

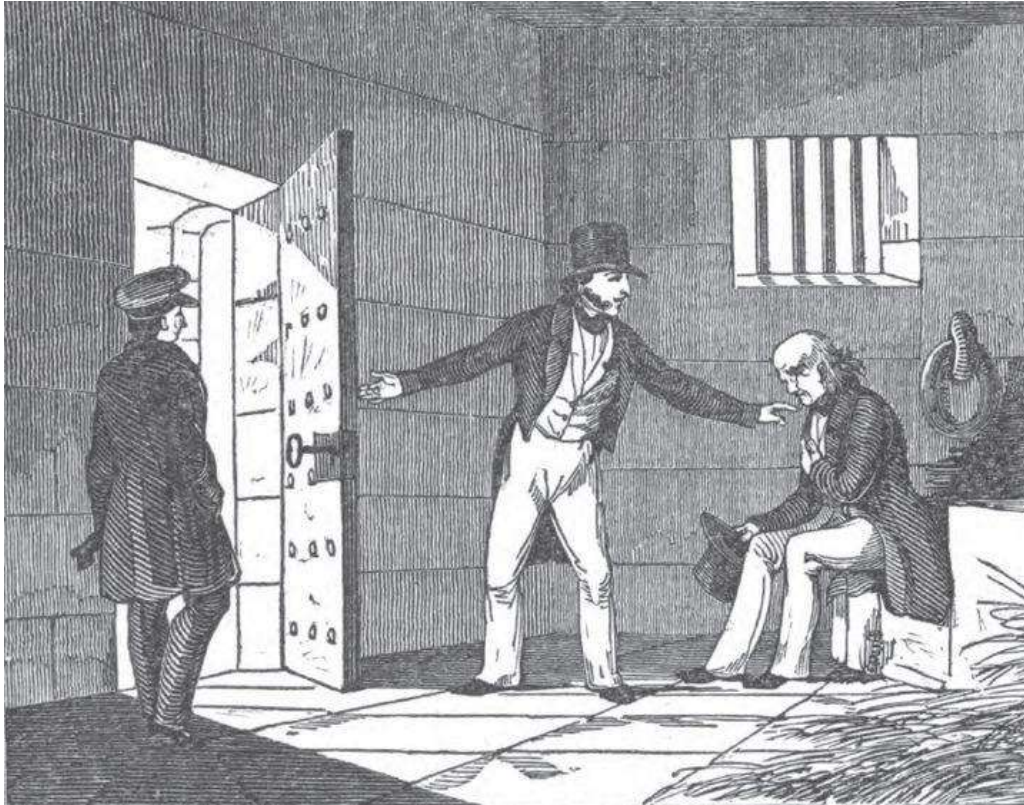
CITY WORK HOUSE 1900

# A BRIEF LOOK AT (SOME OF) THE HISTORY OF VOLUNTARY BANKRUPTCY IN AMERICA

16<sup>th</sup> Annual Frank W. Koger  
Bankruptcy Symposium

Kansas City, Missouri

May 10, 2024



**INSOLVENCY  
WAS A CRIME**

**BANKRUPTCY  
WAS THE  
PUNISHMENT**



# BANKRUPTCY ACT OF 1800

Penal and punitive (imprisonment for noncompliance)

Commissioners to apprehend “the body” of the bankrupt

Commissioners to “cause the doors of the dwelling house . . . to be broken”



# **BANKRUPTCY ACT OF 1841**

Voluntary bankruptcy introduced

Discharge contingent upon surrender  
of property plus consent of creditors  
and no “bad acts”

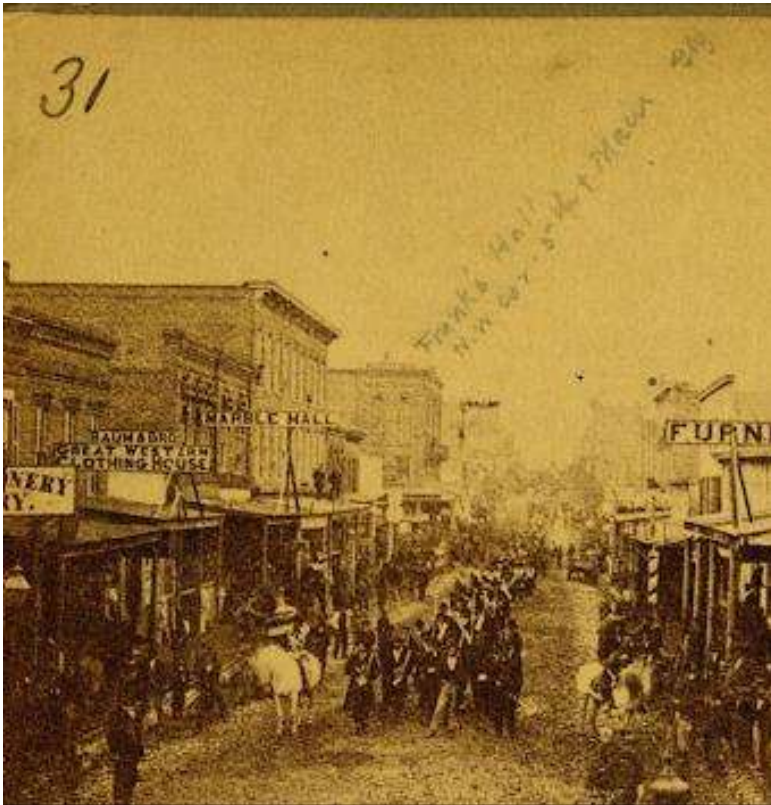
Act repealed after 18 months

# BANKRUPTCY ACT OF 1867

Voluntary bankruptcy reintroduced:  
discharge required surrender of  
property plus creditor consent and a  
minimum distribution to creditors

Debtor prohibited from discharge for  
many “bad acts” including having ever  
lost any part of his property to gaming

The assignee determined what property  
to set aside as exempt



# **BANKRUPTCY ACT OF 1867 (1874 AMENDMENTS)**

**Lowered the creditor consent  
threshold and minimum  
distribution to creditors**

**Introduced “compositions”**

**Act (and amendments) repealed  
in 1878**



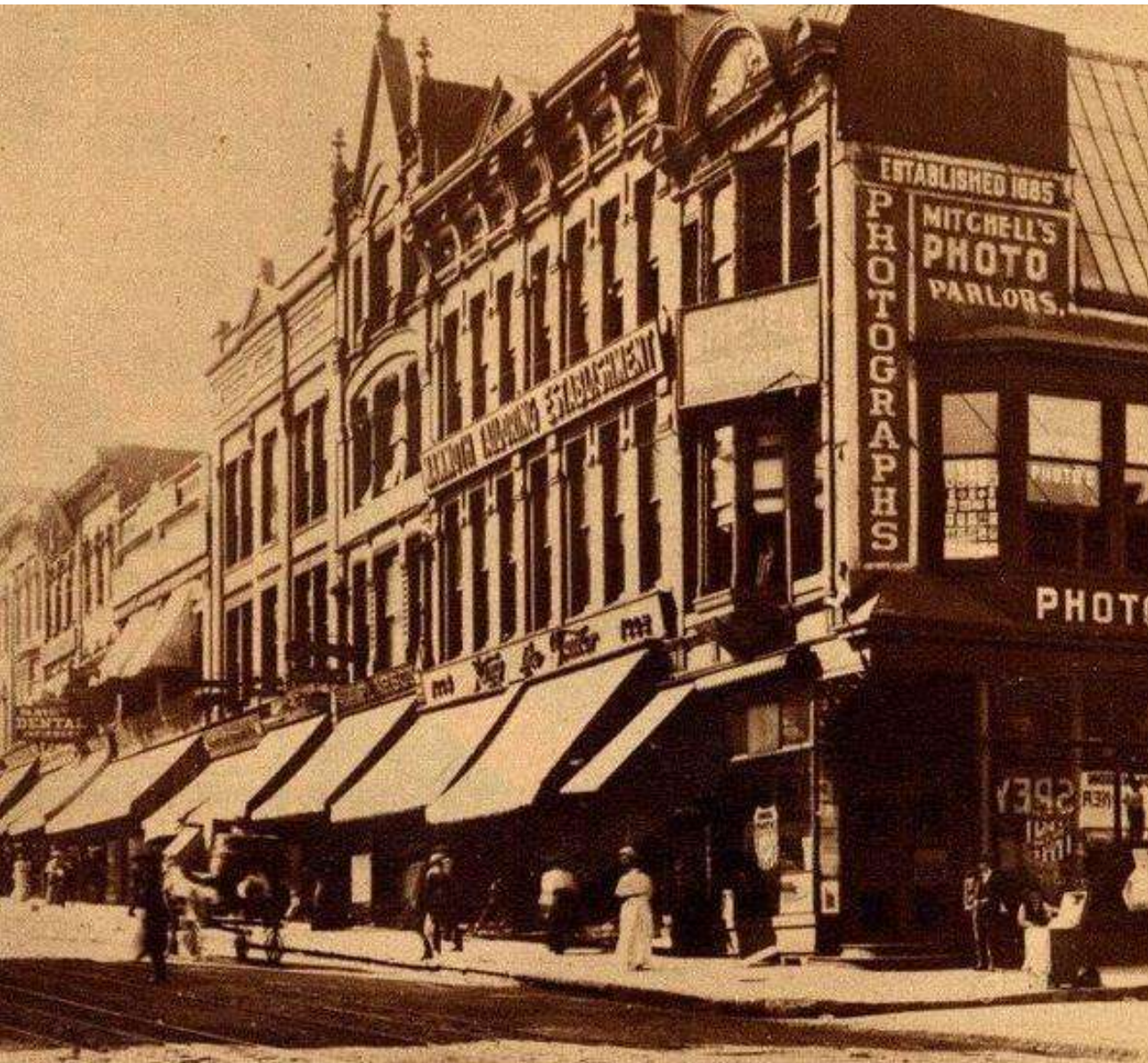
# COMPOSITIONS (1874 AMENDMENTS)

Lump sum settlement and release of unsecured debt

Creditor consent required:

- Majority in number of creditors holding three fourths in value of the debt must accept before application may be filed
- Two thirds in number and half in value must approve for confirmation of the composition “resolution”





## 1898 ACT

“Act of  
bankruptcy”  
required *either*  
inability to pay  
debts as they  
came due *or*  
insolvency

## **1898 ACT**

**Compositions reintroduced**

**“Trustees in bankruptcy” replaced  
commissioners and assignees**

# COMPOSITIONS

Creditor consent  
required prior to  
filing application

Payments of fees  
and priority debts  
required at time  
of application

Payment of  
consideration  
made at time of  
confirmation

Only for  
unsecured  
creditors

## **NO AUTOMATIC STAY**

Stay *only* upon request after a court approved the petition for bankruptcy

Only pending actions and dischargeable actions stayed

No stay of postpetition actions on prepetition claims



# 1933 ACT

"PROVISIONS FOR THE RELIEF  
OF DEBTORS"

Sections 74 and 75 - not  
"Bankruptcy"

- a "Debtor" not a  
"Bankrupt"
- Compositions –  
discharge for lump sum  
payment without  
surrender of property
- Extensions – no  
discharge



**1933 ACT**

**SECTION 75 DECLARED UNCONSTITUTIONAL!**

Supreme Court curbed the farm moratorium.

## 1938 ACT (CHANDLER ACT)

### Chapter XIII

- No modification of secured claims absent affirmative consent
- Extension option for a wage earner because postpetition wages now protected



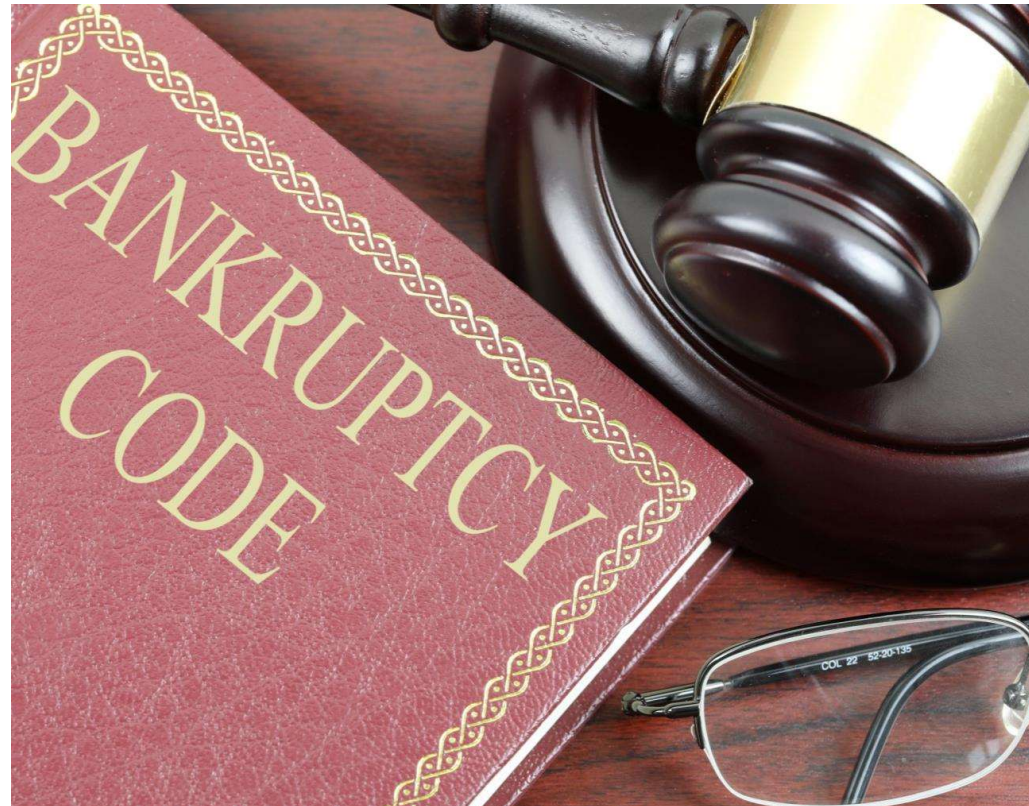
## **\* REFEREES \* TRUSTEES \* DISBURSING AGENTS \***

District judge refers bankruptcy petition to a referee (appointed by the district judge)

Creditors elect trustee

If plan confirmed, referee appoints “chapter XIII trustee” as a disbursing agent but not as a “trustee in bankruptcy”





# 1978 CODE

No "Act of Bankruptcy"  
required to petition for relief

Debtor may voluntarily  
dismiss or convert

Combined composition  
and extension option as  
Chapter 13

## **CHAPTER XIII REPLACED WITH CHAPTER 13**

- Debtor can obtain discharge without payment in full at the end of three years
- No need to pay administrative fees, costs, and priority claims at filing
- No need to deposit plan consideration in full at confirmation
- No need to obtain creditor consent to retain property
- No more unending plans

# CONCLUSION

Voluntary bankruptcy: a success story over two centuries