who is actually tied in with the operation; the debtor is persuaded that he will be able to buy the desired (but probably shoddy) merchandise and to free himself of all his other debts at the same time. In other situations, a debtor will in one way or another find his way to one of the so-called "wholesale" bankruptcy lawyers who specialize in volume bankruptcy. The lawyer, of course, earns himself a fee (ranging anywhere from $150 to $400) which is secured by a wage assignment and reaffirmed after bankruptcy. In many cases, a scrupulous attorney or debt counsellor might have worked something out with the creditors without wasting the debtor's right to a discharge in bankruptcy.[4]

With post-discharge actions, creditors may be able to force bankrupts to pay discharged debts which have not been reaffirmed by the bankrupt. Much of this is due to the nature of the bankruptcy decree. The federal court determines the debtor's right to a discharge, but the state court has jurisdiction to determine what debts were discharged.[5]

A creditor whose debt was scheduled in the bankruptcy petition in the federal court may go into the state court and sue on the debt, alleging that the debt was not discharged under the Bankruptcy Act. Such suits are frequently brought on the ground that a loan was obtained under false pretenses for want of full disclosure of other outstanding debts. In other cases, a creditor may go into the state court alleging that the debt was the result of a "wilful and wanton" tort judgment.[6] If the creditor wins, his debt is exempt from discharge. Since the discharge decree is an affirmative defense which is waived if not pleaded in the state action, unscrupulous creditors can, and have been known to, take advantage of state implementation of the bankruptcy decree by prosecuting actions in state courts on debts they know to have been validly discharged. The creditor often wins anyway since: (1) the bankrupt, for one reason or another, may never receive the summons and therefore not appear; (2) the bankrupt, duly notified of the post-discharge proceeding in the state courts, may fail to appear because of his misunderstanding of the nature and effect of his discharge in bankruptcy; (3) the bankrupt's lawyer may have indicated to the client that he will take care of any post-discharge action, but after a series of continuances, the lawyer withdraws from the case with no notice to the bankrupt.[7] In any event, these creditors have nothing to lose but the state filing fee, because it is highly unlikely that the bankrupt will institute a suit for malicious prosecution or a related action.

In most cases, the problem is not the default judgment, but rather the leverage which the post-discharge procedure gives the creditor in collecting old debts. Rather than incur the trouble and expense of defending in the state court, or risk losing his job because of wage garnishment, the bankrupt will often settle

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[4] We do not mean to imply that all bankruptcy lawyers are *a fortiori* unscrupulous persons uninterested in the welfare of the individual debtor. The attitude of some of these lawyers is important to understand. Some sincerely believe that what they are doing is in the best interest of the debtor. Many attorneys believe that because the state gives so many tools of harassment to the creditor while not effectively allowing the debtor to assert the defenses of unfairness or failure of warranty, the debtor should have no qualms about utilizing bankruptcy whenever possible. These lawyers have a philosophy about their work above and beyond simply "bankruptcy as a buck."

[5] *Ciavarella* v. *Salituri*, 153 F. 2d 343 (2nd Cir., 1946); *In re Siegel*, 164 F. Supp. 709 (D.C.N.Y. 1958).

[6] 11 U.S.C. § 35 (1964):

(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, 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 obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in a manner whatsoever with intent to deceive, or for willful and malicious injuries to the person or property of another*, or for alimony due or to become due for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversations; (3) have not duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; (5) are for wages 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 salesman, 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. (Emphasis is ours).

[7] Loan company attorneys, if they feel a postdischarge action went to default judgment due to an oversight by the bankrupt's attorney, will often reopen the case at the attorney's request and give the bankrupt his day in court.