Comment on Recent Decisions

BANKRUPTCY—ACTS OF BANKRUPTCY—CONVEYANCE TO HINDER, DELAY, OR DEFRAUD A CREDITOR WITH A NON-PROVABLE CLAIM.—An individual had agreed to indemnify a surety company for any losses which the surety company might suffer under a surety bond. After a verdict in a tort suit against the principal, but before a final judgment and hence before there was any fixed liability on either the principal or the surety, the indemnitor transferred all her property with intent to prevent the surety company from collecting on the indemnity bond. Shortly afterwards the judgment was entered in the tort suit. The surety company paid this as soon as execution on the principal had been returned unsatisfied. It then filed an involuntary petition in bankruptcy on the ground that the conveyance was an act of bankruptcy. In enumerating the acts of bankruptcy, the language of the statute is that acts of bankruptcy by a person "shall consist of his having (1) conveyed, transferred, concealed, or removed . . . any part of his property with intent to delay, hinder, or defraud his creditors or any of them . . ." 30 Stat. 546 (1898), 11 U. S. C. 21a. The Bankruptcy Act in a prior section on definitions provides that " 'creditor' shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy" 30 Stat. 546 (1898), 11 U. S. C. 1 (9). *Held*: The conveyance was an act of bankruptcy. The definition of creditor is not meant to be exclusive of other cases in which the term would apply at common law. *American Surety Co. v. Marotta* (1933) 53 S. Ct. 260.

It has long been settled that the person need not have been insolvent at the time he made the conveyance, if it was made with an intent to delay, hinder, or defraud creditors. *George M. West Co. v. Lea* (1899) 174 U. S. 590. However, the Bankruptcy Act is explicit that solvency at the time of filing the petition is a complete defense, although the burden of proving solvency rests upon the alleged bankrupt. 30 Stat. 546 (1898), 11 U. S. C. 21c.

The meaning of this clause has been unsettled up to the decision in the principal case. An early federal district court case had held that it was not an act of bankruptcy to convey property with intent to defraud a person who did not hold a provable claim. *Beers v. Hanlin* (D. C. D. Ore. 1900) 99 F. 695. The wording of the definition of this act of bankruptcy is derived from the famous Statute of Elizabeth which aimed to stamp out such conveyances. Stat. 13 Eliz. c. 5 (1571). Under this Statute and the statutes essentially copied from it, the law had become well settled that contingent creditors were protected. *McLaughlin v. Bank* (1849) 7 How. 220; *Smith v. Volges* (1875) 92 U. S. 183; *American Surety Co. v. Hattrem* (1932) 138 Ore. 358, 3 Pac. (2d) 1109, 6 Pac. (2d) 1087; R. S. Mo. (1929) sec. 3117. This consideration was stressed by the dicta in certain cases which indicated that it would be an act of bankruptcy to make a conveyance with intent to defraud a contingent creditor even though he did not have at the time of the conveyance a provable debt. *Coder v. Arts* (1909) 213 U. S. 223; *Githens v.*

Shiffler (D. C. M. D. Pa. 1902) 112 F. 505. As might be expected in view of such a state of the decisions, the leading commentators upon the law of bankruptcy were in direct conflict. Collier on Bankruptcy (12th ed.) p. 93 (it is not an act of bankruptcy); Remington, Elements of Bankruptcy Law (3rd ed.) p. 16 (it is an act of bankruptcy). There is, of course, no difficulty if there were creditors with provable claims at the time the conveyance was made. Then, the creditor whose claim was contingent at the time of the conveyance may join in the petition which forces the conveyor into bankruptcy, provided the claim has been liquidated so as to be provable at the time the petition is filed. *In Re Van Horn* (C. C. A. 2, 1917) 246 F. 822.

As the principal case points out, the word "include" is more frequently used to introduce words which extend what would normally be the definition of the class in question than to limit the extent of a class. *In Re Harper* (D. C. N. D. N. Y. 1910) 175 F. 412 (which construed the word as used in a later definition in the same section of the Bankruptcy Act with reference to what were "debts"); *Fraser v. Bentel* (1911) 161 Cal. 390, 119 Pac. 509; *Wyatt v. City of Louisville* (1924) 206 Ky. 432, 267 S. W. 146; *Cooper v. Stinson* (1861) 5 Minn. 522. Such an interpretation is especially logical under the peculiarities of wording of the definition section of the Bankruptcy Act, where in some instances the narrow phrase "shall mean" is substituted for "include".

The decision in the principal case is to be welcomed as settling a hitherto disputed point in the interpretation of a statute, whose correct meaning is becoming increasingly important because of the prevailing economic conditions. The decision would seem to accord with sound moral policy for there is no more reason to allow a person with impunity to hinder, delay or defraud a contingent creditor than there is to allow him to do so towards a creditor who at the time holds a provable claim. Indeed, the contingent creditor is so placed that he is in need of the fullest protection, since he cannot take steps to attach the property or otherwise prevent the conveyance, remedies which are possessed by a creditor with a provable claim. G. W. S., '33.

CHARITABLE CORPORATIONS—APPLICATION OF WORKMEN'S COMPENSATION ACTS.—The plaintiff was injured while working as a paid employee of a charitable corporation. The Workmen's Compensation Commission allowed a claim for the compensation fixed by the Statute. The corporation resisted payment on the ground that the Act did not apply to charitable corporations. It was held that the Act applies to charitable corporations. *Hope v. Barnes Hospital* (Mo. App. 1932) 55 S. W. (2d) 319.

There should be little hesitation in applying a Workmen's Compensation Act to charitable corporations in the minority of states which hold such corporations fully liable for torts committed by their agents or servants. However, in most states it has become a settled rule of law that a charitable corporation is not liable to the beneficiaries of the charity for torts done to