

Effect of False Financial Statements on Debts Discharged in Bankruptcy -- Section 17a(2) of the Bankruptcy Act

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entitled "Is Bail a Rich Man's Privilege?"⁷⁵ there appears a passage apposite to this problem:

"Judges cannot be asked to release a prisoner on his own recognizance in all cases where the prisoner has no means to procure bail. If it were possible to provide for bail in forma pauperis, Congress only could so provide."⁷⁶

It is believed that the best interests of society would be served by giving more credence to the historical bases of bail, more individual treatment of bail applications, and by disallowing freedom to those persons who are unable to make a proper showing of sufficient non-proprietary deterrents to flight, or to provide the proper security necessary to furnish the needed "tie to the jurisdiction."

James A. George

Effect of False Financial Statements on Debts Discharged in Bankruptcy— Section 17a(2) of the Bankruptcy Act

The policy of the Bankruptcy Act from its inception through the latest amendments by the Eighty-Sixth Congress has been to permit the financial rehabilitation of a debtor so as to allow him to resume a producing place in the economy.¹ To this end under certain conditions a debtor is allowed to petition for a discharge from his obligations.² However, under Section 14c of the Bankruptcy Act, creditors of the bankrupt are allowed to file objections to the discharge, one ground for objection being the fact that the bankrupt has obtained money or property on credit or as an extension or renewal of credit by issuing a false financial statement in writing.³ Further, even after the bank-

75. 7 F.R.D. 309 (1945).

76. *Id.* at 312.

1. 6 AM. JUR. *Bankruptcy* § 676 (rev. ed. 1950).

To this end "exceptions are confined to those plainly intended, and the exceptions are to be strictly construed in favor of the bankrupt." 8 REMINGTON, *BANKRUPTCY* 170 (1955). *Davison-Paxon Co. v. Caldwell*, 115 F.2d 189 (5th Cir. 1940), *cert. denied*, 313 U.S. 564 (1941). *Contra*, *Hancock v. Blumentritt*, 289 S.W. 177 (Tex. Civ. App. 1925).

2. Bankruptcy Act § 14a, 11 U.S.C. § 32a (1958).

3. Bankruptcy Act § 14c, 74 STAT. 408 (1960), 11 U.S.C.A. § 32c (Supp. 1960). The major change effected by this amendment is to allow a false financial statement to be a bar to the discharge of only a *businessman*. The legislative his-

rpt has obtained a discharge, a creditor who has advanced money or property on the basis of such a statement may pursue the bankrupt in state court, since among other items the liability for obtaining money or property or obtaining an extension or renewal of credit by false representations is excepted from discharge by Section 17a(2) of the Bankruptcy Act.⁴ This state court remedy, a portion of which is the subject of this Comment, is available to the creditor even though he objected to the discharge of the debtor in bankruptcy court and even if he received a distribution from the debtor's estate.⁵

Prior to amendment in 1960 Section 17a of the Bankruptcy Act read in part:

tory of the amendment indicates that the purpose was mainly to curb so-called abuses by small loan companies. See S. REP. No. 1688, 86th Cong., 2d Sess. 1 (1960); H. REP. No. 1111, 86th Cong., 1st Sess. 1 (1959); *Hearings Before the Subcommittee on Bankruptcy of the House Committee on the Judiciary*, 85th Cong., 2d Sess. (1958); Friebolin, *Re-Examination of Section 14c(3) as a Ground for Objection to Discharge*, 39 MINN. L. REV. 673 (1955).

4. Bankruptcy Act § 17a(2), 74 STAT. 408, 11 U.S.C.A. § 35a(2) (Supp. 1960). The operation of Section 17 is seen by the following quotation from Bankruptcy Form No. 45, the order of discharge: "It is ordered that the said be, and he hereby is, discharged from all debts and claims which are made provable by said Act against his estate, *except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy.*" (Emphasis added.)

For material dealing with false representations other than false financial statements, see Annot., 17 A.L.R.2d 1208 (1951).

5. Thus, a defense of estoppel or election of remedies is not available. *E.g.*, *Friend v. Talcott*, 228 U.S. 27 (1913) (participation in distribution of bankrupt's assets not bar to subsequent state action); *In re Anthony*, 42 F. Supp. 312 (E.D. Ill. 1941); *Beneficial Finance Co. v. Hill*, 116 So.2d 346 (La. App. 1959); *Physicians & Surgeons Hospital, Inc. v. Savell*, 76 So.2d 75 (La. App. 1954); *Rosen v. Shingleur*, 47 So.2d 141 (La. App. 1950); 8 REMINGTON, BANKRUPTCY § 3323 (1955). *But see* *Personal Finance Co. v. Thomas*, 167 So. 475 (La. App. 1936). In the latter case bankruptcy proceedings were pending when the state action was filed. The court sustained an exception to the jurisdiction on two grounds: (1) out of comity the Louisiana courts will defer to a bankruptcy proceeding pending in federal court, and (2) plaintiff had an option of barring discharge or suing in state court and since he exercised the option of filing his claim in bankruptcy he is estopped from proceeding in state court. The latter holding as to estoppel appears clearly contrary to the general rule. See *Friend v. Talcott*, *supra*. In effect subsequent Louisiana cases have overruled *Thomas* on the estoppel point. In both *Beneficial Finance Co. v. Hill* and *Rosen v. Shingleur*, *supra*, the creditors had participated in the bankruptcy proceedings and shared in the proceeds thereof, but were allowed to sue in state court. Therefore, all that remains of the *Thomas* decision is the comity holding. This would appear to be a valid result, for unless the state proceedings were stayed or dismissed, confusion would result from a concurrent bankruptcy proceeding, for the portion of proceeds received is a credit against the debtor's obligation.

This Comment will not discuss the possibility of a federal court enjoining or staying a concurrent state proceeding, as stems from *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934). See Glenn, *Effect of Discharge in Bankruptcy: Ancillary Jurisdiction of Federal Courts*, 30 VA. L. REV. 531 (1944); Reich, *Injunctive Relief Under the Bankruptcy Act*, 19 BROOKLYN L. REV. 222 (1953); Twinem, *Discharge — What Court Determines — The Effect Thereof*, 21 REF. J. 33 (1946).

"A discharge in bankruptcy shall release a bankrupt from all of his provable debts, . . . except such as . . . (2) are liabilities for obtaining money or property by false pretenses or false representations. . . ."⁶

The amendment retained the foregoing language in subsection two and added immediately thereafter the following:

"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 an intent to deceive. . . ."⁷

The language of the amendment was borrowed verbatim, except for changes in tense, from Section 14c(3) prior to its amendment in 1960.⁸ Thus it would appear that prior judicial constructions of comparable language in Section 14c(3) will be applicable, almost without exception, to the amended Section 17a(2).

From the outset, it should be noted that a wide difference exists between Section 14 and Section 17 with regard to the matter of burden of proof. The Bankruptcy Act sets forth the burden of proof to be sustained if a debtor is to be denied discharge in the bankruptcy proceedings. When the objecting creditor shows a reasonable basis for opposition, the burden of proof shifts to the debtor to prove that the elements barring discharge are not present.⁹ Under Section 17, however, normal rules of proof in the particular state court prevail.¹⁰ The majority rule

6. Bankruptcy Act § 17a, 11 U.S.C. § 35a (1958).

7. 74 STAT. 408 (1960).

8. Bankruptcy Act § 14c, 11 U.S.C. § 32c (1958): "The court shall grant the discharge unless satisfied that the bankrupt has . . . or (3) obtained money or property on credit, or obtained 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. . . ."

9. Bankruptcy Act § 14c, 11 U.S.C. § 32c (1958).

10. *Kreitlein v. Ferget*, 238 U.S. 21 (1915); *Bevis v. Gay*, 212 Ala. 525, 108 So. 555 (1925); *Morris v. Drubin*, 165 Cal. App.2d 467, 332 P.2d 371 (1958); *Huff v. Porter*, 89 Ga. App. 345, 79 S.E.2d 334 (1953); *Lawrence v. Wischnowsky*, 344 Ill. App. 346, 100 N.E.2d 816 (1951); *Bingham v. Kenall*, 4 S.W.2d 681 (Ky. App. 1928); *Equitable Securities Co. v. Schwaner*, 107 So.2d 330 (La. App. 1958); *Seybold Finance Service, Inc. v. Schwaner*, 102 So.2d 317 (La. App. 1958); *Accounts Supervision Co., d/b/a Asco Loan Co. v. Atley*, 89 So.2d 508 (La. App. 1956); *De Latour v. Lala*, 131 So. 211 (La. App. 1930); *Hunter v. Commercial Securities Co.*, 237 Miss. 41, 113 So.2d 127 (1959); *Freedman v. Cooper*, 126 N.J.L. 177, 17 A.2d 609 (1941); *Wasylikiw v. Jendrowski*, 52 N.J. Super. 243, 145 A.2d 351 (1958); *Rosenthal v. Levin*, 21 N.J. Misc. 301, 33 A.2d 883 (1943); *Commonwealth Loan Co. v. Coleman*, 133 N.E.2d 677 (Ohio Mun. Ct. 1955); *Harrison v. Costello*, 47 S.W.2d 871 (Tex. Civ. App. 1932); *Zerega*

is that "the burden of proof is upon the creditor, who claims that his . . . debt is excepted from the operation of the discharge in bankruptcy."¹¹ The debtor when sued in state court presents a prima facie defense by pleading and proving the affirmative defense of discharge in bankruptcy;¹² the discharge is considered proven by the introduction in evidence of a copy of the discharge.¹³ Thereafter, the burden rests upon the plaintiff to prove the exception from discharge.¹⁴ It should be noted that one Louisiana case holds that the creditor satisfies his burden by introducing the false financial statement, the burden shifting to the defendant to overcome the creditor's case.¹⁵ This portion of the case has not been followed in Louisiana,¹⁶ and it is sub-

Distributing Co. v. Gough, 52 Wash.2d 443, 325 P.2d 894 (1958); 8 REMINGTON, BANKRUPTCY § 3315 (1955); Annot., 2 A.L.R. 1672 (1919); Rifkind, *Bankruptcy Law: Non-Dischargeable Debts*, 45 A.B.A.J. 685, 686 (1959); 6 AM. JUR. *Bankruptcy* § 810 (rev. ed. 1950).

11. *De Latour v. Lala*, 131 So. 211, 212 (La. App. 1930). This pronouncement was affirmed by the Louisiana Supreme Court in *CHF Finance Co. v. Lea*, 127 So.2d 534 (La. 1961). *Accord*, cases cited in note 10 *supra*.

Contra, *Morris Finance & Loan, Inc. v. Dickerson*, 57 So.2d 786 (La. App. 1952) (see note 15 *infra* and corresponding text). Also *contra* is Comment, 32 IND. L. REV. 151, 159, 31 REF. J. 104, 107 (1957). The author states: "The presumption is that the bankrupt is discharged from all of his debts. . . . However, the plaintiff may enter in proof the financial statement given to him by the bankrupt. This coupled with the list of indebtedness filed with the bankruptcy court forms a prima facie case of fraud. When a prima facie case is established from the facts the intent to deceive is presumed and the burden of removing the presumption is on the bankrupt." The author correctly cites the *Morris Finance* case as authority, but apparently erroneously cites several other cases as authority: *Watts v. Ward*, 7 Mass. App. 303 (1942) (the court incorrectly relied on Section 14 cases); *Personal Finance Co. v. Nichols*, 71 R.I. 213, 43 A.2d 315 (1945) (no mention of burden of proof); *Underwood v. Ajax Rubber Co.*, 296 S.W. 964 (Tex. Civ. App. 1927) (no mention of burden of proof). Further, the author cited a Section 14 burden of proof case as authority for this burden of proof under Section 17: *In re Percumutter*, 256 Fed. 862 (D.N.J. 1919). It is not applicable.

12. See note 11 *supra*. See also LA. CODE OF CIVIL PROCEDURE art. 1005 (1960).

13. See note 11 *supra* and 8 REMINGTON, BANKRUPTCY § 3242 (6th ed. 1955).

14. See note 11 *supra*.

15. *Morris Finance & Loan, Inc. v. Dickerson*, 57 So.2d 786, 788 (La. App. 1952). The court said: "Upon introduction of such evidence [a signed financial statement], the burden of proof shifted to defendant to prove otherwise. . . . The defendant has not sufficiently sustained his burden of offsetting the proof of petitioner, and, thus, the judgment of the lower court will be reversed." This was a decision without dissent by the Court of Appeal of the First Circuit. Its holding on burden of proof has not been used as the basis of decision in other cases. Subsequent to that case the First Circuit Court of Appeal decided *Accounts Supervision Co., d/b/a Asco Loan Co. v. Atley*, 89 So.2d 508, 509 (La. App. 1956), in which case it was said: "[W]e do not find under the facts of this case that plaintiff Asco Loan has borne its burden of proving that the false financial statement was executed by defendant Atley with intent to misrepresent or defraud." *Id.* at 511. See note 17 *infra*.

16. The only case mentioning *Morris Finance* on the burden point is *Accounts Supervision Co., d/b/a Asco Loan Co. v. Atley*, 89 So.2d 508 (La. App. 1956). Since the case was resolved upon another point, this particular burden of proof was not considered.

mitted that it is not in accord with the Louisiana jurisprudence, or that of other states. The authority cited by the court indicates that the proof requirements under Section 14 were confused with the Section 17 requirements, that is, such rules as would ordinarily obtain in state court.¹⁷

Another problem frequently raised by Section 17 has been the nature of the creditor's action in state court. On occasion it has been loosely said that the action is *ex delicto*.¹⁸ However, it is generally agreed that a discharge in bankruptcy "does not extinguish . . . or cancel any debt, but merely gives the bankrupt a defense against enforcement which he is entitled to avail himself of if he see fit."¹⁹ Section 17a(2) then apparently means that a *debt* created by fraud is not discharged and allows the creditor to sue and recover *on the contract* if fraud in its inception is proven.²⁰ A recent Louisiana case raised the question of whether attorney's fees and interest stipulated in the contract of loan could be recovered by the creditor. The lower court held that the action was in tort, precluding the contractual stipulations, and that attorney's fees and interest stipulated in the contract were not money or property obtained by the debtor-defendant. The court of appeal found it unnecessary to resolve this question, deciding for the defendant on other grounds.²¹ While other cases discussing this point as related to bankruptcy have not been discovered, it should be noted that Louisiana decisions, including one by the Supreme Court, have allowed the recovery of interest and attorney's fees without discussion.²²

17. The court cited as authority *Third Nat. Bank v. Schatten*, 81 F.2d 538 (6th Cir. 1936). This case is inapplicable since it was an appeal by the creditor from the granting of a discharge by a referee in bankruptcy, a situation governed by the burden of proof specified in Section 14 of the Bankruptcy Act.

18. Comment, 32 *IND. L. REV.* 151, 31 *REF. J.* 104 (1957); 6 *AM. JUR. BANKRUPTCY* § 780 (rev. ed. 1950); Annot., 133 *A.L.R.* 440, 466 (1941).

19. See 8 *REMINGTON, BANKRUPTCY* 47 (6th ed. 1955); 1 *COLLIER, BANKRUPTCY* 1654 (14th ed. 1956).

20. *Zimmerman v. Blount*, 238 *Fed.* 740, 745 (5th cir. 1917); *Mathewson v. Naylor*, 64 *P.2d* 979 (Cal. App. 1937); *Gregory v. Williams*, 106 *Kan.* 819, 189 *Pac.* 932 (1920); *American Surety Co. v. McKiernan*, 304 *Mich.* 322, 8 *N.W.2d* 82 (1943); *Gehlen v. Patterson*, 83 *N.H.* 328, 141 *Atl.* 914 (1928); *Stewart v. Emerson*, 52 *N. H.* 301, 133 *A.L.R.* 466 (1872); *Argall v. Jacobs*, 97 *N.Y.* 110 (1881); *Personal Finance Co. v. Robinson*, 27 *N.Y.S.2d* 6 (*N.Y. Sup. Ct.* 1941); *Public Loan Corp. v. Hood*, 125 *N.E.2d* 770 (*Ohio Com. Pleas* 1955); *Ohio Finance Co. v. Greathouse*, 110 *N.E.2d* 805 (*Ohio App.* 1947); *National Finance Co. v. Valdez*, 359 *P.2d* 9 (*Utah* 1961). *But see* *Eline v. Richard*, 296 *Ky.* 283, 176 *S.W.2d* 697 (1944).

It should be noted that the period of prescription is vitally affected by the nature of the action. Since it appears, as discussed before, that the creditor may bring an action on the contract which is not discharged because of the fraud, the applicable prescription would appear to be that for contracts.

21. *Accounts Supervision Co., d/b/a Asco Loan Co. v. Atley*, 89 *So.2d* 508 (*La. App.* 1956).

22. The following cases have allowed without discussion interest and attorney's

As to the elements of the cause of action, since the contractual debt is not extinguished, it would appear the creditor must prove the contract plus deceit in its inception. On the latter point, it was said in the Louisiana case of *De Latour v. Lala*,²³ which statement was representative of the general jurisprudence,²⁴ that the following elements must be proven: "(1) That defendant made false representations; (2) that these representations were made with the intention of defrauding the plaintiff; and (3) that the plaintiff relied upon and was misled by the false pretenses or representations." The 1960 amendment in general codifies these jurisprudential requisites without change.²⁵ Thus it is still required that the financial statement be "materially false" rather than false to a slight degree.²⁶ As originally drafted the 1960 bill required that the debtor issue the false financial statement "with an intent to defraud."²⁷ Apparently thinking that this would have placed an insurmountable burden on the creditor of proving that at the time of the loan the debtor had no intention of repaying any part of the loan, the bill was amended to substitute the word "deceive," supposedly requiring

fees stipulated in the contract: *CHF Finance Co. v. Lea*, 127 So.2d 534 (La. 1961) (the question of suit in tort precluding the contractual stipulations was raised, but the court allowed interest and attorney's fees without comment); *Morris Finance & Loan, Inc. v. Dickerson*, 57 So.2d 786 (La. App. 1952); *Personal Finance Co. v. Murphy*, 53 So.2d 421 (La. App. 1951). See *Time Finance Co. v. Nelson*, 312 Ky. 255, 227 S.W.2d 189, 17 A.L.R.2d 1204 (1950), where it was said that the measure of damages was determined by looking to the contract.

The United States Supreme Court has defined the "property" spoken of in the Bankruptcy Act as follows: "'Property' is a word of very broad meaning, and when used without qualification, expressly made or plainly implied, it reasonably may be construed to include obligations, rights and other intangibles as well as physical things." *Fidelity & Deposit Co. v. Arenz*, 290 U.S. 66, 68 (1933). Applied to the instant situation when the debtor receives the loan, he obtains the money for a set period of time and the inability of the creditor to collect during that time would appear to be a "right" in the debtor; a right paid for by means of interest. Therefore, it would seem interest is simply a measurement of the "property" that the debtor has received and which should be subsequently collectible by the creditor.

23. 131 So. 211, 212 (La. App. 1930). *Accord*, *CHF Finance Co. v. Lea*, 127 So.2d 534 (La. 1961); *Public Finance Corp. v. James*, 119 So.2d 578 (La. App. 1960); *Equitable Securities Co. v. Schwaner*, 107 So.2d 330 (La. App. 1958); *Seybold Finance Service, Inc. v. Schwaner*, 102 So.2d 317 (La. App. 1958); *Accounts Supervision Co., d/b/a Asco Loan Co. v. Atley*, 89 So.2d 508 (La. App. 1956).

24. *E.g.*, *Commonwealth Loan Co. v. Coleman*, 133 N.E.2d 677 (Ohio Mun. Ct. 1955); *Tyler v. Hartford Accident & Indemnity Co.*, 195 Okla. 523, 159 P.2d 722 (1945); 8 REMINGTON, BANKRUPTCY § 3320 (1955).

25. See note 7 *supra* and the corresponding text for the statute as amended.

26. See 1 COLLIER, BANKRUPTCY 1364 (14th ed. 1956) (interpreting Section 14 language "materially false" brought into Section 17); 8 REMINGTON, BANKRUPTCY 178 (6th ed. 1955) (as to Section 17 before amendment).

27. H.R. 106, 85th Cong., 1st Sess. (1957); H.R. 4346, 86th Cong., 1st Sess. (1959).

a lesser burden.²⁸ The extent, if any, to which this will change the law remains to be seen. The requirement of reliance upon the statement has been employed fairly extensively in recent cases to deny the creditor recovery,²⁹ the court saying in one case that there was "considerable force to defendant's argument that the so called 'financial statement' was taken . . . [by the loan company], not with any serious purpose to rely thereupon but merely as a device obtained perfunctorily from all loan applicants in order to give technical grounds to contest any subsequent discharges in bankruptcy."³⁰ Under the amendment the element of reliance is apparently unchanged.³¹ But some definite changes were made. Thus before amendment the jurisprudence had consistently held that the false representation as to financial condition could be verbal as well as in writing.³² A written state-

28. H.R. REP. No. 1111, 86th Cong., 1st Sess. 3 (1959) stated in part: "The addition of the elements of reliance by the creditor and intent to deceive by the debtor are merely enactments of existing case law."

See *Amendments to Bankruptcy Act Proposed*, 13 PERSONAL FINANCE L.Q. REP. 46, 47 (1959), wherein it is said: "Of course, the bill would inject into Section 17 the irritating language that the financial statement must have been published 'with intent to defraud.' Draftsmen of the bill indicate that they are merely spelling out a condition which had already been developed in the case law. If that be their purpose, it would seem sufficient to say 'with intent to deceive' rather than 'to defraud'. 'Fraud' is a rather ugly word and it connotes despicable conduct. The extreme language may present an insurmountable hurdle, at least in jury trial cases. Out of fairness to both bankrupt and creditor, it should at least be softened 'to deceive'."

As to the type of evidence necessary to prove fraud or deception see *Hills Savings Bank v. Cress*, 205 Iowa 306, 312, 218 N.W. 74, 77 (1928), wherein it was said: "Primarily on the question of intent to defraud and deceive, direct evidence is rarely attainable. Such conclusion must be drawn from the surrounding facts and circumstances in the case. . . ." See also *Accounts Supervision Co., d/b/a Asco Loan Co. v. Atley*, 89 So.2d 508, 511 (La. App. 1956), where the court quoted with approval from a Louisiana case: "'[F]raud is never presumed, and . . . to establish the fraud exceptionally strong proof must be adduced.'"

29. *E.g.*, *Seybold Finance Service, Inc. v. Schwaner*, 102 So.2d 317, 319 (La. App. 1958); *Public Finance Corp. v. Callopy*, 164 N.E.2d 205, 208 (Ohio Mun. Ct. 1959).

30. *Accounts Supervision Co., d/b/a Asco Loan Co. v. Atley*, 89 So.2d 508, 511 (La. App. 1956).

31. *Public Loan Corp. v. Hood*, 125 N.E.2d 770 (Ohio Com. Pleas 1955) stated that reliance on the statement need not be total, a substantial reliance suffices. *Accord*, *Household Finance Corp. v. Christian*, 8 Wis.2d 53, 98 N.W.2d 390 (1959). *But see* *Public Finance Corp. v. James*, 119 So.2d 578 (La. App. 1960) which is characterized by the dissenting opinion as holding that a total reliance is required. On rehearing the court did not comment upon the substantial reliance contention of the dissent, but affirmed the trial court's conclusion that plaintiff "had not relied upon the financial statement." *Id.* at 581.

Since the Section 14 decisions interpreting the word "reliance" appear to be applicable, see COLLIER, *BANKRUPTCY MANUAL* 190-91 (rev. ed. 1960), wherein it is said: "A partial reliance, however, is sufficient, and the statement is not rendered immaterial because the creditor demanded collateral, or made an independent investigation."

32. *Armour Fertilizer Works v. Peninger*, 158 So. 241 (La. App. 1935); 1 COLLIER, *BANKRUPTCY* 1603 (14th ed. 1956); 6 AM. JUR. *Bankruptcy* § 781 (rev. ed. 1950).

ment is now required, yet apparently any type of writing respecting financial condition will suffice and not necessarily a commercial report of assets and liabilities.³³

Prior to the 1960 amendment to Section 17a(2) it was also required that the creditor show that he had parted with "money or property" in reliance upon the statement in order to overcome the bankrupt's defense of discharge. The various state courts were in utter conflict as to whether "property" embraced a renewal or extension of credit.³⁴ Thus where an unmatured note was cancelled by a creditor and a small amount of money given in return for a new note, a New Jersey court held that the entire amount could be recovered.³⁵ Louisiana, faced with an almost identical situation, held that the renewal of an *unmatured* note was not the receipt of property.³⁶ Yet in *CHF Finance Co. v. Lea*,³⁷ where the creditor cancelled a *matured* note, the court held that property was obtained.³⁸ Detailed argu-

33. Bankruptcy Act § 17c(2), 11 U.S.C. § 35c(2), as amended by 74 STAT. 408 (1960). Since the decisions construing the term "writing" under Section 14 are applicable, see 7 REMINGTON, BANKRUPTCY § 3132 (6th ed. 1955); Friebolin, *Re-Examination of Section 14c(3) as a Ground for Objection to Discharge*, 39 MINN. L. REV. 673 (1955).

The possibility of using the retained language of Section 17c(3), "false pretenses or false representations," for an oral financial statement should be noted. But it could be well argued that the language added by amendment was intended to be the exclusive vehicle for suits on liabilities incurred by false financial statements.

34. *E.g.*, *Personal Finance Co. v. Huber*, 77 So.2d 740 (La. App. 1955); *Personal Finance Co. v. Murphy*, 53 So.2d 421 (La. App. 1951); *Personal Finance Co. v. Moore*, 153 Me. 122, 135 A.2d 414 (1957); *Personal Finance Co. v. Snyder*, 131 N.J.L. 597, 37 A.2d 822 (1943); *Personal Finance Co. v. Bruns*, 16 N.J. Super. 133, 84 A.2d 32 (1951); *Leeds, Inc. v. Love*, 145 N.E.2d 154 (Ohio App. 1957); *Public Loan Corp. v. Hood*, 125 N.E.2d 770 (Ohio Com. Pleas 1955); *Commonwealth Loan Co. v. Coleman*, 133 N.E.2d 677 (Pa. Mun. Ct. 1955).

35. *Personal Finance Co. v. Bruns*, 16 N.J. Super. 133, 84 A.2d 32 (1951).

36. *Guedry Finance Co. v. McCubbin*, 120 So.2d 298 (La. App. 1960).

37. 121 So.2d 373 (La. App. 1960), *aff'd*, 127 So.2d 534 (La. 1961).

38. The Supreme Court held that the meaning of the word "property" could be ascertained from Section 14, and that Section 14 provides that property includes obtaining a renewal of a matured note. This would mean, as Section 14 so specifies, that the giving of a new note for an unmatured note, the situation presented in the *Guedry* case, would also be the obtaining of property. Yet the Supreme Court denied certiorari in the *Guedry* case and in the instant opinion approved the *Guedry* decision. That the court did not intend to include the cancellation of an unmatured note within the meaning of "property" is indicated by its remarks in distinguishing *Personal Finance Co. v. Murphy*, 53 So.2d 421 (La. App. 1951).

It is submitted, therefore, that the Supreme Court approved the distinction drawn by the Orleans Court of Appeal in the *Guedry* and *CHF Finance* cases. Of course, this distinction is only relevant to those cases which must still be decided under Section 17 before amendment.

The Orleans Court of Appeal in the *Guedry* case said: "[P]laintiff has not shown it has sustained any loss, financial or otherwise, as a result of the alleged false representation, it being incumbent on plaintiff to make such showing." 120 So.2d 298, 300 (La. App. 1960). In *CHF Finance* the Supreme Court reiterated this language. The author is constrained to agree with Justice McCaleb that "this

ments for or against the various positions as well as the distinction employed in the recent Louisiana cases appear moot as the 1960 amendment excepts from discharge the liability for obtaining (1) money, (2) property, or (3) an extension or renewal of credit.³⁹ By this provision the question of whether an extension or renewal of credit is property is avoided. Besides embracing other credit situations, "renewal" would appear to encompass a matured note, and "extension" would cover an unmatured note which is lengthened in maturity or replaced with a new note. Whether the original credit was extended on the basis of a false statement seems immaterial, as the whole amount if renewed or extended would be collectible under the amendment, if the extension or renewal was induced by a false financial statement.

The remainder of the language added by the amendment, that the financial statement be "made or published or caused to be made or published in any manner whatsoever," appears to be a restatement of the jurisprudence and covers situations where (1) the debtor gives the statement to the creditor directly; (2) his agent does such; or (3) the debtor issues or causes to be issued a statement which receives circulation among several creditors, e.g., given to a mercantile agency.⁴⁰ Thus the major changes effected by the amendment are the addition of the writing requirement and the increase, for some states, for example, Louisiana, of coverage of Section 17a(2) of the Bankruptcy Act to extensions or renewals of credit.

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statement was purely gratuitous and had nothing to do with the question presented for decision." A showing of financial or other loss is not required by the statute, only a showing that (1) money, or (2) property, or (3) after the effective date of the 1960 amendment, that an extension or renewal of credit is obtained.

39. Another rule pertaining to property appears to remain unchanged. Obtaining of *services* from a creditor relying on a false financial statement has been held not to constitute the receipt of "property." *Gleason v. Thaw*, 236 U.S. 558 (1915) (attorney's services); *Hisey v. Lewis-Gale Hospital, Inc.*, 27 F. Supp. 20 (W.D. Va. 1939) (medical services). *But see Physicians & Surgeons Hospital, Inc. v. Savell*, 76 So.2d 75 (La. App. 1954), wherein the court said it had jurisdiction as the debt was non-dischargeable. Since the claim was for services of physicians, it would appear that the debt should have been discharged. No mention of this point was made in the opinion. See COLLIER, BANKRUPTCY MANUAL § 17.02, n. 2 (Supp. 1960).

40. See COLLIER, BANKRUPTCY MANUAL §§ 14.10, 17.02 (rev. ed. 1960).