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## **BANKRUPTCY - DEBTS NOT AFFECTED BY A DISCHARGE - GOODS PURCHASED WHEN INSOLVENT WITH NO INTENT TO PAY**

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## RECENT DECISIONS

BANKRUPTCY — DEBTS NOT AFFECTED BY A DISCHARGE — GOODS PURCHASED WHEN INSOLVENT WITH NO INTENT TO PAY — Respondent was suing the debtor in a municipal court of Georgia for goods purchased on account. When the debtor was adjudicated a bankrupt, the respondent changed his action from contract to tort by alleging that the bankrupt had purchased the goods when insolvent with no intent to pay for them. A judgment was obtained by respondent and the bankrupt subsequently received a discharge in bankruptcy. The bankrupt now asks that the respondent be enjoined from further proceeding to enforce this judgment by garnishment or in any other manner. Respondent claims that the judgment was not discharged since it was a liability for obtaining property by false pretenses or false representations.<sup>1</sup> *Held*, an injunction should be granted since the purchase of goods while insolvent and with no intent to pay was not the obtaining of property by false pretenses or false representations. *Davison-Paxon Co. v. Caldwell*, (C. C. A. 5th, 1940) 115 F. (2d) 189.

Under the Bankruptcy Act before it was amended in 1903, section 17(2) excepted from discharge provable debts which "are judgments in actions for frauds, or obtaining property by false pretenses or false representations. . . ." <sup>2</sup> The judgment given by the municipal court in the principal case followed the case law in Georgia <sup>3</sup> as well as in a number of other states <sup>4</sup> to the effect that one purchasing goods while insolvent and with no intent to pay has made a fraudulent misrepresentation rendering him liable in an action for fraud and deceit. Thus, before the amendment, this judgment would have been excepted from discharge since judgments for any kind of fraud were excepted.<sup>5</sup> But section 17(2) as amended in 1903 excepts from discharge provable debts which "are liabilities for obtaining property by false pretenses or false representations. . . ." <sup>6</sup> While a right of action need no longer be reduced to judgment to prevent its being barred, a mere judgment for fraud or deceit is not excepted from discharge unless it is based upon false pretenses or false representations.<sup>7</sup> Since one of the purposes of the Bankruptcy Act is to give the debtor a fresh start, free from debt, the courts have held that the exceptions to the operation of a discharge should be confined to those plainly expressed.<sup>8</sup> Yet the Supreme Court <sup>9</sup> has shown itself willing to consider an intentional conversion as a "willful and malicious injury to the person or property of another" which created a non-dischargeable liability under the same section 17(2) of the act.<sup>10</sup> Since bank-

<sup>1</sup> 52 Stat. L. 851, § 17 (2) (1938), 11 U. S. C. (Supp. 1939), § 35 (2).

<sup>2</sup> 30 Stat. L. 550, § 17 (2) (1898).

<sup>3</sup> *Atlanta Skirt Mfg. Co. v. Jacobs*, 8 Ga. App. 299, 68 S. E. 1077 (1910); *Crawford v. Davison-Paxon Co.*, 46 Ga. App. 161, 166 S. E. 872 (1932).

<sup>4</sup> HARPER, TORTS 453 (1933).

<sup>5</sup> 7 REMINGTON, BANKRUPTCY, 4th ed., § 3538 (1934); *In re Caldwell*, (D. C. Ga. 1940) 33 F. Supp. 631.

<sup>6</sup> 32 Stat. L. 798, § 5 (1903). The Chandler Act adds the words "money or" before "property." 52 Stat. L. 851, § 17 (2) (1938), 11 U. S. C. (Supp. 1939), § 35 (2).

<sup>7</sup> *Zimmern v. Blount*, (C. C. A. 5th, 1917) 238 F. 740.

<sup>8</sup> *Gleason v. Thaw*, 236 U. S. 558, 35 S. Ct. 287 (1914).

<sup>9</sup> *McIntyre v. Kavanaugh*, 242 U. S. 138, 37 S. Ct. 38 (1916).

<sup>10</sup> 52 Stat. L. 851, § 17 (2) (1938), 11 U. S. C. (Supp. 1939), § 35 (2).

ruptcy should not enable a person to escape responsibility for such an offense against good morals, this decision is certainly justifiable. But it forced the Court to ignore a narrow interpretation of the term "property" which would mean only the object itself. Although this might be the ordinary definition of property used in this section, it was clear that an intentional conversion might not injure the article taken in the least. So the Court took a broad definition meaning not only the object but all the rights in the object, including the right to possession, which was of course injured.<sup>11</sup> After this liberal decision by the Supreme Court, it is difficult to see why the court in the principal case was unwilling to consider the purchase of goods by an insolvent debtor with no intent to pay for them as the obtaining of goods by false pretenses or false representations. In the principal case, the moral turpitude of the debtor would also seem to justify a liberal interpretation of the terms excepting from discharge. For the purposes of this act the court might well have found that the actions of the debtor amounted to fraudulent representations of an intent to pay for the goods.<sup>12</sup> Under the law as it is now interpreted, an insolvent debtor may purchase goods with no intent to pay for them, dissipate them in one last fling, and then be completely discharged in bankruptcy of any liability to pay for them.

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<sup>11</sup> HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS 28-29 (1923).

<sup>12</sup> To that effect, see: *Atlanta Skirt Mfg. Co. v. Jacobs*, 8 Ga. App. 299, 68 S. E. 1077 (1910); *Crawford v. Davison-Paxon Co.*, 46 Ga. App. 161, 166 S. E. 872 (1932).