Marquette Law Review

Volume 21
Issue 4 *June 1937*

Article 2

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Joseph E. Rapkin

POWER OF COURTS TO RESTRAIN SALE OF PLEDGED COLLATERAL

JOSEPH E. RAPKIN

THE power of a creditor to sell, under a power of sale conferred upon him, collateral pledged to secure payment of his claim affords a means of collection which is attractive to the creditor, not only by reason of the savings in legal expense that may be accomplished but also by virtue of the assurance of ready liquidation at such time as the pledgee himself might determine to be propitious.

The protection of this power is, therefore, of great concern to the creditor class. Aside from certain instances, hereinafter referred to, in bankruptcy, equity receiverships and other insolvency proceedings, the exercise of this power was enjoined by the courts only where the validity of the pledge agreement was itself questioned.[1] Even in connection with bankruptcy matters, the right of the pledgee to proceed under the pledge agreement could be interfered with only through a plenary proceeding and then only in limited circumstances.[2] The power of a court of bankruptcy to deal summarily with property of the bankrupt depended upon the court's having first succeeded to the possession of the bankrupt over the property.[3]

The secured creditor was rewarded for his diligence in procuring security for his claim not only by having the security itself but by receiving for it a legislative declaration of independence[4] except insofar as interference was permitted in order to determine the value of the security.[5]

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[1] 49 C.J. 1011.

[2] Sections 60(b), 67(e) and 70(e) of the Bankruptcy Act, 11 U.S.C.A. §§ 96(b), 107(e), 110(e). See also Southwestern Lumber Co. v. Kerr, 11 F. Supp. 253 (S.D. Tex. 1934); 1 REMINGTON, BANKRUPTCY (3rd ed.) 515, 5 *id.* at 410.

[3] Taubel-Scott-Kitzmiller Co. Inc., v. Fox, 264 U.S. 426, 44 Sup. Ct. 396, 68 L.ed. 770 (1924); Bardes v. Hawarden Bank, 178 U.S. 524, 20 Sup. Ct. 1000, 44 L.ed. 1175 (1900); Whitney v. Wenmann, 198 U.S. 538, 25 Sup. Ct. 778, 49 L.ed. 1157 (1905); First National Bank v. Chicago Title & Trust Co., 198 U.S. 280, 25 Sup. Ct. 693, 49 L.ed. 1051 (1905); In re Hudson River Nav. Corp., 57 F. (2d) 175, 176 (C.C.A. 2d, 1932); 5 REMINGTON, BANKRUPTCY (3rd ed.) 410.

[4] Section 67(d) of the Bankruptcy Act, 11 U.S.C.A. § 107(d).

[5] Section 57(h) of the Bankruptcy Act, 11 U.S.C.A. § 93(h); In re Mertens, 144 Fed. 818, 823 (C.C.A. 2d, 1906), *aff'd* Hiscock v. Varick Bank, 206 U.S. 28, 27 Sup. Ct. 281, 51 L.ed. 945 (1907). A sale of mortgaged property could be restrained in a bankruptcy proceeding only if there was an actual or potential equity that might be sacrificed if the sale were to take place. See In re Morris White Holding Co., 52 F. (2d) 499 (S.D.N.Y. 1931); Central States Life Ins. Co. v. Koplar, 80 F. (2d) 754 (C.C.A. 8th, 1935). As to the similar rule in equity receiverships see International Banking Corp. v. Lynch, 269 Fed. 242 (C.C.A. 9th, 1920); Guaranty Trust Co. v. Galveston etc. R. R., 87 Fed. 813 (C.C.A. 5th, 1898); *contra*, Cherry v. Insull Utility Investments, Inc., 58 F. (2d) 1022 (N.D. Ill, 1932), *rev'd* on other grounds in Guaranty Trust Co. v. Fentress, 61 F. (2d) 329 (C.C.A. 7th, 1932).

The special privilege so accorded the pledgee was recognized by most courts[6] and some of the decisions which were decided after the 1933 amendments to the Bankruptcy Act were enacted recognized that before those laws were passed the pledgee had the right to the free exercise of his power.[7]

The practical value of the existence of this right and the probable adverse effect of the denial of its exercise by the pledgee were recognized by at least one court[8] which pointed out that nothing would be more disturbing to such transactions than a failure to preserve the exercise of this right to the pledgee. The same court said further,[9] "Millions of dollars are daily lent on like collateral, which fluctuates from hour to hour; unless the pledgee is free to choose his time to sell, his security may disappear . . . The pledgee, having taken possession of the documents, supposes himself for just that reason to be the sole judge of his necessities and lends on that understanding."

Debtors are often unduly optimistic as to the future values of their depreciated property delivered in pledge. Their optimism and hope, often shared by unsecured creditors, that time would bring higher values and that the pledgee should be restrained pending the event were not shared nor considered sufficient justification to warrant the court in staying the pledgee from exercising his right. Thus, the Supreme Court of California[10] said: " . . . The pledgor is not justified in asking that the exercise of this right be deferred indefinitely to await a purely problematical increase in the price which might be realized at a sale. Nor are the general creditors of the alleged bankrupt entitled to this indulgence . . . "

There were, however, some decisions rendered before the 1933 Amendments to the Bankruptcy Act were passed which were able to justify the imposition of a restraint on the exercise by the pledgee of his right to sell.[11] Most of these decisions have rested upon the admit-

[6] Hiscock v. Varick Bank, 206 U.S. 28, 27 Sup. Ct. 778, 49 L.ed. 1157 (1907); Jerome v. McCarter, 94 U.S. 734, 24 L.ed. 136 (1876); In re Hudson River Nav. Corp., 57 F. (2d) 175 (C.C.A. 2d, 1932); In re Mayer, 157 Fed. 836 (C.C.A. 2d, 1907); In re Browne, 104 Fed. 762 (E.D. Pa. 1900). Relative to equity receiverships see International Banking Co. v. Lynch, 269 Fed. 242 (C.C.A. 9th, 1920); Nor. Pac. Ry. v. Waterhouse & Co., 279 Fed. 150 (W.D. Wash. 1922).

[7] In re Chicago, R. I. & Pac. Ry. Co., 72 F. (2d) 443, 449 (C.C.A. 7th, 1934), *aff'd* Continental Illinois Nat. Bank & T. Co. v. Chicago, etc., Co., 294 U.S. 648, 55 Sup. Ct. 595, 79 L.ed. 1110 (1935); Molina v. Murphy, 71 F. (2d) 605, 607 (C.C.A. 1st, 1934); In re Landquist, 70 F. (2d) 929, 936 (C.C.A. 7th, 1934).

[8] In re Hudson River Nav. Corp., 57 F. (2d) 175, 176 (C.C.A. 2d, 1932).

[9] See note 8, *supra.*

[10] Griffin v. Smith, 177 Cal. 481, 171 Pac. 92 (1918).

[11] In re Henry, 50 F. (2d) 453 (S.D. Pa. 1931); *cf.* Note (1931) 80 PA. LAW REV. 123; 5 REMINGTON, BANKRUPTCY (3rd ed. Supp.) 288; Allebach v. Thomas 16 F. (2d) 853 (C.C.A. 4th, 1927); In re Cobb, 96 Fed. 821 (E.D. N.C. 1899); Cherry v. Insull Utility Investments, Inc., 58 F. (2d) 1022 (N.D.

ted power of a bankruptcy court to prevent a mortgagee from foreclosing his lien after the bankruptcy of the mortgagor.[12] These decisions have been the subject of vigorous criticism by reason of their alleged failure to distinguish between the nature of a pledge as distinguished from a mortgage type of security arrangement.[13]

That there is a vast difference in the commercial function of these two types of security methods is unquestioned. Although both furnish security to the lender, the pledge transaction, although not necessarily limited to short term loans is generally associated with such loans. The mortgage form of security is generally in use where the prime concern is the ultimate security rather than rapid liquidation. In the pledge type of arrangement, the property pledged is usually of such nature as to be capable of quick disposal to outsiders and the free use of the power of sale is therefore of vital importance. In the mortgage transaction the security is generally less saleable. The mortgage customarily secures long term debts of such magnitude that the security is not often sold for cash but rather, in view of difficulty in raising the necessary cash, the foreclosure results in re-financing or re-organization. Even where the mortgage does contain a power of sale, therefore, this power is rarely exercised. In the case of the pledge device, the loans secured are often of emergency nature—to carry the borrower through a short period of unexpected financial need. The lending agency in the latter type is most often of the type that is interested in liquid loans.

Unfortunately, however, except for a few cases,[14] the distinctions between the function and nature of a pledge as against a mortgage transaction have not been stressed by the courts nor even considered. The courts which have denied injunctions against pledges have rested their decisions upon the circumstance that the debtor did not have

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Ill. 1932), *rev'd* by Guaranty Trust Co. v. Fentress, 61 F. (2d) 329 (C.C.A. 7th, 1932). See also In re Mitchell, 278 Fed. 707 (C.C.A. 2d, 1922) and In re Purkett, Douglas & Co., 50 F. (2d) 435 (S.D. Cal. 1931), where the validity of the pledge was contested. The last case, unless distinguishable because the validity of the pledge was involved, would be contrary to a decision by the governing Circuit Court of Appeals in International Banking Corp. v. Lynch, 269 Fed. 242 (C.C.A. 9th, 1920). As to the case of In re Cobb, *supra*, it has been pointed out that this decision was rendered before the case of Bardes v. Hawarden Bank, 178 U.S. 524, 20 Sup. Ct. 778, 49 L.ed. 1157 (1905).

[12] See Isaacs v. Hobbs Tie & Lumber Co., 282 U.S. 734, 51 Sup. Ct. 270, 75 L.ed. 645 (1931); Straton v. New, 283 U.S. 318, 51 Sup. Ct. 465, 75 L.ed. 1060 (1931); In re Henry, 50 F. (2d) 453 (E.D. Pa. 1931); Continental Illinois Nat. Bank & T. Co. v. Chicago, etc., Co., 294 U.S. 648, 55 Sup. Ct. 595, 79 L.ed. 1110 (1935).

[13] McGinnis, *Sale of Collateral Security by the Pledgee Thereof after the Intervention of the Bankruptcy of the Pledgor* (1934) 9 IND. L. J. 195; Howland, *The Enforcement of Secured Creditors' Claims under 77 and 77B: a Functional Analysis* (1937) 46 YALE L. J. 1109.

[14] In re Hudson River Nav. Corp., 57 F. (2d) 175 (C.C.A. 2d, 1932); Rogers, Brown & Co. v. Tindel Morris Co., 271 Fed. 475 (E.D. Pa. 1921); see also In re Chaiken, 10 A. B. REV. 14 (Pa. 1933).

possession of the pledged property at the time of the filing of the petition.[15]

This failure of the courts to recognize the distinctions noted and to make them play a part as a basis of decisions did not result in any difficulties before the enactment of the 1933 Amendments to the Bankruptcy Act inasmuch as the general rule denying any right to restrain the pledgee from exercising his power of sale was in accord with the result desired by business. The struggle that always comes into existence in these situations between secured creditors on the one hand and the debtor and the unsecured creditors on the other was generally decided in accordance with the intention of the debtor and the secured creditor at the time the arrangements were made.

During the years of the depression, however, when there was a sacrifice of equities, the courts were able to find in the new amendments a basis upon which to restrain creditors from pursuing their remedies under pledge contracts. Sections 74, 77 and 77B all[16] gave the bankruptcy court jurisdiction over the debtor's property wherever located. The debtor's equity was held to be "property" within the type contemplated by those sections.[17] In order to avoid interference with the preparation and consummation of a workable plan of reorganization, the assertion and exercise of a power to enjoin the pledgee at least temporarily is now considered permissible.

In the *Rock Island* cases, the Supreme Court definitely abandoned, as to the proceedings before it, the theory that where the pledgee was in possession no injunction could be issued and that the jurisdiction of the bankruptcy court depended upon the security being in the possession of the debtor at the time of bankruptcy. Legislative basis for its decision was found by the court in the provision of Section 77(a) that the bankruptcy court shall have "exclusive jurisdiction of the debtor and its property wherever located," and also in the general provisions of Section 2(15) of the Bankruptcy Act and Section 262 of the Judicial Code, upon neither of which reliance had previously been placed.[18]

The rule of the *Rock Island* cases has been extended to proceedings under Sections 77B[19] and 74.[20] As previously indicated these Sections

[15] Jerome v. McCarter, 94 U.S. 734, 24 L.ed. 136 (1876); Hiscock v. Varick Nat. Bank, 206 U.S. 28, 27 Sup. Ct. 778, 49 L.ed. 1157 (1907); In re Hudson River Nav. Corp., 57 F. (2d) 175 (C.C.A. 2d, 1932); Guaranty Trust Co. v. Galveston City R. R., 87 Fed. 813 (C.C.A. 8th, 1898); International Banking Corp. v. Lynch, 269 Fed. 242 (C.C.A. 9th, 1920).

[16] Sections 74(m), 77(a) and 77(B)(a) of the Bankruptcy Act, 11 U.S.C.A. §§ 202(m), 205(a) and 207(a).

[17] See the cases cited in note 7, *supra.*

[18] See Howland, *The Enforcement of Secured Creditors' Claims under 77 and 77B: a Functional Analysis* (1937) 46 YALE L. J. 1109.

[19] In re Prudence Co. Inc., 82 F. (2d) 755 (C.C.A. 2d, 1936).

[20] In re Brown, 84 F. (2d) 433 (C.C.A. 7th, 1936).

(74 and 77) also declare that the bankruptcy court shall have exclusive jurisdiction of the debtor and its property wherever located.[21] Section 77B contains no provisions inconsistent with such a declaration. As to Section 74, however, there is, at least, room for difference of opinion as to whether or not other provisions of the act do not so limit the clause similar to that contained in Sections 77 and 77B as to make the rule of the *Rock Island* cases inapplicable thereto. And, as hereafter indicated,[22] several courts have refused to enjoin pledgees from exercising their power of sale in proceeding under Section 74.

Unlike Section 77, words of limitation appear throughout Section 74 whenever reference is made to secured creditors. Thus, subdivision(e) of Section 74 refers not to all secured creditors, but only to those "proposed to be *affected by* an extension proposal." Subdivision (g), likewise, directs confirmation of a proposal by the court if satisfied that it "includes an equitable and feasible method of liquidation for *secured creditors* whose claims are *affected* . . . " Subdivision (i) provides that upon its confirmation "an extension proposal shall be binding upon the debtor and his unsecured and secured creditors *affected thereby* . . . " Subdivision (n) provides that the court "may enjoin *secured creditors who may be affected* by the extension proposal from proceeding in any court for the enforcement of their claims . . . " An express distinction between types of secured creditors is made by subdivision (h) which, in part, declares that the "terms of an extension proposal may extend the time of payment of either or both unsecured debts and secured debts *the security for* which is in the actual or constructive possession of the debtor . . . " (Author's italics.)

From the foregoing, and especially in view of the express provisions of subdivision (h) of Section 74 it would seem apparent that Section 74 affects only those secured creditors whose debtors are in actual or constructive possession of the security. It would further appear that under Section 74 there is express reservation of the principle, abandoned by the Supreme Court in the *Rock Island* cases, in the proceeding there involved, that the court's jurisdiction depended upon possession of the security having been had by the debtor at the time of bankruptcy.

The correctness of the foregoing conclusions as to the scope of Section 74 is further evidenced by a study of the legislative history of Section 74. Thus, in noting an amendment to a part of the bill which later became Section 74 so that only secured creditors whose debtors held the security would be affected, the Senate Report[23] says: "It was

[21] See note 16, *supra*.
[22] See text p. 200, *infra*.
[23] SEN. REP. No. 1215, 72d Cong., 2d Sess. (1935).

believed that if every form of collateral that was deposited as a security for a loan should be subject to review by the court in any proceedings under this act it could but result in a greater value of collateral being required by the person or institution granting the loan in the first instance. The tendency would be to further restrict credit."[24] Secured creditors of any kind were brought in only after most careful deliberation.[25]

Further aid in support of the conclusion that pledgees of security were not intended to be affected by Section 74 is to be derived by comparing subdivisions 74(h) and 74(n) as originally proposed with the same subdivisions as finally enacted. Thus, as originally passed by the House of Representatives Section 74(n) read:[26] "After the filing of the petition, as provided in subdivision (a) of this section, the court, on such notice and upon such terms, if any, as it deems fair and equitable may enjoin secured creditors from enforcing their rights in the security held by them until the confirmation of the composition, or the extension has been approved by the court."

As finally passed Section 74(n) reads:[26] "In addition to the provisions of Section 29 of this title for the staying of pending suits, the court, on such notice and on such terms, if any, as it deems fair and equitable, may enjoin secured creditors who may be affected by the extension proposal from proceeding in any court for the enforcement of their claims until the extension has been confirmed or denied by the court."

As originally passed by the House of Representatives, Section 74(h) read:[26] "The terms of an extension proposal may extend the time of payment of either secured or unsecured debts or both."

As finally enacted the same subsection reads:[26] "The terms of an extension proposal may extend the time of payment of either or both unsecured debts and secured debts the security for which is in the actual or constructive possession of the debtor . . . "

There have been decisions which interpreted Section 74 as not affecting all secured creditors but only those whose debtors had actual or constructive possession of the security. Thus, in *In re Doelger*[27] a creditor moved the court for an order vacating an *ex parte* injunction obtained by the debtor which enjoined the creditor from selling certain securities in its possession as pledgee to secure payment of the debt. The court stated the problem thus: " . . . The question presented is whether the new Act affects the creditors' freedom of recourse to the

[24] See note 23, *supra.*
[25] See Senator Hasting's speech, 76 CONG. REC. 5030 (1933).
[26] See In re Doelger, 9 A. B. REV. 329 (D.C. N.Y. 1933).
[27] See case cited in note 26, *supra,* and also In re Chaiken, 10 A. B. REV. 14 (Pa. 1933).

security pledged, and particularly whether the court is authorized to enjoin a sale of such security." And, after referring to subdivisions (h) and (n) of Section 74, the court continued: "Under these express provisions it seems clear that the court's power to enjoin is restricted to court proceedings; and that an extension may be obtained only of secured debts, the security for which is in the actual or constructive pessession of the debtor, a custodian or receiver. Neither of these differences is applicable to the creditor here involved."

Both of the court's last conclusions are supported by its comparison of the subdivisions as originally proposed and as finally enacted. It even considered the statute too clear to require consideration of legislators' statements as an aid to arriving at the correct construction of the relevant statutes.[28]

The decision of the court in the *Doelger* case in effect holds that the provision of Section 74(n) which provides that the filing of the debtor's petition or answer seeking relief thereunder "shall subject the debtor and his property, wherever located, to the exclusive jurisdiction of the court" is limited by Section 74(n) in its prescription as to the types of secured creditors affected in such proceedings. A similare limitation upon Section 74(m) is the result of the decision in *In re Landquist* (*In re Parmenter*).[29] In this case, decided before Section 74(m) was amended in June, 1934, it appears that the debtor, before the proceedings under Section 74 had been taken, surrendered possession of her real estate to the trustee under the trust deed who in turn delivered possession thereof to a receiver appointed by the state court in foreclosure proceedings. The appellate court reversed the lower court decision holding that the foreclosure proceedings could be enjoined, the court pointing out:[30] "Actual or constructive possession of the security by the debtor is a prerequisite to relief under Section 74 of the Bankruptcy Act . . . (T) his is a secured debt and before the debtor is entitled to ask for an extension, it must appear that he is in either actual or constructive possession of the security. We hold, under the circumstances here presented, that appellee was not in actual or constructive possession . . . The only right which appellee now has in the security is that of redemption. To hold otherwise we think would extend the application of Section 74 much further than was contemplated by Congress."

However, after the rendition of this decision, and probably to avoid its effect, Section 74(m) was amended on June 7, 1934, the new portion reading: "And this shall include property of the debtor in the

[28] In re Doelger, *supra*, note 26.
[29] Matter of Landquist, 70 F. (2d) 929 (C.C.A. 7th, 1934); see also Molina v. Murphy, 71 F. (2d) 605 (C.C.A. 9th, 1934).
[30] 70 F. (2d) 929, 936 (C.C.A. 7th, 1934).

possession of a trustee under a trust deed or mortgage, or a receiver, custodian or other officer in a pending cause irrespective of the date of the appointment of such receiver or other officer, or the date of the institution of such proceedings . . . "

This amendment is, in the factual situations there indicated, in conflict which Section 74(h) in so far as the latter indicates that only secured creditors whose debtors are in actual or constructive possession of the security are affected by such proceedings. In such a situation Section 74(m), as amended, should and has been held to control over Section 74(h).[31] The decision of the court in the *Landquist* case is now no longer permissible in the same factual circumstances. However, the next query is: What effect has the amendment of June 7, 1934 to Section 74(m) upon a pledgee when he is not being "a trustee under a trust deed of mortgage, or a receiver, custodian or other officer" indicated in the amendment and upon the rule of the *Landquist* case and *In re Doelger* and *In re Chaiken*?

A literal interpretation of the amendment would lead to the conclusion that pledges were still out of the reach of the court in a proceeding under Section 74 and that the congressional desire to keep credit unrestricted[32] still is the reason for granting such immunity. However, in *In the Matter of Edward Othniel Brown,*[33] which was decided after this amendment to Section 74(m) the court held, without reference to Section 74(h) and decisions construing it, that the decision in the *Rock Island* cases construing Section 77(a), as amended, was applicable in a proceeding under Section 74 and that the similar provision of 74(m) should be similarly construed.[34]

The effect of this decision, unless it be limited to its facts only, is that in proceedings under Section 74, the provision of Section 74(h) indicating the types of secured creditors affected by such a proceeding is not a bar to the issuance of an injunction by the court restraining pledgees from exercising their power to sell property pledged with them by the debtor before sufficient time had been allowed the debtor

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[31] In re Kusel, 75 F. (2d) 314, 315 (C.C.A. 7th, 1934); In re Jacobs, 7 F. Supp. 749, 751, 752 (N.D. Ill. 1934).

[32] See note 23, *supra.*

[33] In re Brown, 84 F. (2d) 433 (C.C.A. 7th, 1936). Unless the power to enjoin is not dependent upon the court's power to extend payment of debts, as to which see In re Ward, 104 Fed. 985 (D.C. Mass. 1900), the language of this decision is not in accord with the thought expressed by at least one text writer who in writing about the types of secured creditors who can be affected by a proceeding under Section 74 said: "As to secured debts there is the important limitation that the security must be in the actual or constructive possession of the debtor or of the custodian or receiver. For example, a mortgagee's right to forclose on land in the debtor's possession may be deferred, but not the right of a bank to sell securities held by it as collateral." COLLIER, BANKRUPTCY (13th ed. 1935 Supp.) 757.

[34] 84 F. (2d) 433, 435 (C.C.A. 7th, 1936).

within which to prepare a plan, where a sale would result in irreparable loss and where the result to be accomplished by the proceeding would be hindered.

Although this decision is ostensibly based on the decision in the *Rock Island* cases and the fact that Section 74(m) is similar to Section 77(a) construed by the Supreme Court, it would seem that the court was at least to some extent adopting the reasoning of the minority view which makes no distinction between a mortgage and a pledge type of security transaction.[35] The Act itself provides[36] that "except as otherwise provided therein, the jurisdiction and powers of the court, the title . . . of its officers . . . and the rights and liabilities of creditors, and of all persons with respect to the property of the debtor . . . shall be the same as if a voluntary petition for adjudication had been filed . . . " The power of the court with respect to the debtor's property would, by this provision, seem to be limited by restrictions thereon otherwise present in the Bankruptcy Act as, for example, by Section 57(h) which provides for the method of liquidation of a pledgee's securities. That such limitation does exist would especially appear where Section 74(h) seems so expressly to limit the types of creditors who can be affected by the proceeding. Even more correctly in a proceeding under Section 74 than in a proceeding under Section 77[37] may it then be said that the question for determination depends less upon Section 74 as furnishing jurisdiction over the pledged property than "upon the validity of the arguments as to the power of the court to enjoin a pledgee from exercising his power of sale apart from" Section 74.

Upon the facts recited in the opinion by the court in the case of *In the Matter of Edward Othniel Brown,*[38] which indicate that the creditor held collateral of the approximate value of $240,000[39] to secure a claim of but approximately$80,000, the power to restrain the pledgee might have been rested upon language of the Supreme Court in the case of *Hiscock* v. *Varick Bank,*[40] in which the court intimated that a wanton sacrifice might justify the inference of a fraudulent purpose and warrant interference with the pledgee's power of sale.[41]

If the decision in the *Brown* case be not limited to its facts the danger, in periods of financial stress, that may follow the ready

[35] See notes 11 and 12, *supra.*
[36] Section 74(m) of the Bankruptcy Act, 11 U.S.C.A. § 202(m).
[37] See Note (1934) 44 YALE L. J. 677.
[38] See In re Brown, 84 F. (2d) 433 (C.C.A. 7th, 1936).
[39] See In re Brown, *supra* note 38 at page 435, where the court said: "The evidence fails to disclose the true value of the pledged securities. The District Court found, however, that the book value of such securities was $588,000."
[40] Hiscock v. Varick Bank, 206 U.S. 28, 27 Sup. Ct. 778, 49 L.ed. 1157 (1907).
[41] In re Browne, 104 Fed. (E.D. Pa. 762). See also 2 REMINGTON, BANKRUPTCY (3rd ed.) 320; 5 *id,* 703-704.

issuance of injunctions restraining sale of collateral held by pledgees is indeed great. The sources of short term credit must not be so threatened with the possibility of injunctions that short term creditors will seek protection in recourse to foreclosure of the pledge as soon as the debtor shows signs of financial difficulties. Loans to debtors temporarily in need will not be so readily forthcoming. Debtors may, as a result, be forced into bankruptcy rather than be able to forestall such an end or be able to rehabilitate themselves.

The assurance and warning given by the courts[42] that the plan of rehabilitation should not be unduly delayed and that in case of a change in circumstances the creditor shall be relieved of the restraint hardly suffices to preserve the incentive to a debtor to prepare and consummate a plan which a threat to sell does preserve. Sympathies are naturally most often with the debtor and the possibility of an overexercise of sympathy quite likely. Whether creation of a definite maximum time limit within which the debtor must present a workable plan of rehabilitation would be a better safeguard against the damage that may result from delay than the present rule which leaves the matter to the discretion of the court may be questionable. On the whole it is probably better and of greater importance to facilitate rehabilitation of debtors than to preserve the integrity of the pledge transaction. The danger of a failure to protect the pledgees' interest is however such that definite rules must be established to protect the pledge transaction from falling into disfavor with creditors by reason of a failure of the courts to recognize its tremendous value and use in the business world.

[42] In re Sterba, 74 F. (2d) 413 (C.C.A. 7th, 1935); In re Brown 84 F. (2d) 433 (C.C.A. 7th, 1936); In re Chicago, R. I. & Pac. Ry. Co., 72 F. (2d) 443 (C.C.A. 7th, 1934); Continental Illinois Nat. Bank & T. Co. v. Chicago, etc., Co., 294 U.S. 648, 55 Sup. Ct. 595, 79 L.ed. 1110 (1935).