Loan by restrictive interpretations of "unusual circumstances." In light of this observation, the question becomes: when should one go to the federal court and what allegations must be made to convince the court to invoke *Local Loan?*

Federal courts have exercised equitable jurisdiction at all points in the state post-discharge proceedings.

"The safest procedure is for the debtor to seek injunctive relief while the creditor's suit is still being prosecuted against him, but he may also be successful in barring an execution on a default judgment. In at least four instances, however, injuctions 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. In spite of strong opinion on the contrary, therefore, the principle of res judicata can be turned aside in the face of special circumstances dictating that the bankrupt be relieved from a state court order mistakenly ruling a debt non-dischargeable." [28]

The key to understanding the use made of *Local Loan* is to appreciate the significance of judicial attitude. Will the individual judge look at the substance of the bankrupt's situation and correct a misinterpretation or miscarriage of justice in the state court, or will he say, as most of them do, that the bankrupt has an adequate remedy—even if this remedy is as a practical matter not available? [29]

The contrast between the majority and the dissent in *Helms* v. *Holmes* [30] is a good example of the form versus substance approach which characterizes these cases. The bankrupt in question sought to enjoin the execution of a default judgment on a debt which was clearly discharged in bankruptcy. The bankrupt, thinking that he was only the nominal defendant in a suit naming him as co-defendant with his wife, and unaware of the necessity to plead the bankruptcy discharge affirmatively, failed to appear and defend. The circuit court held that the district court improperly exercised equitable jurisdiction. The court reasoned that the bankrupt had a legal remedy which he waived by not appearing to defend in the state proceeding. Even if the state judgment was patently unfair, equitable relief is unavailable, and no "unusual circumstances" exist, when a bankrupt waives his legal remedy. In addition, the court thought that the bankrupt still had a state remedy which he could pursue to obtain equitable relief from the judgment.

Judge Paul, in his dissent, argued that denying equitable relief effectively circumvented the policy of the Bankruptcy Act, by failing to appreciate the actual situation of the bankrupt:

". . . [T]his modern view of the right of a bankruptcy court to protect by injunction the effect of a discharge in bankruptcy has been inspired by the necessity of dealing with manifest injustices that have arisen rather than from any essential error in the theory of the earlier cases. The average bankrupt is a layman who has been advised that a discharge in bankruptcy releases him from his debts and who has faith in the dignity, force, and effect of a decree of a federal court. He has surrendered his property and has no means to defend himself against further litigation." [31]

In addition, Judge Paul argued that the federal court should take cognizance of a state proceeding where unscrupulous creditors take advantage of bankrupts by arguing such cases before state magistrates who are sometimes almost as ignorant on the subject of bankruptcy as laymen. The disproportionate expense necessary to achieve the fruits of the discharge decree must be considered, especially in this case where Judge Paul considered any possible state remedy to be effectively unavailable.

Recently two notable cases have taken the approach of Judge Paul in evaluating the advisability of exercising equitable jurisdiction: *State Finance Co.* v. *Morrow* [32] and *Matter of Forgay.* [33] These cases do not seem indicative, however, of any trend toward the equitable substantive approach in these cases. The "unusual circumstance" approved in the *Morrow* case was the inability of the magistrate to properly adjudicate a bankruptcy discharge. The "unusual circumstance" in the *Forgay* case is more difficult to pinpoint; the opinion, in fact,

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[28] T. A. Smedley, *Bankruptcy Courts as Forums for Determining the Dischargeability of Debts,* 39 Minn. L. Rev. 651, 665–6 (1955). See, also, cases cited therein.

[29] *Id.* at 622.

[30] 129 F. 2d 263 (4th Cir., 1942).

[31] *Id.* at 269.

[32] 216 F. 2d 676 (10th Cir., 1954).

[33] 140 F. Supp. 473 (Utah, 1956); aff'd. 240 F. 2d 18 (10th Cir., 1957); *cert. denied,* 354 U.S. 922 (1957).