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Bankruptcy--New Approach to Dischargeability

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worker can rent. However, the bankrupt does need a job. The Court probably will not extend the doctrine very far, but will instead look to Congressional action in the area.

Glenn D. Brumfield

Bankruptcy—New Approach To Dischargeability

On October 19, 1970, Congress enacted Public Law 91-467[1] which radically altered the existing practice concerning bankruptcy discharges.[2] In considering the full impact of this new law, it will be useful to consider some of the abuses it was meant to correct.

I. Introduction

Underlying the operation of bankruptcy discharge is the basic concept that in return for surrendering his non-exempt assets for the benefit of his creditors, the debtor will be discharged from all his provable debts, except for those debts which might be expressly excepted by statute from the operation of that discharge.[3] It can then generally be said that the bankruptcy law does equity both to the creditor, because he can more easily discover and recover the debtor's assets,[4] and to the debtor, because it is "in the interest of a sound public policy not to keep the debtor forever in bondage to his debts, but to restore his energies to the business community."[5]

Conceding that the policy of the bankruptcy law is to treat both the creditor and the debtor fairly, two major sources of abuse have existed in the past which allow the creditor to circumvent the discharge policy. These were: (1) once a bankruptcy court had granted a discharge, the actual effect of this on any individual creditor's claim would be determined in nonbankruptcy courts; and (2) even if the debtor could have pleaded his discharge in the non-

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[1] 84 Stat. 990 (*U.S. Code Cong.* & Ad. News 4536 (1970)).

[2] Although enacted on Oct. 19, 1970 the new law will affect all cases filed on and after Dec. 19, 1970. 84 Stat. 990 (*U.S. Code Cong* & *Ad. News* 4536, 4540 (1970)).

[3] *In re* Anderson 1 F. Cas. 831 (No. 351) (E.D. 1974). *See generally* Beneficial Fin. Co. v. Collins, 150 W. Va. 655, 149 S.E.2d 221 (1966); Ruhl-Koblegard Co. v. Gillespie, 61 W. Va. 584, 56 S.E. 898 (1907).

[4] 7 H. REMINGTON, A TREATISE ON THE BANKRUPTCY OF THE UNITED STATES § 2993 (6th. ed. 1955).

[5] *Id.* The impracticality of such a bondage can be seen if it is remembered that many bankruptcies are the product of sincere, but inopportune, business decisions, rather than fraudulent manipulations.

bankruptcy court, the exceptions which the creditor could invoke to except his claim from that discharge were susceptible to abuse, especially in regard to the false financial statement.

II. Pleading Discharge in the Nonbankruptcy Court

Prior to the new law, a debtor was faced with a dilemma—a dichotomy in regard to the operation of a bankruptcy discharge. First, although the bankruptcy court was required to give a discharge unless a statutory ground of opposition had been proven,[6] certain debts were expressly exempted from the operation of that discharge.[7] Pursuant to judicial interpretation the practice arose for the bankruptcy court to grant the discharge, but the issue of whether any particular creditor's claim was excepted from the operation of that discharge was to be determined in the nonbankruptcy court in which the creditor attempted to enforce the debt.[8] As one court stated, the rationale for this dichotomy was that "the bankruptcy court is interested primarily in the speedy

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[6] 11 U.S.C. § 32 (c) (1964) provides that the court "shall grant the discharge . . ." unless certain grounds of opposition, therein listed, have been proven. This provision had generally been interpreted to mean that the bankrupt has a *right* to discharge, unless he has committed one of the offenses listed within that section. Johnson v. Bockman, 282 F.2d 544 (10th Cir. 1960); Becker v. Shields, 237 F.2d 622 (8th Cir. 1956); *In re* Walsh, 256 F.2d 653 (7th Cir. 1919). Even though some jurisdictions have held that discharge is a matter of privilege rather than right, it seems safe to assert that essentially the same result is achieved whichever view is taken. Some jurisdictions holding that discharge is only a privilege are as follows. *In re* Tabibian. 289 F.2d 793 (2d Cir. 1961); Williamson v. Williams, 137 F.2d 298 (4th Cir. 1943); Dixwell v. Scott and Co., 115 F.2d 873 (1st Cir. 1940). *See generally* Comment *Welfare Recipient's Right to Pre-Termination Hearing,* 73 W. Va. L. REV. 80 (1970-71).

[7] 11 U.S.C. § 35 (a) (Supp. V. 1970) lists those debts which are excepted from discharge. These essentially are: (1) Certain taxes; (2) obtaining money or property, including credit, through false pretenses or false representations; (3) wilful and malicious injuries to the person or property of another; (4) alimony, child support, seduction, breach of promise to marry accompanied by seduction, and criminal conversation; (5) debts not duly scheduled in time for proof; (6) debts created by the debtor's fraud or embezzlement while acting as an officer or fiduciary; (7) wages earned three months prior to the filing of bankruptcy; and (8) moneys due to secure faithful performance.

[8] Since the Bankruptcy Act of 1898 did not specify the effect of a discharge, the lower federal courts' practice was to refer the dischargeability issue to the nonbankruptcy courts. This was officially approved in *Local Loan Co. v. Hunt,* 292 U.S. 234 (1934). *See* Countryman, *The New Discharability Law,* 45 REF. J. (1971).

In the fourth circuit, as well as most other jurisdictions, this practice has been strictly adhered to. "Not only does the bankruptcy court not have 'exclusive jurisdiction' to hear the case of excepting a claim . . . but there is a policy, absent unusual circumstances, of refusing to exercise jurisdiction, i.e., of referring to the state court the effect of the discharge." *In re* Bell, 212 F. Supp. 300, 302 (E.D. Va. 1962); *See* Gathany v. Bishopp, 177 F.2d 567 4th Cir. 1949); *In re* Overkamp, 200 F. Supp. 782 (E. D. Va. 1962). *See also* First Nat'l Bank v. Cootes, 74 W. Va. 112, 81 S.E. 844 (1914).

settlement of the bankrupt's estate, and we do not believe that the bankruptcy court should be required to stop and hear testimony on whether various creditors have debts which are not dischargeable."[9] Another argument advanced in favor of this dichotomy was that the submission of questions of fact to a summary procedure would deprive the parties of the right to a trial by jury.[10] Therefore, even though the debtor may have been granted a discharge in the bankruptcy court, he was still confronted by the possibility that a creditor would sue him in a state court, in another proceeding, claiming that his particular debt was excepted from the operation of the discharge.

The spectre of prolonged litigation, involving two or more separate actions in two or more different courts, was not the only problem facing the bankrupt. Unless the debtor affirmatively asserted his discharge as a defense in the nonbankruptcy court, he was deemed to have waived that defense.[11] In fact, both the West Virginia and the Federal Rules of Civil Procedure expressly require that this defense be affirmatively asserted, and unless this is done, the bankrupt will be subject to a default judgment.[12]

Because the bankrupt would be subject to a judgment in the state courts unless he pleaded his discharge, creditors found the situation easy to abuse. As seen in the legislative history to the Dischargeability Bill, these abuses were centered around the fact that many of the creditors brought suit in the state court after the discharge "in the hope that the debtor will not appear in that action, relying to his [the debtor's] detriment upon the discharge."[13] And all to frequently the debtor did not appear in the

[9] Watts v. Ellinthorpe, 135 F.2d 1, 3 (1st Cir. 1943).

[10] U.S. CODE CONG. & AD. NEWS, 4854, 4856 (1970).

[11] Gathany v. Bishopp, 177, F.2d 567 (4th Cir. 1949); State v. Sims, 139 W. VA. 92, 79 S.E.2d 277 (1953); First Nat'l Bank v. Cootes, 74 W.VA. 112, 81 S.E. 844 (1914). Thus, if the bankrupt neglected to go into the state court and plead his dischargeability he was subject to default judgment. This was true even though the dischargeability issue and the discharge issue were pending simultaneously. For example, in *Cootes* the creditor had brought an action in the state court to collect a debt owed by the debtor, and while that action was pending the debtor was discharged in bankruptcy. The court stated that "[t]he state court does not lose jurisdiction of the person of the defendant because he has been discharged in bankruptcy, pending the action or suit in the state court, and unless he pleads his discharge a judgment may be rendered against him. By his failure to plead it he is deemed to have waived the defense." First Nat'l Bank v. Cootes, 74 W. Va. 112, 113, 81 S.E. 844, 845 (1914).

[12] Rule 8(c) of both the Federal and the West Virginia Rules of Civil Procedure provides that "in pleading to a preceding pleading, a party shall set forth affirmatively . . . discharge in bankruptcy. . . ." FED. R. CIV. P. 8(c); W. VA. R. CIV. P. 8(c).

[13] U.S. CODE CONG. & AD NEWS 4954 (1970).

postbankrupty proceeding, not so much because of lack of concern, but because he (1) had the misguided notion that the discharge operated automatically, so that there was no necessity to appear in the state court, (2) was unable to retain an attorney because of a lack of funds, or (3) had had "sewer" service of process.[14] Another consideration was that even if the debtor did manage to scrape the funds together to retain an attorney for the postbankruptcy hearing, he was in no position to suffer the costs of appeal, which the creditor could easily do,[15] nor could he afford the appeal bond required by justice of the peace courts.

While prior to the new law the debtor could go into the bankruptcy court and obtain an injunction against the creditor's bringing action in the state courts, that remedy was only available if he could prove that "unusual circumstances" existed.[16] However, the debtor, upon pursuing this alternative, encountered at least two major obstacles. First, the federal courts were not inclined to find "unusual circumstances." Secondly, some jurisdictions, including the fourth circuit, had held that the doctrine of *res judicata* barred the debtor from gaining an injunction against the creditor's postbankruptcy judgment if the debtor litigated or could have litigated the issue of dischargeability in that proceeding but failed to do so.[17] All too often this procedure was turned to the best interests of the creditor. This was accomplished by the creditor asking the bankruptcy court to rule on the dischargeability of his claim prior to the granting of the discharge, because "unusual circumstances" were present.[18] This essentially accomplished a two-fold purpose of barring the state courts from ever hearing the

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[14] *Id.*

[15] *Id.*

[16] This exception was first articulated in *Local Loan Co. vs. Hunt*, 292 U.S. 234 (1934). This same doctrine has been invoked in the fourth circuit, although it may be seen from the language of the following quotation that such an injunction was difficult, at best, to obtain. "Only in exceptional circumstances, where irreparable injury would otherwise result, will the injunctive power be used to restrain a creditor from attempting to collect a debt discharged in bankruptcy." Gathany v. Bishopp, 177 F.2d 567, 568 (4th Cir. 1949).

[17] Helms v. Holmes, 129 F.2d 263 (4th Cir. 1942). The doctrine of *res judicata* could also prove troublesome in an action to revive a prebankruptcy judgment. Gathany v. Bishopp, 177 F.2d 567 (4th Cir. 1949).

[18] In *Hamby v. St. Paul Mercury Indem. Co.*, a real estate broker had misappropriated money given him by the plaintiff to pay off certain liens. The plaintiff went to the state court and obtained a judgment for the debt, the trial court judge finding that the defendant had in fact misappropriated the money. Upon the defendant's filing for bankruptcy, the referee excepted that debt from the discharge, and the circuit court upheld this "split discharge" concluding that "Congress could not reasonably have intended that debts involving flagrant dishonesty of this sort should be granted a discharge." Hamby v. St. Paul Mercury Indem. Co., 217 F.2d 78, 81 (4th Cir. 1954).

dischargeability issue, if the creditor were shopping for a forum, and preventing the debtor from having a jury trial where the exception being invoked by the creditor involved the proving of fraud. This practice was known as getting a "split discharge."[19]

III. Litigation of the Dischargeability Issue

Even if the bankrupt had properly pleaded his discharge in the nonbankruptcy court proceeding, the exceptions which the creditor could invoke to exempt his claim from discharge[20] were susceptible to abuse. The most frequently invoked ground for exception was alledging that money or credit had been obtained by false representations,[21] which allowed a creditor who had relied on a materially false financial statement to claim that his debt was excepted from the discharge. Due to the fact that the Bankruptcy Act[22] uses almost identical language as a ground for denying discharge altogether in the case of business bankrupts,[23] the creditor had the alternative in that situation of either objecting to the discharge in the bankruptcy court or to withhold his objection and thereafter claim that his debt was excepted in a postbankruptcy proceeding.[24]

In order for the creditor to have his claim excepted from the discharge on the basis of false representations, he had to show:

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[19] *See* Countryman, *The New Dischargeability Law,* 45 REF. J. 1, 4-7 (1971), for more information concerning this practice.

[20] 11 U.S.C. § 35 (a) (Supp. V, 1970).

[21] 11 U.S.C. § 35 (a) (Supp. V, 1970) provided that a debt would not be discharged if it was a liability;

> for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive. . . .

[22] 11 U.S.C. § 32 (c) (3) (Supp. V, 1970). That provision says that no discharge will be granted if the debtor

> while engaged in business as a sole proprietor, partnership, or as an executive of a corporation, obtained for such business money or property on credit or as an extension or renewal of credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition or the financial condition of such partnership or corporation . . . .

[23] In 1960 Congress amended § 14 (c) (3) of the Bankruptcy Act to limit the use of false financial statements as a bar to total discharge to bankrupts who had used that statement while engaged in business. 11 U.S.C. § 32 (c) (3) (1964), *as amended,* 11 N.S.C. § 32 (c) (3) (Supp. v. 1970). The reason for this amendment was that a complete denial of discharge for a non business bankrupt was too severe a penalty, especially since many of the false representations are merely the result of carelessness. H.R. 11543, 84th Cong. 2d Sess., (1956); H.R. 106, 85th Cong., 1st Sess. (1957).

[24] Family Small Loan Co. v. Mason, 67 F.2d 207 (4th. Cir. 1933).

"(1) That the defendants had made false representation; (2) that these representations were relied upon in making the loan; and (3) that these representations were made with the intent to deceive."[25] Although the burden of proving these elements was upon the creditor,[26] he was not in as difficult a position as it might appear. Proof of the first element was only a question of evidence, but, if abused, both innocent and fraudulent debtors were made to suffer. The trap for the innocent was that all too frequently a debtor made a false representation simply through his own carelessness or through his ignorance of the exact answers required by the credit or loan application form.[27] The second element also lent itself to abuse. "There was a growing body of cases in a few jurisdictions finding that small loan companies, far from relying on false financial statements, had deliberately procured such statements apparently as insurance against the borrower's later bankruptcy."[28] The third element has been made easier to prove, at least in West Virginia, by the state supreme court's holding that "if a false representation of his financial condition is knowingly made by a borrower to induce the lender to make a loan, intent to deceive must be presumed."[29]

Another abuse, practiced by the more ingenius creditors, was to have the debtor reaffirm his obligation after discharge by threatening to bring an action of fraud against him.[30] This reaffirmation was allowable, because "a discharge in bankruptcy does not extinguish the debt and the debtor may . . . revive it by a new promise [to pay]."[31]

IV. The New Law

Perhaps the most significant modification made by the new law is that courts of bankruptcy, and specifically referees, are given the additional jurisdiction necessary to determine the dischargeability of debts.[32] This jurisdiction seems to include (1)

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[25] Beneficial Fin. Co. v. Collins, 150 W. Va. 655, 663, 149 S.E.2d 221, 226 (1966).

[26] *Id.*

[27] U.S. CODE CONG. & AD. NEWS 4854 (1970).

[28] Countryman, *The New Dischargeability Law*, 45 REF. J. 1, 11 (1971).

[29] Beneficial Fin. Co. v. Collins, 150 W. Va. 655, 663, 149 S.E.2d 211, 228 (1966).

[30] *Hearings on S. 578, S. 1316, H.R. 2517, H.R., 2518 and H.R. 2519 Before a Subcomm. of the Senate Judiciary Comm.*, 90th Cong., 1*st Sess.* 24-26, 54-56, 58-60, 64-70, 72-80 at 77-78 (1967).

[31] State *ex rel.* Bank of Ripley v. Thompson, 149 W. Va. 183, 188, 139 S.E.2d 267, 271 (1964).

[32] 11 U.S.C. § 11 (a) (12) (1964) has been amended b ythe new law to give referees the power to "determine the dischargeability of debts, and render

exclusive jurisdiction in regard to the dischargeability of what were the most frequently used exceptions to discharge, and (2) concurrent jurisdiction with nonbankruptcy courts in regard to the remainder of the exceptions which may be invoked.

The bankruptcy court has been given exclusive jurisdiction to hear the dischargeability issues when the creditor's asserted grounds for exception rest on (1) false pretenses, false representations, false financial statements, and wilful and malicious conversion of property, (2) fraud by an officer or fiduciary, or (3) liabilities for wilful and malicious injuries to person or property.[33] These were considered to the most frequently abused exceptions to discharge.[34]

Although the new law nowhere expressly confers exclusive jurisdiction upon the bankruptcy court, it achieves that effect. First, if the creditor contends that his debt should not be discharged because of one of the exceptions stated above, he "must file an application for a determination of dischargeability [in the bankruptcy court] . . . and unless an application is timely filed, the debt shall be discharged."[35] The new law also provides that the bankruptcy court has the power to enjoin the parties from bringing or continuing action to determine the dischargeability of any debt which comes under these exceptions[36] prior to or pending the

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judgements thereon." 84 Stat. 990 (U.S. CODE CONG. & AD. NEWS 4536 (1970)).

In conjunction with this, 11 U.S.C. § 32(b) (1964) has been amended to provide that the bankruptcy court has the power to fix a time for filing objections to the discharge and a time for filing applications to determine the dischargeability of any particular debt. The times for filing are not to be less than 30 days nor more than 90 days after the date set for the first creditors' meeting, although the 90 day period may be extended at the discretion of the court. The filing dates need not necessarily be the same for both the filing of objections to the discharge and the filing of dischargeability issues. *Id.*

33 The new law rearranges, to a large extent, § 17(a) of the Bankruptcy Act, 11 U.S.C. § 35(a) (Supp. V, 1970).

34 The abuses the false financial statement has been subjected to have already been discussed in this paper. The provision for wilful and malicious conversion had been abused due to the fact that the term "property" encompasses collateral, for example, a car. Thus, stories persist among bankrupty practitioners of the unreported cases finding the debtor guilty of wilful and malcoius conversion where he wears out the collateral through authorized use. . . ." Countryman, *The New Dischargeability Law,* 45 REF. J. 1, 14 (1971).

In regard to the exception for fraud by an officer or fiduciary, the Supreme Court has interpreted "fiduciary" to mean the relationship created by technical or express trusts. Tindle v. Birkett, 205 U.S. 182 (1907). However, "fiduciary" has not been so consistently applied by other courts, and at times there is much argument as to whether a simple debtor-creditor relationship or a fiduciary relationship exists. *See* Hamby v. St. Paul Mercury Indem. Co., 217 F.2d 78 (4th Cir. 1954).

35 New § 17(c)(2); 84 Stat. 990 (U.S. CODE CONG. & AD. NEWS 4536, 4539 (1970)). [hereinafter cited as New Law]

36 *Supra,* n.34.

bankruptcy court's consideration of the discharge.[37] Finally, after the discharge has been granted, the creditor is barred from bringing suit elsewhere, because the new law provides that the order of discharge "shall declare that any judgment theretofore or thereafter obtained in any other court is null and void as a determination of the personal liability of the bankrupt. . . ."[38] Furthermore, the order of discharge shall "enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt."[39] Therefore, although not expressly conferred, it can be seen that the bankruptcy court does have exclusive jurisdiction over these three exceptions, because the creditor cannot have the dischargeability issue decided elsewhere pending the bankruptcy proceedings, and he is enjoined from doing so afterwards.

In regard to the other exceptions listed in section 17 (a) of the Bankruptcy Act,[40] the bankruptcy court has been given concurrent jurisdiction to determine dischargeability along with nonbankruptcy courts. New section 17 (c) (1) provides that "the bankrupt or any creditor may file an application with the court for the determination of [the dischargeability of] any debt."[41] Since this is an optional provision, if neither party files an application, the debt may be determined in a nonbankruptcy court.[42]

There are two immediate problems which arise under the expanded jurisdiction conferred upon the bankruptcy court. First, how is the bankruptcy court going to effectuate its determinations? New section 17 (c) (3) provides that "the court shall determine the dischargeability of any debt from which an application. . . has been filed, shall make such orders as are necessary to protect or effectuate a determination that any debt is dischargeable and, if any debt is determined to be non-dischargeable, shall determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof."[43]

The second problem arises from the fact that the new law does not "affect the right of any party, upon timely demand, to a trial by jury, where such right exists."[44] The obvious question is:

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37 New Law § 17 (c) (4), *amending* U.S.C. § 35 (1964).
38 New Law § 17 (f), *amending* 11 U.S.C. § 32 (1964).
39 *Id.*
40 11 U.S.C. § 35 (1964).
41 New Law § 17 (c) (1), *amending* 11 U.S.C. § 35 (1964).
42 However, note that this application is not optional but required if the exceptions being invoked are those given in note 36 *supra*.
43 New Law § 17 (c) (3), *amending* 11 U.S.C. § 35 (1964).
44 New Law § 17 (c) (5), *amending* 11 U.S.C. § 35 (1964).

when does a right to trial by jury exist? Perhaps no such right exists *per se* in determining the issue of dischargeability,[45] but it would seem that this right would arise when the factual issues raised in dischargeability are jury issues as provided for by statute or by constitution—that is, when the amount or liability is in question. Collateral to the issue of determining when the right to a trial by jury exists, is the issue of determining who will conduct the jury trial, a judge or a referee. This issue was considered by Congress in its 1969 hearings.[46] Probably any jury trial must be conducted by the judge, rather than the referee.

Although the conferring of additional jurisdiction upon the bankruptcy courts was the primary change made by the new law, there were other changes to effectuate the discharge order. The form of the order of discharge has been changed by new section 14 (f).[47] New section 14 (h) requires the bankruptcy court to give notice to creditors and other interested parties of those debts which were determined to be nondischargeable, which applications were still pending, and the contents of the order of discharge. That notice has to be given within 45 days after the order of discharge becomes final.[48]

New section 14 (g) provides that the final order of discharge may be registered in any federal district court, in order to enable the debtor to have it enforced there.[49]

Another change made by the new law is revocation of discharge. Prior to the new law, once the discharge was granted the bankruptcy court had little control over the bankrupt unless the discharge had been obtained by fraud. New section 15 authorizes revocation of discharge for refusal to obey an order of, or to answer a material question approved by the court.[50]

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[45] Countryman, *The New Dischargeability Law*, 45 REF. J. 1 (1971).
[46] *Hearings on H.R.* 6665 *and H.R.* 12250 *Before a Subcomm. of the House Judiciary Comm.*, 91st Cong., 1st Sess. 69 (1969).
[47] New Law § 14 (f), *amending* 11 U.S.C. § 32 (1964). The order of discharge is required to;

> (1) declare that any judgment theretofore or thereafter obtained in any other court is null and void as a determination of the personal liability of the bankrupt with respect to any of the following: (a) debts not excepted from the discharge under subdivision a of section 17 of this Act; (b) debts discharged under paragraph (2) of subdivision c of section 17 of this Act; and (c) debts determined to be discharged under paragraph (3) of subdivision c of section 17 of this Act; . . . .

[48] New Law § 14 (h), *amending* 11 U.S.C. § 32 (1964).
[49] New Law § 14 (g), *amending* 11 U.S.C. § 32 1964).
[50] New Law § 15, *formerly* 11 U.S.C. § 33 (1964).

V. Conclusions

The new law will probably cure many of the abuses practiced by unscrupulous creditors. Regarding the dischargeability of debts, the most notable change is that the creditor will not be able to use the ignorance or poverty of the debtor to obtain judgments in the state courts. However, due to the fact that many details are left out of the new law, especially with regard to jury trial and collateral issues which may be considered in determining dischargeability,[51] a good deal of case testing and practical application will be needed before the precise contours of the law can be discerned.

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[51] Consider for example the issue of whether the bankruptcy count will have jurisdiction to determine tax issues as they come up in dischargeability.

Constitutional Law—Disclosure of Journalist's Confidential News Sources

Earl Caldwell, a black newspaper reporter for the *New York Times,* was subpoenaed to testify before a federal grand jury concerning his knowledge of activities of the Black Panther Party. The information sought by the government was secured by Caldwell through interviews with various party officers and spokesmen. Caldwell and the *Times* contended the first amendment precluded disclosure, and that compelled appearance before the grand jury would have a chilling effect on first amendment freedoms. Accordingly, they asked that the subpoena be quashed; or in the alternative, be limited to protect Caldwell's confidential news sources. After making a preliminary standing ruling,[1] a California District Court held that Caldwell, as everyone else, had a public duty to appear before a grand jury when subpoenaed; but that under the circumstances he was entitled to a qualified privilege of confiden-

[1] The district court initially referred to the now familar "personal stake in the outcome" standing criteria of *Baker v. Carr,* 369 U.S. 186 (1962). Yet the court upheld the standing of the *New York Times* to join with Caldwell on the basis of *Ass'n of Data Processing Serv. Organizations v. Camp,* 397 U.S. 150 (1970). In *Camp,* the Court held the personal "stake" need not be a strict legal interest, such as a property interest. Accordingly, for the purpose of standing, it was held sufficient for the party seeking relief to show the challenged action has and will cause him "injury in fact, economic or otherwise." *Id.* at 152.