Louisiana Law Review

Volume 2 | Number 1
November 1939

Bankruptcy - Appeals - Allowance of Appellate Court - Judgment Involving Less Than $500

W. J. B.

Humphrey's[23] decision—the quasi-legislative and quasi-judicial administrative bodies. In view of the wide field of activities covered by the Authority, such a decision would obviously require a clearer definition of those terms than can be found in the *Humphrey's* case.

F. S. C., Jr.

BANKRUPTCY—APPEALS—ALLOWANCE OF APPELLATE COURT—JUDGMENT INVOLVING LESS THAN $500—An appeal from an order of the district court directing the trustee in bankruptcy to furnish a transcript of certain testimony was taken without the allowance of the appellate court. *Held,* that the appeal was properly taken, as Section 24(a) of the Bankruptcy Act[1] limits the cases where allowance of the appellate court is required to those involving money alone and in a lesser amount than $500. *Stein v. Elizabeth Trust Co.,* 104 F. (2d) 777 (C.C.A. 3rd, 1939).

Prior to the Chandler Amendment appellate procedure was both awkward and dangerous.[2] In all orders in *proceedings* in bankruptcy, as distinguished from controversies arising in bankruptcy proceedings,[3] it was necessary in taking an appeal to obtain the allowance of the appellate court, except in the three instances listed under Section 25(a).[4] In *controversies* arising in

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23. Humphrey's Ex'r v. United States, 295 U.S. 602, 55 S. Ct. 869, 79 L. Ed. 1611 (1935).

1. Bankruptcy Act of 1898, § 24(a), as amended by Act of June 22, 1938, c. 575, 52 Stat. 854, 11 U.S.C.A. § 47(a) (Supp. 1938): "The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia . . . are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy . . . . Provided further, That when *any* order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court." (Italics supplied.)

2. Under the old Act appellate jurisdiction was governed by two sections: Section 24(a) dealt with controversies and Sections 24(b) and 25(a) dealt with proceedings. In the new Act Section 24(a) covers both. Act of June 22, 1938, c. 575, 52 Stat. 854, 11 U.S.C.A. § 47(a) (Supp. 1938).

3. The distinction between the two is that *proceedings* in bankruptcy include only matters internal to the bankruptcy administration, while *controversies* arising in bankruptcy proceedings relate to issues arising between the trustee as the general representative of the bankrupt estate and third parties claiming the right to keep property outside the bankruptcy administration. See Childs v. Ultramares Corp., 40 F. (2d) 474 (C.C.A. 2nd, 1930), and cases therein cited.

4. Collier, Bankruptcy (Gilbert, 4 ed. 1937) 514, §§ 727-728.

Section 25(a) formerly provided: "That appeals, as in equity cases, may be taken in bankruptcy proceedings . . . in the following cases, to-wit, (1) from a judgment adjudging or refusing to adjudge the defendant a

proceedings in bankruptcy, appeals from final orders were had *as of right*.[5] It was most important to clearly observe these distinctions. Thus if counsel, thinking the case involved a final order in a *controversy*, appealed without allowance, and the appellate court decided that the case involved an order in a bankruptcy *proceeding*, where an appeal could be had only upon allowance of the appellate court,[6] the appeal might be entirely lost;[7] for the courts have repeatedly held that an appeal so taken could not be treated as having been allowed,[8] and the time for appealing may have passed.[9] This danger was responsible for the cumbersome practice of obtaining allowance of the appeal by both trial and appellate courts in each case.[10] Lawyers and judges alike were hopelessly bewildered by these vague and artificial classifications.[11]

Section 24(a) of the new Act has done much to clear this uncertain and confusing point. At a meeting of American Referees in Bankruptcy the change was stated by Referee Adair as follows:

"The difficulty of distinguishing between controversies arising in bankruptcy proceedings on the one hand, and pro-

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bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. . . ."

5. Collier, op. cit. supra note 4, at 510-513, § 725. Cf. Childs v. Ultramares Corp., 40 F. (2d) 474 (C.C.A. 2nd, 1930), where it was held that the Circuit Court of Appeals does not have jurisdiction over *interlocutory orders* in *controversies* arising in bankruptcy proceedings; interlocutory orders being appealable only when review is granted by statute, either expressly or by necessary implication. See also In re Finkelstein, 102 F. (2d) 688, 689 (C.C.A. 2nd, 1939): ". . . indeed, the interlocutory orders mentioned in that section [§ 24(a)] seem to be confined to those entered in 'proceedings in bankruptcy'. . . ."

6. St. Louis Can Co. v. General American Life Ins. Co., 77 F. (2d) 598 (C.C.A. 8th, 1935); In re Harris, 78 F. (2d) 849 (C.C.A. 9th, 1935).

7. For a complete discussion of appeals under the old Act, see Collier, op. cit. supra note 4, at 505-565, §§ 719-782.

8. Deely v. Cincinnati Art Pub. Co., 23 F. (2d) 920 (C.C.A. 6th, 1928); Schnurr v. Miller, 49 F. (2d) 109 (C.C.A. 8th, 1931); Standard Sanitary Mfg. Co. v. Momsen-Dunnegan-Ryan Co., 51 F. (2d) 684 (C.C.A. 9th, 1931). Cf. Investors Syndicate v. Smith, 105 F. (2d) 611 (C.C.A. 9th, 1939).

9. The thirty days time limit for appeals contained in old Section 24(c) was amended by Act of June 22, 1938, c. 575, 52 Stat. 855, 11 U.S.C.A. § 48(a) (Supp. 1938), and now appears as Section 25(a): "Appeals . . . shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order, or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days of such entry."

10. Hunt, Appeals in Bankruptcy Cases (1936) 10 So. Calif. L. Rev. 296, 318.

11. See Coder v. Arts, 213 U.S. 223, 232-235, 29 S.Ct. 436, 439-441, 53 L.Ed. 772, 776-778 (1908); In re McMahon, 147 Fed. 684, 689 (C.C.A. 6th, 1906);

ceedings in bankruptcy on the other hand, and the danger of obtaining allowance of an appeal by the wrong court have been swept away. Appeals in all[12] cases may be taken as of right, except that when any order, decree, or judgment involves less than $500, allowance by the appellate court is required."[13]

The instant case, and that of *Robertson v. Berger*,[14] bear out the foregoing conclusions by Referee Adair and also clear up a rather difficult point as to the requirement of Section 24(a) that allowance of the appellate court must be had before an appeal may be taken from any judgment, order, or decree involving less than $500. These cases, clearly sound, declare that this clause does not include ordinary administrative orders involving no money at all. They relate only to orders which involve money alone and in a sum less than $500. All other cases, except interlocutory controversy orders,[15] are appealable as of right under the Chandler Amendment.

Formerly all appeals from final controversy orders, regardless of amount, were taken as of right.[16] The language of the proviso of Section 24(a), requiring an allowance of the appellate court, seems clearly to include final controversy orders, as well as orders in proceedings, involving less than $500.[17] However, due to the fact that appeals in final orders in controversies have always been of right because of their plenary nature, it may be argued that the proviso was not intended to limit this right but is only a partial reservation of the old discretion as to allowance of appeals in orders in bankruptcy proceedings.

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Thomas v. Woods, 173 Fed. 585, 587 (C.C.A. 8th, 1909); Jones v. Blair, 242 Fed. 783, 786 (C.C.A. 4th, 1917). See also Hunt, supra note 10, at 318-322.

12. Although the new Act makes a great change, this statement is not literally true. The distinction still exists to the extent that in *controversies* appeals may be had from final orders only. The rule of Childs v. Ultramares Corp., 40 F. (2d) 474 (C.C.A. 2nd, 1930), supra note 5, has not been altered by Section 24(a) of the new Act, supra note 2. Thus, if the order is not a final one it may still be important to determine whether the case involves a controversy or a proceeding. See also In re Finkelstein, 102 F. (2d) 688, 689 (C.C.A. 2nd, 1939), supra note 5.

13. Discussion by Referee Watson B. Adair of Pittsburg, before the National Association of American Referees in Bankruptcy. (1938) 13 J.N.A. Ref. Bankr. 9, 10.

14. 102 F. (2d) 530 (C.C.A. 2nd, 1939).

15. There is no appeal from interlocutory orders in controversies. Collier, op. cit. supra note 4, at 510, § 725. See notes 5 and 12, supra.

16. See note 5, supra.

17. See note 1, supra.