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Bankruptcy--Right of an Unincorporated Body to File a Voluntary Petition

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RECENT CASE COMMENTS

BANKRUPTCY — RIGHT OF AN UNINCORPORATED BODY TO FILE A VOLUNTARY PETITION. — An unincorporated fraternal association filed a voluntary petition in bankruptcy in its own name. The association elected trustees by whom it acted, owned property, and could sue and be sued. The plaintiff moved to dismiss the petition on the ground that the term "corporation" as used in the Bankruptcy Act comprehended only business or commercial organizations. *Held,* that the petition to dismiss must be denied, because the association was a corporation within the meaning of the Bankruptcy Act, entitled to file a voluntary petition in bankruptcy. *In re Philadelphia Consistory Sublime Princes Royal Secret 32° Ancient Accepted Scottish Rite.*[1]

The court in the above case decided that the term "person" as used in the Federal Bankruptcy Act[2] included unincorporated associations, reaching that conclusion by cross-reference to three sections: Section 4(a) provides that any person except certain named classes of corporations shall be entitled to the benefits of the Act as a voluntary bankrupt;[3] Section 1, *Meaning of Words and Phrases,* subdivision 23, defines "person" to include corporations;[4] Section 1, subdivision 8, of the same title, states that the term "corporation" shall include unincorporated associations.[5] If this method of statutory construction by cross-reference is not inconsistent with the general intent of the Bankruptcy Act in its amended form, it would seem that the court could have reached no other logical result.

Until the Bankruptcy Act was amended in 1926, unincorporated bodies were not expressly named as corporations in the definition of that term; but in *In re Sargent Lumber Co.,*[6] it was declared that the clear intent of the Act was to allow such associations the benefits of the Act as voluntary bankrupts. The holding was later criticized by *In re Manufacturing Lumbermen's Underwriters,*[7] decided after the Act was amended in 1926. The court stated that although by definition the word "persons" as used in Section 4(a) included corporations and partnerships, otherwise only

[1] 40 F. Supp. 645 (E. D. Pa. 1941).
[2] 11 U. S. C. A.
[3] Bankruptcy Act, 11 U. S. C. A. § 22, sub. a.
[4] *Id.* at § 1, sub. 23.
[5] *Id.* at § 1, sub. 8.
[6] 287 Fed. 154 (E. D. Ark. 1923).
[7] 18 F. Supp. 114 (W. D. Mo. 1936).

natural persons were meant, the Act intending to limit the benefits of the section to those corporations ordinarily considered within the legal conception of the term, *i.e.,* business or commercial corporations operated for profit.[8]

The legislative history of the Bankruptcy Act shows a clear intent to broaden the scope of the voluntary petition. Before the amendment of 1910,[9] the privileges of voluntary bankruptcy were denied to corporations. Inasmuch as Section 1a(4) defined "persons" to include corporations, and by the amendment of 1926, Section 1a(6) expressly included various unincorporated bodies as corporations, it would seem that the reasonable intent of the Act was to create by express provision an entirely new group of voluntary bankrupts.[10]

It is entirely within the province of a legislative body to attach a meaning to terms not strictly in accordance with the ordinary meaning of the language defined.[11] Section 1 of the Bankruptcy Act, which provides the meaning of words and phrases used throughout the text, begins, "The words and phrases used in this Act shall, unless the same be inconsistent with the context, be construed as follows: . . ." The failure of the court in the *Underwriters* case to apply the cross-reference construction of the statute, in order to define who may be entitled to the benefits of Section 4(a), seems at variance with the preface to the definitions compiled in Section 1. The definitions and rules of construction contained in an interpretation clause as a part of the law, and as such are generally binding on the courts. It would seem that the court in the *Philadelphia Consistory* case advances the logical and sound construction of the statute, consistent with the general policy of the Bankruptcy Act.

G. W. E.

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[8] The decision is probably sound in result for the facts showed that the association was not an entity of any kind. Subscribers were expressly not jointly liable by virtue of the power of attorney granted by each of them to the attorney-in-fact appointed to act for the organization. See 1 COLLIER, BANKRUPTCY (14th ed. 1940) 592.

[9] The Act of July 1, 1898, c. 541, 30 STAT. 547, § 4, sub. a, reads as follows: "Any person who owes debts, except a corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt."

[10] Colin, *An Analysis of the 1926 Amendments to the Bankruptcy Act* (1926) 26 COL. L. REV. 789.

[11] See CRAWFORD, STATUTORY CONSTRUCTION, INTERPRETATION OF LAWS (1940) 130.