delegated to a drainage district: *William R. Compton Co.* v. *Farmer's Trust Co.*, 279 S.W. 746 (Mo. App., 1925); nor to a county: *Glynn County* v. *Brunswick Terminal Co.*, 101 Ga. 244, 28 S.E. 604 (1897); *Aetna Casualty & Surety Co.* v. *Brumell, State Supt. of Banks*, 12F(2d) 307 (1926); *Phillips* v. *Yates Center National Bank* (*Phillips* v. *Gillis*) 98 Kan. 383, 158 Pac. 23, L.R.A. 1917A, 680 (1916); nor to a municipal corporation: *People* v. *Home State Bank of Grant Park*, 338 Ill. 179, 170 N.E. 205 (1930); *In re Northern Bank*, 85 Misc. 594, 148 N.Y.S. 70 (1914) aff'd. 163 App. Div. 974, 148 N.Y.S. 70 (1914) further aff'd. 212 N.Y. 608, 106 N.E. 749 (1914); *United States Fidelity & Guaranty Co.* v. *Rainey*, 120 Tenn. 357, 113 S.W. 397 (1907); contra *Denver* v. *Stenger*, 295 Fed. 809 (1924). A political subdivision has been distinguished from an agency of the state, such as a university, the latter being entitled to exercise the state's common law sovereign prerogative. *University of Tennessee* v. *Peoples Bank, et al.*, 157 Tenn. 87, 6 S.W. (2d) 328.

JUSTIN H. FOLKERTH.

WHAT CONSTITUTES A FARMER UNDER THE BANKRUPTCY ACT?

On May 15, 1935, section 4b of the bankruptcy act was amended to provide, "Any natural person, except a wage earner or a farmer, ... may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this title."[1] At the same time section 75r was amended to provide, "For the purposes of this section, section 4b, and section 74, the term 'farmer' includes[2] not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the

[1] Bankruptcy Act, sec. 4b, 49 Stat. 246, 11 U.S.C.A. sec. 22b. (1935); formerly "Any natural person, except a wage earner or a person engaged chiefly in farming or the tillage of the soil . . . . may be adjudged an involuntary bankrupt." Bankruptcy Act of 1898, sec. 4b, 30 Stat. 547, 11 U.S.C.A., sec. 22b.

[2] The United States Supreme Court recently held that the word "include" was not a term of exclusion, as used in section 1 (9), defining a creditor. *American Surety Co. of New York* v. *Mariotta*, 287 U.S. 513, 77 L.Ed. 466, 53 S. Ct. 238.

principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."[3]

A survey of cases shows the extent to which the present amendment changes or codifies the rule of former decisions. In the past, in interpreting the provision exempting "natural persons," the reasoning of the courts has exempted farming partnerships,[4] but not corporations engaged in farming.[5] However, farming corporations are included in the agricultural composition-and- extensions section if at least 75% of the stock is owned by actual farmers.[6] A stockholder-officer in a farming corporation, who manages the corporation's farms, is within the exemption.[7]

The words "primarily engaged," used in the present amendment, seem to incorporate the meaning which was formerly expressed in the provision "chiefly engaged." Hence the reasoning of former cases is applicable. To determine if the debtor is "chiefly engaged in farming," all activities and pursuits must be considered.[8] Each case must be decided on its own peculiar facts.[9]

The present act provides that the debtor must be "bona fide" engaged in farming. Most courts hold that the debtor's occupation is to

[3] Bankruptcy Act, sec. 75r, 49 Stat. 246, 11 U.S.C.A. sec. 203r. (May 15, 1935) formerly, "For the purpose of this section and section 74, the term 'farmer' means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur." Bankruptcy Act, sec. 75r, 47 Stat. 1470, 11 U.S.C.A., sec. 203r. (1933).

[4] *Sill's Sons* v. *American Nat'l Bank*, 209 Fed. 749, (C.C.A. 7th Cir., 1913); *Sutherland Medical Co.* v. *Rich & Bailey* (D.C. Ga. 1909).

[5] *In re Lake Jackson Sugar Co.*, 129 Fed. 640 (D.C. Tex. 1904).

[6] Bankruptcy Act, sec. 75s., 49 Stat. 942, 11 U.S.C.A., sec. 203s. (1935).

[7] *Evans* v. *Florida National Bank*, 38 Fed. (2d) 627 (C.C.A. 5th Cir. 1930). But a farm laborer is not a farmer within the meaning of section 75. *In re Fullagar*, 8 Fed. Supp. 602 (D.C.N.Y. 1934).

[8] *American Agricultural Chemical Co.* v. *Brinkley*, 194 Fed. 411 (C.C.A. 4th Cir. 1912); *In re Disney*, 219 Fed. 294 (D.C. Md. 1915); *In re Brown*, 253 Fed. 357 (C.C.A. 9th Cir. 1918); *In re Macklem*, 22 Fed. (2d) 426 (D.C. Md. 1927); *Harris* v. *Tapp*, 235 Fed. 918 (D.C. Ga. 1916).

[9] *In re Mackey*, 110 Fed. 355 (D.C. Del. 1901); *In re Glick*, 26 Fed. (2d) 398 (C.C.A. 7th Cir. 1928).

be determined as of the date of the act of bankruptcy.[10] A few courts have considered the problem of changes of occupation into an exempt class prior to the act of bankruptcy. Some of these have allowed immunity on the theory that a change in good faith is valid,[11] while others have rather arbitrarily chosen to apply the date of acquisition of the debts.[12]

Prior to the 1933 amendment, courts differed in the interpretation of the clause "chiefly engaged in farming or tillage of the soil." Some courts held the terms "farming" and "tillage" were synonymous[13] while other reached the conclusion that the terms were not co-extensive.[14] A court which considered the terms synonymous held a dairy farmer was exempt if his dairying was merely incidental to his general farming.[15] Courts holding the terms not to be synonymous did not pass on the question of the status of a dairy farmer; but it would seem that they might have considered a dairyman a farmer even though he was primarily engaged in the dairy business and not pursuing it merely as an incident to tillage of the soil. The express provision of the present amendment exempts the debtor who is primarily engaged in dairy farming.

[10] *Virginia-Carolina Chemical Co.* v. *Shelhorse*, 228 Fed. 493 (C.C.A. 4th Cir. 1915); *In re Disney*, 219 Fed. 294 (D.C. Md. 1915); *Counts* v. *Columbus Buggy Co.*, 210 Fed. 748 (C.C.A. 4th Cir. 1913); *In re Leland*, 185 Fed. 830 (D.C. Mich. 1910); *In re Beiseker & Martin*, 277 Fed. 1010 (D. C. Mont. 1921). The United States Supreme Court, by inference, seems to have adopted this view by refusing to consider an appeal from a case so holding. *Flickinger* v. *First. Nat. Bank of Vandalia, Ill.*, 145 Fed. 162 (C.C.A. 6th Cir. 1906); certiorari denied, 203 U.S. 595, 51 L.Ed. 332 (1906). Contra: *In re Burgin*, 173 Fed. 726 (D.C. Ala. 1909); *In re Wakefield*, 182 Fed. 247 (D.C. Cal. 1910); *In re Crenshaw*, 156 Fed. 638 (D.C. Ala. 1907); *Tiffany* v. *La Plume Condensed Milk Co.*, 141 Fed. 444 (D.C. Pa. 1905). When the debtor has engaged in farming subsequent to the act of bankruptcy it has been held, "The excepted occupations are not designed as a refuge for insolvent debtors laden with property and fleeing from other callings." *In re Luckhardt*, 101 Fed. 807, 809 (D.C. Kan. 1900); approved in *In re Mackey*, 110 Fed. 355 (D.C. Del. 1901).

[11] *In re Folkstad*, 199 Fed. 363 (D.C. Mont. 1912); *In re Inman*, 57 Fed. (2d) 595 (D.C. Wyo. 1932).

[12] *First Nat. Bank of Bode* v. *Williams*, 31 Fed. (2d) 749 (C.C.A. 8th Cir. 1929); *Smith* v. *Brownsville State Bank*, 15 Fed. (2d) 792 (C.C.A. 8th Cir. 1926); *Harris* v. *Tapp*, 235 Fed. 918 (D.C. Ga. 1916).

[13] *Hart-Parr Co.* v. *Barkley*, 231 Fed. 913 (C.C.A. 8th Cir. 1916); *Matter of Brown*, 284 Fed. 899 (D.C. Mo. 1922); *Matter of Stubbs*, 281 Fed. 568 (D.C. Wyo. 1922).

[14] *Robertson* v. *Dwyer*, 184 Fed. 880 (C.C.A. 7th Cir. 1911); *In re Thompson*, 102 Fed. 287 (D.C. Ia. 1900).

[15] *Gregg* v. *Mitchell*, 166 Fed. 725 (C.C.A. 6th Cir. 1909).

Livestock raising has been held to be farming by courts which considered "tillage of the soil" and "farming" as not co-extensive,[16] but a cattle rancher was held not exempt by a court which construed the terms to be synonymous.[17] The present amendment exempts a person who is "primarily engaged in the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state." The general definition[18] of the word "produce," as given by Webster, would certainly include the stock raiser, but the stock feeder would be exempt only if the economic definition[19] is followed.

Prior to the 1933 amendment mere ownership of a farm was not sufficient to exempt a debtor from the involuntary bankruptcy provision,[20] even though the farm was leased on shares—the debtor also had to prove that he was "chiefly engaged in farming."[21] The debtor has been held exempt although incidentally a private banker,[22] storekeeper,[23]

[16] *In re Thompson*, 102 Fed. 287 (D.C. Ia. 1900); *Robertson* v. *Dwyer*, *supra*; *Hoffschlaeger Co.* v. *Napp*, (D.C. Hawaii 1904).

[17] *In re Stubbs*, 281 Fed. 568 (D.C. Wyo. 1922); and see *In re Palma Bros.*, 8 Fed. Supp. 920 (D.C. Nev. 1934), where a person engaged primarily in raising sheep was held not to be a farmer.

[18] "To bring forth, as young or as a natural product or growth, to give birth to, to bear."

[19] "The creation of economic value, the making of goods available for human wants."

[20] *In re Johnson*, 149 Fed. 864 (D.C. N.Y. 1907); *In re Matson*, 123 Fed. 743 (D.C. Pa. 1903). However, an elderly woman, living in the village but owning a farm run on shares by her son and having some voice in the management was held exempt, *Matter of Cox*, 9 Fed. Supp. 244 (D.C. Ill. 1935); and an aged woman, who continued to reside on the farm after her husband's death, under agreement with her son for division of profits, doing such housework as she was able was held immune, *In re Brais*, 15 Fed. (2d) 693 (C.C.A. 7th Cir. 1926); similarly as to a debtor who moved to town, leasing his farm but helping when able and being consulted about the crops, *In re Glick*, 26 Fed. (2d) 398 (C.C.A. 7th Cir. 1928) and *In re Tyler*, 284 Fed. 152 (D.C. Ia. 1922).

[21] *In re Glass*, 53 Fed. (2d) 844 (C.C.A. 7th Cir. 1931), even though the owner occasionally worked on the farm and was consulted as to the crops.

[22] *Couts* v. *Townsend*, 126 Fed. 249 (D.C. Ky. 1903); *In re Beiseker & Martin*, 277 Fed. 1010 (D.C. Mont. 1921).

[23] *American Agricultural Chemical Co.* v. *Brinkley*, *supra*; *Rise* v. *Bordner*, 140 Fed. 566 (D.C. Pa. 1905); and where a debtor maintained a commissary on a large plantation he was held exempt. *Wulbern* v. *Drake*, 120 Fed. 493 (C.C.A. 4th Cir. 1903).

lawyer,[24] or member of a canning partenership, where he was principally engaged in farming operations.[25]

In 1933 the operations included in the section defining farmer were supplemented by the provision "or the principal part of whose income is derived from any one or more of the foregoing operations." From a cursory inspection of this provision one might believe that its object is to include the retired farmer, hitherto excluded because he was no longer primarily engaged in farming.[26] The few cases that have arisen since the amendment have not involved a retired farmer. In these cases the debtor has been engaged in another business too, and the courts have had to resolve the conflict between the provisions "primarily engaged" and "or the principal part of whose income is derived from any one or more of the foregoing operations." However, the statements of the Courts have been broad enough to exclude the retired farmer on the same grounds that he was formerly excluded. Thus, one of these Courts said that there is little distinction between the phrases "engaged chiefly in farming," "personally—primarily engaged in farming," and "the principal part of whose income is derived from farming operations."[27] Another court came to the conclusion that Congress intended that in all cases the individual must be engaged primarily in farming operations, and that the additional clause, "or the principal part of whose income is derived from farming operations," was inserted as a precaution against a bona fide farmer being otherwise classed when during bad years he is forced to engage in some other occupation to earn a livelihood.[28] It may be questioned whether Congress passed the amendment with the intent attributed to it by the above cases—to exclude the farm owner who is primarily engaged in an occupation other than farming;[29] and

[24] *In re Hoy*, 137 Fed. 175 (D.C. Ia. 1905).

[25] *Matter of Disney*, 219 Fed. 294 (D.C. Md. 1915); but c.f. *In re Macklem*, 22 Fed. (2d) 426 (D.C. Md. 1927), where the debtor was held to be a canner and not a farmer. It has been held that a debtor who is chiefly engaged in threshing for hire grain raised by others is not within the exemption. *Hart-Parr Co.* v. *Barkley*, *supra*.

[26] See notes 20 and 21 *supra*.

[27] *In re Day*, 10 Fed. Supp. 948 (D.C. Cal. 1935).

[28] *In re Hilliker*, 9 Fed. Supp. 948 (D.C. Cal. 1935). Income has been held to mean gross income. *In re Knight*, 9 Fed. Supp. 502 (D.C. Conn. 1934).

[29] See *Louisville Joint Stock Land Bank* v. *Radford*, 79 L. Ed. 1593, 1610, 295 U.S. 555, 55 S. Ct. 854 (1935). In a dictum the United States Supreme Court commented on section 75r and observed that the act affords relief "not only to those owners who operate their farms, but also to all individual landlords the 'principal part of whose income is derived' from the

further, if such was the intent whether the retired farmer should be excluded for the reason that he is primarily engaged in no occupation.

The amendment provides that a farmer, as the term is used in sections 4b, 74 and 75, includes a deceased farmer's personal representative. Since the farmer is exempted, by section 4b, from involuntary bankruptcy, the personal representative would also be entitled to his immunity. Therefore, it would seem that the sole purpose of this provision is to permit the deceased farmer's personal representative to file a voluntary petition under section 74 and 75.[30]

It is now provided that a farmer shall be deemed a resident of any county in which his farming operations occur. Formerly the farmer's residence was a question of fact to be determined from the circumstances of the case.[31] Now it seems that farming within the county is sufficient for jurisdiction. CARL R. BULLOCK.

CONDITIONAL SALES

CONDITIONAL SALE — UNRECORDED — PRIORITY OF VENDEE'S RECEIVER OVER VENDOR

Defendant and McWeb's, Inc., entered into a conditional sales agreement for the sale of a beer cooler, title to remain in the vendor until payment of the purchase price. The property was delivered, but payments were not made nor the contract filed for recording. At the request of one of the creditors of McWeb's, Inc., one Doyle was appointed receiver for that company. The defendant was made a party to the suit with leave to plead and he filed a cross petition claiming the beer cooler. The Supreme Court held that failure to file the conditional sales contract rendered it invalid as to creditors of the vendee, and that the appointment of the receiver amounted to an equitable execution, and his seizure of the property to an equitable levy. *Doyle* v. *Yoho Hooker Youngstown Co.*, 130 Ohio St. 400, 200 N.E. 123, 20 Ohio Abs. 17 (1936).

At common law the right and title of a conditional vendor are in no way affected by the appointment of a receiver for the conditional vendee for the reason that the receiver stands in the shoes of the vendee

'farming operations' of share croppers or other tenants; and, among these landlords, to persons who are merely capitalist absentees." See 15 Oregon L. Rev. 62 (1935).

[30] See *In re Day*, 10 Fed. Supp. 229 (D.C. Ill. 1935).

[31] Collier On Bankruptcy (13 Ed., 1923), p. 61.