California Law Review

Published Quarterly throughout the Year by Students of the
School of Jurisprudence of the University of California, Berkeley,
California. Indexed in Index to Legal Periodicals, Public Affairs
Information Service and Current Legal Thought.

Subscription Price, \$4.50

Current Single Copies, \$1.25

BOARD OF EDITORS

WALTER G. OLSON, *Editor*

NEIL E. FALCONER, *Comment Editor*

SCOTT FLEMING, *Note Editor*

JOSEPH A. WOODS, JR., *Note Editor*

BRUCE F. ALLEN

OTTO E. BERG

ALAN C. FURTH

ROBERT W. JAMES

HUGH S. KOFORD

MAYER LIEBERMAN

CHARLES F. GRAY, JR., *Managing Editor*

JOHN H. WALLACE, *Article Editor*

JOHN R. BURTON, *Book Review Editor*

ADOLPH MOSKOVITZ

RUANNE NEIGHBOUR

EDWARD DEAN PRICE

ARNO REIFENBERG

JOHN A. SPROUL

MAX WEINGARTEN

EVELYN COLICHMAN, *General Secretary*

Comment

A PROPOSAL FOR STRENGTHENING THE CALIFORNIA STATUTE CONCERNING ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

INTRODUCTION

More than a decade ago it was recommended in the *State Bar Journal*¹ that the Federal Bankruptcy Act be amended by Congress to permit restoration of state insolvency legislation, thereby making available to the business community a state-regulated liquidation proceeding which would avoid the delay and expense of bankruptcy. The purpose of this comment is to show that such a proceeding could be provided *without* the aid of federal action through state legislation regulating general assignments for the benefit of creditors.

Under common law principles governing conveyances and trusts an owner of property may assign it to a trustee for the benefit of his creditors with instructions to apply the assets conveyed or their pro-

¹ Dennett, *Why not restore our State Insolvency Law?* (1937) 12 CALIF. S. B. J. 38.

ceeds to the payment of their claims.² An assignment by an insolvent debtor, if executed in good faith, is not subject to attack as a fraudulent conveyance.³ Both prior and subsequent to federal bankruptcy legislation many states, including California,⁴ passed laws limiting and regulating the rights of debtors to make general assignments for the benefit of creditors. However, it appears that in this state common law assignment⁵ is generally preferred to statutory assignment⁶ because the California assignment statute, while offering no advantages over the common law procedure, adds unnecessary administrative expense. In addition, the statute undesirably limits the scope of common law assignment.

The amended statute as herein proposed attempts to meet the major defects of present assignment proceedings, both statutory and common law, and to provide within the framework of the assignment device a liquidation proceeding which will operate as an effective substitute for bankruptcy within a large area of the insolvency field.

BANKRUPTCY VS. GENERAL ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

The defects of the bankruptcy system are well known. From a business point of view, they lie chiefly in the high cost of administration and the relatively small dividends to participating creditors even in cases where appreciable assets are left in the estate undergoing liquidation.⁷ Bankruptcy involves a complex judicial procedure. This

² On the right to make an assignment see 6 C. J. S. 1227.

³ In fact many states, including California, have restricted to insolvent debtors the right to make an assignment. CAL. CIV. CODE § 3449; 6 C. J. S. 1228.

⁴ The California statute covering assignments for the benefit of creditors is embodied in sections 3449 through 3473 of the Civil Code. It is traceable to the Civil Code enacted March 21, 1872, based on Field's Draft, N. Y. Civil Code. Various sections (3449, 3451, 3457, 3458, 3462, 3465, 3467, 3468, 3469 and 3473) were subsequently amended, the last amendment being that of section 3451 by Cal. Stats. 1905, p. 622.

⁵ The validity of the common law assignment for the benefit of creditors not executed with the statutory formalities prescribed by sections 3449-3473 of the California Civil Code was established by the San Francisco Board of Trade in the case of *Brainard v. Fitzgerald* (1935) 3 Cal. (2d) 157, 44 P. (2d) 336, wherein the court held that the common law assignment prevailed over a subsequent attachment of the assets in the hands of the assignee. It was argued on behalf of the attaching creditor that since the assignment did not comply with the statutory requirements as to form and recordation, it was not exempt from the operation of section 3440 of the Civil Code and hence was invalid as an unrecorded transfer in bulk. The court, however, held that *both* statutory and common law assignments came within the exemption clause of section 3440, which covers "any . . . assignment . . . statutory or otherwise . . . made for the benefit of creditors generally . . ."

⁶ Based on information received from representatives of the San Francisco Board of Trade and the Oakland Association of Credit Men. These representative creditor organizations for local business apparently have not used the statutory assignment for at least the last thirty years.

⁷ For a fact study see Billig, *What Price Bankruptcy: A Plea for "Friendly Adjustment"* (1929) 14 CORN. L. Q. 413, 419.

accounts for high court costs and counsel fees—perhaps the largest single expense item in bankruptcy cases—and for a usually protracted period of administration, during which fixed expenses such as rent accumulate.⁸

In an effort to secure higher financial returns from the liquidation of insolvent estates, creditors have in recent years made increasing use of assignment as a method of settling insolvent estates. As a result, the "friendly adjustment," an *extra-judicial* settlement administered by a creditors' organization under a general assignment for the benefit of creditors, has become in this as in other states a favorite device for the liquidation of insolvent estates.⁹

According to comparative studies¹⁰ the greater profitability of the assignment method is due to the reduction of administrative expense, achieved mainly by eliminating the delay and cost of court intervention, and to better marketing, which assures creditors a reasonable return from the sale of the debtor's assets. Under a friendly adjustment implemented by an assignment for the benefit of creditors the assets are usually disposed of by the assignee through ordinary business channels rather than by means of the judicial sale customary in bankruptcy proceedings.

⁸ For comparative statistics on the length of the period of administration in bankruptcy and assignment cases see Billig, *Extra-Judicial Administration of Insolvent Estates: A Study of Recent Cases* (1930) 78 U. OF PA. L. REV. 293, 305, 313.

⁹ The scheme of the friendly adjustment, first used on an extensive scale by the San Francisco Board of Trade, has been fostered on a nationwide basis by the National Association of Credit Men, which operates a chain of "approved adjustment bureaus" located in commercial centers throughout the United States. For a detailed description of the adjustment bureau, which administers friendly adjustments, and of the procedure by which such adjustments under an assignment for the benefit of creditors are carried out, see Billig, *op. cit. supra* note 7, at 426 and 429, respectively.

¹⁰ For a comparative survey of results attained under the two systems of liquidation, *i.e.*, assignment and bankruptcy, see Billig, *op. cit. supra* note 7. The statistical material collected by the author is summarized as follows on page 436:

	Percentage Dividend General Creditors to Liabilities	Percentage Cost Administration to Amount Realized	Percentage Dividend General Creditors to Amount Realized
Assignment	27.45	13.85	73.42
Bankruptcy	5.80	24.26	43.32

A striking illustration of the comparative showing of the two systems is presented on page 441 of the cited article. The adjustment bureau in Pittsburgh, Pa. administered the liquidation of two drug-stores, one through an assignment, the other through bankruptcy. Both stores had assets of approximately equal amount, were located in the same town, and both estates were closed in the fall of 1927. The records of receipts and disbursements compare as follows:

	Receipt from Sale of Business	Total Expense Bill	Rent Bill
Assignment Case . .	\$2,750.00	\$388.47	\$101.22
Bankruptcy Case . .	1,105.00	801.83	200.00

Thus under virtually identical conditions the two types of administration resulted in dividends to general creditors of 47% and 4%, respectively, on their outstanding claims.

WEAKNESSES OF THE PRESENT CALIFORNIA ASSIGNMENT PROCEDURE

a. *The Problem of Creditors' Preferences.*

Under the provisions of the Federal Bankruptcy Act¹¹ a general assignment for the benefit of creditors is always subject to displacement by bankruptcy proceedings upon the filing of a petition in a bankruptcy court by three dissatisfied creditors whose claims total \$500. In simple situations this threat is not serious since creditors do not stand to gain from liquidation through bankruptcy and will therefore, as a matter of business expediency, cooperate with the assignment proceeding. It is otherwise, however, where one or more creditors, knowing of the debtor's insolvency, have prior to the assignment procured from him a preferential transfer of some of his assets or secured thereon a lien by attachment, execution or other legal proceeding. In that situation the less fortunate creditors will almost certainly resort to the bankruptcy court to terminate the assignment and to recover the assets for the ratable benefit of *all* creditors, for, under the present law, there is no state court proceeding whereby the creditors wishing to cooperate with the assignment may force the preferred creditor to surrender the assets or the lien.

b. *The Problem of the Debtor's Discharge.*

While in bankruptcy the debtor is normally¹² assured of receiving a full discharge from his debts *in the course of the proceeding*, a debtor making an assignment under present California law—be it executed with or without the statutory formalities—can secure such relief only to the extent that he succeeds in obtaining releases from the individual creditors. Hence many debtors may well prefer bankruptcy and refuse to cooperate with their creditors in executing an assignment. Certainly the present assignment proceeding is highly unfair. Where an honest debtor has in good faith surrendered all of his property for distribution among his creditors, justice would seem to require that he be by law assured of a release from his debts upon execution of the transfer, at least as to creditors participating in the distribution.

It might be suggested that the debtor make the assignment in favor of only those creditors consenting to release him upon acceptance of their ratable shares. Under such an assignment, if valid, the debtor is

¹¹ (1898) 30 STAT. 544, as amended, 11 U. S. C. § 21 (1946). The Bankruptcy Act enumerates six types of conduct or "acts of bankruptcy," any of which, if committed by the debtor, gives rise to a right in his creditors to file a petition in a bankruptcy court to have the property of the debtor liquidated and the proceeds distributed among the claimants. One of the enumerated acts of bankruptcy is a general assignment made by the debtor for the benefit of his creditors.

¹² The types of conduct barring a debtor's discharge in bankruptcy as well as the types of debts not affected by the discharge are enumerated in (1898) 30 STAT. 544, as amended, 11 U. S. C. §§ 32c and 35 (1946).

assured of a release as to creditors participating in the distribution. In practice, moreover, the discharge is likely to be complete since no pecuniary advantage is gained by a creditor from non-participation. The recalcitrant creditor could not prevent the debtor's discharge in a bankruptcy proceeding, and, there, would have to be content with a smaller return from the estate.

In the absence of statute, there is a conflict of authority regarding the validity of general assignments containing a release clause in favor of the debtor.¹³ Inasmuch as such assignments are invalidated by the California assignment statute,¹⁴ this state has codified the view of those courts holding that the release clause renders the transfer subject to attack as a fraudulent conveyance; hence any non-assenting creditor may treat the assignment as void and levy on the assets in the hands of the assignee. Thus California has by statute barred a solution—inherent in the common law assignment of many states—which is most vital to the further expansion of the assignment device in connection with the liquidation of insolvent estates.

THE PROPOSED AMENDMENTS

The following provisions should be incorporated in the California Assignment Statute, sections 3449 through 3473 of the California Civil Code:

- A. A provision for setting aside transfers of assets to a creditor having the effect of preferring him over other creditors, provided such creditor is chargeable with knowledge of the debtor's insolvency at the time of the transfer and the transaction took place within a designated period preceding the assignment. It is for the legislature to determine the length of this period as well as the exact scope of what is to constitute a preferential transfer.
- B. A provision for dissolution of liens acquired by a creditor within a designated period preceding the assignment.
- C1. A provision amending section 3457¹⁵ so as to validate as against non-assenting creditors general assignments stipulating for the debtor's release.
- C2. A provision that any creditor accepting dividends amounting to a designated portion of the sum due is deemed to have discharged the debtor from further obligation.

¹³ GLENN, LIQUIDATION (1935) § 119.

¹⁴ CAL. CIV. CODE § 3457. "An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases: First, If it give a preference of one debt or class of debts over another. Second, If it tend to coerce any creditor to release or compromise his demand . . ." An assignment containing a release clause in favor of the debtor seems subject to attack on either ground.

¹⁵ *Ibid.*

D. An amendment to section 3449 removing the present statutory requirement that the assignment be made to the sheriff.

Provisions (A) and (B) will enable creditors employing the assignment device to set aside preferential transfers as well as liens acquired by legal proceedings without resort to a bankruptcy court. The effect of these provisions is to strip a creditor of his power to block the assignment proceeding by retention of a preference or a lien and to deprive him of the potential bargaining position such power gives.

Provisions (C1) and (C2) are aimed at providing for the debtor's discharge upon execution of the assignment. To rely on provision (C1) alone, the debtor must stipulate for his release in the assignment deed. The assignment deed is then similar in effect to a composition agreement and the release is based upon a contract between the debtor and his several creditors rather than upon the operation of statute.¹⁶ Under provision (C2) the discharge is effective by force of statute irrespective of the terms of the assignment. Under either provision (C1) or (C2) the discharge is, in terms, limited to accepting creditors, but in practice, as pointed out above, it is likely to be complete.

Provision (D) permits *direct* assignment to a representative of the creditors by elimination of the sheriff as original assignee. The provision would simplify the assignment procedure and remove a source of unnecessary expense. The bonding and accounting requirements imposed by statute¹⁷ upon the assignee should be a sufficient safeguard to insure proper care and administration of the assets while in the assignee's possession.

EFFECT OF THE FEDERAL BANKRUPTCY ACT UPON GENERAL ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

The proposition is undisputed that under the United States Constitution¹⁸ state insolvency laws are suspended or superseded in their operation by the enactment of a federal bankruptcy law. While text writers have differed widely as to what constitutes an insolvency law,¹⁹ it was early conceded that the successive federal bankruptcy acts left unimpaired the states' power to give effect to, and regulate by statute, assignments for the benefit of creditors.²⁰ Such assignments were

¹⁶ *Haijek & Simicek v. Luck* (1903) 96 Tex. 517, 74 S. W. 305 (see text at note 38 *infra*); GLENN, *op. cit. supra* note 13, § 119.

¹⁷ CAL. CIV. CODE §§ 3467 and 3469.

¹⁸ U. S. CONST. ART I, § 8 vests Congress with the power "to establish . . . uniform laws on the subject of Bankruptcies throughout the United States."

¹⁹ A full bibliography on the subject is found in HANNA AND McLAUGHLIN, *CASES AND MATERIALS ON CREDITORS' RIGHTS* (3d ed. 1939) 465-468.

²⁰ *Mayer v. Hellman* (1875) 91 U.S. 496; *Boese v. King* (1882) 108 U.S. 379; Williston, *The Effect of a National Bankruptcy Law upon State Laws* (1909) 22 HARV. L. REV. 547, 556, 559.

held to derive their validity from the force of the common law and not from the statute, which merely added regulatory provisions to a transaction valid without its aid.

Since the setting aside of preferential transfers and liens as well as the debtor's discharge are commonly viewed as typical bankruptcy features, the problem arises whether the assignment statute would not become, by virtue of the proposed amendments, a bankruptcy law, suspended by the Federal Bankruptcy Act. However, it appears that the amended statute comes strictly within the leading decisions on the subject represented by the companion cases of *Pobreslo v. Joseph M. Boyd Co.*²¹ and *Johnson v. Star*.²² On the basis of these authorities the proposed law is but a statute regulating assignments for the benefit of creditors, the effectiveness of which is unimpaired by the Bankruptcy Act.

The *Pobreslo* case involved a Wisconsin statute²³ dealing with voluntary assignments for the benefit of creditors. The statute included the following significant provisions:

- (1) A provision for setting aside preferential transfers received with knowledge of the debtor's insolvency and certain types of judgment executions effected within 60 days prior to the assignment.²⁴
- (2) A provision for automatic dissolution of liens obtained through legal proceedings within 10 days prior to the assignment.²⁵
- (3) Provisions vesting the assignee with power to institute any action for the purpose of setting aside preferences, liens, and fraudulent conveyances.²⁶
- (4) A provision prescribing ratable distribution of the debtor's property even in cases where the assignment has for any reason been adjudged void.²⁷ (The validity of this provision (section 128.06) was the immediate issue involved in the case.)
- (5) Provisions for the debtor's discharge (which the Wisconsin Supreme court had held were superseded by the Federal Bankruptcy Act).²⁸

The principal case reached the United States Supreme Court on

²¹ (1933) 287 U. S. 518.

²² (1933) 287 U. S. 527. The *Pobreslo* and *Johnson* decisions were handed down on the same day and should be construed as a unit.

²³ WIS. STAT. (1929), c. 128.

²⁴ *Id.* § 128.02.

²⁵ *Id.* § 128.07.

²⁶ *Id.* §§ 128.03 and 128.04.

²⁷ *Id.* § 128.06. The section prohibits any creditor from obtaining priority over other creditors by attachment, garnishment or levy—*i.e.*, it prohibits a "race of diligence" when an assignment has been declared void.

²⁸ *Id.* §§ 128.19 through 128.29. The state circuit court was vested with the power, in special proceedings initiated by the debtor, to grant the latter a discharge upon compliance with the requisite formalities and a showing of good faith.

appeal from the Wisconsin Supreme Court.²⁹ The state court, following its earlier decision in *In re Tarnowski*,³⁰ held that the discharge provisions of the state assignment statute were superseded by the Federal Bankruptcy Act. However, the assignment statute *without* the discharge provisions was upheld on the ground that statutes regulating voluntary assignments remain unaffected by the Bankruptcy Act.³¹ In affirming the state court's decision the United States Supreme Court appears to have approved the statute to the same extent that it had been upheld by the state supreme court. No question of the validity of the discharge provisions was presented since they had been previously declared inoperative by the state court.

That the United States Supreme Court did not simply confine its attention to the section of the statute most directly involved in the principal case³² is clear both from the language³³ and the reasoning of the Court. The Court looked primarily at the *nature* of the proceeding, as embodied in all of the provisions of Chapter 128, stressing in particular the fact that the statute aimed at enforcing an equal distribution in harmony with the purposes of the Federal Bankruptcy Act. The declared policy of the United States Supreme Court appears thus to be one of upholding assignment statutes including provisions for setting aside preferences and liens if the proceeding *as a whole* is calculated to assure an equal distribution among creditors.³⁴ Provi-

²⁹ *Pobreslo v. Guaranty Mortgage Corp.* (1932) 210 Wis. 20, 242 N. W. 725.

³⁰ (1926) 191 Wis. 279, 210 N. W. 836.

³¹ "A voluntary assignment . . . is a personal right inherent in the ownership of property. Such a right existed at common law independent of statute. The statutes do not confer the right, but . . . have been enacted for the purpose of regulating the administration of the estate for the benefit of creditors . . . the features of our voluntary assignment act are separate and distinct from the discharge features . . . The discharge features . . . are suspended by the Federal Bankruptcy Act. The provisions regulating voluntary assignments do not contravene the Federal Bankruptcy Act and are still in force." *Id.* at 285, 210 N. W. at 838.

In this connection it should be remembered that although a statute regulating voluntary assignments for the benefit of creditors does not contravene the Federal Bankruptcy Act, a general assignment executed under such statute remains an act of bankruptcy within the provisions of the Federal Bankruptcy Law and is subject to displacement by bankruptcy proceedings if a petition is filed by the creditors within four months of the assignment.

³² *Supra* note 27, § 128.06.

³³ "By this appeal we are called on to decide whether, as construed below, the provisions of that chapter which relate to voluntary assignments for the benefit of creditors, and especially a clause contained in section 128.06 conflict with the National Bankruptcy Act." 287 U. S. at 521.

³⁴ " . . . quite in harmony with the purposes of the federal act the provisions of Chapter 128 that are regulatory of such voluntary assignments serve to protect creditors against each other, and go to assure equality of distribution . . ." 287 U. S. at 526.

Similarly, in *Stellwagen v. Clum* (1918) 245 U. S. 605 the Supreme Court held that an Ohio statute providing for the setting aside of preferential transfers at the suit of any creditor did not conflict with, but was in aid of, the Federal Bankruptcy Act, which favored equal distribution.

sions for the setting aside of preferences and liens are designed to implement rather than impede equal distribution. On the authority of the *Pobreslo* case, the Wisconsin statute could conveniently be used as a guide for drafting the proposed amendments (A) and (B).

It remains to be shown that discharge provisions of the type proposed would not be invalidated by the Federal Bankruptcy Act. In *Johnson v. Star* the United States Supreme Court, affirming the decision of the Texas Supreme Court, upheld as valid against subsequent garnishment proceedings an assignment executed under the Texas assignment statute.³⁵ The Texas statute contained a discharge provision³⁶ similar to the proposed amendment (C2), to the effect that the debtor upon making the assignment shall stand discharged as to all participating creditors who received dividends amounting to one-third of their claims.³⁷ The Supreme Court cited with approval the decision of the Texas court in *Haijek & Simicek v. Luck*.³⁸ In that case the debtor had made a general assignment containing a release clause as to accepting creditors. One of the creditors, after receipt of more than one-third of his claim under the assignment, sued for the balance. He contested the validity of the debtor's discharge, which thus became the precise issue in the case. The state court held that, *even if* the Texas assignment law was suspended by the Bankruptcy Act, *the debtor's discharge was effective by virtue of the provision in the assignment stipulating for the debtor's release*, which provision did not require the aid of statute to give it effect.

Thus the *Johnson* case certainly stands for the proposition that a common law assignment with a release clause as to accepting creditors is not invalidated by the Bankruptcy Act. Hence statutes *authorizing* such assignments (such as amendment (C1)) are not in contravention of the federal bankruptcy law, being merely a codification of the common law.

³⁵ Tex. Rev. Civ. Stat. (Vernon 1925) tit. 12.

³⁶ *Id.*, art. 263.

³⁷ But in *International Shoe Company v. Pinkus* (1929) 278 U.S. 261 the Supreme Court upheld an attachment of the debtor's assets in the hands of a receiver attempting to liquidate the assets under an Arkansas insolvency statute. The Arkansas statute, which provided only for voluntary proceedings, contained a discharge provision as to the claims of assenting creditors similar in substance to that found in the Texas assignment statute. In the *Pinkus* case the opinion written by Mr. Justice Butler seems to indicate that the discharge provisions in the Arkansas "insolvency statute" rendered the *entire* statute invalid. Yet, in the *Johnson* case the Court, speaking again through Mr. Justice Butler, sustained the validity of the Texas assignment statute. Thus, if the *Pinkus* case is not overruled by the *Johnson* case, a discharge provision appears to have a radically different effect in an assignment statute, which remains valid, from that which it has in other types of insolvency statutes, which are invalidated in toto. It is hard to see why two statutes of almost identical contents should meet with such difference in treatment merely because one is labelled an assignment statute while the other is not.

³⁸ (1903) 96 Tex. 517, 74 S.W. 305.

But the case may be of broader scope and imply approval of assignment statutes providing for an automatic release by all creditors accepting dividends. The *Haijek* case appears to construe the Texas statute, despite its automatic discharge provision, as merely codifying what the debtor could have validly done at common law.³⁹ In turn, the United States Supreme Court, in formulating the issue of the *Johnson* case, stated that the sole question before it was "whether as construed by its highest court articles 261-274 of Title XII is repugnant to the Bankruptcy Act." The Supreme Court then quoted the discharge provisions of the Texas statute and approved the state court's interpretation to the effect that the statute was not an "insolvency law," but merely regulated the administration of estates under assignments which would be good at common law, unaided by statute.⁴⁰ Under this view of the case the Supreme Court apparently did not disapprove of automatic discharge provisions in *assignment* statutes of the type proposed in amendment (C2). However, in view of the ambiguity of the *Johnson* opinion cautious debtors should always insert a release clause as to accepting creditors in the assignment deed, so as to bring themselves clearly within the narrow interpretation of the *Johnson* case.

CONCLUSION

If the proposed provisions (A), (B) and (C1) or (C2) were incorporated in the California assignment statute, its feasible operating area would be extended to include all cases where creditors are dealing with an honest debtor still in possession of appreciable assets located within the state boundaries. Within this area bankruptcy could effectively be replaced by the more speedy and economical method of the general assignment, administered under the provisions of the amended statute. In the case of dishonest or fraudulent debtors,⁴¹

³⁹ The court in the *Haijek* case cites with apparent approval language from *Keating v. Vaughn* (1884) 61 Tex. 518, 524: "The statute in question is in no sense an insolvent law, providing for the discharge of a debtor by a compliance with its terms without the consent of the creditor, but is a statute which, for the better protection of creditors prescribes a mode for the administration of the estates of insolvents . . . which would be good at common law, unaided by the statute, and, like any other trust, could be enforced in a court of equity in the absence of a statute providing for a mode of administration." 96 Tex. at 519, 74 S. W. at 305.

⁴⁰ 287 U.S. at 528, where the Supreme Court cites the language from the *Keating* case quoted *supra* note 39.

⁴¹ Where the debtor is suspected of conspiring against or defrauding his creditors, the bankruptcy court, equipped with its subpoena and contempt powers, offers more effective protection for the rights of the creditors than a state court proceeding for attacking the assignment as fraudulent. In the bankruptcy court creditors may force the examination of not only the debtor and his wife but "of any designated person," as well as the production of necessary records and of any property concealed by the debtor or secretly transferred to one of the creditors. The greater effectiveness of the bankruptcy system in the case of dishonest debtors is admitted by the champions of the friendly