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RE-EXAMINATION OF SECTION 14c(3) AS A GROUND FOR OBJECTION TO DISCHARGE

CARL D. FRIEBOLIN*

When at its annual Conference, the National Association of Bankruptcy Referees,² without a dissent passes a resolution approving a proposal to eliminate from the Bankruptcy Act one particular ground of objection to a discharge which has been in the Bankruptcy Act for fifty years; when, since that time the referees of the country, with only a very few exceptions,² have stated that such ground of objection should either be eliminated or, at the very least, modified in order to carry out the purposes of the Bankruptcy Act; and when it is estimated that in the past year probably 80% to 90% of all objections to discharge filed in bankruptcy cases, were based upon this ground³—it would seem that such provision of the Act should receive immediate and thorough study and re-examination—not to say an agonizing re-appraisal—with a view to elimination or modification. The provision referred to is Section 14c(3) of the Bankruptcy Act, enacted in 1903 and, with minor amendments, still a part of that Act.

Section 14c of the Act prescribes the grounds of objection which may be made by the trustee or a creditor to the discharge of a bankrupt in strict bankruptcy. These grounds are also available for objecting to confirmation of a debtor's Arrangement under Chapter XI;⁴ to confirmation of a Wage Earner Plan under Chapter XIII⁵ and to the confirmation of a Real Property Arrangement under Chapter XII,⁶ the latter for all practical purposes being a

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2. Result of a poll of referees by the writer. Out of the 86 districts of the federal courts in the United States, referees from 45 districts served by 98 referees, expressed an opinion; this included all of the larger cities.
3. Estimates furnished by referees in districts polled; they keep no records on the nature of objections. The Bankruptcy Division of the Administrative Office of United States Courts does not maintain a record of the grounds of objections to discharge that are filed in strict bankruptcy proceedings nor of the grounds of objection filed to confirmation of a debtor's arrangement (Ch. XI) or real property arrangement (Ch. XII) or a wage earner plan (Ch. XIII). It will be noted that Official Form No. 45 (Discharge of Bankrupt) does not provide for stating the ground of objection. The Bankruptcy Division has a record beginning in 1940 of the number of discharges granted, discharges denied, and discharges waived or not applied for, in strict bankruptcy proceedings only.
4. § 366(3) of the Bankruptcy Act. References hereinafter to the Act will be to chapters or sections only.
5. § 655(a)(3).
6. § 472(3).
"reorganization" by other than corporations. In the interest of brevity, these three debtor relief proceedings will hereinafter be referred to collectively as Plans of Adjustment.

This ground of objection (Section 14c(3)), in substance is that a bankrupt or debtor obtained either money or property on credit or an extension or renewal of credit by making a materially false statement in writing respecting his financial condition. The exact language of this clause and the changes made in it after 1903, will be found in the note below. As will be noted, the respective amendments reflected or annulled the interpretations of the clause as made prior thereto by the courts. From the beginning it has always provided as a ground of objection: the obtaining of credit upon a materially false statement in writing. So today we have in Section 14c(3), substantially, the 1903 provision.

In any event, the courts since 1926 have quite uniformly held that the present provision includes any kind of writing—not necessarily a commercial report listing assets and liabilities—which in-
RE-EXAMINATION OF SECTION 14c(3)

includes a statement referring to the writer's financial condition, whether or not the bankrupt or debtor was at the time engaged in business. In consequence, any individual who obtains a loan regardless of amount, or merely a renewal of the loan which originally had been honestly contracted by making a written false statement respecting his financial condition at the time of renewal, may be denied a discharge from all of his debts, or be denied confirmation of a Plan of Adjustment even though every creditor other than the lender, has duly accepted such Plan of Adjustment.

No sound and intelligent consideration of the purposes of Section 14c(3) and its consequences in bankruptcy administration can be had without taking into account the provisions of Section 17 of the Act and its purpose and its effect and influence in such administration. The failure to differentiate between these two sections and their respective purposes in bankruptcy has led to confusion.

While Section 14c enumerates the acts—the grounds—which, if proven, will bar a discharge of a bankrupt or refusal of confirmation of a Plan of Adjustment, Section 17 enumerates the kinds of liabilities which, although a discharge is granted or a debtor’s Plan of Adjustment is confirmed, are excepted from the effect of the discharge or of such confirmation. In other words, such excepted liabilities will not be released or affected—they survive a discharge or confirmation although all other debts will be discharged, or reduced as provided in the Plan.

Section 17, in some form, has been in the present Bankruptcy Act from the date of its enactment in 1898. The amendments thereof in substance, have been in a change of the word “judgment” to “liabilities” and the addition to the “excepted” status, of further kinds of liabilities. The present language of the section will be found in the note below with the several amendments indicated.\(^9\)

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9. See 1 Collier, Bankruptcy 1358 n. 12; 7 Remington, Bankruptcy § 3327.10 n. 11el. (5th ed. 1939) (1952 Supp.). See also note 38 infra.

10. § 17. “Debts Not Affected by a Discharge. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, (words in italic were inserted in 1938) except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; (2) are liabilities for (italic words were, in 1903, substituted for “judgments in actions for fraud or”) obtaining money or (these two words added in 1938) property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, (words italicized were added by amendment in 1903), or for breach of promise of marriage accompanied by seduction, (words italicized were added by amendment in 1917), or for criminal conversation (words italicized were added by amendment in 1903); (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor
In substance—as appears from the provisions of Section 17—after providing that only provable debts may be discharged, it excepts from discharge, in addition to taxes of all kinds, debts which are: liabilities for obtaining money or property by false representations or for willful and malicious injuries; for alimony due or to become due; for the support of the family; for seduction; for breach of promise; created by breach of the fiduciary relationship by way of embezzlement, fraud, or misappropriation; for wages earned within three months of bankruptcy; or not scheduled in bankruptcy.

It might be said that the excepted obligations imply, to a degree, a moral obligation—at least they indicate a public policy—that certain debts should not be affected by a discharge of the bankrupt. And be it noted that these various kinds of liabilities are also not affected by a confirmation of a debtor's Plan of Adjustment by way of an Arrangement or Wage Earner Plan.

While it is true that the courts have frequently said that the primary purpose of bankruptcy—strict bankruptcy and debtor relief provisions—is the equitable distribution of the debtor's property and a discharge to the "honest" bankrupt, we must never lose sight of the fact that bankruptcy, including the Debtor Relief Provisions, is a creature of statute, that discharges are not governed by equitable considerations, but by the enactments of Congress regarded by it as being in the best interest of the public.11

The grounds of objection to a discharge or to confirmation of Plans of Adjustment are statutory: Section 14c of the Act. Also, the liabilities excepted from a discharge are statutory: Section 17. The test of granting a discharge as well as of exceptions from its effect is not "honesty" of the debtor, as that elastic word might be defined by any particular judge or creditor but whether a privilege or right of the debtor or creditor as measured by the statutory provisions in those sections of the Act, is to be granted or withheld.12

had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; or (5) are for wages [due to workmen, clerks, traveling or city salesmen, or servants] which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment. (Clauses (5) and (6) were added by amendment in 1922 but were changed in form as here appears in 1938.)

11. 1 Collier, Bankruptcy 1274 n. 9.
12. Judge Hough of the second circuit in In re Hughes, 262 Fed. 500, 44 Am. B. R. 447 (2d Cir. 1919) stated: "It is a mistake, and a widespread one, to regard a discharge in bankruptcy as a reward of virtue, or its denial
While, perhaps, one might say that some of the excepted debts in Section 17 imply, to some degree, a lack of honesty or of moral obligation on the part of the debtor, others of such excepted debts do not. Obtaining property by the debtor by fraudulent representations, and breach of the duty of a fiduciary surely do connote moral laxity; debts for taxes or for wages earned within three months do not.

Similarly, in Section 14c, all the acts which constitute the more serious and fatal consequences of a denial of a discharge or of the confirmation of a Plan of Adjustment are not, by any moral standard, the acts of a "dishonest" man. Failure to keep adequate books, a prior discharge or confirmation of a compromise arrangement within six years and inability satisfactorily to explain losses are not necessarily the badges of a "dishonest" man. Actually, an "honest" bankrupt may be denied a discharge or may remain liable for an honestly incurred debt which is excepted from a discharge.

All of this is said to emphasize the fact that we are construing a statute which declares a public policy, a policy of what is in the public interest, a policy that certain specific acts, whether "honest" or "dishonest," shall operate to deny a discharge or confirmation of a debtor's Plan of Adjustment, and, that certain liabilities honestly or dishonestly contracted shall be excepted from a discharge which does release other creditors whose claims are not so specifically excepted.

If it be said that under Section 17, the false pretenses or representations need not be in writing as they must under Section 14c(3)—well, one is just as "dishonest" as the other.

**ARGUMENT FOR ELIMINATION OF SECTION 14c(3)**

A liability excepted from a discharge under Section 17 of the Act should not be the basis of a ground of objection to a discharge under Section 14c. These sections should, to such extent at least, be mutually exclusive.

We have heretofore examined the provisions of these two sections and noted not only their respective purposes but also their respective express provisions. Our contention is that to equate the existence of a liability—any liability—of a bankrupt or debtor, which is excepted from a discharge (or confirmation), with a

as a punishment for general moral turpitude. Discharge is a legal right attaching to the status of bankrupt, which right the statute requires the court to recognize, unless it be affirmatively shown that the applicant has done one or more of the acts enumerated specifically ... (in § 14b of the Statute)." Id. at 502, 44 Am. B. R. at 449-450.
A ground of objection to the granting of a discharge, is illogical, is not consistent with the purposes of the Bankruptcy Act and presents the opportunity — if not an invitation — of conduct tending to pervert and abuse the processes of bankruptcy administration. Moreover, is was not the intention of Congress to make every written false financial statement by anybody a ground of objection. If there had been such intention, the radical changes in our economy have been such that this clause no longer accords with or achieves the purpose of the Bankruptcy Act.

While it seems logical to conclude that the liabilities excepted from a discharge or from confirmation of a Plan of Adjustment were so excepted in anticipation of a discharge being granted to the bankrupt, it hardly seems logical to believe that it was the intention that a creditor holding a claim which would be excepted if a discharge is granted, could also object to the granting of a discharge which would result in the release of no debts at all. At least one of the early authoritative commentators on the Bankruptcy Act perceived the incongruity of the situation if not its unforeseen consequences.13

It would seem clear that an excepted creditor would not want to object to a discharge nor want some other creditor to object to it when to do so would defeat the former's privilege. If a discharge is granted, the excepted creditor could collect from new assets of the bankrupt or debtor while non-excepted creditors would be barred by the discharge. If he (or anyone else) objected to a discharge and the discharge were denied, he would lose his preferred status: all creditors, excepted and non-excepted, would be in the same boat.

Although one court has said that an excepted creditor owed a

13. Remington, who spoke from the background of intimate study and experience as a referee in bankruptcy beginning in 1898, in his 1908 edition of Remington on Bankruptcy, with reference to making it a ground of objection under § 14b(3) that a creditor's debt was excepted under § 17 because of false statement said:

"Sec. 2559. . . Whether any other person thus parting with the property may oppose the discharge on this ground, is a question. The query illustrates the lack of scientific basis for the addition of the ground of opposition by the amendment of 1903. [§ 14b(3)]. It is easy enough to see that the particular creditor harmed by the false representations should have his claim excepted from the operation of the discharge, but why other creditors should be entitled to take advantage of a wrongdoing of the bankrupt that did not harm them at all but rather benefited them by the pro tanto enrichment of the bankrupt's estate, it is exceedingly difficult to understand. It would seem that, logically, the grounds for refusing a bankrupt's discharge should be limited to those acts which tend to deplete the estate and to make the discovery of its true condition difficult; to those acts which affect the creditors in general, and not merely particular creditors. For the particular creditor, the remedy should be the excepting of his claim from the operation of the discharge."
moral duty to object to the discharge, it is not generally so regarded. It is clear, however, that any other creditor or the trustee may object to the discharge by reason of the fraud upon the excepted creditor. It follows then, that under such circumstances, if it developed, for example, during the examination of the bankrupt, that he owed to one creditor a liability which was excepted, another creditor — unexcepted — or the trustee, could object to a discharge and, if successful, thereby defeat the purpose of Section 17, vis., to save from release the excepted debt while, at the same time, to release the bankrupt or debtor from his other debts so that he, the debtor, would be in a position to pay the preferred, the excepted debt, e.g., his taxes, alimony or defaults as trustee.

The courts have frequently said that these two sections are not mutually exclusive nor in pari materia; that they are distinct propositions; that Section 17 confers a personal right to a particular creditor to be invoked only by him; that Section 14c is not for the benefit of a particular creditor but for all creditors and the trustee acting for all creditors. However, this theory results in absurdity when a creditor other than an excepted creditor is permitted to object to a discharge or confirmation of a Plan of Adjustment because of the existence of one excepted debt, and thus deny the bankrupt a discharge from any liability whatever. In the light of this unquestionable fact, the words “not mutually exclusive and not even pari materia” are mere semantic juggling. These two sections surely do have some relevance to one another in considering the logic of making the existence of a liability excepted from a discharge a ground of objection to any discharge whatever. Could this incongruous result be the intent of the Congress?

14. In re Walton, 51 F. Supp. 857, 54 Am. B. R. (N.S.) 748 (W.D. Mo. 1943) (A creditor who claimed to be defrauded by a bankrupt’s statement brought suit on his claim after discharge had been granted though he had not objected to the discharge. The court said that the creditor owed a duty to inform the court of the fraud, that the jurisdiction of the court had been imposed upon, and that if there had been such a false statement it would be the duty of the court to vacate the discharge to afford opportunity to others to proceed.)

15. A defrauded creditor owes no duty to object to a discharge. See In re Hadden, 142 F. 2d 896, 897 (6th Cir. 1944); In re Barber, 140 F. 2d 727, 729 (3d Cir. 1944); Watts v. Ellithorpe, 135 F. 2d 1, 3 (1st Cir. 1944); see 1 Collier, Bankruptcy 1273 n. 5a. This rule, in the instance of this particular ground of objection, explains the painful difficulty of effective enforcement of this ground of objection. There is more logic in the opinion of the judge in the Walton case if objections are not merely for the benefit of one creditor but of all of them.

16. Perhaps it could be said that § 14c(3) is “tied in to a certain extent” with § 17, as it was said that § 3a(1) “is tied in to a certain extent” with §§ 67 and 70, although they, too, are distinct propositions. Capital Finance Corp. v. Leveen, 217 F. 2d 36 (1st Cir. 1954).
Of course the fact is that there is only one kind of liability excepted under Section 17 which is at the same time the basis of a ground of objection under Section 14c. This is true because the courts have quite generally held that under Section 14c(3) any written false financial statement, no matter by whom it is given and regardless of whether the debtor was engaged in business, is a sufficient ground of objection to a discharge if credit is extended thereon.

Perhaps it should be noted that although the language in Section 17(2) differs from that in Section 14c(3) in that in the former the statement need not be in writing, there is otherwise no difference in result.\textsuperscript{17}

Having the current construction by the courts in mind, what is the situation? We have one particular kind of liability — only one out of twelve excepted in Section 17 — singled out to become, also, the basis of a ground of objection to a discharge and to confirmation of a debtor’s Plan of Adjustment. Why should this particular liability be so singled out? Certainly not because it involves a higher degree of moral turpitude than that of a debtor who can obtain a discharge (although the debt is also excepted) if he is liable for for malicious injuries, for alimony and support of family, for breach of a trustee’s duty — the highest known in the law — by embezzlement or misappropriation of funds which may run into millions of dollars.\textsuperscript{18} Nevertheless, as to these debts, a bankrupt so lacking in integrity may obtain a discharge. But if he gets $14.00 in cash with the renewal of a debt obtained upon a false statement, 14c(3) makes it a ground of objection to his discharge which any creditor or the trustee may prosecute. In a scale of ascending moral turpitude does such conduct rank higher than the wrongdoing — even crimes of violence — above enumerated? How does it accord with the recognized liberal construction in favor of the bankrupt in the matter of granting a discharge?

And we must remember that by the great weight of authority this ground of objection is complete even though prior to bankruptcy, the debtor in good faith had paid the creditor in full.\textsuperscript{19} In

\textsuperscript{17} Personal Finance Co. v. Bruns, 16 N. J. Super 133, 84 A. 2d 32 (App. Div. 1951). See also 1 Collier, Bankruptcy 1358 n. 12.

\textsuperscript{18} In the Act of 1841, § 4, misappropriation of trust funds was a ground of objection.

\textsuperscript{19} In re Arky, 138 F. 2d 659 (2d Cir. 1943) (loan paid one year before bankruptcy); see 1 Collier, Bankruptcy 1357 n. 10. \textit{Contra}: In re Milhoff, 40 Am. B. R. 72 (N.D. Ohio 1917); see 7 Remington, Bankruptcy 3340; Nadler, Bankruptcy § 755 (1948).

It is suggested that no action for deceit, for fraudulent representations, is complete unless the plaintiff can show damages. If a borrower makes
other words, a creditor is held to be "defrauded" although the debtor in good faith pays him a debt strictly according to agreement if, forsooth, he gave the creditor a written "false" statement. And this is a ground for denying him a discharge from all of his other debts — other debts, in view of the fact that the "defrauded creditor" has been fully paid. And in a recent case in the court of appeals, it was held that such ground of objection could be maintained by a creditor who knew of the falsity of the statement and connived with the bankrupt in procuring the loan from another creditor on the false statement. 20 It also should be remembered that since 1926 the burden is upon the bankrupt or debtor to establish his innocence of the act constituting the ground of objection after the objector has established a prima facie case. 21

Furthermore, the courts have generally held that it is immaterial how long prior to the bankruptcy proceeding — not prior to obtaining the credit — the bankrupt or debtor made the false written financial statement; 22 it might have been made even before a prior bankruptcy or debtor relief proceeding. 23

It has then come to this: A bankrupt or debtor who, several years prior to his bankruptcy — strict bankruptcy or Plan of Adjustment — obtained cash in the sum of $14.00 upon a "false" financial statement in writing incidental to the renewal of a note for a larger sum which was originally honestly contracted and who,

inaccurate — call them "false" — statements in obtaining a loan, and pays according to the terms of his contract, how can it be said that the creditor has been defrauded? Prior to 1903 the exception in § 17 was "judgments" in action for frauds. The substitution of the word "liabilities" was not intended to except a liability for which a judgment could not be obtained, but to except the liability where judgment had not been obtained at date of bankruptcy; no other claim has been made. 1 Collier, Bankruptcy 1599 n. 3 quotes with approval from Rudstrom v. Sheridan, 122 Minn. 262, 265, 142 N. W. 313, 314, 31 Am. B. R. 862, 865 (1913) : "We assume . . . that Congress inteded the language of the statute to be understood in its ordinary signification . . . . The mere fact that the liability arose in consequence of his fraud is not alone sufficient; the fraud must be followed and result in a loss of property to the creditor." See also Tyler v. Hartford Acc. & Indem. Co., 195 Okla. 523, 159 P. 2d 722 (1945) (must show all elements of actionable fraud including suffering of injury). 20 Cunningham v. Elco Distributors, Inc., 189 F. 2d 87 (6th Cir. 1951) (creditor successfully prosecuted this ground of objection upon a false written financial statement in which he participated and connived to obtain credit by bankrupt from a bank which did not object).

21. § 14c(7) Proviso. See 1 Collier, Bankruptcy 1292; Nadler, Bankruptcy § 76a.
22. 7 Remington § 3339.50; see Nadler, Bankruptcy § 755.
23. One text writer upon bankruptcy as early as 1917, Brandenburg on Bankruptcy (1917 ed.), in discussing this feature of the law said: "§ 1495.— Obtaining property on credit . . . . The provision certainly does not apply, without limit of time, to any obtaining of credit, however long before bankruptcy, and irrespective of intervening transactions with that creditor." The author then, by analogy to other provisions of the Act says that it is evident that Congress intended it not to apply to statements prior to four months.
a year prior to bankruptcy, had in good faith paid the whole note
within the time fixed in the renewal, has committed an act which
may be a valid objection to a discharge of all the provable debts
he owes at bankruptcy, none of which were contracted by fraud.
If, instead, he had embezzled trust funds of a million dollars, no
ground of objection would exist and only the liability would be ex-
cepted. He suffers this "stern penalty and forfeiture," as the courts
have sometimes called it, for nothing more vicious than having
given a statement in writing which was "false to a creditor whom
he paid in full one year ago in accordance with the terms of his
contract." The heights of absurdity appear to have been reached.

Conceding that it is court interpretation of Section 14c(3)
which got us into this mess, the logic of the situation calls for elimin-
ation of that clause leaving Section 17(2) to be invoked, as it was
intended to be, by the creditors who were defrauded.

The existence of Section 14c(3) presents an opportunity for
abusing the processes of the court in obtaining settlements of lia-
Bilities alleged to be for money or property obtained by a written
false financial statement even though these liabilities are also ex-
cepted from a discharge by Section 17(2).

The Administrative Office maintains no record of the nature of
the grounds of objections to discharge filed in strict bankruptcy
cases nor to confirmation of Plans of Adjustment.\(^{24}\) Referees are
not required to keep such statistics and their decisions are not pub-
lished. The decisions of the district judges upon the subject upon
review furnish no adequate basis for sound conclusions. We have
only the estimates of referees as recently obtained.

Reports from referees in all metropolitan districts, indicate that
perhaps 90% of all objections to discharge filed in the past few years
were based upon Section 14c(3) and, of these the majority, by far,
was a false written financial statement made by individuals not in
business, in obtaining loans from small loan companies and in a
few instances from industrial banks. The loans are small, usually
less than $300, because in most states licensed small loan companies
are limited to loans of $300 or less but permitted to charge 2\(\frac{1}{2}\) to
3% interest on monthly balances. Recently the loan limit has
been increased in several states.

When a debtor has given the lender a false financial statement
in writing, the creditor has a liability excepted under Section 17,
but he also has a claim which supplies the basis of an objection to a
discharge. Since the creditor's debt is, on its face, excepted from a

\(^{24}\) See note 3 supra.
discharge, he may quite properly take steps to collect his debt regardless of the bankruptcy. In that respect he is as free to act as a tax authority or a claimant for alimony whose claims are also excepted liabilities.

To be quite realistic, when such a creditor meets a bankrupt or debtor and his attorney during the bankruptcy proceedings, usually at the first meeting during his examination, and elicits information showing that the statement is false or at least inaccurate, what is the natural result? The creditor may not say outright: you know, of course, this gives me ground to object to your discharge, but the bankrupt’s lawyer will know what the lender is after: payment. There will be no spoken threat; the creditor may demean himself quite honorably but everybody knows that the threat is implicit in the situation. What happens then, quite frequently, is that the bankrupt settles with the creditor, and why not? The liability is in any event excepted from a discharge and the balance due on the loan is usually small compared to his total liabilities. It would be foolish for the bankrupt or debtor not to pay for he knows that he must pay eventually because this liability will not be discharged. And he will know, or his lawyer will tell him, that if objection to his discharge or confirmation of his Plan of Adjustment is filed, he will be back where he started: owing all his debts. Even if he could successfully meet the objection, it may well cost him more in money and time than the amount of this particular debt.

Sometimes, especially when the bankrupt’s or debtor’s lawyer is ignorant of the law, the creditor does file objections to the discharge (or confirmation of a Plan) and only then does the bankrupt’s (or debtor’s) lawyer awaken to his client’s predicament. He then, without any express inducement or promise from the creditor, pays the amount due the lender. The lender — still having made no promises — then files application for leave to withdraw the objections. Although all creditors are notified of a hearing upon this application for leave to withdraw, it is a rare case indeed when any creditor or trustee objects to the granting of the application. They realize that they will need the lending creditor’s own witnesses to prove the inaccurate statement to be false; that it was made with intent to deceive, that the statement was material, and that the creditor really relied upon it and was deceived. Any court which has heard and decided these questions when this ground of objection is presented will understand how difficult it is for any third person to win this kind of law suit when the creditor himself has been paid or secured and is no longer interested in preventing a discharge; his
interest, if any, now is in having the bankrupt discharged from his other debts. For that reason, no doubt, we find few instances of objection to an application for leave to withdraw.

The available decisions show that the trustee, in these circumstances, seldom deems it advisable to object under Section 47a(9). It should be said that occasionally the bankrupt is really desirous of paying a loan company because it helped him in his need. But this will not prevent some other creditor from objecting to the discharge because of the false statement. And there are perhaps even more instances where the borrower has deliberately lied in order to get the money to buy a car or television set. It would be a mistake to infer from what is said in support of our contention that there is any intention to cast the loan company always as Beelzebub and the borrower always as an angel of light—far from it.

It must be emphasized that no actual misconduct is necessarily involved in producing the results stated above; it is inherent in the situation presented when a creditor who is excepted from a discharge or confirmation of a plan may also object to it. It might be suggested that the court (usually the referee) could do something about it. What? He could not initiate the objection because he is the court required to decide the issue.25 As such he could hardly compel the creditor or the trustee to file an objection, or, if filed, compel either to proceed with it. If leave to withdraw should be denied, and the trustee or some other creditor did not care to proceed, it would be difficult for the referee to do anything. Of course, he could request that the matter be examined by the district attorney who, if satisfied that a ground for denial of a discharge exists and that the public interest so warrants, could oppose the discharge.26 He, too, would encounter the hindrance to success above noted. If, however, there were grounds for believing that there had been some agreement or understanding that the creditor should forbear from objecting to the discharge, a crime may have been committed, and the referee or the trustee could, and of course should, certify the facts to the district attorney as provided in U.S. Code Title 28, Section 191. This was done with some success in at least two states.27

That the small loan companies are aware of the opportunity for

25. 1 Collier, Bankruptcy 1269 n. 10; In re Walsh, 256 Fed. 653, 43 Am. B. R. 266 (7th Cir. 1919). Prior to 1938 only the judge could consider discharges. Referees were frequently appointed Special Masters to consider them.
26. §14(c), (d).
abuse and misuse of the processes of the court and the explosive
danger inherent in the overlapping of Sections 14c and 17(2) is
frankly disclosed and deplored in their official publications. In them
will be found convincing corroboration of what has been stated here.
In the “Bankruptcy Handbook,” recently published by The Na-
tional Consumers Finance Association, and in their earlier “Operating
Instructions for Bankruptcy”28 will be found repeated un-
equivocal statements of the danger and threat presented in the
administration of the discharge feature of the Bankruptcy Act by
reason of the state of the law. In these publications and others mem-
ers of the association have been warned to avoid the misuse and
abuse so readily encouraged by reason of the fact that loan com-
panies' claims, which are frequently excepted from discharge, at the
same time constitute a ground of objection to a discharge. Over and
over, with notable candor the dangers and pitfalls and methods of
avoiding them are pointed out. Quotations from the Handbook—
which of course are selective—will illustrate the misgivings.29


29. The following quotations are from the Bankruptcy Handbook. (The
emphasis is by the writer of the book.)

p. 37. “The penalty of denial of discharge as to all debts for having in-
duced a loan by a false financial statement given to only one creditor is a harsh
penalty. p. 37. “The situation is difficult for all parties—the referee, the bank-
rupt, the consumer finance company. Some but not all of the heat and danger
will be dissipated by the growing tendency of such finance companies to recog-
nize the harshness of the penalty of complete denial of discharge and to
referee reluctance to impose it and to rely for relief on state courts under
Sec. 17(2) which automatically excepts from a general order of discharge
those liabilities—which are for obtaining money or property by false pre-
tenses or representations.”

p. 41. “The harshness of the penalty under Sec. 14c(3) of complete denial
of discharge has led to efforts to secure split or limited discharges.”

p. 43. “The possibility of violating Title 18 U. S. C. Sec. 152 is present
in every bankruptcy case, but it is generally intensified whenever there is ap-
parent ground for objection to discharge because a false financial statement
in writing may have induced the loan . . . the threat of action or non-action
can not be used directly or indirectly to induce such new contract.”

p. 45. “Creditors or employees should not contact the bankrupt in person
or otherwise. It too easily affords the bankrupt the opportunity to assert that
the creditor threatened, coerced or bribed him to make a new agreement to
pay the scheduled debt as consideration for not opposing bankrupt's dis-
charge.”

p. 46. “If a bankrupt voluntarily offers to pay a scheduled debt or give
a new note therefor, the creditor may accept such payment, or new note.”

p. 47. “The manager must avoid any appearance of bringing pressure on
the bankrupt on account of any possible objection to discharge on ground of
false statement or otherwise. . . . Nothing should be said or permitted to be
said about any financial statement, possible non-dischargeability of a debt or
possible objection to discharge.” p. 47. “Examinations of the bankrupt . . .
should be brief . . . and never made for the purpose of exerting pressure for a
settlement of companies’ claims. Some referees assert that extended examina-

From the poll of referees, it is clear that they are, like the loan companies, deeply concerned; they are apprehensive and disturbed about the situation we have described. Some of their comments will be found in the note below. Nearly all the referees in the large

... 

p. 48. "... the creditor is in a difficult position. ..."

p. 49. "If, while objections are actually pending, the bankrupt should offer to settle a creditor's claim the creditor appears to be in a particularly difficult position. To the extent that the bankrupt expects consideration from the creditor, the creditor is in a dangerous position. ... It seems almost needless to add that the express reasons for settlement, however, must be genuine and not a mere cloak to hide a violation of the statute. ..."

30. Estimates by referees of the percentage of the total number of all objections, which were filed by loan companies based on 14c(3), varied. In metropolitan areas, it usually ran from 80 to 100%; in one of the largest cities in the country, 19 out of a total of 20; in a middle-west industrial area, 42 out of 47.

31. A referee in a large western city: "The filing of objections by small loan companies in this District has almost developed into a racket. They are about the only persons to take advantage of the Section. It has been intimated that some small loan companies encourage the filing of false statements by the debtor when the debt is renewed because they then can hold a club over the debtor in case of bankruptcy. ..."

A referee in a city of 200,000: "The existing provision denies relief to many who are most in need of it; it is a fertile ground for perjury and bad business ethics. ... we need reasonable provisions to restrict some of these companies which have succeeded in largely destroying the benefits of the Act."

A referee whose jurisdiction includes one large city: "The loan companies of (this state) have been educated to the fact that they can accomplish more by bringing suit under Sec. 17(2). This is probably the result of a talk which I gave to their association. ..."

A referee who passed on 25 objections last year said: "My feeling is that small loan companies have a potent weapon under Sec. 14c(3). ... (They) can easily encourage borrowers to present a favorable statement, knowing a false statement will bar their discharge."

A referee from the west: "The bankrupts consistently maintain that the person interviewing them at the loan company office instructs them to put down a 'few' of their present obligations."

Strong words from a referee in the south: "I am opposed to any plan which would leave a loan company with a non-dischargeable debt."

A referee in an eastern state, where 18 or 20 objections were filed by loan companies, based upon § 14c(3): "The best financial statement is a false statement seems to be a new maxim engendered by Sec. 14c(3). How naive can we become?"

A referee with a fairly large territory who passed on 47 objections to discharge in a year, of which 42 were by loan companies based on § 14c(3): "Small loan companies have made a farce out of financial statements. In most instances (they) are no evidence of the honesty or dishonesty of the bankrupt involved. It should be sufficient ... that a non-dischargeable debt is provided under Sec. 17(2) of the Act."

A referee from a large territory says that, after hearing complaints about the practice of loan companies, he referred some cases to the U. S. District Attorney who succeeded in indicting and prosecuting them successfully—ever since, they have not filed objections in his court.

A referee in a large city in the west: "Even now, after filing objections they frequently try to settle and do settle with the bankrupt. I have checked these settlements as carefully as possible but am seriously considering adopting the practice of denying the withdrawal of such objections. ... As you know,
cities have felt uneasy, badgered with doubt, in performing their
duty to follow the law in passing upon objections to discharges
where this ground of objection is presented and the bankrupt is a
wage earner or on salary. They have felt that the Bankruptcy Act
was falling short in relieving from debt the person who most needed
it—a debtor, burdened with debt, who ought to be enabled by a
discharge, again to take his place in society, to earn a living, sup-
port his family, and perform his duties as a citizen. Almost unanim-
ously, these referees are convinced that it would be in the interest
of untainted administration, in the interest of debtors and creditors
alike and in the general interest, that clause 3 of Section 14c be
eliminated or, at the least, modified to permit the class of debtors
not in business who have given false written financial statements to
obtain credit to be discharged, always saving however, the non-
dischARGEability of the specified liability.

The ominous condition herein described has not gone un-
noticed in other quarters.\textsuperscript{22} A perceptive district judge felt called
upon to speak of it when such a case came before him.\textsuperscript{23}

The officials of the loan companies, although they decry the
abuse of a privilege available, are critical but less analytical. They
hesitate to prescribe extirpation of the source of infection but sug-
gest application of poultices of caution. It would seem that they
should rest content in having a non-dischargeable debt.

\begin{footnotesize}
\footnote{\textsuperscript{22} See \textit{Note}, \textit{Effect of Discharge in Bankruptcy: Jurisdictional Prob-
lems}, 18 Brooklyn L. Rev. 271 (1952).}
\footnote{\textsuperscript{23} See Referee H. S. Snyder: \textit{Small Loan Company and the Bank-
ruptcy Act}, Quarterly Report (Fall of 1953) p. 120.}
\end{footnotesize}

A referee in a city of a million inhabitants: "I can recall no case in the
past years where loan companies have successfully prosecuted their objec-
tions under Sec. 14c(3)."

A referee who passed on 18 discharges: "I am loath to deny discharges on
the ground of false financial statement to a loan company."

And see Referee H. S. Snyder: "Small Loan Company and the Bank-
ruptcy Act," Quarterly Report (Fall of 1953) p. 120.

\textsuperscript{32} See Note, \textit{Effect of Discharge in Bankruptcy: Jurisdictional Prob-

\textsuperscript{33} "What I have set down to this point disposes of the matter before the
court. But because I believe it might be of use and complete the whole pic-
ture I will now discuss the implication which is clear from the foregoing
findings—that is, that the agents of the objecting creditors deliberately con-
trived to obtain a financial statement that would be incomplete and erroneous
for the purpose of using it to prevent the extinguishment of their claim by a
discharge in bankruptcy. . . . There was a type of reliance in this case, of
course—but not on the financial statements as claimed. It is my conclusion
from all of the evidence that the agents of the objecting creditors knew that
Anderson was a sober, industrious workingman who had worked steadily
for one employer for over twenty years; they knew, too, that he had shown
no disposition to rebellion but had plodded along paying and refinancing,
and also, they knew they had financial statements which were incomplete and
erroneous which would be useful to them in the event he would attempt to
obtain relief in the bankruptcy court. These—not the financial statements—
were the things upon which the objecting creditors relied." Judge Tehan in
The Intent of Congress

Congress did not, in enacting Section 14c(3) in 1903, have in mind making a liability for obtaining credit by written false financial statements by a person not engaged in business a ground of objection to a discharge in addition to excepting such liability from a discharge. Nor do any of the amendments disclose such intention.

We must keep in mind that from the earliest days of our country there were fears lest the Bankruptcy Clause of the Constitution be held to include and apply to others than merchants and traders. The early Bankruptcy Laws in this country provided relief only for the latter two. In the Act of 1867, which preceded the present Act of 1898, relief was generally extended but a discharge was denied "if being a merchant or tradesman he has not kept proper books of account."

It was in this prevailing economic atmosphere that the amendment in 1903 of Section 14c(3) was passed. It was directed to the then common financial statements by business men, setting forth their assets and liabilities and the net worth, the kind of statement given by them to mercantile agencies like Dun or Bradstreet. This seems to be amply illustrated by the reports of the Congressional Committees and the debates in Congress --- even those relating to the amendments of the clause in 1910 and 1926.

With respect to the original enactment in 1903, Collier in his sixth edition, published in 1907, as well as in later editions recognized it as a tradesman's mercantile statement. Collier, beginning in 1907, and included in his fourteenth edition, quotes a Congressional Report made at the time of its enactment in 1903.

34. See Warren, Bankruptcy in United States History 7 (1935).
35. In the Act of 1800, relief was limited to "... any merchant or other person using the trade of merchandise, by buying and selling in gross, or by retail, or dealing in exchange, or as a banker, broker, factor, underwriter or marine insurer." 1 Stat. 20 (1800).
36. Collier, Bankruptcy 197 (6th ed. 1907) : "The effect of this new objection (§ 14b(3)) will be that every tradesman, whose credit is not unquestioned, will be asked to give a mercantile statement as a condition precedent to dealing, and, it may be suggested, a new statement with every new transaction."
37. 1 Collier, Bankruptcy 389 (12th ed. 1921) and 1 Collier (13th ed. 1923). In 1 Collier 1364, n. 1 (14th ed.), the text of the 12th and 13th editions...
In amending this clause in 1910, the report of the Judiciary Committee of the House used this language:

"Section 6: The bill makes three changes in Subdivision b of Section 14 of the present Act... Third that a false mercantile statement, if made to the trade and relied on by the creditors, shall be an available objection to the debtor’s discharge. . . ."

"The change accomplished by the Bill is simply one which makes available to any creditor any materially false mercantile statement on which the debtor has obtained money or property on credit, and irrespective of whether such statement has been given to the creditor objecting or communicated generally to the trade." 38

In the debate in the House upon this amendment, it appears that the members were discussing mercantile statements. The arguments for and against it clearly evidence that fact as appears from the note below. 39

The 1910 Report of the Judiciary Committee of the Senate also clearly indicates that the proposed amendment applied to mercantile statements of businessmen made to the trade. In part it reads:

"... Third, that a materially false mercantile statement, is repeated but as part of the opinion of a court which adopted it: In re Cazer, 283 Fed. 852, 853, 49 Am. B. R. 289, 290-291 (N.D. Iowa 1922). It reads:

"In writing . . . of this term (§ 14b(3)) the framers of the Amendatory Act of 1903 have said 'This objection, as is proper, will be of no avail when a commercial report is obtained in the haphazard fashion of a hasty interview. The statement must be in writing, which, of course, implies the signature of the person to be charged thereby.'"

As appears from note 9 supra, Collier in his 14th edition as well as in his 13th edition, declares the rule which is that of the courts generally. 1 Collier 1358 (14th ed.): "Since there is nothing in the words of § 14c(3) nor in the history of its adoption, confining its application to merchants, it applies to all who ask a discharge in bankruptcy." Only one case is cited: In re Day, 268 Fed. 871 (N.D. Ga. 1920). The Collier statement is taken practically verbatim from the opinion. There was no discussion of the question of limitation to merchants, and it is only by inference that it appears that the bankrupt in that case was not a merchant.

39. Congressman Clayton arguing against the amendment declared that "the business of commercial agencies will be benefited by this legislative endorsement of their methods, and by this additional force given to the reports or statements which they gather from time to time. But it will not be said that giving an impetus or encouragement to the private business of commercial agencies can be of real public benefit." 45 Cong. Rec. 2271 (1910).

Congressman Sherley, arguing in favor of the amendment, said: "If that statement is made for the purpose of being communicated to the trade, can the man who knowingly makes a false statement in writing to get a credit complain? . . . This can affect only the dishonest man, only the man who is trying to get something by holding out a false representation to the country. . . ." Id. at 2275.

Later Sherley in explaining the amendment of which he was the author, stated as "making the giving of a false mercantile statement in writing as a basis of credit an objection to discharge." Id. at 2277.
if made to the trade and relied on by the creditor, shall be an available objection to the debtor's discharge.\textsuperscript{40}

The Report continues to say that it:

"in effect would make the obtaining of property on false written statements to mercantile agencies ground of objection to discharge, without the creditor... first asking such mercantile agency to procure him the written statement. ... Merchants are likely to make careless general statements where they would be very careful were they making statements to creditors from whom they were at the time asking credit."\textsuperscript{41}

Several reported cases decided shortly after this ground was enacted, bear out the contention that the 1910 amendment as well as the original clause in 1903, related to financial statements by merchants.\textsuperscript{42}

When, in 1926, this clause was further amended, it was again for the purpose of making certain that financial statements to commercial agencies such as R. G. Dun or Bradstreet were included as well as those made directly to the creditor. In commenting on the proposed amendment, the Judiciary Committee of the House said:

\textsuperscript{40} Sen. Rep. No. 691, 61st Cong., 2d Sess. 5 (1910).
\textsuperscript{41} Ibid.
\textsuperscript{42} In re Morgan, 267 Fed. 959, 963, 45 Am. B. R. 612, 618 (2d Cir. 1920): "The Bankruptcy Act limited the cases where so severe a penalty is inflicted as a refusal to grant a discharge from the bankrupt's provable debts upon the objection of a creditor to moneys or property obtained on false statements made for the purpose of obtaining credit. It is intended that acts done prior to the bankruptcy proceedings, which amount to a fraud on the system of commercial credit, shall be regulated by the Bankruptcy Law..."

In re Hudson, 262 Fed. 778, 778-779, 45 Am. B. R. 275, 276-277 (S.D. Ala. 1920). Bankrupt obtained a loan from creditor; gave notes and mortgage on automobile. Discharge was granted. The court, stating that the facts do literally come within the provision of subsection 3 stated, "The question, however, is whether this was such an obtaining of money on credit as was contemplated by Congress when this provision was written... The Bankruptcy Act was primarily written to cover ordinary mercantile dealings; so the words in the Act are to be given the construction and meaning ordinarily understood in mercantile dealings, and not the strict technical construction which they may be susceptible of... The fact that Congress used these words to denote the ordinary credit dealings between merchant and customer is indicated by the construction placed upon this subdivision by all the text writers, such as Collier, Bardenberg, and Remington. In discussing this provision, they all treat it as a provision intended by Congress to deny a discharge where the money or goods were secured on some representation by the borrower, such as the statements ordinarily given to mercantile agencies—a statement of facts made as a basis of credit between a customer and a merchant..."

"The fact that these writers have all so construed this provision, and have not conceived that it went far enough to include money or property obtained by false pretenses or false representations, is persuasive evidence that the language used by Congress was not intended to include such a state of facts, and is supported by the further fact that Congress wrote into the Bankruptcy Act, in Section 17, the following: (The court here quotes § 17 which excepts from a discharge liabilities for obtaining property by false pretenses or false representations)."

And see In re Robinson, 266 Fed. 970, 45 Am. B. R. 619 (1st Cir. 1920).
"... The commerce of to-day is transacted almost entirely upon credit. Under the present law a false financial statement to be grounds for denying a discharge must be given directly to the complaining creditor or his representative. The amendatory provision serves to prevent those evasions of the law which now occur by having the false statements made to and distributed by commercial agencies."

It would appear from the foregoing that Congress had in mind no more than the financial statements ordinarily furnished by persons in business: mercantile statements such as those given to Dun or Bradstreet — a statement of assets and liabilities and net worth. This conclusion seems to be warranted not only by the statements of the Congressional Committees, the debates, and the text writers of that day, but also by the state of our economy and our commerce of that day.

Need For a Change

Whether or not Congress, in 1903 when the original Section 14b(3) was enacted and later when the amendments thereto were passed, intended to include in that clause any written statement respecting the financial condition of the debtor, whether made by a business man or other person, the radical changes in our economic and social life, call for elimination of that clause if the purposes of a Bankruptcy Act are to be achieved.

Surely, no one will deny that our economy, our business practices and our credit system in 1955 bears little resemblance to that prevalent in 1903. In the past 52 years "there have been some changes made." These changes have occurred not only in science, ushering in the atomic age, but in business and industry, our production methods and in particular our credit practices which bear intimate relation to bankruptcy.

As already said, the vast majority of objections to discharge of individuals in bankruptcy filed in recent years were based upon Section 14c(3) and were filed by small loan companies. In 1903 there were no licensed small loan companies. Today they are 8000 offices in 37 states which are lending close to 2 billion dollars a year to some 10 million people. In 1903 few wage earners went into

44. The president of the National Consumers Finance Association, John L. Mentz, recently said: "Last year America's 8000 licensed Consumer Finance offices loaned $2,825,000,000 to some 10,000,000 people or one out of every five families in the 37 states where we operate under some variant of the Uniform Small Loan Law. This year it is estimated that $3,000,000,000.00 will be poured into the economic blood stream of America by the licensed Consumer Finance offices." Personal Financier, Nov.-Dec., 1954.
bankruptcy. Today there are thousands. What has happened in this particular is fully and interestingly told in two publications issued in 1941 and in 1954.45

It all started in 1907 with a study of the Loan Shark problem by the Russell Sage Foundation. Prior to that time, except for businessmen who borrowed from banks at the legal rate of interest, the individual borrower was the prey of the loan shark. Limited by the usury statutes neither the banks nor anyone else could profitably lend small sums. It was because of the emergence in our economy of the licensed small loan company that, for the first time in our history, there became available to wage earners and clerical workers the opportunity to borrow small sums at reasonable rates, although the rates permitted by the state were above those allowed by the regular usury statutes.

While a few states authorized the organization of small loan companies prior to 1930, most of the 39 states presently providing for their operation did not pass effective "small loan laws" until the 1930's—several years after the last amendment to Section 14b(3). By those laws, those states made a distinction in their usury statutes between business transactions and the small loan needs of the small man. The licensed small loan companies satisfied this insistent need. This need was one of the concomitants of the industrial revolution which, after World War I, proceeded with accelerating tempo. Mechanization, industrialization, and urbanization transformed the structure of our society. It raised to the proportions of a major problem the protection for the needy borrower against his own ignorance and the pressure of his needs and his demands.

The great mass of borrowers then came to be not business men but consumers; people dependent upon wages which might cease at any moment. These people were of a different character from those who borrowed from banks in 1903 for commercial purposes since the 1903 borrowers were sufficiently strong economically to avoid being seriously imposed upon. When in 1955 the small borrower defaults for any reason, his wages are often garnished, and as a result he may lose his job and be left in a precarious economic position.

In recent years this class of borrowers and the number of small

loan companies have increased as our country has, more and more, gone into mass production. And the small loan borrower has become the mass consumer. It is no exaggeration to say that, today, consumer credit as much as wholesale business credit, bears a direct relationship to the magnitude of the purchase and sale of the vast amount of consumer goods available, and the employment of large numbers in industry. Without this credit it would be impossible to create an adequate market to sustain more and more production as well as lower costs and prices within the average family budget.

More could be said of this comparatively new phenomenon in our economy and its revolutionary results as measured by the conditions obtaining in 1903—even in 1926. But enough has been said to show that in these earlier times "obtaining credit by false representations" did not mean, realistically, what it does today when applied to the millions of persons who make statements every day and obtain credit from small loan companies for purposes other than business.46

What can be said for retention of this clause in Section 14c when a wage earner having no physical assets and with only his wages to support himself and his family, wishes to pay his debts in full or in part over a period of three years by proposing a Wage Earner Plan under Chap. XIII? Although all of his creditors, except a loan company with a false financial statement agree to the plan, this creditor can prevent confirmation of the Plan.

It is nothing new to say that bankruptcy laws should be amended in accord with changing economic conditions to fulfill the purpose of relieving the overburden deserving debtor.47 It is time for the Bankruptcy Act to catch up with the times.

**Argument in Favor of Modification Only**

Several referees, while fully agreeing that 14c(3) is vulnerable for the reasons herein advanced for elimination, prefer that it be...

46. Justice Wm. O. Douglas after a survey of bankruptcy administration in speaking of discharges: *Aspects of Bankruptcy*, 41 Yale L. J. 329, 349 (1932): "In devising an administrative procedure to handle such cases of consumers there are additional factors to be considered. The prevalence of high-pressure salesmanship with seductive means for breaking down sales resistance has not been accompanied by the correlative technique among buyers of building up sales resistance. Subtle methods of advertising, the advent of installment buying, the growth and development of financial agencies for financing the consumer, all have made the temptation to extravagance overwhelming."

modified to apply only to false written financial statements made by businessmen in obtaining credit. In effect they would, by appropriate amendment, restore 14c(3) to what we have contended was its original purpose and meaning by Congress when it was originally enacted. There is merit in this position.

It can be argued that a businessman who makes a written false financial statement of his assets and liabilities to be published to the world by way of a mercantile agency, has committed an act so implicit with moral obloquy and with such complete disregard of commercial ethics, that mere exception of liabilities incurred to creditors who relied upon the statement, is not "a sufficient penalty"—more accurately, is not good public policy. Further, it can with considerable force be urged that, unlike the wage earner and clerical worker who borrows money on a financial statement, a businessman is not a mere consumer; presumably he has the experience and the ability to bargain fairly and is not so readily imposed upon or beguiled by expert salesmen. Moreover if the discharge be denied or his Plan of Adjustment be denied confirmation, he would not, ordinarily, be so helpless to readjust himself as the wage earner who will be left without means of support for himself and family if his wages are garnished.

But would it not be sufficient to leave every defrauded creditor free of the defense of discharge or unaffected by a confirmed Plan of Adjustment? In the case of an Arrangement the bankrupt, a businessman, could have his Arrangement confirmed in spite of the existence of one or more defrauded creditors. He would, having fully compromised all of his other debts (including the payment of the same percentage to the defrauded creditor) be in position to pay the defrauded creditors in full. If the Confirmation is denied he would still be burdened with all his debts and lack the inducement to pay any of them.

There is at least a partial answer to the above statement. In the case of the individual not in business, there are rarely more than one or possibly two creditors who have a debt obtained by a false statement. In the case of businessmen, there are more likely to be many, particularly if the financial statement had been given to some national commercial agency. In such instance creditors in different parts of the country might have relied upon it. In order to realize upon their claims excepted as they would be under Section 17(2), it would place considerable burden upon a large number of creditors to prove fraudulent representation in obtaining credit. So it could be said that such an extensive and reckless broadcasting of a false
statement to obtain credit wholesale, requires a denial of a discharge, if not as punishment, at least in the interest of promoting honesty in commerce and in the general interest of the public.\textsuperscript{48}

Some difficulty has been encountered by those who would modify Section 14c(3) in the respect stated. It should not be too difficult. Our early bankruptcy laws were limited in their relief to merchants and traders as we have seen.\textsuperscript{49}

It would seem that all that would be required is to amend the clause by providing in substance, for example: “Sec. 14c(3) : \textit{while engaged in business} obtained money or property on credit. . . .”

However, if amendment is to be limited to restricting the effect of clause (3) to persons in business, it should also be further amended to remove some of the extravagant gloss of construction with which the courts have adorned it. One absurdity should be corrected: the holding that although at bankruptcy no present creditor had extended credit upon a false written statement, any creditor or the trustee may invoke this clause upon the ground that a person who had been a creditor extended credit upon a statement allegedly fraudulent even though he was in fact and law not defrauded because he had been paid.\textsuperscript{50}

This could probably be accomplished by adding three additional words to the proposed clause, \textit{e.g.,}

“(3) \textit{while engaged in business} obtained from a creditor money, or property on credit. . . .”\textsuperscript{51}

\textbf{CONCLUSION}

Whether eliminated or modified, the present situation as it affects the administration of the Act relating to discharges, is intolerable. The time has come for a re-examination of Section 14c(3) and its amendment to eliminate the evil that it has spawned. There appears to be no other hope for a peaceful co-existence with it and its ally, Section 17, as those sections now stand.

\textsuperscript{48} There is also the procedural advantage to the objector under § 14c(7) Proviso.
\textsuperscript{49} See note 36 \textit{supra}.
\textsuperscript{50} See notes 19 and 20 \textit{supra}.
\textsuperscript{51} See definition of word “creditor.” § 1(11) of the Act.