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Suspension of State Insolvency Lawsby Federal Backruptcy Act

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Notes

SUSPENSION OF STATE INSOLVENCY LAWS BY FEDERAL BANKRUPTCY ACT

The Constitution of the United States confers on Congress the power to enact "uniform laws on the subject of bankruptcies throughout the United States".[1] Is this power exclusively in Congress or may the various states also enact bankruptcy or insolvency laws? If the power in the states is concurrent with that of Congress until the exercise of the power by the latter, what is the extent of the effect to be given to the enactment by Congress of bankruptcy laws? In its varying phases, these questions have been judicially discussed ever since the adoption of the Constitution and are, even yet, not uniformly decided by the various courts.

It was early decided that the mere existence of the power in Congress, when not exercised, did not prevent state legislation on the subject.[2] This question is now a moot one and likely to remain so indefinitely.

Since Congress first exercised its power by enacting a bankruptcy law in 1800,[3] the more difficult problem of the effect of the exercise by Congress of its power on the operation of state statutes on insolvencies or bankruptcies has been reappearing constantly. Because the Act of July 1, 1898,[4] and its amendments have so largely covered the field, the most acute problem has been the effect of state insolvency laws on persons exempted from either voluntary or involuntary proceedings or both under the federal act. The Bankruptcy Act excepts from involuntary proceedings wage-earners or persons engaged chiefly in farming or tillage of the soil.[5] It also requires that the one against

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[1]Article 1, Section 8, Clause 4.

[2]Sturges v. Crowninshield, 4 Wheaton 196 (1819); Ogden v. Saunders, 12 Wheaton 213 (1827) and Farmers' Bank v. Smith, 3 S. & R. 63 (1817) reversed on other grounds—6 Wheaton 131 (1821).

[3]April 4, 1800, 2 U. S. St. at L. 19.

[4]30 U. S. St. at L. 544.

[5]Bankruptcy Act, Section 4, subdivision b,

whom proceedings are taken shall owe one thousand dollars or over.[6] To what extent, if any, does the Insolvency Act of Pennsylvania[7] apply to these persons?

The first Bankruptcy Act of 1800[8] contained an express provision that it should not repeal or annul any present or future laws of any state except so far as the same might affect persons who were or might be within the purview of that act.[9] The opinion has been expressed that the question would not be difficult under that act and that it was unfortunate that the later acts did not contain the same or some similar provision declaring its effect on state insolvency laws. But the question as to what was meant by those "within the purview" of the act would still be difficult of solution. Are those expressly exempted from only one of the two procedures in the Bankruptcy Act within the "purview" of it?

The opinion has been expressed by many courts and writers that the state laws are suspended only in so far as they are in conflict with the federal Bankruptcy Act. Since that act excludes wage-earners and farmers and persons owing less than one thousand dollars from those who may be adjudged involuntary bankrupts, no conflict was seen in a state law allowing involuntary insolvency proceedings to be taken against such persons. Exclusion by Congress was not considered equivalent to an expression of intent that such persons were to be free from all involuntary proceedings in bankruptcy or insolvency, either federal or state.[10]

This view has been consistently upheld by the Superior Court of Pennsylvania. Numerous cases decided in this court hold that the federal Bankruptcy Act does not suspend the operation of the Pennsylvania Act in its application to farmers. These cases hold that there may be in-

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[6]Bankruptcy Act, Section 4, subdivision b.

[7]June 4, 1901, P. L. 404.

[8]See note 3.

[9]Section 61.

[10]See Collier on Bankruptcy, (13th ed., 1923) vol. 1, page 9 et seq.; 7 C. J. 21-25; 11 U. S. C. A. page 6 et seq.; L. R. A. 1917 A. 109 n.

voluntary proceedings under the state act against farmers and wage-earners.[11] The same has been held as to persons owing less than one thousand dollars.[12]

Several Supreme Court of Pennsylvania cases suggested the problem but did not decide it, either deciding on other grounds or holding that the question was not raised below or argued on appeal.[13] The question was discussed, however, in a case decided in 1930.[14] The Court cites with approval the holding of the Superior Court that the state act is not suspended as to those excluded from the operation of the federal act, such as farmers. The Court also declares that the state act is valid and enforceable in cases where there is no exception in the federal act unless and until the federal act is called into operation by appropriate proceedings. Under this holding there is no automatic suspension of the state act but either system is available to creditors or debtors until the superior system is made effective by taking the necessary steps to call it into force.

The latest United States Supreme Court decision discussing suspension of state insolvency laws by the Bankruptcy Act of 1898 is *International Shoe Co. v. Pinkus*.[15] The case involved voluntary proceedings taken under a state insolvency law by a merchant who owed debts amounting to ten thousand dollars. The case is not, therefore, a direct authority on the question of the effect of the Bankruptcy Act on state insolvency laws in so far as they apply to persons excepted from the national act since the debtor

[11]Potts v. Smith Mfg. Co., 25 Pa. Super. Ct. 206 (1904); Citizens' Bank v. Gass, 29 Pa. Super. Ct. 125 (1905); Charles v. Smith, 29 Pa. Super. Ct. 594 (1905); Rittenhouse's Insolvent Estate, 30 Pa. Super. Ct. 468 (1906); Miller v. Jackson, 34 Pa. Super. Ct. 31 (1907) and Hoover v. Ober, 42 Pa. Super. Ct. 308 (1910). See also 39 P. S. Sec. 1, historical note and notes 1-3, 5, 6.

[12]Landis Machinery Co. v. Cooper, 53 Pa. Super. Ct. 416 (1913)—in this case a corporation.

[13]Beck v. Parker, 65 Pa. 262 (1870); Barber v. Rogers, 71 Pa. 362 (1872); Strawn v. Iams, 247 Pa. 132 (1915).

[14]Walker v. Emerick, 300 Pa. 9, 13 (1930).

[15]278 U. S. 261 (1929); 49 Sup. Ct. Rept. 108; 73 L. Ed. 318—opinion by Mr. Justice Butler with Mr. Justices McReynolds, Brandeis, and Sanford dissenting without an opinion.

was not within the excepted class. However, the reasoning used to justify the holding that the state act was suspended discloses a broad effect to be given the suspensory power of the Bankruptcy Act and is equally applicable to the question being discussed by us.

Mr. Justice Butler says, "The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount. The purpose to exclude state action for the discharge of insolvent debtors may be manifested without specific declaration to that end; that which is clearly implied is of equal force as that which is expressed. * * * * The general rule is that an intention *wholly to exclude state action* will not be implied unless, when fairly interpreted, an act of Congress is plainly in conflict with state regulation of the same subject. * * * * In respect of bankruptcies the intention of Congress is plain. The national purpose to establish uniformity necessarily excludes state regulation. * * * * Congress did not intend to give insolvent debtors seeking discharge, or their creditors seeking to collect their claims, choice between the relief provided by the Bankruptcy Act and that specified in state insolvency laws.[16] States may not pass or enforce laws to interfere with *or complement* the Bankruptcy Act or to provide additional or auxiliary remedies. * * * * It is clear that the provisions of the Arkansas law governing the distribution of property of insolvents for the payment of their debts and providing for their discharge, or that otherwise relate to the subject of bankruptcies, *are within the field entered by Congress* when it passed the Bankruptcy Act and

[16]This statement seems contrary to that in 300 Pa. at 13, where the Court said that in cases covered by the federal act, the state laws are effective until the national laws are called into operation by appropriate proceedings. This would give the choice that the U. S. Supreme Court says was not intended. See also Hull's Assigned Estate, 25 Pa. C. C. 353 where Stewart, J. holds that suspension only occurs when the Bankruptcy Act is actually resorted to by debtors or creditors. Cf. Littlefield v. Gay, 52 Atl. 925 (Me. 1902) where the Court holds the suspension to be automatic. See also 14 Dickinson Law Review 174-176.

therefore such provisions must be held to have been superseded. * * * * *The enforcement of state insolvency systems,* whether held to be in pursuance of statutory provisions or otherwise, *would necessarily conflict with the national purpose to have uniform laws on the subject of bankruptcies throughout the United States.* * * * * And, as the *passage* of the Bankruptcy Act superseded the state law, at least in so far as it relates to the distribution of property and releases to be given, plaintiff in error is entitled to have its judgment paid."[17]

The Court, therefore, clearly held that when Congress entered the field of bankruptcy laws, i. e., laws for the distribution of the property of insolvent debtors and releases from debts, the entire field is covered, either expressly or impliedly, by the federal legislation and nothing remains on which state laws may operate. This suspension of state laws occurs automatically by virtue of the act of Congress and does not await or depend upon the resort by either creditors or debtors to the proceedings provided by the federal act.

That entry into the field of bankruptcy laws precludes any state legislation on the same subject is demonstrated by the cases cited by the Supreme Court. *N. Y. C. R. R. v. Winfield*[18] is cited. That case held that Congress by enacting the Federal Employers' Liability Act covered the whole field of injuries occurring to employees in interstate commerce, leaving nothing on which state laws could be operative. *Prigg v. Pennsylvania*[19] is also cited as analogous. The question of the suspension of state laws arose under the Fugitive Slave Act of Congress. In holding that the state law was suspended, Mr. Justice Story used language that would be equally applicable to our situation. He said, inter alia, "The Act may be said to cover the whole ground of the Constitution * * * * not because it exhausts the remedies which may be applied by Congress to enforce the rights * * * * but because it points out fully all the modes

[17]Italics in opinion added.
[18]244 U. S. 147 (1917).
[19]16 Peters 539, 617 (1842).

of attaining those objects which Congress, in their discretion, have as yet deemed expedient or proper to meet the exigencies of the Constitution. * * * * In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates, that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. * * * * For, if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the state legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose".

Applying the doctrine of the *Pinkus* case, there can be no involuntary proceedings under the state insolvency act against wage-earners, farmers, or persons owing less than one thousand dollars. Congress by enacting the Bankruptcy Act has exhausted the field of legislation on this subject so far as the states are concerned. Congress, by exempting those enumerated from involuntary proceedings has declared, in effect, its will that such persons may not be compelled to hand over their property for distribution.[20] The supremacy of the federal law is a myth and a delusion if in the face of these express exemptions, a state may compel involuntary distribution of their property by such persons. We must conclude that the Pennsylvania decisions enumerated above can no longer be considered the law in view of the holding of the Supreme Court of the United States in the *Pinkus* case.

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[20]Cf. Closser v. Strawn, 227 Fed. 139 (D. C. Pa. 1915). With this case the Circuit Court of Appeals—3rd Circuit—Pa.—disagreed. In re McElwain, 296 Fed. 112 (1924). This latter case is clearly erroneous and holds that the Pa. Act of 1901 is not a bankruptcy act. Cf. with principal case on this point.