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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

REPORT OF THE COMMITTEE ON H.R. 3111, A BILL TO AMEND THE FEDERAL BANKRUPTCY ACT

On June 6, 1949, the House of Representatives passed H.R. 3111 which now goes to the Senate. The bill amends Section 2(a) of the Bankruptcy Act, extending admiralty jurisdiction to the courts of bankruptcy.

Section 2(a) as amended will provide that the courts of bankruptcy are invested with "such jurisdiction at law [and] in equity, and in admiralty as will enable them to exercise original jurisdiction in proceedings under this Act. . . ." The added words are underlined. There is nothing further on this subject in the bill.

When H.R. 3111 was brought on to the floor of the House, no reference was made to this particular amendment. The Committee Report (House Report No. 424, April 11, 1949), comments only briefly on the amendment at page 4. It states that the adjudicated cases are in conflict as to whether the district court, on its bankruptcy side, may exercise its admiralty jurisdiction, as far as necessary, over maritime property of a bankrupt's estate, citing 1 Collier on Bankruptcy, 14th Ed. 168; and that the "confusion and conflict in the adjudicated cases should be resolved." All amendments proposed by H.R. 3111 are characterized in the beginning of the Report as "clarifying and perfecting changes" and "non-controversial in character".

There appear to be some nine or ten cases over the past thirty years on this subject that bear out the statement that there is some conflict, but the limited number of such cases and a study of their holdings suggest that the problem is not so urgent that there is not time to give careful study to the subject. The mere fact of a conflict in these decisions does not inevitably point to what is the desirable

solution under every possible situation that may arise. So far as appears from the Committee Report there was a study by the National Bankruptcy Conference that led to the amendments but we do not know that anyone has been consulted who is familiar with shipping and admiralty.

The original Chandler Act of 1938 when first introduced in Congress contained a similar provision giving admiralty jurisdiction to bankruptcy courts. This particular provision was rejected by the Senate, but this fact is not mentioned in House Report No. 424.

Because the amendment is limited to the simple addition of two words, "in admiralty", on the subject of the bankruptcy court's jurisdiction, its effect in a particular state of facts on procedure and the rights of the parties must be largely a matter of individual opinion.

House Report No. 424 gives no guidance in the interpretation of the amendment. It merely refers to confusion and conflict in adjudicated cases, citing Collier. But there is no statement of what changes are sought to be achieved. A wide variety of questions may arise that do not resemble the questions that have been decided in the conflicting decisions listed in Collier and as to these the intent of the amendment and its effect seem vague and quite as confusing as the present law. The consequence of the amendment may be to bring about greater uncertainty and substantial harm while the effect of the amendment and procedure thereunder is being litigated and otherwise determined.

It is not clear how situations, familiar in the admiralty, will be dealt with in a bankruptcy court with admiralty jurisdiction. For example, how will the bankruptcy court treat cases of salvage, general average, or collision? How will it deal with limitation of liability? What will be the effect on the present efforts to obtain internationally a uniform treatment of ship mortgages? Where most creditors have maritime liens and a proceeding in admiralty is about concluded, may a few unsecured creditors with small claims disrupt the whole thing by a petition in bankruptcy?

The rehabilitation of the bankrupt by the court through reorganization may be a desirable thing that cannot now be satisfactorily applied to shipowners. But it is not at all clear how far the proposed

amendment will help solve this problem. A substantial portion of the vessels engaged in foreign trade are mortgaged to the United States. These are purchase money preferred mortgages given under the Merchant Ship Sales Act of 1946 or the construction subsidy provisions of the Merchant Marine Act, 1936. It is to be remembered that under Sections 701-703 of the Bankruptcy Act (11 U. S. C. 1101-1103) in any proceeding in bankruptcy, equity or admiralty in which a receiver or trustee may be appointed for any corporation engaged in the operation of vessels in foreign commerce on which the United States holds mortgages the Maritime Commission may be appointed and no one else may be appointed except on its ratification. It is also provided that no injunction powers of the bankruptcy court shall apply to the United States as a preferred mortgagee.

It is not proposed to amend or repeal Sections 701-703. What, if any, effect the amendment to Section 2(a) is expected to have where Sections 701-703 apply is open to some doubt. So long as these sections stand, applying as they do to a large part of our merchant fleet engaged in foreign commerce, the amendment to Section 2(a) certainly cannot be supported on the ground that uniformity is being achieved and the admiralty will be no bar to the bankruptcy court's proceeding without hindrance in every case. The fact may be that the bankruptcy court is unsuited to deal with certain types of maritime claims and that this is reflected in Sections 701-703.

By statute the foreclosure of a preferred mortgage and the petition for limitation of liability have been matters exclusively within the jursidiction of the admiralty court (46 U. S. C. 183-189, 951-954). The proposed amendment, ignoring all such existing statutes, seems bound to produce greater, and not less, confusion than now exists.

Another aspect of the proposed amendment has caused some concern. Furnishers of supplies, repairs, towage and similar services do business in a certain way. Because vessels move about and owners are often at a distance, the maritime lien has an important place in all their transactions. There is a substantial basis for the concern felt by some that, because of the change and uncertainty regarding the worth of their liens if the proposed amendment is enacted, new and difficult problems of credit in such transactions will arise and the harm to normal business will far outweigh any supposed benefits from the legislation.

The undersigned committee has not had the time to study and appraise all these objections to the amendment to Section 2(a). It has seemed at this time sufficient to say that a wide variety of situations may be affected by the amendment and that there is obviously substantial basis for the opinion that, with no sure guide to its purpose and effect, it is too sweeping and too vague and uncertain. It seems likely to cause as much doubt and confusion as it allays.

It is recommended that the amendment be opposed on these grounds. If some amendment is thought desirable to adjust any possible conflict between the admiralty and bankruptcy courts the subject should receive detailed study, not alone by those familiar with bankruptcy but by those familiar with shipping and admiralty.

Respectfully,

DONALD D. GEARY, *Chairman*
EDWARD H. MAHLA
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January 23, 1950.