SUPREME COURT OF THE UNITED STATES.

No. 796.—October Term, 1939.

Securities and Exchange Commission, Petitioner, *vs.* United States Realty and Improvement Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[ ]

Mr. Justice Stone delivered the opinion of the Court.

The questions are whether respondent's petition for an arrangement of its unsecured debts under Chapter XI of the Bankruptcy Act should be dismissed because the relief obtainable under that chapter is inadequate, and whether the Securities and Exchange Commission is entitled to raise and litigate that question by intervention and appeal.

Respondent, a New Jersey corporation doing business in New York as owner of and manager of real estate investments, has outstanding ~~in the hands of some seven thousand stockholders~~ 900,000 ~~shares of capital stock~~, without par value, which are listed on the New York Stock Exchange. It has liabilities of $5,051,416, of which only $74,916 is current. This indebtedness includes two series of publicly held debentures aggregating $2,339,000, maturing January 1, 1944, which are secured by a pledge of corporate stock of little value and a $3,000,000 note, due August 12, 1939, which is secured by a first mortgage owned by respondent. In addition respondent is also liable as a guarantor of payment, principal and interest, and sinking fund of mortgage certificates in the sum of $3,710,500, issued by its wholly owned subsidiary Trinity Building Corporation of New York and now in the hands of some nine hundred holders. These certificates have been in default for failure to pay interest, principal and sinking fund since January 1, 1939. They are secured by mortgage of real estate and buildings which are Trinity's only substantial assets. Each year since 1936 respondent has suf-

fered a net loss in the conduct of its business and is now unable to pay its debts.[1]

Before maturity of the first mortgage certificates, respondent and the Trinity Company joined in proposing to certificate holders a plan for the modification of the obligation of the certificates, leaving unaffected the other indebtedness and stock of respondent. By this plan the maturity of the certificates was to be extended, the rate of interest reduced, and the terms of the provisions for payment of the sinking fund modified. Respondent's guarantee, as to the extension and interest, was to be modified accordingly, and its guarantee of sinking fund payments was to be eliminated. The plan was to be consummated by resort to two proceedings, one to be instituted by respondent under Chapter XI of the Bankruptcy Act, 11 U. S. C. Supp. V, § 710 *et seq.*, 52 Stat. 840, for an "arrangement" modifying its guarantee of the certificates in the manner already indicated. The other was to be instituted in behalf of Trinity in the New York state courts under the Burchill Act, New York Real Property Law, §§ 121-123, to secure the appropriate modification of Trinity's primary obligation on the certificates. The plan provided that the modification of respondent's guarantee by the Chapter XI proceeding should stand, even though the state court should refuse to confirm the proposed modification of Trinity's obligation on the certificates. When the assent to the plan of holders of certificates amounting to approximately 60 per cent. in number and amount, had been obtained, the present proceeding was begun May 31, 1939, by the filing in the district court for Southern New York of a petition praying that the proposed "arrangement" affecting the unsecured indebtedness of respondent be approved.

The district court found that the petition was properly filed under § 322 of Chapter XI of the Bankruptcy Act, and directed that respondent debtor continue in possession of the property. On July 18, 1939, the district court entered an order permitting the Secur-

[1] The alleged value of debtor's assets is $7,076,515. Of this $5,200,000 is represented by the stock of the subsidiary and a first mortgage on a building owned by the subsidiary which is pledged to secure respondent's $3,000,000 note. Current assets are less than $400,000. The balance of the assets, consisting chiefly of mortgages, loans and other securities in the amount of $555,655, an investment of $447,300 in securities of an independent company, unimproved real estate valued at $290.000. and a note receivable from a subsidiary of $137.500. The total nominal value of these assets is ~~$8,736,970. as against which its total liabilities, including its liability on the matured debenture certificates, are $9,436,832.~~

ities and Exchange Commission to intervene. A motion of the Commission to vacate the order approving the debtor's petition, to dismiss the proceeding under Chapter XI, and to deny confirmation of the proposed arrangement, was denied by the district court and the cause was referred to a referee for further proceedings. On appeal by the Commission from these several orders and on appeal of the respondent from the order of the district court permitting the Commission to intervene, the appeals being consolidated and heard together, the Court of Appeals for the Second Circuit reversed the order permitting the Commission to intervene and dismissed the appeal of the Commission. 108 F. (2d) 794. We granted certiorari April 1, 1940, the questions raised being of public importance in the administration of the Bankruptcy Act.

The Court of Appeals held that the proceeding to secure approval of the arrangement, embodied in the plan proposed by respondent, was properly brought under Chapter XI of the Bankruptcy Act; that the intervention by the Commission was not authorized by any provision of the Bankruptcy Act and that it had no interest affected by the proceeding under that chapter entitling it to intervene under the applicable rules controlling intervention in the federal courts, and that consequently it was not aggrieved by the order appealed from and so was not entitled to maintain its appeal.

The Commission argues that Chapter X of the Bankruptcy Act prescribes the exclusive procedure for reorganization of a large corporation having its securities outstanding in the hands of the public as does respondent,[2] and that consequently the district court was without jurisdiction to entertain respondent's petition under Chapter XI; that in any case the district court should have dismissed the petition because in the circumstances no fair and equitable arrangement affecting respondent's unsecured creditors alone such as is prescribed by Chapter XI, can be consummated in a proceeding under that chapter. Such being the status of the cause

2 By § 126 a corporation or three or more creditors may file a petition under Chapter X.

By § 130 every petition shall state:

"(1) that the corporation is insolvent or unable to pay its debts as they mature;

"(2) the applicable jurisdictional facts requisite under this chapter;

. . . . . .

"(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter XI of this Act; . . ."

under Chapter XI, the Commission insists that it was properly allowed to intervene in order to protect the interest of the public specially committed to its guardianship by the provisions of Chapter X, and to forestall the impairment of its own functions under that chapter by an unauthorized or improper resort by respondent to Chapter XI, and that for the same reason the Commission was entitled to appeal from the order of the district court refusing to dismiss the Chapter XI proceedings.

To this it is answered, as the Court of Appeals held, that respondent, although a large corporation with its securities widely distributed in the hands of the public, is nevertheless within the literal terms of Chapter XI, which authorizes a debtor to petition under that chapter for an arrangement with respect of its unsecured indebtedness, and that the district court was accordingly bound to entertain the petition, however desirable it might be that the reorganization should proceed under Chapter X, whose procedure is better adapted in cases like the present to protect the public interest and to secure a fair and equitable reorganization, than are the provisions of Chapter XI.

Chapter XI provides a summary procedure by which a debtor may secure judicial confirmation of an "arrangement" of his unsecured debts. The debtor who is defined as a "person who could become a bankrupt under section 4 of the Act", § 306(3), may, according to section 4 and § 1(23), be any person (which includes corporations), except a municipal, railroad, insurance or banking corporation or a building and loan association. The debtor files his original voluntary petition for an arrangement in such a court as would have jurisdiction of a petition in ordinary bankruptcy[3] and must file with the petition the proposed arrangement. §§ 322, 323. An arrangement is defined as "any plan of a debtor for the settlement, satisfaction, or extension of the time of payment of his unsecured debts upon any terms." § 306(1). The unsecured debtors may be treated generally or in classes. §§ 356, 357.

It is evident that the language of the sections to which we have referred in terms confers on the court jurisdiction of a petition for an arrangement, which the present petition is, filed by a debtor, which the respondent is, in the technical sense that it confers on the

[3] § 311 confers on the court in which the petition is filed exclusive jurisdiction of the debtor and his property, where not inconsistent with the provisions of the chapter.

court power to make orders in the cause which are not open to collateral attack. See *Pennsylvania* v. *Williams*, 294 U. S. 176, 180, *et seq.* But the Commission points out that a proceeding begun under Chapter X may be begun and continued under that chapter only if the petition is filed in good faith, §§ 130[7], 143, 146[2], 221, and that under § 146(2) "a petition shall be deemed not to be filed in good faith if . . . (2) adequate relief would be available by a debtor's petition under the provisions of Chapter XI"; that Chapter X, devised as a substitute for the equity receivership, is specially adapted to the reorganization of large corporations whose securities are held by the public, and sets up a special procedure for the protection of widely scattered security holders and the public through the intervention of the Commission, while Chapter XI which is peculiarly adapted to the speedy composition of debts of small individual and corporate businesses, omits the machinery for reorganization set up by Chapter X, and contains no provision for participation by the Commisison in a proceeding under Chapter XI. From this it argues that the district court was without jurisdiction to entertain respondent's petition under Chapter XI, and the readjustment of its indebtedness through judicial action can properly proceed only with the safeguards, public and private, afforded by Chapter X.

While we do not doubt that in general, as will presently appear more in detail, the two chapters were specifically devised to afford different procedures, the one adapted to the reorganization of corporations with complicated debt structures and many stockholders, the other to composition of debts of small individual business and corporations with few stockholders, we find in neither chapter any definition or classifications which would enable us to say that a corporation is small or large, its security holders few or many, or that its securities are held by the public, so as to place the corporation exclusively under the jurisdiction of the court under one chapter rather than the other. But granting the jurisdiction of the court, the question remains of the propriety in the circumstances, of its order retaining jurisdiction, and of the extent of its duty to go forward with the proceeding under Chapter XI in the face of the contention that Chapter X alone affords a remedy adequately protecting the public and private interests involved. The answer turns not on the court's statutory jurisdiction to entertain a proceeding under Chapter XI, but on considerations growing out of the public policy

of the Act and the authority of the court clothed with equity powers and sitting in bankruptcy to give effect to that policy through its power to withhold relief under Chapter XI when relief is available under Chapter X, which is adequate and more consonant with that policy.

Before the enactment of Section 77B of the Bankruptcy Act, 48 Stat. 911, 912, the bankruptcy mechanism was designed for the final liquidation of the bankrupt's estate, except to the extent only that a compromise with creditors was authorized by §§ 12, 74. Bankruptcy afforded no facilities for corporation reorganization which, in consequence, could be effected only through resort to the equity receivership with its customary mortgage foreclosures and its attendant paraphernalia of creditors' and security holders' committees, and of rival reorganization plans. Lack of knowledge and control by the court of the conditions attending formulation of reorganization plans, the inadequate protection of widely scattered security holders, the frequent adoption of plans which favored management at the expense of other interests, and which afforded the corporation only temporary respite from financial collapse, so often characteristic of reorganizations through equity receiverships, led to the enactment of 77B[4]

The creation of the Securities and Exchange Commission, specially charged by various statutes with the protection of the interests of the investing public,[5] and observed inadequacies of § 77B,[6] led

[4] See S. Doc. No. 65, 72d Cong., 1st Sess., p. 90; H. Rept. No. 1049, 75th Cong., 1st Sess., p. 2.

[5] The basic assumption of Chapter X and other acts administered by the Commission is that the investing public dissociated from control or active participation in the management, needs impartial and expert administrative assistance in the ascertainment of facts, in the detection of fraud, and in the understanding of complex financial problems. See, e. g., Securities Act of 1933, 48 Stat. 74, 15 U. S. C. §§ 77a-77aa; Securities and Exchange Act of 1934, 48 Stat. 881, 15 U. S. C. :78; Public Utility Holding Company Act of 1935, 49 Stat. 838, 15 U. S. C. Supp. V, § 79; Trust Indenture Act of 1939, 53 Stat. 1149, 15 U. S. C. Supp. V, §§ 77aaa-77bbb.

[6] The revision of 77B resulted from the investigation of a Special Senate Committee to Investigate Receivership and Bankruptcy Proceedings, S. Doc. No. 268, 74th Cong., 2d Sess.; and from a study by the Securities and Exchange Commission of the degree of protection afforded to the investing public in reorganizations. Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees (1936-1939). See Hearings before the Committee on the Judiciary on H. R. 8046, 75th Cong., 1st Sess.; Hearings before a Subcommittee of the Senate Committee on the Judiciary on H. R. 8046, 75th Cong., 2d Sess.; H. Rept. No. 1409, 75th Cong., 1st Sess.; S. Rept. No. 1916, 75th Cong., 3d Sess. See Dodd, The Securities and Exchange Commission's Reform Program for Bankruptcy

to its revision and enactment in changed form as Chapter X, so as to provide for a larger measure of control by the court over security holders' committees and the formulation of reorganization plans and to secure impartial and expert administrative assistance in corporate reorganizations through participation of the Commission. ~~A subsidiary of the debtor may be brought into such a proceeding, §129.~~ Except where the liabilities are less than $250,000, Chapter X requires the appointment of a disinterested trustee, §§ 156-158, and a thorough examination and study by the trustee of the debtor's financial problems and management, § 167(3)(5). The trustee is required to report the result of his study, to send the report to all security holders with notice to submit to him proposals for a plan of reorganization, § 167(5)(6). He then formulates a plan or reports the reasons why a plan cannot be formulated, § 169. By § 176 consent to a plan in advance of its intial approval by the judge is void unless procured with his consent. A large measure of control is given to the court over the reorganization and of committees of security holders and their compensation, §§ 163, 165, 209, 212, 241-243.

If the judge finds the plan presented worthy of consideration he may refer it to the Commission for report and must do so where the liabilities of the debtor, as in the present case, exceed $3,000,000. § 172. When the plan is submitted to creditors after approval by the judge it is accompanied by the report of the Commission and the opinion of the judge approving the plan, § 175. The Commission is authorized to participate generally in the proceedings as a party, and it is its duty to do so upon request of the court, § 208.

No comparable safeguards are found in Chapter XI.[7] Every phase of the procedure bearing on the administration of the estate

Reorganizations, 38 Col. L. Rev. 223; Swaine, "Democratization" of Corporate Reorganizations, 38 Col. L. Rev. 256; Heuston, Corporate Reorganizations under the Chandler Act, 38 Col. L. Rev. 1199; Teton, Reorganization Revised, 48 Yale L. J. 573; Gerdes, Corporate Reorganizations—Changes Effected by Chapter X of the Bankruptcy Act, 52 Harv. L. Rev. 1; Rostow and Cutler, Competing Systems of Reorganization, Chapters X and XI of the Bankruptcy Act, 48 Yale L. J. 1334.

[7] Chapter XI was sponsored by the National Association of Credit Men and other groups of creditors' representatives expert in bankruptcy. Hearings before the House Committee on the Judiciary on H. R. 6439 (reintroduced and passed in 1938 as H. R. 8046), 75th Cong., 1st Sess., pp. 31, 35. Their business of representing trade creditors in small and middle-sized commercial failures is an important factor in the background of the chapter. See, Montgomery, Counsel for the Association of Credit Men, on Arrangements, 13 J. N. A. Ref. Bankruptcy, 17.

and the development of the arrangement is under the control of the debtor. The process of formulating an arrangement and the solicitation of consent of creditors, sacrifices to speed and economy every safeguard in interest of thoroughness and disinterestedness provided in Chapter X. The debtor is generally permitted to stay in possession and operate the business under the supervision of the Court, § 342, and a trustee is provided for only in the case where a trustee in bankruptcy has previously been appointed and is in possession, or if "necessary" a receiver may be appointed. § 332. The debtor proposes the arrangement, §§ 306(1), 323, 357, and the only opportunity afforded the creditors in respect to the proposed plan is to accept or reject it as submitted by the debtor. Acceptances may be solicited either before or after filing the petition and always before approval of the plan by the Court, § 336(4). Section 361 authorizes confirmation of an arrangement when accepted by all the creditors affected by it, "if the court is satisfied that the arrangement and the acceptances are in good faith," and Section 362 permits confirmation if only a majority of the creditors affected accept. The arrangement is to be confirmed if the Court is satisfied that "(1) the provisions of this Chapter have been complied with; (2) it is for the best interest of the creditors; (3) it is fair, equitable and feasible . . . ; and (5) the proposal and its acceptances are in good faith . . ."

There are no provisions for an independent study of the debtor's affairs by court or trustee, or for advice by them to creditors with respect to their rights or interests in advance of their consent to the arrangement. Committees of the creditors are provided for, §§ 334, 338, but there is no restriction on or supervision over their selection and conduct as in Chapter X. The arrangement may be consummated at the conclusion of a single creditors' meeting. The Court in passing upon the arrangement, is without the benefit of investigation and study by the trustee or Commission, which Congress has required in reorganization proceedings under Chapter X, and is then faced with the fact that a majority of the creditors have already accepted the plan.

Still more important are the differences in the remedies obtainable under the two chapters which result from differences in the nature of the two proceedings and in the securities which may be affected by them. A plan under Chapter X may affect one or more classes of debts or securities of the corporation to be reorganized.

Under Chapter XI only the rights of unsecured creditors may be arranged and this without alteration of the status of any other classes of security holders. Both chapters provide for confirmation of the plan or arrangement by the judge "if satisfied that" it "is fair and equitable and feasible" and if "the proposal" of the plan or arrangement "and its acceptance are in good faith", §§ 221, 366. "Fair and equitable", taken from § 77B and made the condition of confirmation under both Chapter X or Chapter XI are "words of art" having a well understood meaning in reorganizations in equitable receiverships and under § 77B which is incorporated in the structure of both Chapters X and XI. See *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106, 115, *et seq.* The phrase signifies that the plan or arrangement must conform to the rules of *Northern Pacific Ry. Co.* v. *Boyd*, 228 U. S. 482, which established the principle which we recently applied in the *Los Angeles* case, that in any plan of corporate reorganization unsecured creditors are entitled to priority over stockholders to the full extent of their debts and that any scaling down of the claims of creditors without some fair compensating advantage to them which is prior to the rights of stockholders is inadmissible.

Since the sections under Chapter XI already considered admit of an "arrangement" only with respect to unsecured creditors without alteration of the relations of any other class of security holders, and since it contemplates, as required by § 366, that the arrangement shall be fair and equitable within the meaning of the *Boyd* case, it is evident that Chapter XI gives no appropriate scope for an arrangement of an unsecured indebtedness held by some nine hundred individual creditors of a corporation having seven thousand stockholders. The hope of securing an arrangement which is fair and equitable and in the best interests of unsecured creditors, without some readjustment of the rights of stockholders such as may be had under Chapter X, but is precluded by Chapter XI, is at best but negligible and, if accomplished at all, must be without the aids to the protection of creditors and the public interest which are provided by Chapter X, and which would seem to be indispensable to a just determination whether the plan is fair and equitable.

Respondent suggests that the proposed arrangement may be taken to satisfy the test of the *Boyd* case since under it the certificate

holders would receive a new guarantee, enforcible as to principal notwithstanding the New York moratorium law, in place of the old guarantee to which that law applies. See *Honeyman* v. *Hanen*, 275 N. Y. 382, appeal dismissed 302 U. S. 375. It also insists that it is not impossible that an arrangement of its unsecured indebtedness under Chapter XI may be proposed which would meet the test. It states that, availing itself of the privilege afforded by § 363, it has proposed an amended arrangement which is not in the record and the terms of which are not disclosed. But it suggests that the arrangement could be amended so as to provide for a ratable distribution to certificate holders of preferred stock of Trinity, respondents subsidiary, held by respondent or for a similar distribution of cash. But such suggestions raise the question whether the supposed advantage to the creditors is a fair and adequate substitute for the elimination of stockholders within the requirements of the *Boyd* case—a question which obviously cannot be answered with any assurance in the present case without resort to the facilities for investigation of the financial condition and structure of the debtor and its subsidiary, and to the expert aid and advice of the Commission available under Chapter X.

Confirmation of an arrangement follows a finding of the court that it is for the best interests of the creditor, § 366(2). Here the best interest of the creditors depends on the answer to the question whether the stockholders should be eliminated or, should receive some substitute compensation, and whether that compensation is fair and equitable. In a situation like the present it is in the best interests of the creditors that these questions should be answered in a Chapter X proceeding.

While this means that arrangements of unsecured debts of corporations, like respondent, may not, be "in the best interests of creditors" and "feasible" under Chapter XI, it does not mean that there is no scope for application of that chapter in many cases where the debtor's financial business and corporate structure differ from respondent's. This is especially the case of small individual or corporate business where there are no public or private interests involved requiring protection by the procedure and remedies afforded by Chapter X. In cases where subordinate creditors or the stockholders constitute the management of its business, the preservation of going-concern value through their continued management

of the business may compensate for reduction of the claims of the prior creditors without alteration of the management's interests, which would otherwise be required by the *Boyd* case. See *Case* v. *Los Angeles Lumber Products Co., supra,* 121, 122.

Under § 146(2) a petition may not be filed under Chapter X unless the judge is satisfied that "adequate relief" would not be obtainable under Chapter XI. Obviously the adequacy of the relief under Chapter XI must be appraised in comparison with that to be had under Chapter X, and in the light of its effect on all the public and private interests concerned including those of the debtor. Applying this test, if respondent had proceeded under Chapter X the judge would have been compelled upon inquiry to approve his petition on the ground that it complied with the requirements of Chapter X, and that adequate relief could not be obtained under Chapter XI. That being the case the question here is whether, in the absence of any provision of Chapter XI specifically authorizing the dismissal of the petition, the district court should on that ground have dismissed the proceeding under Chapter XI, leaving respondent free to proceed under Chapter X which affords every remedy which could be obtained under Chapter XI and more.

A bankruptcy court is a court of equity, § 2, 11 U. S. C. 511, and is guided by equitable doctrines and principles except in so far as they are inconsistent with the Act. *Bardes* v. *First National Bank of Hawarden,* 178 U. S. 524, 534, 535; *Continental Illinois Nat. Bank & T. Co.* v. *C. R. I. & Pacific Ry.,* 294 U. S. 648, 675; *Wayne United Gas Co.* v. *Owens Illinois Glass Co.,* 300 U. S. 131; *Pepper* v. *Litton,* No. 39, present term. A court of equity may in its discretion in the exercise of the jurisdiction committed to it grant or deny relief upon performance of a condition which will safeguard the public interest. It may in the public interest, even withhold relief altogether, and it would seem that it is bound to stay its hand in the public interest when it reasonably appears that private right will not suffer. *Pennsylvania* v. *Williams, supra,* 185, and cases cited; *Virginia Railway* v. *Federation,* 300 U. S. 515, *et seq.* Before the provisions for alternative remedies were brought into the Bankruptcy Act by Chapters X and XI the occasion was rare when a court could have felt free to deny a petition in order to serve some public or collateral interest at the expense of the petitioner's right

to an adjudication. But here respondent, if dismissed, need not go without remedy. All that he can secure rightly or equitably in a Chapter XI proceeding is to be had in a Chapter X proceeding. The case stated most favorable to respondent is that it has proposed an arrangement which appears on its face not to be "fair and equitable" and hence not to be entitled to confirmation under Chapter XI. Respondent's circumstances, as disclosed by its petition and proposed arrangement, are such as to raise a serious question whether any fair and equitable arrangement in the best interests of creditors can be effected without some arrangement of its capital structure. In any case that and subsidiary questions cannot be answered in the best interests of creditors without recourse to a Chapter X proceeding. Pending the litigation respondent seeks to stay the hand of its creditors and in the meantime to avoid that inquiry into its financial condition and practices and its business prospect, provided for by Chapter X without which there is at least danger that any adjustment of its indebtedness will not be just and equitable, and that its revived financial life will be too short to serve any public or private interest other than that of respondent.

In this situation, we think the court was as free to determine whether the relief afforded by Chapter XI was adequate as it would have been if respondent had filed its petition under Chapter X. What the court can determine under § 146 of Chapter X as to the adequacy of the relief afforded by Chapter XI, it can determine in the exercise of its equity powers under Chapter XI for the purpose of safeguarding the public and private interests involved and protecting its own jurisdiction from misuse. Here, we think it was plainly the duty of the district court in the exercise of a sound discretion to have dismissed the petition remitting respondent if it was so advised to the initiation of a proceeding under Chapter X, in which it may secure a reorganization which, after study and investigation appropriate to its corporate business structure and ownership, is found to be fair, equitable and feasible.

question is not of the Commission's intervention "as of right", but whether the district court abused its discretion in permitting it to intervene.

The Commission is, as we have seen, charged with the performance of important public duties in every case brought under Chapter X, which will be thwarted, to the public injury, if a debtor may secure adjustment of his debts in a Chapter XI proceeding when, upon the applicable principles which we have discussed, he should be required to proceed, if at all, under Chapter X. The Commission's duty and its interest extends not only to the performance of its prescribed functions where a petition is filed under Chapter X, but to the prevention, so far as the rules of procedure permit, of interferences with their performance through improper resort to a Chapter XI proceeding in violation of the public policy of the Act which it is the duty of the court to safeguard by relegating respondent to a Chapter X proceeding. The Commission did not here intervene to perform the advisory functions required of it by Chapter X, but to object to an improper exercise of the court's jurisdiction which, if permitted to continue, contrary to the court's own equitable duty in the premises, would defeat the public interests which the Commission was designated to represent. Sen. Rep. No. 1916, 75th Cong., 3d Sess., p. 35.

Rule 24 of the Rules of Civil Procedure, made applicable to bankruptcy proceedings by paragraph 37 of the General Orders for Bankruptcy, authorizes "permissive intervention". It directs that "upon timely application any one may be permitted to intervene in an action . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." This provision plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interests in the subject of the litigation. Cf. *Pennsylvania* v. *Williams, supra.* If, as we have said, it was the duty of the court to dismiss the Chapter XI proceeding because its maintenance there would defeat the public interest in having any scheme of reorganization of respondent subjected to the scrutiny of the Commission, we think it plain that the Commission has a sufficient

If respondent had sought relief by way of an equity receivership such would have been the duty of the Court. *Pennsylvania* v. *Williams, supra.* We think it is no less so here. Before the enactment of Chapters X and XI the district court in a 77B proceeding was "not bound to clog its docket with visionary or impracticable schemes of resuscitation", however honest the efforts of the debtor and however sincere its motives, and it was its duty to dismiss the proceeding whenever it appeared that a fair and equitable plan was not feasible, leaving the debtor to the alternative remedy of bankruptcy liquidation, see *Tennessee Publishing Co.* v. *American National Bank,* 299 U. S. 18, 22. And it has long been the practice of bankruptcy courts to permit creditors or others not entitled to file pleadings or otherwise contest the allegations of a petition to move for the vacation of an adjudication or the dismissal of a petition on grounds, whether strictly jurisdictional or not,[8] that the proceeding ought not to be allowed to proceed.

The Court of Appeals thought that the Commission had no such special interest as to entitle it to intervene as of right in the Chapter XI proceeding and concluded that the district court erred in permitting the intervention and that from this it followed that the Commission had no right to appeal. Its decision is in effect that a governmental agency not asserting the right to possession or control of specific property involved in a litigation may not be permitted to intervene without statutory authority. Neither Chapter X nor Chapter XI, in terms, gives a right of "intervention", but the Commission is authorized, with the permission of the court, to appear in any Chapter X proceedings, § 208. Such right as the Commission may have to intervene in a Chapter XI proceeding is, therefore, governed by the Rules of Civil Procedure and the general principles governing intervention. We are not here concerned with the refinements of the distinction between intervention, as a matter of right, which the Court of Appeals thought was restricted to cases where the intervenor has a direct pecuniary interest in the litigation, and permissive intervention, a distinction which has been preserved by Rule 24 of the Rules of Civil Procedure. For here the

[8] Royal Indemnity Co. *v.* American Bond & Mortgage Co., 61 F. (2d) 875, aff'd 289 U. S. 165; In re Ettinger, 76 F. (2d) 740; Chicago Bank of Commerce *v.* Carter, 61 F. (2d) 986; Vassar Foundry Co. *v.* Whiting Corp., 2 F. (2d) 240; In re Nash, 249 Fed. 375.

interest in the maintenance of its statutory authority and the performance of its public duties to entitle it through intervention to prevent reorganizations, which should rightly be subjected to its scrutiny, from proceeding without it. *The Exchange,* 7 Cranch. 116; *Stanley* v. *Schwalby,* 147 U. S. 508; *Interstate Commerce Commerce Commission* v. *Oregon-Washington R. Co.,* 288 U. S. 14; *Pennsylvania* v. *Williams, supra.* See, *Hopkins Saving Ass'n* v. *Cleary,* 296 U. S. 315. Cf. *In re Debs,* 158 U. S. 564; *New York* v. *New Jersey,* 256 U. S. 296, 307-308. This interest of the Commission does not differ from that of a liquidator under a state statutory proceeding who may, in a proper case, intervene in an equity receivership in a federal court to ask the court to relinquish in favor of the state proceeding. *Pennsylvania* v. *Williams, supra.* Neither the liquidator nor the state has any personal, financial or pecuniary interest in the property in the custody of the federal court. Their only interest, like that of the Commission, is a public one, to maintain the state authority and to secure a liquidation in conformity to state policy. The claim of the Commission founded upon this interest has a question of law in common with the main proceeding in the course of which any party or a creditor could challenge the propriety of the court's proceeding under Chapter XI.[9] The claim is thus within the requirement of Rule 24 and intervention was properly allowed. The Commission was, therefore, a party aggrieved by the court's order refusing to dismiss and was entitled to appeal under §§ 24 and 25 of the Bankruptcy Act. See *Interstate Commerce Commission* v. *Oregon-Washington R. Co., supra; Texas* v. *Anderson, Clayton & Co.,* 92 F. (2d) 104.

Section 208, applicable to proceedings under Chapter X, gives the Commission, upon filing its notice of appearance, "the right to be heard on all matters arising in such proceeding", but provides that it "may not appeal or file any petition for appeal in any such proceeding." As § 208 has no application to a proceeding under Chapter XI, it is unnecessary to consider the suggestion of the Commission that the limitation of the section is upon appeals to review questions arising in the proceeding from the performance by the Commission of its advisory function and does not preclude it from appealing to challenge the exercise or non-exercise by the district court of its jurisdiction under Chapter X.

Reversed.

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[9] See Note 8 *supra.*