The arguments against such an expansion of the federal jurisdiction must not be overlooked. An injunctive determination in the federal court would probably deny the parties a right to a jury trial which they now can have in the state courts. Secondly, the so-called expertise of the federal courts is a straw argument, because for the most part the post-discharge actions require factual determinations under state law of cases involving allegations of "false pretenses" and "wilful and wanton" torts. Because these kinds of cases are governed by state law, the federal courts would be forced to interpret state law—and if anything state courts should be the primary interpreters of state law.

Thirdly, other critics have said that the use of equitable federal remedies is unnecessary, because these same remedies and more are available in the state courts.[19] Some states allow tort actions and damages for abuse of process and injury to credit from wrongful attachment.[20] Other states permit the state courts to enjoin improper prosecution in the form of repeated actions or threats of suit on an unfounded claim by what is known as a "bill of peace." The problem with the various tort actions is that they are difficult to prove and rarely if ever are employed as a remedy against post-discharge harassment. The use of equitable state remedies is always a possibility but is apparently used in only a few states, with the bankrupt having to prove repeated harassment in many of them in order to obtain equitable relief.[21]

The annotation in 54 A.L.R. 451 states that in many jurisdictions the aggrieved bankrupt must show malice to establish a case for damages. It is hard to imagine a poor wage-earning bankrupt incurring the expense involved to initiate one of these tort suits against an offending creditor, unless he could get attorney's fees if he established his case. Such harassment by creditors is reprehensible and should be discouraged. Awarding attorney's fees on a punitive damages theory might provide the necessary incentive.[22]

A fourth practical objection to expanded federal jurisdiction may yet be the hardest to overcome. The psychological effect on the referee who would hear the post-discharge actions may tend to vitiate any inherent commitment the federal courts have to the goals of the Bankruptcy Act. Referees handling million-dollar corporate bankruptcies might look at wage-earner bankruptcies as "small potatoes," no matter how large the bankruptcy.

What is the legal justification for federal injunctive power in post-discharge state proceedings? The federal courts have the discretion to enjoin post-discharge proceedings in state courts. In *Seaboard Small Loan Corp.* v. *Ottinger*,[23] the court held that the federal court had equity power under § 2(15) of the Bankruptcy Act[24] to prevent the circumvention of a discharge decree and prevent creditor harassment of discharged bankrupts in state courts. The Supreme Court in *Local Loan Co.* v *Hunt*,[25] clarified the existence of this ancillary equity jurisdiction in the federal courts saying that jurisdiction should be exercised only under "unusual circumstances." The "unusual circumstances" in *Local Loan* were that the bankrupt would otherwise have had to pursue a long and expensive course of litigation in the state courts of Illinois, through successive appeals, in order to challenge the Illinois state court interpretation of wage assignment liens as non-dischargeable debts. The remedy of appeal through the state courts before coming to the federal courts was entirely inadequate, because of the wholly disproportionate trouble, embarrassment, expense, and possible loss of employment involved.[26] Equitable jurisdiction was necessary to implement the clear and unmistakable policy of the Bankruptcy Act.[27]

Local Loan is the last pronouncement of the Supreme Court on the equitable jurisdiction of the federal courts in post-discharge bankruptcy proceedings. As one might imagine, the history of the *Local Loan* doctrine has been a circuit by circuit, district by district, interpretation of the "unusual circumstances" rule. For the most part, this history is best characterized as an emasculation of *Local*

---

19 Cf. 30 Va. L. Rev. 531, 541–2 (1944).
20 *Ibid.*
21 *Id.* at 542, note 53.
22 See Philip Moore, "Individual Affirmative Actions," a student workshop paper presented at the Conference on Consumer Credit and the Poor, University of Chicago Law School, Nov. 1965.
23 50 F. 2d 856 (4th Cir., 1931).
24 11 U.S.C. § 11(a)(15) (1964).
25 292 U.S. 234 (1934).
26 *Id.* at 241–2.
27 *Id.* at 244.