THE NATIONAL BANKRUPTCY LAW

Which Passed Congress at Its Last Session and Became Effective August 1, and November 1, 1898.

THOSE WHO MAY BECOME BANKRUPT?

The New Act Discussed From a Lawyer's Standpoint By W. C. Sprague, President of the Sprague School of Law.

The National Bankruptcy Law, which passed the last Congress, went into effect at once on its passage—July 1, 1898; but no petition for voluntary bankruptcy could be filed until August 1st following, and no petition for involuntary bankruptcy could be filed until November 1st; that is, after August 1st a man may voluntarily become a bankrupt, and before November 1st his creditors cannot compel him to become one.

The law contains over 16,000 words, and, as is the case with all laws covering so great a subject, its provisions are so many and so interdependent that the average citizen will do well to let a lawyer read and interpret it for him; and even then, the chances are about even that he may not understand it, for scarcely was the law printed and in the hands of the people before lawyers were contending over it, differing materially regarding its force and effect and the practee under it. Indeed, there is every reason to expect that long and bitter controversies in the courts will ensue before the practice is settled and the lawyer and his client may feel the ground under them secure.

It is desirable that the classes of persons whom the law was intended to benefit should be distinctly pointed out. It has been held by some that the law is a creditor's law, intended to benefit first, and most of all, the creditor class; by others it is asserted to be a debtors' law and for that great number of citizens who, since the last bankruptcy act was annulled, 1878, have been unfortunate and need the aid of legislation to enable them to shake off the load that oppresses them and to start afresh.

We shall, in this article, look upon the law as intended for the unfortunate debtor, and seek to determine whom the law looks upon as such and, therefore, seeks to relieve. The law says (Sec. 5, Chap. III): "Any person who owes debts, except a corporation, may become a voluntary bankrupt." By voluntary bankrupt is meant one who becomes such by virtue of his own conscious act. But, first, what is meant by bankrupt. This term is not synonymous with insolvent. An insolvent is one who is unable to pay his debts; a bankrupt is one who has been declared by a court to be unable to pay his debts. A bankrupt is an insolvent; but an insolvent is not necessarily a bankrupt.

Hence, the law means to say that any person who owes debts (except a corporation) may apply to a court to have himself adjudged a bankrupt. Corporations are, in the eyes of the law, "persons;" hence, as Congress wished to take it out of the power of corporations to go into court and ask to be adjudged bankrupt and relieved of their debts, it was necessary to specifically except them. Under some state insolvency laws, which this National Bankruptcy Law has now superceded, a corporation could file a petition in insolvency.

Under the provisions of the new law certain classes of corporations, as those engaged principally in manufacturing, tradng, pruting, publishing, or mercantile pursuits, may, if they owe debts of $1,000 or more, be proceeded aganst by creditors in bankruptcy proceedings; but no private corporation of any kind can go into court and ask to be declared a bankrupt; and this applies to incorporated banks, insurance companies, fraternal societies, etc., as well as limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association.

One need not be a citizen of the United States in order to take advantage of the law. An alien owing debts here may file his own petition in bankruptcy as soon as he has acquired the necessary residence in the United States.

The better opnion is that an infant (that is, one under legal age) cannot be adjudged a bankrupt, though a case in the Federal courts under a former law, and reported as In re Book, 3 McLean, 317, holds to the contrary.

A lunatic or insane person cannot be adjudged a bankrupt.

As to married women, it may be said that the court will regard the laws of the state where the woman has her legal residence. If by the law of that state a woman may make valid contracts in trade, she may file her petition in bankruptcy; otherwse not.

Sec. 5 of Chap. III., provides, "A partnership during the continuation of the partnership business, or after its dissoluton and before the final settlement thereof, may be adjudged a bankrupt.

One or more of the partners may file the petition.

After a firm is dissolved, any one of the partners may petition the court to have the firm declared bankrupt so long as any unfinished business, debts, credits, or assets, remain. If on petition in bankruptcy by one or more partners, one or more of the partners is not adjudged bankrupt, the partnership property will not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; in such a case the partner or partners not adjudged bankrupt settle the partnership business as expeditiously as its nature will permit and account for the interest of the partner or partners adjudged bankrupt.

As to the cost of the procedure, I may say that the great expense entailed by the old laws was what brought about their repeal. Under the new law, fees are moderate.

The petitioner must deposit with the clerk the sum of twenty-five dollars ($25), except in the case of a petition "of a proposed voluntary bankrupt, which is accompanied by an affidavit stating that the petitioner is without, and cannot obtain, the money with which to pay such fees." In such a case no deposit is required. Of the twenty-five dollars ($25.00), ten dollars $(10) is for clerk's fee, ten dollars ($10) for referee's fee, and five dollars ($5) for trustee's fee. The trustee, in addition, receives such commission as may be allowed by the court, not to exceed three per centum on the first five thousand dollars ($5,000), to be paid as dividends and commissions, two per centum on the second five thousand dollars ($5,000), and one per centum on the balance. The referee will receive, in addition to the ten dollars ($10) deposited with the clerk, a commission of "one per centum on sums to be paid as dividends and commissions, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition." Thus, in a case where the net assets for distribution amount to twelve thousand dollars ($12,000), the clerk's fee would be, as in all cases, ten dollars ($10); the referee's, unless an offer of composition was made and confirmed, one hundred and thirty dollars ($130); the trustee's not to exceed two hundred and seventy-five dollars ($275)—a total expense for these officers in such a case of four hundred and fifteen dollars ($415).

The petitioner is allowed also one reasonable attorney's fee, to be paid out of the estate before distribution to creditors, the amount to be fixed by the court.