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Assignments for the Benefit of Creditors

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ASSIGNMENTS FOR THE BENEFIT OF CREDITORS†

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I. DEFINITION AND HISTORY

A general assignment, or as it is frequently termed, a deed of trust for the benefit of creditors, may be defined as "a transfer, without compulsion of law, by a debtor, of his property to an assignee or trustee, in trust to apply the same, or the proceeds thereof, to the payments of his debts, and to return the surplus, if any, to the debtor".[1] This procedure for the liquidation of estates of insolvent debtors, sometimes euphemistically called in Federal legislation, "embarrassed" debtors, is of great antiquity in the law. The right to execute such an assignment is inherent in the common law,[2] and exists in full force and effect in every State of the Union except Louisiana, unless restricted or modified by statute. In Maryland, the Legislature has not materially altered the common law proceedings, and nearly all of the present law concerning it may be found in the earlier decisions of our Court of Appeals, rather than in the statutes.[3]

II. EFFECT OF FEDERAL BANKRUPTCY LEGISLATION

The passage of the Federal Bankruptcy Act of 1898, and subsequent amendments, while it had the effect of suspending the operation of State insolvency laws within its field of jurisdiction, thereby rendering them practically inoperative, did not, in terms, affect the proceeding of assignment

† This article was originally delivered as an address before the Luncheon Club of the Baltimore City Bar Association, and was published in the *Daily Record* of February 7, 1936 (which issue is now out of print), at a time when the author was engaged in the private practice of law. In 1938, he became a federal estate tax examiner in the office of the Internal Revenue Agent in Charge (now District Director) at Baltimore, and since 1953 has been Supervisor in that office in charge of the audit of estate and gift tax returns filed in Maryland and the District of Columbia.

Because of its continuing utility through the years and the scarcity of local material on the subject, the article upon request has been brought up to date by Mr. Nathanson, in collaboration with Bridgewater M. Arnold, Esq., Professor of Law and Assistant Dean of the University of Maryland School of Law.

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[1] Young v. Clapp, 147 Ill. 176, 189, 32 N. E. 187 (1892).

[2] Tatelbaum v. Pantex Mfg. Corp., 204 Md. 360, 371, 104 A. 2d 813 (1954).

[3] An exhaustive note on the subject, written in 1885 by Moses R. Walter, of the Baltimore Bar, is appended to the early case of Kettlewell v. Stewart, 8 Gill 472 (Md., 1849) [Brantly's Edition].

for the benefit of creditors.[4] The Bankruptcy Act does provide, however,[5] that the making by a person of a general assignment for the benefit of his creditors shall constitute an act of bankruptcy. The effect of this Section is to place it within the power of any three creditors, or in the case of a debtor having less than twelve creditors in all, of any one or more creditors to whom is due the sum of over Five Hundred Dollars to take the matter out of the jurisdiction of the State Court and place it in the Federal Court.[6] This may be done within four months[7] of the making of the assignment, by filing an involuntary petition in bankruptcy against the debtor, giving such assignment as an act of bankruptcy.

In such an instance, the estate of the debtor would have to be turned over by his trustee under the assignment to the receiver or trustee in bankruptcy, the trustee under the deed of trust being compensated only to the extent that his services have been of real value to the estate.[8] Under the circumstances, unless the debtor's attorney believes that the creditors are friendly, and are likely to permit the estate to be wound up by the trustee under the deed of trust, who is usually of the debtor's own selection, he will frequently find it advisable to join a representative of the creditors as cotrustee or counsel, as an alternative to having his client thrown into bankruptcy.

III. Special Considerations As To Various Classes Of Insolvents

A. *Individuals.* Although a receiver is sometimes appointed for an insolvent individual, upon a bill filed by a creditor or creditors asking therefor, where uncontested, there is little authority in the law for making such appointment, and judges are often reluctant to make such designation, unless the debtor consents.[9] The choice of procedural methods for winding up an insolvent individual's affairs rests, therefore, between the use of the deed of trust in the State Court, and bankruptcy.

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[4] Pobreslo v. Boyd Co., 287 U. S. 518 (1933); Johnson et al. v. Star, 287 U. S. 527 (1933).

[5] Bankruptcy Act, Sec. 3, 11 U. S. C. A. Sec. 21(a)(4) [1956].

[6] *Ibid*, Sec. 59, Sec. 95(b) [1956].

[7] *Ibid*, Sec. 3, Sec. 21(b) [1956].

[8] *Ibid*, Sec. 2(21), Sec. 11(21) [1956].

[9] Davis v. Hayden, 238 F. Rep. 734 (4th Cir., 1916); Mathias v. Segaloff, 187 Md. 690, 51 A. 2d 654 (1947); Frigidraft, Inc. v. Michel, 198 Md. 509, 84 A. 2d 695 (1951).

If the individual is seeking a discharge from his debts, and they are of a kind which are dischargeable in bankruptcy, and if he has committed no act which would be a bar to his discharge,[10] he will ordinarily file a petition in bankruptcy, as the proceedings under the deed of trust do not usually provide for the release or discharge of the debtor's obligations upon the surrender of his property.

It is true, however, that various methods for compelling the creditors to execute such releases upon receiving their dividend or distributive share, have been upheld in this State under certain conditions. The method most widely used, prior to the adoption of the Bankruptcy Act, was the insertion in the deed of trust of a provision that in the distribution of the insolvent's estate, those creditors who execute releases within a definite time specified therein should receive the amount of their claim in full, or the pro rata share thereof, if the proceeds of the estate were insufficient, ahead of all other creditors. As there was very seldom a surplus after the releasing creditors were paid, the practical effect of this provision was to bar non-releasing creditors from any share in the distribution. This constituted, in effect, an individual system of bankruptcy, wherein the debtor dictated the terms of his discharge, the propriety of which was the subject of numerous conflicting decisions throughout the country. Our Court of Appeals in *McCall v. Hinkley*,[11] rendered a strongly worded decision in which it sustained the validity of such provisions by an evenly divided Court.

However, the fierce forensic battles, and vigorous judicial opinions which revolved around this question are of historical rather than present interest, for with the easy access of creditors to the Bankruptcy Courts under the provisions of the Bankruptcy Act[12] above referred to, the insertion of such a provision granting priority to creditors executing releases would today speedily result, in most cases, in the filing of an involuntary petition in bankruptcy against the debtors. It is thus a rare, if not unknown, practice to insert such provisions in deeds of trust at the present time.[13]

In many cases, however, an insolvent individual wants to avoid bankruptcy proceedings, and prefers to turn over his entire assets to be liquidated by someone of his own

[10] Bankruptcy Act, Sec. 14, 11 U. S. C. A. 32 [1953].

[11] 4 Gill 128 (Md., 1846). See also: Kettlewell v. Stewart, *supra*, n. 3.

[12] *Supra*, ns. 5, 6.

[13] For instance of some limitations on the powers of trustees under general assignments, see *infra*, n. 30.

selection, or by his attorney, a procedure directly contrary to the practice in bankruptcy where the bankrupt must not be instrumental in any manner in securing the appointment of the receiver or trustee or their counsel.[14] If, in these cases, the debtor is not seeking a release or discharge of his debts, but hopes and intends to make good to his creditors out of his future earnings any loss which they may sustain by the insufficiency of his estate to pay them in full, the situation is one which may be properly and expeditiously handled by the making of a deed of trust for the benefit of his creditors. Where the transaction is untainted by fraud, and especially where most of the creditors are local, and their number is not too large, the probabilities are that they will permit the estate to be wound up under the deed of trust, without resorting to bankruptcy proceedings.[15]

B. *Partnerships.* While the same considerations as were discussed in the case of individuals are applicable to the case of a deed of trust by a firm the added element of the availability of a "friendly" receivership in the State Court deserves mention. This method of winding up the insolvent partnership's affairs is frequently used, and possesses very much the same advantages and disadvantages as the proceedings under the deed of trust.

It might be noted that since each partner's individual property is subject to execution on a partnership obligation, the deed of trust will ordinarily convey both the firm property and the individual property of the partners. In making distribution, however, the equitable doctrine of marshalling assets adopted in *M'Culloh v. Dashiell,*[16] has been held applicable to deeds of trust in the case of *Maennel v. Murdock.*[17] Under this doctrine, the firm's assets will therefore be first applied to the extinguishment of the firm's debts, and the individual's assets to the payment of the individual partner's separate debts.

C. *Corporations.* In the case of a corporation, the question of a discharge from its debts, so important to individuals or partners as a determining factor favoring bankruptcy, is of little practical importance, as the liquidation of a corporation's affairs ordinarily marks the end of its corporate existence, and the abandonment or sale of its

[14] Bankruptcy Act, Sec. 44, 11 U. S. C. A. Sec. 72 [1943].

[15] Any natural person who is a farmer or wage earner as defined by the Bankruptcy Act cannot be put into involuntary bankruptcy. Any debtor who owes debts amounting to less than $1,000 cannot be put into involuntary bankruptcy. Bankruptcy Act Sec. 4, 11 U. S. C. A. Sec. 22(b) [1956].

[16] 1 H. & G. 96 (Md., 1827). See also Uniform Partnership Act Sec. 40(h) [7 U. L. A. (1949)], Md. Code (1951), Art. 73A, Sec. 40(h).

[17] 13 Md. 163, 179 (1859).

corporate name. For this reason the deed of trust, whereby the corporation's own attorney or representative takes charge of its liquidation, either alone or in conjunction with a representative of the creditors, may be employed to good advantage in these cases, especially if the corporation is a small one. Here, again, however, the likelihood of creditors throwing the corporation into bankruptcy must be reckoned with.

IV. PROCEDURE UNDER DEED OF TRUST

A. *The Deed.* Since the validity of the proceedings under the assignment for the benefit of creditors is usually governed by the deed of trust itself, proper preparation and execution of this instrument are of vital importance. It would far transcend the limits of this article to discuss the various cases in our Court of Appeals on the validity of particular clauses in various deeds, reserving part of the property to the grantor, or creating special preferences and priorities. However, as has been said heretofore in discussing clauses in such deeds requiring releases, most of these decisions are not of present importance, as they are little used today.

In the majority of instances, the form of deed used is similar to that given in Carey's Forms.[18] This form has been reprinted by *The Daily Record,* with the addition of a clause providing priority for "the payment of the wages or salaries due to the clerks, employees or servants of the grantor contracted within three months anterior to the execution of this deed", as provided by Article 47, Section 15 of the Code.[19]

The deed should convey on its face all of the property of the grantor, and devote it absolutely and under all cir-

[18] (1885) 371 *et seq.*

[19] (1951). This section says:

"Whenever any person or body corporate shall make an assignment for the benefit of his, her or its creditors, or shall be adjudicated insolvent upon his, her or its petition, or upon the petition of any creditor or creditors, or shall have his, her or its property or estate taken possession of by a receiver under a decree of a court of equity, in the distribution of the property or estate of such person or body corporate, all the money due and owing from such person or body corporate for wages, salaries or commissions to clerks, servants, salesmen or employees contracted not more than three months anterior to the execution of such assignment, adjudication of insolvency, or appointment of receiver, shall first be paid out of such property or estate, after payment of the proper and legitimate costs, expenses and commissions, and shall be preferred to all claims against the property and estate of such insolvent person or body corporate, except the lien claims of such persons as shall hold liens upon such property or estate, recorded at least three months prior to such assignment, adjudication or decree. Taxes legally due and owing shall have priority of payment to general creditors."

cumstances to the payment of his debts. These requirements are fully met in the form referred to above. In the case of an individual, it is advisable, however, to insert an additional clause providing for the payment of his statutory exemption of $100, allowed under Article 83, Section 8 of the Code, which has been held applicable to a deed for the benefit of creditors.[20]

The deed made by a partnership should be executed by each partner, to avoid any question of authority to bind the partnership.[21]

Where a corporation makes a deed of trust, it is advisable to have its acts authorized in advance by a resolution of the Board of Directors or stockholders at a duly called meeting. However, it has been held[22] that such a deed made by the president and secretary, without the formal authority of the Board of Directors, is valid when subsequently ratified by the directors and stockholders, even though not assembled in a meeting.

B. *Recording.* A deed of trust conveying property for the benefit of creditors is subject to the provisions of the Code regarding the recording of all deeds or instruments affecting real and personal property.[23] Article 21, Section 18, provides that every deed conveying real estate "should be recorded within six months from its date in the county or city in which the land affected by such deed lies".[24] A deed of trust conveying real property for the benefit of creditors must therefore be recorded in the county, or in the City of Baltimore, in which the land lies.

As to the personal property, Article 21, Section 53, provides that "[b]ills of sale shall be recorded in the county or city where the vendor or donor resides within twenty days from the date thereof". A deed for the benefit of creditors which conveys personal property has been held to be a bill of sale with a declaration of trust, and is governed by this Section.[25] If the deed conveys both real and personal property, it would now seem that it should be recorded in the county or counties, or in the City of Baltimore in which any land affected by it lies, with appropriate

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[20] Muhr's Sons v. Pinover, Garn., 67 Md. 480, 10 A. 289 (1887); Fowler v. Gray, 99 Md. 594, 58 A. 444 (1904); Darby v. Rouse, 75 Md. 26, 22 A. 1110 (1891).

[21] See Maughlin v. Tyler, 47 Md. 545 (1878); Md. Code (1951), Art. 73A, Sec. 9(3)(a).

[22] Miller v. Matthews & Kirkland, 87 Md. 464, 40 A. 176 (1898); BRUNE, MARYLAND CORPORATION LAW AND PRACTICE (Rev. ed., 1953), Sec. 318.

[23] Stiefel v. Barton, 73 Md. 408, 21 A. 63 (1891).

[24] Note also Md. Code (1951), Art. 21, Sec. 24, providing for late recording.

[25] Stiefel v. Barton, *supra*, n. 23.

cross-indexing in the chattel records as provided by the Code.[26] *Quaere:* if the grantor resides elsewhere than the county where the land is situated, must the deed of trust in this case be also recorded in the county of his residence to be effective as to personal property?

C. *The Bond.* Article 16, Section 275 provides that the trustee shall file a bond with the clerk of the Court.[27] This Section is self-explanatory. In view of the decision in *White v. Pittsburgh Nat. Bank,*[28] holding that where property is attached between the date of the recording of a deed of trust and the filing of the bond under the above section the attachment is valid, it is imperative to file the bond simultaneously with the recording of the deed of trust. Copies of the deed of trust and bond should be left with the clerk of Court at the time of the recording and filing of the originals, to be certified as true copies for filing as exhibits with the petition for assumption of jurisdiction, which will be next discussed.

D. *Petition for Assumption of Jurisdiction by Equity Court.* Upon the recording of the deed and the filing of the bond as above stated, title to the real and personal property of the assignor vests in the trustee. The practice is to then file a petition in the Circuit Court or Circuit Court No. 2 of Baltimore City, if the estate is being administered in the city, or on the equity side of the Circuit Court in the Counties, for the Court to assume jurisdiction of the administration of the trust created by the deed of trust. This petition, which is filed in the name of the trustee, and titled "Ex parte, In The Matter of the Trust Estate of (naming the

[26] Md. Code (1951), Art. 17, Sec. 63.

[27] (1951). This section provides:

"Every trustee to whom any estate, real, personal or mixed, shall be limited or conveyed for the benefit of creditors, or to be sold for any other purpose, except upon a contingency, shall file with the clerk of the Court in which the deed or instrument creating the trusts may be recorded, a bond in such penalty as the clerk may prescribe, being as nearly as can be ascertained double the amount of the whole trust estate, and with sureties to be approved by the clerk, conditioned for the faithful performance of the trusts reposed in such trustee, which bond shall be retained and recorded in the office of said clerk; and no title shall pass to any trustee as aforesaid, until such bond shall be filed and approved as aforesaid, and no sale made by any such trustee without such bond shall be valid or pass any title to such property or estate. If the trust estate consists of real property, or of real and personal property, situated partly in the county or city in which the grantor resides, and partly in one or more other counties, it shall be sufficient that a bond has been accepted and filed in the county of the grantor's residence; if the trust estate consists entirely of real estate in a county or counties other than of the residence of the grantor, it shall be sufficient that a bond has been accepted and filed in the county in which the deed has been recorded; . . ."

[28] 80 Md. 1, 30 A. 567 (1894).

debtor)", should recite the execution and recording of the deed of trust to the petitioner, the filing of the petitioner's approved bond as trustee, and the taking possession of the debtor's assets by the petitioner, where such is the fact. It should then ask the Court to pass an order assuming jurisdiction over the administration of the trust created under said deed. The certified copies of the deed and bond should be annexed to the petition as exhibits. Upon the filing of the petition and exhibits, the Court will pass an order assuming jurisdiction of the estate.

E. *Administration of the Estate.* Upon the signing of the order assuming jurisdiction, the trustee publishes a notice to creditors, giving them sixty days to file their claims against the estate. This is ordinarily the only official notice which creditors will receive of the making of the assignment, as there is no provision for the filing of a list of creditors, and the sending of a notice to them to file claims, as is provided in the Bankruptcy Act. The trustee who possesses a list of such creditors may sometimes write them, advising them to file their claim, or in an exceptional case, may secure an order of Court directing that this be done. No other notice than the publication is required, however. Whether the trustee contemplates a public or private sale of the assets of the estate, it will be advisable for him to petition the Court for the appointment of two appraisers to appraise the assets, both as a basis for determining the sufficiency of any private offers made for same, and as an aid in preparing the report of assets and liabilities which must be filed by the trustee.[29] The authority of the Court must first be obtained before a valid sale can be made.

The trustee will also proceed to collect all outstanding accounts receivable or debts due the estate, and generally take all such further steps as may be necessary to completely liquidate and convert the same into cash.[30] In the course of its administration, it may be necessary for him to have counsel appointed, which will be done upon proper

[29] Within 30 days in Baltimore City — Rules of Supreme Bench, 667.

[30] Trustee of a deed of trust for the benefit of creditors cannot set aside conveyances as being in fraud of creditors; Brown v. Deford & Co., 83 Md. 297, 34 A. 788 (1896); Gardner v. Gambrill, 86 Md. 658, 139 A. 318 (1898). Nor can such a trustee assert a claim to goods purchased by the debtor under a conditional sales contract which is unrecorded; Tatelbaum v. Pantex Mfg. Corp., 204 Md. 360, 104 A. 2d 813 (1956). That a trustee cannot set aside preferences given to creditors, see oral opinion of Judge Frank in In the Matter of the Trustee Estate of William J. Miller reported in *The Daily Record*, April 7, 1941. Under the Uniform Trust Receipts Act, the assignee for the benefit of creditors is treated as a "lien creditor" for purposes of that Act; Md. Code (1951), Art. 95½, Sec. 8(2)(b).

petition, setting out the need therefor. If the trustee is himself an attorney, and performs legal duties in addition to the usual duties as trustee, he may be allowed a fee in lieu of commissions to compensate him for his services, as both trustee and counsel.

The trustee should give prompt notice of his qualification as such to the District Director of Internal Revenue, as required by law.[31] This may be given upon official Form 56 — Notice to Commissioner of Internal Revenue of a fiduciary relationship, which may be obtained from the local Internal Revenue office. Upon giving this notice the trustee assumes the powers, rights, duties and privileges of the assignor in respect to the taxes imposed under the Internal Revenue laws.[32] He should thereafter make certain that any tax returns, Federal, State or local, which he may be required to file by law, are submitted by the due date, and that no outstanding tax liabilities are overlooked when making final distribution of the insolvent's estate. Failure to do so may subject him to personal liability for these taxes.[33] In this connection it is advisable to make written inquiry of the various taxing authorities as to unpaid taxes owing by the assignor, for the additional protection against oversight which it affords. Promptly

[31] I. R. C. 1954 §6036, 26 U. S. C. A. §6036 (1955):
"Notice of qualification as executor or receiver.
Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, and every executor (as defined in section 2203) shall give notice of his qualification as such to the Secretary or his delegate in such manner and at such time as may be required by regulations of the Secretary or his delegate. The Secretary or his delegate may by regulation provide such exemptions from the requirements of this section as to the Secretary or his delegate deems proper."

[32] *Ibid*, §6903:
"Notice of fiduciary relationship.
(a) Rights and obligations of fiduciary. — Upon notice to the Secretary or his delegate that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties and privileges of such other person in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of such other person), until notice is given that the fiduciary capacity has terminated.
(b) Manner of notice. — Notice under this section shall be given in accordance with regulations prescribed by the Secretary or his delegate."

[33] 31 U. S. C. A. §192 (1954):
"Liability of fiduciaries.
Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid."

upon the completion of the administration and distribution of the insolvent estate, the trustee should advise the District Director that the fiduciary relationship of which he had previously given formal notification had terminated. Otherwise, his liability as fiduciary may continue indefinitely.

F. *Examination of Debtor.* Article 16, Section 47, provides for the examination of the debtor, upon petition of two or more creditors.[34] This statute gives the creditors an opportunity for delving into the debtor's affairs to determine whether fraud, concealment or transfer of assets or other improper practices have been indulged in, and is a valuable adjunct to the State Court procedure.

G. *Auditor's Account.* The final step in the liquidation of the debtor's estate is ordinarily the stating of an auditor's account, based on the trustee's report of receipts and disbursements. The trustee in his report will charge himself with the amounts received from the sales of the various assets making up the estate, and from the collection of

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[34] (1951):

"Whenever any assignment is made for the benefit of creditors by any person, firm or corporation, and the Court assumes jurisdiction thereof, and whenever a receiver is appointed by any Court of equity for any insolvent firm or corporation, the Court, upon the petition of any two or more creditors, shall by order refer the cause to one of the standing commissioners or examiners of the Court, who shall, at the request of said creditors, fix a day for the holding of a hearing for the examination of said insolvent person, firm or corporation, and shall summon said insolvent individual, the members of the firm or the officers of the corporation, as the case may be, to be examined fully as to the condition and disposition of his, her, their or its assets both before and after the time of assumption of jurisdiction by the Court. The commissioner or examiner shall cause written notice to be sent to all the creditors of said person, firm or corporation at least ten days prior to the date of said examination. The commissioner or examiner may adjourn said hearing from time to time as he may think proper, and at any stage of the proceedings in said cause the Court may, in its discretion, make a further order that any other examination or testimony be taken by a commissioner or examiner designated therein. Said commissioner or examiner, when acting under this section, shall in addition have all the powers and duties imposed upon examiners by Section 311 of this Article, and any amendments thereto. After the hearing has been concluded, the commissioner or examiner shall put together the original depositions, with all vouchers, documents or other papers filed with him as evidence, in proper order and form, shall authenticate the same by his certificate and signature, and shall return the same, with the titling of the cause endorsed thereon, to the Clerk of the Court, without delay. He shall also return properly authenticated all other exhibits filed with him as evidence. At the hearing the person examined shall be required to answer all questions relative to property of any kind which he, his firm or corporation has acquired, possessed, owned, and disposed of within the period of three years immediately preceding the assumption of jurisdiction of the cause; provided, that said person shall not be required to answer questions which may incriminate him."

accounts receivable and other choses in action. He will credit himself with the various expenditures made by him, for all of which he should produce receipts and vouchers, and submit them to the auditor at the time of filing his report. The auditor then prepares his account, allowing first the expenses of administration of the estate, next the various claims and charges having priority by law, such as taxes,[35] exemptions, wages and rent in arrears not exceeding three months, allowed under Maryland law,[36] the balance of the estate being then distributed among general

[35] The matter of the priority of tax liens has assumed ever-increasing importance in recent years. While any comprehensive discussion of the question would be beyond the scope of this article, a few general observations may be helpful. Where the net assets available for distribution are insufficient to pay all creditors holding perfected liens, including those of the Federal, state and local governments, the principle of "first in time, first in right" is generally applied by the courts. United States v. City of Greenville, 118 F. (2d) 963 (4th Cir., 1941). It should be noted that the relative priority of the lien of the United States for unpaid taxes is always a federal question to be determined finally by the Federal courts. United States v. Acri, 348 U. S. 211 (1955). Since the state's characterization of its liens, while good for all state purposes, does not bind the Federal court in making its determination, recourse must be had to the decisions of these courts where questions of priority involve Federal tax liens.

The principal statutory provisions relating to liens for federal taxes are found in sections 6321 to 6325 inclusive of the Internal Revenue Code of 1954, [11 U. S. C. A. Secs. 6321-6325 (1955)]. These provide that the lien for the unpaid taxes shall arise at the time the assessment is made, but will not be valid against mortgagees, pledgees, purchasers, and judgment creditors until notice thereof has been filed in the office designated by the State or Territory in which the property subject to the lien is situated. In Maryland, the law covering registration of these liens, a part of the Uniform Federal Lien Registration Act, is found in Md. Code (1951), Art. 17, Sec. 12.

A full discussion of the subject of Federal tax liens is contained in a companion article by William F. Mosner in this issue of the MARYLAND LAW REVIEW titled: *The Nature and Scope of Federal Tax Liens With a Special Consideration of their Effect on Mortgage Foreclosures*, 17 Md. L. Rev. 1 (1957).

[36] Md. Code (1951), Art. 47, Sec. 15, set out in full, *supra*, n. 19 (as to wages, expenses, taxes, etc.). See also:

Art. 47, Sec. 16:

> "Whenever any person or corporation shall make an assignment for the benefit of his or its creditors, or shall be adjudicated insolvent, or shall be adjudicated bankrupt, or shall be dissolved as a corporation, or a receiver is appointed to take possession of his or its property or estate, in the distribution of the property or estate of such person or corporation, all the money owing from such person or corporation for rent of any real or leasehold property in this State due not more than three months, but not actually distrained for, before the execution of such assignment or the filing of the bill or petition for such receiver, dissolution or adjudication, shall constitute a lien on, and shall be paid in full out of, the distrainable property of such person or corporation, to the same extent but no further than if distress for said rent had been levied by the landlord before such execution or filing."

Art. 47, Sec. 17:

> "All monies due and owing for advancements of monies for freight made by one common carrier to other previous common carriers on

creditors who have filed their claims in proper form. If no exceptions are filed to the auditor's account within the given period, it is ratified and the funds distributed in accordance therewith by the trustee. The final ratification of the account, and distribution under same ordinarily complete the liquidation of the estate.[37]

V. Conclusion

The aforegoing is a summary of a form of proceeding which has proven simple and effective for a great many years in liquidating the estates of insolvent debtors. In particular cases, it possesses marked advantages over other available methods, such as bankruptcy and receivership. Since the choice of proceedings[38] is an extremely important one, it should obviously be made by debtors' counsel only after the most careful consideration of all relevant factors, legal as well as practical. Accordingly, an effort has been made in this article to point out some of the principal considerations entering into such selection, as well as to describe the procedure to be followed if, in the light of these considerations, the general assignment method of liquidation should be adopted.

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behalf of any consignor and/or consignee not more than three months anterior to the execution of such assignment, adjudication of insolvency or appointment of receiver, necessary in connection with the transportation of goods, wares and merchandise shall constitute a preferred claim and be paid in full after payment of any preferences heretofore provided for by Section 15 of this Article."

Cf. Art. 95½, Sec. 10 (Sec. 10 of the Uniform Trust Receipts Act), which was construed in In re Harpeth Motors, 135 F. Supp. 863 (D. C. M. D. Tenn., 1955) to create a lien.

[37] At the present time, an advisory sub-committee on Creditors' Rights for the Standing Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland has under consideration the drafting of proposed rules of procedure which would be applicable to general assignments for the benefit of creditors.

[38] For a recent article dealing with an insolvent debtor's choice of liquidating devices (among them general assignments for the benefit of creditors), see Krause, *Insolvent Debtor Adjustments Under Relevant State Court Statutes As Against Proceedings Under The Bankruptcy Act*, 12 The Business Lawyer 184 (1957).