his debt was exempted from discharge under 11 U.S.C. § 35 (1964),[14] would have to file suit in the state courts during this period. After the sixty days, a permanent injunction would be issued under 11 U.S.C. § 11(a) (15) (1964) enjoining scheduled creditors who had not yet filed suit from ever suing the debtor on these scheduled debts.

When all the state actions reached final adjudication, the referee would then have complete trial records before him and could hand down a partial discharge. The partial discharge would list all debts discharged, and all debts exempted. The bankrupt would then know with certainty which debts were specifically exempt from the bankruptcy discharge. The accompanying injunction could be used to prevent any future suit on debts listed as discharged in the bankruptcy decree.

The bankruptcy court possesses the requisite equitable power to implement such partial discharge.[15] The court must be convinced to take notice of post-discharge creditor abuses and must be shown that this type of bankruptcy proceeding would be implementing the purpose of the Bankruptcy Act. In addition, creditors would not be deprived of their rights under the Act. It is just as easy for a creditor to determine whether he has a false pretense action at the time the bankruptcy petition is filed as it is for him to make this determination after the decree has been entered. In either case, all he usually does is compare the bankruptcy schedule with the debts listed on the loan application filled in by the debtor, in order to see if the debtor had listed all his outstanding debts. If the creditor decides that he has a cause of action for false pretenses, he has sixty days to file suit. If he does not file, the debt is discharged and he is enjoined from ever suing the debtor on that debt. Giving a creditor more than sixty days to file suit is unnecessary; it only enables the unscrupulous creditor to "sandbag" and file suit several years later hoping for a default judgment.

There is clearly no precedent permitting this use of partial discharge under 11 U.S.C. § 11(a) (15). There is, however, no case precedent against it.

Assuming a bankruptcy court would be amendable to this argument, the creditors could legitimately contend that such an order is beyond the extent of the bankruptcy court's equitable power. 11 U.S.C. § 11 (a) (15) talks about enforcing "the provisions of *this act.*"[16] "This act," the Bankruptcy Act, does not control state post-discharge actions. Therefore, it could be argued that an injunction against post-discharge actions issued after creditors were given 60 days to file suit is invalid. The power of the bankruptcy court to enjoin state post-discharge actions appears, under present case law, to be limited.[17] Legislation may be the most feasible method to deal with these problems.[18]

A more fruitful use of federal court jurisdiction is for the post-discharge injunction. A bankrupt, pursued in the state court by a creditor whose debt was discharged in bankruptcy, petitions the federal court to restrain the suit or to prevent execution of a post-discharge judgment. To the extent that it is available, this approach is not necessarily the most productive way to defend post-discharge actions, because many lawyers *are* quite successful defending these suits in the state courts. The federal forum, however, is arguably more receptive to the correct implementation of the bankruptcy discharge. The federal court is the expert on bankruptcy law, while the state court, not having expertise in this area, may misinterpret the effect of a bankruptcy decree. In addition, the federal referee is already familiar with the facts of a case; he may have considered the circumstances surrounding a given debt in issuing a temporary restraining order at the time the bankruptcy was filed.

To achieve uniformity in the administration of bankruptcy, post-discharge actions seem logically to belong in the federal courts. As the discharge is a federal decree, it is only sensible to let the federal courts interpret it. There is no countervailing state interest at stake here, particularly since the federal courts are required under the doctrine of *Erie v. Tompkins* to apply the state law anyway on questions to which it is applicable. Continued federal jurisdiction will deter the creditor from picking his forum in the state and maintaining post-discharge actions of a dubious nature. In this way the policy of the Bankruptcy Act could be more effectively realized.

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[14] See note 6, *supra.*

[15] 11 U.S.C. § 11(a) (15) (1964).

[16] Emphasis ours.

[17] *Local Loan Co.* v. *Hunt,* 292 U.S. 234 (1934), see notes 23–25 *infra,* and accompanying text.

[18] For a number of years, Congressman Celler of New York has introduced a bill, last introduced as H.R. 1742, 87th Cong., 1st Sess. (1961), giving the bankruptcy courts exclusive jurisdiction over the dischargeability of debts.