Krakowskie Studia z Historii Państwa i Prawa
2024; 17 (3)
https://ejournals.eu/czasopismo/kshpp

MÁTÉ PÉTERVÁRI
https://orcid.org/0000-0002-7221-9111
University of Szeged

The Authority and Liability of the Bankruptcy Trustee Based on the Second Hungarian Bankruptcy Act of 1881[1]

Abstract

After the Austro-Hungarian Compromise, the Hungarian economy developed quickly, and the Hungarian political elite sought ways to help it grow with a new, up-to-date regulation. To that end, the National Assembly adopted a new commercial code in 1875, a new promissory note act in 1876 and a new bankruptcy act in 1881.

In this paper, I examine the liability of bankruptcy trustees on the basis of leading cases of the Hungarian Supreme Court whose decisions determined the Hungarian legal practice. It is an interesting part of Act XVII of 1881 because it has a close connection to the general private law. Since bankruptcy trustees were responsible for determining the amount of bankruptcy assets, the issue of creditor control of the trustee's activity was important. In addition, the provision of the Hungarian bankruptcy act concerning the bankruptcy trustee's liability was the same as the German Bankruptcy Act of 1877, thus creating a good opportunity to compare the German and Hungarian viewpoints in this question.

Introduction

Hungary lost its independence after the Hungarian Revolution and War of Independence 1848–1849, and Franz Joseph I attempted to merge the Kingdom of Hungary with the Habsburg Empire. This decade-long period was characterized by neo-absolutism, since the emperor integrated the Hungarian state administration and jurisdiction into the state organization of the Habsburg Empire by imperial decrees and without the approval of the Hungarian Parliament. However, these provisions were later overturned by the October Diploma in 1860. The October Diploma and its supplements were an attempt of the Austrian emperor to make a compromise with the Hungarian political elite. Franz Joseph I guaranteed a limited independence for Hungary within the Habsburg Empire. The Hungarian Parliament would not have been an independent legislative body, but the state organization could have been separated from the other parts of the Empire.[2] The Hungarian Parliament refused to accept this conception. Therefore, Franz Joseph I dismissed it, and suspended the application of the historical constitution of Hungary.

[1] "Supported by the ÚNKP-21-4 – SZTE - 28 New National Excellence Program of the Ministry for Innovation and Technology from the source of the National Research, Development and Innovation Fund."
[2] Képessy, "Strafrechtliche Fragen an der Konferenz der Landesrichter", 79.

After long preparation, the Austrian emperor and the Hungarian political elite achieved a compromise in 1867. It established the Austro-Hungarian Monarchy, the so-called Dual Monarchy. This state was a real union since the Kingdom of Hungary and Austrian Empire became two independent states which had a common sovereign and a few common affairs,[3] namely the military and foreign affairs and the financial affairs of the two. Besides, the Austro-Hungarian Compromise also connected the two states in other matters,[4] the economic questions among others.[5] The Monarchy was a single customs area, and the currency was common as well.[6] For this reason, the commercial life between the two states was very intensive, and the two economies influenced each other. It is important to highlight that Transylvania was an independent part of the Habsburg Empire separated from Hungary until 1848, but it was annexed to Hungary in the April Acts in 1848.[7] This regulation was not in effect after 1849. Finally, according to the Austro-Hungarian Compromise[8] and the Act XLIII of 1868, the union between Hungary and Transylvania was realized once again.[9]

After the Compromise, the state organization was modernized by the Hungarian Parliament, for example, the legislator separated the jurisdiction and public administration,[10] therefore it re-established self-government and the courts of first and second instances.[11] Moreover, the Hungarian economy also developed quickly in this period, and, as a result, the Hungarian political elite intended to help the development with new, modern regulations.[12] In the frame of this aim, the Hungarian Parliament enacted a new code of commerce in 1875, new acts on promissory notes (1876) and bankruptcy (1881).[13] The latter was the basis of the Hungarian insolvency law until the Communist rearrangement in 1949.[14]

The Hungarian insolvency law generally developed in parallel with the codification of general private law. Before 1840, this procedure was characterized by customary law, and the legal practice was not unified before the courts. Bankruptcy was regulated for the first time when the Hungarian Parliament enacted Act 22 of 1840 on among other acts on commerce.[15] It

[3] Gosztonyi, "Die Lage des Königreichs Kroatien und Slawonien nach den Ausgleichen", 253–4.
[4] Máthé, "Der ungarische Rechtstaat in der Zeit der Doppelmonarchie", 118–9.
[5] Balogh, "Közös érdekű ügyek a dualizmus rendszerében", 5–7.
[6] Stipta, "A közös elvek szerint kezelt ügyek és a közigazgatási bíráskodás", 68; Nagy, "Vámszövetség és kvóta – A gazdasági kiegyezés", 186–7.
[7] Kisteleki, "Erdély és Magyarország első egyesülése: Az 1848-as uniós törvény", 341.
[8] Pál, *Unió vagy «unificáltatás»?*, 154–5.
[9] Fazakas, Kisteleki, "Transylvania in the Habsburg Empire", 270.
[10] Varga, "A törvényhatósági bizottság alakuló ülése Debrecenben és Szegeden", 715.
[11] Antal, "A bírói hatalom gyakorlásának", 9.
[12] Pétervári, "Changes in the Hungarian Insolvency Law", 231–2.
[13] Horváth, *A magyar magánjog*, 481–2.
[14] Lőrinczi, "A mai magyar csődjogi szabályozás", 21.
[15] Pétervári, "Az első magyar csődtörvény", 251–5.

was the first Hungarian act on bankruptcy having great significance in Hungary, since its aim was to help the enforcement of the first Hungarian act on promissory notes.[16] The German effect prevailed in this bankruptcy regulation, because the Hungarian political elite followed the German legislative efforts. Moreover, the royal court sent Ignaz Wildner from Vienna, who probably influenced the direction of the regulation, to support the Hungarian codification.

The independent Hungarian regulation regarding bankruptcy was annulled in the era of neo-absolutism when the Provisional Bankruptcy Code was introduced by decree of Minister of Justice in Hungary and Transylvania in 1853.[17] After the October Diploma, the Judex-Curial Conference (*Országbírói Értekezlet*) abrogated the Provisional Bankruptcy Code when it promulgated its Provisional Rules of Jurisdiction, and Act 22 of 1840 came into effect again in Hungary.[18] This regulation, however, was not applied in Transylvania. The second Hungarian Bankruptcy Act was enacted in 1881 in this legal situation, which modernized the Hungarian insolvency law and unified the legal regulations in the Kingdom of Hungary, including Transylvania.

The role of the bankruptcy trustee

During the enactment of the Second Bankruptcy Act, the aim of the new legislation was, as always, to reduce the cost of the procedures and decrease their length. The legislation applied several measures to achieve these goals, one of the most important of which was the integration of the legal representation and the economic treatment of the bankruptcy assets. These two authorities were separated by the Act 22 of 1840: the legal tasks belonged to the litigator (*perügyelő*), and the economic tasks were carried out by the liquidator.[19] The new act established a new homogeneous position, the bankruptcy trustee, whose emergence unified the aforementioned two tasks of the procedure.[20] For this reason, the key position in the procedure was that of the bankruptcy trustee, who alone handled all the bankruptcy assets.

The legislator put an emphasis on the legal tasks of the bankruptcy trustee during the law-making. Therefore, only attorneys were allowed to fulfil this position. As a result, the legislator guaranteed a source of income for this profession, a signal achievement of the attorney lobby. Apart from that, an important question of this regulation was how each bankruptcy trustee got his position. There were two opportunities: 1) election by the creditors,

[16] Korsósné Delacasse, *«Csalfa áméttások által többeket megkárosított»,* 117.
[17] Herczegh, *A csődtörvénykezés Magyarországban és Erdélyben*, 4.
[18] Pétervári, "«Egészen uj csődosztályzati projectum»", 67.
[19] Korsósné Delacasse, "Die Anfänge des ungarischen", 71.
[20] Halmos, "A csőd intézményének rövid története", 544.

or 2) appointment by the court. The final text of the act stated that the bankruptcy trustee shall be appointed by the court upon the declaration of bankruptcy, and the creditors shall not have the possibility to change this decision during the bankruptcy procedure.

Research question and methodology

In this paper, I examine the liability of the bankruptcy trustee based on the leading cases of the Hungarian Supreme Court (Hungarian Royal Curia), which determined Hungarian legal practice. This part of the act is worth analyzing because it has a close connection with the general private law, and this actor was responsible for the amount of bankruptcy assets. Thus, it was important how the creditors could control its activity. In addition, the provisions of the Hungarian bankruptcy act regarding the liability of the bankruptcy trustee were identical to the German Bankruptcy Act of 1877, which meant one could compare the German and Hungarian viewpoints in this question.

The study presents the judicial practice of these regulations because it is suitable to describe the wide-spread interpretation of this liability form. The Hungarian jurisprudence did not give much help to determine the content of this provision. Moreover, the decisions of higher Hungarian courts were important sources of the Hungarian judicial implementation of law beyond acts, decrees based on act and customary law, especially in the scope of private law due to the lack of a Civil Code. This tradition originated from the *Planum Tabulare* assembled by the order of Maria Theresa, a collection of leading cases of Hungarian Royal Curia from 1723 to 1768, and thus the main source of Hungarian customary law in addition to the *Tripartitum* of the same era.[21] This role of leading cases took shape over the course of judicial practice, but the Hungarian Parliament corrected this function in a separate act in 1881.[22] The leading cases began to serve as significant legal sources for the Hungarian legal system in 1913 because certain decisions of the Royal Hungarian Curia had binding force for lower courts when the Hungarian Code of Civil Procedure (Act I of 1911) came into effect.[23] However, the cases which I present in this paper arose before this change.

Regarding the Hungarian legal practice, the leading cases of higher courts were all decisions which included important legal principles.[24] There were several types of leading cases based on which court established it or on its function.[25] I found and analyzed only those

[21] Bódiné Beliznai, "Felsőbíróságaink döntvényalkotási joga", 60.
[22] Bódiné Beliznai, "A Kúria döntvényalkotási joga", 2–3; Molnár, *Döntvényeink jogi természete*, 6.
[23] Szivós, "Az 1911. évi I. törvénycikk hatálybalépésének körülményei", 203.
[24] Gaár, "Döntvény", 84.
[25] Varga, "A Kúria döntvényalkotási joga 1912 és 1930 között", 171–2.

decisions of Hungarian higher courts that were purely "substantive leading cases", since they were not binding on the lower courts,[26] but oriented the interpretation of the legal regulations. Lajos Králik also emphasized this important role of leading cases in the scope of Hungarian bankruptcy law.[27]

Provision about the liability of the bankruptcy trustee

The bankruptcy trustee practiced representative authority, management and power of disposal concerning the estate of the debtor according to Act XVII of 1881. Based on the archive sources, his main activities were: 1) taking an inventory of assets of the debtor with the cooperation of bailiff or notary public and an expert who was familiar with the profession in connection of the estate; 2) distraint of this estate after the inventory; 3) and selling the estate of the debtor. Besides, he examined the declarations of claims and explored the claims of the debts of the estate of the debtor. He was entitled to collect the claims of the bankrupt for the assets of the bankrupt. He represented the estate in the legal actions. He was under an obligation to give an account of the management of the estate.

The trustee had to act with the care of the good family father (*bonus pater familias*) during the management of his duties (Section 100),[28] which was the standard of his liability. If he neglected this care, he was responsible for all damages. According to the rationale for the act, this liability ensues from the nature of the position of the bankruptcy trustee.[29] He took this office voluntarily and for a fee, therefore the legislator could justifiably demand that he bear a higher level of liability. The motivation referred to the Roman law, as it decreed that according to this liability, the bankruptcy trustee was responsible for *culpa levis* ("slight negligence").

As I mentioned before, this provision was the same in the Hungarian Bankruptcy Act and the German Bankruptcy Act of 1877 (Section 74). The Hungarian legislator adopted this rule and partially its motivation as well.[30] The German regulation, however, included another reason. The application of the liability form of the Roman law was necessary because a unified law of obligations did not exist in Germany in this period, therefore the content of *culpa levis* of the Roman law was the most unambiguous. The second aim of German Code of Bankruptcy added another solution in the absence of German common general private law: the Commercial

[26] Fehérváry, *Döntvénytan*, 61.
[27] Králik, *A csődtörvény (1881. évi XVII. törvényczikk)*, 10.
[28] Szende, *Magyar hiteljog*, 121.
[29] "A magyar csődtörvényjavaslatnak", 128–9.
[30] *Motive zu dem Entwurf einer Deutschen Gemeinschuldordnung*, 14; *Entwurf einer Konkurs-Ordnung*, 306.

Code was in effect in the German states, so the legislator applied the model of liability from this regulation.[31] The care of decent businessman (*ordentlicher Geschäftsmann*) was provided by Section 343 of the Commercial Code (*Allgemeines Deutsches Handelsgesetzbuch*) of 1861, but the argument against this solution was that it is only applicable to commercial life. It was an important point of view since the regulation on bankruptcy did not concern merchants alone, but was a general procedure. This argumentation also had an impact in Hungary because the general private law was not codified in Hungary, either.

The private law was ruled by customary law in Hungary until 1959, but the first drafts were only completed in the time of the enactment of the Second Hungarian Code of Bankruptcy.[32] Moreover, the applied private law was different in Hungary and Transylvania during Dual Monarchy. In 1853, the Austrian Civil Code was introduced in Hungary and Transylvania, which were two different lands in Bach years. This regulation was only abrogated by the Provisional Rules of Jurisdiction in Hungary in 1861, but the Civil Code remained in force in Transylvania.[33] After the Compromise, new acts on private law were adopted by the Hungarian Parliament, which came into force in Transylvania as well. The Hungarian Code of Commerce of 1875 shall be highlighted among these acts since the legislator had an opportunity to use this regulation as a model for a common liability form. This similarity is reasonable because the Hungarian Code of Commerce was based on the German one,[34] and we find the Hungarian translation (Section 342) of this paragraph to which the German legislator referred in the motivation of the Bankruptcy Act. The counterargument was right in Hungary as well because the regulation of the Second Hungarian Bankruptcy Act was also a general insolvency procedure, not a specialized rule for commercial actors.

The German legislator already amended this provision in 1898, when the Bankruptcy Act was amended because of the coming into force of the German Civil Code.[35] This amendment dissolved this liability form, since it only guaranteed that the bankruptcy trustee was liable to all participants of bankruptcy procedure.[36] I would like to analyze in the next part of my paper the question of what this general clause meant in the practice in Hungary, where this rule was applied until the second half of the 20th century. It is an interesting question how this provision was applied, because the German jurisprudent, Otto von Völderndorff, criticized

[31] *Ibid*.
[32] Homoki-Nagy, "Geschichte der zivilrechtlichen Kodifikation", 490.
[33] Homoki-Nagy, "Magánjog", 436.
[34] Horváth, "A kereskedelmi törvény – 1875. évi XXXVII. tc.", 223–4.; Homoki-Nagy, "Magánjogi kodifikációnk kérdései", 184.
[35] Meier, *Die Geschichte des deutschen Konkursrechts*, 202.
[36] Jaeger, *Lehrbuch des deutschen Konkursrechts*, 83–4.

the fact that the liability form was based on the form of liability from the Roman law.[37] He found it problematic that the courts in the German regions with different legal traditions were not able to define the meaning of a general clause. According to him, the judge should measure the act of bankruptcy trustee to business life and social relations.

It is worth mentioning that this liability form was not a unique solution in the German Bankruptcy Code of 1877, since we can find similar ones (care of fair and hard-working family father) in the Bavarian bankruptcy regulation (Article 1234) and the Austrian Bankruptcy Code of 1868 (Section 76) as well.[38] However, the jurisprudence did not emphasize this rule when analyzing the regulations.

Negligence of the utilization of the estate of the debtor

The first significant leading case concerning this provision was a decision by the Hungarian Curia in 1885. Its importance is justified by the fact that the creator of the draft of the act on bankruptcy, István Apáthy, referred to it in his commentary regarding the liability of the bankruptcy trustee.[39] This leading case remained the main basis for the interpretation of this provision for decades.[40]

The case was the following: The bankruptcy trustee did not deposit, in the court or the bank, the money which belonged to the estate of the debtor, and it had remained his for years. For this reason, he did not use this money. The disputed question was whether he is obliged to pay interest on this money. The courts agreed that the bankruptcy trustee had to pay interest for the assets of the debtor because of his negligence. Another disputed question was what percentage of interest he was obliged to pay. The Royal Regional Court of Nagyszeben set the interest rate at 6%, because it was the statutory interest according to the Act VII of 1877.[41] The Royal Regional Court of Appeal of Marosvásárhely changed this rate to 4% because the bankruptcy trustee was only obliged to deposit the amount in the court.[42] According to the appeal court, the committee of the creditors had to decide about the lending of the estate of the debtor, and this organ omitted to do so. Consequently, the court could only count with 4% which was paid by the state as the interest for the deposit, because the higher interest only

[37] Völderndorff, *Konkursordnung für das Deutsche Reich*, 57–8.
[38] Barth, *Commentar zur neuen Civilprozeßordnung für das Königreich Bayern*, 346; Kaserer, *Commentar zur österreichischen Concursordnung*, 149; Zugschwerdt, *Praktisches Handbuch zur Concurs-Ordnung*, 113–4; Schwarz, *Das österreichische Concursrecht*, 200–1.
[39] Apáthy, *A magyar csődjog rendszere*, 46.
[40] Sándor, *Csődtörvény*, 435.
[41] Royal Regional Court of Nagyszeben 5556 (March 6, 1884). In: *Döntvénytár,* 277–8.
[42] Royal Regional Court of Appeal of Marosvásárhely 663 (February 5, 1885). In: *Döntvénytár,* 278–9.

accrued from lending the money. The supreme court – the Hungarian Royal Curia – amended the judgement of the second instance and approved the decision of the first instance.[43] The bankruptcy trustee did not deposit the amount immediately and did not use it, therefore he deprived the committee of the creditors and the court of the opportunity of the utilization, thus he did not act with due diligence of the good family father. The Curia finally decided on an interest of 6%.

It is a special leading case because this lawsuit happened in Transylvania where the Provisional Bankruptcy Procedure of 1853, which was the previous regulation before the Act XVII of 1881, was still in force. However, the rules of the bankruptcy trustee liability were the same in the two legal provisions, therefore this decision was applicable in Hungary during the effect of the second Hungarian Bankruptcy Act.

Disposal of estate of third person by the bankruptcy trustee

The next important leading case regarding this provision dates to the beginning of the 20th century. The bankruptcy case was initiated before the Royal Regional Court of Nyitra.[44] The debtor was a husband who had a common property with his wife. The husband and wife each had one half of the ownership. The bankruptcy trustee appointed entered in the immovable property of the debtor according to the bankruptcy law, but the proportion of the wife was not registered in the inventory. Nevertheless, the bankruptcy trustee handled her proportion as well, and collected the income of the estate. The plaintiff was the wife in this lawsuit, and the defendant was the bankruptcy trustee. According to the plaintiff, the defendant wasted the income, and she alleged that the defendant is personally liable for damages which he caused with his negligent and unlawful actions.

The court ruled that the proportions of both the husband and the wife were registered in the inventory, and it was approved by the court of bankruptcy. For this reason, the bankruptcy trustee did not act as a private person, but in an official manner, when he registered the sugar beets into the inventory formulary which was also approved by the bankruptcy court. However, it is true that he handled the income of the wife as well. The court ruled in the judgement that the bankruptcy trustee handled the objects which are parts of the estate of the debtor based on the inventory with approval of the court without taking into consideration whether it is really the property of the debtor or not. The plaintiff can assert the right to reclaim her immovable property in this situation. The fruit of the common property composed the parts of the estate of

[43] Hungarian Royal Curia 345 (May 12, 1885). In: *Döntvénytár,* 279–80.
[44] Royal Regional Court of Nyitra 11897/909 (August 31, 1909). In: Gallia, *Hiteljogi döntvénytár*, 26–7.

the debtor because it fell under the right of disposal of the husband according to the Hungarian private law.

The bankruptcy trustee sold the sugar beets by public auction, and the committee of the creditors issued its decision, and the court approved this decision. The court finally dismissed the action of the plaintiff because she did not have the right to sue for the declaration of the liability of the bankruptcy trustee. If he had not acted with the care of the good family father or had exceeded his authority, the bankruptcy court could call him to account, but the third party could not make a recovery claim against him. The Royal Regional Court of Appeal of Pozsony upheld the decision of the court of first instance.[45] This court stressed that the defendant proceeded as bankruptcy trustee, therefore direct legal relation was not formed between the plaintiff and the defendant, thus the bankruptcy trustee did not bear the liability for his actions to the third party. The Royal Hungarian Curia upheld the decision of the second instance of court without change.

Is the bankruptcy trustee obliged to insure the bankrupt's estate?

In this case of the Royal Regional Court of Zilah the plaintiff was the debtor, and the bankruptcy trustee was the defendant.[46] The basis of this lawsuit was that the declaration of bankruptcy ultimately did not happen against the debtor because the court of the second instance reversed the judgement of the first instance, and it cancelled the bankruptcy against the debtor. But when the royal regional court declared the bankruptcy, it simultaneously ordered the distraint of the estate of the debtor. For this reason, the bankruptcy trustee seized the estate after the declaration of bankruptcy on December 31, 1910, and he started to register the assets in the inventory. The assets of the debtor were a big sheep farm that burned down on January 9, 1910, when the sheep fold was destroyed and the sheep perished in the fire. The plaintiff initiated the procedure because the bankruptcy trustee neglected his duty according to his point of view, since he did not take out fire insurance for the estate of the debtor. The plaintiff demanded that he be paid damages caused by fire from the bankruptcy trustee.

The royal regional court ruled that the bankruptcy trustee is obliged to handle the estate of the debtor with the care of the good family father that included insuring the estate against fire. In this case, he already started to negotiate with the Fonciére Insurance Company on December 31, 1909, but the time was too short to agree with an insurance company about the

[45] Royal Regional Court of Appeal of Pozsony 2294/909 (March 31, 1910). In: Gallia, *Hiteljogi döntvénytár*, 26–7.
[46] Royal Hungarian Curia 1536 (November 12, 1912). In: *Ügyvédek Lapja,* 2–3.

insurance. The inventory was usually a condition of the insurance company for the contract in case of a bankruptcy procedure unless the bankrupt had obtained insurance before the declaration of bankruptcy. The bankruptcy trustee had only 11 days between the declaration of bankruptcy and the damage caused by fire, and it was not enough time to conduct an insurance with such a great value. For this reason, the bankruptcy trustee was not liable for the damages of the plaintiff. The appellate court (Royal Regional Court of Appeal of Debrecen) upheld the judgement of the first instance, because the negligence of the care of the good family father was not justified for not attempting to look for another insurance company which had been able to conduct an insurance contract immediately. The debtor had been insured with the Adria Insurance Company before the declaration of bankruptcy, but this firm refused to pay for the damage. It was the responsibility of the plaintiff because he had failed to pay the necessary fees.

The Curia upheld the decision of the first instance as well and dismissed the action for damages, but the justification was interesting. This court ruled that the bankruptcy trustee was generally not obliged to insure the estate of the debtor against fire damage. The result of the lawsuit remained unchanged, but the answer for the legal question became completely different. The ratio decidendi of this leading case was as follows: In most cases, the bankruptcy trustee had was not obliged to insure properties belonging to the estate of the debtor against fire. The Hungarian commentaries of bankruptcy included only this statement, which was contrary to the decisions of the lower courts.[47] I think it was a wrong justification from the supreme court because the legislator intended to set the highest level of the liability for the bankruptcy trustee. For this reason, the court generally should not remove this duty from the bankruptcy trustee's tasks.

Negligence of the enforcement of claim for contesting the contract

In this case, the Royal Regional Court of Appeal of Győr examined the statute of limitation of the liability for damages concerning bankruptcy trustees.[48] The court of first instance stated in its judgement that the statute of limitation was two years on the basis of on the rules and regulations of the attorneys (Act XXXIV of 1874).[49] The appeal court ruled that the bankruptcy trustee could only be an attorney in Hungary according to the Bankruptcy Act, but the Act XXXIV of 1874 was not applicable to the bankruptcy trustee, since the attorney in this position

[47] Katona, *A csődtörvény (1881. évi XVII. törvénycikk) kézikönyve*, 158.
[48] Royal Regional Court of Appeal of Győr 1899 G. II. 28. (May 4, 1899). In: Térfi, *A királyi ítélőtáblák felülvizsgálati tanácsainak*, 310–2.
[49] Korsósné Delacasse, *Az ügyvédi kamarák megszületése Magyarországon,* 7–8.

functioned as a special trustee on the basis of the appointment of the court, and he had tasks that did not belong to the practice of an attorney. The Bankruptcy Act did not identify this statute of limitation. For this reason, it in this case was identical with the general period being 32 years, which was the traditional statute of limitation since István Werbőczi's *Tripartitum* from the 16th century.[50]

The other disputed question was whether the liability of the bankruptcy trustee could be established by the court because of the negligence of the enforcement of claims for contesting the contract. The goal of the claim for contesting was to increase the estate of the debtor. For example, in this case the bankruptcy trustee would be able to nullify an act of a creditor who initiated a debt recovery procedure (execution) on his own against the debtor and in this way caused damages to the creditors. The court analyzed whether the act obliged the bankruptcy trustee to enforce the claim for rescission. The court ruled that although the committee of creditors or all creditors (in the absence of such a committee) were able to oblige him to initiate this action, this did not happen in this case. Therefore, the court did not consider this claim for damages to be justified.

Summary

The key role during the bankruptcy procedure was the bankruptcy trustee. Therefore, his liability was of great significance. He was obliged to perform his duties with a liability of higher standards, but only the creditors or the debtor could challenge him based on this higher liability level before the bankruptcy court, and third parties were able to take action against him according to the general rules of claim for damages.[51] This solution followed the German model.[52] If the bankruptcy trustee infringed his duties or he did not see to his responsibilities with the care of the good family father, the creditors could take steps against him in the frame of action for damages, but the court could also levy a fine on him or it could remove him from his position according to the rules of disciplinary liability.

According to Mihály Herczegh, the second Bankruptcy Act expanded the authority of the bankruptcy trustee against the committee of the creditors. Therefore, it was necessary to determine the rules of strict liability, and the bankruptcy trustee had independence under the effect of this act.[53] This attitude, however, was not reflected in the examined cases, the courts

[50] [Dezső], "Elévülés (magánjogi)", 240–1.
[51] Králik, *A csődtörvény (1881. évi XVII. törvényczikk)*, 359.; Apáthy, *A magyar csődjog rendszere*, 46–7.
[52] von Sarwey, *Die Konkurs-Ordnung für das Deutsche Reich,* 460.
[53] Herczegh, *Magyar csődtörvény*, 214.

only analyzed whether the bankruptcy trustee followed the decisions of committee of the creditors. The courts did not demand higher independence of bankruptcy trustees during management of the estate of the debtor. New tasks were not assigned to bankruptcy trustees in the judicial practice because of the care of good family father.

The current Hungarian Bankruptcy Act which is in force (Law LXIX of 1991) does not follow this increased liability level of the liquidator being regulated based on the general liability rules (in a given situation, generally due diligence).[54] This provision, however, was amended in 2009, which made the liability form stricter, since it changed the general liability with this term: "person performing such position due diligence."[55] This amendment was not so innovative, as it incorporated the judicial practice in the legal norm. But this solution is not so strict as the solution in the Hungarian Bankruptcy Act of 1881.

Based on this liability rules, we can determine that the judicial practice remedied deficiencies in the Hungarian Bankruptcy Act. These solutions were accepted and received by the Hungarian legal system. The lawyers handled these supplements as if they were rules of the 1881 act.[56] The German legal development by the courts was not so intensive in this question[57] since it only examined the direction of liability, but not its content. There was a big difference between these Hungarian and German legal practices, in the sense that German courts examined the points of view of the German scholars, but the Hungarian courts analyzed only the text of the statute.

Bibliography

Legal sources

"A magyar csődtörvényjavaslatnak általános indokolása" [General Reasons of the Bill on the Hungarian Bankruptcy Act]. In: *Az 1878. évi október hó 17-ére hirdetett országgyülés Képviselőházának irományai.* [The Papers of the National Assembly's House of Representatives summoned for 17 October 1878], vol. 10. Budapest: Pesti Könyvnyomda Részvénytársaság, 1879.

Döntvénytár. A M. K. Curia, a Budapesti Kir. Itélőtábla és a Pénzügyi Közigazgatási Bíróság elvi jelentőségü határozatai [Book of Leading Cases. Decisions with Principal Importance of

[54] Kiss, "A felszámoló kártérítési felelőssége", 15; Miskolczi Bodnár, "A fizetésképtelenség magyar szabályozása", 163–4.
[55] Juhász, *A magyar fizetésképtelenségi jog kézikönyve,* 1104–5.
[56] Bernhard, *A csődeljárás*, 94–6.
[57] Fuchsberger, *Sämmtliche Entscheidungen des Reichgerichts*, 253–4.

Hungarian Royal Curia, Royal Regional Court of Appeal of Budapest and Financial Administrative Court]. Vol. 12. Budapest: Franklin, 1885.

Entwurf einer Konkurs-Ordnung nebst: Motive zu dem Entwurf einer Konkurs-Ordnung und Entwurf des Einführungsgesetzes sowie Anlage-Band zu den Motiven des Entwurfs einer Konkurs-Ordnung. Berlin: Carl Heymann's Verlag, 1875.

Fuchsberger, Otto, ed. *Die Entscheidungen des Deutschen Reichsoberhandelsgerichts und Reichsgerichts, des obersten bayerischen Landesgerichts und sämmtlicher deutscher Oberlandesgerichte in einem Bande*. Vol. 8. Gießen: Verlag von Emil Roth, 1896.

Gallia, Béla, ed. *Hiteljogi döntvénytár (váltó-, csőd-, kereskedelmi és tőzsdei ügyekben)* [Book of Leading Cases of Credit Law (Promissory Note, Bankruptcy, Commercial and Stock Market Cases)]. Vol. 5. Budapest: Franklin, 1912.

Motive zu dem Entwurf einer Deutschen Gemeinschuldordnung. Vol. 2. Berlin: Verlag der Königlichen Geheimen Ober-Hofbuchdruckerei, 1873.

Royal Hungarian Curia 1536 (November 12, 1912). *Ügyvédek Lapja* 29/50 (1912): Jogesetek (az Ügyvédek Lapja melléklete) 2–3.

Térfi Gyula, ed. *A királyi ítélőtáblák felülvizsgálati tanácsainak elvi jelentőségű határozatai*. Vol. 3: *1898–1899*. Budapest: Franklin, 1900.

Secondary sources

Apáthy, István. *A magyar csődjog rendszere* [The System of the Hungarian Bankruptcy Law]. Vol. 2. Budapest: Eggenberger, 1888.

Balogh, Judit. "Közös érdekű ügyek a dualizmus rendszerében" [Affairs of Common Interest in the System of Dualism]. *Jogtörténeti szemle* 9/3 (2007): 2–7.

Barth, Marquard Adolph. *Commentar zur neuen Civilprozeßordnung für das Königreich Bayern.* Nördlingen: Druck und Verlag der C. H. Beck'schen Buchhandlung, 1871.

Bernhard, Miksa. *A csődeljárás* [The Bankruptcy Procedure]. Budapest: Ráth, 1914.

Bódiné Beliznai, Kinga. "A Kúria döntvényalkotási joga" [The Authority of Leading Case-Making of Curia]. *Jogtörténeti szemle* 14/2 (2012): 2–13.

Bódiné Beliznai, Kinga. "Felsőbíróságaink döntvényalkotási joga" [The Authority of Leading Case-Making of Hungarian Higher Courts]. *Jogtörténeti szemle* 21/3–4 (2019): 59–64.

[Dezső, Márkus]. "Elévülés (magánjogi)" [Prescription (Civil Law)]. In: *Magyar jogi lexikon*, vol. 3. ed. Márkus Dezső, 237–44. Budapest: Pallas, 1900.

Fazakas, Zoltán József; Kisteleki, Károly. “Transylvania in the Habsburg Empire and the Austro-Hungarian Dual Monarchy (1690–1918). In: *Erdély jogtörténete*. ed. Emőd Veress, 237–99. Cham: Springer, 2023.

Fehérváry, Jenő. *Döntvénytan. Elmélkedés a magyar döntvényről* [The Tenet of Leading Case. Contemplation about the Hungarian Leading Case]. Budapest: Budai, 1937.

Gaár, Vilmos. “Döntvény” [Leading Case]. In: *Magyar Jogi Lexikon*, vol. 3, ed. Márkus Dezső, 84–8. Budapest: Pallas, 1900.

Gosztonyi, Gergely. “Die Lage des Königreichs Kroatien und Slawonien nach den Ausgleichen”. In: *Kroatisch-ungarische öffentlich-rechtliche Verhältnisse zur Zeit der Doppelmonarchie*, eds. Gábor Máthé, Barna Mezey, 249–63. Budapest–Zagreb: Eötvös University Press, 2015.

Halmos, Károly. “A csőd intézményének rövid története” [The Short History of Bankruptcy]. *Közgazdasági Szemle* 59/5 (2012): 540–57.

Herczegh, Mihál. *A csődtörvénykezés Magyarországban és Erdélyben* [The Jurisdiction Concerning Bankruptcy Cases in Hungary and Transylvania]. Pest: Pfeifer, 1872.

Herczegh, Mihály. *Magyar csődtörvény. 1881:XVII. törvényczikk* [Hungarian Bankruptcy Act. Act XVII of 1881]. Vol. 2. Budapest: Franklin, 1884.

Homoki-Nagy, Mária. “Geschichte der zivilrechtlichen Kodifikation”. In: *Die Entwicklung der Verfassung und des Rechts in Ungarn,* ed. Gábor Máthé, 451–500. Budapest: Dialóg Campus Verlag, 2017.

Homoki-Nagy, Mária. “Magánjogi kodifikációnk kérdései” [Questions of the Hungarian Private Law Codification]. In: *A kettős monarchia. Die Doppelmonarchie,* eds. Gábor Máthé; Attila Menyhárd; Barna Mezey, 179–201. Budapest: ELTE Eötvös Kiadó, 2018.

Homoki-Nagy, Mária. “Magánjog” [Private Law]. In: *Erdély jogtörténete*, ed. Emőd Veress, 432–54. Budapest–Kolozsvár: HVG-Orac – Forum Iuris, 2020.

Horváth, Attila. *A magyar magánjog történetének alapjai* [The Bases of the Hungarian Private Law History]. Budapest: Gondolat, 2006.

Horváth, Attila. “A kereskedelmi törvény – 1875. évi XXXVII. tc.” [The Commercial Code – Act XXXVII of 1875]. In: *A kettős monarchia. Die Doppelmonarchie,* eds. Gábor Máthé; Attila Menyhárd; Barna Mezey, 203–46. Budapest: ELTE Eötvös Kiadó, 2018.

Jaeger, Ernst. *Lehrbuch des deutschen Konkursrechts*. Berlin–Leipzig: Walter de Gruyter, 1932.

Juhász, László. *A magyar fizetésképtelenségi jog kézikönyve* [The Handbook of the Hungarian Insolvency Law]. Vol. 1. Budapest: HVG-Orac, 2019.

Katona, Gábor. *A csődtörvény (1881. évi XVII. törvénycikk) kézikönyve* [Handbook of the Bankruptcy Act (Act XVII of 1881)]. Budapest: Grill, 1927.

Kaserer, Josef. *Commentar zur österreichischen Concursordnung mit sämmtlichen Materialien, dem Gesetze vom 9. Jänner 1869 nebst Motiven und mit Formularien*. Wien: G. J. Manz'schen Buchhandlung, 1869.

Képessy, Imre. "Strafrechtliche Fragen an der Konferenz der Landesrichter". In: *Die Auswirkungen politisch-sozialer Umbrüche auf das Strafrecht,* ed. Barna Mezey, 78–86. Budapest: ELTE Eötvös-Lóránd-Universität, 2017.

Kiss, Gábor. "A felszámoló kártérítési felelőssége" [Liability for Damages of the Liquidator]. *Gazdaság és Jog* 17/10 (2009): 15–8.

Kisteleki, Károly. "Erdély és Magyarország első egyesülése: az 1848-as uniós törvény" [The First Union of Transylvania and Hungary: The Union Act of 1848]. In: *Erdély jogtörténete*. ed. Emőd Veress, 340–45. Budapest–Kolozsvár: HVG-Orac–Forum Iuris, 2020.

Korsósné Delacasse, Krisztina. "Die Anfänge des ungarischen Konkursrechts". In: *Institutions of Legal History with Special Regard to the Legal Culture and History*. eds. Gábor Béli *et al*., 67–75. Bratislava–Pécs: Publikon, 2011.

Korsósné Delacasse, Krisztina. *Az ügyvédi kamarák megszületése Magyarországon* [The Birth of the Attorneys' Chambers in Hungary]. Budapest–Pécs: Dialóg Campus – PTE ÁJK, 2012.

Korsósné Delacasse, Krisztina. *«Csalfa áméttások által többeket megkárosított». A stellionatus a 18-19. századi magyar jogban*. Budapest: Gondolat, 2022.

Králik, Lajos. *A csődtörvény (1881. évi XVII. törvényczikk)* [The Bankruptcy Act (Act XVII of 1881)]. Budapest: Grill, 1904.

Lőrinczi, Gyula. "A mai magyar csődjogi szabályozás jogtörténeti gyökerei (Szomorújáték három felvonásban)" [Legal History Roots of the Contemporary Hungarian Bankruptcy Regulation (Tragedy in Three Acts)]. *Jogtörténeti szemle* 13/4 (2011): 15–29.

Máthé, Gábor. "Der ungarische Rechtstaat in der Zeit der Doppelmonarchie". In: *Kroatisch-ungarische öffentlich-rechtliche Verhältnisse zur Zeit der Doppelmonarchie,* eds. Gábor Máthé; Barna Mezey, 105–85. Budapest-Zagreb: Eötvös University Press, 2015.

Meier, Anke. *Die Geschichte des deutschen Konkursrechts, insbesondere die Enststehung der Reichskonkursordnung von 1877*. Frankfurt am Main: Peter Lang, 2003.

Miskolczi Bodnár, Péter. "A fizetésképtelenség magyar szabályozása" [The Hungarian Regulation of the Insolvency]. In: *A magyar csődjog alapjai*, eds. Péter Miskolczi Bodnár, Gábor Török, 83–186. Budapest: HVGOrac, 2002.

Molnár, Kálmán. *Döntvényeink jogi természete* [Legal Nature of Hungarian Leading Cases]. Eger: Érseki Liceumi Nyomda, 1913.

Nagy, Mariann. "Vámszövetség és kvóta – A gazdasági kiegyezés" [Customs Union and Quota – The Economic Compromise]. In: *Megosztó kompromisszum. Az 1867. évi kiegyezés 150 év távlatából*, eds. Róbert Hermann, Dávid Ligeti, 173–90. Budapest: Országház Könyvkiadó, 2018.

Pál, Judit. *Unió vagy «unificáltatás»? Erdély uniója és a királyi biztos működése (1867–1872)* [Union or Annexation? The Union of Transylvania with Hungary and the Activity of the Royal Commissioner (1867-1872)]. Kolozsvár: Erdélyi Múzeum Egyesület, 2010.

Pétervári, Máté. "Changes in the Hungarian Insolvency Law in the Interwar Period". *Krakowskie Studia z Historii Państwa i Prawa* 15/2 (2022): 227–44. https://doi.org/10.4467/20844131KS.22.016.15719

Pétervári, Máté. "Az első magyar csődtörvény országgyűlési vitája és a szabályozást meghatározó alapelvek" [The Debate in the Hungarian National Assembly on the First Hungarian Bankruptcy Act and the Principles Determining the Regulation]. *Glossa Iuridica* 8/4 (2022): 245–69.

Pétervári, Máté. "«Egészen uj csődosztályzati projectum» – A csődjogi szabályok helyreállítása az Ideiglenes Törvénykezési Szabályokban" [«Completely New Draft on Classification of Claims in Bankruptcy Procedure» – The Restoration of the Rules of Bankruptcy Law in the Provisonal Rules of Jurisdiction]. *Debreceni Jogi Műhely* 18/3–4 (2021): 66–77. https://doi.org/10.24169/DJM/2021/3-4/8

Sándor, Aladár. *Csődtörvény. A M. Kir. Curiának, a kir. itélőtábláknak és más itélőhatóságoknak elvi jelentőségű határozatai* [Bankruptcy Act. Leading Cases of Royal Hungarian Curia, Royal Courts of Appeal and Other Courts]. Budapest: Grill, 1911.

von Sarwey, Otto. *Die Konkurs-Ordnung für das Deutsche Reich vom 10. Februar 1877*. Berlin: Carl Heymann's Verlag, 1879.

Schwarz, Carl. *Das österreichische Concursrecht.* Vol 1. Wien: Manz'sche k. u. k. Hof-Verlags– und Universitäts–Buchhandlung, 1894.

Stipta, István. "A közös elvek szerint kezelt ügyek és a közigazgatási bíráskodás" [Affairs Handled According to Common Principles and the Administrative Jurisdiction]. In: *A kettős monarchia. Die Doppelmonarchie,* eds. Gábor Máthé, Attila Menyhárd; Barna Mezey, 65–77. Budapest: ELTE Eötvös Kiadó, 2018.

Szende, Péter Pál. *Magyar hiteljog* [Hungarian Credit Law]. Vol. 3. Budapest: Grill, 1930.

Szivós, Kristóf. “Az 1911. évi I. törvénycikk hatálybalépésének körülményei” [The Circumstances of Coming into Effect of Act I of 1911]. *Acta Universitatis Szegediensis. Forum. Publicationes Doctorandorum Juridicorum* 10/1 (2020): 201–17.

Varga, Norbert. “A törvényhatósági bizottság alakuló ülése Debrecenben és Szegeden” [The Inaugural Meetings of Municipal Boards in Debrecen and Szeged]. In: *Ünnepi kötet Dr. Blazovich László egyetemi tanár 70. születésnapjára*, eds. Elemér Balogh; Mária Homoki-Nagy, 715–26. Szeged: Szegedi Tudományegyetem Állam- és Jogtudományi Kar, 2013.

Varga, Norbert. “A Kúria döntvényalkotási joga 1912 és 1930 között” [The Leading Case-Making’s Authority of Curia Between 1912 and 1930]. In: *A közjogi provizórium (1920–1944) időszakának alkotmányos berendezkedése I*, eds. Gábor Schweitzer; István Szabó, 171–90. Budapest: Pázmány Péter Katolikus Egyetem Jog- és Államtudományi Kar, 2016.

Völderndorff, Otto. *Konkursordnung für das Deutsche Reich nebst Einführungsgesetz*. Vol. 2. Erlangen: Verlag von Palm & Enke, 1879.

Zugschwerdt, Johann Baptist. *Praktisches Handbuch zur Concurs-Ordnung für die im österreichischen Reichsrathe vertretenen Königreiche und Länder*. Wien: Wilhelm Graumüller, 1869.