Wage Earners' Plans in the Federal Courts

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I. INTRODUCTORY

It is the purpose of this article to present an analysis and operational study of wage earners' plans under chapter 13 of the Bankruptcy Act, the most recent procedural technique for amortizing the debts of wage-earner debtors through the medium of the federal courts.

The first federal statute to aid wage-earner debtors, aside from straight bankruptcy, was enacted in 1933 and was also included in the Bankruptcy Act, as sec. 74. This statute did not meet with much success due principally to failure to give to the court jurisdiction over the future wages of the debtor and to

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The writer is solely responsible for all statements and conclusions contained herein.

provide for a discharge. It was used by few referees. The statute did, however, provide a laboratory for experiment, and with some five years of experience under it in a few jurisdictions, the present chapter 13 was drafted and has now been in force since September 22, 1938.

It should be emphasized that despite the fact that wage earners' plans are provided for in the Bankruptcy Act, they do not constitute bankruptcy in the accepted meaning of the term, but provide a method of avoiding bankruptcy by paying one's debts in full under the protection of the federal courts.

E.g. in Birmingham, Alabama; Atlanta, Georgia; Knoxville, Tennessee; Norfolk, Virginia. Comment, (1934) 43 Yale L. J. 1285; Analysis of H. R. 12889, p. 102 (74th Cong. 2d Sess. 1936). In commenting upon the deficiencies of sec. 74 Mr. Chandler said: "The section is unsatisfactory in respect to the debtor's discharge. Section 14c of the act gives to the confirmation of a composition the effect of a discharge; but this provision was intended to relate to section 12, which deals with compositions. . . . Thus it may be doubted whether under section 74 the confirmation of a proposal discharges a debtor from the debts affected by such proposal; and it would seem rather clear that in the event of a liquidation under this section or even an adjudication, the debtor, though deprived of his property, is not entitled to the privilege of a discharge." H. R. No. 1409 (75th Cong. 1st Sess. 1937) 50.

Stat. at L., ch. 575, secs. 601-686 inc., (75th Cong. 3d Sess. 1938); 11 U. S. C. secs. 1001 et seq. In her Bankruptcy Act England has had a provision dealing with small debtors in a summary inexpensive manner since 1883. If the estate is less than £300 many of the formalities of bankruptcy are eliminated. If the debtor is a judgment debtor and owes debts which he cannot pay forthwith, and they do not exceed £50, the county court in bankruptcy is entitled to make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, either in full or in part, depending upon the circumstances of the debtor, and subject to modification or conditions as to his future earnings or income as the court should consider just. The debtor is entitled to discharge from his debts upon completion of the plan. Bankruptcy Act of 1883, 46 and 47 Vict., ch. 52, secs. 121, 122. This portion of the Bankruptcy Act of 1883 was continued in force after the general revision of 1914. 4 and 5 Geo. V., ch. 59, Sixth Schedule (1914). It was, however, repealed and re-enacted in the County Court's Act of 1934. 24 and 25 Geo. V., ch. 53, Part VII, secs. 149-157 inc. The Lord Chancellor and the Board of Trade have promulgated rules for the administration of the act and have prescribed the official forms. Statutory Rules and Orders (1936) No. 1317. See generally 2 Halsbury, Laws of England (2d ed. Hailsham 1931) 386. No creditor who is listed or who has intervened may have any remedy against the debtor except such as the county court will permit. If the debtor owns more than £10 worth of property, a creditor may have execution issued against it, but the debtor is given an exemption of £20 worth of household goods, bedding, wearing apparel and implements of his trade. It has been said that executions under this section are practically unknown. 2 Halsbury, Laws of England (2d ed. Hailsham, 1931) 393, note (5). The English act may be enforced by contempt process where the debtor wilfully or negligently fails to make payment. To escape the contempt process the burden is on him to prove that he was unable to meet his payments. 24 and 25 Geo. V., ch. 53, Part VII, sec. 153 (1934); 2 Halsbury, Laws of England (2d ed. Hailsham, 1931) 393, sec. 533. For a discussion of the English Act see Holm-Nielsen, The Problem of Wage Earner Bankruptcies and Its English Solution, (1935) 9 J. N. A. R. B. 103.
The operational study of chapter 13 was made in the courts of the referees in bankruptcy in Birmingham and Montgomery, Alabama; Norfolk, Virginia; Kansas City, Kansas, and Kansas City, Missouri. These cities were selected because each has had considerable experience with wage earners' plans and because they are sufficiently widespread geographically and industrially divergent to give a fair picture of what is necessary to a successful operation of the plans anywhere and to indicate what results may be expected under this procedure. Further, the experience gained by these courts in the administration of the chapter may aid referees just beginning to operate under it to avoid obstacles which others have encountered and to make the detail work as little onerous as a faithful application to detail makes possible.

II. ANALYSIS OF CHAPTER 13

1. WHO MAYInvoke THE CHAPTER

Only a wage earner may apply for the relief afforded by this chapter of the Bankruptcy Act. For the purposes of the chapter, a wage earner is one who works for wages, salary, or hire, whose total income does not exceed $3,600 per year. This should be contrasted with the definition of wage earner in orthodox bankruptcy, where the limitation upon earnings is $1,500.

4"The designation of the wage earner as a 'debtor' is here also adopted. Perhaps it is only a euphemism, but it seems to answer a popular demand. In the public mind there is an odium attached to the word 'bankrupt.'" Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 103. See also Joint Hearings Before the Subcommittees of the Committees on the Judiciary, Congress of the United States, on S. 3866, (72nd Cong. 1st Sess. 1933) pp. 576-582; Report No. 1409, Revision of the National Bankruptcy Act, (75th Cong. 1st Sess. 1937) p. 54; H. R. 1219 (74th Cong. 2d Sess. 1936) 5. Compare King, Experimenting with Our Bankruptcy Act, (1933) 7 J. N. A. R. B. 98, 100 concerning, in part, old section 74. One writer in a popular magazine lost sight of this distinction. Brentano, A New Way to Pay Old Debts, (March 18, 1939) 211 Saturday Evening Post 23.

5It should be noted also that the Eastern District of Tennessee embracing Knoxville and Chattanooga, the Western District of Tennessee embracing Memphis, and the Northern District of Illinois embracing Chicago, have also had considerable experience under old Section 74 and Chapter 13. Annual Report of the Director of the Administrative Office of the United States Court, (1941) Table 18; Open Forum on Bankruptcy Practice (1935) 9 J. N. A. R. B. 71 at 73-74.


711 U. S. C. sec. 1 (32). Two reasons are advanced why $3600 was the income level selected for those who could resort to chapter 13. One is that it approximates today the value which $1500 would have had in 1898 when the present bankruptcy act was originally enacted. H. R. 11219 (74th Cong. 2d Sess. 1936) 8. The other is to bring within its scope the larger group of wage earners to whom amortization relief should be available. Ibid.;
To secure the benefits of the chapter, the wage earner must either be insolvent or have debts which he is unable to pay as they mature. Insolvency here means the simple insolvency of bankruptcy. But insolvency is not necessary, and the debtor may resort to the protection of this chapter when he has debts which he is unable to pay as they mature, regardless of the fact that he may own property, the fair market value of which would be greater than the amount of his debts.

2. Procedure to Invoke the Chapter

Assuming that a debtor is eligible, he may invoke the chapter by filing a petition with the clerk of the federal district court which would have jurisdiction of a petition for adjudication. Such district is one in which the debtor has resided for the greater part of the preceding six months.

While the court in which the petition is filed is given exclusive jurisdiction over the debtor and his property, including earnings and wages during the pendency of the plan, this does not carry with it the right to have the property of the debtor appraised and sold to pay creditors. In order to protect the creditors, however, where the debtor has property aside from his wages and earnings, and is not insolvent but merely unable to pay his debts as they mature, the court may require that he file a bond to indemnify the estate during the period covered by the plan.

The petition must set out the insolvency of the debtor, or the fact that he cannot pay his debts as they mature, and that he wishes to effect a composition or extension, or both, out of his future earnings. Accompanying the petition must be a statement of his executory contracts, the schedules and statement of affairs, and the proper filing fees.

Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 103. Recent figures from the Treasury Department indicate that there are a total of 32,097,000 families in the United States as of March 20, 1942, and of this number, 26,370,000 families have incomes of less than $3,000. There are 28,900,000 families in the United States with average incomes which do not exceed $3,380. Randolph Paul, adviser to the Treasury Dept., in 12 U. S. Week (March 20, 1942) 39. Presumably most of these are wage earners, although this is not shown.

1111 U. S. C. sec. 11 (a) (1).
1211 U. S. C. secs. 1002; 110 (f); General Orders in Bankruptcy Nos. 55, 18.
1411 U. S. C. secs. 1023; 1024. General Orders in Bankruptcy, Official Forms No. 58, the proper schedules under Form No. 1; Form No. 2.
If he has previously petitioned to be adjudicated a bankrupt under orthodox procedure and his case is pending, he may, either before or after adjudication, petition to come under chapter 13 instead of proceeding with regular bankruptcy. Such petition operates as a stay of the original proceedings. Conversely, if he has originally petitioned to come under chapter 13, and for any reason cannot continue with his wage earners' plan, and thereby defaults in the terms of his plan, he may, upon application and presumably with the consent of the court, convert it to an orthodox bankruptcy proceeding. If the wage earner started originally with orthodox bankruptcy and then converted it to a wage earners' plan, the court may, if he fails to secure creditor acceptance, or fails to secure confirmation within the specified time, or if he defaults in any of the terms of the plan, or if the plan terminates by reason of the happening of a condition specified therein, reconvert the plan back into orthodox bankruptcy.

This does not, in reality, mean that the wage earner has been forced into bankruptcy involuntarily, for such result would, if the debtor were a wage earner with an income not exceeding $1,500, conflict with other provisions of the Bankruptcy Act. Rather, it means that the old orthodox bankruptcy proceedings which had been stayed by the conversion to the wage earners' plan are merely revived, and the original intent of the wage earner to go into orthodox bankruptcy is being given effect.

Some question arises as to how much discretion a court has to refuse to permit a wage earner who has filed originally for a wage earners' plan, or for that matter, who has converted an orthodox bankruptcy proceeding into a wage earners' plan, to resort to orthodox bankruptcy and thus escape paying his creditors. A debtor can default merely by laying off from work and thus not earn enough to make the payments required by his plan. Some wage earners,—they are not many,—who have previously bankrupted and so are not eligible for orthodox bankruptcy in point of time, and who are again in financial stress, may file for a wage earners' plan to hold off creditors for a sufficient period of time to enable them to qualify again for orthodox bankruptcy. They may then default in a term of their plan and ask for a conversion of it to orthodox bankruptcy. In such case it appears mandatory that the court “shall” dismiss the proceedings when

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there has been a default by the debtor or for other contingencies specified in the statute, where the plan was filed originally as a wage earners' plan, or, with the consent of the debtor, adjudicate him a bankrupt and proceed with orthodox bankruptcy. If the "shall" be construed to be mandatory, the section gives unscrupulous debtors some protection between discharges in bankruptcies and allows a wage earners' plan to be used to injure creditors. Fortunately this result does not often occur. Some referees consider the provision merely directory, thus avoiding any difficulty. Likewise, the presence of such an intent can easily be ascertained upon the debtor's examination at the first meeting of creditors, and the court may refuse to confirm the plan on the ground that it is not proposed in good faith.\textsuperscript{18}

After the filing of the petition the district judge may retain the case, or, as he usually does, enter an order of reference sending the case to the referee in bankruptcy.\textsuperscript{19} The first meeting of creditors is then called. Notices are sent out to the debtor and his creditors in such form as the court orders at least ten days prior to this meeting.\textsuperscript{20}

3. Notices

The exact contents of the notices to be sent to the creditors and the debtor are not provided for by the chapter, but have been formulated by the supreme court.\textsuperscript{21} They may include additional items.

Any notice must show the pertinent facts of the institution of the proceedings, the date, time, and place of the first meeting of creditors, and the agenda for that meeting. If the referee requires the amortization plan to be filed with the petition and schedules, a statement of the plan may accompany the notice. It may also contain a statement of all the obligations which the petitioning debtor owed at the time of filing, naming creditors, amount due to them, and the consideration for the debts. The advantages of this latter information are obvious, for they show to each creditor what financial obligations the debtor has incurred and other pertinent facts before the creditors' meeting.\textsuperscript{22}

The debtor may secure written acceptances of the creditors to

\textsuperscript{18}11 U. S. C. sec. 1056.
\textsuperscript{19}11 U. S. C. sec. 1031.
\textsuperscript{20}11 U. S. C. secs. 94, 1032, 1077.
\textsuperscript{21}11 U. S. C. sec. 53; General Orders in Bankruptcy, Official Form No. 59.
\textsuperscript{22}This was the practice under old sec. 74. See Open Forum on Bankruptcy Practice, (1935) 9 J. N. A. R. B. 71. 74.
the plan before the filing of the petition. If he cannot, for any reason, do so before the first meeting of creditors, the court might well send out blank proofs of claim and acceptances of the plan if the contents of it are included with the notice of the first meeting of creditors. Should all creditors accept the plan and file their proofs of claim, then a single creditors’ meeting would be sufficient to handle all matters pertaining to the proceeding and would effect expedition and economy in the administration of the chapter. If this procedure is not followed, the notice will contain a proposed time for filing an application to confirm the plan, and a date, time, and place for a hearing on the application.

Notices may, and usually are, served by mail to all parties entitled to any notice under chapter 13 unless, by order or rule of the court, service in any other manner is ordered.

4. Creditors’ Meetings and Procedure Therein

At the first meeting of creditors the judge or the referee may preside. Usually it is the referee. Witnesses may be called, the debtor examined, proofs of claim taken and claims allowed or disallowed in the same manner as in ordinary bankruptcy cases. The examination of the debtor may be by the judge, the referee, the creditors, or the debtor’s attorney. The debtor must then submit his plan if he has not done so before. The court takes the written acceptances of the creditors to the plan if they have not theretofore submitted them. If the plan is accepted by all creditors regardless of whether their claims have been proved or not, the court then appoints a trustee to receive and distribute the money paid under the plan, subject to the control of the court and after a satisfactory bond has been filed. The trustee, after his appointment, may also examine the debtor at the creditors’ meeting.

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2311 U. S. C. sec. 1033(3). In 11 U. S. C. sec. 1033(5) the expression "arrangement" is used twice. Evidently what is meant is "plan," for the entire section deals with the conduct of the creditors’ meeting and the plan of the debtor. No arrangements are provided for in chapter 13. The practice in the courts of the referees is to consider the word as synonymous with "plan."

24Obviously if all creditors have accepted the plan, no notice or meeting to confirm is necessary. Analysis of H. R. 112889 (74th Cong. 2d Sess. 1936) 107.

2511 U. S. C. sec. 1033(1) ; secs. 1031, 1026.

26Section 75 (2) (7) (a) of the Bankruptcy Act defines the duties of trustees in orthodox bankruptcy cases. It would seem also to apply to chapter 13 proceedings. 11 U. S. C. sec. 1036. 11 U. S. C. sec. 75 provides in part:
After all creditors have accepted the plan and the debtor has made any deposits required under it and has paid the referee's indemnity fee, apparently the only question left for the court to consider is whether the plan and its acceptance are in good faith and have not been made or procured by any means forbidden by the Bankruptcy Act.  

If all creditors have not accepted the plan, an application to confirm must be made by the debtor. This application, however, cannot be filed until there has been secured the written acceptance of the majority of the unsecured creditors, both in number and amount, whose claims have been proved and allowed before the conclusion of the creditors' meeting, and of the secured creditors whose claims are dealt with by the plan. A condition precedent to the filing of the application to confirm the plan is that the deposit, if any, required by the plan, be made and that the indemnity fee of the referee be first paid.  

The plan must be confirmed if the court is satisfied that the debtor has complied with the provisions of the chapter, that it is for the best interests of the creditors, is fair, equitable, and feasible, the debtor has done nothing which would bar him from a discharge in bankruptcy, and the proposal and acceptances are in good faith and have not been secured by forbidden means. Further, the court must require that in the proof of claim or by evidence it be established that the creditors' claims are free from usury, the usury to be based upon the law of the place where the debt was contracted.  

If the plan is not accepted or no plan proposed at the first meeting of creditors, or is abandoned or withdrawn before acceptance, or fees are not paid, or application for confirmation not

"(a) Trustees shall . . . (7) examine the bankrupts (a) at the first meeting of creditors or at other meetings specially fixed for that purpose, unless they shall already have been fully examined by the referees, receivers, or creditors. . ."  


2911 U. S. C. sec. 1056 (b): General Orders in Bankruptcy No. 55. This provision was inserted advisedly. Testimony before various congressional committees regarding wage earners' plans had shown that many debtors were the victims of usurious money lenders. See testimony of the late Referee Valentine Nesbit of Birmingham, Alabama, Report of hearings on the Chandler Bill, H. R. 1219 (74th Cong. 1st Sess. 1936) 2, 3, 5, 12, 13 printed by National Retail Credit Association by permission of the Judiciary Committee, and of Dean Garrison, Joint Hearings before the Subcommittees of the Committees on the Judiciary on S. 3866 (72nd Cong. 1st Sess. 1932) 20. In general see symposium, Combating the Loan Shark, (1941) 8 Law and Cont. Prob., 1-240 inc.
made in time, the court may refuse to confirm the plan and either
dismiss it or, if it is a conversion of a previous orthodox bank-
ruptcy case, reconvert it into bankruptcy. In such event the pro-
ceedings under this chapter end.\textsuperscript{30} Assuming, however, that the
plan is confirmed, the wage earner's payments to the trustee begin.

5. The Trustee

Nothing in the chapter requires a court to appoint a single
trustee for all cases. However, nothing in it prevents a single
trustee from being appointed, and nearly all referees known to
the writer do have one trustee who is appointed for all chapter 13
cases.\textsuperscript{31} This is not only perfectly proper and much more efficient
than using different trustees, but seems to be specifically sanctioned
by the supreme court.\textsuperscript{32}

In orthodox bankruptcy the trustee is appointed with creditor

\textsuperscript{30}11 U. S. C. sec. 1066.
\textsuperscript{31}Referee Valentine Nesbit, who originated the Birmingham Debtors' Court under sec. 74, tried using different trustees and found the results very unsatisfactory. (H. R. 11219 (74th Cong. 2nd Sess. 1936) ) 5, 6. It was found in the state courts of Ohio that a single trustee was absolutely essential to the operation of a state amortization or "trusteeship" law. Woodbridge, Wage Earners' Receiverships, Ninth Annual Report of the Judicial Council of Michigan, (1939) 55 at 124, 134, 135.

\textsuperscript{32}General Orders in Bankruptcy, Orders No. 55, 14. Order No. 55 provides in effect that all the general orders apply to Chapter 13 proceedings except where they are inconsistent therewith, but that General Orders 14, 18, and 28 do not apply to chapter 13 proceedings unless bankruptcy is later proceeded with. General Order 14 reads: "No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases." One of the drafters of the General Orders in Bankruptcy made the following comment upon Orders No. 55 and 14: "This order [No. 14] was probably made inapplicable to chapter 13 proceedings because wage earner proceedings are usually small and the fees nominal. The Supreme Court evidently intended to suggest and to foster the practice of having one trustee handle at least as many XIII [sic] proceedings as he could handle instead of appointing a separate trustee in each case. Under such a practice a trustee familiar with wage earner proceedings would handle those proceedings, and the fees might cumulate to a sum which would make it worth the while of the trustee to devote thought and attention to the cases...."

"The question, therefore, is presented as to whether a referee or judge has the power under the Act of June 7, 1934, to follow the suggestion of the Supreme Court and appoint the same trustee in all wage earner proceedings. I believe that the referee has that power, and this undoubtedly was the view of the Supreme Court when that Court promulgated its order making General Order 14 inapplicable to wage earner proceedings. The act of June 7, 1934, refers to a 'monopoly' of appointments. One person would not necessarily have a monopoly of appointments under the bankruptcy act if he were appointed only in one kind of proceeding." Kirkham, Proceedings of the Fourteenth Annual Conference of the National Association of Referees in Bankruptcy, 14 J. N. A. R. B. 39, 55 (1940). It was also the intention of the drafters of the chapter to make this procedure permissive if a court wished to invoke it. Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 108.
In wage earners' cases, however, the court makes the appointment, and creditor approval is not necessary.\(^3\) This is logical because the trustee in fact is not a trustee but rather a custodian of funds for distribution to creditors and other proper persons and under direct control of the referee.\(^3\)

The precise duties of the trustee under this chapter appear to be "to receive and distribute, subject to the control of the court, all moneys to be paid under the plan."\(^3\) Further, it would appear that by reference the powers and duties of the trustee are defined as well by sec. 75 of the Bankruptcy Act. Among other duties, that section provides that the trustee make reports during the first month, and every two months thereafter of the "condition" of the estate. Of necessity such a report will be simple in wage earners' cases and should be the basis for the calculations of the commissions to be paid to the referee and the trustee. When the case is ultimately completed or dismissed for any reason, it is the trustee's duty to make final reports of the financial and other aspects of the case to the referee, have it approved, and obtain his own release and that of his bondsmen. In addition, an efficient trustee will have kept the referee informed of the conduct of the wage earner with reference to these proceedings.

There is some question as to when the trustee should be appointed. Assume that the debtor, when he filed his petition, has secured the acceptance of a majority in number and amount of his unsecured creditors and of all his secured creditors and that his plan requires him to make an immediate payment of $25. He wishes to make an application at once for the court to set a time for hearing on the confirmation so that it may be included in the notice for the first meeting of creditors.\(^3\) The deposit required by the plan must be made with the trustee; yet the trustee is appointed after the plan is accepted and at the first meeting of creditors. Further, some three or four weeks could possibly elapse between the date of filing the petition under this chapter and the final hearing on the application to confirm. During that time the debtor may have earned a good deal of money from which, equitably, he should make some payment into the court pending the final acceptance of his plan. This payment should

\(^{33}\) U. S. C. sec. 72.
\(^{34}\) U. S. C. sec. 1033 (4).
\(^{32}\) Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 108.
be made to the trustee. It would seem, therefore, that sec. 1033
(4) providing for the appointment of a trustee after the plan
has been accepted by all the creditors and the first meeting of
creditors held, is not exclusive, but that when the exigencies
of the situation demand it, the referee has the power to appoint
the trustee; pending confirmation, so as to protect the interests of
the creditors.\textsuperscript{38}

Section 1036 may aid this conclusion, for under it the powers
and duties of the officers of the court are the same after the
petition is filed originally under this section as though a decree
of adjudication in bankruptcy had been entered when the petition
was filed. Under such adjudication a receiver to protect the assets
during the interim pending the adjudication and the creditors'
meeting could be named, and conceivably the trustee under chap-
ter 13 would be merely a substitute for such a receiver, with
similar duties, although denominated a trustee from the be-
ginning.\textsuperscript{39}

With reference to compensation, most courts allow the regu-
lar statutory fees and commissions to the trustee. One court,
however, where the volume of business is great, has seen fit to
appoint a single standing supervisor of debts instead of a trustee,
and to pay him a salary which is less than the regular statutory
commissions but which constitutes a fair and reasonable re-
muneration for his work and responsibility.\textsuperscript{40} Other courts may
see fit to do the same when the volume of their work warrants
it. In this situation the question naturally arises whether the ac-
ceptance of a regular salary would be a complete accord and
satisfaction of all claims the supervisor might have where the
commissions due to a trustee acting in his situation would, dur-
ing some months, exceed the salary paid to him.\textsuperscript{41}

\textsuperscript{38}Supra note 26.

\textsuperscript{39}11 U. S. C. sec. 11 (3).

\textsuperscript{40}This is in Birmingham. The practice begun under sec. 74 has con-
tinued with the same person serving as supervisor. H. R. 11219 (74th Cong.
2d Sess. 1936) 6, 7; Allgood, Chapter XIII Proceedings—Suggestions as to Use. (1940) 14 J. N. A. R. B. 86.

\textsuperscript{41}Certain rules regarding payment to a trustee are well established.
First, no salary or commissions can be paid until actually earned. In re Wallace. (E.D. Okla. 1926) 14 F. (2d) 534; 2 Collier, Bankruptcy (14th
Ed. 1940) 1809. Second, no trustee or referee is entitled to more in the
way of compensation, directly or indirectly, than the statute allows. In re
King. (W.D. Tenn. 1935) 11 F. Supp. 351; Nisonoff v. Irving Trust Co.,
(C.C.A. 2d Cir. 1933) 68 F. (2d) 32; In re Owl Drug Co., (D. Nev. 1936)
16 F. Supp. 139; Realty Associate Securities Corporation v. O'Connor,
It is believed that the *acceptance* of such a salary, pursuant to the employment contract, either would be a complete accord and satisfaction as to all claims the supervisor or trustee might have to additional compensation in the form of commissions, or would constitute a valid waiver of a claim for the statutory commission.42 This would certainly be so where a case has been closed, the costs taxed to take care of the salary of the trustee or supervisor and no appeal taken from the order setting the compensation. In orthodox bankruptcy cases the statute merely sets the maximum commissions, stated in percentages, to which the trustee is entitled. The exact amount to be allowed to the trustee is set by the court based upon the facts of each individual case.43 Section 1059, however, under wage earners’ proceedings, provides for payment of “commissions to the trustee of 5 per centum to be computed upon and payable out of the payments actually made by or for a debtor under the plan.” This statute, standing alone, seems to set an exact statutory rate which must be paid. It would seem to be qualified by sec. 76a, however, which reads in part,

“the compensation allowed a receiver or trustee or an attorney for a receiver or trustee shall in no case be excessive or exorbitant, and the court in fixing such compensation shall have in mind the conservation and preservation of the estate of the bankrupt and the interests of the creditors therein.”

This should set at rest any doubt of the validity of employing a supervisor or trustee on a permanent basis at a set salary, provided such salary is fair and reasonable for the work performed and responsibility discharged and does not exceed the statutory amount allotted to him for each case.44

42 An agreement whereby a referee and a trustee agreed with creditors and the court to accept less compensation than that provided by the statute, in order to aid the estate, was approved. In re Breakwater, (E.D. Pa. 1915) 220 Fed. 226, reversed on other grounds, (C.C.A. 3d Cir. 1915) 224 Fed. 333. It would also seem clear that the debtor and his creditors cannot complain where the amount paid for administrative costs is less than the statutory commission and fees, for they are not injured. A recent amendment to the Bankruptcy Rules of the federal district court for the district of Connecticut, based upon the same principle, provides in part: “It will be understood that those accepting appointments as full time referees are under contractual obligations to turn into their respective indemnity funds, so much of their net compensation, annually, as shall exceed $12,000.” (1940) 14 Conn. Bar J. 146, 168; Note, (1940) 14 J. N. A. R. B. 113. It appears, however, that the compensation of such referee in that district will not reach that figure. (1940) 14 Conn. Bar J. 169.

43 Collier, Bankruptcy (14th ed. 1940) 1794-95.

44 Obviously a trustee or supervisor could not make a valid agreement with a debtor or creditor to handle a case for less than the statutory fees, costs, and commissions. General Orders in Bankruptcy, No. 41.
6. The Plan

The general plan as outlined in the chapter is flexible. It must contain certain provisions and may include certain others. The plan must contain provisions for dealing with unsecured creditors generally as a class and may contain plans for dealing with secured creditors severally, upon any terms. This means that the debtor must work out some method of payment with secured creditors in order to secure their cooperation. The plan may, and usually does, provide for priority of payment between the secured and unsecured creditors.

The problem as to when a creditor is "secured" and hence entitled to be treated individually under chapter 13 as distinguished from the class treatment accorded to general creditors has arisen in many cases and has been decided differently by different referees. It occurs in those cases in which creditors who have loaned money have taken a note indorsed by one or more sureties. Some referees hold that such creditors are secured creditors on the theory that they are "secured" by the obligation of another. Most of them hold that they are not secured creditors.

It seems clear that the holder of an indorsed note on which the debtor is an obligor is not a secured creditor within the meaning of the chapter. In this connection it should be first noted that chapter 13 does not contain a definition of a secured creditor, and one must refer to other pertinent provisions of the Bankruptcy Act for solution. In one such provision, a secured creditor is defined as one who has security for his debt upon the property of the bankrupt of a nature to be assignable under this title or who owns such a debt for which some endorser, surety, or other person secondarily liable for the bankrupt has such security upon the bankrupt's assets. Several situations have arisen in orthodox bankruptcy. First, the creditor holds a simple note made by the debtor with no indorsers and no mortgage to secure it. In such case he is clearly an unsecured creditor. Second, he may hold such a note upon which there are indorsers. The cases consistently hold that, absent other facts, he is not a secured creditor. In re Schatz, (E.D. Pa. 1918) 251 Fed. 351; Bickley v. Armour & Co., (1931) 40 Ohio App. 252, 178 N. E. 590; Young v. Gordon et al., In re Foster Motor Car Co., (C.C.A. 4th Cir. 1914) 219 Fed. 168. Third, he may hold...
Usually the small loan companies secure their loans by chattel mortgages and instalment credit merchants sell on conditional sales contracts or by lease-sale agreement, in which case they are held to be secured creditors by all referees visited.

In the orthodox bankruptcy cases the creditor who holds security consisting of property of the bankrupt is forced to deduct the value of such security from his total claim, and then shares in dividends only for the balance. On this point the proceedings in wage earners' cases are somewhat different. The secured creditor is not required to deduct the value of his security from his claim. He merely proves his claim for the unpaid portion of the purchase price of the article or the balance due on the debt.

such a note which is indorsed by one or more persons, and may also hold collateral security which the indorsers have deposited with him. Where such collateral security is the property of the indorsers and not the debtor, the creditor is still not a secured creditor. In re Pan-American Match Co., (D. Mass. 1917) 242 Fed. 995; In re United Cigar Stores Co. of America, (C.C.A. 2d Cir. 1934) 73 F. (2d) 296, cert. den. (1935) 294 U. S. 708, 55 Sup. Ct. 1243; In re Thompson, (E.D. N.Y. 1913) 206 Fed. 207; Gorman v. Wright (C.C.A. 4th Cir. 1905) 136 Fed. 164. Even if the creditor has realized some money from such collateral security deposited by the third persons, he is still entitled to prove his claim for the entire amount of the debt as an unsecured creditor and receive dividends accordingly. However, he cannot recover in toto more than the total amount of his debt from all sources. In re Blizard, (E.D. Pa. 1937) 29 F. Supp. 481; Gorman v. Wright, supra; In re Thompson, supra; Ivanhoe Building & Loan Association v. Orr, (1935) 295 U. S. 243, 55 Sup. Ct. 685, 79 L. Ed. 1419, noted in (1935) 13 Chi. Kent. L. Rev. 357, (1935) 35 Col. L. Rev. 1129, (1935) 21 Iowa L. Rev. 145; (1935) 14 N. C. L. Rev. 79, (1936) 45 Yale L. J. 531. Neither can the court force the creditor first to exhaust his collateral security before proving his claim. In re United Cigar Stores of America, supra. Further, if the creditor holds security furnished partly by the bankrupt and partly by third persons, he is entitled to prove as an unsecured creditor for that portion of his claim over and above the value of the security furnished by the bankrupt alone. In re Blizard, supra. One court has held that where the creditor secured a judgment against the bankrupt in the sum of $18,500 for personal injuries, and an insurance company was liable for $5,000 of the judgment, he could prove as an unsecured creditor for the total amount of the claim without deducting the amount of the insurance. In re Fay Stocking Co., (N.D. Ohio, E. Div. 1935) 10 F. Supp. 968. The court concluded, however, that the creditor could not recover more than $18,500 in toto.

50 U. S. C. secs. 1 (28), 93 (a) (c) (h); Ivanhoe Building & Loan Ass'n v. Orr, (1935) 295 U. S. 243, 55 Sup. Ct. 685, 79 L. Ed. 1419.

51 Most of the secured creditors are instalment credit merchants, automobile finance companies, legitimate loan companies or usurious money lenders. Where the secured creditor elects to participate, the debtor keeps the property and the creditor receives his payments from the trustee. In fact, if a debtor has a substantial equity in the chattel and is now able to keep up his payments, although he may have technically defaulted, it has been held that the creditor cannot repossess the chattel. In re Duncan, (E.D. Va. 1940) 33 F. Supp. 997. Since the Duncan decision, it has become the general practice in Norfolk to refuse permission for repossession when the debtor has paid in 50 per cent or more of the purchase price on instalment
By parity of reasoning and the application of chapter 13, sec. 1002, therefore, it may be concluded that a creditor is not, under wage earners’ plans, a secured creditor within the meaning of the Bankruptcy Act unless he either holds security enforceable against the property of the debtor, or he is secured by the individual obligation of another as surety or indorser who in turn holds security which belongs to the debtor.\(^{52}\) Where such security as is given does not deplete the assets of the debtor’s estate, if orthodox bankruptcy principles apply to wage earners’ proceedings, the creditor is a simple unsecured creditor and can be treated as such.

b. *Future Earnings.*—The plan should show the prospective earnings of the debtor based upon past earnings.

It must contain a provision to submit the future earnings or wages of the debtor to the “supervision and control of the court for the purpose of enforcing the plan.”\(^{58}\) This submission may take one of three forms as a practical matter. First, if the court accedes, the debtor may merely bring in his payments regularly to the trustee after first drawing his own wages. This has been found to be generally unsatisfactory both under this chapter and under state amortization statutes. Second, the debtor may make an assignment of his entire future wages to the trustee for the term of the extension. The trustee may then retain the amount of payment due under the plan and repay to the debtor the balance. Third, the debtor may assign to the trustee out of his future wages only the amount of the periodical payment he is required to make and may draw the balance of his wages directly from his own paymaster without going to the office of the trustee.

Some trustees use the second method exclusively, some the third, others use both or all three. The third method eliminates much clerical work in the office of the trustee without unduly increasing the work of the payroll office of the employer of the debtor. It has been used in Birmingham, Alabama with a great deal of success by some of the large employers of labor there.\(^{54}\)

c. *Modifications.*—The plan must include a provision for its purchased merchandise if he is able to keep up his payments thereafter through his plan.


\(^{54}\) Allgood, Chapter XIII: Wage Earners’ Plans, (1940) 15 J. N. A. R. B. 20. See also infra., p. 811.
modification during the period of extension. When either the
debtor or a creditor applies for a modification, notice must be
given to all persons entitled to an opportunity to be heard. Modifications will be granted only when the circumstances of
the debtor warrant or require it. They may include increasing
or lowering payments by the debtor; shortening or extending
the period of extension.

The debtor may apply for modifications of the plan at any
time before it is confirmed. If any creditor has not in writing
accepted the modification, the court may adjourn the creditors' meeting or reopen a meeting to allow the creditor to be heard
and may, in his order, provide that if any creditor, after notice,
does not object to the modification of the plan, he will be assumed to have accepted the alteration or modification unless he
has previously said that he would not do so. At least ten days
notice is required in such cases. This eliminates the necessity
of creditors again formally filing new acceptances, and eliminates
tedious detail work which might cause proceedings under this
chapter to be unpopular with them.

d. Executory Contracts.—If the debtor has any executory
contracts, it may provide for their rejection. This provision is
designed to allow a debtor to escape from long term leases of
a home or other executory contracts which are not to his ad-
vantage. His plan may require moving to less expensive quar-
ters, or giving up a radio, musical instrument, or unnecessary
clothing bought upon the instalment plan. If the creditor is
injured by such rejection, however, he may prove as a creditor the amount of his damages and share with the other
creditors. If the rejectory executory contract is a lease of real property the maximum amount of recovery is limited to the unpaid rent
due at the time of the surrender, without acceleration of the balance if the lease contains an acceleration clause, plus the rent
reserved for one year in advance without acceleration of the balance. In actual experience under the chapter, long term
leases of real property are few among the debtors resorting to it.

60Analysis of H. R. 12889 (74th Cong, 2d Sess. 1936) 106.
e. Time Limitations.—While the statutes do not, with reference to a plan, require that it be constricted into any definite time limit, the chapter does provide that a debtor may apply for a discharge at the end of three years after the confirmation of his plan, if his failure to pay in full during that time is due to circumstances "for which he could not be justly held accountable."62 This provision is directory only and not mandatory.63 However, because of it, many referees require, and some creditors insist, that the plans be so worked out that full payment will be made within at least a three year period, which if applied to any extent would take away much of the flexibility otherwise inherent in the chapter. Many plans, of course, work out in much less than three years.

f. Taxes.—The debtor may, in certain situations, if he owes taxes to the federal or state governments, list them in his plan so that the United States or any state may, if it wishes, elect to participate in a wage earners' plan.63a

Any other appropriate provisions may be included which are not inconsistent with the plan. This latter provision is probably one of caution and included to provide flexibility in circumstances which are unusual.64

7. Effect of Confirmation of a Plan

When a plan has been confirmed, its provisions are binding upon the debtor with reference to his future earnings or wages and upon all creditors, even though the latter have not accepted it or have not filed their claims or their claims have not been scheduled or are not allowable.65 Secured creditors may possibly avail themselves of remedies against the property of the debtor but they cannot disturb the extension and terms of the plan.66

64Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 106.
66Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 110.
8. Power of the Court During the Extension or Pendency of the Plan

The court and referee have jurisdiction over the wages and earnings of the debtor and his property during the term covered by the plan.67 This jurisdiction makes it impossible for any subsequent creditor to garnish effectively such earnings, or for the debtor validly to assign them. Further, the court may issue orders to the employer with reference to the wages of the debtor and such order is enforceable as a judgment. Thus a recalcitrant employer may find himself subject to execution process if he fails or refuses to obey the order of the referee with reference to the debtor's wages.

It would seem, also, that if a subsequent creditor attempted to garnish the debtor's wages, the employer as garnishee defendant would merely have to show that the referee had ordered the debtor's wages paid into court, which fact would or should terminate the garnishment proceedings. A problem arises, however, in a case where the employer of the debtor is paying in to the trustee only the amount which the debtor had agreed to pay under his plan, and this amount is less than the non-exempt wages under the state exemption laws. In such case it might be possible for the subsequent creditor to reach that amount without disturbing the plan. In certain cases, therefore, the debtor might be given more protection if his entire wages were ordered paid to the trustee, the latter to return to the debtor the difference between what he received as wages or earnings and the amount due under his plan. If such garnishment actually interfered with the successful execution of the plan, the court would have power to order the creditor to discontinue the suit and the employer to disregard it after the proper disclosures were made to the state court from which the garnishment issued.

9. Exemptions

The chapter provides that the debtor shall be entitled to the same exemptions as if he proceeded under regular bankruptcy, and that the exemptions be set aside in the same manner.68 Inasmuch as it appears that the debtor's wages and earnings, not his property, become available to his creditors in proceedings under

68 U. S. C. secs. 24, 1037.
chapter 13, this provision for exemptions is either superfluous or must relate to wage exemptions. If it is construed to mean wage exemptions under state laws, it would make the plan inflexible and in most states unworkable. Especially would this be true in states where wage exemptions are very small and the amount of wages exempted not sufficient to pay reasonable and necessary living expenses of the debtor. Fortunately none of the courts visited construe this statute as applying the state wage garnishment exemption laws to proceedings under this chapter. Since the debtor is required to submit a plan that is fair, equitable, and feasible, and would be entitled in the discretion of the court to a discharge at the end of three years after his plan is confirmed if he does not pay in full without fault on his part, it would seem that by orthodox rules of construction the courts which do not apply this section to proceedings under this chapter are correct.

10. Costs and Fees

When the petition is filed, the petitioner is required to deposit $15 with the clerk of the district court. Of this money $10 goes to the referee and $5 to the clerk. These fees are expressly in lieu of the fees of $15 and $10 respectively payable in the orthodox bankruptcy case. In addition to these fees, the chapter expressly provides for the following costs and fees: 1. The actual and necessary costs and expenses of the referee and the trustee. 2. In addition to the fee of $10 paid by the clerk to the trustee, the latter is entitled to 5 per centum and the referee to 1 per centum of "the payments actually made by or for a debtor under the plan." 3. A reasonable fee to the attorney for the debtor for

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69 U. S. C. sec. 1002; General Orders in Bankruptcy, Orders No. 55, 18. Future earnings are not "property" within the meaning of the Bankruptcy Act in cases where an extension has been secured upon condition that future earnings are pledged to amortize the wage earner debtor's obligations. McKeever v. Local Finance Co., (C.C.A. 5th Cir. 1935) 80 F. (2d) 449.

70 It has been suggested that while "this provision may be unnecessary because Section 6 (now Section 24) of the Act, dealing with exemptions, would no doubt be applicable, it is nevertheless deemed advisable to make express provision for this right of a wage earner." Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 115.

71 The wide variations in wage garnishment exemption statutes are pointed out by Rolf Nugent, Wage Executions for Debt, Bulletin No. 622 (U. S. Dept. of Labor, 1936). These wage garnishment exemption statutes are not revised periodically in the various states and there is no systematic attempt to keep them abreast of the index of living costs.

services actually rendered. 4. If this is a conversion of an orthodox bankruptcy proceeding, any costs, expenses, or fees of such proceedings which have not previously been paid.\textsuperscript{73}

Two important questions follow from these provisions. First, are they exclusive, or do other provisions of the Bankruptcy Act not contained in chapter 13 also apply? Second, what is meant by the clause "the payments actually made by or for a debtor under the plan. . ."?

As to the first, if the provisions of this chapter as to fees, costs and expenses are not exclusive, then other and additional fees may be charged if authorized by other provisions of the Bankruptcy Act. Section 1024 of chapter 13 expressly says that the $10 and $5 payable to the referee and clerk of the district court respectively are exclusive of the higher fees of $15 and $10 payable in orthodox bankruptcy to the same persons respectively under secs. 68 and 80 of the Bankruptcy Act. However, sec. 68 also provides for the payment of a 25 cent fee for every proof of claim filed for allowance to be paid from the estate, if any, as part of the costs of administration.\textsuperscript{74} If these two provisions were all that had to be reconciled, it would be doubtful whether the fee for filing proofs of claim could be charged under the wage earners' proceedings. However, sec. 1059 of chapter 13 directs the order in which priority claims are to be paid and it nowhere mentions a fee for filing of proofs of claim, unless it be construed as an "actual and necessary cost or expense of the referee."\textsuperscript{75} This would indicate that fees for filing proofs of claim, unless they are "actual and necessary costs," are not to be charged under chapter 13 proceedings. It would also seem to explain the omission in sec. 1024 of the other costs and fees

\textsuperscript{73}11 U. S. C. sec. 1059.

\textsuperscript{74}This fee was added in 1903 to compensate the referee for his service in filing, investigating and allowing claims. By sec. 40a it is 'to be paid from the estate, if any,' and cannot, therefore, be demanded from the creditors or the bankrupt. None would ordinarily be forthcoming in a no-asset case. . ." Report of the Attorney General's Committee on Bankruptcy Administration (1940) 87.

\textsuperscript{75}Referring to the prototype of sec. 1059 it was said: "This clause deals comprehensively with the costs and compensation in a proceeding under [Chapter 13] and the order of priority for their payment. First, priority is given to the actual and necessary costs and expenses of the referee. This accords with the general policy of the law to provide for priority of payment of the court costs in connection with the administration of the proceeding. The next in order is the payment of the necessary costs and expenses of the trustee. It is equally good policy that such costs and expenses be paid ahead of all compensation. . . Next we provide for the compensation of the referee, the trustee and counsel for the debtor, in that order. . ." Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 111.
which may be taxed under sec. 68. Necessary expenses would mean expenses actually incurred and these could hardly be set arbitrarily by statute in advance without reference to the specific case. Generally this fee is charged in chapter 13 proceedings.

The second problem will arise only in the case where the entire check of the debtor is summoned into or assigned to the court and the amount of his payment is deducted, the balance being returned to him. Must the debtor pay a total of 6 per cent upon all moneys paid in by his employer as compensation for the trustee and referee when, for instance, payment into the court by the employer of the debtor's total earnings for the period is $50 but the payment on the plan only is $15, the $35 balance being returned to the debtor? If reference be had to sec. 68 dealing with compensation to referees in orthodox bankruptcy cases, it would seem that the commission to the referee would be based upon the $15 in the above illustration, i.e. upon the amount of money disbursed to creditors or paid in for disbursement to creditors. On the other hand, trustees in orthodox bankruptcy are entitled to a stated percentage of all moneys paid in for disbursement by them to any persons legally entitled thereto. When this difference is borne in mind, and when it is recalled that if the debtor makes voluntary payment of the amount required under the plan, or his employer makes a deduction from his wages or earnings of an amount equal only to his payment due under the plan and transmits that to the court, the commissions for the referee and trustee in both cases would be computed only on the amount paid in by or on behalf of the debtor under the plan. It would seem logical that in all cases commissions should be allowed to the referee and trustee only on the amount paid in by or for the debtor for creditors. This would make for uniformity and would not penalize a debtor whose employer will not accept an order of the court to pay to the trustee only a portion of his wages but insists upon paying in the entire wage to the trustee.

11. DISMISSAL OF DEBTORS AND DISCHARGE

With reference to dismissal of debtors and their plans, it may be said generally that wage earners' proceedings may be dis-

[76]“Costs” in sec. 1059 probably refers to the costs mentioned in General Orders in Bankruptcy No. 10 which includes traveling, publishing or mailing of notices, procuring the attendance of witnesses and the like.

missed where the debtor fails properly to present, perfect, or consummate his plan. If he fails in any of these particulars, his plan must be dismissed unless he filed originally as a wage earner under chapter 13 and consents to be adjudicated a bankrupt. If he had filed first as an orthodox bankruptcy case or been adjudicated an involuntary bankrupt in a proper case and converted into a wage earners' plan, then it is the duty of the court to reconvert the plan into orthodox bankruptcy. By requiring consent in the first situation but not in the second, the policy of the chapter is effectuated in that a wage earner cannot be forced into involuntary bankruptcy without his consent.

It should be noted, however, that if the wage earner is earning over $1500 per year and his wage earners' plan is dismissed, his creditors may, in a proper case, by complying with other sections of the Bankruptcy Act, force him into involuntary bankruptcy. This cannot be done, however, when he has a wage earners' plan pending. If he has been forced into involuntary bankruptcy and comes within the definition of a wage earner under chapter 13, he can convert it into a wage earners' proceeding.

When the debtor has complied with all terms of his plan and has completed it, he is entitled to a discharge from all claims provided for under the plan and from all claims which, if this were a conversion of an orthodox bankruptcy, would not be allowed because not filed within the proper time. If a debt were not dischargeable under sec. 35 of the Bankruptcy Act, it is not dischargeable under this chapter unless the creditor accepted the plan and elected to participate. Not to be overlooked is the possibility that the debtor may secure a discharge at the end of three years even though he has not paid in full where the failure is due to circumstances for which he could not justly be held responsible.

Even though a plan has been confirmed, the confirmation may

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7811 U. S. C. sec. 76c (1).
8011 U. S. C. sec. 22.
8211 U. S. C. sec. 1021; Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 104.
84Analysis of H. R. 12889 (74th Cong. 2d Sess. 1936) 113.
be set aside or the plan modified upon an application by an inter-
tered party where the debtor practiced fraud in procuring the plan and knowledge of it has come to the petitioner since the confirmation. Any modification of the plan must not prejudice the rights of any person who did not participate in the fraud and who does not consent to the modification, nor the rights of bona fide purchasers who acquired their rights subsequent to the confirmation. If the plan were procured through fraud, the court may, where the case is a conversion of an orthodox bankruptcy case, reinstate the bankruptcy proceeding and proceed accordingly, or it may, where the petition was originally filed under chapter 13, enter an order converting it to an orthodox bankruptcy proceeding, adjudicate the debtor a bankrupt and follow orthodox bankruptcy procedure. In this way only may a wage earner earning $1,500 or less a year be adjudicated a bankrupt without his consent.


a. Statute of Limitations.—Statutes of limitations upon provable claims are tolled during the pendency of a wage earners' plan. Likewise, the periods in which other steps should be taken if the debtor had resorted to orthodox bankruptcy are tolled during this time.

b. Income—Cancellation of Indebtedness.—If the plan of the wage earner calls for a cancellation or an adjustment of any indebtedness, and is so confirmed, the difference between the amount of the debt and the amount after adjustment or cancellation is not considered as "income" within the meaning of the state or federal revenue laws governing taxation of income unless one of the principal purposes of the debtor was the evasion of the income tax laws.

c. Notices to the Secretary of the Treasury.—The chapter

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makes it incumbent upon the clerk or the referee to whom the proceeding is referred to send to the secretary of the treasury copies of certain papers filed. The Treasury Department does not require this in the cases where the government is not listed as a creditor.

d. Time for Filing Claims.—"Claims" as here used is broader in scope and meaning than the same term when used in orthodox bankruptcy. All pecuniary claims against a debtor may be here included. In a wage earners' proceeding a creditor presumably has six months from the date of the first meeting of creditors in which to file his claim, although some referees have had some difficulty with this time limitation.

If a debtor has gone into orthodox bankruptcy first and the six months period for filing claims therein has expired, and the bankruptcy proceeding is then converted into a wage earners' proceeding, the claims not so filed in bankruptcy are not provable under the wage earners' proceeding. Further, if the wage earners' plan is later reconverted into bankruptcy, they are likewise not subsequently provable.

If the debtor has gone into orthodox bankruptcy first, and then has converted his plan into a wage earners' proceeding, the time in which claims, not provable in orthodox bankruptcy but which are provable in a wage earners' proceeding, must be proved is not definitely set forth. It would seem, however, that the six months provision should apply here, also, for to those creditors the wage earners' plan is a new proceeding.

III. OBJECTIONS AND APPROVALS

The Report to Congress in December, 1940, of the Attorney General's Committee on Bankruptcy Administration speaks unfavorably of chapter 13. It reads, in part:

"With respect to the newer provisions of the Act, chapter 13, in particular, seems to have failed to fulfill the hopes of its sponsors. It has been used extensively in only three cities. A study should reveal whether this is due to unfamiliarity with these proceedings elsewhere, or to defects in draftsmanship or to the perhaps inevitable conflict between the desire of a bankrupt to pay off his debts, and his ability to erase them without payment, if these remedies are equally available."

89 U. S. C. sec. 1078; General Orders in Bankruptcy No. 55.
90 Letter from Mr. J. P. Wenich, Chief Counsel, Treasury Department, reprinted in 9 Remington, Bankruptcy (5th ed. 1940) 846.
92 (1940) Report of the Attorney General's Committee on Bankruptcy
What the "hopes of the sponsors were" with respect to the spread of the use of the chapter in so short a time as two years is not known. It is unfortunate that the study mentioned above was not made before the statement of the committee.

The National Association of Legal Aid Organizations late in 1940 likewise found objections to chapter 13. They were expressed by a committee of the organization as follows: 1. The requirement of advance payments of costs, which costs are too large. 2. Legal Aid clients have in so many instances such small incomes and such large debts that no plan could be made that would be approved by the court. 3. The debtor in chapter 13 proceedings may be kept in a state of "wage servitude" for at least three years at the discretion of the court and referee with a new set of costs if he is declared an actual bankrupt.

With respect to these objections it should be noted, first, that many referees are not requiring payment of fees before filing of the petition. Second, if debtors in the very low income group are heavily overloaded with debts, they should take orthodox bankruptcy, not wage earners' proceedings. The loss which falls upon creditors in such a case may be due to unforeseen emergencies confronting the debtor. It may be due to the over-extension of credit, and while the creditors who first extended credit to the debtor when the latter was a good credit risk will suffer with those who loaded him up when he was no longer a good credit risk, this cannot be helped under our present form of credit regulation. Justice can be had in most cases, and that appears to be the nearest approximation to a goal of ideal justice for all that can be reached at the present time. This second objection is in reality not an objection to the chapter at all but to the economic system which allows a debtor to get into such a hopeless situation.

Administration 170. See also page 97. "The referees generally have given expression of opinion, saying that they considered this a noble experiment, some of them had open hostility to the act, and one referee said that a lawyer ought to be disbarred if he advised a client to go under ch. XIII. I do not agree with that . . . we are judicial officers appointed to administer the bankruptcy act, in respect of cases referred to us, and, therefore, I think that we should administer the act as sympathetically as we can, notwithstanding our own personal opinions as to whether the filing should be under chapter XIII. or whether the debtor should go into bankruptcy." Snedecor, Chapter XIII—Wage Earners' Plans (1939) 14 J. N. A. R. B. 33.

93Memorandum of Proceedings of the 1940 Annual Conference of the National Association of Legal Aid Organizations (1940) pp. 18, 26. This is a mimeographed report prepared by the secretary whose office is 25 Exchange Street, Rochester, New York.

94See also Comment (1937) 46 Yale L. J. 1177, 1194.
The final objection raised, that of the "wage serfdom" of the debtor, scarcely describes the realities of the situation. A debtor who is heavily involved with many creditors is usually the target for a barrage of writs of garnishment. So long as he works and his creditors are unpaid, the latter take all his non-exempt wages. In addition, the costs mount up and the debts are paid out correspondingly slowly. This might truly be called "wage serfdom." On the other hand, if the debtor takes a wage earners' plan, garnishments are automatically stopped, and the costs, when compared to continual garnishment costs, are no larger and usually are smaller. If the debtor cannot continue with the wage earner plan and converts it to orthodox bankruptcy, he pays only the difference between what he has paid out in filing fees under the chapter 13 proceeding and what he is required to pay under orthodox bankruptcy as an additional fee for the conversion. This does not constitute a "new set of fees" to the same extent that the report of the legal aid committee would suggest. In fact, in Birmingham when a debtor's petition is converted into orthodox bankruptcy, no additional fee is collected. If a bankruptcy petition has been filed and is converted into a wage earners' petition, the $25 filing fee is retained by the court and referee and no additional charge is made.

This objection does, however, suggest one problem which in practice does not often arise, but which has been raised by others as to whether or not the debtor may voluntarily withdraw from the plan once it has been confirmed. There is no dogmatic answer to the problem at the present time, nor is the practice of the referees uniform with respect to it.

Under the old sec. 74, under which the court did not have jurisdiction over the future earnings of the debtor, it was held in *McKeever v. Local Loan Co.* that the debtor could withdraw from an extension at his option. Chapter 13 now gives the court exclusive jurisdiction over the future earnings of the debtor. It is not too clear whether chapter 13 has changed the rule in the *McKeever Case*.

Section 1066 provides that the court shall dismiss the proceedings where filed originally as a wage earners' plan when the debtor defaults in a term of his plan. This appears to be mandatory, and some referees so hold. In the great majority of cases such default would be failure to make the payments required by

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95(C.C.A. 5th Cir. 1935) 80 F. (2d) 449.
the plan. However, the statute requires that the terms of the plan must provide that the court may reduce or increase the amount of payments, or extend or shorten the time for payments where the circumstances of the debtor so warrant or require it. Read together, it surely appears that the referee can exercise some discretion in the matter.

A realistic approach to this problem is required. If a debtor has gone into wage earners' proceedings to hold off his creditors until he can qualify for orthodox bankruptcy, the court should have power to force him to continue with his plan. If emergencies actually arise, he can have his plan modified. If he just gets tired of paying up and wants to bankrupt, he must apply to the court for permission. Balancing the equities of the situation, the court may require him to continue with his payments. The debtor in such a situation well knows that if he merely secures a dismissal of his case his creditors will immediately begin to have writs of garnishment issued against his wages and the "wage serfdom" continues from another court. The conscientious debtor need have no fear. The court should have power to protect creditors who have accepted a plan, apparently offered in good faith by the debtor, but which was intended only to protect him until the lapse of time would entitle him to go again into orthodox bankruptcy.

III. Operational Study of Chapter 13

1. Introductory

In making this part of the research for this study visits were made to the five cities mentioned previously, which with few exceptions, have had more experience with a greater number of cases under chapter 13 than any others. Every effort was made

97Acknowledgment is due to Referees Clarence W. Allgood and Joseph Robinson of Birmingham, Alabama; Referee J. O. Middleton and his Trustee, Mrs. Middleton in Montgomery, Alabama; Referee D. Arthur Kelsey and his Trustee, Walter Hoffman in Norfolk, Virginia; and to Referee Louis Gates and his Trustee, William Scott of Kansas City, Kansas, for their courteous cooperation while the writer was visiting their courts. Miss Stella Weiss, Clerk in the office of the Referee in Bankruptcy in Kansas City, Missouri, supplied the information concerning the working of that court during a visit thereto. Acknowledgment is also due to the many lawyers, credit men, debtors, and others from whom much valuable information was obtained. For materials relating to the operation of Chapter 13 see: Allgood, Chapter XIII Proceedings—Suggestions as to Use, (1940) 14 J. N. A. R. B. 86; Allgood, Chapter XIII. Wage Earners' Plans, (1940) 15 J. N. A. R. B. 20; Note, (1940) 8 U. Chi. L. Rev. 106, reprinted in (1941) 15 J. N. A. R. B. 92 dealing with wage earners’ plans in Chicago.
in each to secure a representative cross section of opinion regarding the operation of the chapter. Records were studied; credit bureaus and social agencies were consulted; interviews were obtained with referees and their clerks, with trustees, debtors, creditors, and attorneys for both creditors and debtors. Hearings were attended in Birmingham and in Kansas City, Kansas.

2. Extent of the Use of the Chapter

Quantitatively the use of wage earners' plans has shown surprising gains for the past two years for which figures are available. Its spread geographically is still slow. The grand total of all bankruptcy cases begun in the forty-eight states for the fiscal year ending June 30, 1940 was 52,171. Of these, 3,202 or 6.13 per cent of the total cases filed were wage earners' plans. On June 30, 1940, there were 54,238 bankruptcy cases of all types pending in the forty-eight states, of which 3,995 or 7.37 per cent were wage earners' plans.

For the fiscal year ending June 30, 1941, a total of 56,153 bankruptcy cases of all types were begun in the forty-eight states. Of these, 4,420 or 7.87 per cent of the total cases filed were wage earners' plans, an increase of 1.74 per cent over the previous fiscal year. On June 30, 1941, there were 56,215 bankruptcy cases of all types pending in the forty-eight states, of which 6,786, or slightly over 12 per cent, were wage earners' plans.

There was an increase of 1,218 wage earners' plans filed during the fiscal year ending June 30, 1941, over the corresponding previous year, an increase of some 38 per cent. For the same period, the increase in filings in orthodox bankruptcy cases was only 5.98 per cent. Thus the percentage of increase of filings of wage earners' plans was more than six times that of orthodox bankruptcy cases. However, up to June 30, 1941, there had been almost no experience under chapter 13 in 26 states.

There were 5,253 cases pending in Birmingham, Alabama on June 30, 1941: 336 cases in Knoxville, Tennessee; 152 cases in Kansas City, Kansas; about 335 cases in Norfolk, Virginia; 149 cases in Chicago, Illinois; 95 cases in Memphis, Tennessee; and 91 cases in Montgomery, Alabama.

97aIncludes the District of Columbia.
98Tables of Bankruptcy Statistics, Administrative Office of the United States Courts (1940) Table 1; ibid. (1941) Table 1.
99The Tables of Bankruptcy Statistics for June 30, 1941, show only 35 cases pending on that date in Norfolk. There were actually 356 cases under chapter 13 pending in Norfolk on December 20, 1941. Only 29 cases had been filed from July 1, 1941, to December 20, 1941.
On April 10, 1942, the trustee in Kansas City, Kansas, wrote: “We are now handling 250 cases and anticipate that we will approximate 290 by July 1 of this year.” If realized, this will represent an increase of 90.8 per cent.

3. The Debtors

Debtors resorting to wage earners’ proceedings represent widely diverse occupations. The majority of them usually come from the principal industries in the particular locality. For example, in 200 cases in Kansas City, Kansas, 82 were employed in meat packing houses, 67 employed by railroads. The meat packing industry and the railroads are the largest employers of labor in Kansas City, Kansas.

In Birmingham, about 60 per cent of the debtors are colored, most of whom are miners and steel workers. The largest white class comes from railroad employees. Then there are employees of the civil service, stenographers, clerks in department stores, school teachers, street railway employees and bus drivers, workers in the mines and steel mills, and others. There are also physicians and lawyers. One court reporter inquired about resorting to a wage earners’ plan.

In Montgomery, there is even a more widely diverse group of debtors including, besides the above, railroad mail clerks, other postal employees under civil service, city firemen, employees of state liquor stores, telegraph and telephone employees, welfare workers, hospital employees, and one college professor, among others.

The direct cause of the majority of these debtors resorting to wage earners’ proceedings in all these cities is garnishment or threat of garnishment of their wages. Reasons for such garnishments or threats are several. There may be illness or death in the family of the debtor; or the debtor may be the victim of unwise extension of credit; or an economic exigency may arise wherein the debtor loses his job; or in some cases the debtor is congenitally dishonest and never intends to pay.

Dismissals by employers for garnishment were common during the days when labor was plentiful. Today all employers have some rules which usually state that an employee will be temporarily laid off after two or three wage garnishments, and dismissed if he does not straighten out his financial affairs within a stated time, but these rules are more honored in the breach than in the enforcement.
In Kansas City, Kansas, out of a total of 217 cases, 25 of the debtors had previously been in bankruptcy. A spot check of the records in 32 cases in Birmingham, selected proportionately from paid in full, dismissed for failure to comply, and pending cases, revealed that 18 debtors, or 56 per cent, were in the court for the first time, that 14 others, or 44 per cent, were repeaters, although three had had one previous debtor's petition only and no bankruptcies. Of the remaining 11, or 34 per cent, all had been in bankruptcy at least once before and 8 of them had received discharges. It thus seems safe to say that in Birmingham, if these cases present a representative picture, at least 75 per cent would have been eligible for orthodox bankruptcy, and in Kansas City, Kansas, an even higher percentage.

The debtors in wage earners' plans are usually married and have one to three children.

4. The Creditors

The same types of creditors, and usually the same creditors, appear with regularity upon the debtors' schedules. A check of fifty cases in Kansas City, Kansas, showed that fourteen creditors appeared with greater frequency than others, and of the fourteen, four were loan companies, one of which appeared in 90 per cent of the cases; four were instalment credit clothing companies, two of which appeared in more than 75 per cent of the cases; two were combined clothing and furniture companies; two were jewelry stores, both of which appeared in more than 45 per cent of the cases; one was an equipment and one a furniture store. Filling in were physicians, a grocery store or two and some other debt for a domestic item.¹⁰⁰

Subsequent creditors, those who become such after the wage earner has filed his debtor's petition, cause much difficulty. If they are continually being acquired and added to the schedules, the plan will continue indefinitely and the court will become a financial manager for distressed debtors. To prevent this situation, most referees warn the debtor to seek no further credit without court permission. Some put it into the order of confirmation. In Norfolk and in Kansas City, Missouri, they are not added by amendment. In Birmingham they are allowed to be added in some cases.

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but without prejudice to the plan. The debtor must make an increased payment into court to pay the new claim. In Kansas City, Kansas, if the debtor needs credit, quite often he will enter into an agreement with the creditor and the trustee whereby the credit will be extended and the trustee will, by authorization of the debtor, deduct an additional amount from the latter’s pay check for payment to the creditor on the new item of credit—all without prejudice to his plan.\textsuperscript{101}

5. \textbf{Judicial Administration of the Chapter}

a. \textit{Invoking the Chapter}.—The same general mechanics of procedure were followed in all the courts visited so far as filing the case was concerned.

Debtors interviewed had heard of wage earners’ plans through a friend or through someone in the personnel office of their employer. In many industrial plants members of the personnel staff try to aid the men in working out their affairs privately through agreement with creditors. When this is impossible they advise resort to wage earners’ plans. Some stable creditors will suggest resort to the chapter when their debtors are being unduly harassed by other creditors.

Some debtors come directly to the referee for advice. In such case the referees usually advise the debtor to consult a lawyer or some social agency to secure professional advice. Only one case was found where a debtor attempted to handle his own case. A lawyer’s service is advisable because of the papers which must be drafted.

After an interview the lawyer prepares the petition, schedules of affairs, debts and assets, and should at this time make out the plan.

When the petition and schedules are offered to the clerk of the federal district court for filing, it is quite customary for him to send them to the referee for his approval before formally accepting them. In this way errors are avoided at the outset. The petition and schedules are then filed and an order of reference is made by the federal district judge referring the case to the

\textsuperscript{101}The English Act provides, in part: “Any person who, after the date of the order, becomes a creditor of the debtor shall, on proof of his debt before the registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividends under the order until the creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.” 24 and 25 Geo. V., ch. 53, Part VII, sec. 150 (d).
referee. In Norfolk an entry is first put on by the federal district judge allowing the petition and schedules to be filed.

b. Formulating the Plan.—The lawyer should, if he handles many wage earners' cases, make up a form which would include the debtor's name, address, employer, badge number, age, family status—which would include the number of dependents, their ages and any special needs they might have. There should be itemized the monthly requirements for rent, fuel, gas and light, food, clothing, transportation, insurance, social security, union dues, incidentals such as newspapers, and some reasonable recreation. The total of these items subtracted from the reasonably anticipated future wages of the debtor should indicate to a large degree of certainty the amount which he can pay. One lawyer who handles a large number of wage earners' plans in Kansas City, Kansas, and Kansas City, Missouri, has printed forms containing this information and it is his practice to file a copy with his petition and schedules in the court in Kansas City, Missouri. Such procedure, although not specifically provided for in the chapter, is inherently sound, for it presents the entire financial and economic picture of the debtor to the court and creditors at the outset and speeds up the hearing on the case.

The majority of the attorneys filing wage earners' cases in Norfolk and Birmingham do not submit a detailed budget of the debtor. They submit instead a skeleton proposal. The referee in Norfolk has drafted a "work sheet," which is in form a budget, upon which he makes notes during the hearing. This aids him in evaluating a proposed plan. The Birmingham referee works out a similar budget on the inside folder of the case. With long standing experience behind them, both are adept, but during the course of a day of hearings, much time is lost while waiting for the debtor to ascertain what he spends for each item. If the plan were worked out in advance by his attorney and submitted in detail, this not inconsiderable time could be saved.

Before some plans are feasible it may be necessary for the debtor to dispose of some of his instalment-purchased property to reduce his debt load. In Birmingham, the writer heard finance companies offer to take back automobiles which were scarcely worth the balance remaining due on them, heard furniture companies offer to take back furniture when obviously they would have gained by going on with the debtor's plan. Some instalment sellers wanted to take back goods sold on instalment credit plans
when the debtor had paid the greater portion of the purchase price. A few debtors will "load" up on clothes and the like just before going into the plan. Where this is true, and the clothes or other chattels have not been used, the referee usually will allow re-possession by the vendor with no allowance for a deficiency where there is no loss.

Ordinarily the plans are drafted so that payment in full will be made within three years. In many instances this can be done with no hardship to the debtor. However, it sometimes places a debtor who wishes to pay but who cannot pay in three years in a difficult position. He must pay more than he can afford and still maintain a decent living for himself and his family, or must seek orthodox bankruptcy. To resolve this dilemma, in plans contemplating at their inception a time limit of more than three years, the referee in Birmingham writes into the order of confirmation, with the consent of the debtor, a provision waiving the three year period. These cases are few.

c. Notices.—In all offices the notices of the first meeting of creditors are made up by the referee as soon as the case is referred. The length of time between sending the notice and the date set for the creditors' meeting varies from the minimum of ten to the maximum of thirty days. The reason for this variation is largely due to the custom of the referees to set aside certain days for particular types of hearing such as creditors' meetings, motion days, and the like.

Notices are sent by ordinary mail in the cities visited. In addition, there is a formal legal notice published in a local newspaper in Montgomery. In Birmingham a list of debtors who have filed petitions with the dates of the respective creditors' meetings is published once a week. In Kansas City, Missouri, no publication is made.

In the notices sent out by mail, the Birmingham court includes a complete list of the creditors with their addresses, the amount owed to each and the consideration for each debt, together with blank proof of claim. In Kansas City, Kansas, the official notice

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102 The office organization of the referees varies according to need. Many referees handle all types of bankruptcy. Many, also, engage in part-time law practice. In Norfolk, Montgomery, and Kansas City, Missouri, the referees have quarters in the federal buildings. In Birmingham and Kansas City, Kansas, they hear the cases in their own private offices equipped for that purpose. In Birmingham one referee was appointed specially for chapter 13 cases, but late in 1941 the number had become so great as to require the appointment of a second referee. In the offices of the referees six girls are employed full time to handle over 5300 pending cases.
is accompanied by the debtor's plan, blank proof of claim and a blank agreement to accept the plan. This makes it possible for many creditors to accept the plan and to record their proofs of claim by mail without the necessity of attending the creditors' meeting. No complete list of creditors is sent out with the Kansas City notices, but there is included with the notice a temporary restraining order addressed to creditors who assert a lien on the debtor's property, and enjoining the employer from making any deductions from the debtor's wages except social security payments and union dues, until the first meeting of creditors. This type of order was not found in use in any other court visited.

The same result as to creditors is reached in Birmingham by the use of a rule nisi. If the debtor has a garnishment pending against him when he files his debtor's petition, his attorney personally takes the file of the case to the office of the referee handling wage earners' cases and files it with a motion requesting that a rule nisi be issued ordering the creditor to show cause why he should not be required to release the garnishment. The rule nisi is issued and the debtor himself serves it. In many cases now the referee is able to handle the situation over the telephone. If not, the rule nisi sets a day for hearing and disposition is made of the rule according to the facts shown on the hearing. The referee has secured remarkable cooperation from such garnishing creditors as well as from the numerous courts of inferior jurisdiction in and around Birmingham which handle collection work.

d. Creditors' Meetings.—Whenever possible these meetings are set at a time which is convenient to the creditors and the debtor. Because many creditors are merchants Monday is a popular day. The procedure in all courts visited is fundamentally the same with minor variations.

The meeting is conducted by the referee, who on routine examination inquires as to the residence of the debtor so as to establish jurisdiction, asks him whether he understands the wage earners' plan, why he is now in, and whether he has bankrupted before. His family situation and economic circumstances are inquired into so that his proposal can then be considered. His entire list of creditors is gone into carefully in order to classify them and to determine whether the list is complete and accurate. Usually very few creditors make further examination.

In Kansas City, Kansas, the referee always asks for and records the social security number of the debtor. A transcript
of the examination of the debtor is included in the record. In the
same court, also, the trustee examines the debtor with special
reference to his plan, its feasibility and the question of working
the plan out within the three year period.

If proofs of claim have been filed, the creditors then vote upon
the plan.

If a detailed statement of the total indebtedness and a copy
of the debtor's proposal has been sent out with the notice along
with blank proofs of claim and space for voting on the plan, experience in Birmingham indicates that a single meeting of
creditors is usually all that is required.

In Birmingham some lawyers list loan company creditors who
charge usurious interest for only one cent or some such small
amount. This requires such loan companies to file proofs of
claim for the amount which they claim is due. At the creditors'
meeting the debtor's attorney can inquire into the claim or ques-
tion it by a motion to expunge. The court then summons in
the books and papers of the loan company for examination to
determine whether or not there is usury in connection with the
loan. Some of the usurious money lenders, since these proceed-
ings have become common, do not prove their claims.

Creditors' meetings are well attended in some cities. In others,
most creditors attend the meetings in certain types of cases only.
Usually the secured creditors are present in person or by attorney
seeking a preference in payment of dividends. Unsecured credi-
tors are usually present when there is a discrepancy in the listed
amount and the true amount of their claims. In Birmingham it is
common practice for them to file their proofs of claim and indicate
their approval of whatever plan the referee will accept. In
Norfolk it is customary for the creditors to attach to their proof
of claim their approval of the plan as presented at the first meet-
ing of creditors, thus making their presence unnecessary at the
second meeting of creditors for confirmation.\footnote{In Norfolk, one lawyer who represents many creditors who are often
listed in chapter 13 cases has a permanent approval of all proposals which
the referee will otherwise confirm filed with the referee.}

All referees are careful to secure the required votes for con-
firmation. In Birmingham, when the necessary proofs of claim
and acceptances have been filed prior to or at the first meet-

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\footnote{In Norfolk, one lawyer who represents many creditors who are often listed in chapter 13 cases has a permanent approval of all proposals which the referee will otherwise confirm filed with the referee.}
of creditors, the court continues the hearing for three days to allow any other creditors to file objections. If none are filed the plan is then confirmed. If any are filed, they are set for hearing and the confirmation postponed accordingly.

Of necessity these creditors' meetings are short and somewhat informal. An experienced and interested referee with a knowledge of human nature can get to the root of the problems quickly, and in cases where the attorney has prepared the plan in careful detail and where the items are not complicated, the hearings seldom last more than thirty minutes, and usually take less than ten.

e. Other Hearings.—Various items may come up from time to time during the pendency of a wage earner's plan. In Birmingham about 70 per cent of the cases are handled as routine by the supervisor's office after confirmation. The referee has no further work on them until time for the discharge except for routine signing of checks or approving disbursements. Debtors in the other 30 per cent return to the court for various reasons such as motions to expunge claims, requests to add after-acquired creditors, motions for modification of the plan, personal pleas to the referee by certain habitual bankrupts to allow them to go into bankruptcy, or requests to be allowed to "skip" a payment. Most of the informal requests are handled by the clerk for the referee. Anything requiring formal action is handled by the latter. These hearings are short, but not summary, and the writer is convinced that the referees visited by him handle their cases with complete fairness.

f. The Trustee.—In Birmingham and Montgomery and in Kansas City, Kansas, a single permanent trustee is employed in wage earners' cases. In Norfolk there are two trustees, one of them handling some seventy per cent of the cases.104

All trustees have the same routine duties to perform which revolve around the setting up of an account for each debtor to record receipts and disbursements. This requires some kind of accounting system, and as none is provided for officially by any

104In Kansas City, Kansas, the trustee, who also practices law, has one girl who spends her full time handling some 250 wage earners' cases, and could use another to assist in keeping the work up to date. The trustee who handles the majority of cases in Norfolk, and who practices law in addition, has two girls, each of whom devotes a portion of her time to wage earners' cases. Due to the great volume of work in the office of the supervisor who acts as trustee in each case in Birmingham, an office force of some nine persons is employed. Besides the supervisor himself, there is an employee who works with him at the paying windows. There is a head bookkeeper, and there are six girls who handle the routine duties of receiving payments and making disbursements and reports.
governmental agency, a trustee must make up his own. The result is that each trustee visited in making this study had a system different mechanically from the others. Each was doing a good job, but some with much less effort than others. Only in Birmingham was a trained accountant found in the trustee's (supervisor's) office.

The autonomy of the trustee varies with the different courts. In Kansas City, Missouri, much of the work ordinarily handled by the trustee is done and records kept in the referee's office. In Norfolk the trustees act as a liaison between the court and the employers, while in Birmingham much of this is done by the referee.

In Norfolk if a wage earner in the court is garnished, the trustee secures release by representing the employer where necessary. No extra compensation is charged for this service.

1. RECEIPTS AND DISBURSEMENTS

The method by which the debtor pays in to the trustee on his plan varies in different cities, and in the same city varies with the different employers. In all cities some debtors voluntarily pay in directly. In Kansas City, Kansas, and Norfolk the general practice is for the employer to send the entire earnings of the debtor in to the trustee. In Montgomery this is done in some cases.

In Birmingham, because of the great number of debtors in the court and the diversified policies of the employers, all three possible methods of payment and some variations of each are used. Some debtors pay directly. Some employers who pay their employees bi-weekly deduct each pay day one half the amount called for by the plan and at the end of the month send in one check for all their employees in the court. Others want their employees to have one full weekly pay check without a "cut," so they pro-rate the monthly payment over the next three weekly checks and send in one large check to cover all their employees. Still others send in the entire pay check and let the supervisor deduct the amount for the plan, giving the balance to the debtor.

The monthly receipts of the Birmingham court for the month

106 In the cases of governmental employees, whose wages are non-garnishable, there is no compulsion which the trustee can put on the paymaster to send in the checks of the debtor. Therefore the debtor must pay directly. This has resulted in some trouble due to the laxity of such a debtor in paying regularly on his plan. In Montgomery, if a governmental employee becomes lax in making his payments, a notice of the delinquency is sent to him and to his superior. This usually produces results.
of October, 1941, illustrate the methods herein described. The total receipts were $49,433.44. Of this amount, $46,490.89 was paid in for disbursement to creditors. The debtors paid in directly $15,062.66, or about one-third of the total paid in for creditors. One firm sent in the entire check for each employee, which necessitated refunding $2,942.55 to its employees as their exempt portions of their earnings. One firm, which employs some 30,000 persons and which had some 1,400 employees in the court as debtors, paid one check of $16,924.16 to cover deductions for all of them. A personnel staff member of this firm strongly advises any large employer of labor to use this method.

In Norfolk as soon as the case gets to the referee formally under the order of reference, the formal machinery of payment is placed in motion. As it will require at least ten days' notice to creditors before their first meeting, it is the practice of the referee to approve a temporary or tentative plan whereby the debtor can begin to pay in at once. The trustee is notified and sets up his books on the case, notifying the employer to send in to him the pay check of the debtor. This referee requires the debtor to file a blank assignment of wages with his papers. In this way the creditors can see that the debtor is in earnest and if there is some delay in securing the final confirmation of the plan the debtor will not have been able to stall off his creditors unjustly while enjoying the protection of the federal court.

The methods of making disbursements vary. When the debtor's entire check is paid to the referee, the debtor comes in to secure his exempt portion. Some referees write a check to the debtor for the balance, taking the latter's signature for it. One referee pays the balance in cash, giving and taking a receipt on the same instrument for the payment, and also securing the debtor's receipt in a permanent record book.

Disbursements to creditors are always made by check. Usually the plans call for the payment to the secured creditors monthly. When the secured creditors are paid and there is money left for distribution to the general creditors, disbursements to the latter are made by some trustees in aliquot parts, such as regular 10 per cent dividends. Others make a disbursement to unsecured creditors at regular intervals or whenever there is enough to make it worth while. To avoid writing many small checks some pay small claims in full, such as those under $5. In Birmingham a disbursement is made to each creditor on the tenth of each month.
Some trustees make a detailed report to the referee of the financial status of the account with a petition for an order of disbursement and secure a court order before making each disbursement. This follows the general method of orthodox bankruptcy. It is questionable whether this procedure should be necessary when a single trustee handles all cases, most of them in which items are numerous and accounts are small.

A new order for cases under chapter 13 could well allow a referee, in an order appointing the trustee, to include a direction that he pay the secured creditors according to plan and the unsecured creditors at specified times, making that time conform to the prevailing practice in that particular court.

The trustee must be bonded, and some courts have a separate bond issued for each case. Others have one large bond to cover the trustee for all cases. The latter method effects economy in each individual case by granting the same protection at much less expense to the debtor. In some offices separate checking accounts are maintained for each plan. This, of course, increases the bank charges for maintaining the small accounts. The trustee in Kansas City, Kansas, after making a survey for the purpose of reducing costs to the debtor, now secures one bond to cover each wage earners' case and has consolidated his trustee's checking account.

This same trustee has done much not strictly required of him to assist debtors. In his bookkeeping system, he has, under disbursements, an account entitled "other disbursements." Sometimes a debtor in the court will be faced with an emergency of some kind. One broke a set of false teeth and the dentist required payment before delivery. Under an agreement with the trustee and the dentist, the amount of the bill was deducted from the debtor's next pay check over and above the amount due under the plan, and the debtor received his false teeth at once. These requests are not many, but some such flexibility is needed and can be arranged in any trustee's procedure.

2. Trustee's Reports

Some of the trustees make detailed reports on each case monthly, some every sixty days. Others include this report in their request for authority to make a disbursement. Still others make only the final report when the case is closed.

Here again the system should be flexible. Where a single trustee is used, and he has offices adjoining those of the referee
and the latter can thus keep easily informed on the progress of
the cases, it would seem that as a practical matter paper work
should be held to a minimum consistent with accurate records and
a compliance with law.

g. Closing Cases.—When cases are paid in full and the trustee
has made his financial report to the referee showing the amount
of money received, amount paid to each creditor, costs, fees, and
any other proper disbursements, the referee notifies the creditors
that the debtor has paid in full, that he is to be discharged and
the trustee dismissed. Few creditors attend the final meeting,
and the discharge usually follows as a matter of course. The
referee in Montgomery does not enter discharges under wage
earners' cases, merely an entry of dismissal.

When a case is to be dismissed before payment in full the
creditors are notified at once, entry of an order of distribution
of the money on hand is made. the trustee presents his final ac-
count for approval and an entry of dismissal is filed after the
final meeting. These meetings are not generally well attended.

Most of the dismissions for failure to comply with the plans are
in cases where no wage assignment could be secured and the
debtor becomes lax in keeping up his payments. In Montgomery
a defaulting debtor is called in before the district judge for a
hearing prior to dismissal. When a debtor's case is dismissed be-
cause of laxity on his part the courts are slow to allow him to
reinstate or file a new petition. If a debtor is a chronic repeater
the courts will not confirm a new plan on the ground that it is
not offered in good faith.

In Birmingham and Norfolk, in such cases, the referees,
knowing that the debtor will again be subject to waves of wage
garnishments, attempt to work out his case through a modifica-
tion of the plan. Sometimes this is a temporary modification, at
other times a continuing one.

When a debtor incurs subsequent debts without the permission
of the referee and such subsequent creditors garnish his earnings,
one court serves a show cause order on the debtor, forcing him
to explain this subsequent debt. He has dismissed a number of
cases because of subsequent creditors.

The referees do not have a uniform policy with reference to
discharging the few debtors who have been paying in for three
years and who have not paid out due to circumstances for which
they could not be justly held responsible. Since chapter 13 has
been in effect only since September 22, 1938, few cases were
eligible for such a discharge when the material was gathered for this study, and since the provision is permissive, naturally the results vary with the different cases and courts. In Birmingham the debtor agrees, in proper cases, not to invoke that provision. In Kansas City, Kansas, the creditors urge that the plan be worked out within three years and the referee and trustee require that the plans work out within that time. In Norfolk no discharge is granted unless thirty-six monthly payments have been made. The principal objection to proposals which require more than three years to work out comes from creditors who do not wish to risk this three year provision. Creditors have reduced their claims in some instances to make the plan fit the ability of the debtor to pay within three years, for to refuse to do so would force him into orthodox bankruptcy with total economic loss to all concerned.

h. **Fees and Costs.**—In all courts visited the statutory filing fee of $15, of which $10 goes to the referee and $5 to the clerk of the district court, was charged. In many cases in each court visited the debtors filed under a poverty oath, in which case the referee's fee was paid from the first money paid in by the debtor. Usually the clerks of the district courts require that their $5 fee be paid on filing, but in meritorious cases they too allow the case to be filed and the trustee to pay their fee as a priority claim.

In Birmingham and Montgomery no referee's indemnity fee is collected. In Kansas City, Kansas, it is $26. In Kansas City, Missouri, and Norfolk it is $15.

All the courts charge the 25 cent filing fee for filing claims. In all courts the referee's commission of one per cent is charged.

In Montgomery, under rule of the district court, a fee of 25 cents is charged for each notice sent out, and a cost of $3 taxed for publication expense.

In Norfolk, Kansas City, Kansas, and Kansas City, Missouri, the statutory commission of 5 per cent is charged by the trustees. In Birmingham it is waived since the supervisor is paid a salary. In lieu thereof, due to the volume of business, by rule of the district court, a cost of 5 per cent of all moneys paid in for creditors is taxed as trustee's expenses which pays the salaries and expenses of the supervisor's office. In Montgomery a charge of 6 per cent for the trustee is made on moneys paid in for creditors, less a discount of 6 per cent of that amount. When the entire check of the debtor is paid in to the trustee and the exempted portion must be refunded to the debtor, a charge of 3 per cent
of the amount returned is made to cover expenses, although in
many needful cases this is waived. These two charges are suf-
cient to cover the expenses of the trustee. In Norfolk a mainte-
nance cost of $1.50 per month per case is charged to cover the
trustee's expenses, while in Kansas City, Kansas, it is $1.00 per
month per case.

In Kansas City, Missouri, the cost of the trustee's bond, $5.00,
is taxed in each case.

The referee's expenses vary. In Kansas City, Missouri, it is
about $2.50 per case in addition to the indemnity fee. The inden-
mity fee covers the referee's expenses in Norfolk and Kansas
City, Kansas. In Montgomery, where no indemnity fee is charged,
the expenses of the referee are set at 30 cents per claim. In
Birmingham where likewise no indemnity fee is charged, the
referee's expenses range from $5 to $10 per case with the average
about $8.

The allowance for attorneys fees varies with the city and with
the specific case in each city. In Norfolk a minimum fee of $25
is allowed. In more complicated cases where additional work is
required, an additional fee is allowed with the maximum not
exceeding 5 per cent of the amount of claims proved. In Kansas
City, Missouri, an advance allowance of $25 is made, with an
additional fee of about $25 allowed on closing the case. In Kansas
City, Kansas, there is a sliding scale of attorneys fees, with an
average of some $75 per case allowed. In Montgomery the scale
of fees is fixed by order of the district judge. Where the indebted-
ness does not exceed $250, the maximum fee for the attorney is
$25; from $250 to $500 the maximum is $35; and when it ex-
ceeds $500 the maximum fee is $50. Obviously, the exact fee will
depend upon the case and the amount of work which is required
of the attorney to handle it properly. In Birmingham the scale
of fees, approved by the local Bar Association, runs from $10
minimum where less than $50 is listed, $15 where indebtedness
is up to $250, with additional allowance where rules nisi are
issued or motions to expunge are necessary. Where the indebted-
ness runs from $250 to $500 the fee is usually $25. The fees
average close to $20 per case. The maximum fee allowed was
$250 in a case where a composition was effected in a $4,000
estate. It should be noted that cases are not allowed to be filed
where the indebtedness is less than $50 unless there are garnish-
ments against the debtor or he is seeking relief from usurious
small loans.
An additional cost of $1 is taxed for amendments to the schedules.

The referees and trustees in all the courts visited were in agreement on the point that the administrative costs, which the debtor must bear in full, must be kept as low as possible consistent with proper administration. The cost might be reduced if the referees are placed upon a salary. They can be made lower with the employment of a single permanent trustee, and can be reduced still further when the volume of business is sufficient to warrant a staff organized on a full-time basis.

Because the average amount of indebtedness per case varies in the different cities, the average percentage of administrative costs in individual cases varies in inverse ratio to the amount of indebtedness listed. Comparisons are, therefore, likely to be misleading. With a somewhat larger indebtedness per case average Norfolk administrative costs are estimated by the referee to be about 12 per cent of the amount paid in for creditors, not including the attorneys fees. Attorneys fees would add about 5 per cent of the total amount. In Birmingham, the total in a representative case where the listed indebtedness is $500 would average 14 per cent. Without attorneys fees it would average 10 per cent. Costs in small cases are proportionately larger but the debtor gains in other ways, since chapter 13 proceedings are one of the few ways in which he can effectively escape the clutches of many loan sharks, for in Alabama a usurious contract is not illegal and is not unenforceable as a matter of substantive law.106

In Montgomery the figures for individual cases were not available but for the entire fiscal year of 1940-41, excluding attorneys fees, the cost to all debtors was 18 per cent of the amount they paid in for creditors. If the attorneys fees be added, the total cost to the debtor for services of the court, trustee, and attorney would be 27.3 per cent of the amount paid in for creditors.

In Kansas City, Kansas, the present cost to the debtor for amortizing a case with debts of $600 is about 20 per cent, not including the attorneys fee. With an increase in the volume of work, the trustee feels that the expense per case in his office may reduce this figure somewhat.107

106Alabama, Code 1940, Title 9, secs. 60-67.
107In Chicago in two cases closed, one commentator found that: "In the process of paying $750 to creditors, this debtor paid ... as expenses ... approximately 35 per cent. In the other case, the ... creditors having only $972 in claims participated in the plan and these debts were scaled down to $648.60. ... The costs in this case aggregated forty-three per cent of the amount paid to creditors. ..." Note, (1940) 8 U. of Chi. L. Rev. 106, 109.
A private amortization agency in Norfolk, Virginia, charges 11 per cent of the listed indebtedness, plus a provision for 15 per cent attorneys fees where legal action is necessary. Amortization costs for a like service in Chicago averaged 11.5 per cent on debts totalling $565. Obviously no attorneys fees were included, and the debtor did not have the protection of the courts during the period of amortizing his debts. Further, credit cooperation was necessary for the entire time. In Birmingham, the cost of amortizing the same amount of indebtedness would be 10.05 per cent without attorneys fees, or 13.12 per cent if a fee of $20, the average, were included.

6. Success of the Chapter as Measured by Results

Figures were not available in all courts visited which would show exact financial information on the number of cases closed which were paid in full, dismissed for want of compliance, or bankrupted. The figures available are here set forth. It is still too early to evaluate results under chapter 13, for many of the plans require three years, and the chapter had been effective only some three and a half years when this study was made.

In Kansas City, Kansas, with a total of 217 cases filed up to December 31, 1941, 210 cases were still pending and 7 had been concluded. During that time a total of $37,009.11 had been disbursed to creditors by the trustee under both the plans and the "other disbursements" previously explained. In addition, he had on hand $11,209.64 awaiting distribution to creditors. This represents a net of $48,218.75 for creditors in all these cases. Of the seven concluded cases two were paid in full. These were small cases totalling $393.25. Five cases were concluded in which no amount was paid in by the debtor. For some unknown reason only one proof of claim was filed in four of them, and the debtors made no further appearance.

In Norfolk, 604 cases had been filed under chapter 13 up to the end of December, 1941. Of these, 356 were still pending and 248 had been concluded. Of the latter, 82 had been paid in full, 32 converted to orthodox bankruptcy, and 186 dismissed for failure to comply.

In Kansas City, Missouri, some 175 cases had been filed up to the end of December, 1941, and some 125 were pending. Of the 75 closed cases, 8 had been paid in full and 67 were dismissed for failure to comply.
In Montgomery, for the fiscal year 1939-40, 33 cases were paid in full, 10 dismissed for failure to comply and 7 converted to orthodox bankruptcy. During that year a total of $19,654.17 was paid out to creditors in all cases and the supervisor had on hand an additional $3,229.99 for disbursements later.

In Birmingham up to November 1, 1941, a total of 7,958 cases had been filed under chapter 13 in slightly more than three years. 3,156 cases were closed during that period, of which 1,486 or slightly over 47 per cent were paid in full, while 1,670 were dismissed for failure to comply, failure to confirm, conversion to bankruptcy, or death of the debtor. In the cases paid in full, a total of $283,516.24 was paid to creditors, an average indebtedness of each case paid in full of $190.80. In the cases not paid in full the creditors received a total of $69,049.72 on their claims. If the average listed indebtedness prevailed in all cases, this would represent slightly less than twenty-three per cent of the listed indebtedness. From April, 1933, when the first wage earners' case was filed under old sec. 74, to April 1, 1942, the Birmingham Debtors' Court has disbursed to creditors the sum of $1,435,401.87.

As of the first week in April, 1942, the referee in Birmingham was able to report that since the declaration of war larger payments are being made by most debtors due to the war boom. The filings of new petitions have not decreased in number.

The Birmingham figures compare very favorably with those under state amortization statutes, where a survey in Flint, Michigan, showed that 35 per cent of the cases were paid in full, and 26 per cent was paid on the listed indebtedness in cases which were abandoned before payment in full. In Grand Rapids, Michigan, under a state amortization statute, 50 per cent of the closed cases were paid in full, and of the claims listed on the abandoned cases 26 per cent was paid before the case was abandoned. When it is noted that Grand Rapids is considered to be a conservative credit town, and that Flint, Michigan, and Birmingham, Alabama, are liberal credit towns due to high industrialization, the comparisons are most favorable.\textsuperscript{108}

A criterion of the success of chapter 13 should be whether or not it has accomplished the purpose for which it was enacted—that of aiding hard-pressed debtors to pay their debts. Figures taken from the records give only a partial picture, for they do not

show how many of the debtors who abandoned their plans later completed payment directly to their creditors. Without the wage earners' plan as a preliminary aid this might not have been possible. Further, financial figures cannot measure the mental relief afforded debtors by the protection of the court, a factor which increases the social value of the chapter many fold.

Credit managers have said that it aids them in creating better public relations with their customers. When a customer is in financial straits many of the more substantial merchants are willing to assist him only to have some avaricious purveyor of cheap consumable goods on time contracts who maintain a fleet of collectors, continually garnish him. This places the stable merchant at a decided disadvantage. A wage earners' plan in such a situation places all creditors of a class on a parity.

A member of the personnel department of a company in Birmingham which employs some 30,000 persons said that the wage earners' plans as worked through the "debtor's court" has helped the morale of their some 1,400 employees who are in the court as debtors. He is convinced that the debtors' court makes for good industrial relations, and that it takes away preoccupations caused by financial difficulties, which in turn makes the employee a better safety risk.

The manager of the Merchants' Credit Bureau expressed approval of the court and its working on behalf of himself and the members of his organization. The approval of the credit managers of various firms is evidenced by their whole-hearted cooperation with the court. The same thing can be said of employers. The legitimate loan companies and the banks having small loan departments, and the industrial banks specializing in small loans cooperate very well. Interviews with creditors and attorneys who represent many creditors indicate that creditors approve wholeheartedly the use of the wage earners' plans. The usurious loan shark in Birmingham seemed to raise the lone dissenting voice to it there.

IV. CONCLUSIONS AND SUGGESTIONS

Chapter 13 had been effective only some three and a half years when the facts for this study were gathered. It has provided a completely revolutionary procedure for wage earners to amortize their debts, for it permits the obligor to seek the protection of the court instead of being forced into court by the obligee as in
traditional legal procedure. It makes only one case for the court instead of single suits by each of a number of creditors and it treats all members of a class equally. Many of the objections to the chapter do not appear to be founded upon an intimate insight into the operations of the chapter and its possibilities, or into the actual plight of the unfortunate small debtor.

Its use has been extensive only in some seven or eight cities. But the percentage of increase in cases under chapter 13 was six times greater than that of orthodox bankruptcy cases in the fiscal year of 1940-41.

Certain clarifications and adjustments should be made in the requirements of the chapter. The problem of fees chargeable should be clarified, as should some of the notice provisions, times for filing claims, the matter of the trustee's reports.

Time would be saved if attorneys were required to file with the petitions and schedules a detailed statement of the proposal of the debtor.

Efficiency could be promoted if there were sent with the official notice of the first meeting of creditors a complete itemized statement of the debts of the debtor, a statement of the proposal, blank proofs of claim and a short form of acceptance of the plan. This would aid creditors who are content with the proposal and whose presence would not add to the hearing in any manner. It would, in many cases, eliminate second or third meetings of creditors without in any way impairing the efficient and proper administration of the chapter.

All referees consulted agreed that the success of the chapter depends upon efficiency and economy in its administration, and cooperation among creditors, debtors, employers, and the bar. Fees and costs must be held to a minimum. The single trustee should be employed and his office organized to handle this particular type of case with a minimum of intricate useless detail and with a system which at all times reflects the true status of each case. Since there is no official accounting system provided for trustees, it might well be provided that the office of the Administrator of the Federal Courts or some other unit of the Department of Justice either officially promulgate such a one or at least suggest model forms which could be used in the ordinary trustee's office in wage earners' plans.109

109 It has been necessary to do a great deal of work in setting up a bookkeeping system which is satisfactory in the trustee's office. That has probably been the hardest problem we have had. Allgood, Chapter XIII, Wage Earners' Plans, (1940) 15 J. N. A. R. B. 20.
A simple, efficient record system for a trustee would include some type of card index. On the card would be the debtor's name, address, and case number, employer and his address, the date of the petition, reference, when closed and reason for closing. An index by case number would aid also if many cases were handled.

In addition to his check book and day book to show daily balances, the trustee should have one other book as his journal of each case. This book should be a special column loose leaf book with two sheets for each case. On the first sheet, for receipts, he should, at the top, show the debtor's name, address, and name of employer. He should also show the number of the case, the date of filing, the date of reference, the date of confirmation, the date payments begin, the plan of payment, and a space for the date of closing.

This page should have thirteen vertical columns running from left to right and entitled as follows: Date, Amount Received, Amount Retained Under the Plan, Date, Amount Returned to Debtor, Debtor's Receipt for Refund, Balance, Date, Referee's Expenses, Trustee's Expenses, Balance. By making the appropriate entries each time, the entry in the extreme right hand column will show the balance remaining in the case at all times. When a distribution to creditors has been completed, an entry could be made in red ink and deducted from the balance, with the new balance showing the amount remaining on hand in the case.

The second sheet, for disbursements, should also contain special columns. The first one should be headed Creditors, the second, Amount of Claim Allowed. Then should follow column three entitled Disbursements. This would be subdivided into three columns marked Date, Dividend Declared and Balance Due respectively. In the space marked Creditors, the name and address of the creditor should be entered; then in column two the amount of the claim allowed; in column three under the proper subtitle should be entered the date of payment of a dividend, the amount of the dividend declared, and the balance due on the account. This column three could be repeated across the page as many times as space would permit. The same scheme could be carried out by having the column run vertically instead of horizontally. By referring to the last figure on the right hand side, or at the bottom of each column if the vertical system were used, the exact status of the account of any creditor could be ascertained at once.
This system is substantially in effect in Birmingham and has recently been adopted by the referee in Kansas City, Kansas. Both trustees agree that it makes for accuracy and economy of time in administration.

Trustees should not be required to make a detailed report each sixty days on wage earners' plans where there is a single trustee and he is connected with the office of the referee. Such voluminous detail work, where the items are numerous and the amounts small, not only increases the overhead expenses of administering chapter 13 but is out of proportion to the amounts involved. Further, if any order of distribution is to be required before dividends are to be paid, a simplified form of application for and an order of distribution should be authorized.

On the point of attorneys fees, a large item of expense, local conditions should govern. Attorneys fees should not be disproportionately high or low for the work involved. They should be sufficiently compensatory so that wage earners' cases will not be avoided by the proper type of lawyer.

One lawyer suggested that a salaried trustee, legally trained, might be employed in all courts where the volume of business warranted it. This trustee would be equipped with the necessary forms to handle the case for the wage earner all the way through. It would eliminate the attorney's fee entirely and reduce the cost to the debtor. Such a step is not revolutionary. A similar procedure has been followed for some nine years in the state courts of Michigan under a state amortization act for small debtors. Lawyers in those cities do not complain of this procedure and do not indicate that it affects adversely their professional incomes. Most of the work in these cases is of an administrative character.

Finally, laws must be administered by individuals, and laws will be effective only as their administration is effective. If the administration of this statute is approached in the spirit of old orthodox bankruptcy it is doomed to failure. If its administration is approached from the viewpoint that it is a new instrument to aid the wage earner who, through misfortune or otherwise, is in the marginally dependent economic group, and who wishes to pay his debts in an honorable manner, thus upholding his dignity as a citizen, and the referee and trustee realize that theirs is a task of social as well as legal responsibility, the use of chapter 13 will produce an optimum of success limited only by the stern practicalities of the medium in which it must operate.