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Bankruptcy--Stay of Bankruptcy Proceedings Denied to Creditor Seeking Lien on Exempt Property--*Harris v. Hoffman*

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RECENT DEVELOPMENTS

BANKRUPTCY—Stay of Bankruptcy Proceedings Denied to Creditor Seeking Lien on Exempt Property—*Harris v. Hoffman**

The appellants, husband and wife, executed a promissory note to the appellee-bank. Thereafter, they purchased real property which they occupied as a homestead. Acting pursuant to an Iowa statute which subjects a homestead to debts contracted before the homestead was acquired,[1] the bank commenced a suit on the note in state court, but this proceeding was stayed when appellants filed a voluntary petition in bankruptcy.[2] After the trustee in bankruptcy set the homestead apart as property exempt under Iowa law,[3] the bank sought a stay of discharge in bankruptcy for a reasonable period of time so that it could obtain a lien on the homestead in the state court.[4] The referee refused, but the federal district court overruled him and granted the stay. On appeal the United States Court of Appeals for the Eighth Circuit, *held,* reversed. Bankruptcy proceedings should not be stayed to permit a creditor to obtain a post-bankruptcy lien when one obtained by him before bankruptcy would be subject to avoidance under section 67a(1) of the Bankruptcy Act[5] or preservation under section 67a(3) of that Act.[6]

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* 379 F.2d 413 (8th Cir. 1967) [hereinafter referred to as the principal case].

1. IOWA CODE ANN. § 561.21 (1950):

> Debts for which homestead liable.
>
> The homestead may be sold to satisfy debts of each of the following classes:
>
> 1. Those contracted prior to its acquisition but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.
>
> . . . .

2. The petition was filed pursuant to § 11a of the Bankruptcy Act. 11 U.S.C. § 29(a) (1964).

3. IOWA CODE ANN. § 561.16 (1950).

4. Appellee relied mainly on Lockwood v. Exchange Bank, 190 U.S. 294 (1903), and Duffy v. Tegler, 19 F.2d 305 (8th Cir. 1927).

5. 11 U.S.C. § 107(a)(1) (1964):

> Liens and fraudulent transfers.
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> Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition initiating a proceeding under this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent . . . .

6. 11 U.S.C. § 107(a)(3) (1964):

> The property affected by any lien deemed null and void under the provisions of paragraphs (1) and (2) of this subdivision (a) shall be discharged from such lien and such property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the trustee or debtor, as the case may be, except that the court may on due notice order any such lien to be preserved for the benefit of the estate, and the court may direct such conveyances as may be

Two Supreme Court decisions decided shortly after the turn of the century have resulted in some disagreement as to whether a creditor should be granted a stay to proceed against exempt property in situations like the principal case. In *Lockwood v. Exchange Bank*,[7] the Supreme Court held that the enforceability of creditors' claims against exempt property must be determined in nonbankruptcy courts.[8] The Court recognized that the Bankruptcy Act gives the bankruptcy courts jurisdiction to determine whether property is exempt, but held that this does not mean that those courts can adjudicate claims against such property.[9] This conclusion did not, however, foreclose the creditor in the *Lockwood* case from relief. Although the creditor had no lien on the exempt property he was pursuing, the debtor had previously signed a valid waiver of his statutory exemption, and the Court held that the creditor was entitled to a reasonable postponement of discharge so that he could establish a lien against the debtor's exempt property in the state court.[10] Prior to the principal case, courts generally did not restrict the granting of stays under the *Lockwood* doctrine to cases in which the creditor held a contractual waiver;[11] they also granted stays to creditors asserting statutory rights to exempt property not founded on waiver of the exemption.

Ten years after *Lockwood* was decided, an opinion was handed down by the Supreme Court which made the scope of the *Lockwood*

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proper or adequate to evidence the title thereto of the trustee or debtor, as the case may be . . . .

As an alternate ground for its decision the court concluded that the granting of a stay would be futile under the circumstances in as much as Iowa law would not recognize the bank's claim in a proceeding to establish a post-bankruptcy lien. Principal case at 418-19. This alternate holding relied on Bracewell v. Hughes, 214 Iowa 241, 242 N.W. 66 (1932), in which the court differentiated between a post-bankruptcy suit to enforce an existing lien and a post-bankruptcy suit to create a lien, holding that the latter action could not be maintained under Iowa law. For a critical examination of the court's reasoning in *Bracewell*, *see* Kennedy, *Limitation of Exemptions in Bankruptcy*, 45 IOWA L. REV. 445, at 469-71, n.117 (1960).

7. 190 U.S. 294 (1903).

8. Some lower courts had previously allowed bankruptcy courts to adjudicate claims against exempt property of the debtor. *See, e.g., In re* Boyd, 120 F. 999 (N.D. Iowa 1903); *In re* Sisler, 96 F. 402 (W.D. Va. 1899); *In re* Woodruff, 96 F. 317 (S.D. Ga. 1899). *See generally* 1 W. COLLIER, BANKRUPTCY ¶ 6.05, at 809 (1967).

9. 190 U.S. at 299-300.

10. *Id.* at 300.

11. *See, e.g.*, Duffy v. Tegler, 19 F.2d 305 (8th Cir. 1927) (distinguished in principal case), which held that a bankruptcy court should stay proceedings for a reasonable period in order to allow a creditor alleging that under state law a homestead was not exempt as to him to pursue his claim in a state court. *Accord, In re* Rabb, 21 F.2d 254 (N.D. Tex. 1927), *rev'd on other grounds*, 29 F.2d 914 (5th Cir. 1929); Westerman Lumber Co. v. Rashke, 172 Minn. 198, 215 N.W. 197 (1927). For a recent case following this interpretation of *Lockwood*, *see In re* Sokatch, 208 F. Supp. 789 (E.D.N.Y. 1962), holding that a judgment creditor was entitled to a stay in order to proceed against goods of the bankrupt which were exempt as to the trustee, but not as to him. *See generally* 1 W. COLLIER, BANKRUPTCY ¶ 6.05, at 812-13 (1967).

decision uncertain. In *Chicago Burlington & Quincy Railway v. Hall*,[12] the Court held that former section 67f of the Bankruptcy Act[13] could be used by a bankrupt to avoid liens obtained on property which was exempt under state law. Section 67a(1), the statutory successor to section 67f, which provides for the avoidance of liens obtained within the four-month period immediately preceding the filing of a petition in bankruptcy, now codifies the rule of the *Hall* case.[14] As the court pointed out in the principal case, the policy of the *Hall* case, and of the Bankruptcy Act as it now reads, runs counter to that of the *Lockwood* doctrine insofar as that doctrine entitles creditors to stays in bankruptcy proceedings to enable them to establish a lien against exempt property in cases other than where there has been a waiver of exemption. For example, suppose an attachment lien obtained by a creditor against a homestead within the four-month period preceding bankruptcy is avoided by the bankrupt under section 67a(1). The creditor thereafter might ask for a *Lockwood* stay in order to obtain a new lien by judgment or execution against the exempt property in a nonbankruptcy court. If the bankruptcy court should allow the creditor to do this, the purpose of avoiding the pre-bankruptcy lien under section 67a(1) would be frustrated.[15] As a practical matter, there is little evidence that this "merry-go-round" has ever developed.[16] No case has been found in

12. 229 U.S. 511 (1913).

13. At that time § 67f read:

> [A]ll liens . . . obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, attachment, or other lien shall be deemed wholly discharged from the same and shall pass to the trustee as a part of the estate of the bankrupt.

Act of July 1, 1898, ch. 541, § 67f, 30 Stat. 564.

14. *See* text of § 67a(1) quoted in note 5 *supra*. For a discussion of § 67a(1), *see* 4 W. COLLIER, BANKRUPTCY ¶ 67.01-.55, at 815-40 (1967).

15. *But see* Countryman, *For a New Exemption Policy in Bankruptcy*, 14 RUTGERS L. REV. 678, 717-18 (1960), in which the author takes the position that there is no inconsistency between *Lockwood* and § 67a. Countryman contends that *Lockwood* stays are available to creditors whose underlying claims are excepted from the exemption statutes. (*See* note 11 *supra* and accompanying text for a discussion of this conception of *Lockwood*.) Therefore, when such a creditor obtains a lien on the otherwise exempt property within four months of bankruptcy, § 67a(1) should not be used to invalidate the lien, as the creditor can levy under his execution and obtain a postbankruptcy lien which § 67a could not reach.

16. Although both Kennedy, *supra* note 6, at 467, and Comment, *Bankruptcy Exemptions: Critique and Suggestions*, 68 YALE L.J. 1459, at 1486 (1959), make reference to the "merry-go-round" problem, only one instance of such a result is mentioned—Northern Shoe v. Cecka, 22 N.D. 631, 135 N.W. 177 (1912). This case held that a creditor seeking to recover the purchase price of goods was not barred from obtaining a new lien on exempt property after bankruptcy, although he had previously abandoned a pre-bankruptcy lien which could have been avoided under § 67a. There are several factors that might explain why this result has not occurred more often. First, there are not many instances in which creditors can obtain liens against exempt property by judicial proceedings. Second, few creditors seek a *Lockwood* order to

which a bankrupt actually argued that this use of a *Lockwood* stay would be inconsistent with section 67a. The court in the principal case, however, did recognize this possible conflict and as a result denied the bank's application for a stay.

Section 6 of the Bankruptcy Act[17] requires that the variety of exemptions granted by state and federal nonbankruptcy law and duly claimed by the bankrupt[18] be recognized in bankruptcy proceedings.[19] The states have varying exemption statutes, and in addition, most states except varying classes of creditors from the operation of the exemptions.[20] In a few jurisdictions creditors may also protect themselves from the effect of exemption statutes by obtaining contractual waivers from their debtors.[21] Differing views have developed on whether state law pertaining to exceptions to

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obtain a lien when they have been unsuccessful in establishing one prior to filing of the bankruptcy petition. Third, if the creditor has obtained a pre-bankruptcy lien, there are few situations where the bankrupt has avoided that lien by use of section 67a, thus forcing the creditor to seek a *Lockwood* stay.

17. 11 U.S.C. § 24 (1964).

18. There are no automatic exemptions in bankruptcy; they must be claimed, ordinarily by the bankrupt, under § 7a(8) of the Act. 11 U.S.C. § 25a(8) (1964).

19. The first two bankruptcy acts, enated in 1800 and 1841, provided for a national exemption without regard to state law. The third act, passed in 1867, gave effect to state exemption law when that law gave a higher exemption than provided for in the federal act. Finally, in 1898, after the panic of 1893, state law became the primary reference for determining exemptions, there being no federal minimum. *See generally* 1 W. COLLIER, BANKRUPTCY ¶ 6.01, at 793 (1967); Countryman, *supra* note 15 at 680-84; Comment, *supra* note 16, at 1461-62, 1509.

State exemption laws vary widely from state to state, and the resulting lack of uniformity in the rights of creditors against bankrupts' estates has generated discussion as to the propriety of these variations. *See* Kennedy, *supra* note 6; Comment, *supra* note 16. Although it has frequently been suggested that a uniform federal exemption law is desirable, any federal standard would certainly be attacked as either too generous with or too strict on debtors. *See* Kennedy, *supra* note 6, at 452; Comment, *supra* note 16, at 1509. Should such a national law reduce the state-determined exemptions presently allowable in bankruptcy, it might also be criticized as a subversion of state policy as to the necessity of certain exemptions to preserve the family unit from dependence on state support. *See* Kennedy, *supra* note 6, at 451. Furthermore, such a uniform national law would induce creditors to invoke involuntary bankruptcy, thus giving them a weapon against debtors seeking to assert through non-bankruptcy proceedings exemptions granted by state law. Conversely, a national minimum above that prescribed by state law would give debtors a new reason for filing voluntary bankruptcy petitions–a prospect not likely to be viewed with favor by Congress, the bankruptcy judges, or the business-credit community. *See* Kennedy, *supra* note 6, at 451.

20. This is the type of statute relied upon by the bank in the principal case. *See* note 1 *supra*. For other examples, *see* note 31 *infra*.

21. Most states do not allow waiver on public policy grounds. This is true even in creditor-oriented states like New York [Kneetle v. Newcomb, 22 N.Y. 249 (1860)] as well as in the debtor-conscious western states such as Iowa [Curtis v. O'Brien, 20 Iowa 376 (1866)], Kentucky [Moxley v. Ragan, 73 Ky. 156 (1873)], and Wisconsin [Maxwell v. Reed, 7 Wis. 582 (1859)]. *See also* S. THOMPSON, HOMESTEADS AND EXEMPTIONS § 441, at 385 (1878). Even Georgia, which recognizes the validity of waivers in her constitution, will not allow the debtor to waive his exemption for wearing apparel and a $300 minimum of furniture and food. GA. CODE ANN. § 51-1101 (1937). *See also* Kennedy, *supra* note 6, at 468-69.

exemptions should be incorporated into federal bankruptcy policy.[22] If the exceptions are included, the bankrupt will not be able to avoid a lien on the exempt property by use of section 67a(1), and the trustee will not have the right to preserve the lien for the benefit of the estate.[23] If, however, these exceptions are not incorporated into federal bankruptcy policy, the bankrupt will be able to avoid a lien on his exempt property.

There are valid policy reasons for denying creditors the opportunity to take advantage of state exceptions to exemptions after bankruptcy or within four months preceding the filing of the petition. One can argue that the underlying policies of ratable distribution of the bankrupt's estate and relief of the bankrupt from his burden of debt would be violated if certain creditors could satisfy their claims in full by obtaining stays and pursuing the bankrupt's exempt property in a nonbankruptcy court.[24] Stays of discharge proceedings might promote races of diligence among those creditors who can take advantage of an exception. If one or more such creditors rush to obtain liens on the same exempt property before other creditors who are also excepted from the exemption can get anything, the result would be clearly antagonistic to the Bankruptcy Act's policy of ratable distribution to all creditors of the same class.[25] Moreover, a stay of discharge puts the creditors holding a waiver or a special right as to exempt property in a better position than other unsecured creditors, for he can share in the distribution of the bankrupt's estate and also proceed against the bankrupt's exempt property.[26] A further objection to the practice of granting stays is that it denies the debtor the benefit of a prompt determination of his right to discharge and is therefore contrary to the congressional policy favoring the expedition of bankruptcy proceedings.[27] Finally, exempt property of the bankrupt may be subject to the control of state courts pending the outcome of the state court litigation; when the exempt property consists of such articles as the tools of the debtor's trade or his auto-

22. *Compare id.* at 462, *with* Countryman, *supra* note 15, *and* Comment, *supra* note 16, at 1483-86.

23. *See* § 67a(3) of the Bankruptcy Act, 11 U.S.C. § 107(a)(3) (1964), quoted in pertinent part in note 6 *supra*.

24. Kennedy, *supra* note 6, at 462-67.

25. *Id.* at 468.

26. A creditor holding a consensual waiver that is supported by a security interest must generally accept deduction of the value of the security from the amount of his allowable claim in bankruptcy, although there is conflict in this area. *See* 1 W. COLLIER, BANKRUPTCY ¶ 1.28, at 130.8 (1967); Kennedy, *supra* note 6, at 463-64.

27. *See, e.g.*, Katchen v. Landy, 382 U.S. 323 (1965). The bankruptcy court is required to set a time for filing of objections to the discharge, and if no such objections are forthcoming, then the bankrupt is discharged. For a discussion of this procedure, *see* 1 W. COLLIER, BANKRUPTCY ¶ 14.03-.15, at 1265-314.9 (1967); Kennedy, *supra* note 6, at 462.

mobile, judicial control could cause the debtor considerable detriment.[28]

On the other hand, there are legitimate reasons for not permitting either the trustee or the bankrupt to use section 67a(1) to prevent excepted creditors from obtaining liens on exempt property either within the four-month period preceding the filing of the petition in bankruptcy or thereafter.[29] The Bankruptcy Act incorporates state exemption laws in their entirety.[30] Yet, when a bankruptcy court refuses to grant a creditor a stay to obtain a lien in a nonbankruptcy court, it in effect makes the debtor the beneficiary of a larger exemption than he was supposed to have had under state law.[31] Courts, at times, have seemingly been so impressed with this argument that they have construed section 67a(1) to apply only to liens obtained on nonexempt property, despite the Supreme Court ruling in *Hall*.[32] It should be noted in this connection that if state exemption policy is effectuated and excepted creditors are granted stays to obtain judicial liens against exempt property, then, except for the rare case in which the trustee would have preserved the lien for the estate, no one is seriously prejudiced but the bankrupt, for the exempt property out of which the excepted creditor satisfies his claim is not part of the bankrupt's estate.

Even if a judicial lien obtained within four months of bankruptcy on exempt property can be avoided under section 67a(1), it does not follow that the property will necessarily be set aside to the bankrupt. Under section 67a(3),[33] the bankruptcy court is authorized to preserve a lien for the benefit of the bankrupt estate. However, the Bankruptcy Act does not indicate whether if the trustee moves to have a lien preserved for the benefit of the estate, he can prevail over the bankrupt's right to avoid the lien under section 67a(1). The

28. Comment, *supra* note 16, at 1477.

29. *Id.* at 1485.

30. *See* 3 H. REMINGTON, BANKRUPTCY ¶ 1290, at 181 (1957); Comment, *supra* note 16, at 1485.

31. The following classes of creditors may thereby be denied rights in exempt property, although state statutes have attempted to give them such rights: Purchase-money lenders [*see, e.g.*, N.Y. CIV. PRAC. § 5206(a) (McKinney 1967); WIS. STAT. ANN. § 272.20 (1957)]; tort claimants [*see, e.g.*, IOWA CODE ANN. § 627.7 (1950)]; alimony, maintenance, and support claimants [*see, e.g.*, MO. REV. STAT. § 452.140 (Supp. 1967); PA. STAT. ANN. tit. 48, § 136 (1965)]; tax claimants [*see, e.g.*, IND. ANN. STAT. §§ 2-3515 (Burns 1946), 64-1511 (Burns 1961); FLA. CONST. art. X, § 1]. *See generally*, Joslin, *Debtors' Exemption Laws, Time for Modernization*, 34 IND. L.J. 355, at 372-75 (1959); Kennedy, *supra* note 6, at 457-58, 472-73; Comment, *supra* note 16, at 1469-70.

32. *See, e.g.*, Duffy v. Tegler, 19 F.2d 305 (8th Cir. 1927); *In re* Snyder, 216 F. 989 (1914) (§ 67f held to apply only to the bankrupt's estate); Blake v. Alswager, 55 N.D. 776, 215 N.W. 549 (1927).

33. *See* text quoted in note 6 *supra*. For a discussion of § 67a(3), *see* 4 W. COLLIER, BANKRUPTCY ¶ 67.15-.17, at 163-93 (1967); Countryman, *supra* note 15, at 715-20; Kennedy, *supra* note 6, at 481-84; Comment, *supra* note 16, at 1485; Note, *Exemptions and Section 67a of the Bankruptcy Act*, 40 VA. L. REV. 83, 88-89 (1954).

language of section 67a(3) is unclear on this point; it provides that property relieved of a lien passes "to the trustee or debtor, *as the case may be.*"[34] However, some light may be shed by the case of *Connell v. Walker*,[35] which was decided by the Supreme Court after the *Hall* decision, but before *Hall* was codified in the Bankruptcy Act. In *Connell* the Court denied a bankrupt the right to dissolve a lien under section 67 on the ground that if it had permitted him to do so, the trustee's option to preserve the lien for the benefit of the estate would have been cut off. Although an attempt has been made to distinguish this holding from that of the *Hall* case,[36] *Connell* seems to imply that *Hall* should not be controlling on the issue of whether the trustee's right to preserve prevails over the bankrupt's right to avoid.

Although little has been written of the power of preservation conferred by section 67a(3),[37] some dispute has arisen over whether it should be employed at all in situations where the benefits of avoidance would inure to the bankrupt.[38] Two courts have allowed trustees to preserve a lien on exempt property in such a situation.[39] These courts reasoned that the trustee should be subrogated to the position of the lienholder and that the bankrupt should only be entitled to claim the equity above the amount of the lien. It is submitted that the trustee should be allowed to assert the rights of creditors in this situation, for that result is most consistent with the general purpose of section 67a to benefit the bankrupt estate. If this position is adopted, the bankrupt's power to avoid a lien would not be completely circumvented, since under section 67a(3) the bankruptcy court is vested with discretion to determine whether the lien shall be preserved. It is likely that preservation would be denied in cases like *Hall*, where a creditor obtained a lien against exempt wages by resorting to a forum other than that of the debtor's domicile.[40]

As a matter of practice, trustees have rarely invoked the lien

34. (Emphasis added.) *See* text quoted in note 6 *supra*.

35. 291 U.S. 1 (1934), *discussed in* J. MACLACHLAN, BANKRUPTCY 229 (1956).

36. *See* Hemsell v. Rabb, 29 F.2d 914, 915 (5th Cir. 1929), which noted that the trustee was not a party to the action in *Hall*, nor did he try to preserve the lien. *But see* J. MACLACHLAN, BANKRUPTCY ¶ 208, at 228-29 (1956); Countryman, *supra* note 15, at 719.

37. *See* authorities cited in note 33 *supra*.

38. Countryman, *supra* note 15, at 718-20, takes the position that § 67a(3) should be limited to situations where the avoidance of a lien would benefit a junior creditor or transferee, while other commentators are in favor of expanded powers for the trustee. *See, e.g.*, J. MACLACHLAN, BANKRUPTCY ¶ 208, at 228-30 (1956); Kennedy, *supra* note 6, at 481-84; Note, *supra* note 33, at 89 (1954).

39. Hemsell v. Rabb, 29 F.2d 914 (5th Cir. 1929); *In re* Porter, 3 F. Supp. 582 (S.D. Fla. 1933).

40. *See* 4 W. COLLIER, BANKRUPTCY ¶¶ 67.02, at 19 & 67.15, at 163 (1967); Kennedy, *supra* note 6, at 483.

preservation provision of section 67a(3), except when avoidance of a lien would give a junior creditor or transferee a windfall.[41] However, the court in the principal case did acknowledge the possibility that if a lien had been obtained during the four-month period, it might have been either preserved for the benefit of the estate or avoided by the bankrupt.[42] Since no lien had in fact been obtained, the court was not called upon to decide which of these two rights would prevail, and it limited itself to reconciling the policies of *Lockwood* and *Hall*.

The principal case narrowly construed *Lockwood* to authorize the bankruptcy court to grant a creditor a stay to establish a lien in a nonbankruptcy court *only* if the creditor's right to the otherwise exempt property has been acquired by contract or express waiver of exemption. It has generally been held that a judicial lien obtained by such a creditor cannot be voided under section 67a(1);[43] nor can it be preserved for the benefit of the estate by the court under section 67a(3).[44] However, virtually all other types of liens obtained by creditors on exempt property have been held voidable by the bankrupt or the trustee.[45] In the principal case, the court reasoned that a stay should not be granted to obtain a lien in the latter category, since such a stay would have no other effect than that of delaying discharge.[46]

As discussed above,[47] there are policy reasons for both approval and criticism of the court's decision to limit the use of *Lockwood* stays and to deny the bank and other similar creditors the right to assert claims against property not exempt as to them under state law. It has been suggested that Congress should amend section 6 of the

41. *See* 4 W. COLLIER, BANKRUPTCY ¶ 67.16, at 178 (1967); Kennedy, *supra* note 6, at 482; Comment, *supra* note 16, at 1485. For the only two exceptions to this limited application, *see* cases cited in note 39 *supra*.

42. Principal case at 418.

43. This was the rule prior to *Lockwood* and it is still followed today. *See, e.g., In re* Jackson, 116 F. 46 (E.D. Pa. 1902); Dockery v. Flanary, 194 Va. 318, 73 S.E.2d 375 (1952), *discussed in* Note, *supra* note 33. *See also* principal case at 417.

44. *See, e.g., In re* Jackson, 116 F. 46 (E.D. Pa. 1902); Kennedy, *supra* note 6, at 482.

45. Principal case at 417. Some cases, however, have held that the bankrupt may not avoid liens on property abandoned by the trustee. *See, e.g.*, Sample v. Jackson, 225 N.C. 380, 35 S.E.2d 236 (1945). *See generally* 4 W. COLLIER, BANKRUPTCY ¶¶ 67.15[2], at 172-73 & 370.42[4], at 515 (1967).

46. *See* note 6 *supra*. It should be noted, however, that liens arising from statutes, usually designed to protect certain occupational groups, as well as judicial liens obtained more than four months preceding bankruptcy, may be valid against the trustee as well as against the bankrupt without legal or equitable proceedings. Bankruptcy Act, §§ 67b & c, 11 U.S.C. §§ 107(b) & (c) (1964). *See also* 4 W. COLLIER, BANKRUPTCY ¶ 67.20-.281, at 208-470 (1967). Under these statutes creditors do not have to employ state judicial machinery in order to perfect their rights against property of the bankrupt, and therefore recognition of these liens does not require a delay of the bankruptcy proceedings.

47. *See* notes 24-32 *supra* and accompanying text.

Bankruptcy Act to clarify the status of exempt property which is subject to the claims of special creditors.[48] In the absence of such an amendment, the principal case strikes a reasonable balance between the countervailing considerations. State laws as to exceptions are abrogated only when a creditor obtains a lien within four months of the filing of the petition in bankruptcy or attempts to stay the discharge proceedings in order to obtain a lien. Although the courts should not frustrate the congressional policy of deference to differing state law, it is submitted that the court was correct in deciding that creditors should not be able to take advantage of state exceptions to exemptions after bankruptcy or within four months preceding the filing of the petition. In ruling as it did the court properly implemented the federal policy of hostility to races of diligence.[49] It also eliminated the preferential treatment that excepted creditors could obtain if they were allowed first to share in the distribution of the bankrupt's estate and thereafter to exploit their special statutory privileges against the debtor's exempt property.[50]

Since most states have greatly restricted the right of creditors to obtain waivers of exemption by contract, after the principal case *Lockwood* stays will be available only in unusual cases.[51] However, the narrow construction given to *Lockwood* by the opinion in the principal case does not mean that the court failed to give due respect to the Supreme Court ruling. The primary problem in *Lockwood* was determining which courts have jurisdiction to adjudicate claims to exempt property; after holding that this jurisdiction lies in non-bankruptcy courts, the Supreme Court merely authorized the bankruptcy court to grant a creditor a stay if state policy and procedure afforded him a remedy as to the exempt property. It is submitted that the court in the principal case was correct in ruling that, despite *Lockwood*, it could and should deny a stay, given the facts with which it was presented. Whether there are sufficient equities in favor of creditors holding express waivers of exemption[52] to justify

48. Kennedy, *supra* note 6, at 486, suggests this possible amendment to § 6 of the Bankruptcy Act:

> *Provided further*, that the rights of any unsecured creditor having a claim provable under this act, other than a claimant for alimony, maintenance, or support, against property which the bankrupt is otherwise entitled to claim as exempt may be enforced in the bankruptcy proceedings by the trustee for the benefit of the estate.

49. *See* note 25 *supra* and accompanying text.

50. *See* note 26 *supra* and accompanying text.

51. *See* note 21 *supra*.

52. The *Hall* court was of the view that neither the bankrupt nor the trustee could avoid a waiver lien, but it gave no particular reason for this other than a reference to *Lockwood*. 229 U.S. at 516. Possibly the Court reasoned that once a bankrupt has waived his exemption, he is estopped to avoid the waiver holder's lien. *See* Note, *supra* note 33, at 93.

the suspension of bankruptcy proceedings to permit such creditors to enforce their claims against property set apart as exempt is a question which deserves re-examination by the Supreme Court in an appropriate case.