

with creditors on debts already discharged in bankruptcy. Because all his other debts have been discharged, the bankrupt is more amenable to settling with "just this one" creditor.

A caveat is in order before proceeding further. This paper will not consider the moral, social or economic implications of bankruptcy as a remedy for the debtor. This paper proceeds on the assumption that, as long as bankruptcy has been designed to give relief to an overburdened debtor, it should be made as effective as possible, regardless of the intelligence or economic class of the debtor. Others may question the advisability of bankruptcy as a means of debtor relief; we proceed on the assumption that given bankruptcy as a remedy, how can it be made more effective.

EXISTING LEGAL REMEDIES

What legal theories and strategies are available to limit bars to the effective use of ordinary bankruptcy by the poor man? Is it possible in the federal courts to have the Referee in Bankruptcy list the debts indicating which are discharged, and which are not? In a few cases this has been done; but, in the cases as they are now argued, this approach has been limited.

Indicative of the very few cases where this method has been used is *Harrison v. Donnelly*,⁸ and *In re Tamburo*,⁹ where the federal courts exercised equitable jurisdiction under § 2 (15) of the Bankruptcy Act¹⁰ to implement the bankruptcy discharge by exempting certain debts in what is called a partial discharge. Section 15 of Chapter 2 provides that the court may "make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act . . .".¹¹ The partial discharge in these cases was granted at the behest of a creditor, and specifically listed only those debts which had *not* been discharged. In these cases, the debt was a tort judgment which was easily demonstrated to have been "wilful and wanton" by the trial record. The courts reasoned that the bankrupt had already had his day in court on the judgment in question and that nothing would be gained by forcing the creditor to relitigate the matter in the Bankruptcy Court. We have found no cases where this approach has been taken in the absence of either the creditor's request or a final determination of the matter in some other court.

This same equitable argument could be made for the debtor; however, the two cases seem to be distinguishable. There is less justification for the exercise of equitable jurisdiction to determine, in the discharge, that a given tort was *not* wilful and wanton. The bankrupt need *not* be the moving party in the state court to achieve his end, no post-discharge action on a debt. Therefore, the equity power of the court is arguably more justifiably exercised when one party must incur additional expenses to receive something which he already has a right to, as in the creditor's case.

In any event, this theory probably has no application in limiting post-discharge actions in the numerous and flagrant "false pretenses" suits. Final adjudication on the false pretense issue is not possible before bankruptcy; indeed, the question is not now even raised until the state post-discharge proceedings. The federal court cannot rely on a court record, but would be forced to conduct a hearing on the question before handing down the decree. Although something like a hearing is conducted for a temporary restraining order under § 11(a) of the Act,¹² there is no precedent for a federal court binding a state court and exercising its equitable powers in this way.

The foregoing reflects the present view of bankruptcy procedures. An argument is possible, however, under existing law, which would insure that the final decree of the court could not be attacked by post discharge actions. Under 11 U.S.C. § 11(a) (15) (1964),¹³ the bankruptcy court could be asked to stay final approval of the bankruptcy discharge for sixty days. Any scheduled creditor claiming that

⁸ 153 F. 2d 588 (1946).

⁹ 82 F. Supp. 995 (1949).

¹⁰ 11 U.S.C. § 11(a) (15) (1964).

¹¹ *Ibid.*

¹² Sec. 11a (11 U.S.C. § 29(a) (1964) :

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 the adjudication or dismissal of the petition . . .

¹³ See notes 10 and 11, *supra*, and accompanying text.