

though the creditor may have weighed other factors in addition to the debtor's statement of his liabilities. The suggestions that "false pretenses" be eliminated as a ground for establishing debt non-dischargeability seems to go too far, because it would encourage fraud.

A corollary to tightening the reliance requirement might be to require all lenders and creditors in a specific vicinity to make use of the facilities of a lender's exchange or have a state lender's exchange set up.⁶⁵ A recording type statute would put creditors on constructive notice of their customers' financial obligations. In this way, creditors could not say that they relied on any statement made by the borrower omitting debts that had been recorded, thus allowing the discharge of these debts in bankruptcy. This system might be only partially effective, for it could not easily be made applicable to every single businessman who extended credit. The administrative burden involved in requiring all merchants to use the system might well make it impractical. This proposal would, however, go a long way toward alleviating the problem, because many post-discharge actions based on "false pretenses" involve small loan company loans which the debtor has outstanding; many of these loans are not presently listed with the existing Lenders' Exchange.

CONCLUSION

This paper has attempted to survey bankruptcy law and the poor in hopes of making bankruptcy a more effective remedy—both by expanding existing law and proposing new law. We have not examined the effect these proposals will have on credit. We make no judgment about the availability of credit. In addition, we have made no study to determine the magnitude of the problems considered. These considerations have been left for others to explore.

A few other caveats are also in order. Voluntary bankruptcy is anything but a panacea for correcting creditor abuses. Although the bankruptcy proceeding could have some utility in raising questions of unconscionability and elimination of debts, bankruptcy is a remedy of last resort. Indeed, creditor abuses should be corrected *before* they are perpetrated. Furthermore affirmative actions short of bankruptcy should also be recommended to the debtor. A prospective bankrupt should be told the possible hazards as well as the benefits of bankruptcy: 1) for various reasons, he will have to reaffirm some debts e.g., to prevent suit against his cosigner or to retain possession of the security; 2) credit in the future may cost him more and will probably be advanced by only the least scrupulous creditors; 3) he will be vulnerable to the creditors for six years, the period he must wait before he can again declare bankruptcy.

In Biblical times, all Jews were relieved of their debts every seven years. The Bankruptcy Act offers a prospect similar to such "Jubilee Years" for those debtors who today are victimized and need relief. With constant diligence on the part of those concerned with the problems of the poor, the Bankruptcy Act may prove an even more effective remedy in the future.

[Journal of the National Conference of Referees in Bankruptcy, October 1966]

REFEREE CLIVE BARE EXCISES USURY FROM SMALL LOAN COMPANY
CLAIM IN CHAPTER XIII PROCEEDING

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF TENNESSEE, NORTHERN DIVISION

In Proceedings under Chapter XIII, No. 23,372

IN THE MATTER OF WILLIAM SYLVESTER BRANCH, DEBTOR

(See p. 952 for full text.)

⁶⁵ In Chicago, the Lender's Exchange does exist to facilitate the flow of credit information among the various small loan companies and thus to provide an independent method of ascertaining a person's indebtedness. However, many loan companies do not belong to this group—especially those of the schlock variety—so that the possible value of the Exchange is presently greatly diminished.