Washington University Law Review

Volume 20 | Issue 2

January 1935

Bankruptcy—Failure to Obtain Discharge—Res Adjudicata

Comment on Recent Decisions

BANKRUPTCY—FAILURE TO OBTAIN DISCHARGE—RES ADJUDICATA.—In a prior proceeding, voluntary bankrupt, owing to the neglect of his attorney to file petition seasonably, failed to procure a discharge of debts existing at that date. Attempts are now made to include in petition for discharge, under a second voluntary proceeding, those obligations provable at the date of the filing of his first petition. Creditors contend that the prior debts cannot be re-submitted for discharge. *Held*, creditors' contention allowed, and that only those debts incurred since the previous adjudication may be allowed in petition for discharge. That the bankrupt was innocent himself, and that the creditors were not prejudiced by failure of petitioner to effect discharge are immaterial. In re *Brislin, William J., D. C.*, N. D. N. Y.,—Fed. Sup.—, (Law Week, Jan. 15, 1935).

The instant case accords with the overwhelming weight of federal authority, which has derived, by judicial construction, the rule that failure of a bankrupt to obtain a discharge within the statutory time limit (11 U.S.C. 32) amounts in effect to a denial of the right to obtain a discharge. Regardless of bankrupt's innocence, the courts hold that there has been a complete adjudication of the bankrupt's rights, and the result is the same as if the court had passed upon the permanent impropriety of the petitioner to enjoy immunity from suit by creditors. Hence, where bankrupt seeks discharge of debts formerly provable, he is precluded from release on the same by judicial application of the doctrines of res adjudicata. Cases holding to this general effect are numerous, the most frequently relied upon being *Kuntz v. Young*, (C. C. A. 8, 1904) 131 F. 719; *In Re Stone*, (D. C., Ore, 1909) 172 F. 947; *In Re Springer*, (D. C., E. D. N. C. 1912) 199 F. 294; *In Re Loughan*, (C. C. A., 3, 1914) 218 F. 619, and more recently, *In Re Mayer*, (D. C., E. D. N. Y. 1933) 4 F. Sup. 203. See also 1 Collier *Bankruptcy* (12th ed., 1921) p. 347; 3 Remington *Bankruptcy* (2nd ed., 1915) p. 2290.

The application of this severe rule, however, has not been received with wholly universal acceptance. Occasionally a court of bankruptcy will rebel against a principle so completely devoid of sympathy for a bankrupt who has made earnest efforts to secure a discharge but for causes outside of his control has failed to act within the required time. Hence, some courts have refused to look upon failure to obtain discharge as res adjudicata where special mitigating circumstances exist, on the ground that in view of the inequitable position in which petitioner is placed, negligence attributable to him is excusable. *In Re Whittaker*, (D. C., Mont. 1932) 57 F. (2d) 345; *In Re Cotton Co.*, (D. C., S. D. Tex. 1929) 32 F. (2d) 533. Both of these cases relied upon an earlier case for authority yet evidently failed to appreciate its true basis. In a well reasoned, simply put decision, it was held (*In Re Glasberg*, (C. C. A., 2, 1912) 197 F. 896), that even though his first petition was dismissed for want of prosecution, and despite the fact that the statutory time had elapsed for filing, bankrupt might still obtain discharge on those same debts. The court held that a bankrupt, under sec. 17

of the Bankruptcy Act, was entitled to release from all his provable debts except in case of six specified classes of obligations. Negligent delay did not fall within any of the latter class, and since debt was provable, bankrupt was able to obtain relief. Res adjudicata was not considered by the court.

It is submitted that the prevailing law as announced in the principal case is arbitrary, technical, unfounded on reason or policy. Precluding a petitioner merely because of delay on the fiction of a judgment determining his rights has been an expedient way for the courts to dispose of the matter, without further examination into the nature of the bankruptcy law. The logic of the case of *In Re Glasberg*, supra, is unrefutable, for the statute expressly endows the bankrupt with the benefit of being relieved of all provable debts, except in certain cases of which delay is not one. At least, the court can exercise a discretion in granting a discharge in view of a conflict between Sections 14 and 17 of the Act. That such discretion should, in the usual case, be resolved in favor of the bankrupt rests upon a consideration of the purposes of bankruptcy legislation. Historically, of course, the law has been a device to be invoked for the protection of the creditors, and the idea of a discharge of obligations has been of relatively recent birth, making its first appearance in the legislation of Congress in 1841. Once implanted in the operation of the bankruptcy law, this feature has produced invaluable results, as a means of rehabilitating the luckless. Further evaluation seems superfluous, in view of the position of the Supreme Court of the United States where it declared, in *Local Loan Co. v. Hunt* (1934), 292 U. S. 234, as follows: "One of the primary purposes of the bankruptcy act is to relieve the honest debtor from the weight of oppressive indebtedness, and to permit him to start afresh, free from the obligations and responsibilities consequent upon business misfortunes. . . . *The various provisions (of discharge) were adopted in the light of that view and are to be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act.*" Upon such a mandate, the courts of bankruptcy should feel impressed with the wisdom of a full reconsideration of the rule announced in the instant case.

W. C. K. '36.

CONSTITUTIONAL LAW — POLICE POWER — BILLBOARDS. — The following amendment became part of the Constitution of Massachusetts in 1918: "Advertising on public ways, in public places and on private property within public view may be regulated and restricted by law." Mass. Const. Amend. Art. 50. Under this provision the legislature conferred on the State Department of Public Works general jurisdiction over advertising signs on public ways "or on private property within public view of any highways, public park or reservation." Mass. Gen. Laws (1932) C. 93 secs. 29-33. The Department of Public Works issued regulations prohibiting the maintenance of billboards and other signs for outdoor advertising purposes without a permit and also prohibiting the issuance of permits for outdoor advertising within certain distances of public parks, reservations and highways.