highlights the heroic nature of the courts employing *Local Loan* and presents the problem of using that case as precedent. The *Forgay* court was influenced by what they thought was an obvious circumvention of the Bankruptcy Act by the plaintiff loan company who had notice of the federal bankruptcy proceedings but made no attempt to block the discharge in the federal bankruptcy hearing. This view was justified before passage of the 1960 amendment eliminating "false pretenses" as a ground for blocking the discharge decree.[34] Today a creditor raising "false pretenses" in the Bankruptcy Court would be specifically told to raise the issue in the appropriate state proceeding.

Further case analysis might be pursued, but the limited utility of *Local Loan* in most jurisdictions justifies a more abbreviated treatment. The Northern District of Illinois, which had 11,587 voluntary bankruptcy decrees last year alone, is a good example of the viability of this doctrine.[35] According to Bankruptcy Referee Bruno Nowogrodski, *Local Loan* is used in the Northern District "only in the grossest cases of injustice." To his knowledge only two or three times during the last eight or nine years did his federal court judge exercise post-discharge equitable jurisdiction on the basis of *Local Loan*.

EXISTING STATE REMEDIES (COMMON LAW)

". . . [T]he practice is too common for creditors with dischargeable debts to disregard the judgments of this Court discharging bankrupts and to file proceedings in the State Courts, hoping, and too often obtaining, judgments on various pretexts, thereby coercing bankrupts into paying out of future earnings debts which in law have been discharged, or imposing upon them expensive and burdensome litigation. . . .

"Furthermore, every such case that is successfully maintained in the State Court induces others to try the same method, thus impairing or destroying the efficacy of the judgments of discharge of this Court." [36]

Even today, the situation described above is quite often the case. "Schlock" merchants and shady loan companies will all but ignore the discharge in bankruptcy in attempting to collect money from the indigent, often unrepresented, debtor. In some instances the case is scarcely more promising for the debtor with an attorney. A couple of very effective loop-holes exist in the law and they provide unscrupulous creditors with a method of effectively evading the discharge in bankruptcy as it applies to the debts owed to them. This section of the paper will discuss these loop-holes and suggest methods of coping with them.

A) THE WILFUL AND MALICIOUS PROBLEM

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . . except liabilities for . . . wilful and malicious injuries to the person or property of another . . . ." [37]

The wording of the above section is one important factor in limiting the effectiveness of bankruptcy. There are two elements to the problem. First, most credit sales to the poor involve secured financing. When bankruptcy occurs, the debtor normally surrenders possession of the property and lists the debt in the bankruptcy schedule. Difficulties arise when the debtor no longer has possession of the security. The creditor may then threaten a suit for illegal conversion of the security. The second aspect of the problem involves claims for wilful and malicious injury to persons or property. A poor person, for example, may have failed to defend himself in a suit for damages and, therefore, since many tort pleadings allege wilful and malicious injury, will be liable even after bankruptcy.

In the illegal conversion situation, the secured creditor, either before or after the discharge in bankruptcy, will attempt to repossess the security. If the debtor is unable to return it, the creditor will bring suit in the state court charging the bankrupt with wilful and malicious conversion of the security and will demand that the debtor either return the goods or pay damages. The amount of damages probably equals the amount due on the original loan or note. If the creditor wins this suit, he can then collect from the debtor the same amount of money that was owed on the debt discharged in bankruptcy. By thus converting the action from one on the debt to one in tort, the amount of the debt can be collected, bankruptcy notwithstanding.

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[34] Amendment to § 14 of the Act, 11 U.S.C. § 35(a)(2) (1964).
[35] "Tables of Bankruptcy Statistics," Administrative Office of the U.S. Courts, p. 251.
[36] *In re Caldwell*, 33 F. Supp. 531, 635 (1940).
[37] 11 U.S.C. § 35 (1964).