

The California, Minnesota, and North Dakota statutes are similar.⁶⁰ The quoted legislation applies *only* to actual judgments of record issued before the debtor was granted his discharge by the federal Bankruptcy Courts. These statutes do not extend to other claims which were not as yet reduced to final judgment as of the date of the discharge. This is because the purpose of these statutes is to expunge from the records uncollectable outstanding judgments—not to relieve debtors from unwarranted creditor harassment.

One state—Wisconsin—permits the debtor himself to go into the state courts to demand an immediate determination regarding the dischargeability of debts scheduled in the bankruptcy proceeding.⁶¹ Its statute removes the one year waiting period and allows the debtor to proceed on his own motion. The utility of the statute is questionable, as the poor debtor is not likely to spend the money to maintain this action.

Putting aside for a moment the consideration of expense, the Wisconsin statute does have potential value for the poor. It would be an obvious aid to the impoverished debtor to know that the discharge is final, and that there is no way for the creditor to revive a discharged debt by going into the state courts on whatever pretext. For an immediate post-discharge determination of dischargeability to be of maximum value to the poor man, this determination should extend to all claims and not be limited to judgments of record at the time of the discharge. The California Code of Civil Procedure provides as follows:

"The court may, upon such terms as may be just, relieve a part or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. Application for such relief must be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and must be made within a reasonable time, in no case exceeding six months, after such judgment, order or proceeding was taken."⁶²

Statutes allowing for the reopening of default judgments are found in many states. Six months, however, is an unusually generous time limit. Thirty days is far more common.

As previously noted many debtors discharged in bankruptcy are unaware of the effect of their discharge. When a summons is received on a debt, which the bankrupt thinks has been cancelled, he will ignore it. The debtor cannot avoid execution of the judgment. That is probably the first time the bankrupt will realize just what the summons was actually about. When he finally seeks legal advice, it is frequently too late to do anything to help him. If the period in which default judgments could be opened was extended, perhaps the plight of the poor debtor would then be at least partially relieved.⁶³

OTHER RECOMMENDATIONS

There are a number of steps which could be taken legislatively on both the state and federal levels in order to implement the Bankruptcy Act more effectively. There are two modes of attack on this problem, both of which result from the split state-federal jurisdiction on the discharge decree. All bankruptcy questions could be dealt with in the federal courts initially *and* in post-discharge proceedings, with *the emphasis on* strengthening the effectiveness of the federal proceeding. Alternatively, state procedures utilizing the bankruptcy decree could be simplified and strengthened.

A simple proposal to improve the bankrupt's understanding of the decree, a job in which many attorneys are often remiss, is to have a notice handed to the bankrupt, with an explanation by the Referee of the nature of the decree and a warning to consult a lawyer should he receive summons on *any* debt, even those discharged in bankruptcy.⁶⁴ The hope is that the bankrupt who receives a summons will then consult these directions and turn the summons over to his lawyer. As previously indicated, the bankrupt will often win a *contested* suit in

⁶⁰ Cal. Code of Civil Procedure, § 675.b; Minn. Stat. Ann. § 548.18 (1947); N.D. Century Code, § 28-20-30 (1960).

⁶¹ Wisc. Stat. Ann. § 270.91 (1958).

⁶² Cal. Code of Civil Procedure, § 473.

⁶³ See William London, "Confessions of Judgment and the Poor," student workshop paper presented at the Conference on Consumer Credit and The Poor, University of Chicago Law School, Nov., 1965.

⁶⁴ A possible notice might read:

In the event you receive a summons or other notice concerning any debt related to this bankruptcy proceeding, immediately see a Lawyer. If you fail to do this, you may find that you will be held unnecessarily liable for some of the debts listed in your bankruptcy discharge. Remember, see a Lawyer in all matters relating in any way to this discharge.