sons. It may be true that a passenger on a steamer or railroad expects the privilege of having his friends come to see him off as part of the trip for which he pays. See *Voirin v. Compagnie Général Transatlantique*, 270 N.Y.S. 643, 644, 151 Misc. 498, 499 (1933). But it does not necessarily follow that there is any benefit to either party in the sense in which the term "business benefit" is usually used. See *Fleckenstein v. Great A. & P. Tea Co.*, 91 N.J.L. 145, 102 Atl. 700 (1917); *Murphy v. Huntley*, 251 Mass. 555, 146 N.E. 710 (1925); and *Pope v. Willow Garages Co.*, 274 Mass. 440, 174 N.E. 727 (1931), where persons accompanying customers to stores or garages, with no intention of doing business there themselves, were held to be mere licensees. The expectation of the parties that the passenger will have visitors does not determine, as the Federal court thought it did, that the plaintiff *was* a business visitor, but only that, under the circumstances, he should be treated like one for purposes of recovery. It seems that at the expense of taxing the descriptive power of the term "business visitor," protection is being extended to those who might more properly be designated as licensees in the company of business visitors. The tendency to extend the liability of owners for the condition of their premises foreshadows, perhaps, the eventual but desirable abandonment of the distinction between gratuitous licensees, including social guests, and business visitors.

Trusts—Grant of Priority in Bankruptcy to Creditors on Alternative Grounds of Express or Constructive Trust—Distinction between Debt and Trust—[Federal].—The X company maintained an employees' association, the purpose of which was to provide insurance benefits for the employees and their dependents. The association was managed by its own officers and maintained a separate bank account. Membership fees were collected pursuant to an arrangement whereby the X company by bookkeeping entries deducted the necessary amounts from each employee's wages, credited the total deducted to the association, and subsequently paid the association. The company fell behind in its payments but continued to make the deductions. Bankruptcy proceedings were then begun against the X company. At the time the petition was filed there was an arrearage of $14,607.51, all of which (according to the record) had accrued more than three months before the filing of the petition. The association assigned its claim to the plaintiff, another employees' organization, which claimed, but was denied, a priority in the district court. *Held*, priority granted. The failure of the bank to pay the amounts deducted created a trust *ex maleficio* or, alternatively, the X company was express trustee for the association. *In re Grigsby-Grunow, Inc.*, 80 F. (2d) 478 (C.C.A. 7th 1935).

The arrangement for the collection of dues may be construed as having made the association either the partial assignee or the partial beneficiary of wage contracts between the workers and the X company. Since it appears that the employment contracts themselves, rather than subsequent assignments by the workers, created the rights of the association, the third party beneficiary view is preferable. See 1 Williston, Contracts § 347 (1920). But whether the association was an assignee or a beneficiary, the grant of a priority on an express trust theory runs counter to the well-settled rule that a debtor, as such, is not the trustee of his creditor. *Steele v. Clark*, 77 Ill. 471 (1875); see *Gough v. Satterlee*, 52 N.Y.S. 492, 497, 32 App. Div. 33, 40 (1898); 1 Bogert, Trusts and Trustees § 17 (1935). This follows from the definition of a trust as a fiduciary relationship in which the *cestui* has an equitable interest in property held for him by the trustee. See *Plum Trees Lime Co. v. Keeler*, 92 Conn. 1, 10, 101 Atl. 509 (1917);

Restatement, Trusts § 2 (1935). An unsecured creditor, on the other hand, has no interest in the debtor's property but only a chose in action. See 1 Bogert, Trusts and Trustees § 17 (1935). It is true that a debtor may become trustee by segregating assets to secure his creditor's claim. See 1 Bogert, Trusts and Trustees § 19 (1935). But by debiting the workers' accounts and crediting the account to the association, the bankrupt merely shifted credits and did not segregate a *res* to which a trust could attach. See *Blakely v. Brinson*, 286 U.S. 254 (1932); *Mechanics' Nat'l Bank of N.Y. v. Buchanan*, 12 F. (2d) 891 (C.C.A. 8th 1926). But *cf. Davis v. McNair*, 48 F. (2d) 494 (C.C.A. 5th 1931); *Northwestern Lumber Co. v. Scandinavian Bank*, 130 Wash. 33, 225 Pac. 825 (1924).

If, however, the arrangement for the collection of dues can be construed in this wise: that the company, as trustee, was to hold enough of its general checking account to secure the amounts due and unpaid, then the grant of a priority on an express trust theory is justified. Although the court appears to have adopted this construction, the findings of fact by the referee afford little basis for the inference that the parties intended such an arrangement.

It is doubtful whether the decision can be supported on the ground upon which it primarily rested: that the failure of the company to pay the amounts deducted rendered it chargeable as a constructive trustee. A constructive trust is imposed when a person retains property acquired by his own or by another's wrong. See *Lewis v. Lindley*, 19 Mont. 422, 439, 48 Pac. 765, 772 (1897); Restatement, Trusts § 1 (e) (1935). Clearly, the failure of a debtor to pay his debts out of any of his assets does not render inequitable the acquisition or retention of any particular asset. It is noteworthy, moreover, that the alternative grounds are mutually exclusive. An express trust, created by a proper expression of intention and a constructive trust raised by equity, without regard to intention, as a remedy for the inequitable retention of property, cannot simultaneously exist with respect to the same property. Since, however, these grounds simply served as alternative bases for the decision, the case does not involve the court in the logical difficulty of a concurrent application of mutually exclusive theories.

Had the balance owed to the association accrued within three months of the commencement of bankruptcy proceedings, a priority might have been allowed under § 64 of the National Bankruptcy Act which creates a priority for wages due to workers if the wages were earned within three months before the filing of the petition and if they do not exceed $300 for each worker. 34 Stat. 267 (1906), 11 U.S.C.A. § 104 (1927). Assignees of wage claims have been granted the workers' priority on the theory that they are enforcing the workers' rights. *Shropshire v. Bush*, 204 U.S. 186 (1907). See 34 Stat. 267 (1906), 11 U.S.C.A. § 104 (1927); 1 Williston, Contracts § 432 (1921). In the principal case, each worker had a *cestui's* interest in a chose in action created by his services and held by the association as trustee. See *Cowles v. Morris*, 330 Ill. 11, 161 N.E. 150 (1928); Wrightington, Unincorporated Associations and Business Trusts 293 (2d ed. 1923). More truly than in the assignment cases, the plaintiff is enforcing the claim of the workers since they will actually benefit from the allowance of a priority.

The strong emotional appeal of the workers' claims makes the result in the principal case consonant with popular notions of fairness. However, it is open to these theoretical objections: the court's application of constructive trust law appears to be erroneous; its conclusion that the conduct of the parties manifested a trust intent does not appear to be warranted by the findings of the referee.