3-1-1934

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Recommended Citation
Chas H. Kinnane, Some Aspects of Section Seventy-Four of the Bankruptcy Act, 9 Notre Dame L. Rev. 291 (1934).
Available at: http://scholarship.law.nd.edu/ndlr/vol9/iss3/3

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SOME ASPECTS OF SECTION SEVENTY-FOUR OF THE BANKRUPTCY ACT*

INTRODUCTION

It is not necessary to advert in detail to the many efforts made in recent months by our federal government to provide relief from the consequences of the depression. Among other efforts made, some have been directed toward the prevention of forced liquidations by embarrassed debtors, for such liquidations are not only costly and distressing to the debtors and frequently to the creditors directly concerned, but have served to drive down prices, wipe out equities, destroy credit, and these consequences in turn have served to cause still other liquidations, so that the evils consequent upon the use of the forced-liquidation-method of settlement seem to have increased almost as if by a geometrical progression; so that each new financial collapse is not only one more case but perhaps itself the cause of many more failures. One effort to prevent the further downward course of values has been to provide for types of settlement between debtors and creditors which will not require resort to the harsh and wasteful forced liquidation method.

Section 74 of the Bankruptcy Act, which is the subject of this article, is one of the results of this effort. This section seems designed to afford a means of avoiding the forced liquidations that are the normal result of liquidation by insolvent debtors in bankruptcy cases at least. And while it is not proposed at this time to discuss by any means all the problems that might arise under Section 74, it is hoped that some of the principal features of this section, as bearing on

*The writer wishes to acknowledge his indebtedness to the following persons for their valuable discussions of the provisions of Section 74 of the Bankruptcy Act: Garrison, in the June, 1933, issue of the American Bar Association Journal, p. 330; King, in the April, 1933, issue of the Journal of the National Association of Referees in Bankruptcy, p. 98; and Weinstein, in the July, 1933, issue of the latter publication, p. 140.
the question of whether the design has been carried out effec-
tively or not, and as bearing on the matter of offering general
information on a subject of interest to lawyers, may be pre-
sented in such a way as to be of some value to the profes-
sional reader, even if only in some instances to put him on
notice as to some of the problems involved when it comes
to using this section.

THE BACKGROUND

To give a brief setting to the ensuing discussion, it might
be pointed out that bankruptcy reform has been in the air
for several years. With the continuation of the depression,
reform movements in bankruptcy were given a new trend to
fit in with the growing sentiment in favor of providing relief
for embarrassed debtors, and, omitting details here, it may
be sufficient to state that the spirit animating relief laws in
general found an outlet in projected extensive changes in
the bankruptcy law. The debtor relief program, as a prac-
tical matter, was virtually compelled to center around the
bankruptcy law, for there is no constitutional objection to
impairing the obligation of contract in bankruptcy proceed-
ings and impairment of the obligation of contract is almost,
if not entirely, indispensable to an effective program of
debtor relief. It was planned indeed, to afford relief to about
all who might be in need of it under new sections of the
bankruptcy law. For example, one part of the plan called
for relief of corporations in general; another for relief to
railroad corporations; and another for relief to municipal
corporations; another for relief of farmers; and another for
relief of individual debtors other than farmers. In all these
cases relief was to be provided to a greater or less extent by
permitting compositions or extensions of time, and all of
these relief devices were to be under the control and supervi-
sion of the bankruptcy courts, and to be conducted pursuant
to new provisions of the bankruptcy law, and were to be
classed as bankruptcy proceedings, although of a special
kind outside of the normal course of hitherto familiar proceedings in bankruptcy.

These projects were carried out in one form or another except in the cases of non-railroad and municipal corporations. The projects for the relief of, and reorganization of railroads, for the relief of farmers, and for the relief of individual debtors were embodied in the Act of March 3, 1933, which added a new Chapter 8 to the bankruptcy law. The title of this chapter is significant. That title is: “Provisions for the Relief of Debtors.” That title in itself indicates to those familiar with the bankruptcy law more perhaps than could be told in an hour. For the benefit of those not familiar with the bankruptcy law, it might be said that the new title indicates, not provisions for the continued normal liquidation of the estates of debtors as under the older sections of the law, but an entirely different type of provision, namely, one for the affording of relief to debtors in lieu of the older proceeding to liquidate by forced sale upon an already depressed market.

As to the details of the railroad section—now section 77 of the Bankruptcy Act—it will only be said that, as they are outside the scope of the present subject, they will not be gone into here, except to say that the section seems to be sufficiently workable to have been used in a few cases shortly after its passage. As to the farmer relief section, namely section 75, it also is outside of the scope of our subject, but in passing it might be said briefly that the writer is of the opinion that it is so cumbersome as to be practically unworkable; that it seems not to have been used; and that in any case the greatest value of the section will probably lie in its unintended effect of providing employment for printers of federal statutes. In any case it will cease, by its own provisions, to operate after five years. As to corporations in general, and municipal corporations, as already noticed, no relief was provided for them. What will be done at the next
session of Congress with respect to relief for them lies in the field of prophecy. The section providing for the relief of individual debtors is, however, within our subject, and it is now proposed to examine some aspects of this section.

**SOME OF THE PROVISIONS OF SECTION 74**

For the benefit of those not already familiar with the provisions of section 74, it might be desirable to review briefly some of the matters provided for in the section, as a preliminary to a discussion of the problems arising under it. The catch line for the section is “Compositions and Extensions,” which suggests that the relief designed for individual debtors is to come under one or the other of these heads. It should be noticed that corporate debtors are expressly excepted by the terms of the section from the class of debtors for whom relief is provided. Here is a very important limitation on the scope of the section, a narrowing of the relief plan, that must be kept in mind constantly in connection with any effort to evaluate the importance or usefulness of the section. The corporate debtor, embarrassed by a boom-time bond issue, cannot look to this section for relief from its difficulties. Farmers are provided for in another section.

Assuming a non-corporate debtor such as the section contemplates, that debtor may apply for relief in one of two ways, and may apply for one of two kinds of relief, namely by composition or extension of time. As to the method of application, the debtor, on analogy to voluntary proceedings in bankruptcy, may on his own initiative file a petition for relief. Or the debtor may stop involuntary bankruptcy proceedings pending against him by filing an answer in which he seeks relief under the section. In either case, whether he invokes the relief jurisdiction by petition, or by answer in involuntary bankruptcy proceedings, the debtor must allege that he is insolvent or that he is unable to meet his debts as they mature and that he wished to effect a composition,
or extension of time in which to pay his debts. (In passing it might be noticed that the allegations seem to restrict the proceedings more narrowly than on a voluntary bankruptcy petition, in which it does not appear to be necessary that the debtor be either insolvent or unable to pay.) The debtor is restricted in applying for relief under the section when involuntary bankruptcy proceedings are already pending against him, by the requirement that his answer asking for relief must be in by the time allowed for his answer in bankruptcy. Under the terms of the section, it seems that a request for relief after that date is too late.

The judge is to enter an order upon the filing of the debtor's petition or answer, approving it as properly filed or dismissing it. If the order approves the application for relief, adjudication is to be stayed in order to permit the relief provisions to operate. No adjudication, or even liquidation, is to occur unless the relief provisions cannot be availed of. It should be noticed, therefore, that there is a sharp distinction between bankruptcy proceedings and relief proceedings, for the normal incidents of bankruptcy are suspended in order to permit the debtor to secure the relief provided for by the section. The very title of the chapter also indicates this distinction for this chapter is a chapter for the relief of debtors—not a chapter for bankrupts. And the section itself refers to the debtor as a debtor, and not as a bankrupt. In the normal case where relief is obtained under section 74, there is to be no proceeding in bankruptcy at all, and the debtor supposedly is not to bear the stigma of being called and adjudicated a bankrupt.

The original stay of the bankruptcy proceedings in involuntary cases is conditional upon the giving of indemnity against loss of assets due to the delay. There is no such indemnity provision in the case of an original petition by the debtor for relief, for in such cases there are no pending bankruptcy proceedings to be stayed. In general, indemnity is to
be given at various stages of the relief proceedings in order to insure against loss, when such proceedings may involve delay.

A receiver or custodian may be appointed for the debtor's property on notice to creditors and attorneys of record. The custodian or receiver is to inventory the estate and exercise control over it as creditors at the first meeting may direct. The possibility that the debtor may be divested of control of his estate, should therefore be noticed, even though no bankruptcy proceedings are involved. Provision is made for the prompt calling of the first meeting of creditors, and the custodian or receiver, or if none is appointed, the court is to give notice of the debtor's proposal, together with a summary of the debtor's assets and financial condition as shown by his schedules (which he is required to file, much as in bankruptcy proceedings), and a list of the 15 principal creditors. This requirement seems designed to provide for informing the creditors as to the debtor's general financial condition before the meeting of the creditors is held, so that they may be in a position to prepare in advance for such meeting with fairly definite information as to the debtor's situation. Creditors may appear at or before the first meeting and controvert the facts alleged in the debtor's petition or answer, and the court is required to hear such controversy promptly. The word "court" includes the referee, so such proceedings may be more expeditious than would be the case usually if the judge had to hear the controversy. If the allegations of the debtor's petition or answer are not found to be true, the petition or answer is to be dismissed. If it is not dismissed, creditors may examine the debtor at the first meeting, and nominate a trustee. It should be noticed that the creditors only nominate a trustee, for the trustee is not to act unless the relief proceedings fall through, and liquidation is necessary. This feature again serves to distinguish ordinary bankruptcy, from relief proceedings. The court—including the referee—can speed up the procedure by requir-
ing that the application for confirmation of the debtor's proposal shall be made within a specified reasonable time. Provision is made for hearing the application and objections thereto. In case confirmation is denied, or in case the debtor fails to meet the conditions imposed by law or by the agreement, the debtor's estate may be liquidated, in some cases without, and in others with, an adjudication. Details as to this will be gone into later.

Perhaps the more important points to keep in mind, out of the foregoing summary, are these: That relief is limited to non-corporate debtors; That there are two ways in which the debtor may apply for relief, namely, by voluntary petition, or by answer in involuntary bankruptcy proceedings; That the proposal of the debtor may be for one of two kinds of relief, namely, for a composition, or for an extension of time; That adjudication may be stayed on condition that indemnity against loss of assets is given; That neither adjudication nor liquidation occurs as a matter of course, but only in case the relief proceedings fall through; That creditors are protected by the requirement of confirmation of the debtor's proposal by the court; and That the possibility of liquidation and even of adjudication as a bankrupt lurks in the background, as the alternative to failure to have the debtor's relief proposals accepted, confirmed and executed.

Some Problems Arising Under Section 74

Section 74 is long and complicated. It contains some 1800 words and some 16 sub-sections. It was hastily prepared and enacted. It bears evidence of what is the fact, that Congress wanted to afford relief and yet was afraid to go too far, and as it did not have time to learn what it was doing or how far it was going, it tried to play safe in several instances by taking back in one phrase, what it appeared to give in another. Many parts of the section are obscure, and seemingly necessary provisions are lacking. The relation to other pro-
visions of the bankruptcy law is not clear in many cases. It is impossible therefore, in the space available to attempt to cover all the points that might arise under this section, even if one could see them all. The present effort will accordingly be devoted only to noticing some of the general matters arising under the section.

**Avoidance of Liquidation**

At the outset, it should be observed that the section purports to provide something new to bankruptcy legislation in this country, and that is in the provisions designed to avoid the necessity for liquidation of the debtor's estate. Liquidation is to be resorted to only after other possibilities fail. This is in striking contrast to the older bankruptcy law under which liquidation was the normal means of settling the affairs of the debtor. (Reference will be made shortly to another mode of settlement, by means of a composition in bankruptcy under section 12.)

**Avoidance of the Stigma of Bankruptcy**

Another thing to notice, which may be of importance to some individual debtors, is the effort made to induce embarrassed debtors to avail themselves of the provisions for relief through compositions, or extensions of time, without incurring the stigma of bankruptcy. This section is not in any strict sense designed to be a bankruptcy section at all. The debtor is referred to as a debtor and not as a bankrupt. The section is in a debtor's relief chapter. The composition or extension is designed to be a debtor's and not a bankrupt's composition or extension. In case everything works out well, there is to be no proceeding in bankruptcy, and even pending bankruptcy proceedings may be stayed in involuntary cases. There is to be no adjudication of bankruptcy, and no liquidation of a bankruptcy estate except when the relief machinery fails to function as intended. While this appears to be entirely novel, it should be noticed, however, that under
section 12 of the older law, relating to compositions in bankruptcy, it was possible to offer a composition before adjudication and to have adjudication stayed in such a case on giving security, and so avoid the stigma of a technical adjudication as a bankrupt—although not the stigma of having been involved in bankruptcy proceedings.

No Relief to Corporations

Another important point is that corporations are wholly and expressly excluded from having the benefits of the relief provisions of section 74. Since the broad definition of corporations under section 1 (6) of the bankruptcy act is presumably applicable, this means in effect that the relief provisions are available only to individuals and general partnerships.

Assets and Exemptions

The assets involved in the new relief proceedings are in general the same as those involved in bankruptcy proceedings. Exemptions given by section 6 of the bankruptcy law are expressly preserved to debtors seeking relief under section 74, by sub-section (h) of the latter section. In general it would appear therefore that the debtor has no chance of losing substantially more, and that the creditors have no chance of getting more than in strict bankruptcy proceedings. These chances may, however, vary, depending on whether costs and expenses may be less in relief proceedings, and whether the debtor may use after acquired assets to pay off creditors under the composition or extension agreement.

Jurisdiction Over Persons

Jurisdiction over persons is much the same as in bankruptcy, except that, as noticed, corporations cannot have the benefit of the relief proceedings. Classes exempt from involuntary bankruptcy proceedings, such as wage earners and farmers, are in much the same situation under the relief
section, that is, they are not denied the benefit of the act as voluntary parties, but they may not be adjudicated bankrupts without their consent, even if the relief proceedings fall through so that liquidation and adjudication would be the normal consequence of such failure in the case of non-exempt classes.

**Bankruptcy Compositions Not Abolished**

Another point to notice is that the old composition proceedings under section 12 of the bankruptcy law are not done away with. This is doubly significant. Corporations which are deprived, as we have noticed, of the right to compose or extend under section 74 are still able to compose with their creditors under section 12. And since individual debtors are offered only a new method of settlement with creditors by section 74, and are not deprived of the right to offer and effect a composition under section 12, there are now two competing composition sections in the bankruptcy law, one a bankruptcy section, and the other a debtor's relief section, available to individuals. The result is that while section 74 is complicated enough, there is a further element of complication in the necessity for knowing when to use the one section and when to use the other.

**Extensions of Time**

It should be noticed that there are some substantial reasons for giving consideration in the case of individuals, to the problem of whether to seek a composition under section 12, or under section 74, for there are some serious defects in section 74, and in so far as it may be desired only to secure an extension of time in which to pay unsecured debts, section 12 is adequate to permit the accomplishment of the object, for the "consideration" required to be deposited under section 12 need not be money. The language of section 12 is that the "consideration" be deposited. The courts have allowed the consideration to take the form of notes payable
at a future date, so that in effect an extension of time may be had in some cases, even under the old law. So section 74 is not the only section to be kept in mind in case it is desired to effect an agreement for an extension of time—a moratorium in other words.

**Contingent Claims in Extension Cases**

On the other hand, there are features in section 74 that are not duplicated in the old composition section. Section 74 is designed to permit the offer and confirmation not only of composition agreements, but also of extension agreements, and in connection with such extension, as distinguished from composition, agreements there are two major points that deserve consideration. The first is that contingent claims in general, including the much discussed landlord's claim for rent accruing after bankruptcy are to be liquidatable and provable, although contingent claims are not provable in bankruptcy proceedings proper. The significance of these provisions is that the landlord has a chance, like other creditors, to get at least something out of the presently available assets. And the same is true with respect to holders of other contingent claims. There is also some advantage to the debtor for in normal bankruptcy cases the debtor notwithstanding his discharge is left in many cases burdened with large liabilities in the form of unprovable and so undischargeable contingent obligations. It should be noticed, however, that contingent claims are so made provable only in extension, and not in composition cases under section 74.

**Secured Claims in Extension Cases**

The second exclusive feature of the extension, as distinguished from composition, provisions of section 74 is that relating to secured claims. In bankruptcy proceedings proper such claims are in general not affected. Under section 74 such claims may be materially affected as part of the program of giving debtors relief through extensions of time.
First, however, it should be noticed that the definition of "secured claims" that may be affected in extension cases is a much narrower one than would be supposed by one knowing only in a general way that secured claims can be affected. As a consequence of the narrowness of the definition, there are in fact many instances where secured claims cannot be affected at all by extension agreements. For section 74 (h) permits secured claims to be affected only when the security is held actually or constructively by the debtor or by his receiver or custodian. Thus claims secured by mortgages of land may be affected by extensions of time, while the secured claim of a holder of collateral cannot be since the security is held by the creditor, rather than by the debtor or his custodian or receiver. Banks in particular are in a position to liquidate their secured claims in many instances, notwithstanding the relief provisions in section 74, and of course if the debtor owes secured obligations of this kind, it may be a matter for careful consideration whether when relief cannot be obtained as to such obligations, there is any substantial possibility of obtaining a sufficient amount of other relief to make it worth while to seek an extension of time. Whether the presumed Congressional purpose of affording relief through moratoria on secured claims has been unduly thwarted by the narrowness of the definition of secured claims—whether what appears to be given by one hand is taken back with the other—is another matter.

**Extent of Effect on Secured Claims**

As already stated, it is only in cases where an extension proposal is made and approved under section 74 that secured and priority claims can be affected at all. But even in extension cases, there is no authority under section 74 for any obligatory reduction in the amount or the lien of the secured claim. Sub-section (i) expressly provides that the amount of the claim shall not be reduced and that the lien shall not be impaired. At most, the extension agreement is permitted
to affect only the *time and method* of liquidation of secured claims. It should be observed, however, that while the relief provisions as to extensions of time may be considered to be so narrow as to preclude relief in many cases, because of the narrow definition of secured claims, or because of the limited effect of an extension upon such claims, still there is the possibility that the mere gaining of time in which to pay may be of considerable benefit in many other cases. At any rate, this is about all the relief that can be obtained in cases of secured claims. It may appear again therefore that Congress has been less generous with its relief provisions than is sometimes supposed.

**Overlapping of Compositions and Extensions**

While section 74 purports to make a distinction between the two forms of relief provided for, namely by way of composition and by way of extension, and while in the foregoing discussion that distinction has been recognized, it should be noticed that while the section contains provisions applicable to the one proceeding or the other, it does not in terms define either a composition or extension, or limit the scope of the relief proceedings so as to make them in all cases mutually exclusive. On analogy to the practice on bankruptcy composition under section 12, it would seem possible to effect an extension of time even in a composition proceeding by a deposit of notes instead of cash or securities or other property, as indicated above, and that such deposit would constitute a deposit of the required "consideration" in compositions under section 74, as well as in compositions under section 12. Accordingly, it would seem that a composition would not exclude an extension. On the other hand, the terms that may be incorporated into an extension proposal under section 74 are not limited so as to exclude the possibility of a composition forming part of an extension agreement. Accordingly, it is worth noticing that it should not be assumed that a composition means a present payment of
part of the debts, and that alone, or that an extension means only an extension of time without composition features, at least with respect to unsecured claims, for the prohibition against reduction of the amount of the creditors’ claims applies only in the case of secured claims. Again, it might be noticed that there appears to be no obstacle to a reduction in the amounts to be paid even on secured claims if the creditors to be affected thereby should all consent, even though the assent of a majority is all that is required as far as the extension features of the agreement would be concerned. It would seem, however, that the provision restricting the provability of contingent claims to cases where extensions only are involved will require the preservation of a distinction between compositions and extensions where such claims are involved.

**Extension Terms**

Another point worth noticing is that there is considerable freedom allowed to the debtor and his creditors with respect to the terms which an extension agreement may include. Such extension agreement may provide for priority between secured and unsecured creditors; may provide for specific undertakings by the debtor, including payments on account, and so presumably for installment payments in general; may provide for supervisory or other control over the debtor’s affairs, by the creditors or a committee of them, or in other ways; and may provide for the termination of the extension agreement on contingencies to be specified. Such contingencies might well include a default by the debtor, or the payment by the debtor in advance of the time specified, if things go well with him, or the payment of a certain percentage of his debts in case he fails to prosper abundantly—and so, in effect, amount to an executory composition.

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1 See section 74 (i).
Priority Claims

In connection with priority claims, as distinguished from secured claims on the one hand and unsecured general claims on the other, it should be observed that the same priority is given expressly by sub-section (j) of section 74, that is given by section 64 of the Bankruptcy Act to such claims in bankruptcy proceedings proper. This priority is given in both composition and extension cases under section 74. In connection with this matter, it should be observed that section 74 has substantially the same requirements as to the deposit of money or security to pay off priority claims (and costs) as old section 12 on bankruptcy compositions, and that therefore the debtor’s relief plans under section 74 would be likely to break down just as they might under section 12 because of the inability of the debtor to make the required deposit of ready funds or security, when the aggregate of priority claims is large. It should be noticed, therefore, that here is another rather stringent requirement which may serve to correct any misimpression that relief follows almost as a matter of course from the mere fact of financial embarrassment.

Majority Control

The majority control features familiar under section 12, the bankruptcy composition section, are preserved under section 74, so that no application can be made for a confirmation of the debtor's proposal, whether for a composition or an extension, until the majority of creditors, whose claims, if unsecured, have been allowed, or, if secured, are proposed to be affected by an extension proposal, which number of creditors must represent a majority in amount of such claims, have accepted the proposal in writing. Here again is an important limitation which prevents relief from being granted automatically, for creditors are not entirely ignored, and unless a majority in number holding the majority in
amount of claims will approve, no relief can be had. Many proposals will doubtless fail because of the inability of the debtor to get the required consents.

On the other hand, the provision for majority control is very valuable, for in cases where a sound proposal would otherwise be obstructed by minority creditors, such obstruction can be overcome. Unanimous consent of creditors is not required, and if the majority are satisfied with the proposal and consent to it, the proposal may go through. This, of course, aids the debtor by relieving him from the necessity for getting the consent of a grasping minority, and to the same extent it aids majority creditors by preventing the immediate impairment of assets by liens and other claims of the minority.

**CONFIRMATION**

While the majority creditors are given some assistance by the provision for majority control as just noticed, minority creditors are also given some protection from an easy-going majority, for the proposal is subject not only to approval by the majority, but also to confirmation by the court. In general, the requirements as to confirmation are the same as in bankruptcy composition cases. The proposal must be for the best interests of creditors, the debtor must have been guilty of no action that would be a ground for denying a discharge and the offer and acceptance must have been made in good faith and no improper means must have been involved. There is, however, one very important additional requirement. The court must be satisfied that the proposal includes "an equitable and feasible method of liquidation for secured creditors whose claims are affected, and the financial rehabilitation of debtor."  

This additional requirement, like some of those mentioned above, also serves to put a significant obstacle in the way of quick and easy relief to the debtor, if that is thought to be important, for a sure-

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2 Sub-section g (I).
fire plan for the “financial rehabilitation” of the debtor will not always be easy to provide. The desperate cases, therefore, apparently cannot be helped under section 74, even with the consent of the majority of the creditors. So again it might be observed that by imposing conditions that debtors in some cases will not be able to meet, Congress has not been unduly generous to the debtors it purported to aid.

Failure of Relief Proceedings

As a matter of background, it should be constantly kept in mind that whenever the relief proceedings provided for in section 74 fail, whether for lack of approval by a majority of the creditors, or for lack of confirmation by the court, or for failure on the part of the debtor to perform his obligations, the debtor is not remitted to his original position. On the contrary, at least liquidation will follow in composition cases, and also in extension cases where the court has retained jurisdiction of the case as it may do under subsection (j). As already noticed, also, there is provision for the exercise of control over the debtor’s estate by a custodian or receiver as creditors may direct at their first meeting. The debtor who wishes to be assured of retaining control of his estate to begin with, and to avoid liquidation at the end, should, therefore, not apply blindly for relief, but it seems he should do so in any case only after preliminary negotiation and understanding with his creditors. Again, not only liquidation may follow, but even adjudication is provided for in some cases, so again it appears that seeking relief under section 74 is not to be undertaken lightly by a debtor who may be able to get along otherwise, or who wishes to avoid the stigma of a bankruptcy liquidation and adjudication.

Liquidation may occur in some cases without, and in other cases with, adjudication. There is to be liquidation without adjudication when the debtor merely fails to provide the required indemnity against loss of the estate when delaying
the proceedings is involved, or where the debtor fails to make
the required deposit in composition cases, or where the cred-
itors have rejected the debtor's proposal. There may be an
actual adjudication as well as liquidation, however, when a
confirmation is denied, or when the court is satisfied that the
proceedings were initiated or prolonged for the purpose of
delaying creditors or avoiding adjudication. There is an ex-
ception, as in the case of bankruptcy proceedings in the
case of wage earners and farmers, who may not be adjudi-
cated without their consent.

It seems, also, that when the relief proceedings fall
through, adjudication and liquidation are to follow in the
cases provided, almost as a matter of course. At any rate,
the section does not provide an opportunity to the debtor
to raise the point of his original non-liability to bankruptcy
proceedings. So it appears that filing a petition or answer
invoking the relief jurisdiction is in effect a consent to liqui-
dation or even adjudication, whenever the contingencies pro-
vided in the section occur.³

TEMPORARY INJUNCTIONS

It might also be noticed that debtors seeking an extension
—as distinguished from a composition—may prevent cred-
itors with secured claims from defeating the debtor's pur-
pose by enforcing their securities, for the court may enjoin
such creditors from attempting to enforce their securities
until the extension proposal has been confirmed, or dis-
missed. This, of course, is consistent with the general idea
that even dissenting creditors may be bound by the majority
who may agree to an extension of time in which to pay even
secured claims.⁴

DISCHARGE

Finally, it should be observed that section 74 does not in
terms provide for a discharge in either composition or ex-

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³ See, in general, sub-section (L).
⁴ See sub-section (N).
tension cases, although another section provides that a bankruptcy composition when confirmed discharges a debtor from his provable debts. As already noticed, secured claims are not discharged under section 74 in any case, even in extension cases the amount of the claim or the lien is not to be affected. But as to unsecured claims there is a problem. In one view, by a strict construction of the language of the section, it is possible to contend that even though the proceedings for relief fall through so that liquidation and even adjudication may follow, yet no discharge is available to the debtor. In view of the purpose of the section to afford additional relief to debtors, and not to deny them benefits already available, it seems more proper to take the position that a discharge is to be implied from the language of section 14 (c), although strictly 14 (c) refers only to bankruptcy compositions and not to the debtor’s relief provisions in section 74. In this connection it should be noticed that sub-section (m) of section 74 gives the court the same powers and jurisdiction as if a voluntary petition in bankruptcy had been filed by the debtor as of the date of the filing of the debtor’s relief petition or answer. So that while it is provided in the section that the debtor’s duties shall be the same, and while no rights are expressly given to the debtor, it would seem that sub-section (m) is broad enough to permit a discharge. It is possible, however, that a different construction may be put upon this mooted point.

At any rate, in extension cases, it seems that no discharge is contemplated, at least in the cases where the extension agreement is carried out as planned and approved. Insofar, however, as the extension may involve not only a moratorium, but also composition features, what was said in the preceding paragraph would seem to be applicable. Again, in case the extension plan falls through, as because of a default by the debtor after confirmation, so that liquida-
tion or adjudication follows, the same remarks seem to be applicable. Another kind of problem arises when the extension agreement is carried through smoothly. While rent and other contingent claims are provable for extension agreement purposes, it would seem not to be contemplated that such claims should be discharged in case any of them should remain unmatured at the end of the extension period, but rather that the rehabilitated debtor should then continue to be liable for such claims, notwithstanding their limited provability for the purpose of such extension agreement. If, on the other hand, the extension proceedings should fall through for the default of the debtor after approval and confirmation, it would seem, although the act is silent on this, that such claims, as in general is the case in bankruptcy with respect to contingent claims, should not be discharged.

**UTILITY AND WORKABILITY**

It would be, perhaps, venturing too far into the field of prophecy to hazard an opinion as to the ultimate utility and workability of the new section. In the period of about ten months since the passage of the section very few instances have appeared in the reports of cases coming up under the new section. This may indicate that the view of the informed bar is that the matter is sufficiently complicated to suggest caution in using the section; or it may indicate that many of the things provided for in it can be done under the composition section—old section 12; or it may indicate a conviction that the section is unworkable. This, of course, is inconclusive. It is suggested, however, that the reader may be justified in the inference from the facts that the foregoing rather lengthy discussion may have served to give warnings, rather than to answer questions in all cases, and that by no means all of the problems that can arise under the section have even been referred to, that much clarification of the section will be necessary before a sound opinion could be given. Bearing in mind, however, the professed object of
providing relief for embarrassed debtors, it does not seem to be an overstatement to say that Congress has been rather niggardly with "easy-relief" provisions, and generous with restrictions, limitations and qualifications. It seems that the debtor who wishes to avoid the stigma of bankruptcy is offered little to attract him, when we keep in mind the fact that liquidation and even adjudication are the consequences of failure to provide a workable, acceptable and confirmable scheme of composition or extension. Again, the same considerations suggest that the debtor who would like to get out of his difficulties without surrendering his control over his estate, is offered little that is attractive to him, for the custodian and receiver take their orders from his creditors, and the trustee administers in case of failure of his proposal to go through. Again, the desperate cases seem remediless, because the debtors may not be able to provide the indemnity required at various stages of the proceedings under the section, or the deposit in cases of composition, or a proposal which will insure his financial rehabilitation. Again, the bankruptcy composition procedure under section 12 seems adequate to meet the needs of many situations. In any case, there can be no compulsory scaling down of secured debts in order to give a debtor a new chance; in the cases where time alone does not afford an adequate remedy, no other is available.

And yet it seems that something of value has been done in giving the debtor a chance, provided nowhere else, to get an extension of time in which to pay even secured claims if he can get the consent and approval of a majority of his creditors and of the court, even though grasping or designing minority creditors may object, and without the necessity for being adjudged a bankrupt in that case. At least the fact that the debtor now has a right to apply for relief by way of extension of time may itself be sufficient to induce
unmeritorious minority creditors to give some concessions so that an actual application for relief by the debtor may not be necessary. And in some cases it may be considered that Congress has given a valuable chance to the debtor to arrange a composition or extension of time in which to pay even unsecured claims, without being technically a bankrupt for doing so.

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