

aside if any state of facts reasonably may be conceived to justify it." There is nothing in that language that suggests to me that courtrooms should become forums for a second round of legislative hearings whenever a legislative determination is later challenged.

Since I believe that the District Court correctly concluded that the classifications at issue rest upon a rational basis, I dissent.



417 U.S. 467, 41 L.Ed.2d 243

George P. BAKER et al., Petitioners,

v.

GOLD SEAL LIQUORS, INC.

No. 73-804.

Argued April 23, 1974.

Decided June 17, 1974.

Trustees of railroad in reorganization brought action against shipper to recover freight charges. Shipper counterclaimed for cargo loss and damages. The United States District Court for the Northern District of Illinois, Eastern Division, set off one judgment against the other, which resulted in a net judgment against trustees. The Court of Appeals, 484 F.2d 950, affirmed and certiorari was granted. The Supreme Court, Mr. Justice Douglas, held that to the extent setoff was allowed, it granted preference to claim of one creditor over the other by the happenstance that creditor owed freight charges and was a form of discrimination to which policy of reorganization statute is opposed.

Reversed.

Mr. Justice Stewart, with whom Mr. Justice Powell joined, concurred in the result and filed opinion.

Mr. Justice Rehnquist dissented and filed opinion.

### 1. Federal Civil Procedure ⇨775, 776

Claim is not compulsory within counterclaim rule if it was the subject of another pending action at the time the action was commenced, or if the opposing party brought his suit by attachment or other process not resulting in personal jurisdiction but only in rem or quasi in rem jurisdiction. Fed.Rules Civ.Proc. rule 13(a), 28 U.S.C.A.

### 2. Federal Civil Procedure ⇨775

A counterclaim which is compulsory but is not brought is thereafter barred. Fed.Rules Civ.Proc. rule 13(a), 28 U.S.C.A.

### 3. Courts ⇨264(2)

If a counterclaim is compulsory, federal court will have ancillary jurisdiction over it even though ordinarily it would be a matter for a state court. Fed.Rules Civ.Proc. rule 13(a), 28 U.S.C.A.

### 4. Federal Civil Procedure ⇨778

Under permissive counterclaim rule, court may dispose of all claims between the parties in one proceeding whether or not they arose in the "same transaction." Fed.Rules Civ.Proc. rule 13(b), 28 U.S.C.A.

### 5. Bankruptcy ⇨670.4

Section of Bankruptcy Act providing that in all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid, applies to reorganization proceedings only when consistent with the provisions of the reorganization statute. Bankr.Act, §§ 68, 77, 77, sub. l, 11 U.S.C.A. §§ 108, 205, 205l.

### 6. Bankruptcy ⇨801

Basic considerations of railroad reorganization court are the collection of amounts owed the bankrupt to keep its cash inflow sufficient for operating purposes, at least at the survival levels, and to design a plan which creditors and others will approve, which will pass scrutiny of the Interstate Commerce

Cite as 94 S.Ct. 2504 (1974)

Commission, which will meet the fair and equitable standards required by the Bankruptcy Act for court approval, and which will preserve an ongoing railroad in the public interest. Bankr.Act, § 77, 11 U.S.C.A. § 205.

### 7. Bankruptcy ⇔670.1

The word "property" within section of Bankruptcy Act giving reorganization court exclusive jurisdiction of debtor and its property includes intangibles such as choses in action. Bankr.Act, § 77, sub. a, 11 U.S.C.A. § 205(a).

See publication Words and Phrases for other judicial constructions and definitions.

### 8. Bankruptcy ⇔813

Setoff of judgment against customer of railroad in reorganization for freight charges and judgment against trustees for loss and damage to shipments resulted in preference to claim of one creditor over the others by the happenstance that it owed freight charges that the others did not and gave rise to a form of discrimination to which the policy of the Reorganization Act was opposed. Bankr.Act, § 77, 11 U.S.C.A. § 205.

### 9. Bankruptcy ⇔813

As a general rule of administration for railroad reorganization courts, when trustees and railroad's debtor have obtained judgments against each other, no setoff should be allowed. Bankr.Act, § 77, 11 U.S.C.A. § 205.

#### *Syllabus* \*

Petitioners, trustees of a railroad in a § 77 reorganization proceeding, brought suit for freight charges against respondent shipper, and respondent counterclaimed for cargo loss and damage. The District Court granted petitioners' motion for summary judgment for entry of one judgment on their claim and another on the counterclaim, but set off one judgment against the other, resulting in a net judgment against peti-

tioners for some \$11,000. The Court of Appeals affirmed. *Held*: The Court of Appeals erred in allowing the setoff, since it thereby granted a preference to the claim of one creditor that happened to owe freight charges over other creditors that did not, and thus interfered with the Reorganization Court's duty under § 77e, 11 U.S.C. § 205(e), to approve a "fair and equitable plan" that duly recognizes the rights of each class of creditors and stockholders and does not discriminate unfairly in favor of any class. Pp. 2505-2509.

7 Cir., 484 F.2d 950, reversed.

Paul R. Duke, Philadelphia, Pa., for petitioners.

Theodore J. Herst, Chicago, Ill., for respondent.

Opinion of the Court by Mr. Justice DOUGLAS, announced by Mr. Justice WHITE.

The Penn-Central Transportation Co. is in bankruptcy reorganization under § 77 of the Bankruptcy Act, 11 U.S.C. § 205. Petitioners are its trustees authorized to collect its assets, one of which is a claim for freight charges against respondent owed the bankrupt debtor. The claim on which this suit was brought was \$8,256.61 and the amount is undisputed. Respondent filed a counterclaim for \$19,319.42 for loss and damage to shipments over the debtor's lines. Its amount is also not disputed. 1468

The trustees filed a motion for summary judgment asking the District Court to enter one judgment covering the amount of freight charges admittedly due and another for the amount claimed by respondent.

Previously the Reorganization Court in the Third Circuit had prohibited the various bank creditors from offsetting their claims against the trustees of the

\*The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the con-

venience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

debtor. 315 F.Supp. 1281. Prior to the decision of the instant case that bank setoff case was affirmed by the Court of Appeals, 453 F.2d 520. Also prior to the ruling of the Court of Appeals in the instant case the Reorganization Court prohibited some shippers from setting off freight loss and damage claims against amounts owed for transportation claims. That order, 339 F. Supp. 603, was affirmed by the Court of Appeals, 477 F.2d 841, and by this Court, sub nom., *United States Steel Corp. v. Trustees of Penn Central Transp. Co.*, 414 U.S. 885, 94 S.Ct. 231, 38 L.Ed.2d 137.

The District Court in the instant case granted the trustees' motion for summary judgment but set off one judgment against the other, which resulted in a net judgment in favor of respondent

1. Rule 13(a), the compulsory-counterclaim rule, requires a defendant to plead any counterclaim which "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." The claim is not compulsory if it was the subject of another pending action at the time the action was commenced, or if the opposing party brought his suit by attachment or other process not resulting in personal jurisdiction but only *in rem* or *quasi in rem* jurisdiction. A counterclaim which is compulsory but is not brought is thereafter barred, *e. g.*, *Mesker Bros. Iron Co. v. Donata Corp.*, 401 F.2d 275, 279.

If a counterclaim is compulsory, the federal court will have ancillary jurisdiction over it even though ordinarily it would be a matter for a state court, *e. g.*, *Great Lakes Rubber Corp. v. Herbert Cooper Co.*, 286 F.2d 631. Under Rule 13(a)'s predecessor this Court held that "transaction" is a word of flexible meaning which may comprehend a series of occurrences if they have logical connection, *Moore v. New York Cotton Exchange*, 270 U.S. 593, 46 S.Ct. 367, 70 L.Ed. 750, and this is the rule generally followed by the lower courts in construing Rule 13(a), *e. g.*, *Great Lakes, supra*; *United Artists Corp. v. Masterpiece Productions*, 2 Cir., 221 F.2d 213, 216.

Rule 13(b) permits as counterclaims, although not compulsory, "any claim against an opposing party not arising out of the transaction or occurrence that is the subject

against the trustees in the amount of \$11,017.01. The Court of Appeals affirmed, 484 F.2d 950, and we granted certiorari to resolve the conflict.

We reverse.

[1-4] Ordinarily where a court has primary jurisdiction over the parties and over the subject matter, the power to resolve the amount of the claim and the counterclaim is clear. Indeed, under the Federal Rules of Civil Procedure the counterclaim may be compulsory. Rule 13(a).<sup>1</sup> That is the procedure under § 68 of the Bankruptcy Act, 11 U.S.C. § 108.<sup>2</sup> 1469

[5] The problem of the bankruptcy Reorganization Court is somewhat different. Liquidation is not the objective. Rather, the aim is by financial restructuring to put back into operation a 1470

matter of the opposing party's claim." Thus the court may dispose of all claims between the parties in one proceeding whether or not they arose in the "same transaction."

2. Title 11 U.S.C. § 108 provides:

"a. In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

"b. A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate and allowable under subdivision g of section 93 of this title; or (2) was purchased by or transferred to him after the filing of the petition or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent or had committed an act of bankruptcy."

If the trustee in ordinary bankruptcy goes into a court that has jurisdiction and asserts a claim, the debtor of the bankrupt may raise as a setoff any claim he has against the bankrupt and the court ordinarily issues only one judgment for the difference.

In a straight bankruptcy case, *Cumberland Glass Co. v. DeWitt*, 237 U.S. 447, 35 S.Ct. 636, 59 L.Ed. 1042, the Court construed § 68 as "permissive rather than mandatory" and as to which the bankruptcy court "exercises its discretion . . . upon the general principles of equity." *Id.*, at 455, 35 S.Ct., at 639. And see *Susquehanna Chemical Corp. v. Producers Bank & Trust Co.*, 3 Cir., 174 F.2d 783.