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## INVOLUNTARY BANKRUPTCY—COOPERATIVE MARKETING ASSOCIATIONS

In 1931, a federal district court in California<sup>1</sup> held that an incorporated marketing cooperative was not amenable to involuntary bankruptcy proceedings and cited as directly deciding the issue an earlier decision by a federal district court in Indiana.<sup>2</sup> Although there has been no subsequent litigation of the question in the Ninth Circuit, post-1931 decisions in other circuits<sup>3</sup> have held marketing cooperatives subject to involuntary bankruptcy adjudication. This note will analyze the present law as it pertains to the amenability of these associations to involuntary bankruptcy.

### Who May Be Adjudged Bankrupt?

In initially determining who is susceptible to bankruptcy, the Bankruptcy Act<sup>4</sup> distinguishes between alleged bankrupts who initiate their own proceedings and those who are forced into bankruptcy proceedings by the petitions of their creditors. With respect to the former, subsection 4(a)<sup>5</sup> of the Act provides:

Any person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this title as a voluntary bankrupt.

Since "person," as defined by the Bankruptcy Act, extends to corporations as well as natural persons,<sup>6</sup> and since marketing associations are not otherwise specifically excluded from this subsection, it is clear that they are not prohibited from petitioning for voluntary bankruptcy.<sup>7</sup>

Liability to involuntary proceedings in bankruptcy is not so summarily determined. Subsection 4(b) of the Bankruptcy Act states:

Any natural person, except a wage earner or farmer, and any moneyed, business, or commercial corporation, except a building and loan association, a municipal, railroad, insurance, or banking corporation . . . may be adjudged an involuntary bankrupt . . .<sup>8</sup>

By definition marketing cooperatives are not within either the "natural person" category or within any of the specified exceptions to the "moneyed, business, or commercial corporation" category. Their position relative to involuntary bankruptcy consequently turns on whether

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<sup>1</sup> *In re Weeks Poultry Community, Inc.*, 51 F.2d 122 (S.D. Cal.).

<sup>2</sup> *In re Dairy Marketing Ass'n*, 8 F.2d 626 (D. Ind. 1925), noted in 74 U. PA. L. REV. 408 (1926).

<sup>3</sup> *Missco Homestead Ass'n v. United States*, 185 F.2d 280 (8th Cir. 1950); *First Wisconsin Nat'l Bank v. Wisconsin Co-operative Milk Pool*, 119 F.2d 999 (7th Cir.), cert. denied, 314 U.S. 655 (1941); *Schuster v. Ohio Farmers' Co-operative Milk Ass'n*, 61 F.2d 337 (6th Cir. 1932); *In re South Shore Co-operative Ass'n*, 4 F. Supp. 772 (W.D.N.Y. 1933).

<sup>4</sup> Ch. 541, 30 Stat. 544 (1898), as amended, 11 U.S.C. (1964).

<sup>5</sup> 11 U.S.C. § 22(a) (1964).

<sup>6</sup> 11 U.S.C. § 1(23) (1964).

<sup>7</sup> F. EVANS & E. STOKDYK, *THE LAW OF CO-OPERATIVE MARKETING* 229-30 (1937).

<sup>8</sup> 11 U.S.C. § 22(b) (1964).

or not they can be classified as "moneyed, business, or commercial corporation[s]." Inasmuch as this phrase is not defined by the Bankruptcy Act, the amenability of these associations to involuntary bankruptcy is directly dependent upon judicial interpretation.

### Moneyed, Business, or Commercial Corporation

*In re Dairy Marketing Association*,<sup>9</sup> the primary authority<sup>10</sup> exempting marketing cooperative associations from involuntary bankruptcy proceedings, interpreted the phrase "moneyed, business, or commercial corporation" to include "such corporations as were engaged in *enterprises for profit*, and did not intend to include . . . nonprofit cooperative marketing associations, none of which are conducted for profit to themselves or to their members as such."<sup>11</sup> The holding has two aspects: the first involves the adoption of the enterprise for profit test for determining a "moneyed, business, or commercial corporation," and the second involves the question of what factors are to be considered in the test's application.

Before examining these aspects, the anomalous financial character of a cooperative will be briefly considered, because the uncertainty of cooperatives being "moneyed, business, or commercial corporation[s]" stems from this characteristic.

### Nonprofit Character of a Cooperative

A cooperative is an organization that is owned by its members and controlled by them on a substantially equal basis. It furnishes to its members economic services, such as the marketing of their products, without entrepreneur or capital profit to itself.<sup>12</sup> Of importance to this discussion is the cooperative's nonprofit character. Whereas in the normal business corporation the excess of receipts over expenditures is subject to the control of management after it has accrued, and hence is clearly profit to the corporation, this excess in a cooperative by contract vests in its patrons<sup>13</sup> pro rata to the quantity of products marketed for each.<sup>14</sup> The cooperative is required to account to its members for the full net amount it receives for commodities delivered by the members to the cooperative.<sup>15</sup> This nonprofit characteristic is formally recognized in many states<sup>16</sup> by provisions in their marketing acts which provide substantially as follows:

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<sup>9</sup> 8 F.2d 626 (D. Ind. 1925).

<sup>10</sup> *In re Weeks Poultry Community, Inc.*, 51 F.2d 122, 123, the other case holding similarly, said that *In re Dairy Marketing Ass'n* "clearly decides the question."

<sup>11</sup> 8 F.2d at 628 (emphasis added).

<sup>12</sup> I. PACKEL, *THE LAW OF THE ORGANIZATION AND OPERATION OF COOPERATIVES* 3 (2d ed. 1947).

<sup>13</sup> "The members of a cooperative ordinarily stand in a three-fold relation to the cooperative: as members; as patrons; and as investors." Misculer, *Agricultural Cooperative Law*, 30 ROCKY MT. L. REV. 381, 383 (1958).

<sup>14</sup> L. HULBERT, *LEGAL PHASES OF FARMER COOPERATIVES* 1 (Farmer Cooperative Serv. Bull. No. 10, 1958).

<sup>15</sup> *Id.* at 131.

<sup>16</sup> *Id.* at 129.

Associations organized hereunder shall be deemed "nonprofit", inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.<sup>17</sup>

### "Enterprise for Profit" Test

The first aspect of the *In re Dairy Marketing Association* holding involves the construction given to the phrase "moneyed, business, or commercial corporation." The district court interpreted the phrase to include such organizations as were engaged in enterprises for profit.<sup>18</sup> This construction was in line with the interpretation given to the phrase by other courts in unrelated cases.<sup>19</sup> The phrase "moneyed, business, or commercial corporation," which was first used in the Bankruptcy Act of 1867,<sup>20</sup> omitted in the Act of 1898,<sup>21</sup> and returned by amendment thereto in 1910,<sup>22</sup> was generally held in the early decisions to include corporations organized for the "sake of gain"<sup>23</sup> or "pecuniary profit"<sup>24</sup> and to exclude charitable, religious or educational corporations.<sup>25</sup> By applying this "profit" criterion to cooperatives, the court<sup>26</sup> placed them with the latter corporations.

### State Classification Theory

The second aspect of the court's decision concerns the application of the "enterprise for profit" test. The court applied this test not to the actual characteristics of the association, but to the state's statutory classification of it. The character of a corporation, according to the court, had to be determined from the organization's articles of incorporation and the statutes authorizing its formation.<sup>27</sup> In accordance with this state classification theory, the court examined the Indiana Marketing Act<sup>28</sup> under which the cooperative was organized. On the basis of the nonprofit provisions<sup>29</sup> of the Act, the cooperative was held not to be a "moneyed, business, or commercial corporation" and thus was not amenable to involuntary bankruptcy.<sup>30</sup>

<sup>17</sup> *Id.* Similarly, CAL. AGRIC. CODE § 54033 provides: "Associations which are organized pursuant to this chapter are 'nonprofit,' since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers."

<sup>18</sup> 8 F.2d at 628.

<sup>19</sup> Cases cited notes 23-25 *infra*.

<sup>20</sup> Ch. 176, § 37, 14 Stat. 517.

<sup>21</sup> Ch. 541, § 4, 30 Stat. 544.

<sup>22</sup> Act of June 25, 1910, ch. 412, § 4, 36 Stat. 838.

<sup>23</sup> *In re R.L. Radke Co.*, 193 F. 735 (N.D. Cal. 1911); *Alabama & C.R.R. v. Jones*, 1 F. Cas. 275 (No. 126) (C.C.S.D. Ala. 1871); *Rankin v. Florida A. & G.C.R.R.*, 20 F. Cas. 274 (No. 11,567) (N.D. Fla. 1868).

<sup>24</sup> *Winter v. Iowa M. & N.P. Ry.*, 30 F. Cas. 329 (No. 17,890) (C.C.D. Iowa 1873).

<sup>25</sup> *Id.*; *Alabama & C.R.R. v. Jones*, 1 F. Cas. 275 (No. 126) (C.C.S.D. Ala. 1871); *Sweatt v. Boston H. & E.R.R.*, 23 F. Cas. 530 (No. 13,684) (C.C.D. Mass. 1871).

<sup>26</sup> *In re Dairy Marketing Ass'n*, 8 F.2d 626 (D. Ind. 1925).

<sup>27</sup> 8 F.2d at 628.

<sup>28</sup> Ch. 20, [1925] Ind. Acts 42-58.

<sup>29</sup> Ch. 20, § 2, [1925] Ind. Acts 42-58.

<sup>30</sup> 8 F.2d at 628.

## A New Standard

Although to date *In re Dairy Marketing Association* has not been expressly overruled, its present validity is open to serious question. It has been followed only in the case of *In re Weeks Poultry Community, Inc.*<sup>31</sup> Subsequent to this decision four other cases<sup>32</sup> (in four different circuits) have passed on the same question and all of them have held marketing cooperatives accountable to involuntary bankruptcy. Three<sup>33</sup> of these four decisions have looked beyond profit in determining whether or not cooperative marketing associations are "moneyed, business, or commercial." The pivotal case in this change was *Schuster v. Ohio Farmers' Cooperative Milk Association*.<sup>34</sup>

In *Schuster* the court specifically pointed to the fact that the Bankruptcy Act does not refer to corporations for profit.<sup>35</sup> Instead of profit, the court set forth the following standard:

[W]here the chief purpose of the corporation is to carry on trade or commerce in an established field, and to do this primarily for the financial benefit of those who have joined in its organization and the conduct of its affairs, there is but little room for doubt that the corporation is a "business or commercial" one within the intendment of the Bankruptcy Act.<sup>36</sup>

The theory of the court was that cooperatives should not be exempt from involuntary proceedings merely because there is a "difference of economic principle governing the distribution of wealth" from that of ordinary corporations.<sup>37</sup> To implement this reasoning, the court looked beyond the cooperative entity and focused its attention on the members thereof. Unlike eleemosynary corporations which are generally formed for philanthropic, humanitarian, or charitable reasons,<sup>38</sup> cooperatives are formed by farmers, because of the anticipated financial benefit they will derive from the organization in the marketing of their farm products.<sup>39</sup> Although the cooperatives themselves function essentially on a cost basis,<sup>40</sup> the court recognized that they nevertheless serve as vehicles for the financial advantage of

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<sup>31</sup> 51 F.2d 122 (S.D. Cal. 1931).

<sup>32</sup> Cases cited note 3 *supra*.

<sup>33</sup> First Wisconsin Nat'l Bank v. Wisconsin Co-operative Milk Pool, 119 F.2d 999 (7th Cir. 1941); *Schuster v. Ohio Farmers' Co-operative Milk Ass'n*, 61 F.2d 337 (6th Cir. 1932); *In re South Shore Co-operative Ass'n*, 4 F. Supp. 772 (W.D.N.Y. 1933).

<sup>34</sup> 61 F.2d 337 (6th Cir. 1932), noted in 46 HARV. L. REV. 326 (1933), 31 MICH. L. REV. 982 (1933), and 7 TUL. L. REV. 458 (1933).

<sup>35</sup> *Id.* at 338.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *In re Michigan Sanitarium & Benevolent Ass'n*, 20 F. Supp. 979, 982 (E.D. Mich. 1937).

<sup>39</sup> L. HULBERT, *supra* note 14, at 1.

<sup>40</sup> "The principle of doing business on a 'cost basis' involves these concepts: (1) that the contract between a properly organized cooperative and its patrons vests the excess between its receipts and expenditures during an accounting period in its patrons, and (2) that, accordingly, a cooperative, as a legal entity, cannot have entrepreneur profit as respects any excess which is covered by such contract." *Id.*

their members.<sup>41</sup> As such, they are distinguishable from charitable corporations.

The court's criterion for "moneyed, business, or commercial corporation[s]" did not rest solely on this element of financial benefit, however. The court elaborated:

[I]t is quite conceivable that a co-operative association might be organized to function without itself engaging in the conduct of any business. In such event it would doubtless not be amenable to the Bankruptcy Act.<sup>42</sup>

The additional element the court deemed essential was the organization's external purpose. If that purpose was to carry on trade or commerce in an established field, then it was a "moneyed, business or commercial corporation." In essence then, the court's standard consisted of two elements. First, a financial benefit had to pass to the organization's members; and second, the organization had to carry on trade or commerce in an established field.

Since the *Schuster* case there have been two cases<sup>43</sup> involving cooperatives that have relied upon the *Schuster* criterion. Being engaged in an enterprise for profit was explicitly dismissed as a test for determining corporate character by the first<sup>44</sup> of these cases.

If a "business" corporation . . . means a corporation organized for profit, the alleged bankrupt is not subject to the bankruptcy law. But the Bankruptcy Act says nothing about "profits" in this connection.<sup>45</sup>

Clearly, the court said, the association was a "business corporation in the sense that the word 'business' is ordinarily construed."<sup>46</sup> It then quoted with approval the test set forth in the *Schuster* case and held the marketing cooperative accountable to involuntary bankruptcy.<sup>47</sup>

The second case to follow *Schuster* was *First Wisconsin National Bank v. Wisconsin Co-operative Milk Pool*.<sup>48</sup> The case is of particular significance since it is the appellate court for the circuit in which *In re Dairy Marketing Association* was decided. On that basis the decision can be interpreted as implicitly overruling the latter case. It said:

There is nothing in the nature of a co-operative association which conducts business for the purpose of realizing profit for those with whom it does business to remove it from the Congressional definition. While such associations are to be encouraged as instrumentalities looking to aid of their patrons, they are not eleemosynary or charitable organizations. Rather they represent merely a banding together of producers for their common financial advancement.<sup>49</sup>

<sup>41</sup> 61 F.2d at 338.

<sup>42</sup> *Id.*

<sup>43</sup> *First Wisconsin Nat'l Bank v. Wisconsin Co-operative Milk Pool*, 119 F.2d 999 (7th Cir. 1941); *In re South Shore Co-operative Ass'n*, 4 F. Supp. 772 (W.D.N.Y. 1933).

<sup>44</sup> *In re South Shore Co-operative Ass'n*, 4 F. Supp. 772 (W.D.N.Y. 1933).

<sup>45</sup> *Id.* at 773.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> 119 F.2d 999 (7th Cir.), *cert. denied*, 314 U.S. 655, *noted in* 5 U. DET. L.J. 33 (1941), *rev'g* 35 F. Supp. 787 (E.D. Wis. 1940), *noted in* 39 MICH. L. REV. 1011 (1941).

<sup>49</sup> *Id.* at 1001-02 (emphasis added).

The court continued by advancing the *Schuster* criterion.<sup>50</sup> After the cooperative was adjudged subject to involuntary bankruptcy, certiorari was denied by the United States Supreme Court.<sup>51</sup>

In summary, these three cases have talked in terms of "financial benefit to the corporation's members" to distinguish the cooperatives from charitable organizations and to classify them with ordinary business corporations for purposes of the Bankruptcy Act. The courts in these cases have recognized that agricultural associations are essentially business entities, notwithstanding the fact that they function on a nonprofit basis. As in the case of other businesses, they operate in the open market by competitively processing and selling commodities. Moreover, they are organized for the same reasons as are other business enterprises, namely, for the financial advantage of their members.<sup>52</sup>

Furthermore, as stated by the Court of Appeals for the Seventh Circuit in the case of *First Wisconsin National Bank v. Wisconsin Co-operative Milk Pool*:

To hold a corporation amenable to bankruptcy is not in any wise to interfere with its activities as a useful association or to penalize it. The Bankruptcy Act is remedial legislation. Its excuse for existence lies in the underlying theory that in the absence of bankruptcy the diligent creditor may lay hold of all assets to the detriment of others. For the old legal maxim that, to the diligent belongs the reward, it has supplied a new one,—equality is equity.<sup>53</sup>

### Anomaly

*Missco Homestead Association v. United States*,<sup>54</sup> the latest case to hold a cooperative accountable to involuntary bankruptcy proceedings, is dissimilar to the preceding cases. In this instance the cooperative was organized with the guidance and support of the Department of Agriculture under the laws of Arkansas providing for the formation of benevolent associations. Its purpose was to rehabilitate and render self-supporting the families of its members who were tenant farmers and sharecroppers having low income. The court deemed this cooperative a "moneyed, business, or commercial corporation." Under the existing cases there were two means by which the court might have arrived at this result. The court, by applying the *Schuster* criterion, might have found that since the cooperative conferred a benefit on its members and was carrying on trade in an established field, it was a "moneyed, business, or commercial corporation." Or the court might have applied the "enterprise for profit" test of *In re Dairy Marketing Association* to the state's statutory classification. As Arkansas' benevolent association statutes<sup>55</sup> did not specifically declare the associations organized thereunder to be nonprofit, application of this test would have resulted in the cooperative being found an enterprise for profit. Instead of these alterna-

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<sup>50</sup> *Id.* at 1000.

<sup>51</sup> *Wisconsin Co-operative Milk Pool v. First Wisconsin Nat'l Bank*, 314 U.S. 655 (1941).

<sup>52</sup> L. HULBERT, *supra* note 14 at 1.

<sup>53</sup> 119 F.2d at 1002.

<sup>54</sup> 185 F.2d 280 (8th Cir. 1950), *aff'g* 86 F. Supp. 511 (E.D. Ark. 1949).

<sup>55</sup> POPE'S DIGEST OF ARK. STAT. §§ 2252-61 (1937).

tives, the court adopted the "enterprise for profit" test<sup>56</sup> and applied it to the cooperative's activities as well as to its state statutory classification.

A few cases hold that in determining whether a corporation is a member of the accepted class, the classification of the corporation by the state should be given predominant influence . . . .

But in the light of the decision<sup>57</sup> of the Supreme Court of the United States . . . this rule is questionable.

In determining whether a corporation is within the classification of a moneyed, business, or commercial corporation, it would seem the better rule to take into consideration the classification of the corporation by the state; the powers conferred upon it; and the character and extent of its main activities.<sup>58</sup>

By this means the court reached the conclusion that the cooperative was an enterprise for profit.<sup>59</sup> Yet, when the court went beyond the state statutes to the cooperative's actual character, it would seem that the court should have held the cooperative to be nonprofit. It does not appear that the cooperative deviated in any way from the normal cooperative procedure of distributing its net earnings back to its members each year, in proportion to the value of goods and services purchased by each.<sup>60</sup> As such, it had an actual financial nonprofit character.<sup>61</sup> The court's determination is a departure from the findings of all of the cases previously discussed. Neither the courts holding cooperatives immune to involuntary bankruptcy nor those holding them amenable thereto directly concluded that cooperatives are enterprises for profit. It is submitted that the right decision was reached by the wrong reasoning.

### Deemphasis of the State Classification Rule

*Missco* has not been the only decision to deemphasize the state classification rule. The Court of Appeals for the Seventh Circuit in *First National Bank v. Wisconsin Cooperative Milk Pool* said:

The power to determine whether one may be bankrupt . . . lies with Congress, and any state legislation interfering with the same must give way before that paramount authority . . . . Federal legislation . . . determines whether an interest or right created by local law is within the federal law. The latter must prevail no matter what name is given the interest or right by the local law.<sup>62</sup>

This statement was given in response to a district court's contention that Congress did not enumerate the types of nonprofit organizations which would be exempt from involuntary bankruptcy because it was the intention of Congress to permit the states to define what such nonprofit organizations might be.<sup>63</sup> The United States Supreme Court itself weakened the state classification rule when, in an unrelated case, it said, "[I]n the interpretation and application of the

<sup>56</sup> 185 F.2d at 282.

<sup>57</sup> *Wragg v. Federal Land Bank*, 317 U.S. 325 (1943).

<sup>58</sup> 185 F.2d at 282 (emphasis added).

<sup>59</sup> *Id.*

<sup>60</sup> 86 F. Supp. 511, 515 (E.D. Ark. 1949).

<sup>61</sup> Text accompanying notes 12-15 *supra*.

<sup>62</sup> *First Wisconsin Nat'l Bank v. Wisconsin Co-operative Milk Pool*, 119 F.2d 999, 1002 (7th Cir. 1941).

<sup>63</sup> *In re Wisconsin Co-operative Milk Pool*, 35 F. Supp. 787, 789 (E.D. Wis. 1940).

Bankruptcy Act as in the case of other federal statutes, federal not local law applies."<sup>64</sup> The Court went on to say that it is for the bankruptcy court to determine, by reference to the bankruptcy statutes, what rights created by state law are within the jurisdiction of the bankruptcy court.<sup>65</sup> In essence, the trend seems to indicate that the bankruptcy courts do not have to constrain their judgments to conform with the state legislative classifications of corporations.

It should be noted, however, that the state classification rule might still be useful in finding that marketing cooperatives are amenable to involuntary bankruptcy. By applying the *Schuster* standard<sup>66</sup> instead of the "enterprise for profit" test to state marketing statutes declaring cooperatives to be nonprofit, the cooperatives can be held amenable to involuntary bankruptcy. In short, that portion of the statute which declares that these associations are organized to "make a profit . . . for their members as producers"<sup>67</sup> harmonizes with the "financial benefit to its members" element of the *Schuster* standard. From this it can be deduced that the associations are "moneyed, business, or commercial corporation[s]" and as such, are amenable to involuntary bankruptcy.

### Congressional Intent

It seems reasonably clear that including cooperatives within the provisions of involuntary bankruptcy is not contrary to the intent of Congress. Where Congress has wanted to exempt or include these instrumentalities from various statutes it has done so expressly. For example, it exempted them from stamp taxes in the War Revenue Act of 1898,<sup>68</sup> from certain corporate taxes in the Corporation Tax Statute of 1909,<sup>69</sup> and from income taxes in the Income Tax Statute of 1913.<sup>70</sup> By a 1921 amendment<sup>71</sup> to the War Finance Corporation Act of 1918,<sup>72</sup> cooperative associations were allowed to receive advances from the Corporation for certain agricultural purposes, and by a 1923 amendment<sup>73</sup> to the Federal Reserve Act,<sup>74</sup> specific provisions were made for discounting negotiable instruments of cooperative marketing associations. Under the Agricultural Marketing Act of 1929,<sup>75</sup> cooperatives were able to borrow money from a board created by the Act. These examples are not intended to be inclusive but are meant to illustrate positive action on the part of Congress when it has desired to give cooperatives a special status.

Furthermore, in 1938, when Congress revised the Bankruptcy Act,<sup>76</sup> including subsection 4(b),<sup>77</sup> it did not specifically exempt co-

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<sup>64</sup> *Wragg v. Federal Land Bank*, 317 U.S. 325, 328 (1943).

<sup>65</sup> *Id.*

<sup>66</sup> Text accompanying notes 42-43 *supra*.

<sup>67</sup> Note 17 *supra* and accompanying text.

<sup>68</sup> Ch. 448, § 25, 30 Stat. 461.

<sup>69</sup> Ch. 6, § 38, 36 Stat. 112.

<sup>70</sup> Ch. 16, § G(a), 38 Stat. 172.

<sup>71</sup> Act of Aug. 24, 1921, ch. 80, § 3, 42 Stat. 181, 182.

<sup>72</sup> Ch. 45, 40 Stat. 506.

<sup>73</sup> Act of March 4, 1923, ch. 252, § 404, 42 Stat. 1479.

<sup>74</sup> Ch. 6, 38 Stat. 251 (1913).

<sup>75</sup> Ch. 24, 46 Stat. 11.

<sup>76</sup> Ch. 575, 52 Stat. 840.

<sup>77</sup> 11 U.S.C. § 22(b) (1964).

operatives from involuntary bankruptcy although the cases of *In re South Shore Cooperative Association* and *Schuster v. Ohio Farmers' Cooperative Milk Association* had previously held these associations liable to involuntary bankruptcy. It must be presumed that Congress approved of this judicial construction, particularly since the court in the *Schuster* case specifically commented<sup>78</sup> that congressional failure to exclude cooperatives from the Act was indicative of congressional intent to make them amenable to the Act.

### Conclusion

From the foregoing it is apparent that, by the weight of authority, cooperative marketing associations are amenable to involuntary proceedings in bankruptcy. Whereas two district courts<sup>79</sup> have exempted these cooperatives from the proceedings, one district court<sup>80</sup> and three appellate courts<sup>81</sup> have held them subject thereto. Moreover, one of the district court decisions<sup>82</sup> exempting cooperatives was implicitly overruled by its circuit court.<sup>83</sup> All the decisions holding cooperatives subject to the involuntary provisions of the Bankruptcy Act were decided later in point of time.

It is submitted that there is no convincing reason why marketing cooperatives should be immune to involuntary bankruptcy. First, the organizations are by no means in an inferior economic position to other marketing instrumentalities. Presently, about one-quarter of all United States farm products are handled by these cooperatives at one or more stages in their progress from farm to consumer table.<sup>84</sup> Second, as in the case of other business instrumentalities, these associations operate primarily for the financial benefit of their own members, rather than for philanthropic or charitable purposes.

In summary, a marketing association is just another means of doing business, and as such, should be subject to its creditors equitably if it fails.

Kenneth F. Johnson\*

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<sup>78</sup> 61 F.2d at 338.

<sup>79</sup> *In re Weeks Poultry Community, Inc.*, 51 F.2d 122 (S.D. Cal. 1931); *In re Dairy Marketing Ass'n*, 8 F.2d 626 (D. Ind. 1925).

<sup>80</sup> *In re South Shore Co-operative Ass'n*, 4 F. Supp. 772 (W.D.N.Y. 1933).

<sup>81</sup> *Missco Homestead Ass'n v. United States*, 185 F.2d 280 (8th Cir. 1950); *First Wisconsin Nat'l Bank v. Wisconsin Co-operative Milk Pool*, 119 F.2d 999 (7th Cir. 1941); *Schuster v. Ohio Farmers' Co-operative Milk Ass'n*, 61 F.2d 337 (6th Cir. 1932).

<sup>82</sup> *In re Dairy Marketing Ass'n*, 8 F.2d 626 (D. Ind. 1925).

<sup>83</sup> *First Wisconsin Nat'l Bank v. Wisconsin Co-operative Milk Pool*, 119 F.2d 999 (7th Cir. 1941); see text accompanying notes 48-49 *supra*.

<sup>84</sup> R. FREEMAN & E. VAN HORN, *AGRICULTURAL MARKETING, VITAL LINK BETWEEN FARMER AND CONSUMER* 15 (U.S. Dep't of Agriculture Marketing Bull. 36, rev. 1966).

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