

Bankruptcy - Insolvency Proceedings - Acts of Bankruptcy

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RECENT DECISIONS

BANKRUPTCY—INSOLVENCY PROCEEDINGS—ACTS OF BANKRUPTCY.—The debtor had filed its petition as a Michigan corporation praying for dissolution under the local statutes [MICH. COMP. LAWS (1929) § 15310]. The debtor corporation was in fact insolvent. The Michigan court entered its decree dissolving the corporation and appointed a receiver to carry out the liquidation of the company's affairs. Within four months thereafter a creditor petitioned the bankruptcy court to have the corporation adjudicated a bankrupt, alleging as an act of bankruptcy the debtor's petitioning voluntarily for dissolution when it was insolvent. The bankruptcy court denied a motion by the equity receiver to dismiss the petition. On appeal, *held*, order affirmed; the operation of the bankruptcy laws cannot be defeated by voluntary dissolution under state statutes. *Austin v. Thomas*, 78 F. (2d) 602 (C.C.A. 6th, 1935).

Although a corporation has ceased to exist in the eyes of its own domestic courts it is not beyond the reach of the bankruptcy court. *Hammond v. Lyon Realty Co.*, 59 F. (2d) 592 (C.C.A. 4th, 1932); see also *in re Watts and Sachs*, 190 U.S. 1, 23 Sup. Ct. 718, 47 L.ed. 933 (1902). The Federal Constitution [Art. 1, § 8 (4)] gives Congress exclusive power to establish uniform laws on the subject of bankruptcy, and any state law may be a bankruptcy law in substance and in fact which provides for the administration and distribution of the estates of insolvents. *Barks v. Kleyne*, 15 F. (2d) 153 (C.C.A. 8th, 1926). State insolvency laws are suspended to the extent that they conflict with the Bankruptcy Act. *Stellwagon v. Chum*, 245 U.S. 605, 38 Sup. Ct. 215, 62 L.ed. 507 (1917). The court, in the principal case, was not required to fix the precise time when the act of bankruptcy was committed. The voluntary petition for dissolution was filed, the decree for dissolution was entered, and the receiver appointed, all within four months before the filing of the involuntary petition in bankruptcy. The appointment of a receiver to liquidate the affairs of a corporation dissolved on a voluntary petition to the Michigan equity court under the local statutes is not an act of bankruptcy if the corporation is not in fact insolvent. *Vassar Foundry Corp'n. v. Whiting Corp'n.*, 2 F. (2d) 240 (C.C.A. 6th, 1925). If the corporation is not in fact insolvent the statutory scheme under which the equity court through its receiver is supervising the liquidation of the dissolved corporation's affairs is not an "insolvency law" in conflict with the Bankruptcy Act. *Vassar Foundry Corp'n. v. Whiting Corp'n.*, *supra*. It is submitted that a voluntary dissolution by a special majority vote of the stockholders under the Wisconsin statutes [Wis. STAT. (1933) c. 181] would not by itself be an act of bankruptcy. Some conduct thereafter on the part of the statutory trustees, the old corporation directors, or previous conduct on the part of the directors, as such, just before dissolution, together with the fact of insolvency as defined in the Bankruptcy Act [see § 1 (15), 30 STAT. 544 (1898), 11 U.S.C.A. 1 (15) (1926)] would have to be shown to justify the bankruptcy court's adjudicating the dissolved corporate debtor a bankrupt and supervising the liquidation of the estate. The opinion in the principal case, however, indicates quite definitely that if the requisite facts are present the estate of such a dissolved corporation-debtor would not be outside the scope of the bankruptcy court's jurisdiction.

CLYDE F. BAILEY.

BILLS AND NOTES—STATUTE OF LIMITATIONS—ACCOMMODATION MAKER.—A claim was filed against the estate of the decedent on a promissory note executed by the decedent along with five other joint makers. The decedent had