What Kind of Bankruptcy Legislation for Farmers?

by

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WHAT KIND OF BANKRUPTCY LEGISLATION FOR FARMERS?*

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I. INTRODUCTION

An adequate farm bankruptcy law could make a fundamental contribution to the welfare and security of individual farmers and agriculture as a whole. The need for passing special legislation for farmers in financial distress, when there is time for clear thinking, is usually admitted. However, consideration of such a law has been pushed into the background because of the overwhelming interest in price support legislation.

Although there have been numerous bills introduced in Congress during the past decade dealing with the problem of farmer bankruptcies, to date none has been passed. In general, these bills have been of two kinds: (1) a "debt adjustment" type bill and (2) a "moratorium" type bill.

A few years ago, the United States Senate and some members of the legal profession[1] strongly endorsed a "debt adjustment" type bill drafted by the National Bankruptcy Conference.[2] This bill, hereafter called the "N.B.C. bill," would have replaced section 75 of the bankruptcy laws (commonly called the Frazier-Lemke Act which expired in 1949)[3] with a permanent chapter XVI of the United States bankruptcy laws. The N.B.C. bill—like section 75—permitted a complete debt adjustment through a composition or redemption, and it has been introduced repeatedly.

Section 75 has been and still is the object of sharp controversies, and the views of those who opposed section 75, and

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1 Comment, 56 Yale L.J. 982 (1947). For unpublished critical comments of the bill, see my statement submitted to Subcommittee No. 2 of the House Committee on the Judiciary, Hearings on S. 25; H.R. 447; H.R. 1068; and H.R. 3694, Uniform System of Bankruptcy, Washington, D.C., May 21, 1954, Hearings Before the Subcommittee on the Study of Uniform System of Bankruptcy of the House Committee on the Judiciary, 83d Cong., 2d Sess., at 25 (1954).

2 For a brief history of this draft, see Kruse, Re-establishing the Availability of Farmer Debtor Relief under the Bankruptcy Act, 39 Minn. L. Rev. 735 (1955).

3 Actually only subsection (s) of section 75, 48 Stat. 1289 (1934), 11 U.S.C. § 203 (s) (1940) is properly called the Frazier-Lemke Act.

similar legislation, e.g., the N.B.C. bill, have recently found concrete expression in an alternative bill of the "moratorium type."[4] This bill, which would also add a permanent chapter XVI to existing bankruptcy laws, provides in principle for only a federal judicial moratorium. The congressional history of these bills since 1949 is briefly outlined in the following table:

	Type of bill introduced in Congress	
Congress	Debt adjustment bills	Moratorium bills
81st	S. 938: passed by Senate	
82d	S. 25: put aside in favor of S. 25A by Senate Sub-Committee	S. 25A: passed by Senate
83d	H.R. 1068: see next column None in Senate	S. 25 : passed by Senate as in previous year, with minor amendments H.R. 447 and 3584: hearings held, (also on H.R. 1068) No action taken
84th	(S. 316) : see text	S. 689: passed by Senate July 12, 1955 H.R. 670: no action to date

Note: Except for minor details, the bills in each column are identical. House bills mentioned only for the past two years.

Permanent debt adjustment legislation has been abandoned for the time being. But temporary legislation was re-introduced recently by Senator Watkins with S. 316 which proposes that subsection (c) of section 75 be amended by striking out the date

[4] This legislation was first drafted by the National Farm Loan Association of California, Nevada, Arizona and Utah, and endorsed by leading insurance companies and the American Bankers Association. See L. Ferguson. Shall We Have a Permanent Frazier Lemke Law?, a pamphlet distributed by the Equitable Life Assurance Society of The United States, Jan. 20, 1950 and Parkinson: Frazier Lemke Rides Again, Bankers Monthly (Dec. 1951). Only the American Bankers Association repeatedly maintained that existing bankruptcy laws (particularly chapter XII) are fully adequate to protect farmers; but that if some legislation was to be passed, it would endorse the moratorium bill. See also, Hearings on S. 25 Before a Sub-Committee of the Senate Committee on the Judiciary, 82d Cong., 1st and 2d Sess. (June 19 and July 17, 1951, and February 7, 1952).

"March 1, 1949" and the date "March 1, 1956" be inserted in lieu thereof.[5] This turn of events makes a discussion of section 75 and other farmer debtor relief bills all the more timely.

II. THE VULNERABILITY OF AGRICULTURE AND OBJECTIVES OF FARMER DEBTOR RELIEF LEGISLATION

In contrast to the business sector, agriculture has gone through more years of economic hardship than of economic prosperity during the last thirty-five years. Even in recent years, slight downward trends in general economic conditions—such as in 1949 and 1953—resulted in noticeable agricultural declines, and agriculture can be expected to remain as vulnerable to adverse economic fluctuations as in the past.

In some areas farmers face additional risks and uncertainties. In the plains states, for instance, relatively normal years are succeeded by years with low rainfall, and yields are reduced to next to nothing. Dry years cannot be predicted. Studies have indicated no regular pattern in the succession of wet and dry years. Other areas with highly specialized agriculture—e.g., California's citrus industry—are also subject to weather risks. Hardships caused by unfavorable weather and economic conditions, or both, have been as demoralizing to agricultural communities and individuals as prolonged unemployment has been to industrial workers and their families. A dramatic example of the hopeless situation in which many farmers found themselves was cited in one North Dakota case, in which the judge stated:

> This case is one of a large group involving much the same situation insofar as the facts are concerned. . . . The only livestock the farmer owns, according to his testimony, is 3 horses, 5 cows, and 3 young stock. All stock is mortgaged. Even assuming the increase therefrom was not covered by mortgage, it is readily apparent that the proceeds to be derived from the sale of increase would be negligible. . . . The record indicates that he has had no paying crop since 1928. At present the debtor has no seed to plant a crop. . . . At the first meeting of creditors, he was asked this question: "Have you got enough equipment and help so that you could farm all of the plow land on your place?" Answer: "Well, no, I haven't. I farmed until I am just about no good myself and machinery and horses and everything is shot." He testified further that he wanted to be sure there was plenty of rain before he would put in a kernel of seed. As to his buildings he said: "The sun and the wind are just beating them up so we can look through them any place. . . I have lived in sand storms for years. Lots of days we had to

[5] S. 689, 84th Cong., 1st Sess. (1955), was passed in the Senate on July 12, 1955, without any discussion, and no mention was made on that day of S. 316, 84th Cong., 1st Sess. (1955).

> take the family and drive away." He says that he . . . worked three months on W.P.A. last fall and has been receiving some relief. He testified that unless his debts were adjusted enough he could not make good.[6]

Farm foreclosures and bankruptcies which characterize agricultural depressions have serious social as well as economic implications. They force farmers off their farms and homes; or they result in a change of status, such as owners becoming tenants or tenants becoming hired farm laborers. In the thirties, large scale farm foreclosures and bankruptcies were accompanied by social unrest, difficulties of law enforcement, and breakdown of the credit structure. Collective action by farmers which amounted to an interference with the enforcement of creditors' rights was not even criticized by the public.

When industrial activity is high during periods of agricultural depressions, farmers who lose their farms find non-agricultural employment elsewhere if they have the necessary training, skill, and adaptability. But when there is widespread non-agricultural unemployment, farmers who are displaced from their farms swell the ranks of the unemployed.

The relative prosperity of farmers in recent years and the element of stability that has been introduced with price support programs should not be used as arguments against farmer-debtor relief legislation. Today, farm income is relatively high, real estate indebtedness low. Mortgages are mostly on a long-term basis, the rate of interest relatively low. In case of distress several government agencies now provide for agricultural credit or some financial support on a limited scale. These factors differentiate the 1950s from the 1920s and 1930s and seem to make a recurrence of a disastrous agricultural depression more unlikely.

However, new elements, which modern farming methods and the change of farm life have introduced into the agricultural economy, could, under given circumstances, seriously threaten the present favorable situation. Today, operating cash expenses and capital expenses on equipment and buildings are very high. On farms operated exclusively or primarily by family labor, annual cash needs of three to fifteen thousand dollars (depending on the type of farming) are not unusual. If farm prices or incomes are low, these expenses could result in a very rapidly

[6] In re Anderson, 22 F. Supp. 928 (D.N.D. 1938). In recent interviews with farmers who have gone through section 75 procedures, it has again become evident that the depression of the thirties has left a clear and detailed imprint on the memories of those who struggled through it.

rising, potentially dangerous indebtedness. Most farmers cannot accumulate reserves sufficiently large to overcome a prolonged period of distress without outside assistance. In recent interviews with farmers, bankers, and others, there was widespread conviction that two consecutive years of drastically lower farm incomes would seriously threaten many farms. Under these circumstances, farmers may even find it difficult to borrow funds, on a large scale, from local or national credit institutions.

Price support programs cannot prevent individual farmers from falling into financial distress. Price supports depend on congressional appropriations, and mounting surpluses exert ever-increasing pressure on Congress to set support prices at as low a level as is consistent with the stated support policy in order to minimize government expenditures. Also, price supports do not affect all crops or livestock. They are of no assistance when farm production and incomes decline because of unfavorable weather. Thus, it should be clear that farmers are not now immune to financial distress on a national or regional scale.

Therefore, the objectives of farmer-debtor relief are: (a) to prevent farm foreclosures and farm bankruptcies in the event of nation-wide, regional, or local distress; (b) to keep individual farmers on their farms and homes; and (c) to preserve for individual farmers their status as owners or tenants.

The objectives of this legislation cannot be realized without a compromise between the interests of individual farmers, of the lenders, and of society as a whole. Legislation which permits farmers to keep their farms through moratoria or by altering their long-term or short-term, secured or unsecured debts cannot fail to affect creditors deeply. To prevent creditors from foreclosing on a mortgage cuts deeply into their right to enforce their claims. *A careful balance must therefore be struck between preserving our agricultural economy and society on one side and the credit structure on the other; therefore, no one-sided approach can result in such a balance.*[7]

It is perhaps not superfluous to point out that the "interests of creditors" are not necessarily identical. Some private lenders and some large credit institutions, such as insurance companies which consider farm real estate loans as a long-term investment, could withstand a farm moratorium or even a debt adjustment

[7] The Frazier-Lemke Act has been accused of being socialistic. Nothing could be more erroneous. The purpose of section 75 was to preserve the farm (private property) to the individual farmer and thus to maintain and strengthen the private ownership pattern.

with relative ease. In this connection it is noteworthy that United States life insurance companies have only a relatively small proportion of their mortgages in farms (8 percent in 1953).[8] On the other hand, local banks are primarily interested in liquidity. A moratorium or debt adjustment would affect them more seriously. Small private lenders—who incidentally now hold a high proportion of all farm mortgages—often depend on interest rates from loans for their livelihood. These factors complicate a solution to the problem.

III. A STUDY OF THE FRAZIER-LEMKE ACT IN ACTION

Was section 75 successful in effectuating "a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. . .?"[9] A recent study on the impact and effectiveness of the Frazier-Lemke Act shows that, prima facie, section 75 was not effective legislation, particularly during its first five or six years of operation.[10] However, an examination of the circumstances under which the law operated shows that the failure of the law to be more successfully applied was due to causes not necessarily inherent in the law itself, nor in the ends which it attempted to achieve.

Section 75 failed to halt the tide of farm foreclosures during the thirties.[11] For example, in South Dakota alone, there were approximately 20,000 foreclosures between 1933 and 1949, but only 251 section 75 cases were recorded in the state during that period. The ratio between foreclosures and section 75 cases was equally low in other states, except North Dakota where 2,651 petitions were filed. The following table shows the approximate number of foreclosure sales in the Dakotas between 1933-38 and 1939-49:

[8] Life Insurance Fact Book 76 (1955).

[9] Wright v. Union Central Life Insurance, 311 U.S. 273 (1940).

[10] This study has not yet been completed. Tentative conclusions have been published: Munger, A Preliminary Study of Farmer Bankruptcy Experiences in the Dakotas, 1928-1952, Agri. Econ. Pamphlet 61, S.D. State College, Brookings, S.D. (Mar. 1955). This study, made possible through the assistance of the USDA, is based on a detailed analysis of federal court records, county foreclosure and real estate records, and personal interviews of individuals connected with the operation of section 75 in various capacities in several plains states. Some problems raised by section 75 may, however, never be fully answered because of the difficulties inherent in such a historical analysis.

[11] Thousands of farmers also lost their farms by voluntarily transferring title to their creditors, thus making foreclosure unnecessary.

Period	North Dakota	South Dakota
1933-38	9,217*	15,887
1939-49	7,506	3,769
Total	16,723	19,656

* 1934-38 as 1933 data was not available.

The low number of section 75 petitions does not necessarily indicate that farmers had no intention of making use of the act.[12] Immediately after the enactment of section 75 and again after the law was declared constitutional in 1937, the number of petitions by distressed farmers increased rapidly,[13] so that the awareness of farmers as to the potential assistance which section 75 promised them can be taken for granted.[14]

The law seems even less effective if one considers the small number of cases in which farmers apparently obtained some direct relief—through composition, extension, or a successful redemption procedure—and the large number of cases which were dismissed by the courts apparently without giving the petitioners any kind of relief. A petition can be deemed successful if, as a result of the action, the farmer succeeds in retaining his farm.[15] The following two tables show the general disposition of *all* section 75 cases in the Dakotas, and the outcome of the petitions

[12] An analysis of bankruptcy cases by type of farming areas shows that the number of section 75 cases per 1,000 farms was smaller in the very high risk areas of the Dakotas than in the less risky, more diversified farm communities where the drought was less severe. The explanation is that many farmers in the highest risk areas simply abandoned their farms and homes because they had no resources left and no income from their farms.

[13] In North Dakota, where the drought lasted until 1942, the highest number of cases was recorded in 1937 and 1942.

[14] Claims have been made that section 75 was used by "unscrupulous" farmers for the purpose of "taking advantage" of their creditors; or that only "dishonest" farmers were resorting to it. In interviews with bankers and other creditors, these claims have not been confirmed. Besides the obvious fact that laws are passed so that people can use them, section 75 was apparently used by farmers in the majority of instances with the honest intention of keeping their farms and homes. As a corollary, the fact that a farmer had applied for relief under section 75 had little or no adverse effect on his credit rating. One banker specifically mentioned several "good" farmers who had used the Frazier-Lemke Act and were still obtaining credit from him at this time.

[15] This is disclosed by an analysis of federal court records and county deed (including foreclosure) records.

for *six sample counties* where section 75 cases were studied in detail.[16]

Period	Total number of cases*		Dismissed cases		Discharged cases	
	North Dakota	South Dakota	North Dakota	South Dakota	North Dakota	South Dakota
1933-38	1,114	226	1,036	210	78	16
1939-49	1,537	25	763	13	774	12
Total	2,651	251	1,799	223	852	28

* Reopened cases not included.

Period	Dismissed cases						Discharged cases					
	Farmers stayed on farm		Farmers lost farm		Uncertain		Farmers stayed on farm		Farmers lost farm		Uncertain	
	N.D.	S.D.	N.D.	S.D.	N.D.	S.D.	N.D.	S.D.	N.D.	S.D.	N.D.	S.D.
1933-38	3	10	12	30	3	8	—	—	—	5	1	1
1939-49	21	1	12	1	2	—	82	—	5	—	17	—
Total	24	11	24	31	5	8	82	—	5	5	18	1

Note: Among the "uncertain" cases are those involving tenants. One South Dakota case was dismissed because the petitioner was not a farmer. In some dismissed cases, the farmers were granted a delay but lost their farms anyway. In a few dismissed cases where farmers retained their farms, it could not be determined whether the petition was or was not the reason for the success.

[16] For reasons explained in the text below, the data are presented separately for 1933-38 and 1939-49 and were classified by disposition (i.e., dismissal or discharge). Whether a "dismissal" of a section 75 petition will result in relief more frequently than a "discharge" cannot be stated without looking at the records of each individual case. Section 75 provides that petitions are to be dismissed in a number of circumstances, such as where a voluntary composition or extension agreement has been reached under court control. In some cases which were studied an agreement may have been reached between the parties outside of court and the cases were dismissed because of lack of further action by the petitioners. Thus in some dismissal cases relief was obtained by farmers. Particularly North Dakota cases were dismissed in later years upon request of the conciliation commissioners because agreements were reached. Incidentally, this resulted in a relatively rapid disposal of the cases.

However in earlier years, as shown in the tables, petitioners obtained little relief in dismissal cases and the large proportion of these cases is one indication of the difficulties which farmers faced under section 75. In later years the proportion of "discharged" cases became much larger, and it can be assumed that in nearly all instances the farmers obtained the relief provided by the act.

It should be observed that the data for South Dakota reflects more correctly the situation in the nation as a whole than the North Dakota data, for reasons explained below.

A. Reasons for Failure

Several factors contributed singly or in combination to the apparent failure of the law.

1. Even after the law was enacted, a large number of foreclosures had already been initiated and completed (or nearly completed); therefore, section 75 was of no assistance to most of the foreclosed farmers.

2. The act was poorly written (as acknowledged even by its defenders) and judges, conciliation commissioners, and others had difficulty in interpreting or applying it. For instance, some of the earlier cases which were studied were handled like regular bankruptcy cases, even though they were begun as section 75 procedures, the assets being placed in the hands of a trustee or with the appointment of a referee, the assets being disposed of like in regular bankruptcy and the petitioners being discharged.

3. The lower courts were hostile to the legislation. *This was probably one of the most important factors that discouraged farmers from petitioning under the act.* The unsympathetic attitude of the courts became rapidly known in farm communities. Many of the arguments used to justify a refusal to grant relief to petitioning farmers were accepted by the courts in order to assist the creditors more than the farmers. These arguments were often developed in cases which served as precedents for a large number of denials of subsequent petitions. The difficulties which farmers in distress encountered when resorting to section 75, while sometimes acknowledged, have never been sufficiently appreciated and appraised.[17]

The constitutionality of the act was questioned promptly in a large number of cases. It was not upheld until 1937.[18] For

[17] See, however, the excellent article, Letzler, Bankruptcy Reorganization for Farmers, 40 Col. L. Rev. 1133 (1940).

[18] Wright v. Vinton Branch Mountain Trust Bank, 300 U.S. 400 (1937). In this connection, it is interesting to note that opponents of section 75 still continue to refer to this act in a manner which would leave doubts as to its constitutionality. Collier, Bankruptcy Manual § 75.00, 1057 (2d ed. 1954) states: "Despite the hardships it imposes upon creditors, § 75s has been held constitutional"; and 5 Collier, Bankruptcy para. 75.03, 124 (1945) declares: ". . . *as a general proposition . . . section 75 is well within the bankruptcy power and . . . its validity is now firmly established.*" (Italics Supplied)

several years the legislation was therefore practically useless. After 1937, other reasons for dismissal were proferred by the courts. In the Dakotas, just as elsewhere, cases were dismissed because of "lack of good faith"; and lack of resources on the part of the farmer at the time of his petition was held to be a lack of good faith in applying for relief. A typical example of the hostile attitude of a court, in a typical farm community, can be found in a Brown County, South Dakota case.[19] There the court, while holding that the order adjudicating debtor a bankrupt upon his said amendment petition was erroneous and without authority of law and improvidently entered, said, in dismissing the case:

> . . . . that the object and intention of the debtor in submitting said proposal was to hold possession of all his property as long as he might do so and use and enjoy the same and keep it away from his secured creditors without any reasonable prospect of liquidating his debts or of financial rehabilitation; and the debtor hoped and intended thereby to prevent secured and preferred creditors from pursuing their legal remedies and to delay and defraud said creditors and use up and exhaust their property.
>
> That said debtor . . . omitted . . . to offer to his creditors a proposal for compromise and extension which included an equitable and feasible method of liquidation for secured creditors. . . and omitted to make in good faith any offer or proposal of compromise or extension complying with the requirements of the Bankruptcy Act.

This decision seems to be in obvious contradiction not only to previous Supreme Court rulings but also to the text of section 75. The records of the case also disclose that the petitioner had in fact made a proposal and that it had been rejected by the creditors.[20] The case is astounding since section 75(s) specifically provided that the petitioner "may amend his (original) petition asking to be adjudged a bankrupt."

[19] This order was made in the case of a Brown County (South Dakota) farm widow and the case was dismissed in March 1939. In re Alatalo, 26 F. Supp. 276 (D.S.D. 1939). Henceforth, twenty-three other petitions from the same county were rejected on the same grounds at the same time. For further details, see Munger, op. cit. supra note 10, at 50, 58, 83.

[20] For the text of this proposal, see Munger, op. cit. supra note 10, at 83-84. To this point, Collier. Bankruptcy Manual, 1056, para. 75.00, 1057 (2d ed. 1954) comments as follows: ". . . it may fairly be said that in the vast majority of cases, the debtor's proceeding under those subdivisions [§ 75(a-r)] has been instituted merely to provide a steppingstone from which to reach the desired three-year moratorium under subdivision(s). In substance, the debtor needs only to go through the motions of seeking to effect a composition or extension. . . ." In the debt-adjustment bill, the composition or extension proposal does not precede the moratorium, as in section 75, and therefore is given much more weight.

In interpreting the law consistently in favor of the creditors and not the petitioners, the courts did not attempt to carry out the intent of Congress. The burden of reversing unfavorable decisions rested primarily on the debtors.[21]

Incidentally, in several early Dakota cases, the real estate of the farmer who had petitioned under section 75 was declared burdensome. As a result, the real estate was disposed of and the farmer lost his farm. Whether this was a method by which the provisions of the law were evaded cannot be stated. But the point bears keeping in mind when future legislation is being discussed. Obviously any method by which the farm could be taken out of the procedure altogether—when the object of the procedure is to save the farm for the farmer—would be contrary to the intent of the law.

4. The adamant attitude of creditors was often a serious handicap. Though the petitioners frequently made proposals to the creditors for a composition which seemed very favorable, at that time and in the light of the subsequent developments (such as prices at which creditors who had foreclosed resold the property ten or twelve years later), their proposals were rejected and the cases dismissed. In some instances the petitioner even had firm commitments from the Federal Land Bank for refinancing purposes.

5. Since farm credit was severely limited, many farmers apparently felt that it was useless to petition under section 75 unless they could also obtain some funds at the same or a later time for the purpose of redemption. As one farmer put it when

[21] In 1939, the United States Supreme Court ruled as follows: "The subsections of section 75 which regulate the procedure in relation to the effort of a farmer-debtor to obtain a composition or extension contain no provision for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor. Nor is there anything in these sub-sections which warrants the imputation of lack of good faith to a farmer-debtor because of that plight. *The plain purpose of section 75 was to afford relief to such debtors who found themselves in economic distress, however severe, by giving them the chance to seek an agreement with their creditors and, failing this, to ask for the other relief afforded by subsection (s).* The farmer-debtor may offer to pay what he can . . . and *he is not to be charged with bad faith in taking the course for which the statute expressly provides.*" (Italics supplied) John Hancock Mutual Life Insurance Company v. Bartels, 308 U.S. 180 (1939). Section 926, S. 689, 84th Cong., 1st Sess. (1955), of the moratorium bill and section 927, H.R. 1068, 83d Cong., 1st Sess. (1953) of the debt adjustment bill now provide that a farmer has the right to relief even where his financial position appears hopeless at the time of the petition.

recently interviewed: "Without money, you cannot refinance." Therefore, the creation of additional funds of credit for petitioning farmers should accompany farmer debtor relief legislation if farmers are to be in a position to take full advantage of the law.[22] The more serious the depression, the greater the need for such additional funds for refinancing purposes.[23]

6. Several persons interviewed indicated either that it had been difficult for them to find an attorney to represent them in a section 75 proceeding, or that those that were representing farmers in such cases—such as conciliation commissioners—encountered difficulties in their professional activities and that their professional reputation was affected adversely.

Incidentally, this throws new light on the problem concerning the role of *conciliation commissioners* and the argument whether a farmer-debtor relief procedure should be referred to a referee in bankruptcy or to a conciliation commissioner. The office of conciliation commissioner had been introduced by the Frazier-Lemke Act for the purpose of giving the distressed farmers a sympathetic advisor and agent in court. It has been vigorously denounced by creditors as being unfair to them. It has also been argued that in many areas conciliation commissioners were hard to locate and that many were unwilling to serve because of inadequate compensation, while at the same time their professional requirements had to be similar to those of a referee.

Both the new debt adjustment and the moratorium bill provide for the reference of the procedure to a referee in bankruptcy. However, there seems to be little doubt that the office of conciliation commissioner is highly useful in farm distress cases.[24] Since

22 One farmer who was interviewed thought that federal loans had been more helpful to farmers than the Frazier-Lemke Act.

23 In this connection, the Swiss have set up excellent provisions for farm relief in which the rights of creditors and debtors are equally well protected. See Feder, Farmer-Debtor Relief Legislation in the United States and in Switzerland—A Lesson in Agricultural Policy?, Journal of Farm Economics 228 (May 1952). The main feature of this legislation consists in the issue of government bonds which secured creditors obtain in lieu of their (scaled down) claims against the farmer. The relationship between creditors and farmers ceases and two new contracts arise: (1) between the creditor (bondholder) and the state and (2) between the farmer and the state. In the latter, the state becomes the farmer's creditor and the farmer must make annuity payments for a period of twenty years according to an amortization plan set up by the law.

24 One of the witnesses in the hearings on the moratorium bill thought that conciliation commissioners "degrade" the procedure. He stated: "One thing we had in mind [in referring the procedure to a referee] was

farmer debtor relief legislation is designed, in principle, to assist farmers, the retention of this office seems highly advisable. But if the various shortcomings of that office are to be corrected, permanent legislation for farm relief should set up a federal agency designed especially to handle farmer bankruptcy cases, e.g., an office of conciliation commissioners. It could be organized as a separate division of the United States Department of Agriculture and consist of attorneys with experience in agriculture. Local state offices could be set up to consult with farmers, handle their affairs, and represent them in court in the same capacity as conciliation commissioners did under section 75.

Such a proposal is to be taken all the more seriously since it has been found in the study that sometimes the federal courts were not sufficiently well equipped to handle a large number of farmer-debtor relief cases.

7. Finally, lack of information, inexperience, and ignorance of many farmers in legal matters and their natural disinclination to initiate court procedures may have accounted in part for the partial failure of section 75. Only in North Dakota was it a less important factor since farmers had been acquainted with the purpose and the provisions of the act through well organized community meetings and a press sympathetic to this legislation.

B. The Indirect Effects of Section 75

The preceding discussion is concerned with the direct effects of section 75 which can be documented. The indirect, "persuasive" effects of the Frazier-Lemke Act, which several commentators have repeatedly mentioned, cannot be assessed in quantitative terms. The mere existence of the act and the threat of a prolonged court procedure is said to have forced many creditors who previously had adopted an adamant attitude in their dealings with the distressed farmers to come to some agreement with them, thus forestalling either a petition under section 75 or a redemption procedure under section 75(s). An out-of-court agreement between creditors and farmers could be reached in two ways:

to get out of the conciliation commissions. *We wanted to get it on a little higher plane rather than degrade the action;* to get it on as high a plan as possible." (Italics suppled) Hearings, supra note 4, at 41. But the argument is based on a misunderstanding since under section 75(a), a conciliation commissioner was not eligible unless he was also eligible for appointment as referee and thus had the same professional qualifications. See also Comment, 56 Yale L.J. 982, 991 (1947) which considered the office of conciliation commissioner superior to a referee for the purpose of farm relief.

either before the actual beginning of a section 75 petition, e.g., through the mere threat of the farmer to go to court; or after the petition. The study of North and South Dakota section 75 cases does not furnish much evidence that creditors came to an agreement with their farmer-debtors after the introduction of a petition. Some cases were begun and later abandoned ("dismissed") because of lack of further action by the petitioner, possibly because an agreement was reached between the parties. But the number of these cases is small. (See the table on p. 46.)

Thus the "persuasive" effects of section 75 probably were manifested through threat of the farmers to go to court. Several persons recently interviewed felt that this had indeed been the case,[25] and the files show that some lenders were very concerned over the threat of a farmer to file a section 75 petition.[26]

The number of distress cases and consequently of foreclosures and farm bankruptcies (with the exception of North Dakota) declined radically after the start of World War II and the beginning of the agricultural recovery. At the same time, with the beginning of the 1940s, a much larger proportion of section 75 cases resulted in relief for farmers as provided for in the law. For instance, in North and South Dakota a much higher proportion of the cases started between 1939 and 1949 resulted in farmers retaining their farms. The economic recovery, however, was not the only and probably not the major reason.[27] After several crucial years of court experience and court tests, the validity of section 75 had finally been firmly established.

25 See Kruse, Re-establishing the Availability of Farmer Debtor Relief under the Bankruptcy Act, 39 Minn. L. Rev. 735, 737 (1955); Schickele, Agricultural Policy 378-400 (1954); Hearings, supra note 4, at 51-56.

26 Many creditors were in as precarious a position as the farmers. Large institutional lenders, who could probably better afford a scale-down of their investment than small private lenders, had to have some protection and had obligations to their own creditors. This emphasizes the fact that section 75 was not a measure which fairly distributed in society the losses brought about by the depression. For a better solution, see infra note 23. On the whole, the continued large number of foreclosures would indicate that even the "persuasive" effects of section 75 were not overly extensive.

27 Even in the early forties, real estate values were still low resulting in relatively low farm appraisals under section 75 (s) and consequently low redemption values for the petitioning farmers. Incidentally, one of the major points of disagreement between the sponsors and the opponents of debt-adjustment type bills is the official appraisal of the property of the petitioner. The appraisal of the farm is the basis for the actual scale-down of the debts, and determines to a large extent the precise loss which a creditor has to take, if any. The records of the section 75 cases were studied for the purpose of determining whether there was any basis

The conclusion can therefore be drawn that if a more adequate law had been enacted and in force prior to, or even at the beginning of, the depression, and if section 75 had had the recognition in 1930 which it acquired by 1940, and assuming that adequate sources for refinancing had been available, the wave of foreclosures and farm bankruptcies could well have been avoided through the use of farmer-debtor relief procedures. Under the circumstances, it cannot be maintained that the redemption provisions, i.e., the debt adjustment provisions, of section 75 have unduly tipped the scale in favor of the farmers. On the contrary,

for the belief that the farm appraisals were intentionally low for the purpose of scaling down the debts to an inordinate degree. No evidence could be found for substantiating that belief. .*On the contrary, there is evidence that farmers attempted to make their financial situation look as favorable as possible because, particularly in earlier years, courts were prone to reject those cases in which the farmer's position seemed hopeless.* The actual appraisals were apparently in line with the then current real estate prices. Also, it seems altogether unlikely that a federal court would endorse an appraisal which would be obviously out of line with current conditions. The debt adjustment bill also provides for an appraisal of the property "at its then fair and equitable market value." It would be preferable if the appraisal were made instead on the basis of a long-run value based on the income earning ability of the farm. In periods of severe agricultural depressions, this would raise the appraisal value above the market value. Such a provision would also tend to put a damper on inflationary price movements of land in the long run. It would make additional legislation for credit funds in farm relief cases obligatory. The redemption feature of the debt adjustment bills is also the basis for the argument, used by its opponents, that if Congress would enact such a bill, it *would seriously curtail farm credit* and thus work to the disadvantage of farmers themselves.

The representative of the American Bankers Association stated that even the moratorium bill, which contains no redemption feature, would restrict credit because "It would not provide a definite time in which this matter would be ended . . . . if too much of a slant were given to the borrower, he could turn to and avail himself of this relief and it would add perhaps largely to the number of individuals who would seek such relief, and as cases came up and as the delay and the time was consumed there, using such a moratorium case, I think that that lender and his neighbors and whoever might know of it would be very much discouraged or enter into new similar contracts similar to the loan mortgage contracts." Hearings, supra note 4, at 42-43.

It has already been pointed out in Comment, supra note 1 that this argument has not been borne out in practice since farm credit increased during the 1940s even though section 75 was in operation. Lenders are more interested in the worthiness of the debtor, at the time of the loan, and his ability to repay than in some future contingencies such as that offered by a debt adjustment procedure. In recent years, institutional lenders have been conservative in their appraisals of farms. Hence, the risk of substantial losses through a redemption procedure is probably now smaller than it was in the thirties.

section 75 seems to have established some balance between (1) the absolute right of foreclosing with its serious effects on the agricultural society (and on credit) in periods of widespread distress and unrest, and (2) the farmers' wish to remain on their farms and homes.

The large amounts of legal commentaries, as well as practical experiences, accumulated during the life of section 75 should become important guides in the drafting of a new bill.

IV. THE MORATORIUM BILL: AN ANALYSIS OF ITS MAJOR PROVISIONS

In sub-committee hearings and on the floor of the Senate, it has been intimated repeatedly that the debt adjustment bill is similar to the moratorium proposal and that they differ only from a procedural, not a substantive viewpoint.[28] This, however,

[28] For an analysis of the debt adjustment bill, see Comment, supra note 1. The following additional comments on the debt adjustment bill may be in order:

(a) Section 947, H.R. 1068, 83d Cong., 1st Sess. (1953) provides for the granting by the court of a three-year moratorium to the petitioning farmer. According to sections 986-987 the farmer may propose a composition or extension agreement ("plan") within the first two years of the moratorium. Section 988 enumerates the terms that such a "plan" may contain. But its wording is awkward. It contains permissive provisions (the plan "shall" include. . . .). It would be better legislative technique if the two types of provisions were grouped together. Section 934(3) of H.R. 1068 is an improvement over S. 25, 82d Cong., 1st Sess. (1951). The latter provided that after the appraisal of the property, but prior to the moratorium, the debtor was to file with the court "the offer of, and the terms of, payments to be made by him on the appraised value of such property." This is not to be confused with his "plan." H.R. 1068 states correctly instead: "the offer of rental to be paid by him on such property. . . ." If the bill should be re-introduced in the Senate, it should be made to read like H.R. 1068.

If all creditors approve the "plan," the court confirms it (§ 989). If not all creditors approve, the court can confirm it nonetheless if a majority of the secured or unsecured creditors representing the majority of the amount of the claims approves (§ 990). But sections 988 and 990 are *nearly incomprehensible.* See Comment, supra note 1, at 1003-4, which attempts to summarize these sections in simple terms. Sections 990, 988(14) to which the former refers, appear to provide with respect to secured creditors that if not all secured creditors accept the "plan": (1) those that do not accept the "plan" must receive some adequate protection for the realization of the values of their claims, while (2) those who do accept must all accept unless they are divided into several classes, in which case the majority rule prevails (§ 990(1)(b)). It is hard to see why a bill to aid farmers and which is to be used in farm communities should be couched in such obscure language. Before being reintroduced in Congress, these sections should be improved for readability and clarity.

(b) Sections 1006-09 raise a more serious problem. According to these sections, a farmer has an alternative method of relief to the "plan." Under section 1006 the farmer can "redeem" the farm if he does not choose to propose a "plan," or if a plan cannot be worked out with his creditors. This is probably the correct meaning of the section which states: "Unless . . . a debtor's plan under this chapter is either pending or has been confirmed . . . the debtor may, at any time before the expiration of three years after the entry of the order retaining the debtor in possession (granting the moratorium) . . . file an application to redeem the property." In other words, there appears to be *no obligation* on the farmer to propose a "plan." If this interpretation is correct, a farmer may apply for the redemption even before he offers a "plan." He will do so if he can find a lender to finance him. (In fact, his ability to refinance himself may even encourage the creditors to make a settlement with him under a "plan.") He may offer the "plan" first if he encounters difficulties in refinancing himself immediately or if he finds his creditors agreeable to it. But should the farmer not be obliged to first attempt to work out an agreement with his creditors before being permitted to redeem through refinancing? Since section 75, as shown above, encouraged settlements to avoid a lengthy court procedure, an obligation to first attempt a "plan" would seem desirable. On the other hand, arguments may be found for the solution provided for in section 1006: An early redemption may speed up the case where creditors would be satisfied to be paid out, even at a loss, rather than go through the "plan" procedure or the entire moratorium. During the depression of the thirties many institutional lenders lost money by taking over farms which they had to sell at a low price. Private lenders may also prefer a cash settlement to any other arrangement. For these creditors it would be better if the law would provide that a "plan" can be omitted only by mutual consent of creditors and the debtor. But if a "plan" is offered and not agreed upon, then a redemption may be applied for.

(c) However, section 1006 poses another problem with respect to the time permitted. According to section 986, the debtor may offer a "plan" not later than two years after the date of the entry of the order provided for in section 947 (i.e., the moratorium). Section 996 provides that "if a plan is pending and not confirmed *at the end of the three year period* . . . the debtor shall be continued in possession until the plan has been confirmed or rejected. . . ." (Italics supplied) But under section 1006, the debtor must *file for redemption before the expiration of three years. Does this imply that the farmer cannot file for redemption, if, at the end of the three-year period the parties still argue about the "plan"? If yes, the creditors could forestall the debtor's use of section 1006 since the wording of the section appears to be restrictive.* (Surely the provision in section 1006 ". . . and where not otherwise inconsistent with the provisions of this chapter . . . ." cannot refer to this eventuality.) Since the law specifically envisages the possibility of a "plan" not being confirmed at the end of the three-year period (§ 996), section 1006 should be amended so as to include any additional time which the court may grant under section 996.

(d) According to section 1028, fees, costs and expenses, including the farmer's costs of attorney, are to be paid in full in advance of distribution to creditors, to be shared by them "pro rata." Thus the costs of the procedure are borne by the creditors. The opponents of the debt adjustment bill have objected to this. If the debtor is insolvent, he will

is not borne out by a comparison of the two bills. The procedures and the relief provisions, as well as the basic philosophy of the moratorium bill, are at variance with the other bill. Hence the two bills differ in their usefulness and adequacy.

The basic goals of the moratorium bill are:[29] (1) it should be fair and equitable to creditors as well as to debtors so as not to dry up agricultural credit; (2) it should be administered expeditiously and economically; (3) it should not provide the same remedy for every distressed farmer regardless of the cause of his distress; and (4) a moratorium which is co-extensive in time with the emergency (which causes the debtor's distress), if followed by a re-amortization of the secured debts or by the possibility of procuring the benefits of the general bankruptcy laws, is sufficient to provide relief for distressed farmers.

Hence the draft does not provide for an appraisal of the farm, composition, or redemption. (However, the principle of no debt adjustment is only adhered to for secured and not for unsecured debts.)

A. Is the Moratorium Bill a Bankruptcy Bill?

Since the bill provides, in principle, only for changes in the payment schedule of the debt, it is questionable whether it still retains the essential features of a bankruptcy, or quasi-bankruptcy, procedure which seeks a complete or partial adjustment in the financial situation of the debtor. By providing for a moratorium as the outstanding method of relief, the bill shifts the emphasis from bankruptcy to a federal moratory law; and thus introduces a new idea into federal bankruptcy legislation, viz, solving the financial difficulties of the farmer-debtors by giving them time only.[30] Whether such moratory provisions can prop-

hardly be able to pay the court and other costs. On the other hand, where a "plan" has been agreed to. it could include a provision for the farmer to pay part of the costs out of future earnings.

29 See Outline for Farmer Debtor Bankruptcy Legislation (Sept. 1950), prepared at the request of the directors of fifty-two cooperative National Farm Loan Associations in California, Nevada, Arizona and Utah. Reprinted in Hearings, supra note 4, at 58.

It is noteworthy that in 1951 the Land Bank Commissioner testified in favor of the debt adjustment bill and was therefore apparently not in agreement with the drafters of the moratorium bill.

30 This assumes that the farmer who asks for relief is only temporarily in financial difficulties and bound to overcome them if given sufficient time. The debt adjustment bill assumes that the ratio of assets to debts is such that some adjustment in the debt structure is imperative.

erly become part of the United States bankruptcy laws is an open question,[31] hence the constitutionality of such a bill is questionable.

B. Who Can File

According to section 906(7)[32] both owners and tenants can file a petition for relief. But the bill is not clearly worded. A farmer is defined as "an individual . . . primarily engaged in producing products of the soil . . . or livestock . . . or livestock products . . . and the principal part of whose gross income is derived from any one or more of such operations, *whether so engaged personally or as a tenant or by tenants . . . Provided however that the provisions of this chapter shall not be available to a farmer whose sole interest in property,* as hereinafter defined, *is that of tenant.*" (Italics Supplied) "Property" is defined in section 906(11) to ". . . include all his property, real or personal wherever located."

According to testimony of a representative of the Bankruptcy Division of the Administrative Office of the United States courts, the moratorium bill "makes the provisions of chapter XVI available to all farmers within the definition set forth in section 906(7) *except a tenant farmer. . . .*"[33] But this interpretation seems erroneous. The point was referred to by one of the witnesses during the hearings and clarification was requested but has not been forthcoming.[34] Apparently the drafters of the bill intended to include "ordinary tenants" as beneficiaries of the chapter. If this was not the intent, then the words "whether so engaged personally or as a tenant. . . ." would certainly make no sense. The word "tenant" would then mean a farmer who rents

[31] It is a problem of the definition of bankruptcy and of the right of Congress to legislate in matters of bankruptcy. See Kruse, supra note 2, at 739. However, Charles Warren, Bankruptcy in United States History 8 (1935) states: "A steadily expansive interpretation however has been given to the Bankruptcy Clause . . . And it is now substantially settled by legislative practice and by judicial decision . . . that a statute may be 'on the subject of bankruptcy' without being technically a 'bankruptcy law'—in other words that any national law which deals with inability to pay debts and which is uniform throughout the country is a law 'on the subject of bankruptcy.'" Before the Senate it was argued that this moratorium bill introduces a new idea into bankruptcy legislation because it makes its use subject to the worthiness of the farmer. However, the introduction of a federal judicial moratorium is a much more significant innovation.

[32] References are to S. 689, 84th Cong., 1st Sess. (1955).

[33] Hearings, supra note 4, at 92. The same witness stated that the debt adjustment bill makes the relief available to tenants.

[34] Id. at 85-86.

a farm but owns all or part of the livestock or implements. On the other hand, the "proviso" would intend to exclude those tenants who own neither real property nor livestock nor implements on the farm which they operate, i.e., those farmers whose interests in any of the property on the farm are only that of tenants. The purpose of this "proviso" was probably to exclude sharecroppers and the like. These persons do not usually furnish even operating expenses.

But there are many farm communities where a farmer may own neither the land which he farms nor the livestock nor the implements on his farm, but furnishes all or part of the operating expenses. He would still fall under the definition of a tenant. Such arrangements are made, for instance, with beginning farmers and between fathers and sons and are referred to as labor-share leases or arrangements. There is no reason why such a tenant should be excluded from the benefits of the law. Also sharecroppers, even though they are often held to be laborers, should be included, just as industrial wage-earners are entitled to use chapter XIII of the Bankruptcy Act.

It is therefore recommended that the "proviso" of section 906(7) be stricken out for reasons of clarity and fairness.

C. The Offer of Rental Payments

After the filing of a petition for relief, the farmer who is insolvent or unable to pay his maturing debts must file a statement of his financial affairs (section 924(2)) and offer a "fair and reasonable rental" (section 924(6)). Section 925 provides that in determining the rental, the farmer must base his offer on the market value of his property, the customary rental value, the net income and earning capacity of the property, and "other factors." The petitioner's offer is then discussed, among other matters, in the creditors' meeting; and if a creditor objects, the court will determine the rental (section 939).

For several reasons these provisions relating to the fixing of rentals compare unfavorably with the rental provisions of the debt adjustment bill. It is first of all noteworthy that the farmer should take the market value of the property into consideration in proposing the rental to be paid, but that the bill makes no provisions whatever for arriving at such a value since it does not provide for an appraisal of the property.[35] How then can the

[35] It would appear that in the matter of an appraisal the chairman of the sub-committee which held hearings on this legislation was under a misapprehension. He stated erroneously that "both bills [i.e., the debt

farmer hope to arrive at an estimate of the market value? If he is to make a conscientious effort, he may have to appoint and pay for an appraiser or appraisers. Thus, in their desire to get away from the farm appraisal—a feature which the opponents of the Frazier-Lemke Act have always strongly criticized[36]—the drafters of the moratorium bill are putting the farmer-petitioner into a paradoxical and unfavorable situation.

According to the wording of the moratorium bill, the farmer must himself determine the fairness and reasonableness of his proposal. This is in contrast to the debt adjustment bill where the rental is fixed by the court at the creditors' meeting.[37] There, after the farmer has filed an offer of rental to be paid,[38] the *court* fixes the rental by giving consideration to the market value of the property and other factors enumerated in the bill.[39] The moratorium bill therefore appears to place a heavier responsibility and a heavier burden of proof on the farmer, particularly if one considers the absence of provisions with respect to an appraisal.

The moratorium bill also does not take into account "the farmer's ability to pay"—like the debt adjustment bill does[40]—though it does permit the farmer to "give due consideration . . . to the availability of farm income."[41] However, this wording has a meaning different from "ability to pay" and is only a repetition of the words "the actual net income and earning capacity of the debtor's property," i.e., the factors which the farmer must consider in determining the rental.

D. The Creditors' Meeting

After the approval of the petition, the judge, or a referee to whom the proceeding may be referred,[42] will call a meeting of creditors.[43] This meeting plays a more important role in the moratorium procedure than in either section 75 or the debt ad-

adjustment bill and the moratorium bill], of course, obviously must contain a first appraisal of the property in order to arrive at any formula of installments or rental or whatever it may be." Hearings, supra note 4, at 62.

[36] E.g., Shall We Have a Permanent Frazier-Lemke Law?, supra note 4, at 8.

[37] H.R. 1068, 83d Cong., 1st Sess. § 939(3) (1953).

[38] Id. § 934(3).

[39] Id. §§ 944, 945.

[40] Id. § 945(3).

[41] S. 689, 84th Cong., 1st Sess. § 925 (1955).

[42] Id. § 932.

[43] Id. § 933.

justment bill because in addition to discussing the ordinary business, such as appointing a trustee or the fixing of rentals, the court shall determine at that time whether the farmer can or cannot benefit from the relief provisions of the chapter. The outcome depends on its decision on *the cause of the debtor's distress,* or better, *on the merits of the case.*

The bill provides for two types of distress: distress caused by the farmer's own fault, i.e., due to causes *within his control;* and distress caused by causes *beyond his control.*

E. Worthy and Unworthy Farmers

No relief will be given under this bill if the farmer is held "unworthy" by the court. The bill states specifically that bad personal habits, failure to attend to business, diverting farm income to nonagricultural expenditures, extravagant operations and lack of farming ability are reasons for denying relief.

On the other hand, relief will be accorded in cases of national, regional or local emergencies, i.e., for causes determined by the court as being beyond the debtor's control.

Section 938, which according to its drafters introduces an innovation into bankruptcy legislation, merits detailed comments. Its purpose is, obviously, to limit the use of the chapter to "worthy" farmers. The principle of giving assistance or relief to "worthy" or deserving individuals as a safeguard against obtaining such relief under false pretenses may have considerable merit when the expenditures of public funds are involved. But in the case of bankruptcy or moratorium, it is highly questionable. A debtor's worthiness should not be judged when he is in financial difficulties, but at the time when credit is extended to him. Normally, it is good business practice to examine a borrower's integrity at the time at which the loan is concluded, and it is unlikely that an institutional or even a private lender will advance funds to a farmer who is an habitual drunkard, spendthrift, or gambler. If they do, they should bear the risk. Often lenders advance money on operations of which the financial hazards are known with a correspondingly high rate of interest or collateral. The drafters of the bill are also concerned with the problem of the use of the bill by "unscrupulous" farmers because it has been claimed that section 75 was so abused. But this appears to be based on a false premise.[44] Fraudulent use of chapter XVI before a federal court is indeed quite unlikely. A

[44] See note 14 supra.

carefully worded law and the integrity of the judicial system would prevent such a use.[45]

In addition, the manner in which the farmer's worthiness is to be determined is subject to criticism. Section 938 appears to give the creditors a somewhat preponderant role in arriving at this determination. The section states: "At such meeting of creditors, or at any adjournment thereof, the court shall determine whether the debtor's distress is due. . . ." There is no provision made for the farmer to be represented or assisted by members of his community, though character witnesses could possibly be called into the meeting. It would probably be desirable to include at least a provision in the law which would give the farmer some safeguard against "character assassination." A representative of one of the large farm organizations referred to this provision in his testimony before the Senate sub-committee and suggested that the decision of the farmer's worthiness "should be removed from the judgment of the creditors entirely."[46] This could be achieved if the determination of the farmer's worthiness would be made at a time other than the creditors' meeting.

Finally, the wording of the several "causes within [the farmer's] control" is open to criticism. The proviso "failure to attend to business" is vague. What, for instance, if a farmer attempts to earn additional income off the farm by selling farm machinery or doing custom work for other farmers? The same applies to "diverting farm income to non-agricultural expenditures" and even more so to "extravagant operations." In the plains states, farmers are sometimes called "gamblers" because of the high risk inherent in their farm enterprises. What might be an "extravagant" undertaking when the farmer loses might be a sound business venture if he succeeds. Therefore, assuming that the determination of the worthiness of the farmer is to remain part of the procedure, it would be preferable if the law would simply state that the court should order the moratorium if, in its opinion, the farmer is "worthy of relief"—rather than enumerate "causes within his control."

F. Causes Beyond the Farmer's Control

The moratorium bill enumerates a number of causes beyond

[45] It has been stated that "a court of bankruptcy is invested with equitable powers and accordingly could be expected to thwart any unconscionable selection by a farmer of the parts to redeem. This furnishes the creditor an additional protection." Comment, supra note 1, at 1009. While this reasoning was applied to another specific problem, it would equally well hold in the matter of abusing the law in general.

[46] Hearings, supra note 4, at 63, 82.

the farmer's control which entitle him to relief under the proposed chapter. These can be sub-divided into (1) causes which affect agriculture on a nationwide basis—they include (but are not limited to) "national emergencies or declines in the agricultural market, or acreage reductions under the law as a result of any of which the farmer-debtor cannot operate at a profit";[47] and (2) conditions which are of a local character (including probably regional emergencies), i.e., "local emergencies or drought, freeze, fire, flood, hail, or insect damage" and presumably cattle disease.

The wording of this section is not consistent. Drought, freeze, fire, etc. are no doubt examples of local emergencies and no questions arise with respect to the meaning of local emergency. But the term "national emergency" is less clear, and market declines or acreage reductions cannot be taken as examples of national "emergencies." In fact, the section refers only to the effect of a price decline or acreage reduction on individual petitioners,[48] not the effect on a wide section of agriculture which would at least be more consistent with the meaning of national emergency. Therefore, the determination of a "national emergency" would be left to the interpretation of the courts. Probably the drafters of the bill had in mind severe, long-lasting depressions, such as those of the 1920s and 1930s.

But did the drafters of the bill really propose this legislation with the thought that it would provide for adequate relief in a serious depression? This is doubtful. Indeed, it has been admitted by the supporters of the bill that it is not adequate in a severe depression. In presenting the bill to the Senate in 1952, the following exchange took place on the floor of the Senate:

> Mr. Hendrickson: I wonder whether the distinguished Senator from Washington feels that the enactment of the pending bill at this time as permanent legislation would adequately meet a widespread emergency in the future?
>
> Mr. Magnuson: I do not think it would meet a national emergency. In the event of a national emergency I believe we would have to do many of the things we did in 1933 for the benefit of the farmer. I do think that the pending bill would take care of the hardship cases or area cases. . . .[49]

[47] The first draft (1950) did not refer to price declines or acreage reductions. The amendment was introduced in 1953 after farm incomes had declined and S. 689 contains this amendment. S. 689, 84th Cong., 1st Sess. § 938 (1955). However, H.R. 670 still carries the original text. See H.R. 670, 84th Cong., 1st Sess. § 938 (1955).

[48] S. 689, 84th Cong., 1st Sess. § 938 (1955).

[49] 98 Cong. Rec. 3513 (1952).

In the Hearings, the same thought was expressed by a representative of the National Grange:

> We do not believe that S. 25 as amended will meet the needs of the country and agriculture if a prolonged depression reduces the general level of land values below general mortgage levels that are in force. Such a condition would call for extraordinary legislation to prevent wholesale transfer of farm land from family farm owners to non-agricultural ownership. At such time the necessary emergency legislation could and should be passed. But to place it [i.e. the emergency legislation] on the statute books, we believe, would impair the farmers' ability to obtain adequate amounts of credit at equitable interest rates. S. 25 as amended, as we interpret it, does not contemplate taking care of such general depression credit distress. For credit distress other than that which is caused by prolonged depression, from sickness or other bad luck, and for distress from drought or other natural hazards S. 25 (a) amended appears to us to adequately meet the reasonable needs of both creditors and debtors. . . .[50]

If the moratorium bill is not intended, nor adequate, to cover a "nationwide emergency," but is intended to "take care of hardship cases or area cases . . . of cases which would happen in a certain area or in a certain valley, where farmers could not meet their obligations because of weather conditions, blights or conditions of that sort," *then the wording of the legislation is in contradiction to its intent.* The courts which have to interpret the

[50] Hearings, supra note 4, at 75. This testimony was, however, somewhat contradictory and it is not clear where and whether the witness stated the official position of the Grange or his own convictions in the matter. The witness stated earlier: "During the last 20 years the nature of farming has so changed that farm income is more vulnerable than ever. Cash farm costs are now higher and more rigid than ever before, also the farm family living costs are greatly changed and more rigid. This means that unfavorable farm crops due to widespread and prolonged drouth or unfavorable prices could create another wave of farm foreclosures unless the farm credit laws of this nation recognize the irregular nature of farm income and provide flexibility accordingly. During relatively prosperous times many people . . . take on excessive debt if there are lenders willing to lend them the money. It would be wise social policy to pass a moratorium law now so that the over-optimistic people, both lenders and borrowers, will not take unrealistic gambles. Especially should we prevent lenders from using the mortgage and foreclosure instrument to reap the savings of over-optimistic or inexperienced people. . . . Unless the creditor wishes to foreclose and take some unjust advantage of the distressed farmer, it is to the interest of both creditor and debtor to keep the farmer in full operating responsibility on the farm." Id. at 74, 75. It is the very "excessive debt" on a farm that would make a scaledown, and not a moratorium, necessary when a depression of some duration strikes in order to keep the farmer on the farm.

meaning of "national emergency" which is, at any rate, a rather indefinite term will find no clarification in the legislators' statements.[51]

It is even doubtful whether the proposed chapter would be adequate in *regional* emergencies such as a drought of long duration over a wide area of the country.

Two apparent reasons were given for proposing a bill which is admittedly inadequate to meet the situation which it states specifically it can meet. First, when the bill was first drafted and discussed in Congress, optimism in continued agricultural prosperity was high and affected its drafters.

The second reason is the expectation that the enactment of a "moderate" bill would forestall or prevent more drastic legislation, such as section 75, in a severe depression. This thought was expressed in the Hearings in the following exchange:

> *Senator Magnuson*: Of course, what happens in this situation is this: if we ran into another national problem such as we had from 1929 on, Congress is going to pass something like this anyway, like the Frazier Lemke Act, for the emergency, and we might be better off in the long run if we would establish some permanent, fair, equitable procedures that would take care of the situation if and when it occurred.
>
> *Mr. Ferguson*: This is our position.
>
> *Senator Magnuson: I am afraid that we might get even a much more radical type of legislation if we let this go until the thing happens.* I have been with legislative bodies for so long that I can foresee that.
>
> *Mr. Downie*: If you act dispassionately right now, you might produce better legislation.
>
> *Senator Magnuson*: It can be done more calmly now and some procedure can be established that would make fair relief avail-

[51] The meaning or interpretation of the term "national emergency" by the courts is important because according to section 942, the court may have to determine that the emergency has ceased whereupon the moratorium shall terminate. S. 689, 84th Cong., 1st Sess. § 942 (1955). Kruse, supra note 2, at 739 draws attention to the fact that even under section 75(s)(6) (11 U.S.C. § 203(s)(6)), which contained a similar provision, no court ever held that the emergency ceased to exist in its locality. The courts would be all the more confused if in trying to interpret the term "national emergency" they were to look at the legislators' intent and discover that they did not mean this act to apply in such a case. It is hardly necessary to emphasize that the passage of a complicated bill to give relief primarily for local emergencies, which can usually be taken care of by the local credit institutions, or with the aid of federal emergency loans, cannot be advocated.

able when it was needed, *rather than to have it happen and have everybody stand up and go off on tangents with maybe what is unsound and unwise legislation.*[52]

This point of view is debatable. Since chapter XVI is to be a permanent piece of legislation, an attempt should be made to make it adequate in the long run, i.e., in prosperity and depression. Inadequate legislation might precipitate, rather than forestall, drastic action, while adequate legislation might possibly prevent altogether the occurrence of mass foreclosures and bankruptcies.

G. The Moratorium

If the farmer's distress is due to causes beyond his control, a judicial moratorium is authorized by the court "for the duration of the emergency, without expressly limiting the moratorium to a term of years."[53]

According to section 942, creditors may ask for a new hearing at two year intervals to determine whether the emergency has ceased to exist. If the moratorium threatens to last more than four years, creditors may appeal the determination of a judge, or of a referee, that the emergency has *not* ceased to exist. But the provisions with respect to this appeal are confused. Originally the draft provided that if the determination of the continued emergency was made by a *judge,* a creditor could appeal to an appellate court; that if the determination was made by a *referee,* he could petition for review by a judge, and that the determination by a judge on review was not subject to appeal. Section 942 further stated: "If a judge, after a review or an appellate court, on appeal, determines that the emergency still exists, such determination shall continue the moratorium in full

[52] Hearings, supra note 4, at 46. The same thought has been expressed more eloquently by the President of the Federal Land Bank of California, Hearings, supra note 4, at 10: Mr. Dean: "Further, ever since the lapsing of the Frazier Lemke Act in March, 1949, there has been agitation for legislation involving scaling down which would be very detrimental to farmers and lenders generally. That has been a hazard. . . . The bill which was actually passed by the Senate in 1949 almost went through the House." Mr. Wilson (Rep. from Texas): "26 to 1 on this full committee. They reconsidered it later." Mr. Dean: "That makes me shudder and I am sure of this in the lending field that the farmers would not want to see the drying up of credit. They would shudder at the narrow escape. Until such time as we have legislation on the statute books, there is always the hazard that it might happen. We entered into it because of the emergency that this was almost passed. . . ."

[53] S. 689, 84th Cong., 1st Sess. § 938 (1955).

force and effect. . . ." One Senator asked the chairman of the sub-committee on the floor of the Senate:[54]

> *Mr. Hendrickson*: I also understand . . . that no appeal to the Supreme Court is provided for in the bill. Is that correct?
>
> *Mr. Magnuson*: That is correct. . . . We determined as a matter of policy not to allow an appeal because we felt that an appeal might delay relief. The other point of view, as given to us by witnesses who appeared before the committee, was that without the right of appeal we might bog things down very badly. It was a matter of policy.

The Senator then indicated that he would introduce an amendment which would permit an appeal to the Supreme Court, but upon further discussion agreed to omit the word "not" from the sentence: "The determination by a judge on review shall *not* be subject to appeal." But does the omission of the word "not" now authorize creditors to appeal to the Supreme Court? This is doubtful because the further text: "If a judge, after a review or an appellate court, on appeal, determines that the emergency still exists, such determination shall continue the moratorium in full force and effect. . . ." has not been modified and can be interpreted as not permitting an appeal to the Supreme Court. If they are not so interpreted, they are superfluous and should be omitted. In conclusion, it would, therefore, appear that an appeal by creditors to the Supreme Court is still not possible as the bill now stands.[55] This would introduce a new element into bankruptcy procedure, the desirability of which is not certain. True, the proceedings could be speeded up if no appeal to the Supreme Court by creditors were permitted. But while the lower courts may be well qualified to make decisions as to "local" emergencies, the question of "national" emergencies should be subject to review by the Supreme Court, if only for the purpose of obtaining an authoritative definition of this elusive term.

Section 942 further provides that where a creditor has asked for such a review, or has appealed to the higher court, any creditor, i.e., not necessarily the same creditor, may now ask for hearings at one year intervals, and he may appeal a referee's or a judge's order that the emergency still exists. Though the bill does not specifically say so, it must be assumed that also in this case the decision of the appellate court is not subject to appeal.

[54] 98 Cong. Rec. 3513-14 (1952).

[55] While S. 689 was passed by the Senate in July 1955, with this amendment, H.R. 670 still carries the original text prohibiting an appeal by a creditor of a determination by a judge on review. H.R. 670, 84th Cong., 1st Sess. § 942 (1955).

If the moratorium threatens to extend over more than four years, but no creditor appeals the decision of a referee or a judge that the emergency still exists, then the bill probably gives the creditors the right to further hearings only at two year intervals.

Section 942 raises two more problems. (a) Both secured and unsecured creditors may individually appeal the decision of a referee or a judge that the emergency still exists since the section gives that right to "any" creditor. In practice, unsecured lenders will be among the first to raise the question of the continued emergency because of the preferential treatment which the bill gives secured creditors in later phases of the proceedings. In the event that the provisions on "emergencies" are left in the bill, a preferable possibility would be to allow an appeal or review only upon a majority vote of the creditors, by class. (b) The section deals specifically with the creditors' but not with the debtors' right to appeal. Since the section refers to the confirmation of the continuation of the emergency, the farmer is assumed to be in full agreement with the continuation of the emergency which gives him extended relief. But upon closer examination of the debtors' right to appeal where a determination is made that the emergency has *ceased* to exist—and hence the moratorium is at an end—section 942, while dealing only with creditors, may have a bearing on the debtor's rights to appeal.

Section 943 provides that the farmer may ask for a review by a judge of an order made by a referee as provided in section 39(c) of the act. An "order by a referee" would obviously include the determination of the question whether or not the emergency—and hence the moratorium—continues to exist. The farmer, who has a vital interest in this determination, would probably ask for review only if he disagrees with the referee's determination that the emergency has ceased to exist. Section 943 does not limit in any way the farmer's right to appeal a judge's decision upon review. But what if, under section 942, a judge on review, or the appellate court, reverses the original determination by a referee or by a judge that the emergency continues to exist and now finds that the emergency has ceased to exist? Since section 942 specifically limits only the *creditors'* right to appeal to the appellate court as the highest instance and not the farmer's, it must be assumed that the farmer may appeal to the Supreme Court a reversal of the determination that the emergency continues to exist. Whether or not this was the intention of the drafters or whether this problem has been overlooked cannot be

stated. If this interpretation is correct, it would probably afford the debtor adequate protection in all cases.

H. During the Moratorium

During the moratorium, the farmer (1) retains possession of the farm under supervision of the court, (2) may be required to file reports on his farming operations,[56] and (3) must pay rentals to the court[57] and additional payments may be required from him.[58]

According to section 1016(b), where the debtor defaults in the payment of rentals or defaults under any other order, the court may end the proceedings under this chapter if within 60 days such default is not cured. *This appears to be a very harsh provision.* What would the farmer do under the bill if the moratorium had been ordered in a drought year and the drought continues for several years with varying intensity as to make him unable to pay the agreed upon rental? It would appear that section 1016(b), as it is worded, *will make the very purpose of the bill* (i.e., to give farmers relief through giving them adequate time to recover in cases of emergency) *illusory.* Section 1016(b) is much more severe than the corresponding section of the debt adjustment bill which provides that the court "may allow the debtor to cure the default upon such terms and conditions as the court may prescribe, giving due consideration to the financial circumstances of the debtor and the interests of the creditors."[59]

I. After the Moratorium: The "Extension" Proposal

Within two months after the declaration of the end of the emergency, i.e., after the end of the moratorium, the farmer may ask for an extension.[60] It should be noted that the bill does not authorize the farmer to apply for an extension *during* the moratorium as does the debt adjustment bill.

The wording of section 986 is unfortunate. It states that "the debtor may file a notice of election wherein he may elect an extension." The term "elect" would imply an alternative method of relief, such as a composition or a redemption. As a matter of fact, the farmer has no alternative under the bill because, if he does not "elect" the extension, the proceedings under the chapter would automatically be terminated.[61]

[56] S. 689, 84th Cong., 1st Sess. § 944 (1955).
[57] Id. § 939.
[58] Id. § 945.
[59] H.R. 1068, 83d Cong., 1st Sess. § 959 (1953).
[60] S. 689, 84th Cong., 1st Sess. § 986 (1955).
[61] Id. § 1016(c).

Also the farmer is assumed not to be entitled to a composition (debt adjustment). But this applies only for secured debts, i.e., real estate and chattel mortgages, not for unsecured debts.[62] Section 987 amplifies on the proposal for extension and states that the farmer must provide:

> . . . *for full payment of his secured claims* amortized over a term of years, which term of years shall be based upon the earning power of the property that is security for the debt as determined by the court, but not exceeding the greater of ten years or the original term of years, payable in equal quarterly, semi-annual or annual installments, plus interest at the contract rate or 6 per centum per annum, whichever is the lesser, and such extension proposal shall provide for payment of *unsecured debts*, for which claims have been filed and allowed . . . *to the extent and on the terms which the debtor believes he will have the ability to pay from his future income.*[63]

Thus the proposal for extension actually includes a proposal for the composition of unsecured debts and therefore the term is erroneous since an extension, by definition, cannot mean a composition.

Section 987 is unique. It is in contrast to all other chapters of the United States bankruptcy laws. By failing to provide the farmer with the possibility of adjusting his debt-structure, it overlooks completely the fact that a bankruptcy procedure is designed to help adjust the financial situation of a debtor *who is insolvent.*[64] Are we to assume that a farmer who is "in the red"

[62] Here again the chairman of the subcommittee holding hearings appeared to be in error. The representative of the Farmers Union said: Mr. McDonald: ". . . Now unless I misread this measure, the farmer would have to pay back the entire sum as agreed on." Senator Magnuson: "The entire sum as modified by the hearing and the appraisals and the pro rata sums which the referees may determine." Mr. McDonald: "Then if this bill provides for a scaling down, I withdraw that objection to it." Senator Magnuson: "It is a technical matter [!]. . ." Hearings, supra note 4, at 62. Apparently the chairman was not too well acquainted with the text of the bill.

[63] The interest rate provided for in section 987 was criticized by the representative of the Farmers Union as being "ridiculously high" and he suggested a rate of four per cent. Hearings, supra note 4, at 80. Senator Magnuson referred to this suggestion in his statement before the Senate, and reported that "the committee adopted the compromise of 5 percent." 98 Cong. Rec. 3514 (1952). However, H.R. 670 now before the House still contains the six per cent rate. H.R. 670, 84th Cong., 1st Sess. § 987 (1955).

[64] For arguments in favor of a scale-down, see testimony of Fred H. Kruse, Hearings, supra note 2, and testimony of the Land Bank Commissioner, Hearings, supra note 4, at 65.

is financially better able to overcome his difficulties than a corporation, or a railroad company, or a wage-earner?

The section also discriminates in favor of secured creditors, i.e., mortgagors who may be institutional or private lenders, and against unsecured creditors.[65] Such discriminatory treatment is hardly justified if one keeps in mind today's relatively low real estate indebtedness and the large operating expenses of modernized farming. If one were to follow the logic of the drafters of the moratorium bill, whose main concern was that a debt adjustment type law would "dry up credit to farmers" and thus be against the interests of the farmers themselves, *this bill if passed by Congress would threaten credit to farmers much more than a Frazier-Lemke type bill* because local banks, feed dealers, oil stations and implement dealers, who now advance much credit without security, would attempt to discontinue their practices and make no credit available to farmers without collateral.[66]

In the third place, section 987 apparently does not allow the debtor to refinance himself and to pay out his unsecured creditors in a lump sum. While a scale-down of the unsecured debts is permissible, they *must be paid back out of the future income of the farm.* This may have certain advantages for the farmer, but only if he cannot find other sources of credit, and it may have disadvantages for the unsecured creditors who may wish to be paid out at the end of the moratorium if the farmer can obtain funds to refinance himself.

The proposed payment plan is to be based on the income earning ability of the farm. As previously mentioned, this is not determined in a formal manner by an appraisal. Since the income earning power of the farm is a basic factor in the deter-

[65] The representative of the Farmers Union characterized the bill as a "bankers' bill." Hearings, supra note 4, at 63. See also Kruse, supra note 2, at 741-42. One of the guiding thoughts in this bill was the argument that the "original contract" entered into by the debtor is "inviolate" and should therefore not be interfered with. This argument is, however, erroneous and has been abandoned in our legal system, particularly in bankruptcy proceedings, long ago. or else debtors in default would still be put into jail. That a composition for unsecured debts is possible under this bill is evidently not very consistent. In this connection is the phrase, "The extension proposal when approved by the court shall have the full force and effect of a binding contract for redemption between the affected parties," in section 988, not both misleading and superfluous?

[66] The 1955 Nebraska Legislature, for instance, considered—but did not pass—several bills which proposed a lien in favor of oil companies and others on crops produced with the gas, oil, etc., sold by them to the farmers.

mination of the payments to be made under the "extension" proposal, the burden of proof lies again, as in the case of the rentals, primarily on the farmer; and in the absence of more specific guiding principles, the bargaining power of the parties will have a determining influence on the final payment provisions.

J. Confirmation of the "Extension" Proposal

The extension proposal must be confirmed by the court.[67] If approved, the original debt structure of the secured debts remains intact, but the contract may be modified as to maturity, interest rate and repayment schedule; unsecured debts may be scaled down. If creditors are opposed to the proposal, the court may take their objections into consideration and confirm a modified plan. Section 988 states:

> If written objections are filed, the court shall consider the written objections or hear the objecting party and shall enter an order in accordance with the proof, approving the proposal as submitted, or modifying it as to the objecting party [i.e. the creditor or creditors] and approving it as modified.

This provision assumes that the confirmation by the court of some plan—the debtor's original plan or a modification of it—will take place once the farmer has "elected" to ask for an extension. But what if the farmer does not agree—and feels that due to his weak financial position in the wake of the emergency he cannot comply—with the proposal as modified by the court in consideration of the objection of one or several creditors? Must the court confirm a plan to which the debtor does not consent without regard to his ability to rehabilitate himself? Must the farmer submit to the plan? The text of section 988 leaves the court with no alternative. As it now stands, this section is not equitable for the farmer. The debt adjustment bill is more regardful of the debtor's situation. Section 993[68] provides that:

> After a plan has been accepted by creditors, alterations or modifications of the plan may, with leave of court, be proposed in writing by the debtor.

and section 997[69] provides that:

> The court shall confirm a plan if satisfied that . . . (3) it will result in the financial rehabilitation of the debtor. . . .

If the creditors' objections to the extension proposal are obviously adamant, the court may ignore their objections ("the court shall

[67] S. 689, 84th Cong., 1st Sess. § 988 (1955).
[68] H.R. 1068, 83d Cong., 1st Sess. § 993 (1953).
[69] Id. § 997.

consider the written objections. . . ."), and thus the farmer enjoys a certain amount of protection; but this is at the discretion of the court, and the bill is silent as to the criteria which the court is to use in adopting or rejecting the creditors' objections. If past experience is a guide, the lower courts will give farmers in distress little sympathy.

Under section 988 any individual creditor may object to the proposal regardless of the size or nature of his claim. Unsecured creditors are likely to be more adversely affected by the "extension" than secured creditors, whose claims cannot be scaled down. Hence, unsecured creditors may be the first to object to a proposal which reflects the farmer's weak financial position. Just exactly how are creditors going to agree among themselves? On this point the moratorium bill is also silent. The provisions of the debt adjustment bill offer greater protection to the farmer, and incidentally also to creditors, by providing for majority acceptance by the creditors of a "plan."[70]

If the court confirms or threatens to confirm a modified extension plan, under which the farmer feels that he cannot rehabilitate himself, the latter may: (1) Accept the modified proposal and attempt to live up to it. If his financial condition remains weak, he can file another petition and obtain another moratorium. If his distressed situation is not due to causes within his control, he may be granted further relief. The bill contains no provision barring a farmer from using the relief more than once, though the question of introducing such a restriction has been discussed. But whether the court will give the farmer's second petition a sympathetic hearing at the creditors' meeting, which determines the cause of the farmer's distress, is doubtful. (2) He may ask that the proceedings be dismissed (though this is not expressly stated in the bill) or ask that the proceedings be transferred to chapter XII of the act which enables him to reach a composition or extension agreement with his creditors.[71]

[70] Id. § 990.

[71] Before the introduction of the moratorium bill, its supporters held that chapter XII would afford farmers adequate relief. It is not clear whether or not the moratorium bill now authorizes a farmer to transfer to a chapter XII proceeding. According to section 1015, the debtor may apply "during the moratorium" for a transfer to a proceeding under chapters I-VII. But the bill does not specify what he may do *after* the moratorium. Since most commentators agree that chapter XII was not specifically designed to assist farmers and will therefore not give them adequate relief, it is not certain that the farmer would gain anything by asking for such a transfer.

Can the farmer withdraw his extension proposal? If yes, section 1016 provides that if the debtor has not filed an extension the court may adjudge him a bankrupt and direct that bankruptcy be proceeded with (this is mandatory in certain cases) or dismiss the proceeding, whichever in the opinion of the court may be in the interest of creditors. But the bill does not specifically state that the farmer has the right to withdraw his proposal. In contrast, the debt adjustment bill envisages this possibility.[72]

K. After the Confirmation of the "Extension"

If an extension proposal has been confirmed by the court, the entire proceedings are terminated by discharging the farmer and the trustee.[73] The farmer shall make all required payments directly to the persons entitled thereto.[74] These provisions are in contrast to the provisions of the debt adjustment bill which states that the "plan" may, for the period of extension, provide for the operation of the farm and the management of the property with or without supervision or control by a trustee, a committee of creditors or otherwise.[75] Under section 999 of H.R. 1068 the court may also retain jurisdiction over the debtor until the extension period has expired and may issue such orders as may be necessary to effectuate the provisions of the extension agreement. While the provisions of the moratorium bill may reduce the time during which the proceedings remain under control of the court, a desirable objective, they offer the creditors less protection that the terms of the extension proposal will be observed. By the same token, they may prove to be less favorable for the farmer if he should encounter temporary difficulties in living up to the extension agreement.

L. The Length of the Proceeding

It has been claimed by the drafters that a procedure under the moratorium bill would be less lengthy than under the debt adjustment bill or section 75.[76] It is doubtful whether this assertion is correct. The procedure depends on the length of the emergency, which is impossible to predict. Since the moratorium is of an indefinite duration, the procedure could last for ten years or more.

[72] H.R. 1068, 83d Cong., 1st Sess. § 1002 (1953).
[73] S. 689, 84th Cong., 1st Sess. § 1018 (1955).
[74] Id. § 988.
[75] H.R. 1068, 83d Cong., 1st Sess. § 988(10) (1953).
[76] The majority of section 75 procedures in the Dakotas did not extend over six to twelve months.

It has been stated elsewhere that an unlimited moratorium would cause the bankruptcy courts to be clogged by a large number of cases for a long period of time.[77] The supporters of the moratorium bill apparently confuse the issue of the "length of the procedure" with that of the "simplicity of procedure." Since the moratorium bill contains no provisions as to appraisal, composition of secured debts, redemption, etc., it would result in a simpler, less complicated procedure which may give rise to fewer appeals or litigations. This assumes that the bill is clearly worded and contains few loopholes—an assumption that an analysis of the moratorium bill does not warrant.

CONCLUSION

The study of the operation of section 75 and the analysis of the major substantative and procedural provisions of the moratorium bill lead to the conclusion that its defects are numerous and its adequacy as permanent farm relief legislation highly questionable. Its passage by Congress cannot be advocated.

The bill has been inspired, to a large extent, by the hostility of its drafters to the Frazier-Lemke Act and similar legislation. But this hostility is based on a misunderstanding and misinterpretation of the objectives of the Frazier-Lemke Act; of its value in effectuating a compromise between the interests of agriculture, of lenders and of society; and of the conditions under which it has operated in practice.

The bill appears to be as hastily drafted and poorly worded and as replete with loopholes as section 75. Some of its major provisions are contrary to the intent of its supporters. This introduces an element of deception.

It ignores almost entirely the experiences, both legal and practical, gained throughout the lifetime of section 75. By the same token, it ignores the experiences gained under other chapters of the Bankruptcy Act. It introduces entirely new concepts —some of which are undesirable or possibly outside the scope of a bankruptcy procedure, and hence may be held unconstitutional.

It gives relief to farmers only hesitantly; and what it gives with one hand, it appears to take away with the other. Consequently, it cannot be easily defended from the accusation that it favors the creditor more than debtor.

It puts secured creditors in a more favored position than un-

[77] Kruse, supra note 3, at 739.

secured creditors; and among secured creditors, institutional lenders would occupy a privileged position.

If the "drying up" of credit to farmers is the major objection to a debt adjustment bill, then the moratorium bill may be still more objectionable; its effects on the conditions under which short-run and intermediate loans are given to farmers could be far-reaching. With farmers' cash expenses, and hence credit needs, being at a high level, this could result in further rationing credit to farmers. Also the unfavorable position of unsecured creditors in the procedure, as provided by the bill, makes the rehabilitation of farmers in distress cases more questionable. The failure to permit refinancing by farmers through composition or redemption may be disadvantageous, not only for farmers, but also for those creditors—both secured and unsecured—who cannot easily withstand the effects of a prolonged moratorium.

For these reasons, the moratorium bill is only a poor alternative to the debt adjustment bill drafted by the N.B.C.