a) of this title.

Par. (6) was from fifth sentence of former section 202 (a) of this title.

Par. (7) was from second sentence of former section 202 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (m) of this title.

§ 813. Same; administration of estate.

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties conferred and imposed upon it by this chapter—

(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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (d) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (n) of this title.

CROSS REFERENCES

Petition as stay, see section 828 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second sentence of former section 202 (m) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

§ 824. Statements and fees to accompany petition.

The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statements of affairs, and such time shall not further be extended except for cause shown, and on such notice and to such persons as the court may direct; and

(2) payment to the clerk of the fees, if not already paid, required by this title. (July 1, 1898,

ch. 541, § 424, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918, and amended July 7, 1952, ch. 579, § 41, 66 Stat. 434.)

AMENDMENTS

1952—Act July 7, 1952, amended section by incorporating former pars. (1) and (2) into par. (1) and adding a proviso, and by renumbering former par. (3) to be par. (2) and substituting "required by this title" for "required to be collected by the clerk under this title."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (a) of this title.

§ 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 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. (July 1, 1898, ch. 541, § 425, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (a) of this title and second sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (a) of this title and second sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from first sentence of former section 202 (*l*) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Stay of actions generally, see section 814 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (*o*) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from first sentence of former section 202 (c) of this title and second sentence of former section 30 (a) of this title.

CROSS REFERENCES

Notices generally, see section 815 of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (c) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from second sentence of former section 30 (a) of this title.

Par. (3) was from first sentence of former section 202 (d) of this title and second sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from former section 202 (b) of this title.

Par. (2) was from first sentence of former section 202 (e) of this title.

Par. (3) was from former sections 30 (c) and 202 (f) of this title.

SUBCHAPTER VI.—TITLE, RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

§ 841. 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Receiver in equity, powers of, see section 959 of Title 28, Judiciary and Judicial Procedure.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former section 202 (b) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from last two sentences of former section 202 (a) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 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 claims for taxes legally due and owing to the United States or any State or any

subdivision thereof at the time of the filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed, and claims not already filed may be filed in accordance with the provisions of subdivision (n) of section 93 of this title. (July 1, 1898, ch. 541, § 459, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921, and amended July 7, 1952, ch. 579, § 42, 66 Stat. 434.)

AMENDMENTS

1952—Act July 7, 1952, amended section to permit claims to be filed within six months rather than three months when bankruptcy ensues upon failure of a plan and to include claims for taxes legally due and owing.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from former section 202 (h) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from second sentence of former section 202 (e) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from fourth sentence of former section 202 (g) of this title and third clause of former section 30 (d) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former section 202 (e) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 815 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) if is for the best interests of creditors and is feasible;

(3) 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;

(4) 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

(5) 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.

Confirmation of an arrangement shall not be refused solely because the interest of a debtor will be preserved under the arrangement. (July 1, 1898, ch. 541, § 472, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923, and amended July 7, 1952, ch. 579, § 43, 66 Stat. 435.)

AMENDMENTS

1952—Act July 7, 1952, amended section by eliminating the provision that a proposed plan must be "fair and equitable" and added last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section, except par. (6), was from former section 202 (g) of this title.

§ 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 and are not contingent, unliquidated, or 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, and amended July 7, 1952, ch. 579, § 44, 66 Stat. 435.)

AMENDMENTS

1952—Par. (3) amended by act July 7, 1952 to substitute "and are not contingent, unliquidated, or disputed" in lieu of "fixed debts, liquidated in amount and not disputed".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (1) was from first sentence of former section 202 (i) of this title.

Par. (3) was from former section 202 (j) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 881. Abandonment or rejection of arrangement before confirmation.

If the statement of the executory contracts and the schedules and statement of affairs, as provided

by paragraph (1) of section 824 of this title, are not duly filed, or 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, and amended July 7, 1952, ch. 579, § 45, 66 Stat. 435.)

AMENDMENTS

1952—Act July 7, 1952, amended section by adding "If a statement * * * are not duly filed, or".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first and second sentences of former sections 30 (e) and 202 (*l*) of this title.

§ 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 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, § 482, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from first and second sentences of former section 202 (*l*) of this title and from former section 30 (e) of this title.

§ 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. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Par. (2) was from second sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from last sentence of former section 202 (*l*) of this title and, in part, from former section 202 (p) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 886. Proceedings after confirmation of arrangement.

Where, after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the

property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement or in the order confirming the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

(3) the provisions of chapters 1—7 of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of entry of the order directing that bankruptcy be proceeded with. (July 1, 1898, ch. 541, § 486, as added July 7, 1952, ch. 579, § 46, 66 Stat. 435.)

EFFECTIVE DATE OF SECTION

Section as effective three months after July 7, 1952, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act of June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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. 296.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 815 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 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, and amended June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" in lieu of "circuit court of appeals".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1933, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from first sentence of former section 202 (m) of this title and second sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section in part was from first sentence of former section 202 (m) of this title and second sentence of former section 30 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

This section was from former sections 202 (k) and 31 of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, sce 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.)

REFERENCES IN TEXT

The National Housing Act referred to in the text, is classified to sections 371, 1131g–1, 1422, 1426, 1430, 1431, 1462, 1463, 1701, 1702, 1703, 1705, 1706, 1706b—1715, 1715b—1715h, 1716, 1717—1721, 1724—1730, 1732—1734, 1736—1748h and 1750—1750g of Title 12, Banks and Banking, section 22 of Title 41, Public Contracts, section 484d of Title 48, Territories and Insular Possessions, and section 22 of Title 49, Transportation.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

CODIFICATION

Definition of "Securities Act of 1933" has been omitted at end of subd. (b) of this section as unnecessary in view of translations in text to Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 926 of this title.

§ 921. Same; arrangement to evade.

Where it appears that an arrangement has for one of its principal purposes the evasion 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 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, 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.)

AMENDMENTS

1940—Act July 1, 1940, added "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" in the first sentence and inserted second sentence.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees

of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by 1950 Reorg. Plan No. 26, §§ 1, 2, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 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 920 and 922 of this title shall apply to compositions and extensions confirmed under section 202 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 202 of this title 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, provided: "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 13.—WAGE EARNERS' PLANS

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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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1002. Application of other provisions.

The provisions of chapters 1—7 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 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—7 of this title. 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 his other income, does not exceed $5,000 per year. (July 1, 1898, ch. 541, § 606, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930; amended Dec. 29, 1950, ch. 1193, 64 Stat. 1134.)

AMENDMENTS

1950—Paragraph (8) amended by act Dec. 29, 1950, which substituted "$5000" for "$3600".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the first sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the second sentence of former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Rejection of executory contracts as breach thereof, see section 103 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (n) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Mail, notices by, see section 1077 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the second sentence of former section 202 (m) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (a) of this title.

§ 1024. Statements and fees accompanying petition.

The petition shall be accompanied—

(1) by a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statement of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

(2) where a petition is filed under section 1022 of this title, by payment to the clerk of $15 to be distributed, $10 to the Treasury of the United States for deposit in the referees' salary fund and $5 to the clerk, in lieu of the fees of $17 and $8 as prescribed in sections 68 and 80 of this title: *Provided, however,* That such fees may be paid in installments, if so authorized by general order of the Supreme Court of the United States. (July 1, 1898, ch. 541, § 624, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932, and amended June 28, 1946, ch. 512, § 15, 60 Stat. 331; July 7, 1952, ch. 579, § 47, 66 Stat. 436.)

AMENDMENTS

1952—Act July 7, 1952, amended section by incorporating former pars. (1) and (2) into par. (1) and adding a proviso, and by renumbering former par. (3) to be par. (2).

1946—Par. (3) amended by act June 28, 1946, to make fees uniform with other bankruptcy fees, and to provide for their disposition.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE; REPEAL; ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and 202 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and 202 (a) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (o) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (c) of this title.

§ 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 clerk, for payment into the referees' expense fund a fee, not to exceed $15, to be graduated and charged in the manner outlined in paragraph (2) of subdivision (c) of section 68 of this title: *Provided, however,* That such fee may be paid in installments, if so authorized by General Order of the Supreme Court of the United States;

(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, and amended June 28, 1946, ch. 512, § 16, 60 Stat. 331.)

AMENDMENTS

1946—Par. (2) amended by act June 28, 1946, to make fees uniform with other bankruptcy fees.

EFFECTIVE DATE; REPEAL; ETC., OF 1946 AMENDMENT

Effective date; repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (a) and (c) and 202 (d) and (f) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in the proviso to former section 202 (h) of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (m) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

§ 1043. Repealed. July 7, 1952, ch. 579, § 48, 66 Stat. 436.

Section, act July 1, 1898, ch. 541, § 643, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933, related to expiration of time for filing claims in pending bankruptcy.

EFFECTIVE DATE OF REPEAL

Repeal of section as effective three months after July 7, 1952, 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 claims for taxes legally due and owing to the United States or any State or any subdivision thereof at the time of the filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition under this chapter was filed under section 1021 of this title, and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors: *Provided, however,* That if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title shall not be allowed in the reinstated bankruptcy proceeding. (July 1, 1898, ch. 541, § 643, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933, and amended July 7, 1952, ch. 579, § 49, 66 Stat. 436.)

AMENDMENTS

1952—Act July 7, 1952, amended credit of section by renumbering former section 644 of act July 1, 1898, as added by act June 22, 1938, to be section 643 of said act July 1, 1898, and to permit claims to be filed within six months rather than three months when bankruptcy ensues upon failure of a plan.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER VIII.—PROVISIONS OF PLAN

§ 1046. 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this were contained in former section 202 (h) of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (g) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (b) and 202 (e) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 1015 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 and is feasible;

(3) 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 the bankrupt; and

(4) 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.

Confirmation of a plan shall not be refused solely because the interest of a debtor will be preserved under the plan.

(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, and amended July 7, 1952, ch. 579, § 50, 66 Stat. 437.)

AMENDMENTS

1952—Subd. (a) amended by act July 7, 1952, to eliminate provisions that a proposed plan shall be "fair and equitable" and added last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 30 (d) and 202 (g) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (i) of this title.

§ 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (j) of this title.

§ 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 costs of the referee as specified in paragraph (2) of section 1033 of this title;

(2) the actual and necessary costs and expenses of the trustee;

(3) an additional fee for the referees' salary fund, to be graduated and charged in the manner outlined in paragraph (2) of subdivision (c) of section 68 of this title, and to be computed upon the amount of the payments actually made by or for a debtor under the plan; 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, and amended June 28, 1946, ch. 512, § 17, 60 Stat. 331.)

AMENDMENTS

1946—Pars. (1) and (3) amended by act June 28, 1946, to make fees uniform with other bankruptcy fees.

EFFECTIVE DATE; REPEAL; ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see notes set out under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former section 202 (j) of this title.

§ 1060. Discharge of debtor.

Upon compliance by the debtor with the provisions of the plan and upon 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, but excluding such debts as 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, and amended July 7, 1952, ch. 579, § 51, 66 Stat. 437.)

AMENDMENTS

1952—Act July 7, 1952, amended section by striking out "and all debts denied participation in the plan by section 1043 of this title" immediately preceding "but excluding debts which".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1061. Same; 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, but excluding such debts as 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, and amended July 7, 1952, ch. 579, § 52, 66 Stat. 437.)

AMENDMENTS

1952—Act July 7, 1952, amended section by striking out "and all debts denied participation in the plan by section 1043 of this title" immediately preceding "but excluding debts which".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

SUBCHAPTER X.—DISMISSAL AND ADJUDICATION

§ 1066. Procedure upon withdrawal, abandonment, or failure to accept plan.

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 1024 of this title, are not duly filed, or 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, and amended July 7, 1952, ch. 579, § 53, 66 Stat. 437.)

AMENDMENTS

Act July 7, 1952, amended introductory paragraph of section by inserting "If the statement * * * as the court may fix".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section as effective three months after July 7, 1952, see note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

§ 1069. Proceedings following confirmation of arrangement.

Where, after the confirmation of a plan, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the plan and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the plan or in the order confirming the plan, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the plan or in the order confirming the plan, less any payment made thereunder; and

(3) the provisions of chapters 1—7 of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the plan and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with. (July 1, 1898, ch. 541, § 669, as added July 7, 1952, ch. 579, § 54, 66 Stat. 437.)

EFFECTIVE DATE OF SECTION

Section as effective three months after July 7, 1952, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

PRIOR PROVISIONS

Provisions on this subject were contained in former sections 31 and 202 (k) of this title.

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.)

[1] So in original.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 1015 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, 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.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 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 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 202 of this title 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, provided: "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 the Merchant Marine Act, 1936, 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.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in the text, is contained in chapter 27 of Title 46, Shipping.

ABOLISHMENT OF COMMISSION AND TRANSFER OF FUNCTIONS

The United States Maritime Commission was abolished by 1950 Reorg. Plan No. 21, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1273, set out in note under section 1111 of Title 46, Shipping, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provisions that the Chairman of said Federal Maritime Board should, ex officio, be such Administrator.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 20, 1949, 14 F. R. 5228, 63 Stat. 1069. See note set out under section 1111 of Title 46, Shipping.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 the Merchant Marine Act, 1936, 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 the Suits in Admiralty Act. 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.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, and the Suits in Admiralty Act, both referred to in the text, are contained in chapters 27 and 20, respectively, of Title 46, Shipping.

ABOLISHMENT OF COMMISSION AND TRANSFER OF FUNCTIONS

The United States Maritime Commission was abolished by 1950 Reorg. Plan No 21, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1273, set out in note under section 1111 of Title 46, Shipping, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of said Federal Maritime Board should, ex officio, be such Administrator.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 20, 1949, 14 F. R. 5228, 63 Stat. 1069. See note set out under section 1111 of Title 46, Shipping.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, 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 the Ship Mortgage Act, 1920, 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.)

REFERENCES IN TEXT

The Ship Mortgage Act, 1920, mentioned in text, is contained in chapter 25 of Title 46, Shipping.

ABOLISHMENT OF COMMISSION AND TRANSFER OF FUNCTIONS

The United States Maritime Commission was abolished by 1950 Reorg. Plan No. 21, eff. May 24, 1950, 15 F. R. 3178, 64 Stat. 1273, set out in note under section 1111 of Title 46, Shipping, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of said Federal Maritime Board should, ex officio, be such Administrator.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 20, 1949, 14 F. R. 5228, 63 Stat. 1069. See note set out under section 1111 of Title 46, Shipping

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see note under section 1 of this title.

Chapter 15.—RAILROAD ADJUSTMENTS

§§ 1200—1255. Jurisdiction; definitions; petitions; hearings; proceedings; etc.

TERMINATION OF CHAPTER

This chapter, chapter XV of the Bankruptcy Act of July 1, 1898, ch. 541, §§ 700—755, as added by act Oct. 16, 1942, ch. 610, 56 Stat. 787, terminated by its own provisions on Nov. 1, 1945, except with respect to proceedings initiated on or before that date.

A prior chapter 15 of this title, chapter XV of the Bankruptcy Act of July 1, 1898, ch. 541, §§ 700—755, as added by act July 28, 1939, ch. 393, 53 Stat. 1134, terminated by its own provisions on July 31, 1940, except with respect to proceedings initiated on or before that date.

TITLE 12.—BANKS AND BANKING

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Chapter 1.—THE COMPTROLLER OF THE CURRENCY

Sec.
1. Bureau of Comptroller of the Currency.
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4. Deputy Comptroller.
5. Assistant Deputy Comptroller.
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7. Chief of examining division.
8. Clerks.
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9a. Salaries of Deputy Comptrollers, additional examiners, assistant examiners, clerks, and other employees.
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11. Interest in national banks.
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14. Report of Comptroller.
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§ 1. Bureau of Comptroller of the Currency.

There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds and, under the general supervision of the Board of Governors of the Federal Reserve System, of all Federal Reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency, and shall perform his duties under the general directions of the Secretary of the Treasury. (R. S. § 324; Dec. 23, 1913, ch. 6, § 10, 38 Stat. 261; June 3, 1922, ch. 205, 42 Stat. 621; Aug. 23, 1935, ch. 614, § 203 (a), 49 Stat. 704.)

DERIVATION; NATIONAL BANK ACT

Section derived from act June 3, 1864, ch. 106, § 1, 13 Stat. 99, which was the National Bank Act. See section 38 of this title.

CHANGE OF NAME

Act Aug. 23, 1935, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 2. Comptroller of the Currency; appointment; term; salary.

The Comptroller of the Currency shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office for a term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate; and he shall receive basic compensation at the rate of $16,000 per annum. (R. S. § 325; Aug. 23, 1935, ch. 614, § 209, 49 Stat. 707; Oct. 15, 1949, ch. 695, § 4, 63 Stat. 880.)

DERIVATION; NATIONAL BANK ACT

Section derived from act June 3, 1864, ch. 106, § 1, 13 Stat. 99, which was the National Bank Act. See section 38 of this title.

AMENDMENTS

1949—Act Oct. 15, 1949, increased Comptroller's compensation from $15,000 to $16,000 per annum.

EFFECTIVE DATE OF 1949 AMENDMENT

The increased compensation provided for by act Oct. 15, 1949, took effect on the first day of the first pay period which began after Oct 15, 1949, by the provisions of section 9 of said act Oct. 15, 1949, which is set out as a note under section 3 of Title 5, Executive Departments and Government Officers and Employees.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

§ 3. Oath and bond of Comptroller.

The Comptroller of the Currency shall, within fifteen days from the time of notice of his appointment, take and subscribe the oath of office; and he shall give to the United States a bond in the penalty of $100,000, with not less than two responsible sure-