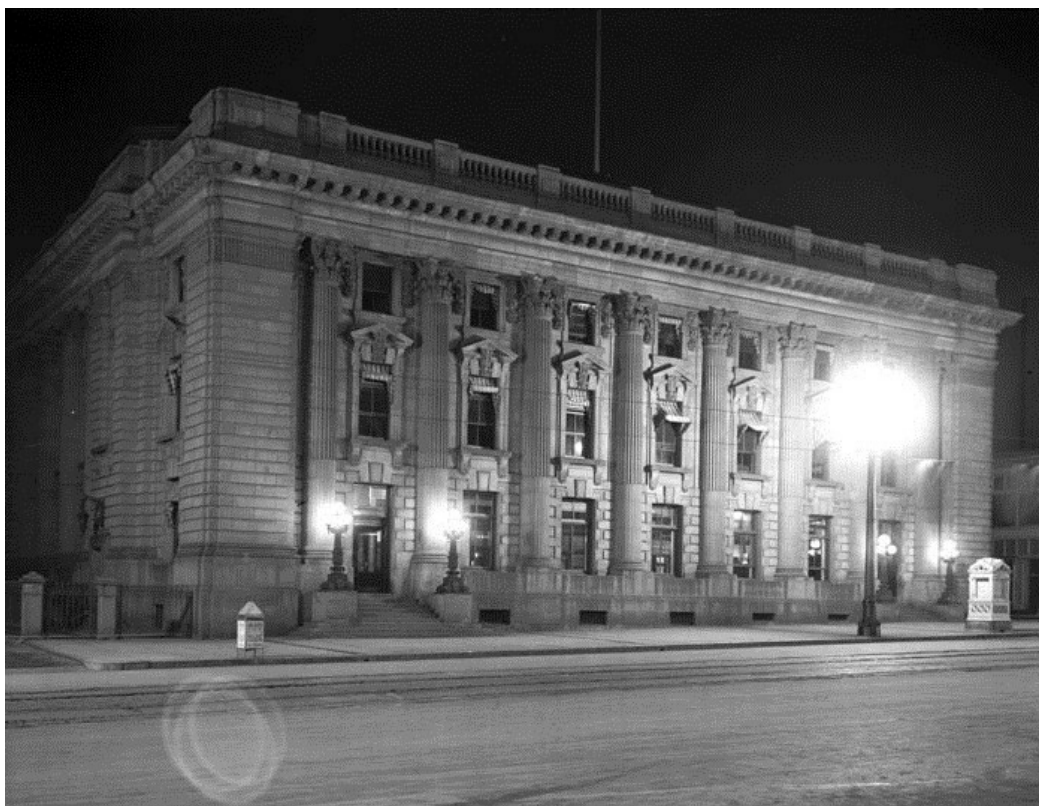


UTAH BANKRUPTCY PRACTICE IN THE EARLY ERA

1898 - 1949



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UTAH BANKRUPTCY PRACTICE IN THE EARLY ERA.	-3-
Historical Background.	-3-
Appointment of the First Referees	-9-
The First Bankrupts	-23-
The Tillman Davis Johnson Era.	-27-
The Chandler Act Era	-31-
APPENDIX.	-35-
Utah Judges and Referees.	-35-
Historic Buildings.	-38-

UTAH BANKRUPTCY PRACTICE IN THE EARLY ERA¹

1898 - 1949

Hon. Judith A. Boulden²

Kenneth L. Cannon II³

Historical Background

On July 1, 1898, President William McKinley signed the Bankruptcy Act of 1898 (the 1898 Act) into law.⁴ The 1898 Act filled a statutory vacuum left when, in 1878, Congress repealed the 1867 Bankruptcy Act, which had been enacted in response to economic conditions following the Civil War.⁵ Utah was admitted to the Union as a state in 1896, just two years before the 1898 Act became law in the country.⁶ Utah's unique history during its territorial period and its unusual makeup is reflected in Utah's history with bankruptcy during the first 50 years after the 1898 Act was enacted.

To comprehend fully Utah's experience with bankruptcy, it is necessary to understand its unusual history. Utah was populated from 1847 principally by adherents of the Church of Jesus Christ of Latter-day Saints, who moved to what became Utah to escape persecution and to

¹ The authors wish to express their appreciation to Patricia Hummel, David Singer, Heather Schriever, and Michael Coffman of the Court's staff for their invaluable assistance.

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⁴ Bankruptcy Act of 1898, Introductory, p. 17, 30 Stat. 544 (1898) (repealed 1978).

⁵ A. Bruce Campbell and Frank D. Tsu, *Tenth Circuit Bankruptcy History*, 4, www.10thcircuithistory.org (2009).

⁶ Edward Lew Lyman, *Political Deliverance: The Mormon Quest for Utah Statehood* (University of Illinois 1986), 255-285.

practice their religion in the comfort of isolation. Mormon hopes for isolation from the rest of the world were naive, as the trails to California crossed through Salt Lake City and through much of central and southern Utah Territory. The practices of polygamy, political cohesion, and economic communitarianism attracted the world's attention and incited its abhorrence.⁷ Utah became a territory of the United States in 1850 as part of the critical Congressional compromise of that year,⁸ and territorial officials, including judges, were appointed by the President.⁹ The "territorial judges appointed by the President were usually nonresidents of the territory. They were political appointees, often selected without regard to their learning, judicial qualification or experience, temperament, or personal integrity."¹⁰ Utah was no exception, and the difficulty with the early territorial judges is chronicled in histories of the time.¹¹

In 1851, most federally appointed officials feared for their lives among the Mormons and left the territory, becoming the "Runaway Officials." Reports they took back to Washington resulted in President James Buchanan sending federal troops to Utah in what came to be known as the "Utah War." The "war" was settled without violence, but troops remained near Salt Lake City. The Republican Party's platform in 1856 vowed to eradicate from the United States the "twin relics of barbarism," slavery and polygamy. During the Civil War, the United States

⁷ Lyman, *Political Deliverance*, *supra* note 6, at pp.124-184.

⁸ Paul E. Wilson, *The Federal Courts of the Tenth Circuit: A History*, Ch. I, 7 (James K. Logan, ed.) (1992).

⁹ The three judges sitting together constituted a supreme court; sitting separately, they acted as district judges and had jurisdiction over cases under United States and Territorial law. Wilson, *The Federal Courts of the Tenth Circuit: A History*, *supra* note 8.

¹⁰ *Id.*

¹¹ *See, e.g.*, Clifford L. Ashton, *The Federal Judiciary in Utah* (Utah Bar Foundation) (1988).

government stationed soldiers at Fort Douglas in the foothills east of Salt Lake City, and the commanding officer encouraged his troops to search for precious minerals. Valuable minerals were found, starting both Utah's mining industry and facilitating the diversification of the Territory's population as non-Mormons were attracted to Utah.

The early settlers' distrust of the federal government was not ameliorated by the appointed federal judges, and one method of dealing with the situation, espoused by Brigham Young, "was simply to steer clear of courts and lawyers."¹² As a result, the federal territorial courts were not busy. What disputes arose were generally handled by ecclesiastical courts or by the state probate courts controlled by Mormons.¹³ From 1852 forward, the probate courts had exercised concurrent jurisdiction with the federal courts in all matters, criminal and civil.¹⁴ But in 1874, the United States Supreme Court ruled that the concurrent jurisdiction of the legislatively created probate courts was void, and Congress enacted the Poland Act, removing most of the broad jurisdiction from the local probate courts. Eventually the territorial probate courts were limited to ordinary probate proceedings,¹⁵ and the power of the federal courts increased, extending jurisdiction in civil and criminal cases and enabling them to exercise jurisdiction over prosecution of plural marriage.

Utahns' distrust of the federal judiciary intensified as Congress passed a series of anti-polygamy statutes beginning in 1862 with the Morrill Anti-Bigamy Act, which made polygamy a

¹² Clifford L. Ashton, *The Federal Courts of the Tenth Circuit: A History*, Ch.V, 145 (James K. Logan, ed.) (1992).

¹³ Ashton, *The Federal Courts of the Tenth Circuit: A History*, *supra* note 12, at p. 150.

¹⁴ Ashton, *The Federal Judiciary in Utah*, *supra* note 11, at pp. 149-150.

¹⁵ *Id.*

crime. This law was held to be constitutional in the important Supreme Court decision of *Reynolds v. United States*,¹⁶ but was largely ineffectual because it was difficult to prove the solemnization of a marriage. The Edmunds Act of 1882 made prosecution of polygamists much easier by criminalizing “unlawful cohabitation” by polygamous couples. More critical from an economic standpoint, the passage of the draconian Edmunds-Tucker Act in 1887 resulted in, among other things, the disincorporation of the Church, escheatedment of most of the Church’s assets to the government, and denial of certain civil rights to polygamists.¹⁷ Further statutory initiatives would have denied most Mormons basic civil rights. Under the Edmunds and Edmunds-Tucker Acts, hundreds of Mormon polygamists, including some of their most prominent leaders, were prosecuted, convicted, and incarcerated. Those who were not were forced to go into hiding, as they were hunted by federal deputy marshals, known by the Mormons, not affectionately, as the “Deps.”¹⁸ Eventually, the constitutionality of most of the provisions of the Edmunds-Tucker Act were upheld by the United States Supreme Court¹⁹ in May of 1890. As stated by Judge Charles S. Zane,²⁰

[O]ur national law-makers in 1862 enacted a law defining plural marriage as a crime. . . . In 1882 they made another law, more stringent and comprehensive, defining and punishing unlawful cohabitation also as a crime. And in 1887 still another law was passed designed to be yet more stringent and effectual. The

¹⁶ 98 U.S. 145 (1879).

¹⁷ Ashton, *The Federal Judiciary in Utah*, *supra* note 11, at p. 155.

¹⁸ *Id.*, at p. 152-53.

¹⁹ *The Late Corporation of The Church of Jesus Christ of Latter-day Saints v. United States*, 136 U.S. 1 (1890).

²⁰ Judge Zane was a legal associate of Abraham Lincoln, a judge in the Territorial Supreme Court in Utah, and the first Chief Justice of the Utah Supreme Court after statehood. (Born March 2, 1831, died March 29, 1915). Wikipedia, http://en.wikipedia.org/wiki/Charles_S._Zane (last visited August 18, 2010).

courts of the Territory of Utah began the enforcement of the two acts. . . . After more than thirteen hundred men had been sent to prison for their violations, Wilford Woodruff, the president of the Mormon church made and published an official declaration termed the “Manifesto” [which declared polygamy no longer a practice in the Church].²¹

During the same period, in addition to presidentially appointed federal officials, local government officials in Salt Lake City were elected by non-Mormons, increasing strong tensions even further.

When the United States Supreme Court upheld the Edmunds Tucker Act’s constitutionality in 1890, the LDS Church officially abandoned the practice of polygamy in the “Manifesto” referred to by Judge Zane and instructed its members to join the national political parties. The Church’s capitulation on polygamy and certain other unusual practices paved the way for return of escheated property to it and for Utah’s eventual statehood in 1896. Tensions eased somewhat and former political enemies sometimes found themselves in the same national political parties. However, the new state also continued to feel unease as the U.S. House of Representatives refused to seat one of the first Congressmen elected from Utah because he was a Mormon polygamist and as the U.S. Senate investigated an early Senator elected from the state on the basis that he was a Mormon Church leader (though not a polygamist).

Utah’s population in January 1896, when it was admitted as a state, was 247,324, greater than five of its surrounding sister states.²² Utah’s population was predominantly rural, and its principal industries were agriculture, which had long been suffering, and mining, which

²¹ Charles S. Zane, quoted by Ashton, *The Federal Judiciary in Utah*, *supra* note 11, at p. 160.

²² Richard D. Poll, *A State is Born*, Utah Historical Quarterly (Winter 1964) available at http://historytogo.utah.gov/utah_chapters/statehood_and_the_progressive_era/astateisborn.html (last visited August 18, 2010).

deteriorated in the 1890s. Salt Lake City's population was close to 50,000; Ogden had 15,000 residents; Provo 6,000; Logan 5,000;²³ and Vernal 1,500.²⁴ The smaller towns of Utah, where most residents lived, were either unpaved and unexciting farming centers or "unpaved and uninhibited mining camps."²⁵ Farming employed approximately one-third of the state's employed population and mining a large proportion of the remaining population. A good wage at the time was about \$2.00 a day.²⁶ Utah families were large, as in most agrarian societies, but this was exacerbated by the unusual size of some Utah families in which there was one father and a number of "sister wives."

During the early 1890s, the nation (and Utah) were experiencing the effects of a severe depression. Nationally, unemployment among non-farm workers was twenty percent. During that time over 800 banks failed, stock prices declined significantly, real estate speculation abounded, numerous businesses failed, wages were low resulting in strikes that disrupted basic industries, and little new construction was being carried on.²⁷ Agriculture had suffered a 30-year decline in prices, and the Panic of 1893 had added mining distress to agricultural depression in Utah and elsewhere. "Property values aggregated approximately \$100 million in the state, but if absentee-owned railroads and mines were deducted, the accumulation of a half-century's effort

²³ *Id.*

²⁴ *Utah State Gazetteer*, R. L. Polk & Co; 1900, p. 353.

²⁵ Poll, *A State is Born*, *supra* note 22.

²⁶ *Id.*

²⁷ "Utah and the Depression of the 1890s," by Leonard J. Arrington, in *Utah Historical Quarterly* 29 (1961), found at http://history.utah.gov/learning_and_research/make_a_difference/1890s.html (last visited Sept. 5, 2010).

averaged out at less than \$300 per capita, and at least half of that was in real estate.”²⁸ Utah's mines had produced only \$4,854,300 in silver in 1895, and the total value of nonferrous metal production for the year was \$8,464,500, down almost \$4 million from 1890.²⁹ The federal and territorial governments did little to counteract the effect of the depression, electing to wait out the economic cycle. Utah’s local economy was significantly harmed by the Panic of 1893 and the federal legislative agenda against the Mormons over the prior 15 years.

Appointment of the First Referees

Into this economic and political environment stepped John Augustine Marshall, a University of Virginia Law School graduate, son of a nephew of Chief Justice John Marshall, and former probate court judge in Salt Lake County (1888-89). On January 13, 1896,³⁰ he was appointed by President Grover Cleveland as the first United States District Court Judge for Utah and shared offices with other U.S. officials in the Dooly Building located on the southwest corner of 200 South and West Temple in Salt Lake City.³¹ It fell to him, two years later, to carry out the provisions of the 1898 Bankruptcy Act³² which created the District Courts of the United States as courts of bankruptcy,³³ and which also created the two offices of referee and trustee.³⁴ Judge

²⁸ Poll, *A State is Born*, *supra* note 22.

²⁹ *Id.*

³⁰ Ashton, *The Federal Judiciary in Utah*, *supra* note 11, at p. 57.

³¹ Polk’s Salt Lake (Salt Lake County, Utah) City Directory, 1899, p. 50.

³² For a description of the general provisions of the 1898 Bankruptcy Act, *see* Campbell *supra* note 5, at pp. 5-9.

³³ Bankruptcy Act of 1898, ch. II §2, 30 Stat. 544 (1898) (repealed 1978).

³⁴ Bankruptcy Act of 1898, ch. V, §33(a), 30 Stat. 544 (1898) (repealed 1978).

Marshall's charge was to appoint referees (for a term of two years), to establish the limits of the district of the referees,³⁵ and also to appoint trustees if the creditors of a bankruptcy estate did not do so.³⁶ The 1898 Act did not require either referees or trustees to be lawyers,³⁷ and nothing required the districts to follow the county divisions set forth in the Utah Constitution. This broad grant of discretionary power was not reviewed by the Circuit Courts of Appeal, nor was the district judge required to refer any case to a referee.³⁸

The 1898 Act introduced a number of innovations to American bankruptcy law which have remained since: voluntary filings, relief for both businesses and all classes of individuals, recognition of state exemption laws, and provision for the grant of a discharge only to honest debtors.³⁹ One would expect little difference in the implementation of and relief provided by this new federal statute to the residents of Utah as opposed to other states that later comprised the Tenth Circuit. But this was not necessarily the case.

The enactment of the 1898 Act provided an avenue for relief for the people of the new state and its businesses. But many Utahns continued to be very suspicious of the federal government and its officials and were reluctant to utilize the new statute. Although the Mormon majority was now able to ensure that candidates acceptable to it would be elected (even though

³⁵ Bankruptcy Act of 1898, ch. V, §34(a), 30 Stat. 544 (1898) (repealed 1978).

³⁶ Bankruptcy Act of 1898, ch. V, §44, 30 Stat. 544 (1898) (repealed 1978).

³⁷ Bankruptcy Act of 1898, ch. V, §§ 35, 45, 30, Stat. 544 (1898) (repealed 1978). But the statute provided that a referee may "not hold any office of profit or emolument under the laws of the United States . . . other than . . . masters in chancery. . ." Section 35 (2).

³⁸ *Administration of the Bankruptcy Act: Report of the Attorney General's Committee on Bankruptcy Administration 1940*, p. 58 (U.S. Gov. Printing Office, 1941) (hereinafter A.G.'s 1940 Report).

³⁹ Campbell *supra* note 5, at p. 5.

Mormons had separated into the Democratic and Republican parties), federal judges, including bankruptcy referees, continued to be appointed by the federal government, with the Federal District Judge appointed by Washington and the referees (and trustees) appointed by the District Judge.

Federal District Judge John Marshall was a Democrat, and his appointment of referees favored Democrats, consistent with his political preference.⁴⁰ In addition, although the 1898 Act did not require it, it appears that most or all the referees appointed by Marshall were members of the bar.⁴¹

Judge Marshall initially established the limits of the districts by appointing referees in several cities and towns from Logan to Richfield. No “official” list of referees during this period has been located, and an investigative report by the Attorney General of the United States into the functioning of the 1898 Act complains that it was “unable to ascertain the total number of referees for any year prior to 1927.”⁴² However, through reviewing Court-retained records, the Polk City Directories for Salt Lake City (including at times the entire state) and Ogden, and the Polk Gazatteers for the applicable dates under the heading United States Officers, we are able to reconstruct a probable list of the following referees from 1898 through the 1940’s (although some may have served in more than one district). Interestingly, unlike today, when Bankruptcy

⁴⁰ He was nominated by President Grover Cleveland, Federal Judicial Center *Biographical Directory of Federal Judges*, <http://www.fjc.gov/public/home.nsf/hisj> (last visited Dec. 2, 2010).

⁴¹ Trustees, on the other hand, came from a variety of non-legal professions. For example, Alice Burke, a “clerical” person, served as Trustee for many years; James M. Burton, a bookkeeper at the First National Bank; James M. Harris, Sec and Tres. at the Enterprise Clay Works; and John F. Ledridge, Operator at the W. U. Telegraph Co. *See, for example*, Polk’s Salt Lake City Directory, R. L. Polk & Co; 1920, p. 161.

⁴² A.G.’s 1940 Report, *supra* note 38, at p. 62.

Judges all sit in Salt Lake City with occasional hearings in Ogden and in St. George, during parts of this period referees were appointed in various parts of Utah. All of the referees appointed before 1939 were Democrats, most appear not to have been practicing Mormons, and many were born in either Iowa or Kentucky. Over the years between 1900 and mid-year in 1951, collectively they handled a total of approximately 11,136 cases,⁴³ or, if the total filings were simply divided by the number of years, roughly 218 cases per year.

The referees, with terms of office, locations, and a short biography of each referee, are as follows:⁴⁴

Location	Date	Referee
Salt Lake City	1898 - 1920	Charles Baldwin
	1920 - 1922	Jerrold Ranson Letcher
	1922 - 1924	Samuel Thompson Corn
	1924 - 1925	Albert John Weber
	1925 - 1939 [only referee for the state]	James T. McConnell
	1939 - 1949 [only referee for the state]	Thomas D. Lewis
Ogden	1898 - 1906	Thomas Maloney
	1908 - 1910	Augustus B. Patton
	1911 - 1914	Samuel Thomas Corn

⁴³ U.S. Dist. Ct. Utah, *Bankruptcy Index A to Z (Typed)*, (Filing dates: 1900 to 1951) (microformed by MicroCOM).

⁴⁴ C.C. Goodwin, *History of the Bench and Bar in Utah*, 112 (Interstate Press Assoc.) (1913), is a critical source of information regarding many of these referees.

Uinta	1912 - 1925	James T. McConnell
Provo	1901 - 1903	James W. N. Whitecotton
	1903 - 1913	Elmer E. Corfman
Beaver	1901 - 1903	John Nowers
Richfield	1900 - 1902	Joseph A. Harris
	1902 - 1908	Jacob Marinus Lauritzen
Logan	1902 - 1906	Pearl Eben Keeler
Eureka	1902 - 1903	Frank Hiram Holzheimer
Mt. Pleasant/ Ephriam	1902 - 1913	George Christensen

The first of four referees from Iowa, Charles Baldwin was born on January 22, 1851, graduated from Iowa State University, Iowa City, in 1873, with an L.L.B., and practiced in Wapello, Iowa and Burlington, Iowa prior to moving to Salt Lake City in 1887. Baldwin served as a United States Commissioner for Salt Lake County for several years and as a Master in Chancery of the United States District Court of Utah, succeeding Samuel H. Lewis in 1908.⁴⁵ He also was President of the Utah State Bar Association from 1910-11. Baldwin was a Democrat and was approximately 47 when he was appointed as a bankruptcy referee.⁴⁶ He served until his death on April 1, 1920 at 69.

In a 1916 decision of U. S. Comptroller Warwick, it was determined that Baldwin could not lawfully hold the office of United States Commissioner and that of referee at one and the

⁴⁵ *C. Baldwin Is Appointed*, DESERET NEWS, Oct. 22 1908.

⁴⁶ Goodwin, *History of the Bench and Bar in Utah*, *supra* note 42, at p. 111; Department of Health, Office of Vital Records, death certificate.

same time. Since Baldwin was a United States Commissioner when he was appointed as referee and did not resign as commissioner, the Comptroller found that he was ineligible for the appointment and therefore his appointment and acceptance did not confer upon him legal investiture of the office of referee.⁴⁷

Jerrold Ranson Letcher was born on June 23, 1851 in Missouri and attended the University of Missouri. He then moved to Utah where he was active in the organization of national political parties in the Territory, serving as secretary and president of the Democratic Club. When Utah was admitted as a state, Letcher was appointed clerk of the Federal Courts. He participated in the founding of the Utah State Historical Society.⁴⁸ He was appointed as referee on April 12, 1920 at the age of 69 upon the death of Charles Baldwin.⁴⁹ He served until his death at the age of 71 on July 15, 1922.⁵⁰

One of two referees from Kentucky, Samuel Thompson Corn was born on October 8, 1840, and graduated from Princeton College in 1860 with an A.B. and in 1863 with an A.M. He studied law and was admitted to practice in Kentucky, and he later practiced in Illinois. In 1886 he was appointed one of the judges of the Supreme Court of the Territory of Wyoming. In 1887, Corn was elected Judge of the Supreme Court of Wyoming when Wyoming was admitted as a state. In 1906 he moved to Ogden and practiced there. He was 71 when he was appointed as Referee in Bankruptcy for Weber County and 82 when he was appointed Referee in Salt Lake

⁴⁷ *Decisions of the Comptroller of the Treasury*, Vol 23, July 1, 1916 to June 30, 1917.

⁴⁸ Goodwin, *History of the Bench and Bar in Utah*, *supra* note 42, at p. 164.

⁴⁹ *Letcher Made Bankruptcy Referee*, SALT LAKE TELEGRAM, April 12, 1920.

⁵⁰ Department of Health, Office of Vital Records, death certificate.

City. Corn was a Mason and Democrat.⁵¹ He resigned as referee in Salt Lake in November of 1924 because of ill health, but remained as Referee in Weber County until his death on January 28, 1925 at 84.⁵²

Albert John Weber, who eventually became the Chief Justice of the Utah Supreme Court, was born on November 19, 1859 in West Point, Iowa and admitted to the bar of Iowa in 1884. He moved to Ogden, Utah in 1889 and was admitted to practice law in Utah in 1891. He remained in Ogden until 1902 when he moved to Salt Lake City. Weber, a Democrat, formed a partnership with Thomas D. Lewis in 1917 and was appointed as a justice of the Utah Supreme Court in 1919 and served as Chief Justice from 1923 until 1925.⁵³ When Weber's term as Chief Justice of the Utah Supreme Court expired, he was appointed by Judge Tillman D. Johnson at the age of 66 as referee to replace Samuel Corn.⁵⁴ He died on August 8, 1925, only eight months after his appointment.⁵⁵

James T. McConnell was born in Bloomfield, Iowa around 1858.⁵⁶ He moved from Iowa to Utah in 1887. He was stationed at the Uinta Indian reservation, and the school building at Randlett was constructed under his supervision. In 1893 he moved to Vernal where he practiced

⁵¹ Goodwin, *History of the Bench and Bar in Utah*, *supra* note 42, at p. 126.

⁵² *Judge Samuel Corn Expires*, OGDEN STANDARD EXAMINER, Jan. 29, 1925.

⁵³ THE UTAH BAR BULLETIN, August - Oct 1946 p. 126; The Political Graveyard. <http://politicalgraveyard.com/bio/webe-webney.html> (last visited Sept. 6, 2010).

⁵⁴ *Justice Weber to Stay Till January*, SALT LAKE TELEGRAM, November 17, 1924.

⁵⁵ *Judge Weber, Former Utah Justice, Dies*, SALT LAKE TELEGRAM, Aug. 08, 1925.

⁵⁶ *State of Utah, Certificate of Death*, State file no. 324.

law until 1920, when he moved to Salt Lake City.⁵⁷ McConnell was probably appointed bankruptcy referee in 1912 for the Uinta District at the age of 54, but was clearly appointed by Judge Tillman D. Johnson at the age of 67 to take over the position left vacant by the death of Justice Albert John Weber on August 8, 1925.⁵⁸ Soon after being appointed in Salt Lake City, he became bankruptcy referee for the entire state.⁵⁹ He served as alternate delegate to the Democratic National Convention from Utah in 1928. He died on June 26, 1947 at the age of 80.⁶⁰

The first referee born in Utah was Thomas D. Lewis. He was born on September 15, 1865 in Salt Lake City and educated at the University of Utah (then Deseret, where he became the University's first graduate to be granted a degree) and the University of Michigan in 1891, with an LLB. He engaged in the general practice of law in Salt Lake City until 1903, when he was appointed a judge of Third Judicial District of Utah at the age of 38.⁶¹ In 1917, he returned to private practice forming a partnership with A. J. Weber and Culbert L. Olson (later governor of California). He was a Republican (the first appointed as a bankruptcy referee). In 1939, Judge Tillman D. Johnson appointed him as bankruptcy referee at the age of 74 to fill James T. McConnell's position as Utah's sole bankruptcy referee.⁶² He served until 1949 when he retired at age 84.

⁵⁷ *J. T. McConnell Dies at Salt Lake*, VERNAL EXPRESS, 1947.

⁵⁸ *Referee Named for Salt Lake District*, SALT LAKE TELEGRAM, August 18, 1925.

⁵⁹ *McConnell Named Bankruptcy Referee*, SALT LAKE TELEGRAM, November 27, 1925.

⁶⁰ *Legal Official, 80, Dies at Provo*, SALT LAKE TELEGRAM, June 27, 1947.

⁶¹ C.C. Goodwin, *History of the Bench and Bar in Utah*, 165 (Interstate Press Assoc.) (1913).

⁶² *Utah's Senior Bar*, THE UTAH BAR BULLETIN, Aug.-Oct., 19__, p. 125,126.

Thomas D. Lewis was the father of David Thomas Lewis, who was appointed to the United States Court of Appeals for the Tenth Circuit in June 1956, and served as Chief Judge of the Circuit from 1970-77.⁶³ David Thomas Lewis was the father-in-law of Eleanor S. Van Scriver (Lewis) appointed to the Third Circuit Court Bench by Governor Scott M. Matheson.⁶⁴

Born on December 6, 1846 in Tennessee, Thomas Maloney moved to Utah in August 1885 after completing law school at Tusculam University in Nashville, Tennessee. The same year that he was appointed as bankruptcy referee for Ogden at the age of 52,⁶⁵ he was nominated by the Democratic party as a candidate for the Supreme Court and later ran as the American Party candidate for the Supreme Court. He served as referee until about 1906. Maloney was described as one of the best and most favorably known attorneys in Ogden– selfless, patient, kind and unostentatious– and was said to be “learned in the law” with a private life above reproach.⁶⁶ Maloney also served as a United States Commissioner, a position that eventually evolved into the position of United States Magistrate Judge under the Federal Magistrates Act of 1968.⁶⁷

Augustus B. Patton was born in Fayette County, Penn. on January 13, 1846. He graduated in the Law Department of Wesleyan University at Mount Pleasant, Iowa and was admitted to the bar in 1872. He practiced in Pueblo, Colorado for some period of time. He was

⁶³ *Judges of the United States*, Bicentennial Committee of the Judicial Conference of the United States 1978, p. 235. U. S. Gov. Printing Office; <http://www.fjc.gov/public/home.nsf/hisj> (last visited Sept. 7, 2010).

⁶⁴ *Utah's First Hundred Women Attorneys 1872 - 1976: A Celebration of Women in the Profession*, Utah State Bar. Class of 1968-1969 # 51.

⁶⁵ U.S. Dist. Ct. Utah, Central Division, *Appointment of Mr. Maloney, Referee in Bankruptcy for the County of Weber 9/5/1898* (Filing Dates: 1-12-1900 thru 8-28-1901) (microformed on microcopy reel 34, p.1. by MicroCOM).

⁶⁶ Goodwin, *History of the Bench and Bar in Utah*, *supra* note 42.

⁶⁷ *Wikipedia* 8/3/2010, United States magistrate judge, p.3. *See* text at note 45.

appointed a bankruptcy referee in 1908 at the age of 66, and succeeded Thomas Malony.⁶⁸ His service was terminated in 1911.⁶⁹

The second Kentucky born referee, James W. N. Whitecotton was born on June 14, 1859, and graduated from Ottawa University (Kansas) in 1881. He practiced law and was admitted to the bar of Beloit, Kansas in 1889. Whitecotton moved to Provo Utah in 1889, and practiced law in Provo and other towns in Utah County. He was 42 at the time he was appointed as a referee in about 1901. He served until 1903. Whitecotton was the unsuccessful Democratic nominee for justice of the Supreme Court of Utah in 1900 and 1906.⁷⁰

Another referee who became a Chief Justice of the Utah Supreme Court, Elmer E. Corfman was born on March 2, 1863, in Toledo, Iowa. He graduated from the University of Michigan's law department in 1890. He moved to Utah in 1890 and practiced thereafter in the state. He was 40 when appointed as a referee about 1903 to replace James W. N. Whitecotton. Corfman served as the Chief Justice of the Utah Supreme Court from 1919 to 1923. He practiced in Utah, and was a Mason and a Democrat.⁷¹

John A. Nowers, one of the youngest people appointed as referee, was born March 5, 1868.⁷² He was appointed as referee about 1901 at the age of 33 and served until 1903.

Born in Virgin, Utah on May 22, 1866 or 1867, Joseph Alma Harris graduated from the

⁶⁸ Polk's Salt Lake (Salt Lake County, Utah) City Directory, R. L. Polk & Co; 1910, p. 73.

⁶⁹ Dept. Of Health, Office of Vital Records and Stat. death certificate; R. M. Stevenson, *Augustus B. Patton*, USGENWeb Archives. Joy Fisher <http://www.genrecords.net/emailregistry/vols/00001.html#0000031>.

⁷⁰ Goodwin, *History of the Bench and Bar in Utah*, *supra* note 42, at p. 216.

⁷¹ Goodwin, *History of the Bench and Bar in Utah*, *supra* note 42, at p. 126.
[Http://en.wikipedia.org/wiki/Utah_Supreme_Court](http://en.wikipedia.org/wiki/Utah_Supreme_Court) (last visited Sept. 6, 2010).

⁷² Department of Health, Office of Vital Records and Statistics, Death certificate.

University of Michigan Law School.⁷³ He was appointed a referee in 1900 at about the age of 34.⁷⁴ There is no biography of Harris in Goodwin, but he is listed as a referee in Polk's Salt Lake (Salt Lake County, Utah).⁷⁵

One of two Denmark born referees, Jacob Marinus Lauritzen was born September 8, 1870, in Allberd, Denmark. He was appointed as a referee in 1902 at the age of 33.⁷⁶ He served until 1908.

Pearl Eben Keeler was born October 23, 1868, in Galena, Ohio, and earned a LL.B. in 1891 from Boston University. He practiced law for a number of years in Logan, Utah, serving as county attorney of Cache County and as city attorney of Logan.⁷⁷ He was appointed as referee in 1902 at the age of 34 and served until 1906. He moved to Nevada, and then to Los Angeles, California, where he became Judge of the Superior Court of Los Angeles, and later returned to private practice.⁷⁸

Frank Hiram Holzheimer was born August 4, 1867 in Lewiston, NY. He graduated from Ann Arbor, Michigan law school in 1896. He was appointed as referee in 1902 at the age of 35 and served until 1903. By 1909 he had moved to Seattle where he was deputy prosecuting attorney. He was accused of soliciting a bribe of \$1,000 from a defendant charged with

⁷³ University of Michigan Law School alumni directory, 1860-1950.

⁷⁴ SALT LAKE HERALD, May 13, 1900.

⁷⁵ City Directory, R. L. Polk & Co; 1901, p. 54.

⁷⁶ *Bankruptcy Matters*, SALT LAKE HERALD, January 25, 1902.

⁷⁷ Los Angeles County Biographies, H. James Boswell, *American Blue Book California Lawyers*, p. 126.

⁷⁸ Los Angeles Biographies, *supra*.

manslaughter in return for dismissal of the manslaughter charges. After Holzheimer was arrested, he agreed to resign his office in Seattle if he was not prosecuted.⁷⁹

The second Denmark born referee, George Christensen, was born on February 24, 1866 and moved to Utah in 1873. He graduated in 1904 from the Sprague Correspondence School of Law and later received a B.A. in 1907 from Central University in Indianapolis, Indiana and an A.B. from B.Y.U. in 1909. Christensen practiced law in Ephraim until 1909, then moved to Mount Pleasant where he continued to practice law. A Democrat, he served as county treasurer of Sanpete County, 1893-95; county superintendent of schools in Sanpete County, 1901-03; mayor of Mount Pleasant, 1900-02; and county attorney of Sanpete County, 1910-12. Christensen was 36 when he was appointed referee in 1902 and served for 11 years until 1913.⁸⁰

Judge Marshall's initial appointments seemed designed to give geographical coverage to the state consistent with the 1898 Bankruptcy Act's charge that each county should have the services of a referee if needed,⁸¹ and to provide convenient access to the citizens so that they could make use of the new statute. Most of the referees were 50 years of age or older when appointed, except for those appointed in Provo and Mount Pleasant.

A closer look at some of Judge Marshall's appointments is warranted because some served for a considerable length of time and provided needed continuity for the newly enacted statute. Judge Marshall appointed Charles Baldwin as referee for the Central Division around 1900, and he served for almost 20 years. Although 1903-06 saw the construction of the United

⁷⁹ *F.H. Holzheimer Has Gone Wrong*, EUREKA REPORTER, Dec. 17, 1909.

⁸⁰ Goodwin, *History of the Bench and Bar in Utah*, *supra* note 42, at p. 123. See also *City Briefs*, THE MOUNTAIN REPUBLICAN, May 24, 1908.

⁸¹ A.G.'s 1940 Report, *supra* note 38, at pp. 61-62.

States Post Office and Courthouse at 350 South Main Street in Salt Lake City and the move of many of the federal officers out of the Dooly Building into the new facility,⁸² Baldwin eventually settled into offices at 424 Continental National Bank Building, known as the Beason Building. The Beason Building was eventually torn down to make way for the Walker Bank Building parking structure. From the time the offices at the Beason Building were established, each succeeding referee in the Salt Lake City district occupied those offices until the expansion and remodeling of the Post Office building in 1932 provided sufficient space for the referees to occupy bankruptcy courtroom # 218 in the federal Courthouse.⁸³

From January 12, 1900, through August 28, 1901, Charles Baldwin, acting as referee in the Central Division, was referred at least 109 cases, with three that were probably business entity filings.⁸⁴ It appears that members of the bar were willing and able to practice in this new arena because there were numerous attorneys who appeared for their bankrupt clients. A number of filings were also made by the bankrupts *pro se*. Even if the public bias against the federal judiciary continued, many Utah residents took advantage of filing bankruptcy in the new federal court under the new federal statute in spite of that bias.

On September 5, 1898, Judge Marshall also appointed Thomas Maloney as referee in

⁸² Utah State History, *Markers and Monuments Database*.
http://history.utah.gov/apps/markers/detailed_results.php?markerid=2418 (last visited August 19, 2010).

⁸³ Report of the Conservator, U.S. Post Office & Courthouse, Salt Lake City, Utah, G.S.A, Denver, Colo. Region 8, Nov. 9, 1979, p. 54.

⁸⁴ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index* (Filing Dates: 1-12-1900 thru 8-28-1901) (microformed on microcopy reel 34, pp.1-5 by MicroCOM).

bankruptcy for Ogden, Weber County.⁸⁵ Less than 42 days after his appointment, Referee Maloney's bankruptcy court was up and running. In the first case filed in the Ogden area, the bankrupt Robert M. Robinson was adjudicated by Judge Marshall and the case was referred by Judge Marshall to Referee Maloney. Following the referral, the notice to creditors was published in the Utah State Journal and the meeting of creditors held at Referee Maloney's office at 2442 Washington Avenue, Ogden, Utah. A notice of the bankrupt's application for discharge was filed and noticed to creditors, a trustee (J. T. Ledridge) was appointed (bonded for \$100), and a trustee's report of exempt property and no assets was filed. The bills were then paid: noticing (\$.50); the stenographer (\$1.85); and Referee Maloney \$10.00 for the case.⁸⁶

The Court dockets for Ogden show that nine cases were filed from October 21, 1898 through the end of the year.⁸⁷ For the period 1898 to 1905, there were 97 cases referred to Referee Maloney.⁸⁸ One can only imagine what it must have been like to have been Alfred W. Agee,⁸⁹ who was the attorney for the bankrupt in the first five cases filed under the 1898 Act (four in a two-week period just after enactment), before the new referee.⁹⁰ Or for that matter,

⁸⁵ U.S. Dist. Ct. Utah, Central Division, *Appointment of Mr. Maloney, Referee in Bankruptcy for the County of Weber* (Filing Dates: 1-12-1900 thru 8-28-1901) (microformed on microcopy reel 34, p. 1 by MicroCOM).

⁸⁶ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index* (Filing Dates: 1-12-1900 thru 8-28-1901) (microformed on microcopy reel 8, p. 2-3 by MicroCOM).

⁸⁷ U.S. Dist. Ct. Utah, *Bankruptcy Proceedings with Index* (Filing Dates: 1898 to 1905) (microformed on microcopy reel 8, pp. 2-18 by MicroCOM).

⁸⁸ *Id.*

⁸⁹ Alfred W. Agee, Polk's Ogden (Weber County, Utah) City Directory, R. L. Polk & Co; 1899, p 52. Lawyer UPRR Co. 9 Union Depot. Ogden Ut.

⁹⁰ U.S. Dist. Ct. Utah, *Bankruptcy Proceedings with Index* (Filing Dates: 1898 to 1905) (microformed on microcopy reel 8, pp. 2-8 by MicroCOM).

what it was like to be Referee Maloney, serving in a position significantly different from the registers of prior statutes and with significantly broader powers.⁹¹ He seems to have taken in stride that, just a year after the enactment of the 1898 Act, for the six months between July of 1899 and January of 1900, because the “Hon. John A. Marshall being out of the Judicial District”,⁹² he was vested with all the powers of the Court, including the power to adjudicate.⁹³

Eventually, the number of referees in the outlying towns dwindled, and filings were consolidated with the Salt Lake City referee serving the central and southern part of the state and the Ogden referee serving the northern part of the state. There may also have been a Uinta Division with Referee McConnell, although we have no dockets from that area. Although no reason is given for a change in the location or number of referees, it is reasonable to assume that the small remuneration provided through the referee’s salary and expense fund and the limited number of filings made the position less than attractive to attorneys, especially where the number of cases filed was small.⁹⁴

The First Bankrupts

For those individuals and businesses who elected to make use of the new statute, the economic data of the time give insight into their conditions, and the docket sheets describe in their own words the circumstances that prompted their filings. The 1900 Census indicates that

⁹¹ A.G.’s 1940 Report, *supra* note 38, at p. 4.

⁹² U.S. Dist. Ct. Utah, *Bankruptcy Proceedings with Index* (Filing Dates: 1898 to 1905) (microformed on microcopy reel 8, pp. 60-77 by MicroCOM).

⁹³ A.G.’s 1940 Report, *supra* note 38, at p. 4.

⁹⁴ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index* (Filing Dates: 1-12-1900 thru 8-28-1901) (microformed on microcopy reel 34, pp.1-5 by MicroCOM).

73,840 men and 10,764 women were gainfully employed in Utah. As might be expected, the most important job categories for men were agriculture, manufacturing and mechanical pursuits, and trade and transportation. For women the top three jobs were domestic and personal service, manufacturing and mechanical pursuits, and professional services.⁹⁵ Many women also ran general or specialty stores, and they were the owners and operators of boardinghouses and small hotels.⁹⁶ The bankruptcy court records include the occupations and reasons for filing for some of the bankrupts. Their occupations include, among others, a miner, livestock man, laborer, blacksmith, locomotive engineer, mining speculator, collection agent, peddler, nurse, and a variety of small business owners operating a wholesale fruit and produce store, pool room and cigar factory, stage line, grocery store, and saloon. Several corporate filings are listed among the early filers, many as involuntary petitions, including D. G. McGinley & Co.,⁹⁷ Newman Shoe Company,⁹⁸ Faust Creamery & Supply Co.,⁹⁹ Provo Bench Fruit and Produce Co.,¹⁰⁰ Mt. Nebo

⁹⁵ Miriam B. Murphy, *Jobs in 1900*, History Blazer, (Feb. 1996), available at http://historyto.go.utah.gov/utah_chapters/statehood_and_the_progressive_era/jobsin1900.html (last visited Aug. 18, 2010).

⁹⁶ *Id.*

⁹⁷ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Register Item 2* (Filing Dates: 1898 - 1905, case no. 114 (1899)) (microformed on microcopy reel 8 p. 26 by MicroCOM).

⁹⁸ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index #1* (Filing Dates: Jun 1905 thru Dec 1907, case no. 856 (1905)) (microformed on microcopy reel 20, p. 85 by MicroCOM).

⁹⁹ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index #2* (Filing Dates: Oct 1907 thru Mar 1911, case no. 1186 (1909)) (microformed on microcopy reel 20, p. 73 by MicroCOM).

¹⁰⁰ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index #1* (Filing Dates: Feb. 1911 thru Jun 1913, case no. 1392 (1912)) (microformed on microcopy reel 21, p. 345 by MicroCOM).

Oil Company,¹⁰¹ Jewish Agricultural and Colonial Assn.,¹⁰² and the United States Mercantile Company.¹⁰³

In their own words, the bankrupts described their reasons for filing bankruptcy. And as might be expected, the reasons often related to illness or family circumstances.

Through my sickness and sickness in my family. I have had appendicitis and rheumatism. My wife has been sick and I have had three children die.¹⁰⁴

I got behind with my bills through being out of employment and because of sickness. . . . Besides the five children of my second wife who live with and are supported by me, I have five other children by a former wife.¹⁰⁵

I got into debt through sickness and by signing a note for \$560 about eight years ago. . . . I afterward enlisted in the Army served about a year and when I came out I was sick and unable to do a man's work and could not pay the note.¹⁰⁶

I got into debt through having sickness in my family and being out of work. My wife was extravagant when we were living together. When I was working . . . I was unable to hold my job there on account of my wife's interference.¹⁰⁷

¹⁰¹ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 2* (Filing Dates: Mar 1913 thru Apr 1915, case No. 1716 (1914)) (microformed on microcopy reel 21, p. 187 by MicroCOM).

¹⁰² U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index #* (Filing Dates: Mar 13, 1915 - Jun 8, 1918 (1916)) (microformed on microcopy reel 22, p. 288 by MicroCOM).

¹⁰³ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 2* (Filing Dates: Dec. 9, 1921 thru Oct. 5, 1923, case No. 6750 (1922)) (microformed on microcopy reel 23, p. 222 by MicroCOM).

¹⁰⁴ *In re Joseph Doty*, case No. 146 (1912) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 1* (Filing Dates: Feb 1911 - Jun 1913) (microformed on microcopy reel 21, p. 406 by MicoCOM).

¹⁰⁵ *In re J. A. Noonan*, case No. 4110 (1915) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 2* (Filing Dates: Mar 1913 - Apr 1915) (microformed on microcopy reel 22, p. 175 by MicoCOM).

¹⁰⁶ *In re Harry Castlemain*, case no .9948 (1927) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 2* (Filing Dates: Jun 1926 - Nov 1927) (microformed on microcopy reel 24, p. 143 by MicoCOM).

¹⁰⁷ *In re Arind Koldenya*, case No. 10,020 (1927) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 2* (Filing Dates: Jun 1926 - Nov 1927) (microformed on microcopy reel 24, p. 117 by MicoCOM).

Got behind with our bills . . . because after my husband lost his leg he was not able to earn money. . . .¹⁰⁸

Many of the individual filings were related to business failures.

Through trying to run a restaurant in the Heron Hotel.¹⁰⁹

In the wholesale liquor business in the basement of the Union Saloon at Bingham Canyon, Utah. . . the strike in the mine . . . caused our failure.¹¹⁰

Became insolvent through bad luck in loss of horses due to lameness.¹¹¹

Have been forced into bankruptcy because my creditors would not let me alone . . . I bought 20 or 25 vacant lots and built homes on them and then sold them on the installment.¹¹²

I got so badly in debt that I cannot pay through going into a Motion Picture business last fall.¹¹³

Sometimes the reasons were related to dishonesty or speculation.

Bad investments and dishonest partners. . . . I got into debt and unable to pay

¹⁰⁸ *In re Elizabeth Kate Johnson*, case No. 4300 (1916) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 1* (Filing Dates: Mar 13, 1915 - Jun. 8, 1918) (microformed on microcopy reel 22, p. 247 by MicroCOM).

¹⁰⁹ *In re M. Gordon*, case No. 1492 (1911) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 1* (Filing Dates: Feb 1911 - Jun 1913) (microformed on microcopy reel 21, p. 157 by MicroCOM).

¹¹⁰ *In re Marchi Bros, a Partnership*, case No. 154 (1913) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 1* (Filing Dates: Feb 1911 - Jun 1913) (microformed on microcopy reel 21, p. 483 by MicroCOM).

¹¹¹ *In re W. Bury Putnam*, case No. 1550 (1911) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 1* (Filing Dates: Feb 1911 - Jun 1913) (microformed on microcopy reel 21, p. 142 by MicroCOM).

¹¹² *In re L. J. H. Midgley*, case No. 4957 (1917) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 1* (Filing Dates: Mar 13, 1915 - Jun. 8, 1918) (microformed on microcopy reel 22, p. 929 by MicroCOM).

¹¹³ *In re William B. Kelling*, case No. 2050 (1915) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 1* (Filing Dates: Mar 13, 1915 - Jun. 8, 1918) (microformed on microcopy reel 22, p. 91 by MicroCOM).

through losses in mining stock speculation.¹¹⁴

And sometimes the reasons were rather unique.

Who else do you support? I don't know there are about thirty of us - . . . - just buried two this summer; there is twenty-eight I am supporting.¹¹⁵

The Tillman Davis Johnson Era

The case filings continued at a modest rate. For a period of about three and a half years, from October 1907 to March 1911, records indicate at least 277 cases being filed, of which twelve were business entities and three appear to have been involuntary petitions.¹¹⁶ Economic conditions improved because World War I, starting in the summer of 1914 and lasting until 1918, created a demand for Utah's copper, coal, steel, and agricultural products, all of which were important for sustaining both the armed forces and the civilian citizenry.¹¹⁷ The post-war economy slid into the depression of 1919-22, and mining and agriculture limped along. Manufacturing, construction, trade, and transportation prospered at much superior levels. From March 1923 to November 1926, 197 cases were filed,¹¹⁸ but from June 1926 to November 1927,

¹¹⁴ *In re O. W. Andelin*, case No. 4849 (1917) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index # 1* (Filing Dates: Mar 13, 1915 - Jun. 8, 1918) (microformed on microcopy reel 22, p. 841 by MicroCOM).

¹¹⁵ *In re Daniel Densley Jr.*, case No. 1079 (1907) located in U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index #1* (Filing Dates: Jun 1905 thru Dec 1907) (microformed on microcopy reel 20, p. 461 by MicroCOM).

¹¹⁶ *Bankruptcy Proceedings with Index #2* (Filing Dates: Oct 1907 to March 1911) (microformed on microcopy reel 20 by MicroCOM).

¹¹⁷ Thomas G. Alexander, *Utah, the Right Place*. Condensed by Brittany Nelson. http://historytogo.utah.gov/utah_chapters/fromwartowar.html (last visited August 19, 2010).

¹¹⁸ *Bankruptcy Proceedings with Index #1* (Filing Dates: March 9, 1923 to November 24, 1926) (microformed on microcopy reel 24, pp. 1-3 by MicroCOM).

a period of just under one and one-half years, the filings increased to over 140 cases.¹¹⁹

In 1911, Judge Marshall, had been viewed as the frontrunner for appointment as a Federal Circuit Judge, but was not then appointed because President Taft, a Republican, feared that he had already appointed too many Democrats. Before being considered for the Circuit Court bench by Taft's Democratic successor, Woodrow Wilson, Judge Marshall resigned due to issues involving the woman who cleaned his courtroom.¹²⁰ Tillman Davis Johnson was appointed by Woodrow Wilson on August 16, 1915.¹²¹ It is said that President Wilson's criteria were that the new appointee be a southern Democrat, a non-Mormon, and a lawyer,¹²² but historians have characterized Johnson as neither "pro" nor "anti" anything and agree that he was an honest, well-respected judge.¹²³

Judge Johnson began appointing referees upon taking office. He appointed Albert J. Weber, a prior law partner of Thomas D. Lewis (later a referee), who had been serving as Chief

¹¹⁹ *Bankruptcy Proceedings with Index #1* (Filing Dates: June 1926 to November 1927) (microformed on microcopy reel 24, pp. 1-4 by MicroCOM).

¹²⁰ Willis Van Devanter of Wyoming was serving on the Eighth Circuit Court of Appeals (of which Utah was a part until 1929) when he was appointed as an Associate Justice of the United States Supreme Court in December 1910. The Utah Bar proposed Judge Marshall, a Democrat, to fill Van Devanter's seat. Senator Reed Smoot, although a Republican, approached William Howard Taft regarding the possible appointment of Judge Marshall to the Court of Appeals. Taft responded that he was being criticized for appointing so many Democrats, but if he were to appoint a Democrat, it would be Marshall. Taft instead appointed Walter I. Smith, an Iowa Republican, to Van Devanter's seat on the Eighth Circuit in January 1911. Reed Smoot, *Diary*, December 22, 1910, L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University, Provo, Utah; Federal Judicial Center, *History of the Federal Judiciary*, Walter Inglewood Smith, <http://www.fjc.gov/servlet/nGetinfo?id=2229&cid=999&ctype=na&instate=na> (accessed October 2010); Willis Van Devanter, <http://www.fjc.gov/servlet/nGetinfo?id=2440&cid=999&ctype=na&instate=na> (accessed October 2010); John August Marshall, <http://www.fjc.gov/servlet/nGetinfo?id=1487&cid=999&ctype=na&instate=na> (accessed October 2010). The detail regarding the cleaning woman comes from Ashton, *The Federal Judiciary in Utah*, *supra* note 11, at p. 57.

¹²¹ Ashton, *The Federal Judiciary in Utah*, *supra* note 11, at p. 58.

¹²² *Id.*

¹²³ *Id.*, at pp. 58-9.

Justice of the Utah Supreme Court at the end of his term on January 1, 1924. After completing his duties for the Utah Supreme Court, Weber assumed his duties as referee, but passed away on August 8, 1925.¹²⁴ James T. McConnell had been serving as a U.S. Commissioner in Vernal in the early 1900s, and had apparently been appointed in 1912 as referee in the Uinta District. Judge Johnson appointed him on November 27, 1925¹²⁵ to take over the duties in the Salt Lake District made vacant as a result of Weber's passing.

Judge Johnson elected to consolidate the referee position into one referee to serve the entire state. McConnell filled that position, and “[b]usiness in the northern division will be negotiated once a week in Ogden, . . . while in emergency cases a sitting will be held in Vernal.”¹²⁶ McConnell probably also “rode circuit” to attend to the other areas in the state. He instituted modest technological improvement in Bankruptcy Court administration by having forms printed for docket sheets that captured relevant case and financial information in a convenient manner at the beginning, rather than throughout the docket sheets.

After McConnell's appointment came Black Tuesday and the Stock Market Crash of 1929. Utah was among the states hit hardest by the Great Depression of the 1930s.

In 1933 Utah's unemployment rate was 35.8 percent, the fourth highest in the nation, and for the decade as a whole it averaged 26 percent. By 1932 the wage level for those who had not lost their jobs had declined by 45 percent and the work week by 20 percent. Annual per capita income dropped 50 percent by 1932, and in 1940 had risen to only 82 percent of the pre-depression level. By the spring of 1933, thirty-two percent of the population was receiving all or part of their food, clothing, shelter, and other necessities from government relief funds: 32 of Utah's 105 banks had failed, and corporate business failures had increased

¹²⁴ *Supra*, note 46.

¹²⁵ *Mc Connell Named Bankruptcy Referee*, SALT LAKE TELEGRAM, November 27, 1925.

¹²⁶ *Id.*

by 20 percent.

During the two-year period after the Utah Division of Employment Security began operating in 1938, one of every three Utahns was unemployed long enough to receive unemployment compensation. Nearly 60 percent of them exhausted their benefits before finding another job. Of those placed in jobs, only one quarter were in permanent positions; the rest were either in temporary government programs or in private jobs lasting less than 30 days.¹²⁷

Agriculture was not immune from the ravages of the Depression. Between 1929 and 1933, Utah's gross farm income fell nearly 60 percent. Season after season individual farmers suffered from the miserably low prices they received for their products, and it made little difference what they grew or raised; they considered themselves lucky to sell their products for enough to meet their costs of production.¹²⁸

Bankruptcy filings from October 24, 1931 to July 1, 1933, approximately two years and eight months, totaled at least 425, with ten entity filings, of which three were involuntary filings.¹²⁹ Filings were not increasing at a rate that might be expected, however, given the severe economic circumstances. It is likely that conditions were so untenable that resort to bankruptcy relief was unnecessary. Most realized that a person must have some asset to protect from collection by creditors to prompt a bankruptcy filing. During this period, many Utahns were unable to pay rent or meet mortgage payments, and many families were dispossessed from their homes. In the summer of 1933, the *Deseret News* reported hundreds of homeless families were camped out on vacant lots throughout the city.

¹²⁷ John S. McCormick, *Utah History Encyclopedia*, (and citations therein) http://historytogo.utah.gov/utah_chapters/from_war_to_war/thegreatdepression.html (last visited August 19, 2010).

¹²⁸ *Id.*

¹²⁹ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index* (Filing Dates: October 24, 1931 to July 1, 1933, Vol 21) (microformed on microcopy reel 26, by MicroCOM).

The federal government responded to the dire circumstances with the New Deal, and federal programs in Utah were extensive. Per capita federal spending in Utah during the 1930s was ninth among the 48 states. The percentage of Utah workers on federal relief projects was far above the national average. For every dollar Utahns sent to the nation's capital in taxes, the government sent back seven dollars through various programs.¹³⁰ The Works Progress Administration (WPA) alone employed a peak of 17,000 people in Utah in 1936. A 1939 survey revealed that Utah's average WPA worker was 38 years old, married, with two to three children.¹³¹

The Chandler Act Era

The Chandler Act of 1938¹³² included substantial provisions for reorganization of businesses and consumer payment plans¹³³ and was designed to expand the options for troubled business and individuals to meet the adverse economic times. The Chandler Act of 1938 granted bankruptcy referees the authority to adjudicate petitions referred to them, to administer oaths and examine witnesses, and to act for the judge in certain instances. It transferred many of the referee's administrative functions to bankruptcy trustees or clerks of court while increasing the

¹³⁰ John S. McCormick, *Utah History Encyclopedia*, (and citations therein including Leonard J. Arrington, Utah, the New Deal and the Depression of the 1930s. Ogden, Utah: Weber State College, 1982; John F. Bluth and Wayne K. Hinton, "The Great Depression", Chapter 26 in Richard D. Poll, et al., eds. Utah's History, Provo: Brigham Young University Press, 1978. and John S. McCormick, "Hard Times", Chapter VIII in Salt Lake City, the Gathering Place. Woodland Hills, California: Windsor Publications, Inc., 1980) http://historytogo.utah.gov/utah_chapters/from_war_to_war/thegreatdepression.html (last visited August 19, 2010).

¹³¹ *Id.*

¹³² Bankruptcy Act 52 Stat. 883 (1938).

¹³³ Bradley Hansen, *Bankruptcy Law in the United States*, <http://eh.net/encyclopedia/article/hansen.bankruptcy.law.us>. (last visited Aug. 19, 2010).

referees' judicial functions.¹³⁴

Shortly after enactment of the Chandler Act, a new referee, Thomas D. Lewis, was appointed on November 2, 1939,¹³⁵ when James McConnell resigned at the age of 81. Lewis appears to have been the first Republican appointed as referee, and he served until 1949.

Utahns reacted to the new, amended Bankruptcy Act by filing for protection in increasing numbers. Bankruptcy cases filed from November 2, 1939 to May 20, 1942 (probably for the Central Division), a period of about two and one-half years, totaled 381. Although this number was not that much greater than earlier filings, among these cases were at least one wage earner plan, ten business filings (of which three were involuntaries), and two chapter XI cases.¹³⁶

World War II finally produced a change in economic circumstances that brought an end to the Depression. During the War years, Utah reached full employment for the first time in the 20th century. Worker's incomes increased by 50 percent; corporate profits doubled. By the time the War ended in 1945, Utah, like the United States as a whole, had never been so prosperous.

During the period between 1940 and 1950, the state increased in population by 25 per cent, and Salt Lake County increased from 211,000 to 274,000.¹³⁷ The Salt Lake metropolitan region from Ogden to Provo comprised about 70 percent of the total population of Utah, with 17 of the 29 counties of Utah showing a decrease in population.

¹³⁴ Judicial Administration and Organization, Bankruptcy Referees, http://www.fjc.gov/history/home.nsf/page/admin_03_03.html (last visited Sept. 6, 2010).

¹³⁵ *Supra*, note 60.

¹³⁶ U.S. Dist. Ct. Utah, Central Division, *Bankruptcy Proceedings with Index* (Filing Dates: November 2, 1939 to May 20, 1942, Vol 28) (microformed on microcopy reel 28 by MicroCOM).

¹³⁷ The Work of the Utah Local Government Survey Commission. Wendell B. Anderson, Utah State Agricultural College, Page 1.

Lewis's term as referee seems to have been uneventful. The filings for the Northern Division for the 14 year period from October 27, 1934 through December 14, 1948 totaled approximately 480, or a bit more than 34 cases per year.¹³⁸ However, there was unrest with the administration of the bankruptcy system as reflected in the *Administration of the Bankruptcy Act: Report of the Attorney General's Committee on Bankruptcy Administration 1940*, (U.S. Gov. Printing Office, 1941). The A.G.'s 1940 Report indicated that the nation's referees "exercise their jurisdiction more or less wisely and more or less efficiently. Yet, . . . they do all of this under a statute and a system of administration which makes scarcely a gesture toward any coordination of their work, and makes supervision in many instances little more than a pious hope."¹³⁹ The A.G.'s 1940 Report complained of a "lack of . . . an effective and responsible coordination and supervision of bankruptcy administration as a whole. . . and the necessity for improving the refereeship system by limiting the number of referees, putting each of them on a full-time basis, and modifying the anachronistic system under which they are at present compensated and their expenses paid."¹⁴⁰ The experience in Utah served to prove the point regarding the excessive number of part-time referees, for, over the 40 or so years from the enactment of the 1898 Bankruptcy Act, the number of part-time referees was reduced to one full-time position. Complaints in the A.G.'s 1940 Report also focused on the manner of appointing referees, indicating disdain for political endorsements and the necessity for political clearance. These concerns about political patronage in the method for appointing referees would be

¹³⁸ *Bankruptcy Proceedings with Index - Northern Division* (Filing Dates: October 27, 1934 through December 14, 1948) (microformed on microcopy reel 32 by MicroCOM).

¹³⁹ A.G.'s 1940 Report, *supra* note 38, at p. 3.

¹⁴⁰ *Id.* at p. 2.

highlighted in Utah's experience over the next several referee appointments.

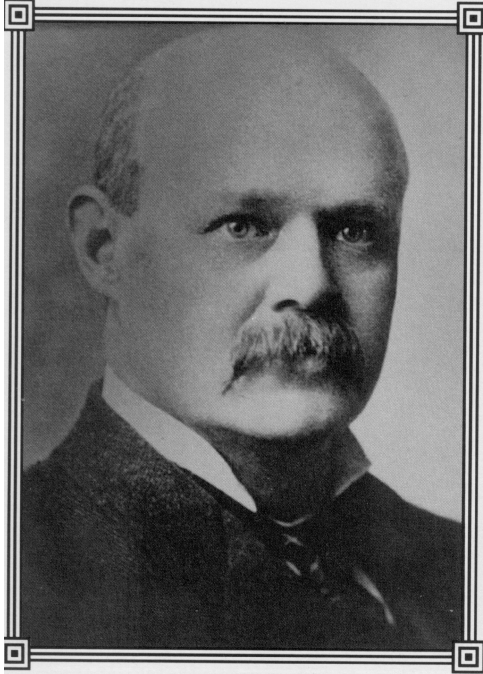
From the perspective of significant events related to the history of bankruptcy in Utah, the next pivotal event was the appointment of Democrat Willis W. Ritter as United States District Judge for the District of Utah on October 25, 1949, after a bitter appointment process.¹⁴¹ For the next twenty-nine years of Judge Ritter's somewhat controversial tenure on Utah's Federal District Court bench, one man heavily influenced federal jurisdiction in Utah, including practice in Utah's Bankruptcy Court.¹⁴²

¹⁴¹ Patricia F. Cowley and Parker M. Nielson, *Thunder Over Zion: The Life of Chief Judge Willis W. Ritter*, ch. 10 (The University of Utah Press) (2007).

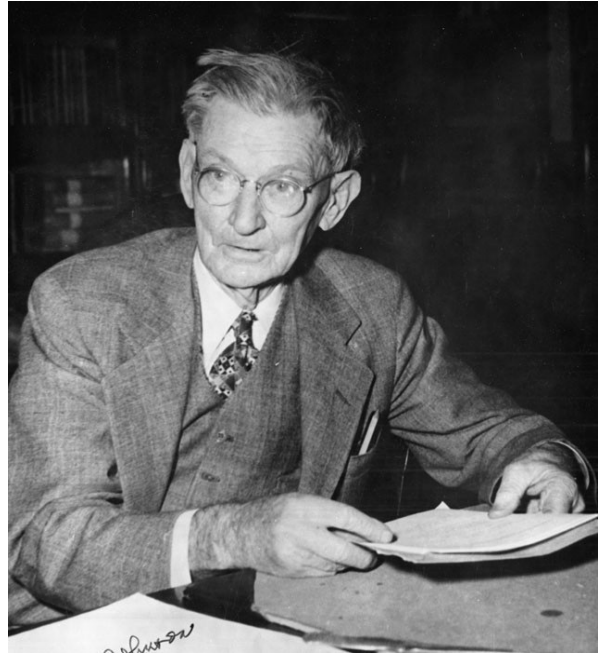
¹⁴² Judith A. Boulden and Kenneth L. Cannon II, "Utah Bankruptcy Practice in the Modern Era 1950-2015," pp. 3-19, <http://www.10thcircuithistory.org/learn/courthistory:1992-present>.

APPENDIX

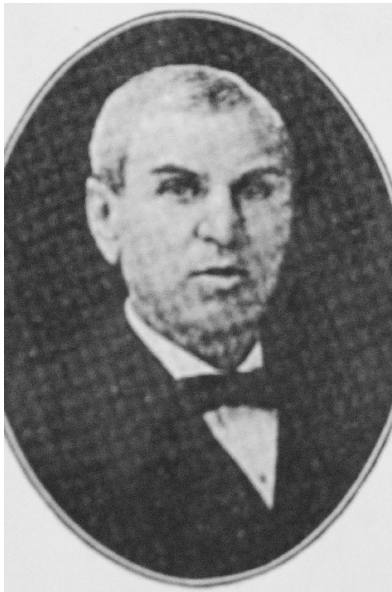
Utah Judges and Referees



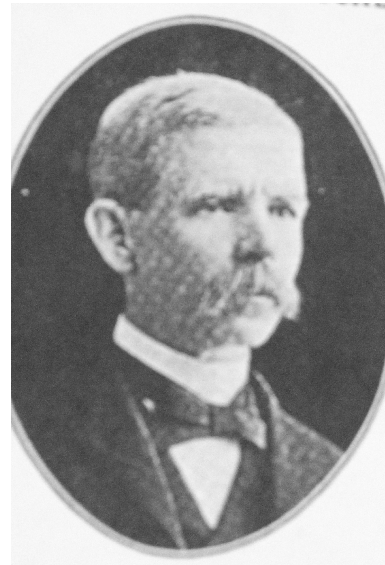
John A. Marshall - United States District Judge



Tillman D. Johnson - United States District Judge*
1947



Charles Baldwin - Bankruptcy Referee 1898 - 1920



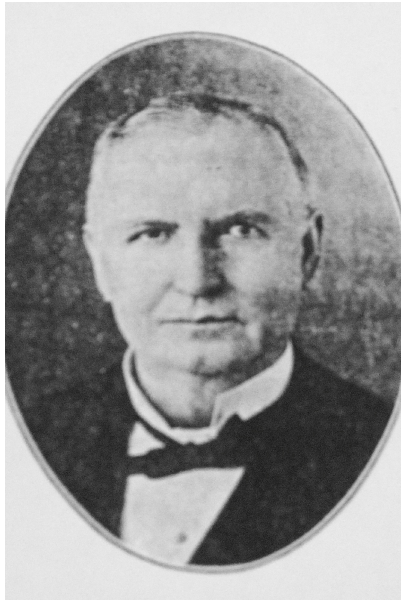
Jerold Ranson Letcher - Bankruptcy Referee
1920-1922



Samuel Thompson Corn - Bankruptcy Referee
1922 - 1924



Thomas D. Lewis - Bankruptcy Referee
1939 - 1949



Thomas Maloney - Bankruptcy Referee
1898 - 1906



Elmer E. Corfman - Bankruptcy Referee
1903 - 1913

Historic Buildings



Dooly Building - 1916 -Location of Federal Offices until Post Office and Courthouse Construction in 1906*



Continental Building (Beason Building) 1905 Location of Bankruptcy Referees' Office and meetings of creditors*



Post Office and Courthouse Building* 1908



Post Office and Courthouse Building* 1907



Exchange Place with Post Office and Courthouse in the Distance* 1910



People gathered outside the Land Office, Third Floor Just Outside Room 330, Post Office and Courthouse* 1911

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