

1955

Bankruptcy Courts as Forums for Determining the Dischargeability of Debts

T.A. Smedley

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Smedley, T.A., "Bankruptcy Courts as Forums for Determining the Dischargeability of Debts" (1955). *Minnesota Law Review*. 2399.
<https://scholarship.law.umn.edu/mlr/2399>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

BANKRUPTCY COURTS AS FORUMS FOR DETERMINING THE DISCHARGEABILITY OF DEBTS

T. A. SMEDLEY*

After a penitent insolvent has been redeemed from his financial sins by the grace of a discharge in bankruptcy, he is likely to assume, with some reason, that the bankruptcy court, as his original deliverer, will stand as his protector against attempts of creditors to collect supposedly discharged claims.¹ Twenty years ago, in *Local Loan Co. v. Hunt*,² the Supreme Court of the United States confirmed the jurisdiction of the bankruptcy courts to take action to effectuate discharge orders, and upheld the issuance of an injunction to restrain a creditor from suing in a state court to enforce a discharged claim. Though the Court employed rather broad terms in declaring this jurisdiction to exist,³ the opinion also contained some restrictive language,⁴ and the specific situation on which the *Hunt* decision turned is one of rare occurrence. Under the uncertainty as to the scope of the principle laid down by that decision, both creditors and bankrupts have since had occasion to contend that bankruptcy courts can and should—or cannot and should not, as the interests of the particular party dictated—determine the dischargeability of specific debts. For two decades, then, this issue has been argued, somewhat inconclusively, both in and out of the courts.

Perhaps the trouble really began when the federal courts early laid down the rule that the right to and effect of a discharge are distinct matters, and that while a bankruptcy court must determine whether the bankrupt is entitled to a general discharge, the effect of the discharge as to any particular debt is a matter for any court

*Professor of Law, Washington & Lee University.

1. "Truly, when a bankrupt obtains a discharge he has the right to look to the dispensing court to protect him and to 'effectuate its orders of adjudication and discharge.'" Nadler, *Recent Developments in Bankruptcy*, 27 J. N. A. Ref. Bankr. 75, 78 (1953).

For sad tales about such misguided bankrupts, see *Beneficial Loan Co. v. Noble*, 129 F. 2d 425 (10th Cir. 1942) and *In re Zilliox* (S.D. Cal. 1953), 28 J. N. A. Ref. Bankr. 92 (1954).

2. 292 U. S. 234 (1934).

3. "That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether in law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled. . . . And we find nothing, either in the nature of the bankruptcy court or in the terms of the Bankruptcy Act, which necessitates the application of what would amount to a special rule on this subject in respect of bankruptcy proceedings." *Id.* at 239-240.

4. "It does not follow, however, that the court was bound to exercise its authority. And it probably would not and should not have done so except under unusual circumstances such as here exist." *Id.* at 241.

in which the creditor seeks to enforce his claim.⁵ Apparently conceived in the desire to reduce the load of litigation in the federal courts⁶ and to expedite the administration of bankrupt estates,⁷ the rule was adhered to with staunch regularity in the lower federal courts. Thus, even after a debtor had received his discharge, he was not secure against being sued in the state courts on his pre-bankruptcy debts.⁸ The order is issued in general terms declaring that the bankrupt is "discharged from all debts and claims which are made provable . . . against his estate, except such debts as are, by [Section 17a of the Bankruptcy Act] excepted from the operation of a discharge in bankruptcy."⁹ Further, though Section 17a declares that a discharge "shall release" the bankrupt from his debts, the rule has long been followed that the release is effective only if asserted as a defense to the enforcement of a debt, and that the defense is waived unless affirmatively pleaded by the bankrupt.¹⁰ A creditor of a discharged bankrupt could, therefore, still proceed with an action in a state court to enforce his claim, hoping that the debt would be held to be within the exceptions of Section 17a or that the debtor would fail to plead his discharge in defense. On the other hand, the bank-

5. *In re Mirkus*, 289 Fed. 732 (2d Cir. 1923); *Teubert v. Kessler*, 296 Fed. 472 (3d Cir. 1924); *In re Sezler*, 73 F. Supp. 314 (S.D. Cal. 1947); 1 Collier, *Bankruptcy* ¶¶ 17.27, 17.28 (14th ed. 1940); 7 Remington, *Bankruptcy* §§ 3437, 3439 (5th ed. 1939).

This rule is recognized to be subject to two qualifications, apart from that established by the *Hunt* case. (1) Section 11a of the Bankruptcy Act provides: "A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until an adjudication or the dismissal of the petition . . . [and] may be further stayed until the question of his discharge is determined. . . ." Under this provision, the bankruptcy court must, for that purpose, determine the dischargeability of the claim. *In re Millkofsky*, 17 F. Supp. 127 (W.D. N.Y. 1936); *Hisey v. Lewis-Gale Hosp.*, 27 F. Supp. 20 (W.D. Va. 1939). See *In re Drowne*, 124 F. Supp. 842 (D. R.I. 1954), in which the court found the claim to be within § 17a and expressly excepted the claim from the operation of any discharge which might later be granted. (2) When a provable claim was scheduled in a prior bankruptcy proceeding involving the same debtor, and, for one reason or another, no discharge was granted, such claim is rendered non-dischargeable in the later proceeding and will be excepted from the discharge on petition by the creditor. *In re Schwartz*, 89 F. 2d 172 (2d Cir. 1937); *Brack v. Gross*, 186 F. 2d 940 (4th Cir. 1951). See discussions in Oglebay, *Some Developments in Bankruptcy Law*, 20 J. N. A. Ref. Bankr. 115 (1946); Note, 64 Harv. L. Rev. 1191 (1951).

6. Coleman, *A Plea for "One Stop Service" in Bankruptcy*, 25 J. N. A. Ref. Bankr. 31 (1951).

7. *Watts v. Ellithorpe*, 135 F. 2d 1, 3 (1st Cir. 1943); *In re Marshall*, 24 F. Supp. 1012, 1014 (S.D. N.Y. 1938).

8. *Hellman v. Goldstone*, 161 Fed. 913 (3d Cir. 1908); *In re Havens*, 272 Fed. 975 (2d Cir. 1921).

9. Bankruptcy Form 45.

10. *Helms v. Holmes*, 129 F. 2d 263 (4th Cir. 1942); *In re Weisberg*, 253 Fed. 833 (E.D. Mich. 1918); *In re Boardway*, 248 Fed. 364 (N.D. N.Y. 1918); 7 Remington, *Bankruptcy* § 3459.

ruptcy court's incapacity to determine the effect of a discharge on a particular debt precluded a creditor with even an obviously non-dischargeable claim from having it expressly exempted in the terms of the general discharge.¹¹ His only remedy was to bring suit in a court of general jurisdiction to enforce his debt and then overcome the debtor's defense of discharge by proving that this debt came within the Section 17a exceptions. Under this cumbersome system, the bankruptcy court issues "a strange form of decree which must be taken to another court for an interpretation of its effect."¹² The result was to relieve the bankruptcy court of considerable work and worry, and to throw the parties upon the mercies of a myriad of state courts for determination of whether the federal court's decree prevented enforcement of the bankrupt's debts.

LOCAL LOAN CO. V. HUNT

Not until 1934 was a substantial breach made in this protective wall which the bankruptcy courts had erected around themselves. Then the decision in *Local Loan Co. v. Hunt* "chartered a new course by declaring an extension of the jurisdictional boundary of the bankruptcy court."¹³ The debtor in that case had borrowed \$300 from the loan company, and as security for repayment had made an assignment of wages to be earned. Six months later, he became a voluntary bankrupt, scheduled the loan among his liabilities, and in due time received his discharge. One week thereafter, the loan company brought suit in a Chicago municipal court against the bankrupt's employer to enforce the assignment against wages earned subsequent to the adjudication. Without moving to intervene in that action, the debtor petitioned the bankruptcy court for an injunction to prevent the loan company from prosecuting the suit or otherwise attempting to enforce the claim. The District Court granted the injunction, which action was affirmed by the Circuit Court of Appeals and finally by the Supreme Court, against the specific contention of the creditor that the bankruptcy court was without jurisdiction in the matter. The Supreme Court, noting that numerous decisions had denied such relief on the ground that the effect of a discharge is to be decided in whatever court the creditor chooses to sue, quite positively declared that in the case at bar the bankruptcy court, as a federal court of equity, "has jurisdiction of a bill ancillary

11. *In re Marshall Paper Co.*, 102 Fed. 872 (1st Cir. 1900); *In re Mussey*, 99 Fed. 71 (D. Mass. 1900).

12. *Twinem, Discharge—What Court Determines the Effect Thereof*, 21 J. N. A. Ref. Bankr. 33, 34 (1946).

13. *Id.* at 33.

to an original case or proceeding in the same court . . . to secure or preserve the fruits and advantages of a judgment or decree rendered therein. . . ."¹⁴ However, it was quickly added that: "It does not follow . . . that the court was bound to exercise its authority. And it probably would not and should not have done so except under unusual circumstances such as here exist."¹⁵ In the *Hunt* case itself, the "unusual circumstances" arose from the fact that the established Illinois law made the wage assignment enforceable against post-bankruptcy earnings in spite of the general discharge. Though the contrary view is applied in most states and in the federal courts, the bankrupt here would have been forced to appeal through the entire hierarchy of Illinois courts and then to the federal Supreme Court before he could obtain a correct decision that the assignment was unenforceable. Under that long and costly course of litigation, "it is clear that the legal remedy thus afforded would be inadequate to meet the requirements of justice."¹⁶

It is not quite accurate to assert, as some authorities have done,¹⁷ that the *Hunt* decision created an entirely new power in the bankruptcy courts, because in several notable cases lower federal courts had already in effect exercised the jurisdiction which the Supreme Court now recognized.¹⁸ Nevertheless, both creditors and debtors reacted promptly and enthusiastically to this new and powerful sanction of the bankruptcy court's power to determine the dischargeability of specific claims. Creditors have hailed the *Hunt* case as sustaining the right of the referee expressly to exempt certain debts when granting a general discharge,¹⁹ while debtors sought to employ it as authority for enjoining any actions by creditors to enforce debts in state courts after discharge. On the other hand, some writers

14. *Local Loan Co. v. Hunt*, 292 U. S. 234, 239 (1934).

15. *Id.* at 241.

16. *Ibid.*

17. See *Ciavarella v. Salituri*, 153 F. 2d 343, 344 (2d Cir. 1946); Note,

18 *Brooklyn L. Rev.* 271, 273 (1952). Glenn, *Effect of Discharge in Bankruptcy: Ancillary Jurisdiction of Federal Court*, 30 *Va. L. Rev.* 531 (1944), asserts that only one lower federal court case had previously adopted a similar view.

18. *Seaboard Small Loan Corp. v. Ottinger*, 50 F. 2d 856 (4th Cir. 1931); *Sims v. Jamison*, 67 F. 2d 409 (9th Cir. 1933); *In re Hunt*, 67 F. 2d 998 (7th Cir. 1933), *relying on In re Skorcz*, 67 F. 2d 998 (7th Cir. 1933) (though the discharge had not yet been issued in the *Skorcz* case, the court in the *Hunt* case declared this difference not to be a legal distinction). *In re Fellows*, 43 F. 2d 122 (N.D. Okla. 1930) (discharge not yet granted, but permanent restraining order was granted, court basing its authority on § 2(15); not a proceeding for temporary stay under § 11a). See *In re Home Discount Co.*, 147 Fed. 538, 552-553 (N.D. Ala. 1906).

19. See 1 *Collier, Bankruptcy* ¶ 17.28 (1953 Supp.); Donnelly, *The Non-Dischargeability of Dischargeable Debts in Bankruptcy*, 36 *Va. L. Rev.* 185, 197 (1950).

condemned the Supreme Court's attempt to extend the jurisdiction of the bankruptcy courts, and insisted that those tribunals would refuse to embrace their new-found authority.²⁰

The twenty years which followed have not completely justified any of those points of view. The lower federal courts have, quite understandably, put different constructions on the *Hunt* decision, and the Supreme Court has not spoken again in the matter.

THE CREDITOR'S RIGHTS UNDER THE *HUNT* CASE RULE

Prior to 1934 there apparently had been little serious contention that the bankruptcy court, in issuing a general discharge, could properly exempt specific claims from the effect of the order,²¹ but the *Hunt* case has brought about a change of opinion in that regard. In the twelve decisions found which pass directly on the issue, the courts in ten instances appear to have recognized that the power to make such an exemption exists, though in only four of the cases was the creditor's request to have the discharge qualified actually granted.²² The opinions do not always yield a clear explanation for the basis of this jurisdiction; but in most of them general reference is made to the *Hunt* case as establishing that the bankruptcy court has power "to determine whether the bankrupt's discharge is a bar to a provable debt,"²³ or that a "bankruptcy court has inherent equity jurisdiction to control the effect of its own order of discharge,"²⁴ though in at least one case the court correctly took note of the fact that the *Hunt* case actually affords no specific authority

20. Glenn, *supra* note 17; Note, 28 Va. L. Rev. 650, 651 (1942). It is interesting to note that Professor Glenn was in a more mellow mood when he wrote in his treatise on Liquidation that the "reasoning of the court is more objectionable than the actual decision," which reaches a result that "is useful." Glenn, Liquidation § 355 (1935).

21. But *In re Wernecke*, 1 F. Supp. 127 (W.D. N.Y. 1932) took such action at the creditor's request, without any reference to the basis of the court's authority to do so.

22. Granting the creditor's request: *Harrison v. Donnelly*, 153 F. 2d 588 (8th Cir. 1946); *Rees v. Jensen*, 170 F. 2d 348 (9th Cir. 1948); *In re Zitzmann*, 46 F. Supp. 314 (E.D. N.Y. 1942); *In re Tamburo*, 82 F. Supp. 995 (D. Md. 1949). Refusing the creditor's request but recognizing the bankruptcy court's jurisdiction to qualify a discharge: *Watts v. Ellithorpe*, 135 F. 2d 1 (1st Cir. 1943); *In re Barber*, 140 F. 2d 727 (3d Cir. 1944); *In re Hadden*, 142 F. 2d 896 (6th Cir. 1944); *In re Sutton*, 19 F. Supp. 892 (S.D. N.Y. 1937); *In re Anthony*, 42 F. Supp. 312 (E.D. Ill. 1941); *In re Biscoe*, 45 F. Supp. 422 (D. Mass. 1952). See *Hisey v. Lewis-Gale Hosp.*, 27 F. Supp. 20, 25 (W.D. Va. 1939). Denying the bankruptcy court's jurisdiction to qualify a discharge: *In re Lowe*, 36 F. Supp. 772 (W.D. Ky. 1941); *In re McCarthy*, 45 F. Supp. 323 (E.D. N.Y. 1942). See *Francine v. Babayan*, 45 F. Supp. 321, 322 (E.D. N.Y. 1942). *Twinem*, *supra* note 12, at 33 states that: "Quite a number of Referees have already followed the practice of declaring a particular obligation non-dischargeable."

23. *In re Zitzmann*, 46 F. Supp. 314, 315 (E.D. N.Y. 1942). Also *Harrison v. Donnelly*, 153 F. 2d 588, 589-590 (8th Cir. 1946).

24. *In re Tamburo*, 82 F. Supp. 995, 999 (D. Md. 1949).

for qualifying a discharge at a creditor's request.²⁵ In a few instances this jurisdiction has been found to be an incident of the basic power of bankruptcy courts to construe and administer the Bankruptcy Act,²⁶ and in other cases the courts merely recognize the existence of their power to act without attempting to explain its source.

On one point there is agreement. This phase of the jurisdiction of the bankruptcy court is discretionary, and so a creditor has no *right* to have the nature of his claim passed upon. Whether the bankruptcy court will exercise its discretion to do so is said to depend on whether there are unusual circumstances in the case at bar which would lead to some unfairness or special embarrassment to either creditor or debtor should the issue be left to later settlement in the state courts,²⁷ or whether the purposes of the Bankruptcy Act would be better served by a disposition of the question by the bankruptcy court in making the discharge.²⁸ In the few cases granting the creditor's petition, the opinions have not been persuasive in showing special need for action by the bankruptcy court. The procedure has been to establish the jurisdiction by a broad construction of the *Hunt* decision and then to declare that the case at bar presents a proper situation for the exercise of that jurisdiction.²⁹ One court, declaring a creditor's judgment obtained after the bankruptcy adjudication to be non-dischargeable, found its justification for determining the issue in the fact that the bankrupt had failed to exercise his privilege under Section 11a to have the creditor's suit stayed before judgment.³⁰ A more reasonable argument, advanced in *In re*

25. *In re Barber*, 140 F. 2d 727, 728 (3d Cir. 1944).

26. *In re Anthony*, 42 F. Supp. 312, 315 (E.D. Ill. 1941): "Because the creditor's petition brings into question the effect of the court's own order of discharge, as well as the proper construction and application of the statute, the conclusion that the subject matter is within the jurisdiction of the court would seem to be inescapable." See *Hisey v. Lewis-Gale Hosp.*, 27 F. Supp. 20, 25 (W.D. Va. 1939).

27. *Harrison v. Donnelly*, 153 F. 2d 588, 590 (8th Cir. 1946); *In re Tamburo*, 82 F. Supp. 995, 999 (D. Md. 1949).

28. *In re Barber*, 140 F. 2d 727, 729 (3d Cir. 1944); *In re Anthony*, 42 F. Supp. 312, 315 (E.D. Ill. 1941).

29. As in *Harrison v. Donnelly*, 153 F. 2d 588 (8th Cir. 1946). In *Rees v. Jensen*, 170 F. 2d 348 (9th Cir. 1948) the court seems almost to be confusing the creditor's right to have his specific claim exempted from discharge with the creditor's right to oppose the granting of a general discharge.

30. *In re Zitzmann*, 46 F. Supp. 314 (E.D. N.Y. 1942). This reasoning is unpersuasive, because even if the bankrupt had asserted his rights under § 11a, he could at best only have obtained a temporary stay against prosecution of the pending suit until after his right to discharge was determined. The bankruptcy court's finding that the debt was dischargeable would not prevent the creditor from continuing the suit later, nor would it prevent the state court from ruling that the debt was non-dischargeable. *Greenfield v. Tuccillo*, 129 F. 2d 854 (2d Cir. 1942); *In re Millkofsky*, 17 F. Supp. 127 (W.D. N.Y. 1936); 1 *Collier, Bankruptcy* ¶ 11.04.

Tamburo,³¹ is that if the bankruptcy court refused to exempt from the discharge the judgment already proven by the creditor as a claim in the bankruptcy proceedings, he would be put to the burden of again proving in a state court the details of the bankrupt's conduct out of which the allegedly non-dischargeable liability arose, and the witnesses might not be available to testify in such later action. That consideration was made especially significant in the case, however, by the fact that the judgment in question had been obtained prior to the bankruptcy in a conversion action in the same federal district court which now sat as the bankruptcy court.

The courts which have refused to exercise their discretion to decide whether a creditor's claim should be exempted are more positive in their reasons. The absence of unusual circumstances is demonstrated by pointing out that the creditor has adequate remedies in suing in a state court to enforce his claim as within the class of non-dischargeable debts listed in Section 17a, or in objecting to the granting of a general discharge on the ground that the bankrupt is guilty of offenses listed in Section 14c.³² Neither of these remedies satisfies the creditor, of course, because he hopes to avoid the trouble, delay and expense of a later state court action on the debt; and if he should successfully oppose the application for discharge, he would lose the desired advantage of having the bankrupt in better position to pay this debt for having been released from his other obligations.³³ But several other arguments for denying relief are advanced. It is said that determination of the dischargeability by the bankruptcy court would unjustly deprive the debtor of a jury trial on the issues of fact involved,³⁴ and that little would be gained by the bankruptcy court's determination because the creditor would still have to go to a state court to obtain a judgment on his claim or to obtain execution on a judgment already entered, if the bank-

31. 82 F. Supp. 995, 998 (D. Md. 1949). Note, 36 Va. L. Rev. 84, 87-88 (1950), attempts to discredit *Tamburo*'s reasoning: "Such an argument would seem rather weak in the face of the fact that the determination will be made from the pleadings and judgment in the trial court, and human witnesses are largely unnecessary."

32. *Watts v. Ellithorpe*, 135 F. 2d 1, 3 (1st Cir. 1943); *In re Barber*, 140 F. 2d 727, 728-729 (3d Cir. 1944); *In re Hadden*, 142 F. 2d 896, 897 (6th Cir. 1944).

33. The courts of course recognize this motive in the creditor's actions: See *In re Barber*, 140 F. 2d 727, 729 (3d Cir. 1944): "A bankruptcy court is not concerned with the furtherance of, nor may it be required to further, some particular creditor's private interests or desires. Its duty and, therefore, its responsibility is to see to the ratable distribution of a bankrupt's property among his creditors according to their priorities as determined by the Act."

34. *Watts v. Ellithorpe*, 135 F. 2d 1, 3 (1st Cir. 1943); *In re Anthony*, 42 F. Supp. 312, 317 (E.D. Ill. 1941); *In re Biscoe*, 45 F. Supp. 422, 423 (D. Mass. 1942).

rupt persisted in his refusal to pay the obligation.³⁵ Perhaps the most significant consideration is the danger of delay in the administration of bankrupt estates. As was aptly observed in *In re Biscoe*: "If on the petition of a creditor, the bankruptcy court stops to adjudicate questions like the one at bar, then the completion of a bankruptcy case will be delayed and the proceedings made more burdensome for the estate at the ultimate expense of creditors not directly involved."³⁶

From the standpoint of the creditor's interests, it is worth noting here that in every case found in which a bankruptcy court has granted a creditor's request to declare a particular debt to be exempted from a general discharge, the creditor had already reduced his claim to a judgment, either before or after the start of the bankruptcy proceedings.³⁷ On the other hand, in only one of the more numerous cases denying this relief to the creditor had he obtained a judgment before the controversy over the discharge arose.³⁸ The opinions do not stress this factor, and in fact there seems to be no compelling reason why it should make any difference. The suggestion has been made that where a judgment has been obtained, the debtor has been afforded an opportunity for a jury trial, and so that objection to a determination by the bankruptcy court is answered. Further, it is supposed that the bankruptcy court would reach its decision on the basis of the record in the state court proceeding, and so the trouble and delay of holding a full hearing in the matter would not be experienced.³⁹ Though the matter of the existence of a judgment may be merely coincidental, yet the fact remains that the creditor goes before the bankruptcy court better armed with favorable authority if he has already reduced his claim to judgment. He is in a still stronger position if he has been able to inject into the record of the trial some proof that the debtor's liability resulted from willful and malicious injury to the creditor's person or property, or from some other circumstance placing the claim within the types

35. *In re Anthony*, 42 F. Supp. 312, 316 (E.D. Ill. 1941). This argument is approved by Note, 28 Va. L. Rev. 650, 651 (1942), but rejected by Coleman, *supra* note 6, contending that "There would be an end to litigation" if the referees were authorized to except debts from a general discharge.

36. *In re Biscoe*, 45 F. Supp. 422, 423 (D. Mass. 1942). Also, *Watts v. Ellithorpe*, 135 F. 2d 1, 3 (1st Cir. 1943); *In re Barber*, 140 F. 2d 727, 729 (3d Cir. 1944).

37. The first four cases cited in note 22 *supra*. Also, the pre-*Hunt* case decision, *In re Wernecke*, 1 F. Supp. 127 (W.D. N.Y. 1932).

38. *In re Lowe*, 36 F. Supp. 772 (W.D. Ky. 1941). This is one of the two cases in which the jurisdiction of the bankruptcy court to determine whether a particular claim is discharged was expressly denied.

39. Note, 36 Va. L. Rev. 84, 87-88 (1950).

made non-dischargeable by Section 17a.⁴⁰

Though some authorities have argued vigorously for the broader exercise by the bankruptcy courts of their jurisdiction, at the creditor's request, to exempt certain debts when issuing a general discharge, this writer concludes that the practice is not sound in the normal run of cases. It is probably true that the bankruptcy court, being more familiar with bankruptcy law in general and the facts of the case at bar in particular, is better qualified to pass on dischargeability questions than are the state courts; and the honest creditors with non-dischargeable claims would be saved some time and expense of prosecuting separate actions in state courts.⁴¹ However, there are stronger considerations demanding that the bankruptcy court should ordinarily deny the creditor's request for qualification of the discharge. Certainly, the rule of the *Hunt* case is not broad enough to sustain that type of action, because that case dealt with the power of a bankruptcy court to determine the dischargeability of the debt at the petition of the bankrupt after the issuance of a general discharge.⁴² Further, the creditor, in contrast with the debtor, ordinarily has no substantial need for such relief, as he has available, and knows enough to pursue, the normal remedy of bringing suit in a state court to enforce the obligation. In fact, a declaration of non-dischargeability will often not relieve him from the necessity of ultimately proceeding in a state court, for the bankruptcy court "cannot carry through and render a judgment upon a creditor's unreleased claim upon which execution may issue against the bankrupt's after-acquired assets."⁴³ A positive reason against the practice of entertaining petitions for qualifying the discharge rests in the strong danger that creditors would be inclined to abuse the privilege by continually clamoring to have their claims exempted whether or not there actually were sound grounds for arguing that the liabilities were within the exceptions of Section 17a. The delay in the administration of the bankrupt estate while these petitions were being contested would become quite substantial, to the unnecessary prejudice of both the bankrupt and the creditors waiting to receive dividends on their dischargeable claims.

40. See Notes, 33 Neb. L. Rev. 88, 90 (1953); 22 Va. L. Rev. 585 (1936); 11 Wash. & Lee L. Rev. 176, 181 (1954).

41. As contended in *Twinem*, *supra* note 12; *Coleman*, *supra* note 6.

42. See *In re Barber*, 140 F. 2d 727, 728 (3d Cir. 1944); 1 Collier, Bankruptcy ¶ 2.62 [5]; *Donnelly*, *supra* note 19, at 195. But this point has not always been recognized. See Note, 28 Va. L. Rev. 650 (1942), where, referring to the *Hunt* case, it is declared: "As a matter of fact, this is tantamount to acknowledging that a bankruptcy court has the power to decide whether any particular debt is barred by its order of discharge."

43. *In re Anthony*, 42 F. Supp. 312, 316 (E.D. Ill. 1941).

THE BANKRUPT'S RIGHT UNDER THE *HUNT* CASE RULE

Even greater controversy has arisen as to how broadly *Local Loan Co. v. Hunt* should be applied as enabling the bankrupt to call upon the bankruptcy court to interfere with a creditor's efforts to enforce a claim in proceedings outside of bankruptcy after a general discharge has been granted. In spite of the assertions of critics of the *Hunt* case that the lower federal courts have been reluctant to determine matters of dischargeability at the bankrupt's request,⁴⁴ the decisions are about evenly divided in granting and denying relief.

The courts refusing to interfere with a creditor's enforcement efforts have generally recognized their power to take such action, but have stressed the part of the *Hunt* opinion which cautioned against the exercise of that power "except under unusual circumstances such as here exist." Though it might be argued that the Supreme Court by this phrase meant to restrict the scope of the bankruptcy court's jurisdiction to cases involving the same basic situation as in the *Hunt* case, even the courts denying relief have not adopted such a narrow view, but rather have made case-by-case determinations as to whether "unusual circumstances" existed. Some variant expressions employed in the opinions help to indicate the import of that ambiguous concept in the minds of the judges. It has been said that the bankruptcy court will not interfere on behalf of the debtor unless the state court remedy is inadequate,⁴⁵ or unless the failure of the bankruptcy court to act will cause "special embarrassment"⁴⁶ or "irreparable injury" to the bankrupt,⁴⁷ or unless there are "special conditions" calling for intervention,⁴⁸ or unless action by the bankruptcy court is necessary "to effectuate . . . its order of discharge"⁴⁹ or "to prevent the defeat or impairment of its jurisdiction."⁵⁰

44. Glenn, *supra* note 17; Note, 36 Va. L. Rev. 84, 97 (1950). See *Ciavarella v. Salituri*, 153 F. 343, 344 (2d Cir. 1946).

45. *Helms v. Holmes*, 129 F. 2d 263, 266-267 (4th Cir. 1942); *In re Innis*, 140 F. 2d 479, 480-481 (7th Cir. 1944); *In re Stoller*, 25 F. Supp. 226, 227 (S.D. N.Y. 1938); *In re Harris*, 28 F. 487, 488 (E.D. Ill. 1939); *In re MacGinnis*, 50 F. Supp. 413, 414 (N.D. Cal. 1942).

46. *Ciavarella v. Salituri*, 153 F. 2d 343, 344 (2d Cir. 1946).

47. *Gathany v. Bishop*, 177 F. 2d 567, 568 (4th Cir. 1949).

48. See *In re Marshall*, 24 F. Supp. 1012, 1014 (S.D. N.Y. 1938).

49. *Beneficial Loan Co. v. Noble*, 129 F. 2d 425, 427 (10th Cir. 1942). See *Sword Line, Inc. v. Industrial Com'r of N. Y.*, 212 F. 2d 865, 870 (2d Cir. 1954): "While injunction against state proceedings is undesirable, it is nevertheless recognized as necessary where preservation of federal dispositions in bankruptcy and protection and enforcement of federal decrees in legal rehabilitation of corporations are necessary."

50. *Helms v. Holmes*, 129 F. 2d 263, 267 (4th Cir. 1942); *State Finance Co. v. Morrow*, 216 F. 2d 676, 680 (10th Cir. 1954): "The Congress and the courts have always recognized the power and the duty of the bankruptcy court

Implementing this restrictive attitude, decisions have specifically rejected the arguments of bankrupts that certain commonly recurring situations present sufficiently "unusual circumstances" to justify action by the bankruptcy courts. Thus, the mere fact that the creditor was taking steps to garnishee wages or enforce an assignment of wages as a means of collecting a debt which the bankrupt claims to be dischargeable has several times been held not to be grounds for the issuance of an injunction to restrain the creditor.⁵¹ It is reasoned that if the debt was actually discharged, the bankrupt could have a state court declare the enforcement proceedings invalid. The *Hunt* decision is distinguishable on the basis that there it was affirmatively shown that the state rules erroneously held that the liability survived the bankruptcy, and so the bankrupt's appeals to the state courts would have been fruitless. Similarly, no relief was given against the creditor's enforcement of a judgment obtained as a result of a state court's having erroneously applied the state law in ruling the debt not discharged.⁵² Once again, the debtor's remedy is said to have lain in an appeal to a higher state court to reverse the erroneous trial court judgment. The fact that the bankrupt's failure to defend in the state court was based on his honest belief that the discharge operated automatically to release him from his debts has been rejected as an adequate excuse for his resorting to the bankruptcy court for relief, even in one instance when he had been ill-advised by a Legal Aid Society consultant to ignore the creditor's suit.⁵³ The bankrupt was simply charged with negligence in failing to ascertain his legal rights correctly; and the *Hunt* case was distinguished on the ground that there the debtor had been alert enough to seek injunctive relief while the creditor's action was still pending in the state court. Nor was the threat of the bankrupt's being imprisoned under a body execution for failing to satisfy the creditor's judgment regarded as a serious enough invasion of the debtor's rights to sustain interference by the bankruptcy court.⁵⁴

to grant any appropriate and necessary injunctive decree in furtherance or in aid of its jurisdiction or to protect or effectuate its judgments."

51. *Ciavarella v. Salituri*, 153 F. 2d 343 (2d Cir. 1946); *In re Stoller*, 25 F. Supp. 226 (S.D. N.Y. 1938); *In re Harris*, 28 F. Supp. 487 (E.D. Ill. 1939); *In re Grover*, 63 F. Supp. 644 (D. Minn. 1945). See *In re Cox*, 33 F. Supp. 796 (W.D. Ky. 1940) (proceedings before issuance of discharge, but turned on same principles as post-discharge cases).

52. *Csatari v. General Finance Corp.*, 173 F. 2d 798 (6th Cir. 1949); *In re Epstein*, 46 F. Supp. 436 (S.D. N.Y. 1942). See *In re Marshall*, 24 F. Supp. 1012, 1014 (S.D. N.Y. 1938) (creditor's petition to enjoin bankrupt from using discharge as a defense).

53. *Beneficial Loan Co. v. Noble*, 129 F. 2d 425 (10th Cir. 1942); *In re Innis*, 140 F. 2d 479 (7th Cir. 1944).

54. *In re Devereaux*, 76 F. 2d 522 (2d Cir. 1935); *Csatari v. General Finance Corp.*, 173 F. 2d 798 (6th Cir. 1949).

Perhaps the most coldly technical attitude displayed by the courts is found in the cases refusing to grant relief against the enforcement of a creditor's judgment even though the bankrupt pleaded that he was financially unable to carry an appeal to higher state courts to correct the trial court's error in finding the debt non-dischargeable.⁵⁵ Ignoring the fact that it is dealing with a man who has recently surrendered his assets for distribution to his creditors, the same court which presided over that proceeding takes the position that if a remedy is legally available to the bankrupt in the regular judicial processes of the state, then, even though he cannot afford to invoke that remedy, he does not need the special protection of the bankruptcy court.

In fact, the theme of all the decisions denying relief appears to be that the bankrupt's remedy in the state courts is adequate if theoretically available—even if not practically available—and that the *Hunt* case rule does not apply unless the state courts in which the bankrupt is sued would erroneously deny the dischargeability of the obligation. In most of the opinions it is emphasized that the bankrupt either had or could have appeared in a state court proceeding to assert his discharge in defense, and could have appealed the adverse decision to a higher state court, which would presumably have corrected the lower court decision if it was in error—or the bankrupt could have gone up to the United States Supreme Court by certiorari. On this reasoning, a number of decisions have declared that the principles of *res judicata* precluded the bankrupt from relitigating the issue of dischargeability in the bankruptcy court after an adverse decision in a state court.⁵⁶ Other courts have ruled that in failing to assert his discharge as a defense in the state action, the bankrupt was guilty of such gross negligence as to disqualify himself from the equitable relief which the bankruptcy court could grant in proper circumstances.⁵⁷ As an equity court, it could intervene to prevent enforcement of a judgment of another court only if the bankrupt's failure to assert his rights was due to fraud, accident, or mistake not resulting from his own neglect.

55. *Csatari v. General Finance Corp.*, 173 F. 2d 798 (6th Cir. 1949); *Otte v. Cooks, Inc.*, 113 F. Supp. 861 (D. Minn. 1953).

56. *In re Devereaux*, 76 F. 2d 522 (2d Cir. 1935); *Beneficial Loan Co. v. Noble*, 129 F. 2d 425 (10th Cir. 1942); *Walters v. Wilson*, 142 F. 2d 59 (9th Cir. 1944); *Csatari v. General Finance Corp.*, 173 F. 2d 798 (6th Cir. 1949); *In re Epstein*, 48 F. Supp. 436 (S.D. N.Y. 1942); *Otte v. Cooks, Inc.*, 113 F. Supp. 861 (D. Minn. 1953). See *In re Kornblum*, 22 F. Supp. 245, 247 (D. Minn. 1938); *In re Cox*, 33 F. Supp. 796, 798 (W.D. Ky. 1940); *In re Grover*, 36 F. Supp. 644, 647 (D. Minn. 1945).

57. *Helms v. Holmes*, 129 F. 2d 263 (4th Cir. 1942); *In re Innis*, 140 F. 2d 479 (7th Cir. 1944); *Gathany v. Bishopp*, 177 F. 2d 567 (4th Cir. 1949).

In cases granting relief, on the other hand, a broad construction is placed on the principle of *Local Loan Co. v. Hunt* as not confining the bankruptcy court's jurisdiction to cases of complete unavailability of other remedies.⁵⁸ The courts extending protection to bankrupts have found circumstances justifying their action from a variety of rather commonplace factors. Of course, injunctive relief is accorded in situations like that of the *Hunt* case, where, contrary to the general (and federal) law, the state rule makes the debt non-dischargeable, so that an appeal through the state court system would be futile.⁵⁹ However, one decision has extended the authority of the *Hunt* rule to a case in which the bankrupt did not seek the protection of the bankruptcy court until after the creditor had already obtained his judgment in the state court.⁶⁰ And several district courts have further extended the Supreme Court's principle to justify interference with the enforcement of a judgment when the state court in sustaining the creditor's claim had erroneously applied what was regarded by the bankruptcy court as the established law of the state.⁶¹ More realistic attention is given to the fact that the bankrupt has not the financial means to engage in extensive litigation to assert his rights and that the mere availability of a remedy in the state courts does not adequately protect him if that remedy

58. This view is well expressed in the dissenting opinion of Judge Paul in *Helms v. Holmes*, 129 F. 2d 263, 268, 270 (4th Cir. 1942): "But the right to enjoin being established, the circumstances under which it may be exercised are not confined to any definite and limited state of facts. The reported cases show a tendency to enlarge rather than to restrict its use. In my opinion this tendency is a wise and humane one and necessary to prevent nullification of the beneficent purposes of the bankrupt law at the hands of ingenious and grasping creditors. Certainly the right to an injunction is not barred merely because the bankrupt might have fought the matter out in the state court. *Local Loan Co. v. Hunt* decided this." Also, *State Finance Co. v. Morrow*, 216 F. 2d 676 (10th Cir. 1954).

Judge Knight, of the Federal District Court for the Western District of New York, has for many years been passing upon the requests of bankrupts to determine the nature of specific debts and enjoin creditors' actions to enforce debts found to be dischargeable. However, the opinions contain no reference to the source of the court's jurisdiction nor to the considerations which make the exercise of the jurisdiction necessary. In most of the cases, it does not appear that the bankrupts have yet been discharged, but the proceedings are not brought under § 11a for temporary stays but rather may be instituted by "an Order to Show Cause," and they seek a permanent injunction against enforcement of the debt. *In re Kubiniec*, 2 F. Supp. 632 (W.D. N.Y. 1932); *In re McCarthy*, 8 F. Supp. 518 (W.D. N.Y. 1934); *In re Ellman*, 48 F. Supp. 518 (W.D. N.Y. 1942); *In re Carncross*, 114 F. Supp. 119 (W.D. N.Y. 1953).

59. *Davison-Paxon Co. v. Caldwell*, 115 F. 2 189 (5th Cir. 1940).

60. *In re Caldwell*, 33 F. Supp. 631 (N.D. Ga.), *aff'd*, 115 F. 2d 189 (5th Cir. 1940).

61. *In re Nichols*, 22 F. Supp. 694 (W.D. Ky. 1938); *In re Patt*, 43 F. Supp. 754 (E.D. Tenn. 1941); *In re Connors*, 93 F. Supp. 149 (N.D. Ind. 1950).

is prohibitively expensive in relation to the amount of the debt. Very recently, in *State Finance Co. v. Morrow*, the Court of Appeals of the Tenth Circuit took occasion to observe: "... it is important to bear in mind that the remedy afforded to the bankrupt by federal law is not merely a legal remedy in the form of burdensome litigation with successive appeals to reach a count of record. It is a remedy adequate to meet the full requirements of justice—a remedy which comports with the spirit and purpose of the bankruptcy act to secure to the bankrupt the full and complete benefits and advantages of his discharge."⁶²

Frequently the opinions do not establish the "unusual circumstances" on any specific factor in the case, but rather justify the bankruptcy court's action as necessary to prevent the bankrupt from being subjected to "trouble, embarrassment, expense and possible loss of employment,"⁶³ or to forestall "the continued oppression of poor and inexperienced bankrupt debtors by the prosecution of ... dischargeable claims against them,"⁶⁴ resulting in the creditor's "virtually annulling [the] order of discharge by coercive measures. . . ."⁶⁵ Thus do these courts disregard the possibility of a theoretical remedy in the state courts, and instead emphasize the practical hardships falling on bankrupts if they are left to their own resources in defending against claims after bankruptcy and the unfairness of allowing an aggressive creditor to collect debts by deliberately ignoring the discharge which other creditors have observed in good faith.⁶⁶

62. 216 F. 2d 676, 680 (10th Cir. 1954). An injunction was there issued against the prosecution of a creditor's action in a justice of the peace court on a note given by the bankrupt for repayment of a loan. The federal court found that the debt on the note was discharged and reasoned that the bankrupt should not be left to the uncertain remedy of pleading the discharge as a defense, because "the court in which the liability was asserted was not a court of record where issues of law and fact are defined with any degree of particularity, and . . . for all practical purposes the bankrupt was defenseless." Manifesting a similar practical approach to the question are: *In re Cleapor*, 16 F. Supp. 481 (N.D. Ga. 1936); *In re Connors*, 93 F. Supp. 149 (N.D. Ind. 1950); *In re Zilliox* (S.D. Cal. 1953), 28 J. N. A. Ref. Bankr. 92 (1954).

63. This language was first employed in *Seaboard Small Loan Corp. v. Ottinger*, 50 F. 2d 856, 859 (4th Cir. 1931), decided three years prior to *Local Loan Co. v. Hunt* and relied on heavily by the Supreme Court in the *Hunt* case. Among later cases containing this or very similar language in the opinions are: *Holmes v. Rowe*, 97 F. 2d 537 (9th Cir. 1938); *In re Caldwell*, 33 F. Supp. 631 (N.D. Ga. 1940); *In re Patt*, 43 F. Supp. 754 (E.D. Tenn. 1941).

64. *In re Taylor*, 29 F. Supp. 656, 657 (N.D. Ga. 1939). Similar expressions appear in: *In re Nichols*, 22 F. Supp. 694 (W.D. Ky. 1938); *In re Connors*, 93 F. Supp. 149 (N.D. Ind. 1950).

65. *In re Cleapor*, 16 F. Supp. 481, 484 (N.D. Ga. 1936). See dissent in *Helms v. Holmes*, 129 F. 2d 263, 268, 269 (4th Cir. 1942).

66. See *Evans v. Dearborn Machinery Movers Co.*, 200 F. 2d 125, 127 (6th Cir. 1952); *In re Walton*, 51 F. Supp. 857, 859 (W.D. Mo. 1943).

The conflicting attitudes of judges favoring and those opposing the extra-

The debtor's chances of receiving protection from the bankruptcy court definitely appear to be stronger if he has refrained from appearing to defend in the enforcement proceedings brought by the creditor, for then he avoids being in the unfavorable position of asking the bankruptcy court to relitigate an actually contested issue already determined by a state court. The safest procedure is for the debtor to seek injunctive relief while the creditor's suit is still being prosecuted against him,⁶⁷ but he may also be successful in barring an execution on a default judgment.⁶⁸ In at least four instances, however, injunctions have been issued against the enforcement of the creditor's state court judgment even after the bankrupt had appeared in the state suit to assert his bankruptcy as a defense.⁶⁹ In spite of strong opinion to the contrary,⁷⁰ therefore, the principle of *res judicata* can be turned aside in the face of special circum-

ordinary relief to bankrupts are sharply presented in *Helms v. Holmes*, 129 F. 2d 263 (4th Cir. 1942), where the majority (consisting of two circuit judges) denied relief to a bankrupt who had, through a natural misunderstanding, failed to plead his discharge in a state court action in which discharge would have constituted a complete defense to the creditor's claim. The majority judges, having ruled that the debtor disqualified himself from relief by his own "gross negligence," declared: "Accordingly, while we are fully cognizant of the present unfortunate predicament of Holmes, the dictates of orderly administration in bankruptcy proceedings must prevail in this situation, which is fraught with danger." *Id.* at 267. The dissent (consisting of a district judge) vigorously protested against this unimaginative approach to the problems, expounded upon the disadvantages under which the average bankrupt labors, and concluded: "Every court which deals with any considerable number of bankruptcy cases is familiar with the difficulties which bankrupts have in protecting themselves from rapacious creditors even after discharge. . . . The conditions above recited do not in themselves embody any legal principles, as I am well aware. But they are factual realities which exist to a greater or less degree in every district and which have become so prevalent in some communities as to amount to a practical nullification of the Bankruptcy Act." *Id.* at 268, 269.

67. *Evans v. Dearborn Machinery Movers Co.*, 200 F. 2d 125 (6th Cir. 1952); *In re Cleapor*, 16 F. Supp. 481 (N.D. Ga. 1936); *In re Henry*, 46 F. Supp. 536 (W.D. N.Y. 1942); *In re Walton*, 51 F. Supp. 857 (W.D. Mo. 1943).

68. *In re Tillery*, 16 F. Supp. 877 (N.D. Ga. 1936); *In re Taylor*, 29 F. Supp. 656 (N.D. Ga. 1939); *In re Zilliox* (S.D. Cal. 1953), 28 J. N. A. Ref. Bankr. 92 (1954). See *In re Buzas*, 58 F. Supp. 717 (N.D. Cal. 1944), where the court took jurisdiction at the bankrupt's request for an injunction, but decided that the debt was non-dischargeable and therefore refused to grant the injunction. In a number of cases enjoining enforcement of judgments, the opinions do not indicate whether the debtor appeared in the state court.

69. *Holmes v. Rowe*, 97 F. 2d 537 (9th Cir. 1938) (default judgment obtained, but later attempts was made by bankrupt in state court to have the judgment canceled); *Davison-Paxon Co. v. Caldwell*, 115 F. 2d 189 (5th Cir. 1941) (bankrupt sought stay in state court before discharge, on ground debt was dischargeable, but judgment was entered for creditor); *In re Nichols*, 22 F. Supp. 694 (W.D. Ky. 1938) (same); *In re Connors*, 93 F. Supp. 149 (N.D. Ind. 1950) (bankrupt pleaded discharge in pending suit but judgment was entered for creditor).

70. See cases cited note 56 *supra*. Also 7 Remington, Bankruptcy § 3438; Note, 18 Brooklyn L. Rev. 271, 282 (1952).

stances dictating that the bankrupt be relieved from a state court order mistakenly ruling a debt non-dischargeable. Thus, the circuit court of appeals in *Holmes v. Rowe* declared: "Nor do we consider that the failure of the appellee to exhaust his remedies in the state court would preclude the District Court from exercising its jurisdiction in the matter. . . . 'The fundamental question involved is the effect of the discharge in bankruptcy upon the debt. . . . The question may be decided by either state or federal court according to state law, but the bankruptcy court has primary and superior jurisdiction to determine the effect of its own decree of discharge, and it may exercise, or refuse to exercise, that jurisdiction according to the exigencies of the case.'"⁷¹

Granting that there are two sides to this question and that not all creditors have black souls nor all bankrupts pure hearts, this writer definitely inclines to the point of view that the bankruptcy courts should be readily available to afford broad protection to debtors against the efforts of creditors to enforce discharged claims. Leaving the determination of the dischargeability of specific debts strictly to any court in which the creditor may choose to proceed tends to defeat both of the basic purposes of the bankruptcy system—release of the debtor from his obligations and equal treatment of creditors with provable claims.

As the more sympathetic courts have pointed out repeatedly, bankrupts, not being able to protect themselves, are all too frequently coerced into paying discharged obligations.⁷² Misunderstanding the import of a discharge order, they are commonly unaware of the necessity of defending actions brought by creditors to collect debts.⁷³ Often, the creditor's post-bankruptcy maneuver is in the form of the sudden prosecution of a suit filed before the adjudication and allowed to remain unnoticed on the court's docket until after the debtor has been lulled into a false sense of security by obtaining his discharge.⁷⁴ Financially unable to bear heavy expenses

71. *Holmes v. Rowe*, 97 F. 2d 537, 540 (9th Cir. 1938) citing *Local Loan Co. v. Hunt*, and quoting *Seaboard Small Loan Corp. v. Ottinger*.

72. See *Seaboard Small Loan Corp. v. Ottinger*, 50 F. 2d 856, 859 (4th Cir. 1931); *In re Home Discount Co.*, 147 Fed. 538, 552 (N.D. Ala. 1906); *In re Caldwell*, 33 F. Supp. 631, 635 (N.D. Ga. 1940); *In re Connors*, 93 F. Supp. 149, 150 (N.D. Ind. 1950).

73. See cases cited note 53 *supra*. Also, discussions in *In re Zilliox* (S.D. Cal. 1953), 28 J. N. A. Ref. Bankr. 92 (1954), and Note, 18 Brooklyn L. Rev. 271, 277 (1952).

74. *Holmes v. Rowe*, 97 F. 2d 537 (9th Cir. 1938) (suit filed before bankruptcy, default judgment obtained 2½ years later, after discharge and without notice to bankrupt); *In re Innis*, 140 F. 2d 479 (7th Cir. 1944) (suit filed before bankruptcy, default judgment obtained 4½ years later, 3½ years after discharge and without notice to bankrupt); *Gathany v. Bishopp*, 177

which may be incurred in extensive litigation, the bankrupt is surely in no position to meet the extreme requirement that he resist the creditor all the way to the Supreme Court of the United States, if necessary.⁷⁵ If the debtor has come into substantial assets since his discharge and if the claim sought to be enforced is a large one, then he may find it worthwhile to carry the fight into the state courts. But it seems obvious that the amount of the resources of the bankrupt and the size the debt in issue should not be the factors determining whether a particular individual is to enjoy the benefits which the Bankruptcy Act is intended to make available to all honest debtors.

Denying the right of the bankruptcy courts to interfere tends to give the unscrupulous creditor a chance to impose unfairly not only on the bankrupt but also on the other creditors.⁷⁶ A creditor who is willing to take advantage of the ignorance, inexperience and poverty of the bankrupt by threatening him with legal action and by endangering his job through harassment of his employer with garnishment proceedings⁷⁷ may obtain full satisfaction of his claim while the other creditors with more humane instincts receive only a few dollars in liquidation dividends. Because of his expectation of

F. 2d 567 (4th Cir. 1949) (judgment obtained before bankruptcy, assigned and revived by assignee 9 years after discharge, and filed as claim against deceased bankrupt's estate 3 years later—more than 12 years after discharge); *In re Epstein*, 48 F. Supp. 436 (S.D. N.Y. 1942) (judgment obtained 8 years before bankruptcy, no attempt to execute until after discharge).

75. *In re Devereaux*, 76 F. 2d 522 (2d Cir. 1935), the decision more responsible than any other for the move to restrict to narrow limits the jurisdiction recognized in the *Hunt* case, expressly sanctioned this absurdity.

76. "The [creditor], claiming to know facts that would have precluded a discharge, concealed such facts to the end that it might have an advantage over other creditors after the discharge was granted. It sought to make itself a privileged creditor by concealing information that it was bound under the law to disclose and thus give it an opportunity against the earnings of the bankrupt, the debts of all other creditors having been discharged. The [creditor] has acted in bad faith. . . ." *In re Walton*, 51 F. Supp. 857, 859 (W.D. Mo. 1943). *Evans v. Dearborn Machinery Movers Co.*, 200 F. 2d 125, 127 (6th Cir. 1952); Referring particularly to reorganization proceedings, the bankruptcy court "declared that the bankrupt's interests were not alone to be considered but that the efforts of many persons to salvage an otherwise defunct organization were of transcendent importance."

The *Walton* case held the creditor to be estopped by his failure to carry out his "statutory duty" to object to the granting of a discharge. *Contra* on this point: *In re Anthony*, 42 F. Supp. 312, 315 (E.D. Ill. 1951).

77. Experience has impressed on some courts (most notably in the Northern District of Georgia) the danger of a debtor's being discharged by an employer who is subjected to garnishment proceedings by a creditor. It is frequently less trouble to find a new employee than to bother with the withholding of wages under a garnishment order. Quite obviously, the threat of the loss of his job is an acutely potent extortion weapon against a bankrupt who has recently surrendered his assets to his creditors and has only his current earnings on which to live. See *Seaboard Small Loan Corp. v. Ottinger*, 50 F. 2d 856, 859 (4th Cir. 1931); *In re Cleapor*, 16 F. Supp. 481, 483 (N.D. Ga. 1936); Strasburger, *The Wage Assignment Problem*, 19 Minn. L. Rev. 536 (1935).

circumventing a discharge in bankruptcy, such a scheming creditor is encouraged to extend credit recklessly, thereby contributing to the original financial downfall of the unwary debtor and saddling the loss on the more ethical claimants against the insolvent estate.⁷⁸

There is some indication that the referees and district judges, who deal first-hand with the unfortunate debtor and the grasping creditor, see the true fundamentals of the situation more clearly than do the judges who merely read the briefs and hear the formal arguments of attorneys in appeals.⁷⁹ The latter jurists may be in danger of basing their conclusions on the dictates of cold legal logic rather than on the demands of warm human misfortunes. This may explain the fact that while on several occasions the district courts have granted relief to bankrupts only to be reversed by the appellate courts,⁸⁰ no case has been found in which the lower court was reversed for *failing* to grant relief.

It seems obvious that the bankruptcy courts are in better position than the multitudinous state tribunals to pass on the issues of dischargeability of debts.⁸¹ They are necessarily better versed in bankruptcy law, not only in knowledge of its specific provisions but also in understanding of its general purposes. Also, they are more familiar with the bankrupt's affairs, the nature of the claims against him and the attitude of the creditor toward the bankruptcy proceedings. Quite possibly the bankruptcy court will already have passed on the dischargeability of the debt in question on a Section 11a motion for a temporary stay of the creditor's suit. In every case, if the creditor has proved his claim in the bankruptcy proceeding, there will be some evidence before the court as to the origin and nature

78. "If creditors were as diligent in investigating the responsibility of an applicant for a loan or a purchase under a conditional sales contract before making the loan or sale, as they are in attempting to collect after the indebtedness has been incurred, there would be fewer cases in bankruptcy and the losses incurred in trade would be greatly reduced." *In re Nichols*, 22 F. Supp. 694, 695 (W.D. Ky. 1938). Also *In re Caldwell*, 33 F. Supp. 631, 635 (N.D. Ga. 1940). *In re Patt*, 43 F. Supp. 754, 755 (E.D. Tenn. 1941), referring to this situation, utters a truly historic observation: "This court feels that such conduct does not conform to the best business ethics nor is it in line with governmental righteousness."

79. See, for example, impressive exposition of: District Judge Paul, dissenting in *Helms v. Holmes*, 129 F. 2d 263, 268, 269 (4th Cir. 1942); Judge Underwood in *In re Cleapor*, 16 F. Supp. 482, 483-484 (N.D. Ga. 1936); Referee Brink in *In re Zilliox* (S.D. Cal. 1953), 28 J. N. A. Ref. Bankr. 92 (1954).

80. *In re Devereaux*, 76 F. 2d 522 (2d Cir. 1935); *Helms v. Holmes*, 129 F. 2d 263 (4th Cir. 1942); *Beneficial Loan Co. v. Noble*, 129 F. 2d 425 (10th Cir. 1942); *In re Innis*, 140 F. 2d 479 (7th Cir. 1944). See *Ciavarella v. Salituri*, 153 F. 2d 343 (2d Cir. 1946) (bankruptcy court decided case on merits against bankrupt, but appellate court denied jurisdiction of bankruptcy court to decide the case).

81. See *Coleman*, *supra* note 6; *Nadler*, *supra* note 1, at 78.

of the debtor's liability, whereas in a state court suit, the proof of these factors will have to be submitted all over again.⁸² Furthermore, the debtor is already acquainted with the bankruptcy court and naturally expects it to deal with all matters concerning his case.⁸³

If bankruptcy courts do undertake to extend the exercise of their jurisdiction to effectuate the discharge, some delay in the administration of bankrupt estates will inevitably be occasioned by the diversion of the courts' attention from the business of collecting assets and paying claims.⁸⁴ This factor probably furnishes the most persuasive argument for leaving the issue of dischargeability of particular debts to the state courts. What is necessary, however, is a balancing of the demands of efficient administration for the estate and of adequate protection for the bankrupt. Since the impression seems to exist that bankruptcy courts are more inclined to hold debts to be discharged, creditors might in time learn not to try to enforce claims unjustifiably if the bankruptcy court's interference were assumed to be forthcoming, and thus the burden on those courts would be kept within bounds. Further, if creditors' chances of collecting debts after discharge were reduced, they might be more alert to object to the granting of discharges, and thereby some undeserving bankrupts would properly be prevented from wrongly obtaining the benefits of bankruptcy.

CONCLUSION

If it can be agreed that the existing situation is not entirely satisfactory, the final question is, what steps can be taken to work improvements. Several alternatives may be suggested. First, the Supreme Court could take advantage of the first opportunity to clarify its views as to the scope of the phase of the bankruptcy courts' jurisdiction here under discussion. Of course, no acceptable definitive rule can possibly be laid down to cover all cases, though some writers have expressed the opinion that the courts should make a better attempt to do so.⁸⁵ Some flexibility must be retained, for if the bankruptcy courts were bound to pass on every petition for injunctive relief which a bankrupt might see fit to file, those courts could be used by a debtor to vex a creditor who had proceeded in good faith in a state court on full notice to the bankrupt to enforce a liability actually not dischargeable. However, the Supreme Court could

82. See *Twinem*, *supra* note 12, at 34.

83. See dissenting opinion, *Helms v. Holms*, 129 F. 2d 263, 268, 269 (4th Cir. 1942); *Nadler*, *supra* note 1, at 78.

84. See *Helms v. Holmes*, 129 F. 2d 263, 267 (4th Cir. 1942).

85. Notes, 18 *Brooklyn L. Rev.* 271, 286 (1952); 36 *Va. L. Rev.* 84, 87 (1950).

take occasion to declare that the "unusual circumstances" concept of *Local Loan Co. v. Hunt* is to be liberally interpreted to include any situation in which a bankruptcy court finds that a creditor is employing coercive tactics to harass a bankrupt who is financially or mentally unable to preserve for himself the benefits of his discharge.⁸⁶ This is, in actual fact, the manner in which some sympathetic courts are applying their authority derived from the *Hunt* case, and possibly these courts and similarly-minded referees will gradually extend the exercise of this jurisdiction until it becomes so commonplace that all courts will fall into line.

A second reform could come from state legislation designed to afford bankrupts better protection in the state courts. Some form of simplified procedure is needed for nullifying judgments which creditors may obtain on dischargeable debts by default, through the debtors' unintentional or ill-advised failure to plead discharges in defense. Several states, including New York, California and Minnesota, have statutes looking to this end,⁸⁷ but they do not provide a sufficient remedy for the bankrupt. For example, relief is not available until a year after the discharge, and during that time creditors have proceeded with garnishments and other means of collecting debts unjustifiably.⁸⁸ Further, the bankrupt must still go to the expense of employing counsel to assert his rights under these statutes, a burden which he may be unable to bear.⁸⁹ Perhaps some of this financial incapacity may be obviated by requiring the creditor to give security for the payment of the bankrupt's expenses of litigation if the claim sought to be enforced is ultimately proved to be discharged.⁹⁰

86. See Twinem, *supra* note 12, at 34.

87. N. Y. Debtor and Creditor Law § 150: "At any time after one year has elapsed since a bankrupt was discharged from his debts . . . the bankrupt . . . may apply, upon proof of the bankrupt's discharge, to the court in which the judgment was rendered against him . . . for an order, directing the judgment to be cancelled and discharged of record." Very similar provisions appear in: Cal. Code Civ. Proc. § 675(b) (1953); Minn. Stat. § 548.18 (1953).

88. See *In re Stoller*, 25 F. Supp. 226 (S.D. N.Y. 1938); *In re Epstein*, 48 F. Supp. 436 (S.D. N.Y. 1942); *In re Grover*, 63 F. Supp. 644 (D. Minn. 1945). This difficulty could be solved by granting the bankrupt a temporary stay against prosecution of a pending suit, under the authority of § 11a, and making the stay extend for twelve months after the discharge (although § 11a does not specifically provide for such extension). See *In re Partnow*, 19 F. Supp. 690 (E.D. N.Y. 1937).

89. It may be argued that the problem of persons who cannot afford adequate legal counsel to protect their rights is a general one, and that the law need not make special provision for one class of such unfortunates—the bankrupts. See Note 36 Va. L. Rev. 84, 98 (1950). However, in one sense bankrupts do constitute a special class, because the law has accorded judicial recognition to their poverty, and their financial affairs have already been put in the hands of a court.

90. See Note, 36 Va. L. Rev. 84, 98 (1950).

The most effective and obvious procedure for insuring the bankrupt the benefits of his discharge lies in revision of the Bankruptcy Act. Section 17 could easily be amended to specify that a discharge shall be issued only in general terms and that the court has no power to insert qualifications in the order to exempt specific debts. Section 11a could be revised to provide that the temporary stay of state court proceedings pending against the debtor should extend for one year after discharge, so that the protection would continue during the interval before state statutes provide the bankrupt with a means of setting aside judgments obtained on discharged debts. Also, this same section could be made to accord express power to the bankruptcy courts to grant permanent injunctions against the enforcement of any liability it determines to be dischargeable.⁹¹ Such a provision would have the effect of giving direct legislative sanction to the *Hunt* case. Finally some means might be devised to give the discharge the effect of automatically extinguishing dischargeable liabilities, unless the bankrupt affirmatively and expressly waives his defense of discharge in regard to a particular obligation. By such simple means the practices of the different bankruptcy courts could be rendered more nearly uniform and more effective in achieving the basic objectives of the Bankruptcy Act.

91. *In re Sutton*, 19 F. Supp. 892, 894 (S.D. N.Y. 1937) suggests that § 11a "... strongly implies that a creditor will not be stayed beyond the date of the bankrupt's discharge."

