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# Bankruptcy from a Family Law Perspective

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# BANKRUPTCY FROM A FAMILY LAW PERSPECTIVE

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The points at which family interests are involved in the usual bankruptcy proceeding are many. Some are quite obvious, as dower rights of the wife, alimony claims, or intra-family concealments. Others are less conspicuous but no less potent, as exclusion of relatives and spouses from certain rights, post-bankruptcy inheritances, cryptic exemption rights or evidentiary obligations. The scope here will not be limited to the traditional academic "Family Law" concept but will include that wider sphere where husbands, wives, and children are actually and vitally concerned in a bankruptcy involving one of them. Not only are the advantageous rights to be considered but also the duties and burdens placed upon members because of the family unit. It is with this broad concept of family law as it intermingles in the law of bankruptcy that we are here concerned.

## I. WIFE OR RELATIVE AS PETITIONING CREDITOR.

It is clear that either spouse may become a voluntary or involuntary bankrupt[1] but the rights of the one in the early stages of a proceeding in bankruptcy of the other are delimited. Section 59(e) of the Bankruptcy Act[2] provides that in computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, creditors who are relatives of the bankrupt shall not be counted. A wife is a relative under section 1(27).[3] Thus the problem arises as to her situation in this regard when she is a creditor of her husband in bankruptcy. At first the restriction seems clear and unambiguous but by raising two questions some uncertainty may result:

1. Does this mean a wife or relative may not be a petitioning creditor?
2. Does the limitation go only to the problem of ascertaining how many creditors shall be counted in determining the number of persons who must file the petition?

The dual nature of the problem may be illustrated by supposed factual situations. Under section 59(b) of the Bankruptcy Act,[4] if there are twelve or more creditors, three or more creditors must file a petition for involuntary bankruptcy. If the creditors are less

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1. Bankruptcy Act § 4, 30 STAT. 547 (1898) as amended, 11 U.S.C.A. § 22 (Supp. 1955) (hereinafter cited to U.S.C.A. section only). See also 11 U.S.C.A. § 1(23), (33) (Supp. 1955).
2. 11 U.S.C.A. § 95(e) (1943).
3. 11 U.S.C.A. § 1(27) (Supp. 1955).
4. *Id.* § 95(b).

than twelve, only one need file the petition. If the involuntary petition has been signed by one creditor but later it appears there are fourteen creditors, one of whom is the bankrupt's wife and the two others relatives, the petition is sufficient as the three would not be counted in ascertaining whether there were twelve or more creditors. On the other hand, if there were more than twelve countable creditors and the petition were signed by three creditors including the wife, would the petition be sufficient? When there was no statutory limitation on the wife, it was held that she could be a petitioning creditor in her husband's bankruptcy.[5] Since section 59(e)(2) has been held to exclude creditors who are related to the bankrupt only for purposes of determining the total number of creditors, in ascertaining the number of petitioning creditors required, and that a relative may still be a petitioning creditor,[6] it is clear that a wife or other relative may be a petitioning creditor, although such relative may not be counted in ascertaining the total number of creditors of the bankrupt for petition requirement purposes. The scope of this limitation on relatives as creditors is quite extensive as "relatives" is defined to mean persons related by affinity or consanguinity within the third degree as determined by the common law and includes a spouse.[7]

### II. Intra-Family Creditors and Selection of Trustee.

Relatives of the bankrupt are subject to further limitations in the selection of the trustee in bankruptcy. Prior to 1938 the attitude of the courts could be summed up in the words of a New York judge: "There is no reason in law or morals why a relative of the bankrupt, who is a legitimate creditor, shall not have the same right to vote for a trustee as any other creditor."[8] However, the wife was more closely watched and as a creditor of her bankrupt husband, was not allowed to dominate the choice of a trustee.[9] The matter is now specifically dealt with by the Bankruptcy Act's providing that creditors of the bankrupt who are related by affinity or consanguinity, including the spouse, may not participate in the election of a trustee.[10] The object of this provision seems based on an attitude less trustful of relatives. "The purpose of the provision . . . is to prevent the election of a trustee who may be too friendly to the bankrupt and fail to protect the interests of creditors."[11] Here again the problem seems an untroubled one, but when the manner of electing a trustee is considered, doubts again arise.

5. *In re* Novak, 101 Fed. 800 (N.D. Iowa 1900).
6. Perkins v. Dorman, 206 Fed. 858 (D.N.M. 1913).
7. Bankruptcy Act. § 1(27), 11 U.S.C.A. § 1(27) (Supp. 1955).
8. *In re* Rothleder, 232 Fed. 398, 401 (S.D.N.Y. 1916).
9. *In re* Ballantine, 232 Fed. 271 (N.D. N.Y. 1916).
10. § 1(27), 11 U.S.C.A. §§ 1(27) (Supp. 1955), 72(a) (1943).
11. *In re* Latham Lithographic Corp., 107 F.2d 749, 750 (2d Cir. 1939).

Under section 56,[12] a trustee is selected by a majority vote in number and amount of claims of all creditors. Only creditors present are recognized in determining the majority necessary in number and amount for selecting a trustee. If the creditor wife then attends the creditors' meeting, is she disqualified only in determining the number of creditors present or is the amount of her claim also disqualified in determining a majority in amount of claims? Suppose there are three creditors present, one of whom is the wife of the bankrupt. It is clear under section 44(a),[13] the wife may not be counted as a creditor in determining the number of creditors empowered to elect a trustee. However, if the wife's claim is for $5,000 and the combined claim of the other two creditors, $4,500, the creditors could not elect a trustee if the wife's claim must be included in ascertaining the total claims present, and the court would be forced to name the trustee under section 44(a).[14] Section 56(b) and (c),[15] concerned with other disqualified creditors, are specific on this matter. Subsection b provides "nor shall such claims be counted in computing either the number of creditors or the amount of their claims," and subsection c, "shall not be counted in computing the number of creditors voting or present at creditors' meetings, but shall be counted in computing the amount." Both concepts thus are seen to be recognized in the act itself. A broad interpretation of the relative disfranchising provision of section 44(a) seems logical. The result would be that the wife's or other relative's claims would be disregarded completely from the class of creditors that may vote for a trustee or be counted either in number or amount of claims in ascertaining majorities required.[16] Reading sections 44(a)[17] and 56(a)[18] together, the meaning could well be integrated as follows: Creditors, exclusive of the wife and relatives of the bankrupt, shall at the first meeting appoint a trustee by a majority in number and amount of claim of *such* creditors who are present.[19]

## III. Wife's Duty to Testify in Husband's Bankruptcy.

The status of husband and wife when observed at the time of bankruptcy of the husband is one viewed by the lawmaker and the courts

12. Bankruptcy Act § 56(a), 11 U.S.C.A. § 92(a) (1943).
13. Bankruptcy Act § 44(a), 11 U.S.C.A. § 72(a) (1943).
14. *Ibid.*
15. Bankruptcy Act, § 56(b),(c), 11 U.S.C.A. § 92(b),(c) (1943).
16. Relatives are only disqualified at the creditors meeting in selection of a trustee. In other matters they have full right of participation. § 56, 11 U.S.C.A. § 92 (1943).
17. Bankruptcy Act § 44(a), 11 U.S.C.A. § 72(a) (1943).
18. Bankruptcy Act § 56(a), 11 U.S.C.A. § 92(a) (1943).
19. "In our opinion § 44 creates a personal disability only. If a creditor who would be disqualified to vote the claim in the debtor's bankruptcy assigns it in good faith to a purchaser who is not disqualified, we can see no reason to bar the latter from voting it." *In re* Latham Lithographic Corp., 107 F.2d 749, 750 (2d Cir. 1939).

with vacillating ambivalence. The ancient common law, disqualifying spouses from testifying for each other,[20] together with the privilege not to testify against the other,[21] and the several state statutes with their many variations of this husband-and-wife disqualification or privilege, went far in refusing the right to delve into the transactions within this relationship. The Bankruptcy Act,[22] however, indicates that the veil must be drawn aside in bankruptcy matters and that the very nature of the husband-wife relationship justifies a careful scrutiny of transactions within the scope of the particular bankruptcy period.[23]

Section 21(a) of the act provides that the spouse of a bankrupt may be required to appear and be examined, any law of the United States or any state to the contrary notwithstanding.[24] The mandate is strong and removes, in the scope of its coverage, the necessity of considering the common-law or statutory provisions in the several states or other federal laws on the problem of competency and privilege of the husband-wife relationship. However, the door is not thrown completely open as the scope of section 21(a) is narrowed so that the spouse may be examined only concerning acts, conduct, or property of a bankrupt, and only if touching business transacted by such spouse or to which such spouse is a party and for the purpose of determining such facts.[25] If, then, this basis can be established, the rule of evidence of the Bankruptcy Act[26] alone will be applicable and the wife or spouse will be required to testify notwithstanding the provisions of any other law. The latitude of inquiry, once the proper basis is established, should be broad as the wife is often the only witness who can be of help (though recalcitrant) in discovering assets and revealing frauds.[27]

The scope of section 21(a)[28] is further narrowed by other rules of evidence. This provision of the Bankruptcy Act is one designed primarily to give the bankruptcy court the power to require a spouse to testify regardless of other law to the contrary, but it does not alter the usual rules of evidence as to privilege, eliciting or properly presenting evidence. The proposition may be illustrated by the situation where a wife is called to testify concerning her husband's bank-

20. See 2 WIGMORE, EVIDENCE §§ 600, 601 (3d ed. 1940).
21. See 8 WIGMORE, EVIDENCE, § 2227 (3d ed. 1940).
22. Bankruptcy Act § 21, 11 U.S.C.A. § 44 (1953).
23. "[I]n many cases the wife is the only witness who can shed light upon the whereabouts of concealed assets. . . ." *In re* Hyman, 48 F.2d 814 (6th Cir. 1931).
24. 11 U.S.C.A. § 44(a) (1953). "All evidence shall be admitted which is admissible under the statutes of the United States . . . or under rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. . . . *The competency of a witness to testify shall be determined in like manner.*" FED. R. CIV. P. 43(a). (Emphasis added).
25. Bankruptcy Act § 21(a), 11 U.S.C.A. § 44(a) (1953).
26. *Ibid.*
27. See *In re* Hyman, 48 F.2d 814 (6th Cir. 1931); *In re* Foerst, 93 Fed. 190, 191 (S.D. N.Y. 1899).
28. Bankruptcy Act § 21(a), 11 U.S.C.A. § 44(a) (1953).

ruptcy and the particular line of questioning goes to confidential communications between a husband and wife. The communications are privileged and the wife may not answer.[29]

Although the wife may be required to testify in this limited area, it is a matter discretionary with the court.[30] It is suggested that upon the application of a creditor, the courts should not only be receptive and grant the order requiring a wife to testify but should be lenient in permitting a wide range of searching questions. The pre-bankruptcy situation should be brought to light and where there has been no intra-family hugger-muggery, there should be little reluctance on the part of the wife to cooperate fully. It is further suggested that if this intra family situation is vague and uncertain because of the recalcitrance of the wife and the bankrupt husband, the court should refuse discharge under section 14(c)(7) of the act.[31] The ease with which assets have been concealed within the family and remained undisclosed in the bankruptcy proceeding can be largely laid to indifference or reluctance on the part of creditors to pursue vigorously for disclosure, but the courts may also be at fault in unduly stifling the creditors' inquiries into family affairs. In any event, herein is a sore spot from which rumors have spread, tending to discredit the whole bankruptcy proceeding.

This provision of the Bankruptcy Act declaring the competency of the wife to testify in the husband's bankruptcy, provides further that the wife may be required to appear before the court or the judge of any state court for purposes of examination.[32] This may on casual observation seem to give the bankruptcy court power to compel a wife to testify in a state action although the state law would not permit; however, this is not the case.[33] It seems logical that such provision was for convenience of the witness so that where ordering the witness to appear before the bankruptcy court would work a hardship, the order to appear before a conveniently located judge of a state court might be issued.[34] This hearing before the judge of the state court, however, relates only to a part of the proceedings in bankruptcy and so the fact is that the state judge is as a matter of courtesy hearing a bankruptcy matter. It is therefore logical that the law of evidence of the Bankruptcy Act should apply in such proceeding before the state judge. Thus a wife may be compelled to

29. *In re* Gilbert, 10 Fed. Cas. 344, No. 5,410 (D. Mass. 1869). "I cannot bring myself to believe that congress intended to destroy this most sacred of all confidences." *Id.* at 344.

30. Bankruptcy Act § 21(a), 11 U.S.C.A. § 44(a) (1953). *In re* Weidenfeld, 254 Fed. 677 (2d Cir. 1918).

31. Bankruptcy Act § 14(c)(7), 11 U.S.C.A. § 32(c)(7) (1953). Although this section is pointed at the bankrupt, where he and his wife fail to explain satisfactorily, there seems a stronger justification for refusal of discharge.

32. Bankruptcy Act § 21(a), 11 U.S.C.A. § 44(a) (1953).

33. See Weeks v. Davis, 148 Okla. 230, 298 Pac. 267 (1931).

34. *Ibid.*

testify there regardless of the law of that particular state.[35] If, however, a trustee in bankruptcy brings a full scale action in a state court, the laws of competency and privilege of the state may apply and the evidentiary law of the Bankruptcy Act has no application. Therefore a wife in such action may not be called to testify if the law of that state so provides,[36] section 21 of the Bankruptcy Act[37] notwithstanding. Query: In some matters where the bankruptcy court and a state court may have concurrent jurisdiction, could these matters of competency of the wife as treated by the state law and the Bankruptcy Act be a determinative force in selection of jurisdiction?

In summary, then, it will be noted that the bankruptcy court may in its discretion require a wife to testify in her husband's bankruptcy proceedings in the limited area touching on business transacted by her or to which she is a party or to determine such facts. This requirement encompasses a wife's appearing before a state judge in the bankruptcy proceeding but does not include full actions in state courts although the trustee in bankruptcy is a party.[38]

## IV. DOWER RIGHTS IN BANKRUPTCY.

Although dower rights in bankruptcy may be classified generally into two categories (*viz.*: (1). dower rights when the husband is in bankruptcy, and (2) dower rights in the wife's bankruptcy), the usual situation is the problem of the treatment of dower in the husband's bankruptcy. The matter is clearly covered by the Bankruptcy Act,[39] but the act's reference to state law for the initial determinative factor may leave the problem vague and uncertain in any particular bankruptcy court. Section 70(a)(5) provides that the trustee shall take the title of the bankrupt in all property which he could have transferred or might have been levied upon and sold under judicial process against him, or otherwise seized.[40] Whether the wife has any dower interest which remains in her upon the husband's bankruptcy then depends upon whether under the applicable state law the husband by transfer or his creditors by levy could have ended the wife's dower right.

In jurisdictions where a wife's dower right continues against the husband's property in the hands of the trustee, the problem arises in the bankruptcy court as to the liquidation of the property so encumbered. Prior to the Chandler Act of 1938, under a provision

35. *Ibid.*
36. *Ibid.*
37. 11 U.S.C.A. § 44(a) (1953).
38. The wife is emphasized because she is the party usually involved; however, all problems are equally applicable to a husband. The word "spouse" is used in § 21(a) of the Bankruptcy Act, 11 U.S.C.A. § 44(a) (1953).
39. Bankruptcy Act §§ 2(a)(7) and 70(a), 11 U.S.C.A. §§ 11(a)(7) (Supp. 1953), 110(a) (1953).
40. 11 U.S.C.A. § 110(a)(5) (1953).

of the Bankruptcy Act stating that the trustee could "cause the estates of bankrupts to be collected, reduced to money and distributed,"[41] it was held that the bankrupt's real estate could not be sold free and discharged from the inchoate dower of his wife without her consent.[42] A nonconsenting wife therefore interfered substantially with the marketability of the property and the price obtainable. This situation is to some extent alleviated by the present act, which provides that the trustee may "determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property of any estate whenever, under the applicable laws of the state, creditors are empowered to compel such spouse to accept a money satisfaction for such interest."[43] The power of the trustee to sell real estate free of a wife's continuing dower right without her consent is circumscribed by the state law. The bankruptcy court, then, may sell free and clear of this continuing dower right only with the wife's consent or where under the applicable state law, creditors may compel such sale. It seems desirable for the trustee to have a broad power to sell free and clear of dower interests if the wife receives adequate compensation for her loss, as such liquidation in most instances would result in a better sale price. Should there be any objection to a change empowering the trustee to sell free of the dower right regardless of the law of the particular state? It seems there would be no real objection.[44]

From the relative certainties, we like to move to the supposititious and create possible problems that prick the mind of the academician. Suppose, for instance, that the wife's dower right at the time of her husband's bankruptcy is such that the trustee takes the husband's property freed from any dower right of the wife. Suppose further that the husband dies shortly after his petition in bankruptcy. If the wife's dower right is one that becomes absolute and indefeasible in property of which her husband died seized, is there any possibility that she may assert a dower right now although she could not at the time of the petition? The Bankruptcy Act literally cries out a "no" answer. The trustee of the estate of the bankrupt shall be vested with the title of the bankrupt as of the date of the filing of the petition.[45] However, in *Ehrhart v. New York Life Insurance Co.*, it was held that the death of the husband after his petition in bankruptcy did not entitle the trustee to the death benefits of a life insurance policy that otherwise passed to the trustee, as against the wife beneficiary.[46] It can be argued that the supposed situation on dower

41. Bankruptcy Act § 2(7), 11 U.S.C.A. § 11(7) (1927).
42. Kelly v. Minor, 252 Fed. 115 (4th Cir. 1918).
43. Bankruptcy Act § 2(a) (7), 11 U.S.C.A. § 11(a) (7) (Supp. 1955).
44. Curtesy is not specially considered. However, its problems are similar to those presented under dower.
45. Bankruptcy Act § 70(a), 11 U.S.C.A. § 110(a) (1953).
46. 45 F.2d 804 (S.D. Ill. 1929). For underlying motivating forces for de-

and that of the insurance case are very similar, or that they are completely disparate, yet the powerful underlying motivating forces for decision are the same, and a holding that the wife's dower right on the post-petition death of the husband must inure to her benefit would be no more of a corruption of the act than the insurance case, if corruption it was.

The bankruptcy of a wife is less common but in that event, the question as to the trustee's right to her dower interest presents itself. Under section 70(a)(5),[47] all property which the wife could have transferred or might have been levied upon and sold under judicial process against her would pass to the trustee. Whether the trustee takes such dower interest then depends upon its incidents as created by state law. If the wife's dower interest is such that the trustee would not take at the time of the petition, would he take it subsequently if the husband died within six months giving the bankrupt wife a vested interest under section 70(a)(7),[48] which provides that the trustee shall be vested with the title of the bankrupt of "contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, *and like interests in real property,* which were nonassignable prior to bankruptcy and which, within six months thereafter, become assignable interests or estates"? To claim that the wife's dower interest which became vested within six months after her petition in bankruptcy passes to the trustee would present a clash in the philosophy of construction favorably to the wife, and the general scope of section 70(a)(7) and the second and third subparagraphs intending to vest in the trustee property coming to the bankrupt within six months after bankruptcy.[49] However, it is ventured that if such post-petition dower interest is not otherwise exempt by state law,[50] it would not be held to pass to the trustee as being a property interest included within the meaning of section 70(a)(7).[51]

Analogous to the problems of the dower interest in bankruptcy are the questions which arise in connection with tenancies by the entirety, joint tenancies, tenancies in common and community property. The determinative factor will be the applicable state law as it creates these interests and whether they could have been transferred or levied upon and sold under judicial process as provided for in

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cision see also Myers v. Matley, 130 F.2d 775 (9th Cir. 1942), *aff'd,* 318 U.S. 622 (1942).

47. Bankruptcy Act § 70(a)(5), 11 U.S.C.A. § 110(a)(5) (1953).

48. Bankruptcy Act § 70(a)(7), 11 U.S.C.A. § 110(a)(7) (1952). (Emphasis added.).

49. Bankruptcy Act § 70(a)(7) and subparagraphs 2 and 3, 11 U.S.C.A. § 110(a)(7) and subparagraphs 2 and 3 (1953).

50. Bankruptcy Act § 6, 11 U.S.C.A. § 24 (Supp. 1955).

51. Bankruptcy Act § 70(a)(7), 11 U.S.C.A. § 110(a)(7) (1953).

section 70 (a) (5) of the Bankruptcy Act.[52] No detailed treatment of these special problems is intended here.

## V. Alimony and Related Matters in Bankruptcy.

A divorced husband's bankruptcy in all probability will require a consideration of his former wife's claims against him resulting from their marriage and divorce. The usual situation would be one of overdue and future installments in a general alimony decree for periodic payments. The overdue installments are clearly provable and allowable under section 63 (a) (1),[53] and future installments may be allowed under section 63 (a) (8).[54] However, the court will usually refuse to allow a claim for future installments as being not capable of liquidation or of reasonable estimation, as provided in section 57 (d).[55] A wife may not be interested in presenting her claim for alimony where the husband's estate is of little value inasmuch as her protection comes under section 17 (a) (2),[56] which provides that discharge in bankruptcy shall not release him from liabilities for alimony due or to become due, or for maintenance or support of wife or child. It may be wise procedurally, however, for a wife to present her full claim for alimony. A finding at that time by the bankruptcy court that the future obligation is not capable of liquidation or of reasonable estimation would then prevent this future obligation, even in part, to the risk of being later proved to be other than an alimony liability and so discharged by the bankruptcy, as section 63 (d)[57] provides that where such contingent claim is proved but has not been allowed because of its uncertain nature, it is then not provable and so not discharged under section 17[58] providing for discharge of all provable debts.

Although the Bankruptcy Act clearly states that obligations for alimony or for maintenance or support of wife and children shall not be discharged,[59] whether the obligations provided for in the divorce decree or agreed between the husband and wife are alimony or support within the act may be questionable,[60] and the use of the terms "ali-

52. 11 U.S.C.A. § 110 (a) (5) (1953). For a general summary of tenancies by the entirety, joint tenancies, tenancies in common and community property in bankruptcy, see Collier, Bankruptcy Manual, 915-17 (1948).
53. Bankruptcy Act § 63 (a) (1), 11 U.S.C.A. § 103 (a) (1) (1953).
54. Bankruptcy Act § 63 (a) (8), 11 U.S.C.A. § 103 (a) (8) (1953).
55. Bankruptcy Act § 57 (d), 11 U.S.C.A. § 93 (d) (1943).
56. Bankruptcy Act § 17 (a) (2), 11 U.S.C.A. § 35 (a) (2) (1953).
57. Bankruptcy Act § 63 (d), 11 U.S.C.A. § 103 (d) (1953).
58. Bankruptcy Act § 17, 11 U.S.C.A. § 35 (1953). For facts illustrating the problem, see Avery v. Avery, 114 F.2d 768 (6th Cir. 1940).
59. Bankruptcy Act, § 17, 11 U.S.C.A. § 35 (1952).
60. *E.g.*, see *In re* Hollister, 47 F. Supp. 154 (S.D.N.Y. 1942), *aff'd*, 132 F.2d 861 (1943); Remondino v. Remondino, 41 Cal. App. 2d 208, 106 P.2d 437 (1940); La Rue v. La Rue, 341 Ill. App. 411, 93 N.E.2d 823 (1950); D'andria v. Hageman, 253 App. Div. 518, 2 N.Y.S.2d 832 (1st Dep't), *aff'd*, 278 N.Y. 630, 16 N.E.2d 294 (1938); Battles v. Battles, 205 Okla. 587, 239 P.2d 794 (1952); Fife v. Fife, 1

mony" or "support" in the decree or agreement have little probative value.[61] In determining whether the obligation is exempted from discharge, it should in many instances be tested by each standard separately as one may save the obligation from discharge but not the other, *i.e.*, the obligation may not be alimony but clearly one for maintenance or support of the wife or child. Of these two tests which provide freedom from discharge, that of maintenance or support is the broader and will save many stipulations and provisions in a divorce decree from discharge which might not be anticipated before observing the decisions in this area.[62] These decisions will be considered later, herein.

True alimony in gross is both alimony, and for support of the wife and so not discharged[63] even though proved in full in the bankruptcy proceeding. True separate maintenance agreements,[64] or true stipulations for support of wife and children made prior to divorce or in the divorce proceeding are obligations not discharged,[65] and these cause only nominal concern under the clear exceptions to discharge of section 17(a)(2). The trouble arises when an agreement or decree ostensibly indicates it is alimony or for support but is challenged as being at least in part an award for money owed the wife by the husband prior to the divorce or agreement, or in payment for property which the husband appropriated from the wife. For example, the stipulation or decree may provide that the husband shall pay the wife $1000 a month alimony. Half of this may be based on the need for the husband to pay back to the wife monies he in equity should replace, and the other half as his obligation to care for his wife after divorce. The second half here is clearly excepted from discharge under section 17(a)(2)[66] but should the first half also be excepted? Logically, it seems it should not be. If the husband owed the wife on a note in a commercial venture, his bankruptcy would clearly discharge this obligation. If the obligation is set out in a divorce stipulation or decree even indiscriminately as alimony or for support, at or after bankruptcy, the true nature of this obligation should require that it be segregated and found discharged.

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Utah 2d 281, 265 P.2d 642 (1954); Lyon v. Lyon, 115 Utah 466, 206 P.2d 148 (1949).

61. Cases cited note 60 *supra*.

62. *E.g.*, see *In re* Hollister, 47 F. Supp. 154 (S.D.N.Y. 1942), *aff'd*, 132 F.2d 861 (1943); Remondino v. Remondino, 41 Cal. App. 2d 208, 106 P.2d 437 (1940); Krupp v. Felter, 77 N.Y.S.2d 665 (Sup. Ct. 1948); D'andria v. Hageman, 253 App. Div. 518, 2 N.Y.S.2d 832 (1st Dep't), *aff'd*, 278 N.Y. 630, 16 N.E.2d 294 (1938).

63. Lyon v. Lyon, 115 Utah 466, 206 P.2d 148 (1949).

64. Holahan v. Holahan, 77 N.Y.S.2d 339 (Sup. Ct. 1948); Battles v. Battles, 205 Okla. 587, 239 P.2d 794 (1952).

65. Lyon v. Lyon, 115 Utah 466, 206 P.2d 148 (1949).

66. Bankruptcy Act, § 17(a)(2), 11 U.S.C.A. § 35(a)(2) (1953).

This problem usually arises upon the wife's action to collect alimony or support money after the husband's bankruptcy and his refusal to pay on the grounds that the award was totally or partially a statement adjusting dischargeable obligations between the parties. Thus the matter is one normally raised in the state courts. That the courts will look behind the decree or agreement to determine the nature of the obligation and divide it into its components is unquestioned.[67] In *Avery v. Avery*[68] a judgment based upon a former divorce decree was inquired into to ascertain what parts of it were originally for alimony or support of the wife and children. A master was appointed to determine what portion of the decree was in payment for the wife's dower and other property rights which would be subject to discharge; and in *La Rue v. La Rue*[69] a divorce decree ordering the payment to the wife was held to be an order to pay back money she had loaned to her husband and that this obligation was discharged in bankruptcy. The viewpoint of these cases seems to be that adjustments in a divorce decree providing for debts owed the wife and for her property rights are civil obligations arising from arms length dealings and so such obligations are discharged. Only that part of the decree providing for the wife's care in the future arising out of the duty created by the marital relation is free from discharge under this restrictive interpretation.

Such an interpretation seems too narrow. The party injured is the wife. The party benefited is the husband. Third parties are in no way affected at the time of the bankruptcy and future creditors of the husband are on notice of his divorce decree obligations. It permits a husband to relieve himself of obligations created during marriage and which in all probability never would have been created except for the marriage. Then, too, such a narrow interpretation disregards the fact that the wife at the time of divorce and the court in its decree are considering the adequacy of the entire award in relation to the future, and a new undischargeable obligation is and should be the basis upon which it is determined. An agreement or decree requiring the payment of a certain amount to the wife if undischargeable is an award to her of rights far superior to any claim for a similar amount she may have against her husband regardless of the divorce. It is contended then that all general decrees for payment to the wife or agreements between divorced spouses for such payments should be nondischargeable in bankruptcy unless it could be clearly shown that any part of the award was made as

67. *E.g.*, see Avery v. Avery, 114 F.2d 768 (6th Cir. 1940); Lyon v. Lyon, 115 Utah 466, 206 P.2d 148 (1949); La Rue v. La Rue, 341 Ill. App. 411, 93 N.E.2d 823 (1950).
68. 114 F.2d 768 (6th Cir. 1940).
69. 341 Ill. App. 411, 93 N.E.2d 823 (1950).

payment of a debt owed to the wife or for property rights of the wife, and that the remaining portion of the award was intended and evaluated as a full adjustment for future care for the wife and children.

This may be going somewhat farther than present holdings, but the way is pointed by *D'andria v. Hageman*,[70] where the husband and wife stipulated in divorce that the husband would repay a definite sum of money which he had borrowed from her during their marriage, and that this would be in lieu of any payments for maintenance and support. This was held to be for support of the wife under section 17(a)(2) of the Bankruptcy Act and so not discharged. The statement of the court in *Remondino v. Remondino* gives a proper background for decision: "If, upon a consideration of the entire transaction the court determines that the purpose of the judgment for support money is to guarantee the economic safety of the wife by the husband, then his discharge in bankruptcy does not affect his liability under the judgment."[71]

The provision of the Bankruptcy Act excepting from discharge liabilities for maintenance or support of wife or child[72] projects itself into other than divorce or separation situations. Many claims against the bankrupt husband and father will have arisen upon the furnishing of necessities to him for his family, such as medical care, food, clothing and shelter. It is clear that these claims are discharged in bankruptcy.[73] Yet claims by one furnishing necessaries to the wife and children to aid them because of their need after abandonment by the husband and father are not discharged.[74] The dividing point seems to be whether the necessaries were furnished upon an agreement with the husband directly or through his wife or children, or furnished because of need resulting from the failure or refusal of the father to maintain and support them. Thus obligations arising because of purchases by a child or wife under any agency relationship with the father or husband would be discharged on his bankruptcy while claims for necessaries furnished during a period of abandonment would not be.[75]

The position of claims of government units for relief granted a bankrupt are atypically treated. Although relief is based on need and inability of the husband to furnish basic necessities, such

70. 253 App. Div. 518, 2 N.Y.S.2d 832 (1st Dep't), *aff'd*, 278 N.Y. 630, 16 N.E.2d 294 (1938).
71. 41 Cal. App. 2d 208, 106 P.2d 437, 441 (1940); see *In re* Hollister, 47 F. Supp. 154, 156 (S.D.N.Y. 1942), *aff'd*, 132 F.2d 861 (1943).
72. §17(a)(2), 11 U.S.C.A. § 35(a)(2) (1953).
73. See *In re* Meyers, 12 F.2d 938 (W.D.N.Y. 1926); *In re* Lo Grasso, 23 F. Supp. 340 (W.D.N.Y. 1938); Lieb v. Auerbach, 10 N.J. Super. 391, 76 A.2d 726 (L. 1950).
74. *In re* Meyers, 12 F.2d 938 (W.D.N.Y. 1926); *accord*, *In re* Lo Grasso, 23 F. Supp. 340 (W.D.N.Y. 1938).
75. Cases cited note 73 *supra*.

claims for relief paid are usually held to be discharged by the bankruptcy of the husband and father under section 17(a)(2) of the Bankruptcy Act.[76] Although an individual furnishing necessities to the family where the husband has failed or refused to make provision for his family has a nondischargeable claim, a furnishing of relief where the law creates a claim for repayment has been held a dischargeable obligation as such relief was not furnished because of a family relationship to the bankrupt and therefore not for support of wife and children under section 17 of the act.[77]

The impact of such a conclusion may be mitigated by interpreting the claim for payments for relief granted to be of such a nature as not to be a provable claim at the time of bankruptcy[78] and so not discharged.[79] Then, too, the statutory provisions may create a lien on the husband's property to the value of relief granted and this would be recognized in bankruptcy.[80]

A question may be raised as to the dischargeability of orders for payment in an annulment decree. The usual decree of annulment provides for readjustment of property rights and no provision for alimony. Thus it seems logical that in most annulment situations all such obligations for payment of money would be discharged by the putative husband's bankruptcy. Such ordered payments are for the adjustment of property rights and not for maintenance and support of a wife and are so discharged in bankruptcy.[81] However, it is suggested that the test for annulment decrees should be the same as that for divorce decrees,[82] at least for the voidable marriage. Thus any award in an annulment action which is in fact for support and maintenance of the woman who occupied the position of wife should not be subject to discharge upon the bankruptcy of the supposed husband. If the marriage were absolutely void, to bring any decree of award within the exception to discharge would shock those steeped in the traditional concept of such marriages, but even here if the decree of annulment is an attempt to work out an adjustment which is primarily concerned with caring for the supposed wife, such obligation should not be discharged in bankruptcy and need not be under section 17(a)(2)[83] with a realistic interpretation of the meaning of the

76. 11 U.S.C.A. § 35(a)(2) (1953).
77. Hilliard v. De Ciuceis, 202 Misc. 197, 115 N.Y.S.2d 5 (Sup. Ct. 1952).
78. Bankruptcy Act § 63(a), 11 U.S.C.A. § 103(a) (1953).
79. State v. Murzyn, 142 Conn. 329, 114 A.2d 210 (1955).
80. Of interest to the attorney is the holding that an allowance in a decree for attorney's fees in a divorce action creates an obligation which is for maintenance of the wife and so not discharged under § 17(a)(2) of the Bankruptcy Act. Merriman v. Hawbaker, 5 F. Supp. 432 (E.D. Ill. 1934). Neither is the obligation to pay attorney's fees created by stipulation between the husband and wife in a divorce action discharged. Doyle v. Hollister, 39 N.Y.S.2d 124 (N.Y. Munic. Ct. 1942).
81. Fife v. Fife, 1 Utah 2d 281, 265 P.2d 642 (1954).
82. Discussed in text *supra*.
83. 11 U.S.C.A. § 35(a)(2) (1953).

word "wife" in that section. The need for such an extending interpretation will usually arise where the parties to the intended marriage were in good faith but mistaken. In the situation where the supposed husband has wrongfully induced the other into a void marriage, the obligations he is to pay under the aunulment decree or any other theory of liability to the wronged woman should not be discharged in his bankruptcy under section 17(a)(2)[84] providing that liabilities for obtaining money or property by false pretenses or false representations, or for willful and malicious injuries to the person or property shall be exempt from discharge.

A less frequent problem of alimony in bankruptcy is the question as to whether a wife's rights to alimony are taken by the trustee as part of her estate and so available to creditors in bankruptcy. The broad provisions of the Bankruptcy Act that the trustee shall take all property including rights of action which the bankrupt could have transferred or might have been levied upon, except exempt property,[85] again sends us to the state law for determination of these matters. Upon close analysis it will be seen: first, that if the alimony status at the time of bankruptcy is exempt by state law the wife retains her rights under it; second, if not exempt the alimony rights will pass to the trustee if they were transferable; and, third, if not exempt, the wife's alimony rights will pass to the trustee if they might have been levied upon and sold under judicial process. These may overlap in some respects but the scope of each must be carefully considered in determination of the particular case. If, then, a wife's alimony rights are exempt from her creditors under the applicable state law the trustee in bankruptcy will not be entitled to them. A state statute, however, exempting alimony from creditors may be held not to exempt provisions of a decree or settlement which are in fact final property divisions or alimony in gross and so the trustee would take.[86] As long as the state statute provides for an actual exemption, it will be recognized in bankruptcy and so the alimony exemption may be quite broad in some states and narrow in others.

If the status of the wife's alimony right is not exempt, it still may be such that it is neither transferable nor leviable property or a cause of action under section 70(a)(5)[87] of the Bankruptcy Act and so not an interest that would go to the trustee. In the case of *In re Le Claire*,[88] it was held that a claim for alimony in a pending divorce action was not transferable nor could it have been levied upon and therefore would not pass to the trustee, although the alimony award

84. Bankruptcy Act § 17(a)(2), 11 U.S.C.A. §35(a)(2) (1953).
85. Bankruptcy Act § 70(a)(5), 11 U.S.C.A. § 110(a)(5) (1953).
86. *In re* Fiorio, 128 F.2d 562 (7th Cir. 1942).
87. 11 U.S.C.A. § 110(a)(5) (1953).
88. 124 Fed. 654 (N.D. Iowa 1903); Glasser v. Rogers, 53 F. Supp. 668 (S.D. N.Y.1943).

was made five days after the petition in bankruptcy. Whether the trustee in the wife's bankruptcy takes her interest in an alimony obligation of her former husband depends then upon the treatment of such obligation under the applicable state law, and as alimony is generally exempt or is an interest not transferable or subject to levy under the applicable state law, it seldom becomes an asset in the hands of the trustee in bankruptcy.

## VI. The Homestead in Bankruptcy.

An effective homestead exemption provided by the state law will be recognized in bankruptcy and the trustee ordinarily takes no interest in the property so exempt.[89] However, the trustee may upon finding that the property in which the homestead exists is indivisible, sell the entire property free from the homestead, causing the exemption to shift from the property to the proceeds.[90] This power to sell free and clear is especially important in states where the dollar value homestead exemption is small compared to the present value of the indivisible property in which the homestead is claimed. If the property is divisible, the homestead should be set aside by the bankruptcy court and no further jurisdiction asserted over it.[91] The most troublesome problem of late has been whether a homestead exemption could be perfected after the filing of the petition in bankruptcy. It is contended that since the trustee is vested with the title of the bankrupt at the time of the petition and that such interest is equivalent to the rights of a creditor holding a lien, it would be impossible for a homestead to be perfected after the petition.[92] However, it is now well established, and correctly so, that if under the state law the homestead could have been perfected in a nonbankruptcy situation, it may also be perfected in that post-petition status.[93]

The various states have recognized that the declaration and perfecting of homestead exemptions are often neglected, and to protect the family from frequent complete loss of the exemption, statutory permission to perfect the exemption is granted before execution sale. In this situation the claimant is put on notice of the need for perfecting his homestead exemption by the levy and adequate time is available for the perfection. If the petition in bankruptcy cuts off this possibility, in many cases, especially in the involuntary bankruptcy, the one entitled to homestead would have lost his right to claim without

89. Bankruptcy Act § 70(a), 11 U.S.C.A. § 110(a) (1953).
90. *In re* Brown, 228 Fed. 533 (W.D. Ky. 1915); *In re* Oderkirk, 103 Fed. 779 (D. Vt. 1900).
91. See Morgridge v. Converse, 72 N.E.2d 295 (Ohio App. 1947), *rev'd,* 150 Ohio St. 239, 81 N.E.2d 112 (1948).
92. See Myers v. Matley, 130 F.2d 775 (9th Cir. 1942), *aff'd,* 318 U.S. 622 (1943).
93. Myers v. Matley, 318 U.S. 622 (1943); *In re* Curmar Mfg. Co., 91 F. Supp. 647 (S.D. Calif. 1950); *In re* Davies, 96 F. Supp. 416 (W.D. Va. 1949).

prior notice of the seriousness of his situation. However, as now interpreted the homestead claimant may perfect his exemption any time before sale of the property by the trustee if the state law permits perfection to time of sale or execution.

## VII. HUSBAND'S INSURANCE IN BANKRUPTCY.

Although the life insurance provision of the Bankruptcy Act[94] is not expressly directed to the family situation, it in fact is of greatest importance to the family of the bankrupt. The most usual situation is life insurance upon the husband or father with the wife or estate as beneficiary. It is not to be doubted that a husband and father in taking out life insurance is usually motivated by a desire to care for his family in the event of his death and not to create an asset for creditors. If the rights in the life insurance were taken by the trustee in bankruptcy and liquidated, the contemplated protection for the family would be ended and probably be irreplaceable. The provisions of the Bankruptcy Act are expressly concerned with this problem and have alleviated the severity of such seizure and liquidation of life insurance interests in two ways: first, by the broad exemption of section 70(a)[95] under which life insurance exempt by state law would not go to the trustee; and, second, by providing that life insurance not exempt and which will go to the trustee may have such insurance released from the bankruptcy by payment to the trustee of the cash surrender value.[96] The dual nature of this beneficent treatment of life insurance must be recognized for in combination they give excellent protection to the family of the bankrupt insured. If the state law has liberal exemptions of life insurance, it may not be necessary to consider the release factor of section 70(a)(5)[97] but in those states having a low dollar value exemption the combination of both the exemption and cash surrender value release may come into play.

The Bankruptcy Act[98] provides that the bankrupt may, within thirty days after the cash surrender value of non-exempt life insurance has been ascertained and stated to the trustee, pay the trustee such value and then hold the policy free of the claims of creditors in bankruptcy. The referee should require the trustee to give prompt notice to the insured of the cash surrender value and it would not seem remiss for the referee as part of his operating procedure to insist that the bankrupt be carefully and fully advised of his rights therein. It would not seem out of place for the referee to request that

94. § 70(a)(5), U.S.C.A. § 110(a)(5) (1953).
95. Bankruptcy Act § 70 (a), 11 U.S.C.A. § 110 (a) (1953).
96. Bankruptcy Act § 70(a)(5), 11 U.S.C.A. § 110(a)(5) (1953).
97. 11 U.S.C.A. § 110(a)(5) (1953).
98. § 70(a)(5), 11 U.S.C.A. § 110(a)(5) (1953).

the bankrupt's wife be informed of the right to release the insurance, at least if the husband had no objection. It may be difficult for the bankrupt to raise the cash surrender value, but exempt property could possibly be the basis for the security needed. In many instances the wife will have resources for paying this cash surrender value and usually it would be an advantage for her to release the insurance.

If the cash surrender value of life insurance which has passed to the trustee is not paid within thirty days thus releasing the insurance, the policy passes to the trustee as an asset in the bankruptcy.[99] This evokes no criticism until the situation in which the insured bankrupt dies after the thirty day release period has passed without the cash surrender value having been paid.[100] The problem then becomes one as to whether the trustee takes the death benefit under the policy or only the cash surrender value. The determination of this question is logical only because it is one involving family interests, and so it is held that the interest the trustee takes is the cash surrender value, and the death benefits payable because of the death of the bankrupt, less the cash surrender value, go to the named beneficiary, although the insurance was not released or intended to be released by the insured, and the time within which the release could have been demanded elapsed.[101] The result seems right as the area wherein it will most frequently occur is one beneficial to the family unit.

Of course, particular insurance policies may be taken out wherein the rights are such that the trustee would not in any event take an interest in them, as where the wife is named beneficiary and no right to change the beneficiary without the consent of the beneficiary is reserved,[102] but normally this is not the case and the protection to the family by the exemption of insurance by state laws plus the right to release that not exempt by paying the cash surrender value seems desirable and adequate.

## VIII. Other Matters in Bankruptcy of Special Interest to the Family.

No concept of the Bankruptcy Act has become more routinely fixed than that of the trustee in bankruptcy taking title to all property owned by the bankrupt at the date of the petition and no other property. This may trap the unwary, for hidden in the unlettered paragraphs of the act are two insidious provisions which provide circumstances under which after acquired property may go to

99. Bankruptcy Act § 70(a) (5), 11 U.S.C.A. § 110(a) (5) (1953).
100. See Ehrhart v. New York Life Ins. Co., 45 F.2d 804 (S.D. Ill. 1929).
101. *Ibid.*
102. See *In re* Grant, 21 F.2d 88 (W.D. Wis. 1927).

the trustee in bankruptcy.[103] These are of especial interest in the family area because they are most apt to occur within that relationship. It is therein provided that interests by the entirety which, within six months, become transferable solely by the bankrupt, vests in the trustee, and further that property which comes to the bankrupt by devise, bequest or inheritance within six months after bankruptcy goes to the trustee in bankruptcy.[104] The intent here is clear but the advisability of taking such after acquired property is questionable. It may have created a period of time wherein the change of existing wills, of a testamentary rearrangement of intestate devolution, is desirable at least from the standpoint of the benefactor and the object of his benefaction. This may readily be depicted by the supposition of a bankrupt's wealthy father who is elderly and in poor health at the time of his son's bankruptcy. It seems the act in this respect goes too far in subjecting to the bankruptcy the property received by the bankrupt under a will or inheritance within six months of bankruptcy, but such is the present status of the law.[105]

Although the law of bankruptcy is strict on the time within which claims of creditors must be presented to be allowed, the arbitrary six-months requirement is tempered in the case of infants' claims. Such claims may be filed six months longer if the infant was without a guardian and was without notice of the bankruptcy proceedings.[106] The claim of the infant then will not be permitted to be filed for allowance in any event more than a year after the first date set for the first meeting of the creditors. This may seem somewhat harsh but when considered in connection with the dischargeability of claims, the interests of infants do not seem unduly infringed upon. Section 57(n)[107] deals only with allowance of claims and does not determine whether the infant may have a continuing right against the bankrupt. An infant's claim would not be discharged if not duly scheduled and if the infant had no notice of the bankruptcy.[108] Where the infant's claim has been properly scheduled by the bankrupt, in all probability a guardian would be appointed in time to file the claim properly. If the infant's claim is not properly listed by the bankrupt, the claim in all probability would not be discharged. Normally this would be to the over-all advantage of the infant.

The family is further considered in relation to the claiming of exemptions. Thus, the bankrupt's right to claim exemptions is preserved upon his death and may be exercised for the benefit of the spouse or dependent children surviving him.[109] It is important to

103. See Bankruptcy Act § 70(a)(8), 11 U.S.C.A. § 110 (a)(8) (1953).
104. See note 103 *supra*.
105. *Ibid.*
106. Bankruptcy Act § 57(n), 11 U.S.C.A. § 93(n) (Supp. 1955).
107. 11 U.S.C.A. § 93(n) (Supp. 1955).
108. Bankruptcy Act § 17(a)(3), 11 U.S.C.A. § 35(a)(3) (1953).
109. Bankruptcy Act § 8, 11 U.S.C.A. § 26 (1927).

notice here, that the bankrupt's right to exemption shall be preserved. Suppose the bankrupt has waived his exemptions or has not diligently claimed them and then dies. If the state law does not permit the wife to claim exemptions, may she under section 8 of the Bankruptcy Act[110] claim exemptions although the deceased bankrupt could not have claimed at the time of his death? If "the bankrupt's right to exemption"[111] refers to the situation at his death, the wife probably could not claim after his death, but if that provision means the right to exemption as recognized at the time of the petition, the wife or dependent children could assert the exemptions although the bankrupt could not, had he lived. Logic seems to press for a result which would permit the wife to claim exemptions only if the bankrupt could have at his death, but the heart asks for more leniency toward both the wife and dependent children, and the heart dictates the best family law.

Other disturbing matters in the purlieus of the family such as seduction, breach of promise, criminal conversation and wrongful injuries to or death of relatives, are specifically considered in the Bankruptcy Act.[112] Under section 17 (a) (2)[113] of the Bankruptcy Act, even though liabilities for seduction, breach of promise, or criminal conversation have reached the point of being provable, they are not affected by discharge and so are enforceable in the post-bankruptcy period. It must be noted, however, that the exception from discharge of provable claims is only for seduction of an *unmarried female,* for breach of promise of marriage *accompanied by seduction,* or for criminal conversation, a much narrower field of exception than might at first glance be realized.

It is further provided that rights of action for seduction and criminal conversation shall not vest in the trustee unless such rights were subject to the creditors by the applicable state law,[114] and rights of action for injuries to a relative, whether resulting in death or not, will not go to the trustee unless subject to creditors under state law.[115] The possible scope, of this injury to the relative provision, is very great.

Section 70 (a) (5) of the Bankruptcy Act provides that rights of action ex delicto for injuries to a relative, whether resulting in death or not, shall not vest in the trustee unless by the law of the state such rights of action are subject to creditors.[116] Relatives include

110. 11 U.S.C.A. § 26 (1927).
111. Bankruptcy Act § 8, 11 U.S.C.A. § 26 (Supp. 1955).
112. Bankruptcy Act §§ 17(a) (2), 70(a) (5), 11 U.S.C.A. §§ 35(a) (2), 110 (a) (5) (1953).
113. 11 U.S.C.A. § 35(a) (2) (1953).
114. Bankruptcy Act § 70(a) (5), 11 U.S.C.A. § 110 (a) (5) (1953).
115. *Ibid.*
116. 11 U.S.C.A. § 110(a) (5) (1953).

persons related by affinity or consanguinity within the third degree as determined by the common law and includes the spouse.[117] Clearly then, the claims of the bankrupt for wrongful death of his wife, children or any other relative giving him a claim by the law of the particular state is not an asset in the trustee's hands if not subject to creditors by that state. The same result would be obtained on the bankrupt's claim for injuries to his spouse or children. Although these claims may be transferable by the bankrupt under the applicable state law, they do not come to the trustee unless they were reachable by creditors, thus the proviso of section 70(a)(5)[118] is an important limitation on the dual test of transferability or creditor subjection in the general scope of that section.

## IX. SUMMARY AND CONCLUSIONS.

In this broad area of family relations it is recognized that special rules of law are justified and necessary and that hard arms length principles are not binding or desirable as this venerable status comes in conflict with outside interests. This special consideration extended the family institution is expressly evidenced in many provisions of the Bankruptcy Act, although cryptically placed in several of its important aspects. The attitude of the courts generally, in interpreting the Act's provisions relating to family matters has been a benignant one. In construction and interpretation every consideration should be given these family interests with a view to the importance of the institution itself. However, the family status should not be permitted blindly as a haven for fraud or a screen behind which creditors may not cast a questioning glance. A family relationship entitled to protection is one from which the economic picture is freely and clearly given the bankruptcy court. The privilege of requesting its power to be released from oppressive and overbearing debt is meant to be granted those who in good faith and candor request it. Perhaps a closer scrutiny into the intra-family economic picture in the ante-bankruptcy period is justified. It is authorized by the Bankruptcy Act.

117. Bankruptcy Act § 1(27), 11 U.S.C.A. § 1(27) (Supp. 1955).
118. 11 U.S.C.A. § 110(a)(5) (1953).