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A CRITICAL STUDY OF THE INSOLVENCY LAW

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PART I
INTRODUCTORY

CHAPTER I
HISTORY OF BANKRUPTCY AND INSOLVENCY LAWS

1. *Ancient Roman Laws.*—In the laws of the Twelve Tables, the primitive origin of Roman Law, there could be found certain provisions governing the relation between creditor and debtor previous to and during the reign of the Christian emperors. According to those laws, the creditors might cut the debtor's body into pieces and take their proportionate shares, an insolvent debtor being considered at that time as a criminal offender. Other Roman laws provided that the debtor might be imprisoned and subjected to hard labor at the mercy of his creditors, or his person, wife, and children might be sold as slaves in foreign lands by his creditors. Then the prætor introduced a law by which direct execution against the property of the debtor was granted by means of the so-called "missio in bona," the property of the debtor being sold by a magistrate for the benefit of his creditors (*venditio bonorum*). Later, another law was introduced for the benefit of the debtor, by which he was exempted from the payment of his debts, provided he would swear that he had not enough property left to pay them. Subsequently, Julius Cæsar introduced the law of cession—"cessio bonorum"—by which the debtor was secured from being dragged to gaol if he voluntarily surrendered all his fortune to his creditors. It extended to all classes of persons, but the debtor was not discharged from future execution. It merely exempted the debtor from corporal punishment. This law is considered to be the origin of modern bankruptcy and insolvency laws. (2 Blackstone Com. 472-473; I *Derecho Romano* por G. de la Serna, 22; Studies in Roman Law by Lord Mackenzie, 387-390; 394; Sohm's Inst. of Roman Law, 286-289; 1 Loveland on Bankruptcy 2; 5 Cyc. 239; 1 Blanco, "Estudios Elementales del Derecho Mercantil," 694.)

2. *In Spain.*—The so-called "Ordenanzas de Bilbao" is one of Spain's antique bodies of rules on the subject of bankruptcy. The Spanish legislators, inspired by the importance of the principles contained in those ordinances, embodied them in the Code of Commerce of 1829 to form one of the books, only with such modifications as circumstances demanded at the time of the adoption of that code. Keeping pace with the progress of time, the Spanish Code of Commerce of 1885 was adopted

to remedy the evils which occasionally arose under the shelter of the old code. Book IV of this code, as modified by the law of June 10, 1897, together with the "Enjuiciamiento Civil," constitutes the body of bankruptcy laws in force in Spain at the present time (1 Blanco 695-696; Viso, *Derecho Mercantil* 684; *Elementos del Derecho Mercantil* por Carreras y Gonzales Revilla, 443-444).

3. *In the United States.*—The Congress of the United States, exercising the powers conferred upon it by section 8, article I, of the Federal Constitution, has established four systems of national bankruptcy in the United States. The Act of April 4, 1800, was the first national Bankruptcy Act passed, and it remained in force but three years. The second, which was enacted August 19, 1841, was repealed March 3, 1843. On March 2, 1867, the third general Act was passed, remaining in force for a period of eleven years. The fourth system was established by the Act of July 1, 1898. This Act, as amended by the Acts of February 5, 1903, and June 25, 1910, is the present law in force in the United States on the subject of bankruptcy. (I Loveland, 7; see, also, Judge Lobingier's Introduction to Judge Sobral's "Breves Comentarios sobre las Leyes de Quiebras y Corporaciones.")

4. *In Other Countries.*—It is not our intention to enter into an extensive field of historical investigation, but, in order to give an idea of the importance the subject has attained in modern legislation, it suffices to quote what Loveland says in volume I, page 3, of his work on bankruptcy, thus:

> The Judiciary Committee of the House of Representatives reported to Congress, December 16, 1897, that the following countries have bankruptcy laws: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Costa Rica, Denmark, England, France, Germany, Guatemala, Haiti, Honduras, Ireland, Italy, Liberia, Mexico, Netherlands, Norway, Paraguay, Portugal, Roumania, Russia, Scotland, Spain, Sweden, Turkey, Uruguay, and Wales. The committee did not ascertain whether or not there was a bankruptcy law in Chile, Columbia, Dominican Republic, Hawaii, Japan, Korea, Peru, Syria, Switzerland, or Venezuela.

5. *In the Philippines.*—By the Royal Decree of August 6, 1888, the operation of the Spanish Code of Commerce of 1885 was extended to these Islands, which took effect November 16, 1888,[1] fifteen days after its publication in the "Gaceta de Manila." Book IV of that code treats of Suspension of Payments, Bankruptcy, and Prescriptions. The amendments to this part of the Code made by the Law of June 10, 1897, were also extended to the Philippines by the Royal Decree of the Colonial Department of June 25, 1897,[2] so that, prior to the American occupation the law on bankruptcy in this country was Book IV of the Code of Commerce of 1885, as amended by the law of June 10, 1897. Was this law *ipso facto* abrogated by the transfer of sovereignty to the United States? According to a wise and ancient rule deeply rooted in the public policy of the civilized world, the transfer of sovereignty over a certain territory from one nation to another *ipso facto* abrogates all

[1] Appendix II, Code of Commerce.
[2] Notation to Sec. I, Title I, Book IV, Code of Commerce.

political laws under the retiring sovereignty, but all municipal laws remain in force in so far as they are not inconsistent with the policy of the new ruler. The bankruptcy law, being a part of the municipal law, not inconsistent with any policy of the United States, remained in force here until September 1, 1901, when Act 190 of the Philippine Commission was made effective. Section 524 of this Act expressly repealed all laws and orders relating to bankruptcy and proceedings therein, then existing. On May 20, 1909, the Philippine Legislature passed Act 1956, entitled "The Insolvency Law." That part of this law which relates to suspension of payments was taken from the Spanish law, while the rest was modeled after the Federal Bankruptcy Act of 1898, so that our law on the subject at present is a conglomeration of two distinct systems of bankruptcy, affording abundant material for a searching study.

CHAPTER II

DEFINITION AND DISTINCTIONS

1. *Etymological Meaning of the Word "Bankrupt."*—The word "bankrupt" (in Italian, "banca rota"), is claimed by various authors to have been derived from the word "bancus" or "banque," meaning "bench" or "counter," and "raptus," meaning "broken." To uphold this theory, they say that it was the custom in the middle ages to break the benches or counters of merchants who failed to pay their debts.[1] The allusion is probably figurative, denoting one whose shop or place of trade is broken or gone. A different theory has been formulated by others, who choose the French word "route," meaning "trace," and conclude that a bankrupt is one who has removed his "banque" or bench, leaving but a trace behind.[2]

2. *Bankruptcy Law Defined.*—"Bankruptcy law in the modern and legal significance means a statutory system under which an insolvent debtor may either on his own petition or that of his creditors be 'adjudged bankrupt' by a court of competent jurisdiction, which thereupon takes possession of his property, distributes it equally among his creditors, and discharges the bankrupt and his after-acquired property from debts existing at the initiation of the bankruptcy proceeding."[3] According to the Spanish Code of Commerce, a merchant is considered in a state of bankruptcy when he fails to meet his current obligations.

3. *Bankruptcy Laws Distinguished from Insolvency Laws.*—The two principal distinctions which have been given by various authors between these laws are: First, bankruptcy laws apply only to traders and merchants, while insolvency laws apply to all classes of persons; Second, the former discharge absolutely the debt of the honest debtor, while the latter discharge only the person of the debtor from arrest and imprisonment, but leave the property subsequently acquired by the debtor liable to the demands of his creditors. At present, in many countries, no

[1] Bouvier's Law Dict., Vol. I, p. 218 (Bankrupt)
[2] 2 Blackstone Com., 472 (Foot-note)
[3] 5 Cyc. 237.

attempt has been made to distinguish them. As has been said by Chief Justice Marshall in the case of Sturges *vs.* Crowinshield, 4 Wheaton (U. S.) 195, a bankruptcy law may contain those regulations which are generally found in insolvency laws, and an insolvency law may deal with those which are common in bankruptcy laws.

PART II
"THE INSOLVENCY LAW"
ACT 1956 OF THE PHILIPPINE LEGISLATURE

CHAPTER I
ITS CONSTITUTIONALITY, NATURE AND SCOPE

1. *Its Constitutionality.*—In determining the constitutionality of this law, the first question which presents itself for solution is whether or not it is within the power of the Philippine Legislature to enact it. President McKinley's instructions to the Philippine Commission of April 7, 1900, ratified by the Act of Congress of July 1, 1902, vested in the Philippine Commission the legislative powers of the Philippine Government, which powers were transferred to the Philippine Legislature upon the establishment of the Philippine Assembly. Our Insolvency Law is intended to regulate a matter of internal concern to the Islands, and it is, therefore, within the competency of the Philippine Legislature to enact it. In the United States, it has long been decided that the State Legislatures have power to pass insolvency laws, in spite of the constitutional provision which gives Congress the power to enact uniform laws on the subject of bankruptcy throughout the United States.

Is our insolvency law against or in any manner inconsistent with any treaty of the United States or any Act of Congress, so as to render it null and void? Section 5, of the Act of Congress of July 1, 1902, among other things, provides that no law impairing the obligation of contracts shall be passed. Does our insolvency law impair the obligation of contracts? In the case of Ogden *vs.* Saunders, 12 Wheaton (U. S.) 213, the court said:

> A bankruptcy or insolvency law of any state which discharges both the person of the debtor and his future acquisition of property is not a "law impairing the obligation of contracts" so far as respects debts contracted subsequent to the passage of such law. Contracts are to be construed and executed according to the law of the place where the contracts are made, and the obligation of the contracts is what the law of the place makes it.

It is, therefore, beyond dispute that our Insolvency Law is valid in so far as debts contracted after its passage are concerned, because the provisions of the existing law form part of the terms of the agreement between the contracting parties.

2. *Its Nature.*—Under this heading we must distinguish between the nature of the law itself and the nature of the proceedings provided therein. Our Insolvency Law is a remedial statute, being intended, on the one hand, to make a fair and equitable distribution of the debtor's property among his creditors, and, on the other hand, to allow an honest debtor to commence the business of life anew by relieving him of his already-incurred liabilities. Being remedial, it must be interpreted liberally according to the reasonable import of its terms with a view to promote its object and give justice to the parties concerned. There are, however, provisions in our Insolvency Law which cannot be termed remedial, such as section 71, which is penal in its nature. That part of section 20 which enumerates the acts of bankruptcy, and section 65, which gives the cases in which a discharge should not be granted, should also be considered penal in their operation and effect. They should, therefore, be construed strictly, excluding from their provisions any act which is not expressly enumerated therein. The proceedings under our Insolvency Law are substantially similar to those under the Spanish and American[1] bankruptcy laws, in so far as their unity and universality are concerned. There is unity in the proceedings because the creditors are not permitted to bring separate actions, and, by the provisions of sections 18 and 24 of our Insolvency Law, all civil proceedings pending against the debtor in both voluntary and involuntary insolvency shall be stayed, upon the granting of an order of the court adjudging the debtor a bankrupt. Proceedings by creditors to prove their demands against the estate of a bankrupt are part of the suit in bankruptcy and are not separate and independent suits.[2] The proceedings are said to be universal because they reach all the property of the debtor, and upon the adjudication of bankruptcy, the receiver or the assignee, as the case may be, takes possession of all the property of the debtor for the benefit of his creditors, except that which is exempted by law from execution. Of course, that which is beyond the jurisdiction of the court can not be included, as the court lacks the necessary means to enforce its orders affecting the same.

3. *Its Scope.*—The scope of the operation of our law is wider in some respects than that of either the Spanish or American system of bankruptcy. In the first place, our system, unlike that of the United States, recognizes not only both voluntary and involuntary insolvency, but goes a step further and provides that a debtor who, possessing sufficient property to cover all his debts, foresees the impossibility of meeting them when they respectively fall due, may by petition be declared to be in a state of suspension of payments by a court of competent jurisdiction. In the second place, our system, unlike that of Spain, applies to all classes of persons, be they merchants or not. It applies not only to natural persons, but also to partnerships,[3] corporations, and "sociedad anónimas," except banking corporations and those

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1 Blanco, 698; Gestoso 596.
2 Wiswall vs. Campbell, 93 U. S. 347.
3 Section 51, Act 1956.

regarding which there is special provision of law for their liquidation in case of insolvency.[1] As to whether or not there is justice in our extensive system of insolvency our chapter on "Criticisms and Conclusions" will undertake to discuss. Our law is very general in its provisions in respect to insolvent debtors, so that it is necessary to inquire who may be declared such within the meaning of the law. Can aliens, minors, lunatics, and married women be declared insolvent debtors? Is the estate of a decedent subject to the operation of this law? We shall have occasion to answer fully these inquiries in connection with the detailed discussion of voluntary and involuntary insolvency.

CHAPTER II

ITS OBJECTS, CAUSES, AND EFFECTS

1. *Its Objects.*[2]—Evidently, judging from the provisions of our Insolvency Law, the Philippine Legislature, in enacting it, had three principal objects in view: (*a*) to give a debtor who possesses sufficient property to cover all his debts but foresees the impossibility of meeting them when they respectively fall due, opportunity to resume his former status of complete solvency by extending the time for the fulfillment of his obligations; (*b*) to give the creditors a speedy and adequate remedy for the equitable division of the debtor's property in proportion to the interest of each, reserving in every case the rights of preferred creditors, and (*c*) to give an honest debtor opportunity to commence the business of life anew by discharging him from his debts upon his surrender to his creditors of all his property, except such as is exempted by law from execution.

2. *Its Causes.*—After pointing out the objects of this law, we may arrive at the conclusion that the only cause which inspired the Philippine Legislature in its enactment is to give effect to those objects. At the present time, credit constitutes about ninety per centum of the basis of all commercial transactions, and without which the commercial world would be paralyzed. In the carrying out of these transactions on the basis of credit, a series of juridical relations is created among the parties to those transactions. The non-fulfillment of any of the obligations created by these transactions causes a break in the relations and disturbs the normality of the transactions, giving rise to great losses and damages. To remedy this our Insolvency Law was enacted. As to the causes which give rise to a state of insolvency, they may be grouped into (*a*) fortuitous events, (*b*) fault or negligence, and (*c*) fraud.

3. *Its Effects.*—The principal effect of the enactment of our Insolvency Law is that it created certain legal remedies which were either unavailable before the enactment of that law, because they were not then in existence, or, if available they

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[1] Sections 2 and 52, Act 1956.

[2] Breves Comentarios Sobre las Leyes de Quiebras y Corporaciones by Sobral, p. 3.

were not speedy, because of the form in which they were then recognized and known. By providing for suspension of payments, the law affords a remedy for debtors who are solvent in the sense that they have enough property to cover all their debts but who foresee the impossibility of paying them as they become due. A remedy is given to an honest debtor by which he may surrender all his property to this creditors and be discharged from all his liabilities. Another remedy is granted to the creditors in the equitable division of the debtor's property. Finally, there is a remedy provided for in our Insolvency Law, applicable to dishonest and fraudulent debtors either by punishing them or denying to them the privileges of the law. The creation of these various remedies is the general effect of the operation of the law. What are its specific effects? Its specific effects may be said to be the effects of an adjudication of insolvency, which may be grouped under three heads, namely: (*a*) effect upon the person of the debtor, (*b*) effect upon the property of the debtor, and (*c*) effect upon the person of the creditor. Prof. Bocobo, in his "Outlines of the Law of Persons and Family Relations," mentions suspension of payments and insolvency as one of the fourteen conditions which qualify the capacity of persons.[1] Sections 18 and 24 of Act 1956, our present Insolvency Law, provide that an order of the court, declaring a debtor insolvent, "shall further forbid the payment to the debtor of any debts due to him, the delivery to the debtor, or to any person for him, of any property belonging to him, and the transfer of any property by him." Article 13 of the Code of Commerce provides:

> ART. 13. The following can not trade nor exercise any direct administrative or economic representation in commercial or industrial associations:
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> * * * * * * * * * * * *
>
> 2. Persons who have been declared bankrupts, until they have obtained their discharge. * * * * *

These provisions of law expressly point out the fact that an adjudged insolvent, until he is granted a discharge, is disqualified to do many acts under the law which he could otherwise lawfully do had he not been adjudged an insolvent.

As to the property of the debtor, our Insolvency Law provides[1] that when an assignee is chosen as provided in that Act, all the property, estate, and belongings of the insolvent shall be delivered to such assignee. The writer is of the opinion that, although the law prescribes certain legal steps which must be taken before the final distribution of the debtor's property among his creditors, yet from the moment the assignee takes possession of the debtor's property, at least the equitable, if not the legal, title is vested in the creditors. The delivery of the debtor's property to the assignee and the final distribution of the same among the creditors constitute a single continuous transaction.

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1 Outline II, Bl. 3, p. 5.

As to the effect upon the creditors, Blanco, a Spanish commentator on mercantile law, states that by means of bankruptcy a community of property is established among the creditors of the insolvent, forming a single mass of property to which each has a right in proportion to his interest.[2] After the final distribution of the debtor's property and upon the granting of a discharge to the debtor, the relation of the creditors to the debtor as such ceases to exist, although the respective debt to each creditor may not have been fully satisfied by the shares which each creditor takes.

CHAPTER III

SUSPENSION OF PAYMENTS

1. *Preliminary Remarks.*—A comparative study of that part of Act 1956 which treats of suspension of payments and the Spanish law on the subject (being Section First, Title I, Book IV, of the Code of Commerce, as amended by the Law of June 10, 1897), clearly shows, as was previously indicated, that our present law on the subject of suspension of payments was directly taken from the Spanish law. This being the case, every doubt which may arise in the interpretation and application of this part of our law must be decided according to the jurisprudence of Spain. In this chapter it is intended to construe our law on suspension of payments, and, in so far as the limited scope of the work will permit, to point out the main differences between the two systems—that of Spain and that of the Philippine Islands.

2. *What Is and Who May Apply for Suspension of Payments?*—Suspension of payments is the condition of a debtor who has sufficient property to cover all his obligations, but who has not enough funds to pay them upon their becoming due. In order that a person may apply for suspension of payments, the following requisites must be present[1]: (*a*) that he is a debtor, (*b*) that he possesses sufficient property to cover all his debts but foresees the impossibility of meeting them when they respectively fall due, and (*c*) that he must have resided in the province or city under the jurisdiction of the court in which he files his petition for six months immediately preceding the filing of such petition.

a. Meaning of Word "Debtor."—Our law expressly provides that the word "debtor" includes partnerships, corporations and "sociedades anónimas."[2] But this provision of our law does not remove every doubt as to the meaning of the word "debtor." Does the word "debtor" include aliens, minors, insane persons, and married women? It is clear that if an alien has six months' residence in the province in whose court he files his petition, he is entitled to the benefits of the law and may be declared in a state of suspension of payments. The writer is inclined to think that minors and insane persons may be included within this provision only as respects

[1] Section 2, Act 1956.
[2] Section 77, Act 1956.

valid debts, such as those incurred for the necessities of life or those which they may contract while they continue, through their guardians, the business which their parents or other persons from whom the right is derived may have been engaged in;[1] but in every case they must be represented by their guardians in the proceedings. A married woman may also be entitled to this right when she owes valid debts, incurred in the course of her business, provided she is authorized to trade.[2] Under the Spanish law, it would be easier to determine what persons are entitled to petition for a suspension of payments, because that law provides that the petitioner must be a merchant,[3] and merchants are clearly defined in articles 1 to 15, inclusive, of the Code of Commerce.

b. Meaning of Word "Property."—The provision that the debtor must possess sufficient property to cover all his debts leads to an inquiry as to the proper meaning of the words "property" and "debts" as used in the law. The evident purpose of the law in providing for suspension of payments is to give the debtor time to realize his assets for the payment of his debts, and, should he fail to do so under the conditions stipulated and at the time agreed upon, he may be made subject to the bankruptcy and insolvency proceedings in the manner established by our law,[4] and in that case the final result would be the equitable distribution of the debtor's property among his creditors. What property, then is subject to this distribution? Section 48 of our Insolvency Law in part provides as follows:

> "Sec. 48. Merchandise, effects, and any other kind of property found among the property of the insolvent, the ownership of which has not been conveyed to him by a legal and irrevocable title, shall be considered to be the property of other persons and shall be placed at the disposal of its lawful owners on order of the court made at the hearing mentioned in section forty-three or at any ordinary hearing, if the assignee or any creditor whose right in the estate of the insolvent has been established shall petition in writing for such hearing and the court in its discretion shall so order, the creditors, however, retaining such rights in said property as belong to the insolvent, and subrogating him whenever they shall have complied with all obligations concerning such property."

The section then continues to enumerate the property which shall be included therein. In order, therefore, that property may be considered as belonging to the debtor, the ownership thereof must have been transferred to him by a legal title and this title, besides being legal, must also be irrevocable. In the light of the above provisions, we are justified in concluding that when the law establishes the requisite that the petitioner in suspension of payments must possess sufficient property to cover all his debts, the word "property" must be construed to mean only such property as the debtor owns under a legal and irrevocable title. Property which he

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[1] Article 5, Code of Commerce.
[2] Articles 5 and 11, Code of Commerce.
[3] Article 870, Code of Commerce.
[4] Section 13, Act 1956.

possesses in a fiduciary capacity must not be included. In this connection, we must not lose sight of the fact that the petitioner's rights or interests in property the legal title to which is in other persons may be included, provided such rights or interests may be liquidated or their value ascertained. This, however, does not destroy our conclusion that the debtor must have a legal and irrevocable title to the property, because in this case, although the title to the property vests in other persons, yet the title to the interests or rights in the property vests in the petitioner, and such interests or rights alone in the property must be included and not the property itself.

As an example, let us suppose that a petitioner for suspension of payments owns property in the amount of ₱2,000. Of this amount, ₱150 is the value of property exempted by law from execution, so that the value of his property subject to execution is ₱1,850. His debts amount to ₱1,900. In this particular case, can he be granted an order by the court to suspend payments? Does he possess sufficient property to cover all his debts in the sense the Legislature intended to give to that provision of one law? Does the word "property" as used in that provision include property exempt from execution? In this case the petitioner may have a legal and irrevocable title to that part of his property which is exempt from execution, but the fact that the law has made it exempt from execution places it beyond the reach of his creditors, so that it is not such property as may be made to cover his debts. His assets falling short of his liabilities, he is not entitled to a court order to suspend payments. Again, it must be observed that the petitioner must not only have a legal and irrevocable title in the property and a right to dispose of it, but he must also have capacity to make such disposition.

c. Meaning of Word "Debts."—According to the rules of statutory construction, every possible consistency is presumed in favor of the law-making body,[1] so that the word "debt" as used in suspension of payments must be given the same meaning as the word "debt" used in voluntary and involuntary insolvencies. The provisions in our law regarding voluntary and involuntary insolvencies were derived from American legislation,[2] and for this reason we are justified in citing judicial decisions in jurisdiction to elucidate the meaning of the word "debt" as used in our law. The District Court for the Northern District of California decided on February 24, 1902, that the word "debt" as used in the Federal Bankruptcy Act of 1898 must be construed as limited to a "debt, demand, or claim provable in bankruptcy," and an unliquidated claim for damages for a personal tort is not such a debt.[3] On November 21, 1904, the District Court for Massachusetts, in deciding a case before it, held that a petitioner in voluntary bankruptcy, who schedules no debt which would be barred by a discharge, may be dismissed in the discretion of the court. In that case the only debt scheduled was for $250 for damages granted by a judgment in a

[1] Black on Construction and Interpretation of Laws, p. 118-119.
[2] Federal Bankruptcy Act of the U. S. of 1898.
[3] *In re* Yates, 114 Federal Reporter, 365.

case of assault.[1] Numerous decisions have been made by the courts of the United States holding the same principle as was held in these two cases. Debts which are void for any reason known in the law and debts voidable by the debtor are not within the meaning of the provisions of our Insolvency Law.

3. *No Suspension of Payments After Default is Made.*—Is a debtor who possesses sufficient property to cover all his debts entitled to petition for an order to suspend payments after he has already defaulted in the payment of some of them? The Spanish law on this point, being articles 870 and 871 of the Code of Commerce, provides as follows:

> "Art. 870. A merchant who, possessing sufficient property to cover all his debts, foresees the impossibility of meeting them when they respectively fall due, may suspend payments, which shall be declared by the judge of first instance of his domicile in view of his declaration."
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> "Art. 871. A merchant who possesses sufficient property to cover all his liabilities may also suspend payments within forty-eight hours following the falling due of an obligation which he may not have met."

The Philippine Legislature presumably took into consideration the substance of the above cited Art. 870 in enacting our Insolvency Law, Act 1956, section 2 of which provides as follows:

> "Sec. 2. The debtor who, possessing sufficient property to cover all his debts, be it an individual person, be it a 'sociedad,' or corporation, foresees the impossibility of meeting them when they respectively fall due, may petition that he be declared in the state of suspension of payments by the court, or the judge thereof in vacation, of the province or the city in which he has resided for six months next preceding the filing of his petition."

The Legislature has in no part of our law made any provision similar to that of Art. 871 of the Code of Commerce, already quoted. From this attitude of the Legislature, it is clear that under our Insolvency Law a debtor who has already defaulted in the payment of his current obligations is not entitled to petition for an order to suspend payments even if he possesses sufficient property to cover all his debts.

4. *Six Months' Residence.*—Our law also requires, as already mentioned, a residence of six months in the province in whose court his petition to suspend payments is filed. Should this residence be understood in a strict sense so as to require the petitioner to have resided in the place for six months or more continuously? We have already said that the Insolvency Law is a remedial statute, and consequently a liberal construction must be given to its provisions. Moreover, the vicissitudes of commerce and the growing complexity of business life render it impracticable for man to reside continuously in a given place. A residence of three or four months

[1] *In re* Colacula, 133 Federal Reporter, 255.

in a place is sufficient, and "residence" must not be understood to mean "domicile."[1] Our law does not apply to those who reside in foreign territories.[2] The law has established this requisite of six months' residence to avoid fraud on the part of a debtor who moves from one province to another with intent to petition for suspension of payments in the province which would best suit his convenience.

5. *How and to Whom may Application for Suspension of Payments be Made. Documents to Accompany Same.*—The application must be made in writing in the form of a petition to be presented to the Court of First Instance or the judge thereof in vacation. It must be accompanied by a schedule and inventory in the form hereinafter described, a statement of the debtor's assets and liabilities, and the proposed agreement he requests of his creditors.[3] The petition must contain all the requisites mentioned in the law, and a prayer to be declared in a state of suspension of payments. The schedule must contain: (*a*) statements of all debts and liabilities, (*b*) names and residences of creditors to whom they are due and the amount due each, (*c*) nature of liability and consideration thereof, (*d*) when and where it accrued, (*e*) security for payment of same, and (*f*) facts which may give rise to a cause of action against the debtor.[4] The inventory must contain an accurate statement of all the real and personal property of the debtor, including his homestead, and all property exempt from execution, stating the value and location of each and the incumbrances thereon, if any.[5] He must also state facts which may give rise to a cause of action in his favor. The law requires that the petition, schedule, and inventory must be verified by the affidavit of the petitioner,[6] because the intention of the Legislature is to avoid fraud on the part of the debtor. The statement of the debtor's assets and liabilities is the result of his schedule and inventory.

6. *Nature of Proposed Agreement.*—Our law is silent as to what should be the nature and extent of the proposed agreement the debtor may submit to his creditors. The Spanish law, Art. 872 of the Code of Commerce, sets a limit to the scope of such proposed agreement by providing that the extension which may be requested must not exceed three years, and, in any case, there must not be a discharge or reduction of any debt. In setting this limitation, it was the intention of the Spanish legislators to guard against any possible injustice. Our legislature, however, did not expressly provide for such limitation because under our form of government every possible freedom and discretion is given to its citizens, and it is left to the creditors to decide what agreement they will accept, provided it is legal. Moreover, if the proposed agreement be so unjust to the creditors as to shock the conscience of man, the Court will be justified in setting it aside as contrary to public policy and good morals, even though a majority of the creditors may favor its approval.

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[1] Sobral, Breves Comentarios sobre las Leyes de Quiebras y Corporaciones, p. 8.
[2] Id., pp. 8 and 9.
[3] Section 2, Act 1956.
[4] Section 15, Act 1956.
[5] Section 16, Act 1956.
[6] Section 17, Act 1956.

7. *Order of Court upon Receipt of Petition.*—Upon receipt of petition for suspension of payments, filed by the debtor, the court shall make an order calling a meeting of the creditors. The order must contain (*a*) a notice of the meeting, designating the time[1] and place thereof, (*b*) a designation of the newspaper wherein such notice must be published, and (*c*) an absolute injunction forbidding the petitioning debtor from disposing of his property or making any payments outside of the necessary or legitimate expenses of his business.[2] The clerk of the court must order the publication of the notice as prescribed by the court and cause a copy thereof to be delivered personally or to be sent forthwith by registered mail to each creditor named in the debtor's schedule.[3] The Spanish law which governs the proceedings in suspension of payments is the so-called "Ley de Enjuiciamiento Civil," referred to in Art. 873 of the Code of Commerce as "the special law." A comparative study of the procedure in suspension of payments under the Spanish law and under our law reveals no substantial difference between the two systems.

8. *Meeting of Creditors.*—For the sake of clearness, the meeting of creditors will be explained under the following topics and in the following order: (*a*) Purpose of meeting, (*b*) Qualifications required of persons attending, (*c*) Quorum, (*d*) Rules to govern and order of business, and (*e*) Result of meeting.

a. Purpose of Meeting.—The principal purpose of the meeting is to submit to the decision of the creditors the proposed agreement requested by the debtor.

b. Qualifications Required of Persons Attending.—Section 5 of Act 1956 provides:

> "Sec. 5. Only creditors included in the schedule filed by the debtor shall be cited to appear and take part in the meeting mentioned in section three, and they shall be notified upon delivery or transmission to them of a copy of the order calling the meeting to appear at same with the written evidences of their respective claims, without which they shall not be admitted."

Does this provision limit the privilege of attending the meeting to those creditors who are mentioned in the debtor's schedule? Can creditors who are not mentioned in that schedule appear and be admitted to the meeting, provided they carry with them written evidence of their claims? The above-quoted section definitely provides that a creditor, in order to be admitted to the meeting, must bring with him the written evidences of his claims. It does not say that only creditors included in the schedule filed by the debtor shall appear and be admitted to the meeting. It merely states that such creditors only as are mentioned in the debtor's schedule shall be cited and take part in such meeting. The question is whether or not creditors who are not cited to appear can appear. If it is the intention of the law to limit the right to appear and take part in the meeting to those creditors mentioned in the

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[1] Must not be less than two nor more than eight weeks from date of order.
[2] Section 3, Act 1956.
[3] Section 4, Act 1956.

debtor's schedule and cited to appear, what is then the purpose of publishing the notice in a newspaper of general circulation? This publication is intended to give notice to the public in general. As the debtor may fraudulently or through innocent omission exclude some creditors from his schedule, the law creates a means of giving notice of the meeting to such creditors, and to them is extended the right of attending thereat, provided they carry with them the written evidences of their claims. Creditors may be represented by one or more lawyers or by any other person duly authorized by power of attorney, which document shall be presented at the meeting.[1] It is believed that guardians may represent their wards at the meeting by presenting their appointment as such guardians. This may also be true of other legal representatives.[2] Minors and insane persons can not execute powers of attorney to their guardians, but if the guardianship refers to the property of the ward, the appointment of the guardian is a general power of attorney granted by the court to represent the ward in all that concerns his property. Section 9 of Act 1956 provides:

> "Sec. 9. Persons having claims for personal labor, maintenance, expenses of last illness, and funeral of the wife or children of the debtor, incurred in the sixty days immediately preceding the filing of the petition, and persons having legal or contractual mortgages, may refrain from attending the meeting and from voting therein. Such persons shall not be bound by any agreement determined upon such meeting, but, if they should join in the voting, they shall be bound in the same manner as are the other creditors."

According to the above section, the persons mentioned therein are not only qualified to attend the meeting but are given the choice to attend or not, as their interests may dictate. As to what may properly be considered personal labor, maintenance, funeral expenses, and expenses of last illness, there is no definite rule to be followed, but each case must be decided according to its attending circumstances, taking into consideration the customs of the place and the social standing of the debtor at the time the expenses were incurred.

c. Quorum.—"The presence of the creditors representing at least three-fifths of the liabilities shall be necessary for holding a meeting."[3] Our law does not state the number of creditors required to attend the meeting. It seems that any number of creditors will be sufficient, provided they represent at least three-fifths of the debtor's liabilities as stated in his schedule. Here we must distinguish between the word "quorum" and the word "majority," as used in section 8 of Act 1956. As we have seen, the presence of creditors whose claims constitute three-fifths of the liabilities is necessary for a quorum, but, to form a majority for the approval of any proposition presented before the meeting, it is necessary (*a*) that the claims represented by

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[1] Section 7, Act 1956.
[2] Sobral, Breves Comentarios sobre las Leyes de Quiebras, p. 13
[3] Section 8, Act 1956.

such majority vote amount to at least three-fifths of the total liabilities of the debtor mentioned in the petition and (*b*) that two thirds of the creditors *voting* unite upon the same proposition.

d. Rules to Govern and Order of Business.—"Persons appearing for more than one creditor shall have only one personal vote, but the claims represented by them shall be taken into consideration for the purpose of arriving at the majority of the amount represented."[1] The judge of the Court of First Instance or a person commissioned by him shall preside over the meeting and the clerk of court shall act as secretary thereof. After examining the written evidences of the claims of the creditors appearing at the meeting, the following order of busineess shall be observed, if there is a quorum: (*a*) Reading by the clerk of the debtor's petition, schedule, statement of assets and liabilities, and the proposed agreement he requests of his creditors, (*b*) discussion of the proposed agreement (in the course of this discussion the debtor may modify his proposal or he may embody therein suggestions made by his creditors), (*c*) taking the vote on the agreement or agreements presented and discussed, (*d*) admission of protests against the majority vote, which must be noted in the record, and (*e*) adjournment.[2]

e. Result of Meeting.—If the meeting should result in the approval of an agreement favorable to the debtor, it may be objected to within ten days following the date of the meeting by any creditor who attended the meeting and who protested against the vote of the majority. The grounds for objection may be (*a*) defects in the call of the meeting, in the holding thereof, and in the deliberations had thereat which prejudice the rights of the creditors, (*b*) fraudulent connivance between one or more creditors and the debtor to vote in favor of the proposed agreement, and (*c*) fraudulent conveyance of claims for the purpose of obtaining a majority.[3] The Spanish law on this point states that the lack of personality or proper representation on the part of any creditor whose vote formed a part of the majority is also a ground for the objection. The Court shall hear and pass upon the objection in a summary manner and shall make a final order declaring whether or not the decision of the meeting is valid. It may also issue such orders as are necessary to enforce the agreement. The agreement shall be binding upon all creditors included in the schedule of the debtor who may have been properly summoned, but not upon creditors having claims for personal labor, maintenance, expenses for last illness, and funeral expenses of the wife or children of the debtor, incurred in the sixty days immediately preceding the filing of the petition, and persons holding legal or contractual mortgages.[4] According to a decision of the Supreme Court of Spain, rendered September 27, 1899, the agreement is not binding upon a creditor whose domicile was known, but

[1] Section 7, Act 1956.
[2] Section 8, Act 1956.
[3] Sections 11 and 12, Act 1956.
[4] Sections 9 and 11, Act 1956.

was not personally cited to appear at the meeting.[1] If the debtor fails wholly or in part to perform the agreement, then the creditors shall resume all the rights which they had against the debtor before the agreement.[2]

If the agreement be rejected at the meeting or the objection to its approval be sustained, then the creditors are at liberty to exercise their rights as such creditors.[3] The proposed agreement shall be deemed rejected if the creditors attending the meeting do not constitute a quorum, or if there is no majority vote in favor of its approval, even if the negative vote itself does not receive such majority.[4]

CHAPTER IV

VOLUNTARY AND INVOLUNTARY INSOLVENCY

1. *Differences.*—In a voluntary insolvency the debtor himself applies to the Court to be adjudged an insolvent, while in an involuntary insolvency three or more creditors make the application for such adjudication. While both kinds of insolvency produce, as a general result, the discharge of the debtor and the equitable distribution of his property among his creditors, yet involuntary insolvency may occasion a prosecution against the debtor for having committed acts of insolvency punishable by law.[5]

2. *Who may Apply for an Adjudication of Insolvency?*—As we have already seen, in a voluntary insolvency, any debtor may petition for an adjudication of insolvency, provided the following requisites exist: (*a*) that the debtor is insolvent, (*b*) that he owes debts in an amount exceeding one thousand pesos, and (*c*) that he has resided for six months next preceding the filing of such petition in the province or city to whose Court he makes his application.[6] In an involuntary insolvency three or more creditors may make the application, provided the following requisites are present: *a*) that the petitioning creditors are residents of the Philippine Islands, (*b*) that their credits or demands accrued in the Philippine Islands, (*c*) that the aggregate amount (of their credits or demands is not less than one thousand pesos, and (*d*) that none of said creditors has become a creditor by assignment, made within thirty days prior to the filing of said petition.[7] For the proper understanding of the words "debtors," "debts," and "property," and the phrase "six months' residence," see the chapter on Suspension of Payments.

3. *Who may be Adjudged Insolvents?*—In a voluntary insolvency there is no doubt that any debtor who is qualified to make an application for an adjudication of insolvency may be adjudged an insolvent. In an involuntary insolvency a debtor can not be adjudged insolvent, unless he has committed one or more of the acts of

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1 Viso, Derecho Mercantil, 689-690.
2 Section 13, Act 1956.
3 Section 11, Act 1956.
4 Section 10, Act 1956.
5 Sobral's Breves Comentarios sobre las Leyes de Quiebras, pp. 32-33.
6 Section 14, Act 1956.
7 Section 20, Act 1956.

insolvency mentioned in the law. At first sight we may be led to believe that under our law any one can be adjudged an insolvent, but, by giving a reasonable construction to its provisions, there appear to be certain classes of persons who are excluded from its operation. Judge Sobral is of the opinion that wage-earners and tillers of the soil can not be adjudged involuntary insolvents, although our law does not make express provision to that effect.[1] Can an adjudication of insolvency be made against the decedent's estate or against his legal representative as respects his estate? Section 72 of Act 1956 provides:

> "Sec. 72. If any debtor shall die after the order of adjudication, the proceedings shall be continued and concluded in like manner and with like validity and effect as if he had lived."

But supposing that the debtor should die before the order of adjudication, or even before a petition is filed for such order of adjudication, what would be the result? The writer is of the opinion that in this case no order of adjudication should be made. Sections 735 and 736 of the Code of Civil Procedure (Act 190) govern such a case. The existence of a person who owns property in his own right is an indispensable requisite to an adjudication in bankruptcy. In case of a deceased person there is no one *in esse* against whom the proceedings would lie. The court of bankruptcy not having acquired jurisdiction during the lifetime of the deceased, the administrator or executor can not be forced to bring the estate within the jurisdiction of the court. However, proceedings instituted during the lifetime of the debtor will not be abated by his death.[2] While a minor is a person within the meaning of the law, he is not entitled to the benefits of the same, because the debts which he owes are for the most part voidable. If he chose to avoid them, the proceedings in bankruptcy would be futile.[3] When an infant owes debts for which he is legally liable, he may be adjudged an insolvent; otherwise the proceedings would be idle.[4] As a general rule, an insane person can not be adjudged bankrupt, but, if he has committed an act of bankruptcy during a lucid interval, he may be forced into bankruptcy by his creditors, even against the consent of his guardian. It is also probable that, through his guardian, he may file a voluntary petition in bankruptcy.[5] The question whether a married woman may be adjudged bankrupt depends upon whether she may owe debts, and this is to be determined according to the law of the place.[6] The writer is of the opinion that his discussion on the subject of married women in the Chapter on Suspension of Payments is applicable to voluntary and involuntary insolvencies in this country, according to our laws.

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1. Sobral's Breves Comentarios sobre las Leyes de Quiebras, p. 33.

2 1 Loveland, 289-90.

3 5 Cyc. 282; *In re* Duguid, 100 Fed. Rep. 274.

4 1 Loveland 291-2; *In re* Derby, Fed. Case No. 3815; *In re* Dunnigan, 95 Fed. Rep. 428.

5 5 Cyc. 282; 1 Loveland, 292-3; *In re* Funk, 101 Fed. Rep. 244; *In re* Marvin, 1 Dill. (U. S.) 178; *In re* Weitzel, Fed. Case No. 17365; *In re* Pratt, Fed. Case No. 11371; *In re* Burka, 107 Fed. Rep. 674.

6 5 Cyc. 282; 1 Loveland, 293; MacDonald vs. Tefft-Weller Co., 128 Fed. Rep. 381; *In re* Doodman, Fed. Case No. 5540; *In re* Howland, Fed. Case No. 6791.

a. Meaning of Word "Insolvent."—It has been said that, according to our law, a debtor who voluntary requests an adjudication of insolvency must not only owe debts in an amount exceeding one thousand pesos but he must also be an insolvent debtor. What is the meaning of the word "insolvent" as used in that provision of our law? Should we understand it in the sense that the debtor's assets fall short of his liabilities, even though he has not yet defaulted in the payment of his debts? Or should it be understood in the sense that the debtor has defaulted in the payment of his debts even though his assets do not fall short of his liabilities? In the United States, the Federal Bankruptcy Act of 1898, section 1 (15), provides that "a person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts." Under our Insolvency Law, one is inclined to believe that a debtor whose assets do not fall short of his liabilities and who has not defaulted in the payment of any of his debts, but only foresees the impossibility of paying them when they fall due, is not an insolvent and is not subject to either voluntary or involuntary insolvency proceedings, provided he has not committed any act of insolvency as defined in the law. He may, however, petition for suspension of payments. A debtor whose assets fall short of his liabilities but who has not defaulted in the payment of any of his debts is an insolvent, and may be entitled to the privilege of voluntary insolvency proceedings, provided he owes debts exceeding one thousand pesos in amount. If his assets do not fall short of his liabilities but he has defaulted in the payment of his debts, he may also be subject to voluntary insolvency proceedings.

At this point we shall undertake to distinguish between the word "insolvent" and the phrase "adjudged insolvent." As we have seen, a debtor can not make a voluntary petition for an adjudication of insolvency unless he is insolvent. Here we shall have occasion to observe that a petition for an adjudication of insolvency may be made against a debtor in an involuntary insolvency, even though such debtor is not an insolvent and has not defaulted. A debtor who has not defaulted in the payment of his debts and possesses sufficient property to cover all of them may still be subject to involuntary proceedings in insolvency and be "adjudged insolvent," if he has committed an act of insolvency, such, for instance, as the concealment of his property to defraud his creditors. As to what shall be considered property of the debtor for the purpose of determining his solvency, it is claimed that the debtor's exempt property, both real and personal, is to be included in determining whether or not he is insolvent.[1]

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[1] 3 Ruling Case Law, 202.

4. *Acts of Insolvency.*—Section 20 of our Insolvency Law (Act 1956) enumerates thirteen instances in which a person may commit an act of insolvency. They are the following:

> "(1) That such person is about to depart or has departed from the Philippine Islands, with intent to defraud his creditors; (2) that, being absent from the Philippine Islands with intent to defraud his creditors, he remains absent; (3) that he conceals himself to avoid the service of legal process for the purpose of hindering or delaying or defrauding his creditors; (4) that he conceals or is removing any of his property to avoid its being attached or taken on legal process; (5) that he has suffered his property to remain under attachment or legal process for three days for the purpose of hindering or delaying or defrauding his creditors; (6) that he has confessed or suffered to allow judgment in favor of any creditor or claimant for the purpose of hindering or delaying or defrauding any creditor or claimant; (7) that he has willfully suffered judgment to be taken against him by default for the purpose of hindering or delaying or defrauding his creditors; (8) that he has suffered or procured his property to be taken on legal process with intent to give a preference to one or more of his creditors and thereby hinder, delay, or defraud any one of his creditors; (9) that he has made any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits with intent to delay, defraud or hinder his creditors; (10) that he has, in contemplation of insolvency, made any payment, gift, grant, sale, conveyance, or transfer of his estate, property, rights, or credits; (11) that, being a merchant or tradesman he has generally defaulted in the payment of his current obligations for a period of thirty days; (12) that, for a period of thirty days, he has failed, after demand, to pay any moneys deposited with him or received by him in a fiduciary capacity; and (13) that an execution having been issued against him on final judgment for money, he shall have been found to be without sufficient property subject to execution to satisfy the judgment."

The above-mentioned acts of insolvency may be grouped into four general heads: (*a*) those relating to the person of the debtor, being Nos. 1, 2, and 3; (*b*) those relating to his property, either directly or indirectly, being Nos. 4, 5, 6, 7, 8, 9, and 10; (*c*) those relating to default in making payments, being Nos. 11 and 12; and (*d*) that relating to his positive insolvency, being No. 13. In many of the acts of insolvency enumerated above the law requires that there must be an intent to defraud creditors.[1] The intent need exist only on the part of the person making the transfer; if that exists, the debtor clearly commits an act of bankruptcy, however, innocent the intent of the preferred creditor or the person receiving it may be.[2] If the natural consequence of the fraudulent transfer is to defraud creditors, the intent will be presumed.[3] Every one is presumed to intend the legal consequences of his acts, and, where an insolvent debtor transfers a large portion of his property to one creditor to the exclu-

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1 Wilson *vs.* Nelson, 183 U. S. 191.

2 5 Cyc., 290.

3 Wager *vs.* Hall, 16 Wall. (U. S.) 584.

sion of others, such transaction must be taken as conclusive proof of an intent to give a preference.[1] However, in Nos. 7 and 8, intent is not an essential requisite.[2] It is the result obtained by the creditor and not the specific intent of the debtor that constitutes the essential fact.[3] A mere passive nonresistance of an insolvent debtor to regular judicial proceedings, in which a judgment and levy on his property were obtained, when the debt was justly due and he was without just defense to the action, is in itself not sufficient to show preference of a creditor.[4] In many cases, the law requires that the transfer be fraudulent.[5] The fraudulent intent of the debtor in committing an act of insolvency is a matter of fact to be proved before the court by the person alleging such intent. As the intent of a debtor can only be proved by his own declaration, act, or omission, a person alleging such intent encounters great difficulties in proving it, unless the natural consequence of the debtor's act is to defraud his creditors. When a debtor is alleged to have committed an act of insolvency, the proper procedure is not to inquire into his intent in committing it but to determine the natural consequence of the same. Any person who can be adjudged an involuntary bankrupt may commit an act of bankruptcy. But the act must be committed by the person himself or at least with his knowledge and consent.[6] A voluntary bankrupt has committed an act of bankruptcy in filing the petition.[7]

5. *Hearing to Show Cause and Order of Court.*—In case of an involuntary insolvency, the petitioning creditors must file their petition in the Court of First Instance of the province or city in which the debtor resides or has his principal place of business. Such petition must be verified by at least three of the petitioners and shall set forth one or more acts of insolvency alleged to have been committed by the debtor. The petitioners may, by leave of court, amend the petition so that the same may conform to the facts, and it was decided in the case of Armstrong *vs.* Fernandez, 208 U. S., 330, that the power of the court of bankruptcy over amendments is undoubted and rests in the sound discretion of the court. It must be accompanied by a bond with two or more sureties, conditioned that, if the petition be dismissed by the court or withdrawn by the petitioner or if the debtor shall not be declared an insolvent, the petitioners will pay to the debtor all costs, expenses, and damages occasioned by the proceedings, together with a reasonable counsel fee to be fixed by the Court.[8] Upon the filing of the petition, the court shall make an order requiring the debtor to show cause why he should not be adjudged an insolvent debtor. The order shall contain the time and place of hearing. At the same time or thereafter, upon good cause shown therefor, the court may by order forbid the payment of any debts and the delivery of any property belonging to such debtor to him or to any other person

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1 *In re* McGee, 105 Fed. Rep. 895.
2 Sobral's Breves Comentarios sobre las Leyes de Quiebras, p. 36
3 3 Ruling Case Law, 204.
4 Wilson *vs.* The City Bank of St. Paul, 17 Wall. (U. S. 473.
5 Coder *vs.* Arts. 213 U. S., 223.
6 5 Cyc., 286; 1 Loveland, 295.
7 Hanover Nat. Bank *vs.* Moyses, 186 U
8 Section 20, Act 1956.

for his use or benefit or the transfer of any property by him.[1] A copy of the petition with a copy of the order shall be served on the debtor, in the same manner as is provided by law for the service of summons in civil actions,[2] which may be made by publication in the cases provided.[3] At the hearing the debtor may demur to the petition on the same grounds as are provided for demurrer in other civil cases by the Code of Civil Procedure.[4] If the debtor does not demur or if his demurrer is overruled, he must answer the petition.[5] If the respondent be in default or if the issues are decided in favor of the petitioners, the court shall make an order adjudging the debtor insolvent, requiring him to file the schedule and inventory explained in this work in the chapter on Suspension of Payments. Said order shall further: (*a*) direct the sheriff to take possession of all the deeds, vouchers, books of accounts, papers, notes, bills, bonds, and securities of the debtor, and all his real and personal property, estate, and effects, except such as under the law may be exempt from execution; (*b*) forbid the payment of any debt or the transfer of any property to or by the debtor; (*c*) designate a time and place for a meeting of creditors for the election of an assignee; and (*d*) designate a newspaper of general circulation wherein the order shall be published. All civil proceedings pending against the said insolvent shall be stayed.[6] The publication of the order and the service of a copy of the same to each creditor shall be made in the same manner as in Suspension of Payments, already discussed. If the proceedings were voluntary, there would be no occasion for an order to show cause; but, as the petition is filed by the debtor himself, together with his schedule and inventory, the court shall upon receipt thereof make an order declaring the petitioner insolvent, and the same procedure shall then be followed as in a case of involuntary insolvency.[7] A creditor can not intervene to oppose an adjudication in an ordinary voluntary petition in bankruptcy by setting up that the pettioner is not insolvent.[8] After receiving the order of the Court, the sheriff shall take possession of the property of the debtor not exempt from execution, to an extent sufficient to cover the amount of the claims, and within a period of three days thereafter, which may be extended by the Court for good cause shown, he shall take a complete inventory of all the property so taken. He shall also prepare a schedule of the names and residences of the creditors and the amount due each, to be filed with the clerk of the court. The creditors shall be notified of the debtor's insolvency. If the property taken by the sheriff does not embrace all the property of the debtor not exempt from execution, creditors other than the petitioners, upon giving bond in double the amount of their claims, shall be entitled to similar orders, and to like action, by the sheriff,

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[1] Section 21, Act 1956.
[2] Sections 394 to 397, Act 190.
[3] Section 22, Act 1956; Sections 398 and 399, Act 190.
[4] Section 91, Act 190.
[5] Section 23, Act 1956.
[6] Section 24, Act 1956.
[7] Sections 14, 18 and 19, Act 1956.
[8] *In re* Carleton et al, 115 Fed. Rep. 246.

until all claims be provided for, if there be sufficient property. All property so taken by the sheriffs shall be held by him for the benefit of all creditors whose claims shall be duly proved.[1]

CHAPTER V

ASSIGNEES

1. *General Observations.*—Again we shall make a comparative study of the American and Spanish bankruptcy laws, not only to locate the origin of those provisions of our law regarding assignees, but also to ascertain how far the jurisprudence of each of those two nations on that subject can be made applicable in this country. Under the American system, the court of bankruptcy may appoint one or more referees, who may, by representing the judge, hear and decide claims against the debtor and perform such other duties as the statute designates or the court may delegate.[2] Under our law the duties of the referee are undertaken by the court. The American law also authorizes the court to appoint receivers or marshals, upon application of parties in interest, in case the court shall find it absolutely necessary for the preservation of the debtor's estate. The receiver shall take possession of the property of the bankrupt after the filing of the petition and until its dismissal or until a trustee is qualified.[3] A receiver has no title to the property and does not act as trustee thereof.[4] Under our law the duties of the receiver as provided for in the American law are mostly undertaken by the sheriff of the province or city in whose court the petition is filed. The receiver is also mentioned in several parts of our Insolvency Law as an officer who takes possession of the debtor's property immediately upon the adjudication of insolvency and until the election of an assignee, provided such receiver has been appointed; otherwise the sheriff is called upon to perform his duties. Section 78 of our Insolvency Law contains briefly the provisions regarding the appointment, duties, and powers of receivers. It states that the general laws on receivers are applicable and the provisions of the Code of Civil Procedure regarding receivers (sections 173 to 180 inclusive of Act 190) are the provisions meant. The trustees under the American law possess similar duties as the assignees under our law.

Trustees in bankruptcy, like executors or administrators, are bound to use due diligence to get in the assets.[5] This is also true of assignees under our law; but, while our law does not prescribe the qualifications for assignees, the American law provides that trustees may either be individual persons or corporations, and, if individuals, they must be persons of good reputation and residents of the place where

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1 Sections 26 and 27, Act 1956.
2 C. Sobral, Breves Comentarios sobre las Leyes de Quiebras, p. 60; 3 Ruling Case Law, 196.
3 3 Ruling Case Law, 191.
4 3 Ruling Case Law, 193.
5 3 Ruling Case Law, 195.

the bankruptcy proceedings are instituted. The assignees under the Spanish law are the same as the assignees under our law, so that the provisions of our law regarding them are more of Spanish than American origin.[1]

2. *Election of Assignee.*—An assignee is elected by the creditors of the insolvent in a meeting called for that purpose, under the control and supervision of the court. In order that a creditor may be entitled to vote, he must have his written claims filed in the office of the clerk of the court at least two days prior to the election. Any person having an interest in the estate may file objection to the legality or good faith of such claims at least one day prior to the election. Claims barred by the statute of limitations shall not be received, and no creditor who holds any mortgage, pledge or lien of any kind as security for the payment of his claim shall be permitted to vote unless he surrenders to the sheriff or receiver such lien or property upon which the mortgage or pledge is constituted or have the value thereof appraised.[2] The majority of the creditors who have proven their claims must concur in the election of an assignee, and such majority must be both in number and amount,[3] as stated under Suspension of Payments. The court may appoint an assignee when no one has been elected or when he resigns or is removed for any reason.

3. *His Powers.*—The powers of the assignee, enumerated in section 36, and those mentioned in section 33 and 35 of our Insolvency Law may be summarized as follows: (*a*) to prosecute or defend an action pending in the name of the debtor and to institute proceedings for the recovery of the debtor's claims; (*b*) to settle all claims and accounts between the insolvent debtor and his debtors and to compound with any of them for the discharge of the claims; (*c*) to take possession of all the property of the debtor except so much of it as is exempt from execution in whosever possession such property may be, including all books, vouchers, evidences of indebtedness, and securities belonging to the same (by virtue of this power, he has the right to recover all property fraudulently given, sold, transferred, or conveyed by the debtor, to redeem all valid mortgages, pledges, and conditional contracts;) and (*d*) from time to time to sell at public auction, after advertisement provided in subsections 1, 2, and 3 of section 454 of the Code of Civil Procedure, upon order of the court, any of the estate, real or personal, which has come into his possession, and which is vested in him as such assignee, and on such sales to execute the necessary conveyances and bills of sale. In connection with the powers of the assignee, it is believed that the assignee may employ lawyers to represent him in actions prosecuted or defended by him as such assignee, although the law does not expressly grant him such power.

4. *His Duties.*—The duties of the assignee comprise: (*a*) administration of estate; (*b*) rendition of accounts; (*c*) filing of schedule and inventory; and (*d*), in case of his resignation or removal, the surrender of the property to his successor.

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[1] Sobral's Breves Comentarios sobre las Leyes de Quiebras, 60 and 61.
[2] Section 29, Act 1956.
[3] Section 30 and 80, Act 1956.

The assignee, being entrusted with the possession of all the property of the insolvent for the benefit of the creditors, is required to administer such property as a good father of a family; that is, with such diligence as if it were his own. Within one month after the making of the assignment to him of such property, he shall cause the real property to be recorded in the registry of property of each province in which any part of it is situated.[1] The assignee shall, as speedily as possible, convert into money all the property assigned to him, selling first that of a perishable nature and then the rest with the approval of the court.[2] It is also the duty of the assignee, at the expiration of three months from his election, or earlier, as the court may direct, or when requested by two or more creditors, to render true accounts of all his receipts and payments, with proper vouchers, verified by his oath and stating the condition of all the property administered by him or outstanding. Within one year from the date of the order of adjudication the assignee shall file with the court his final account, unless further time has been granted him for that purpose.[3] If the insolvent debtor has not made the inventory of his property and the schedule required in section 24, it is the duty of the assignee, within one moth after his election, to make such inventory and schedule[4] as described in sections 15 and 16 of our Insolvency Law and discussed in this work under Suspension of Payments. Upon the resignation or removal of the assignee, it is his duty not only to file his final accounts but also to deliver to his successor all the property of the insolvent in his possession, before he can be exempt from any liability under his bond.

5. *His Resignation or Removal.*—According to section 35 of our Insolvency Law, the assignee may at any time, by writing filed in court, resign his appointment. He must first settle his accounts and deliver to his successor all the property in his possession. Under section 46, an assignee may be discharged for any of the following reasons: (*a*) when he refuses or neglects to render his accounts as required by sections 43 and 44; (*b*) when he refuses or neglects to pay over a dividend when he has, in the opinion of the court, sufficient funds for that purpose; (*c*) when he neglects or mismanages the estate in any manner whatever; and (*d*) when he violates any of the provisions of the Insolvency Law.

1 Section 34, Act 1956.
2 Section 39, Act 1956.
3 Sections 43 and 44, Act 1956.
4 Section 34, Act 1956.