CASE NOTES

BANKRUPTCY—CHAPTER XIII—RIGHTS OF NONASSENTING SECURED CREDITORS

Debtor filed a wage earner plan under Chapter XIII of the Bankruptcy Act.[1] At the first meeting of creditors Universal C.I.T. Credit Corporation, a listed secured creditor, appeared, asserted its right to repossess the debtor's automobile under a conditional sales agreement and, not being allowed to prove its security, rejected the plan. All unsecured creditors having accepted, the referee confirmed the plan over C.I.T.'s objection, stating that C.I.T. was not a part of the plan and was not affected thereby. On appeal, the district court reversed, holding that, under section 652 (1) of the Bankruptcy Act,[2] where no provision was made in the plan for payment to a nonassenting secured creditor in accordance with the terms of its contract, and such nonassenting secured creditor would have been precluded from asserting its contract rights independently of the bankruptcy court,[3] the nonassenting creditor's claim was "dealt with by the plan" and therefore C.I.T.'s written acceptance was a prerequisite to confirmation thereof.[4] The Court of Appeals for the First Circuit reversed on the ground that the plan neither expressly limited the amount recoverable on C.I.T.'s claim, nor restricted its security interest and that its claim was therefore not dealt with.[5]

Construing section 652 (1) of the Bankruptcy Act,[6] the courts have uniformly held that, if a secured creditor is "dealt with" by the debtor's plan, he must accept the plan before it can be confirmed.[7] The criterion, then,

1. Bankruptcy Act, ch. XIII, 11 U.S.C. §§1001-86 (1964).
2. Bankruptcy Act. ch. XIII, 11 U.S.C. §1052 (1) (1964), which provides that, if a plan has not been unanimously accepted, an application for confirmation of the plan may be filed with the court, but not before—
   (1) it has been accepted in writing, if unsecured creditors are affected by the plan, by a majority in number of all such creditors whose claims have been proved and allowed before the conclusion of the meeting, which number shall represent a majority in amount of such claims, *and by the secured creditors whose claims are dealt with by the plan.* (emphasis added.)
3. Section 614 of the Bankruptcy Act, ch. XIII, 11 U.S.C. §1014 (1964), provides that the court may
   [E]njoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor.
4. In re Cheetham, 272 F. Supp. 501 (D. Me. 1967).
5. Cheetham v. Universal C.I.T. Credit Corp., 390 F.2d 234 (1st Cir. 1968).
6. Bankruptcy Act, ch. XIII, 11 U.S.C. §1052 (1) (1964).
7. First Nat'l Bank v. Cope, 385 F.2d 404 (1st Cir. 1967); Interstate Fin. Corp. v. Scrogham, 265 F.2d 889 (6th Cir. 1959); In re Rutledge, 277 F. Supp. 933 (E.D. Ark. 1967); In re Pappas, 216 F. Supp. 819 (S.D. Ohio 1962); In re O'Dell, 198 F. Supp. 389 (D. Kan. 1961).

is simply whether the secured creditor is being "dealt with" in the plan.[8] If not, such a creditor is not affected.

Although relatively few decisions have dealt specifically with this area of bankruptcy law, the principal case follows the general view that the claim of a secured creditor is "dealt with" if the debtor's plan does not make provision for the payment of such claim according to the terms of the instrument creating the debt.[9] However, it specifically rejects the idea that, because sections 611, 614, 657 and 658 of the Act[10] limit the freedom of such secured creditors, both to bring suit and to enforce their liens, they are "dealt with,"[11] and in this regard the court said,

> Were the potential restraints of these sections to constitute 'dealing with,' every secured creditor would be dealt with except those whose claims were fully provided for in the plan. This would seem precisely contrary to section 646 (2),[12] which expressly makes

But the real importance of the principal decision lies in the fact that the court departs from the interpretation generally given to the words "dealt with"[14] when it states,

> If Chapter XIII is to serve any real purpose where there are secured creditors, section 652 must be read as written, to require assent only of those 'whose claims are dealt with,' meaning expressly adversely dealt with. Irrespective of what general inconveniences may occur to non-assenting secured creditors as a result of Chapter XIII proceedings, we hold that secured claims are dealt with only when the plan expressly limits the amount recoverable on the claim, or restricts the creditor's security interest . . . . We do not believe section 652 is meant to be more rigidly interpreted, or that it is necessary to do so.[15]

8. 10 COLLIER ON BANKRUPTCY ¶22.10 (1967).
9. Hallenbeck v. Penn. Mut. Life Ins. Co., 323 F.2d 566 (4th Cir. 1963); In re Rutledge, 277 F. Supp. 933 (E.D. Ark. 1967); In re Wilder, 225 F. Supp. 67 (M.D. Ga. 1963); In re Pappas, 216 F. Supp. 819 (S.D. Ohio 1962); In re O'Dell, 198 F. Supp. 389 (D. Kan. 1961); In re Duncan, 33 F. Supp. 997 (E.D. Va. 1940).
10. Bankruptcy Act. ch. XIII, 11 U.S.C. §§1011, 1014, 1057, 1058 (1964). These deal with the court's jurisdiction of all property belonging to the debtor, the court's power to stay suits and other actions against debtor and his property, the binding effect of the confirmed plan on all creditors whether or not they are affected by the plan, and the power of the court to retain jurisdiction of the debtor and his property and wages throughout continuation of the plan.
11. This was the reasoning followed by the court in Hallenbeck v. Penn. Mut. Life Ins. Co., 323 F.2d 566 (4th Cir. 1963); In re Pappas, 216 F. Supp. 819 (S.D. Ohio 1962); In re O'Dell, 198 F. Supp. 389 (D. Kan. 1961).
12. Bankruptcy Act, ch. XIII, 11 U.S.C. §1046 (2) (1964), which provides that a plan under Chapter XIII of the Bankruptcy Act *shall* include provisions dealing with unsecured debts generally, and *may* include provisions dealing with secured debts severally.
    dealing with secured creditors optional . . . .[13]
13. Cheetham v. Universal C.I.T. Credit Corp., 390 F.2d 234, 237 (1st Cir. 1968). (footnote author's.)
14. First Nat'l Bank v. Cope, 385 F.2d 404 (1st Cir. 1967); Interstate Fin. Corp. v. Scrogham, 265 F.2d 889 (6th Cir. 1959); In re Rutledge, 277 F. Supp. 933 (E.D. Ark. 1967); In re Pappas, 216 F. Supp. 819 (S.D. Ohio 1962); In re O'Dell, 198 F. Supp. 389 (D. Kan. 1961).
15. Cheetham v. Universal C.I.T. Credit Corp., 390 F.2d 234, 238 (1st Cir. 1968).

This reasoning is in harmony with the language of the court in the 1963 Georgia case on this point[16] where it is stated, "The interest of a creditor must be 'materially and adversely' affected by the plan before the creditor's acceptance becomes necessary for the confirmation of the plan. There must be more than a nominal or minute alteration in the creditor's interest."[17] The opposite position is taken in a recent Arkansas decision[18] where the court held that it was error to require a creditor which did not accept the plan to participate in it—even though the plan provided for payment of the full contract price—because the plan did not provide for any specific time limitation for bringing delinquent payments current.

The principal case held that the consent of every secured creditor who is not expressly designated for full payment by the trustee is not a condition precedent to confirmation of a plan. Adoption of this reasoning would take the whip from the hand of a secured creditor[19] who might otherwise arbitrarily reject the plan and prevent confirmation, and would remove what at times has been a source of frustration for those who seek to administer, as well as those who in good faith invoke the protection of, Chapter XIII of the Bankruptcy Act.

HELEN BERENTHIEN

CONSTITUTIONAL LAW—FIFTH AMENDMENT—SELF INCRIMINATION AND THE RIGHT NOT TO FILE A GAMBLING TAX RETURN

Proper assertion by the defendant of his privilege against self-incrimination was a complete defense to prosecution for conspiracy to evade payment of the federal occupational tax on wagering and failure to register and pay such tax,[1] where such wagering violates state criminal statutes[2] and

16. In re Wilder, 225 F. Supp. 67 (M.D. Ga. 1963).
17. *Id.* at 69.
18. In re Rutledge, 277 F. Supp. 933 (E.D. Ark. 1967).
19. Speaking of the decision of the district court in the *Cheetham* case, the court here said,

> The court's interpretation, requiring the consent of every secured creditor who is not expressly designated for full payment by the trustee, gives each secured creditor a whip hand. All must assent except those who have no reason to dissent; in consequence, the only plans that can be approved are those which expressly undertake to pay non-assentnig secured creditors in full. We do not believe this to have been Congress' intention.

1. 26 U.S.C. §4411 (1954), provides for a $500 occupational tax per annum on those subject to tax in §4401 and those who receive wagers on their behalf. 26 U.S.C. §4412 (1954) requires registration with the director of local internal revenue district each year, supplying (1) his name and place of residence, (2) whether he accepts wages, (3) names and addresses of persons receiving wagers for him, and (4) names and addresses of persons for whom he receives wagers. *See also* 26 U.S.C. §§4401, 4403, 4422, 4423, 6107, 6806(c) (1954).
2. CONN. GEN. STAT. REV. §§53-295, 53-289 (1958). *See also* CONN. GEN. STAT. REV. §§53-273, 53-290, 53-293, 54-197 (1958).