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The Wage Earners' Plan: Its Purpose

Walter Chandler*

In this article, the author discusses the need for this provision of the bankruptcy laws and its history both in the Congress and in practice. The reader will be interested in comparing Mr. Chandler's views with those of Referee R. W. McDuffee in the succeeding article.

Chapter XIII¹ is the forerunner of the general revision of the National Bankruptcy Act in 1938.

Introduced as a bill for the relief of harassed wage earners who desire to pay their debts if given sufficient opportunity, the bill attracted the attention of the Honorable Hatton W. Sumners, Chairman of the Committee on the Judiciary of the House of Representatives. In view of the cumulative need for a definitive study of the law of bankruptcy with the end view of enacting a complete revision of the Act of 1898, a special subcommittee on bankruptcy was created; this subcommittee, with the cooperation of various organizations interested in commercial law and bankruptcy, undertook a three year study which culminated in the Act of June 22, 1938.²

In its turn, the bill for the relief of overburdened wage earners was considered and, after changes, was approved and included as chapter XIII of the new law.

A number of states had debt composition statutes, and section 74 of the Bankruptcy Act was already in existence. But those various enactments failed to prevent repeated garnishment proceedings at heavy costs, sheriffs' fees, and unconscionable judgments against those unable to be represented by counsel. Debtors were rendered virtually helpless except through resort to voluntary bankruptcy. Millions of dollars were being lost annually by bona fide creditors, poverty among low income groups was increasing steadily, and a federal statute which would protect wage earners and salaried people in "hard" times was sorely needed.

Originally, chapter XIII applied only to those whose wages or salaries did not exceed \$3,600 per annum, but this limit has been removed.³ At present, the statute is available to all persons who are employed for wages or salaries and who, without being adjudicated bankrupt, wish to pay their

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1. 52 Stat. 930, as amended, 11 U.S.C. §§ 1001-86 (1958).
2. Ch. 575, 52 Stat. 833 (1938), which generally revised 11 U.S.C.
3. 73 Stat. 24, 11 U.S.C. § 1006 (Supp. II, 1959).

debts in installments under the protection of a federal court, free from garnishments, executions, attachments, penalties, usury, or excessive costs. The chapter has become increasingly popular with both debtors and creditors.

In the simplest language, chapter XIII provides a round table method of settlement; the debtor is afforded an opportunity to meet his just obligations and to look his creditors in the face instead of crossing to the other side of the street in order to avoid them. It is not a moratorium for debtors, as some have thought. It is amortization. The Bankruptcy Act still preserves the rights of debtors to file voluntary petitions in bankruptcy and discharge their debts in that manner. That manner, however, is not the American way, since it destroys not only the credit standing, but also the self respect of the bankrupt. In fact, the bankruptcy law as a whole is intended to help people, not embarrass them.

The procedure under chapter XIII is initiated by filing a petition in a United States district court. The court refers the petition to a referee, and the referee calls a meeting of the creditors of the petitioner. At that meeting, the debtor submits a plan for payment of his debts in installments from his wages or salary; a sufficient amount is first set aside for the support of his family and himself. Having availed himself of this procedure, the debtor, as a matter of good faith and under the law, is expected to see the proceeding through to its conclusion, if possible. To that end, the act gives the court the power to protect the debtor's future income from recalcitrant and selfish creditors. So far chapter XIII has proven satisfactory to both debtors and creditors.

From a slow beginning, caused primarily by the unwillingness of referees in bankruptcy in many jurisdictions to undertake the task of administering chapter XIII proceedings, the use of chapter XIII has increased. At the end of the fiscal year June 30, 1961, 19,723 chapter XIII proceedings had been filed, as compared to 13,599 in the previous twelve months, or an increase of 45%. This percentage is greater than the 31% increase noted in voluntary bankruptcy petitions filed over the same period, thereby indicating a recognition of the usefulness of chapter XIII. Alarming, the increase in bankruptcy proceedings of all types in the twelve months referred to was 33.3%, and 89 of every 100 bankruptcy, reorganization, or debtor proceedings were filed by employees or others not in business.

Chapter XIII proceedings extend generally over the three year period provided in the statute. In 1960, in 5,920 cases closed, \$5,168,251 were paid to debtors' creditors by virtue of chapter XIII proceedings, as against \$469,865,567 that were lost to creditors in cases closed under other sections of the Bankruptcy Act. From figures presently available, the savings to creditors in chapter XIII proceedings in 1961 will run to approximately \$6,250,000.

Few amendments to chapter XIII have been enacted by Congress, and a substantial body of clarifying decisions has simplified the operation of the law. The only serious impediment to widespread success of chapter XIII proceedings is the absence in many bankruptcy districts of operating procedures for the carrying out of approved wage earner plans. As full-time referees in bankruptcy now receive salaries for their services and generally hold office for life, there is no justification for not providing sufficient and capable trustees to handle chapter XIII proceedings efficiently. The result will be beneficial to the debtors in that they will be aided in meeting their obligations according to plan, and will be of great benefit to creditors who will receive payments from debtors otherwise unable to pay.

Furthermore, the administration of chapter XIII is conducted differently in the various districts; this may be an advantage, especially in districts where the chapter has worked well. However, strengthening amendments to the chapter may be advisable after extensive study by organizations such as the National Bankruptcy Conference.

The Administrative Office of the United States Courts greatly desires to extend the use of chapter XIII. Mr. Edwin L. Covey, Chief of the Division of Bankruptcy, has stated that the Administrative Office believes that chapter XIII "holds a solution to many of the cases which are now administered in straight bankruptcy as no asset cases."

Charles E. Nadler, author of two leading works on bankruptcy and debtor relief, has written:

Known as a "debtor" and not as a "bankrupt", the honest but hardpressed "wage earner" is offered the helping hand of the federal courts to extricate him from the accumulation of debts incurred through over extension of credit buying or because of illness or other economic exigencies. Thus he can put a stop to never ending garnishment proceedings, and by planned amortization of his debts made possible through these proceedings his morale and his public relations can be reinstated. The relief thus provided is predicated upon the idea that the future earnings of the debtor shall be made available for payment or composition of his unsecured debts, generally and as a class. Moreover, secured creditors may be dealt with, but only severally and with each one separately. However, those secured creditors who hold a mortgage on real estate or chattels belonging to the wage earner are not affected by, nor can be subjected to, these proceedings.⁴

With the unprecedented growth in population, the vast expansion of consumer credit, and with the uncontrolled increase in the high cost of living, millions of our citizens have only a narrow margin of solvency despite the careful exercise of good husbandry. Any unexpected or unavoidable expenses inevitably result in buying in advance of income. Charge accounts are invited without reasonable limitations, and even teen-age accounts have made their appearance. Personal loan companies

4. NADLER, DEBTOR RELIEF ¶ 380.

are ultimately resorted to for immediate relief when the harried debtor finds himself at the "end of his row."

Therefore, chapter XIII of the Bankruptcy Act provides remedies where both debtors and creditors may extricate themselves from irrevocable losses; at the same time, the economy of the nation and the character of its citizens need not be seriously affected. Thus, chapter XIII deserves the favorable interest and attention of the courts and their administrative officers, the Bar, the creditor, the debtor, the public, the law text writer, the law school instructor, and the economist.