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THE

BANKRUPTCY LAW ANNOTATED

BEING THE

NATIONAL BANKRUPTCY ACT OF 1898
AS AMENDED

FEBRUARY 5th, 1903.

19202

THE

ORDERS IN BANKRUPTCY, THE OFFICIAL FORMS
AND THE UNITED STATES EQUITY RULES.

WITH

ALL THE DECISIONS SINCE 1898, DIGESTED AND ARRANGED
UNDER APPROPRIATE SECTIONS WITH
FULL CROSS-REFERENCES,

AND

ALL FORMER BANKRUPTCY ACTS.

TOGETHER WITH

A LIST OF JUDGES, CLERKS AND REFEREES, WITH THEIR
JURISDICTIONS.

BY

SIDNEY CORNING EASTMAN,

REFEREE IN BANKRUPTCY IN CHICAGO.

CHICAGO:
T. H. FLOOD & CO.
1903.

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"The primary object of a bankruptcy law is to secure a just distribution of the bankrupt's property among his creditors; the secondary object is the release of the bankrupt from the obligation to pay his debts." Justice Miller, in *Wilson* v. *City Bank* (1873), Sup. Ct. of U. S., 17 Wall. (U. S.), 473.

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PREFACE.

The United States is the only civilized nation which has not had a permanent bankruptcy code. The laws of 1800, 1841 and 1867 were respectively repealed after a few years trial. The defects in each created a sentiment of opposition which finally grew sufficiently strong to cause its destruction. Many have come to regard such legislation as necessarily short-lived and to believe its object should be like unto the old Jewish law, a periodical discharge for the financially crippled. The real object and value of bankruptcy law is, however, well shown in that early case, an extract from which is presented on a preceding page. The administrative feature of the law does not so forcibly arrest the attention of the casual observer as does the discharge part, yet in the former is the real effectiveness and utility of the law found.

The Referees in Bankruptcy under the law of 1898, early in their experience, came together in convention and talked over the new law, compared notes, exchanged ideas and finally appointed committees to take up in a careful and elaborate manner all suggestions that were offered for improving the law. Their labors resulted in the elaboration of an amendatory act which they presented to the committees of the Senate and House of Representatives. Judge Hoar of the Senate and Congressman Ray of the House (now United States District Judge for the Northern District of New York), cordially received these suggestions and invited further labors. The result is shown in the adoption of the amendment of February 5, 1903, which is incorporated in this volume.

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It is apparent that the interest which has been thus displayed and the education which the country has had on the subject of bankruptcy legislation has made a change in public sentiment, and it is confidently asserted by those competent to speak that a national bankruptcy law has become a part of our jurisprudence, to be amended and improved from time to time, but never to be repealed.

Every effort has been made to secure accuracy in the book and to avoid errors. For those errors that have crept in, the stress of preparation in the midst of exacting official duties will in a measure be an explanation. The author invites criticisms and suggestions from the users of this book.

The author desires to make recognition of the valued assistance of Mr. Carl V. Wisner of the Chicago bar, in the preparation of this work.

SIDNEY CORNING EASTMAN.

CHICAGO, March, 1903.

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SCOPE NOTE.

This volume is the outgrowth of a system of note taking made necessary in practice. It contains a brief notation of every decision which has found its way into print since the law of 1898 came into being, down to March 15, 1903. It does not claim to be a text book, but contains the features of an annotated statute and an index digest.

It has been the effort to collect all the cases on the subject of bankruptcy decided since 1898. To that end a careful search of all the reports, State and Federal, has been made. This has been done by going to the reports themselves. The collections of bankruptcy cases in the National Bankruptcy News (cited N. B. N.) and in the American Bankruptcy Reports (cited A. B. R.) have been carefully examined, and all cases found therein digested and arranged under appropriate sections. One hundred and fifty cases or more have been found and digested, not now found in any series of reports devoted to bankruptcy decisions.

The purpose has been to give the lawyer the use of all his library, and with that end in view reference has been made to the various reports in which each case is reported. Owing to the large number of cases and the fact that they cover every portion of the United States, the court, the district and the date of the case has been given so that the lawyer can see at a glance whether a case has been decided and is controlling in his district and circuit. A list of the judicial officers of the courts of bankruptcy has been added, as this information has not been found in any other publication, and the numerous inquiries therefor seemed to justify its publication. It has been obtained by personal

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correspondence with the clerks and referees in the various districts.

In carrying out the original plan of placing under each section or paragraph all the decisions relating to it, with a short note of the substance of the case, it became apparent towards the close that by reason of the increasing number of cases some sections were overloaded. It was too late to attempt a curtailment, and it was deemed better to carry out the plan irrespective of the growing bulk. A difficulty arose which is apparent in that, owing to the somewhat incoherent shape which the act assumed from the manner of its production, many sections cross and interfere with each other. which resulted in an embarrassment in correctly placing the notes.

The purpose has been to give the lawyer who has occasion to consider questions of bankruptcy law a complete working tool containing all the statute and case law.

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FEDERAL CONSTITUTION,

ARTICLE 1, SECTION 8.

"The congress shall have power * * to establish * * uniform laws on the subject of bankruptcies throughout the United States, * * and to make all laws which shall be necessary and proper for carrying such power into execution."

Under this power bankruptcy laws have been enacted by Congress as follows: Apr. 4th, 1800, amended Apr. 29th, 1802, repealed Dec. 19th, 1803; August 19th, 1841, repealed March 3rd, 1843; March 2nd, 1867, amended July 27th, 1868, June 14th, 1870, June 30th, 1870, June 8th, 1872, Feb. 13th, 1873, March 3rd, 1873, June 22nd, 1874, April 14th, 1876, July 26th, 1876, repealed in entirety June 7th, 1878; July 1st, 1898, amended Feb. 5th, 1903. See *post* former Bankruptcy Acts.

PURPOSE OF BANKRUPTCY LAWS.

Jurisdiction of National Law exclusive. *New Lamp, etc., Co.* v. *Ansonia Brass, etc., Co.* (1876), 91 U. S. 656.

Primary object of bankruptcy act is to secure a just disposition of property among creditors; secondary object is release of bankrupt from his debts. *Wilson* v. *City Bank* (1873), 17 Wall. (U. S.), 473.

Speedy distribution of assets of bankrupt is purpose of bankruptcy act, second in importance only to equality of distribution. *Bailey* v. *Glover* (1874), 21 Wall. (U. S.), 342.

BANKRUPTCY ACT OF 1898, CONSTITUTIONAL.

The act discussed and its constitutionality upheld. *Hanover Nat. Bank* v. *Moyses* (1902), 186 U. S., 181; 8 A. B., R. 1.

STATE INSOLVENCY LAWS. SUSPENDED BY NATIONAL BANKRUPTCY ACT.

Former Statutes Construed. *Sturges* v. *Crowninshield* (1819), 4 Wheaton (U. S.), 122; *Ogden* v. *Saunders* (1827), 12 Wheaton (U. S.), 213.

Act of 1898. General State Law suspended or superseded. *In re Macon Sash, etc., Co.*, S. Dist. Ga., Speer, J. (1901), 112 Fed., 323; 7 A. B. R., 66; *In re Storch Lumber Co.* (1902), Dist. Md., Morris, J. 114 Fed., 360; 8 A. B. R. 86; *In re Rogers* (1902), S. Dist. Ga., Speer, J., 116 Fed., 435; 8 A. B. R. 723; *Carling* v. *Seymour Lumber Co.* (1902), C. C. A., 5th Cir., Shelby, J., 113 Fed., 483; 8. A. B. R. 29.

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California law held still in force as to persons not coming under the Act. *Herron Co.* v. *Superior Court* (1902), Sup. Court Cal., Harrison, J., 68 Pac., 814.

Illinois Act construed. *In re* Curtis (1899), S. Dist. Ill.; Allen, J., 91 Fed., 137; affirmed (C. C. A., 7th Cir.), Jenkins, J., 94 Fed., 312; 2 A. B. R. 226.

Illinois Act held suspended and County Court deprived of jurisdiction. *Horbaugh* v. *Costello* (1900), Sup. Court, Ill., Magruder, J., 184 Ill. 110; affirming *Costello* v. *Harbaugh* (1898) 83 Ill., App. 29.

Indiana Act construed. *In re* Smith (1899), Dist. Ind., Baker, J., 92 Fed., 135; 2 A. B. R. 9.

Kentucky Act construed. *In re* John A. Etheridge Furniture Co. (1899), Dist. Ky., Barr, J., 92 Fed., 329; 1 A. B. R. 112.

Missouri Act construed. *In re* Seivers (1899), E. Dist. Mo., Adams, J., 91 Fed., 366; 1 A. B. R. 117; affirmed sub nom. *Davis* v. *Bohle* (1899) (C. C. A.), 8th Cir., Thayer, J., 92 Fed., 325; 1 A. B. R. 412.

Massachusetts Act construed. *Parmenter Mfg. Co.* v. *Hamilton et al.* (1898), Sup. Court Mass., Knowlton, J., 172 Mass., 178; 1 A. B. R. 39.,

Maryland law held not suspended. *Old Town Bank* v. *McCormick* (1903), Sup. Court Md., Fowler, J., 53 Atl. 934.

Minnesota Act construed. *Armour Packing Co.* v. *Brown* (1899), Sup. Court Minn. 76 Minn., 465. *Foley Bean Lumber Co.* v. *Sawyer* (1899), Sup. Court Minn., Mitchell, J., 76. Minn., 118.

New Hampshire Act suspended. *Wescott Co.* v. *Berry et al.* (1898) Sup. Court, N. H., Young, J., 69 N. H, 505.

North Carolina Act construed. *In re* Richard (1899), E. Dist. N. C,, Purnell, J., 94 Fed., 633; 2 A. B. R. 506.

Pennsylvania Act of 1901 construed and held suspended. *Rees* v. *Boggs* (1902), C. Court Pa., Bell, J., 26 Pa., C. C., 284. *In re* Scheivley (1902), 26 Pa. C. C., 34; also *McArvdy* v. *Tantz* (1902), Weard. J., 26 Pa. C. C., 417; McMullen's Petition (1902), 26 Pa. C. C., 157,

Bankruptcy law does not conflict with Pennsylvania law relating to attachments. *McCullough* v. *Linn & Goodhard* (1899), Circuit Court Pa., Biddle, J., 22 Pa. C. C., 369.

Rhode Island Act construed. *Maman* v. *Crown Carpet Lining Co.* (1901), Sup. Court R. I., 50 Atl., 381.

Texas Act construed. *Patty-Joiner Co.* v. *Cummins* (1900), Texas Sup. Court, Gaines, J., 93 Texas, 598; 4 A. B. R. 269; 57 S. W., 566.

Wisconsin Act construed. *Binder* v. *McDonald* (1900), 106 Wis., 332; *In re* Bruss-Ritter Co. (1898), E. Dist. Wis., Seaman, J., 90 Fed., 651; 1 A. B. R., 58.

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ANNOTATED BANKRUPTCY STATUTE.

CHAPTER 1.

DEFINITIONS.

SECTION. 1 MEANING OF WORDS AND PHRASES.

(1) A person against whom a petition has been filed.
(2) adjudication.
(3) appellate courts.
(4) bankrupt.
(5) clerk.
(6) corporations.
(7) court.
(8) courts of bankruptcy.
(9) creditors.
(10) date of bankruptcy.
(11) debt.
(12) discharge.
(13) document.
(14) holiday.
(15) when deemed insolvent.
(16) Judge.
(17) oath.
(18) officer.
(19) persons.
(20) petition.
(21) referee.
(22) conceal.
(23) secured creditor.
(24) States.
(25) transfer.
(26) trustee.
(27) wage earner..
(28) Words in Masculine gender.
(29) Words importing the plural number.
(30) Words importing singular number.

An Act To establish a uniform system of bankruptcy throughout the United States.

Approved July 1st, 1898. Chapter 541, Acts of Fifty-fifth Congress. 30 Statutes at L., 544. 2 Sup. R., S. U. S. 843. Amended February 5th, 1903. As to time when Act goes into effect, see Sec. 71, *post*. As to time amendment goes into effect see amendment of Feb. 5, 1903, *post*.

SECTION 1. MEANING OF WORDS AND PHRASES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

a The words and phrases used in this Act and in pro-

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ceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

The Act is remedial and should have reasonable construction according to the fair import of its terms with view to effect its objects. *Blake* v. *Francis Valantine Co.* (1898), N. Dist. Cal., Hawley, J., 89 Fed., 691; *Norcross* v. *Nathan* (1900), N. Dist. of Cal., Hawley, J., 99 Fed., 414; 3 A. B. R., 613; *Southern Loan & Trust Co.* v. *Benbow* (1899), W. Dist. N. C. Ewart, J., 96 Fed., 514. 3 A. B. R. 9.

Where the language is clear and unambiguous it must be held to mean what it plainly expresses, and no room is left for construction. *Swarts* v. *Siegel et al.* (1902), C. C. A., 8th Cir., Sanborn, J., 117 Fed., 13; 8 A. B. R., 689.

(1) **"A person against whom a petition has been filed"** shall include a person who has filed a voluntary petition;

Applies to voluntary and involuntary cases. *Peck Lumber Mfg. Co.* v. *Mitchell* (1899), Lackawanna County Court (Penn.) Common Pleas, Edwards, J., 1 A. B. R., 701; 1 N. B. N., 262.

(2) **"Adjudication"** shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed;

As to adjudications, see Sec. 18. *post.*

(3) **"Appellate Courts"** shall include the circuit courts of appeals of the United States, the supreme courts of the Territories, and the Supreme Court of the United States;

As to manner of taking appeals see Sec. 25 *post.*; also, Gen. Ord. XXXVI.

(4) **"Bankrupt"** shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt,

As to application of definition, see Sec. 4b. *post.*

Person against whom petition has been filed is within meaning of word as used in the act prior to adjudication. *In re* Hicks (1901), Dist. Vt., Wheeler, J., 107 Fed., 910 6 A. B. R., 182; 3 N. B. N., 959.

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(5) **"Clerk"** shall mean the clerk of a court of bankruptcy;

See as to what are courts of bankruptcy, Sec. 1 (8). *post.*

(6) **"Corporations"** shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association;

For discussion of meaning of this section see: *In re* The Empire Metallic Bedstead Co. (1899), N. Dist., N. Y., Hotchkiss R., 1 A. B. R. 136.

(7) **"Court"** shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee;

(8) **"Courts of bankruptcy"** shall include the district courts of the United States and of the Territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska;

See as to Jurisdiction and specific designation of courts, Sec. 2, *post.*

Does interest of District Judge give ground for removal of cause under Sec. 601, Rev. Stat., U. S.? *In re* Seebold (1901), C. C. A., 5th Cir. McCormick, J., 105 Fed., 910: 5 A. B. R. 358.

(9) **"Creditor"** shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy;

An accommodation maker, an indorser or surety on the obligations of a bankrupt within this definition. *Swarts* v. *Siegel* (1902), C. C. A. 8th Cir. Sanborn, J., 117 Fed. 13; 8 A. B. R. 689.

General terms of definition of "creditor" must apply in absence of restrictive language. *In re* Walker (1899), Dist. N. Dakota; Amidon, J., 96 Fed., 550; 1 N. B. N. 510;

"Attorney" in this section includes attorney at law though he has no power to vote except on additional security. *In re* Henschel (1901), S. Dist., N. Y. Brown, J., 109 Fed., 861; 6 A. B. R. 305: 3 N. B. N. 933.

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(10) **"Date of bankruptcy,"** or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed;

As to computation of time see Sec. 31 *post*.

The filing of the petition in good faith gives jurisdiction to the court, and the moment of filing is the precise point of time from which the various limitations in the Act are to be read. *In re* Chas. Lewis & Bro. (1899), S. Dist., N. Y., Brown, J., 91 Fed., 632; 1 A. B. R. 458; 1 N. B. N., 556.

Insufficient petition withdrawn and amended – date of filing the amendment is the date when proceedings commenced. *In re* Washburn Bros. (1900), Dist. Conn. Townsend J. 99 Fed., 84; 3 A. B. R. 585.

In the computation of time, exclude the day the act of bankruptcy was committed and include the day the petition was filed, *In re* Stevenson (1899), Dist. Del., Bradford J., 94 Fed., 110; 2 A. B. R. 66; 1 N. B. N. 313.

(11) **"Debt"** shall include any debt, demand, or claim provable in bankruptcy;

"Debt." in bankruptcy law is not restricted to its strict legal meaning "a sum due by certain and express agreement." *In re* Fife (1901), W. Dist. Pa., Buffington, J., 109 Fed., 880; 6 A. B. R., 258; 3 N. B. N., 835.

This Subdivision is limited by Sec. 60a. *In re* Yates (1902), N. Dist. Cal., De Haven, J., 114 Fed., 365; 8 A. B. R., 69. See also to the same effect: *In re* Mitchell (1902), Dist. Del., Bradford, J., 116 Fed., 87; 8 A. B. R., 324.

(12) **"Discharge"** shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this Act;

As to granting of discharges see Sec. 14 and notes.

As to debts not affected by discharge, see Sec. 17 and notes. For definition of debts which are provable in bankruptcy, see Sec. 63 and notes.

(13) **"Document"** shall include any book, deed, or instrument in writing;

See Sec. 70a as to title to documents relating to bankrupt's property vesting in trustee.

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(14) **"Holiday"** shall include Christmas, the Fourth of July, the Twenty-second of February, and any day appointed by the President of the United States or the Congress of the United States as a holiday or as a day of public fasting or thanksgiving;

As to computation of time, see Sec. 31 and notes.

(15) **[When person insolvent.]** A person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not at a fair valuation, be sufficient in amount to pay his debts;

Act of 1867 made person insolvent who could not pay his debts in ordinary course of business. Sec. 39, Act of 1867, *post.*

As to "conveyed, transferred, concealed or removed, etc.," see Sec. 3a (1), and notes. As to debts which may be proved, see Sec. 63 and notes.

Insolvency in administration of bankruptcy and insolvency laws is inability to pay debts as they mature in the regular course of business; non-payment of contracts challenged for fraud on ground of insufficiency of assets has application to inability to pay. *Marvin* v. *Anderson* (1901), Sup. Ct. Wis., Marshall, J., 6 A. B. R., 520; 87 N. W., 226.

An adjudication on an involuntary petition raises no presumption of insolvency as to any antecedent date. *In re* John Chappell (1901), E. Dist. of Va., Waddell, J., 113 Fed., 545; 7 A. B. R., 608.

Inability to pay debts in full as they mature is not the same as "property at a fair valuation not sufficient to pay debts." *Martin* v. *Bigelow* (1901), Sup. Ct. N. Y., Sp. Term.; 36 Misc., 298.

Adjudication on involuntary petition containing allegation of act of bankruptcy involving insolvency on previous date is *res adjudicata* on all creditors. *In re Am. Brewing Co.* (1902), 112 Fed., 752; 8 A. B. R., 463.

Definition in this section must be strictly adhered to. *Duncan* v. *Landis* (1901), C. C. A., 3rd Cir., Gray, J., 106 Fed., 839; 5 A. B. R., 649; 3 N. B. N., 673.

Confession of inability to pay debts *prima facie* evidence of insolvency.

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In re Lange (1899), N. Dist. Iowa, Shiras, J., 97 Fed., 197; 1 A. B. R., 189; 1 N. B. N., 60.

Judgment and levy not proof of insolvency. *Levor* v. *Seiter* (1901), N. Y. Sup. Ct., Sp. Term; 34 Misc., 382.

Debtor presumed to know his insolvency. *In re* Gilbert (1902), Dist. Ore., Bellinger, J., 112 Fed., 951; 8 A. B. R., 101.

Corporations suspension of business and inability to pay debts—presumption of insolvency. *In re* Elmira Steel Co. (1901), N. Dist., N. Y., Hazel, J., 109 Fed., 456; 5 A. B. R., 484.

Dissolution of a firm and inability to meet debts is strongest evidence of insolvency. *In re* Miller (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 764; 5 A. B. R., 140.

Property exempt from execution included on trial of contested petition. *In re* Bauman (1899), W. Dist. Tenn., Hammond, J., 96 Fed., 946.

Prospective profits on goods purchased not assets. *In re* Bloch (1901), C. C. A., 2nd Cir., 109 Fed., 790; 6 A. B. R., 300; 3 N. B. N., 894.

Evidence improperly rejected. *In re* Bloch (1901), C. C. A., 2nd Cir., 109 Fed., 790; 6 A. B. R., 300; 3 N. B. N., 894.

Insolvency established. *In re* Rome Planing Mill Co. (1900), N. Dist. N. Y., Coxe, J., 99 Fed., 937; 3 A. B. R., 766.

Insolvency denied. *In re* Gilbert (1902), Dist. Ore., Bellinger, J., 112 Fed., 951; 8 A. B. R., 101.

(16) **"Judge"** shall mean a judge of a court of bankruptcy, not including the referee;

As to What are Courts of Bankruptcy, see ante Sec. 1 (8), and notes. As to when powers of Judge are vested in referee, see Sec. 38a.

(17) **"Oath"** shall include affirmation;

As to punishment for false oath, see Sec. 29b (2), and notes. As to who may administer oaths, see Sec. 20a. Refusal to take oath, contempt. Sec. 41a (4).

(18) **"Officer"** shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer;

As to officers, their duties and compensation, see Chapter V. post. "Person" defined, Sec. 1 (19) post.

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(19) **"Persons"** shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations;

As to offenses under this act forbidden see Sec. 29a *post* and notes. As to violations of the Bankruptcy law and punishment therefor see Sec. 2 (4) and notes.

(20) **"Petition"** shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this Act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named;

As to petitions see Sec. 59 and notes. As to acts of bankruptcy by a debtor, see Sec. 3 *post* and notes. As to what are Courts of bankruptcy, see Sec. 2 *post*. For definition of Clerk, see Sec. 1 (5) ante. As to filing of papers see Gen. Order II and notes. As to Creditors filing involuntary petitions, see Sec. 59b and notes.

(21) **"Referee"** shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or any one acting in his stead;

As to duties, powers, qualifications of referee, see Chapter V *post*, Sec. 33 to Sec. 34, inclusive. Courts of bankruptcy determine territorial Jurisdiction of referees, Sec. 34a (2). As to Reference of cases, see Sec. 22 (a).

A referee is in fact a judge of the Bankruptcy Court. *In re* Tebo (1900), Dist. W. Va., Jackson, J., 101 Fed., 419; 4 A. B. R., 235.

(22) **"Conceal"** shall include secrete, falsify, and mutilate;

This clause construed. *In re Bellah* (1902), Dist. Del., Bradford, J., 116 Fed., 69; 8 A. B. R., 310.

(23) **"Secured creditor"** shall include a creditor who

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has security for his debt upon the property of the bankrupt of a nature to be assignable under this Act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets;

As to how value of securities ascertained, see Sec. 57 and notes.

This section limits the meaning of "secured creditor" to its strict definition. It does not amplify the usual meaning of the term. *In re* Coe, Powers & Co. (1899), N. Dist. Ohio, Remington, R., 1 A. B. R. 275; 1 N. B. N., 294.

(24) **"States"** shall include the Territories, the Indian Territory, Alaska, and the District of Columbia;

As to State insolvency laws, see Sec. 71 (a) and notes.

(25) **"Transfer"** shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security;

As to the further construction and application of "transfer," see Sec. 60c and notes. When transfer is act of bankruptcy, Sec. 3a (1) and notes.

"Transfer" is used in its most comprehensive sense and is intended to include every means and manner by which property can pass from the ownership and possession of another. *Pirie* v. *Chicago T. & Tr. Co.* (1901), U. S. Sup. Court, McKenna, J., 182 U. S., 444; 5 A. B. R., 814; 3 N. B. N., 566.

Payment of money on account is a transfer. *In re Fixen* (1900), C. C. A., 9th Cir., Morrow, J., 102 Fed., 295; 4 A. B. R., 10.

Word "property," as here used, includes money. *Boyd* v. *Lemon Gale Co.* (1902), C. C. A., 5th Cir., Pardee, J., 114 Fed., 647; 8 A. B. R., 81.

Payment of money in due course of business a "transfer." *Worden* v. *Columbia Electric Co.* (1899), Dist. Ind., Baker, J., 96 Fed., 803; contra *In re* Ratliff (1901), E. Dist. N. C., Purnell. J., 107 Fed., 80; 5 A. B. R., 713.

Receivership is not a transfer. *In re* Baker-Ricketson (1899), Dist. Mass., Lowell, J., 97 Fed., 489; 4 A. B. R., 605; 2 N. B. N., 133.

Deposit in bank is a "transfer." *In re* Stege (1902), C. C. A., 2nd Cir., 116 Fed., 342; 8 A. B. R., 515.

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As to application of "transfer" see: *In re* Ed W. Wright Lumber Co. (1902), W. Dist. Ark., Rogers, J., 114 Fed., 1,011; 8 A. B. R., 345.

(26) **"Trustee"** shall include all of the trustees of an estate;

For appointment, duties, qualifications of trustees, see Sec. 44 to 51, inclusive, and Gen. Ord., XIII, XIV, XV and XVII. As to when more than one trustee in an estate, see Sec. 47b and notes.

(27) **"Wage earner"** shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year;

As to prior claim of wage earner with construction of term. See Sec. 64 b (4) *post* and notes thereunder. Wage-earner exempted from involuntary bankruptcy, Sec. 4b *post* and notes.

(28) **[Words importing masculine gender.]** Words importing masculine gender may be applied to and include corporations, partnerships, and women;

See definition of persons, Sec. 1 (19) ante and notes. See as to words imparting singular number, Sec. 1 (29) and Sec. 1 (30) *post.*

(29) **[Words importing Plural Number.]** Words importing the plural number may be applied to and mean only a single person or thing;

For definition of persons, see Sec. 1 (19) *ante* and notes, see also Sec. 1 (28) *ante*, and Sec. 1 (30) *post.*

(30) **[Words importing singular number.]** Words importing the singular number may be applied to and mean several persons or things.

See Sec. 1 (29) ante.

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CHAPTER II.

CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.

SEC. 2. COURTS OF BANKRUPTCY NAMED.—JURISDICTION.

(1) to adjudge persons bankrupt.
(2) to allow and disallow claims.
(3) to appoint receivers.
(4) to try and punish bankrupts.
(5) to permit temporary transaction of business.
(6) to substitute persons in proceedings.
(7) to collect and distribute assets.
(8) to close estates.
(9) to confirm and reject compositions.
(10) to modify, etc., referee's finding.
(11) to determine exemptions.
(12) to discharge bankrupts, etc.
(13) to enforce orders.
(14) to extradite bankrupts.
(15) to make all necessary orders for enforcement of provisions of act.
(16) to punish for contempts before referees.
(17) to appoint trustees.
(18) to tax costs.
(19) transfer cases to other courts of bankruptcy.
(20) specified powers.

SEC. 2. COURTS OF BANKRUPTCY NAMED.— JURISDICTION.

[Jurisdiction of courts of bankruptcy.] That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several states, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in

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vacation in chambers and during their respective terms, as they are now or may be hereafter held, to

Courts of bankruptcy defined Sec. 1 (8) ante. For jurisdiction of U. S. and State Courts, see Sec. 23 *post*, and notes thereunder.

Federal court sitting as court of bankruptcy is always open and does not lose jurisdiction to alter interlocutory orders by termination of term at which they were entered. *In re* Henschel (1902), S. Dist., N. Y., Adams, J., 114 Fed., 968; 8 A. B. R., 201.

(1) **[To adjudicate persons bankrupt.]** Adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdiction for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions;

Compare with Sec. 1 of Act of 1867 *post*.

See Forms 1 and 3 for allegations of residence in petitions, also Gen. Ord. VI, as to petitions in different districts, and Gen. Ord. VII, as to priority of petitions when two or more are filed against a common debtor.

Ancillary jurisdiction exercised by court of bankruptcy. *In re* Peiser (1902), E. Dist. Pa., McPherson, J., 115 Fed., 199; 7 A. B. R., 690.

Business, residence and domicile, facts on which court must base its jurisdiction to adjudge persons bankrupt. *In re* Marine Machine & Conveyor Company (1899), S. Dist. N. Y., Brown, J., 91 Fed., 630; 1 A. B. R., 421; 1 N. B. N., 135; *In re* Brice (1899), Dist. Iowa, Woolson, J., 93 Fed., 942; 2 A. B. R., 197; 1 N. B. N., 310; *In re* Blair (1900), S. Dist. N. Y., Brown, J., 99 Fed., 76; 3 A. B. R., 588; 2 N. B. N., 890; *In re* Filer (1900), S. Dist. N. Y., Brown, J., 108 Fed., 209; 5 A. B. R., 332; 3 N. B. N., 366; *In re* Plotke (1900), C. C. A., 7th Cir., Seaman, J., 104 Fed., 964; 5 A. B. R., 171; 3 N. B. N., 122; *In re* Grimes (1899), W. Dist. N. C., Ewart, J., 94 Fed., 800; 2 A. B. R., 160; 1 N. B. N., 339.

Court of bankruptcy no power to enter order to show cause to be served on person outside the District. *In re* Waukesha Water Co. (1902), E. Dist. Wis., Seaman, J., 116 Fed., 1,009; 8 A. B. R., 715.

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Residence must have commenced at least six months prior. *In re* Stokes (1899), Dist. Washington, Munter, R.; 1 A. B. R., 35; 1 N. B. N., 106; (see note to this case, 1 A. B. R., 37).

Domicile not lost by temporary absence however prolonged where intention to return remained. *In re* Williams (1900), District Washington, Hanford, J., 99 Fed., 544; 3 A. B. R., 677; 2 N. B. N., 206.

"Domicile" and "Residence" defined. Three months of either inside the six months period essential to the jurisdiction. *In re* Berner (1899) N. Dist. Ohio, Remington, R., 3 A. B. R., 325; 2 N. B. N., 268, 330.

Residence of bankrupt is jurisdictional fact; burden on bankrupt to show it. *In re* Waxelbaum (1899), S. Dist. N. Y., Brown, J., 97 Fed., 562; 3 A. B. R., 267; 2 N. B. N., 103. Same on rehearing. *In re* Waxelbaum (1899), S. Dist. N. Y., Brown, J., 98 Fed., 589; 3 A. B. R., 392; 2 N. B. N., 228.

Objection to jurisdiction of court of bankruptcy on account of residence must be promptly raised, otherwise waived by creditors. *In re* Mason (1900), W. Dist. N. C., Ewart, J. 99 Fed., 256; 3 A. B. R., 599; 2 N. B. N., 425.

Principal place of doing business of a corporation is where its business is in fact done, not where it merely markets its products. Full discussion of jurisdiction of court on "principal place of business." *In re* Elmira Steel Company (1901), N. Dist. New York, Moss, R.; 5 A. B. R., 484.

Residence not shown by the mere temporary lodging in a boarding house in the State although intention to return is claimed. *In re* Dinglehoef Brothers (1901), E. Dist. North Carolina, Purnell, J., 109 Fed., 866; 6 A. B. R., 242; 3 N. B. N., 946.

A corporation created by law of one State may be adjudged bankrupt, in another. *In re* Magid-Hope Silk Mfg. Co. (1901), Dist. Mass., Lowell, J., 110 Fed., 352; 6 A. B. R., 610; *Dressel* v. *North State Lumber Co.* (1901), E. Dist. N. C., Purnell, J., 107 Fed., 255.

Objection to jurisdiction over person must be promptly taken. *In re* Mason (1900), W. Dist. N. C., Ewart, J., 99 Fed., 256; 3 A. B. R., 599, 2 N. B. N., 425.

As between two United States District Courts, the one whose aid is first invoked is entitled to charge of the proceedings. *In re* Elmira Steel Company (1901), W. Dist. N. Y., Hazel, J.; 5 A. B. R., 484.

Want of jurisdiction to adjudicate one a bankrupt cannot be raised by creditors in opposition to discharge. Grounds enumerated in the statute only can be raised. *In re* Clisdell (1900), N. Dist. N. Y., Coxe, J., 101 Fed., 246; 4 A. B. R., 95; 2 N. B. N., 638.

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A corporation having its general office within a district more than six months prior to filing of petition is within jurisdiction of the court. *In re* Marine Machine & Conveyor Co. (1899), S. Dist. N. Y., Brown, J., 91 Fed., 630; 1 A. B. R., 421; 1 N. B. N., 136,

A petition stating disjunctively "that the petitioner has had his principal place of business, or has resided, or has had his domicile for greater portion of six months, etc.," is insufficient on its face to confer jurisdiction. *In re* Laskaris (1899), N. Dist. N. Y., Moss, R.; 1 A. B. R., 480; 1 N. B. N., 209.

"Place of business," "residence" and "domicile" compared and discussed. *In re* Cisdell (1899), N. Dist. N. Y., Moss, R.; 2 A. B. R., 424.

Words "greater portion" are synonymous with "longest period" in the Act of 1867. The petition may be filed in the District in which bankrupt has resided for the longest period during the preceding six months. *In re* Ray *et al.* (1899), Dist. of Washington, Worden, R.; 2 A. B. R., 158; 1 N. B. N., 336.

Jurisdiction dependent on principal place of business must show that there was business carried on. Making an assignment void by law does not carry on the business by virtue thereof. *In re* Plotke (1900), C. C. A., 7th Cir., Seaman, J., 104 Fed., 964; 5 A. B. R., 171; 3 N. B. N., 122.

Jurisdiction conferred where parties proceed to hearing on petition before referee without objecting to jurisdiction. *In re* Steuer (1900), Dist. Mass., Lowell, J., 104 Fed., 976; 5 A. B. R., 209; 3 N. B. N., 226.

No jurisdiction by summary process where there is none by plenary suit. *In re* Ward (1900), Dist. Mass., Lowell, J., 104 Fed., 985; 5 A. B. R., 215; 3 N. B. N., 216.

Jurisdiction of the federal courts is acquired the moment petition is filed. *Carpenter Bros.* v. *O'Connor* (1899), Ohio Cir. Ct., 2nd Cir., Wilson, J.; 1 A. B. R., 381.

(2) **[Allow and disallow claims.]** Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

As to Creditors and Claims, see Sec. 55 to 60, inclusive.

As to time of hearing claims, see Sec. 55b. As to procedure, Secs. 57, and 65. As to Forms for proof of claim, see Forms 32, and 33. For Proof of Claims, Gen. Ord. XXI.

As to Estates, see Sec. 70 and notes.

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For proof and allowance of claims, see Sec. 57 and notes thereunder. What are provable debts see Sec. 63 and notes.

Claim of creditor filed and disallowed is *res adjudicata* in the bankruptcy proceeding. *In re* Heinsfurther (1899),. S. Dist. Iowa, Woolson, J., 97 Fed., 198; 3 A. B. R., 109; 1 N. B. N., 504.

Referee no jurisdiction to find in considering claims that bankrupt was guilty of fraud in contracting the debt. *In re* Lazarovic (1898), Dist. Kan., Corey, R.; 1 A. B. R., 476.

(3) **[Appoint receivers.]** Appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified;

See (5) *post* under this Section and notes. Also (7) and notes and amendment as to compensation. As to possession of property and proceedings to seize the same, see Sec. 69a and Sec. 3e.

For definition of trustee see Sec. 1 (26) *ante*; as to suits by trustees Sec. 236; relative to appointment of trustees Sec. 44 and 45 and notes.

Bankrupt court having obtained possession will not suffer State officer to interfere therewith. *In re* Schloerb (1899), E. Dist. Wis., Seaman, J., 97 Fed., 326; 3 A. B. R., 224; 2 N. B. N., 234.

Receiver's fee must be fair and reasonable. *In re* Scott (1900), E. Dist. N. C., Purnell, J., 97 Fed., 588; 3 A. B. R., 625; 2 N. B. N., 440.

Fire insurance policy held to belong to receiver in bankrucpty who could collect the premium, and not to a bank which claimed it as collateral, and which if maintained would have invalidated the policy. *In re* Hamilton (1900), *et al.*, W. Dist. Ark., Rogers, J., 4 A. B. R., 543; 2 N.B. N., 957.

Receiver has power to sell liquor license as an asset if transferable under law of State. *In re* Becker (1899), E. Dist. Pa., McPherson, J. 98 Fed., 407; 3 A. B. R., 412; 2 N. B. N., 225.

Marshal entitled to fees same as receiver. *In re* Adams Sartorial Co. (1900), Dist. Colo., Hollett, J., 101 Fed., 215; 4 A. B. R., 107; 2 N. B. N., 535.

Before adjudication receiver no extra territorial jurisdiction. Independent procedure necessary to take possession of assets in foreign state. *In re* Schrom (1899). N. Dist. of Iowa. Shiras, J., 97 Fed., 760; 3 A. B. R., 352.

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Receiver under bankruptcy law derives his powers from that statute alone and object of his appointment is to preserve the property of the bankrupt so as to prevent its destruction. Is not a common law receiver. Cannot institute suit to recover property etc. *Boonville Nat. Bank* v. *Blakey* (1901), C. C. A., 7th Cir., Jenkins, J., 107 Fed., 891; 6 A. B. R., 13; 3 N. B. N., 644.

Summary proceedings by landlord to remove bankrupt tenant from premises enjoined at suit of receiver. *In re* Kleinhans (1902), W. Dist. N. Y., Hazel, J., 113 Fed., 107; 7 A. B. R., 604.

Bankruptcy Court will take jurisdiction of a motion to appoint a receiver even when proceedings are pending in State Court. *In re* Bruss-Ritter Co. (1898), E. Dist. Wis., Seaman, J., 90 Fed., 651; 1 A. B. R., 58; 1 N. B. N., 39; *In re* John A. Ethridge Furniture Co. (1899), Dist. Ky., Barr, J., 92 Fed., 329; 1 A. B. R., 112; 1 N. B. N., 139.

Bankruptcy Court will appoint marshall to take charge of bankrupt's property even if proceedings in State Court pending. *Davis* v. *Bohle* (1899), C. C. A., 8th Cir., Thayer, J., 92 Fed., 325; 1 A. B. R., 412; 1 N. B. N., 216; affirming *in re* Sievers (1899), E. Dist. Mo., Adams, J., 91 Fed., 366; 1 A. B. R., 117; 1 N. B. N., 60.

Bankruptcy Court will not appoint receiver of property claimed adversly. *Carling* v. *Seymour Lumber Co.* (1902), C. C. A., 6th Cir., 113 Fed., 483; 8 A. B. R., 29; reversing *in re* Macon Sash, etc., Co. (1901), S. Dist. Ga., Speer, J., 112 Fed., 323; *Beach* v. *Macon Grocery Co.* (1902); C. C. A. 5th Cir., 116 Fed., 143; 8 A. B. R., 751.

Assignee under general assignment appointed receiver. *In re* John A. Etheridge Furniture Co. (1899), Dist. Ky., Barr, J., 92 Fed., 329; 1 A. B. R., 112; 1 N. B. N., 139.

Receiver must preserve assets intact. He is only a custodian and caretaker. *In re* Kleinhans (1902), W. Dist. N. Y., Hazel, J., 113 Fed., 107; 7 A. B. R., 604; *Boonville Nat. Bank* v. *Blakey* (1901); C. C. A., 7th Cir., Jenkins, J., 107 Fed., 891; 6 A. B. R., 13; 3 N. B. N., 644.

Court of Bankruptcy may, under its general equity powers, appoint receivers. *In re* Fixen (1899), S. Dist. Cal., Wellborn, J., 96 Fed., 748; 2 A. B. R., 822.

Receiver not to exercise general powers conferred on trustee. *In re* Kleinhans (1902), W. Dist. N. Y.,, Hazel, J., 113 Fed., 107; 7 A. B. R., 604.

Court may order receiver to sell property. *In re* Becker (1899), E. Dist. Pa., McPherson, J., 98 Fed., 407; 2 N. B. N., 245.

Court may issue injunction in aid of receiver. *In re* Kleinhans (1902), W. Dist. N. Y., Hazel, J., 113 Fed., 107; 7 A. B. R., 604.

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Receiver can not forcibly seize property in possession of an adverse claimant. *Bardes* vs. *Hawarden First Nat. Bank* (1900), U. S. Sup. Ct., Gray, J.,178 U.S., 538; 4 A. B. R., 163; 2 N. B. N., 725; *in re* Bender (1901), W. Dist. Ark., Rogers, J., 106 Fed., 873; 5 A. B. R., 632.

Receiver in bankruptcy has statutory powers only—has not the power to sue exercised by trustee. *Boonville Nat. Bank* v. *Blakely* (1901), C. C. A., 7th Cir., Jenkins, J., 107 Fed., 891; 6 A. B. R., 13.

Marshal having seized the property of purchaser, damages, attorneys, fees and costs were allowed purchaser for the improper seizure. *In re* Arbaham (1899), C. C. A., 5th Cir., McCormick, J., 93 Fed., 767; 2 A. B. R., 266; 1 N. B. N., 281.

(4) **[Try and punish bankrupts.]** Arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies of corporations for violations of this Act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States;

"Bankrupt"defined Sec. 1 (4) and notes. "Officers" defined Sec. 1 (18) and notes. "Persons" defined Sec. 1 (19) and notes. As to jury trials see Sec. 19 *post* and notes. For offenses under this Act see Sec. 29 *post* and notes.

Arrest by bankrupt under State process for fraudulent insolvency will not be challenged by bankruptcy court. *U. S.* v. *McAleese* (1899), C. C. A., 3rd Cir., McPherson, J., 93 Fed., 656; 1 A. B. R., 650; 1 N. B. N., 265.

In defense to a proceeding for failure to account for assets, confession of squandering the same not sufficient. *In re* Tudor (1899), Dist. Colo., Hallett, J., 96 Fed., 942; 4 A. B. R., 78; 2 N. B. N., 168.

(5) **[Authorize temporary transaction of business.]** Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary, in the best interests of the estates,* and allow such officers additional compensation for such services, but not at a greater rate than in this Act allowed trustees for similar services.*

As amended by law of 1903, Section 1 of amendment, page — *post*. Amendment adds matter between stars.

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See ante (3) and notes. As to compensation of trustees see *post*, Sec. 48 as amended.

(6) **[Bring in additional parties.]** Bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy.

Trustee may be ordered by the court to enter his appearance and defend any pending suit, Sec. 11b *post*. He may prosecute suits brought by bankrupt, Sec. 11c *post*. As to when third persons other than the bankrupt, trustee and creditors may be brought in, see Sec. 23 *post* and notes.

Bankruptcy proceeding is *in rem*, and all those interested in the *res* are regarded as parties to it. *Southern Loan & Trust Co.* v. *Benbow* (1899), W. Dist. N. C., Ewart, J., 96 Fed., 514; 3 A. B. R., 9; 1 N. B. N., 499.

(7) **[Collect and distribute assets.]** Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided;

For administration of estates, Chapter VII *post*. As to suits in relation to bankrupt's property, see Sec. 11 *post*, and notes. See *ante* (3) and (5) and notes. Jurisdiction of courts in suits by trustee, Sec. 23b *post* and notes. As to possession of property, see Sec. 69 *post* and notes. Title to property, Sec. 70 *post*.

Bankruptcy court has exclusive jurisdiction over property of bankrupt and has sufficient equity powers to have all claims brought in and enforced by it. *Murray* v. *Beale* (1899), Dist. of Utah, Marshall, J., 97 Fed., 567; 3 A. B. R., 284; 2 N. B. N., 164.

Claim of creditors for the return of goods is cognizable by the bankruptcy court. *In re* McCallum (1902), E. Dist. Pa., McPherson, J., 113 Fed., 393; 7 A. B. R., 596.

Bankruptcy court has inherent power to punish inter-meddlers by summary process. *In re* Tune (1902), N. Dist. Ala., Jones, J., 115 Fed., 906; 8 A. B. R., 285.

Bankruptcy court may assess stockholders of bankrupt corporation. *In re* Miller Electric Maintenance Co, (1901), W. Dist. Pa., Buffington, J., 111 Fed., 515; 6 A. B. R., 701; 3 N. B. N., 1,002; *In re* Crystal Spring Bottling Co. (1899), Dist. Vt., Wheeler, J., 96 Fed., 945; 3 A. B. R., 194; 3 N. B. N., 180.

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The jurisdiction to determine controversies under this sub-head depends, (1) whether the controversy is one having reference to property actually in the possession of the bankruptcy court or belonging to the bankrupt's estate; or (2) whether it arises in the bankruptcy proceeding; or (3) whether from nature of the controversy power is conferred on the court to determine conflicting liens and apportion assets. *In re* Kellogg (1902), W. Dist. N. Y., Hazel, J., 113 Fed., 120; 7 A. B. R., 623.

The words "except as herein otherwise provided," refer to the provisions of Sec. 23a and b, limiting the jurisdiction of bankruptcy courts. *Bryan* v. *Bernheimer* (1901), U. S. Sup. Court, Gray, J., 181 U. S., 194; 5 A. B. R., 623; 3 N. B. N., 482; *Bardes* v. *Hawarden First National Bank* (1900), U. S. Sup. Court, Gray, J., 178 U. S., 535; *In re* Kellogg (1902), W. Dist. N. Y., Hazel, J., 113 Fed., 120; 7 A. B. R., 623; *In re* Woodbury (1900), Dist. N. Da., Amidon, J., 98 Fed., 833; 3 A. B. R., 457; 2 N. B. N., 284.

This clause construed. *In re* Baudouine (1900), C. C. A., 2nd Cir., Wallace, J., 101Fed., 574; 3 A. B. R., 651; 1 N. B. N., 506. *In re* Browne (1900), E. Dist. Pa., McPherson, J., 104 Fed., 762; 5 A. B. R., 220; *In re* Rosenberg (1902), E. Dist. Pa., McPherson, J., 116 Fed., 402; 8 A. B. R., 624.

Owner of property may intervene. *In re* Whitener (1900), C. C. A., 5th Cir., Pardee, J., 105 Fed., 180; 5 A. B. R., 198; 3 N. B. N., 316; *Fisher* v. *Cushman* (1900), C. C. A., 1st Cir., Putnam, J., 103 Fed., 860; 4 A. B. R., 646; *In re* Kindt (1900), S. Dist. Ia., Shiras, J., 101 Fed., 107; 3 A. B. R., 546; 2 N. B. N., 373; see likewise *In re* Todd (1901), S. Dist. N Y., Brown, J., 109 Fed., 265; 6 A. B. R., 88; 3 N. B. N., 833; *In re* Durham (1900), E. Dist. Ark., Trieber, J., 104 Fed., 231; 4 A. B. R., 760 2 N. B. N., 1,101.

Property secured by fraud of bankrupt ordered returned to owners. *Bloomingdale* v. *Empire Rubber Mfg. Co.* (1902), E. Dist. N. Y., Thomas, J., 114 Fed., 1,016; 8 A. B. R., 74.

District court should examine ground for summary application for order directing surrender of property and if there appears to be a real controversy, matter must be referred to the state court. *In re* Baird (1902), E. Dist. Pa., McPherson, J., 115 Fed., 1023; 8 A. B. R., 649.

District Court must determine whether a real controversy exists—cannot act *in personam* upon adverse claimants who reside in another district. *In re* Waukesha Water Co. (1912), E. Dist. Wis., Seaman, J., 116 Fed., 1009; 8 A. B. R., 715.

State court cannot refuse to surrender assets until its officers are paid

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fees. *In re* Rogers (1902), S. Dist. Ga., Speer, J., 116 Fed., 435; 8 A. B. R., 723.

Bankruptcy court cannot dispose of adverse claim to property of bankrupt in possession of third person without consent of the parties. *In re* Michie (1902), Dist. Mass., Lowell, J., 116 Fed., 749; 8 A. B. R., 734.

Sale of property in hands of receiver by order of bankruptcy court, though creditors had been on same. *Beach* v. *Mason, Grocery Co.* (1902), C. C. A., 5th Cir., 116 Fed., 143; 8 A. B. R., 751, where District Court has acquired possession of property it has power to adjudicate liens claimed thereon. *Chauncey et al.* v. *Dyke Bros.* (1902), C. C. A., 8th Cir., Thayer, J., 119 Fed., 1.

Bankruptcy court has no jurisdiction over funds of execution sale, where the judgment on which sale was based was obtained more than four months prior to filing the petition, even though the sale was within the four months preceding. *In re* Easley (1899), W Dist. Va., Paul, J., 93 Fed., 419; 1 A. B. R., 715; 1 N. B. 230.

Jurisdiction of property in possession of District Court is not to be interfered with by proceedings in state courts subsequently brought. *In re* Russell & Birkett (1900), C. C. A., 2nd Cir., Wallace, J., 101 Fed., 248; 3 A. B. R., 658.

Mortgagees obtaining possession of property prior to filing of petition, cannot be compelled by summary process to deliver same to the trustee. *In re* Buntrock Clothing Co. (1899), N. Dist. Ia., Shiras, J., 92 Fed., 886; 1 A. B. R., 454; 1 N. B. N., 291

Bankruptcy court no jurisdiction over fund, title to which has been adjudicated by another court of competent jurisdiction. *Quaere.* Has District Court jurisdiction of suit agaist trustee by claim of property held by him. *J. B. McFarlane Carriage Co. et al.* v. *Salanas et al.* (1901), C. C. A., 5th Cir., 106 Fed., 145; 5 A. B. R., 442.

Jurisdiction in garnishment proceedings against the bankrupt inheres in District Court. *In re* McCartney (1901), E. Dist. Wis. Seaman, J., 109 Fed., 621: 6 A. B. R., 367.

Jurisdiction wanting in District Court to compel assignee to turn over assets on summary proceedings—no contempt where party ordered to do the impossible and turn over money squandered. *Sinsheiner et al.* v. *Simonson et al.* (1901), C. C. A., 5th Cir., Severens, J., 107 Fed., 898; 5 A. B. R., 537.

Jurisdiction wanting in District Court in suit by trustee to compel third party to bankruptcy proceedings to sell certificate of Board of Trade held by bankrupt as collateral. *In re* Silberhorn (1900), N. Dist. Ill., Kohlsaat, J., 105 Fed., 899; 5 A. B. R., 568.

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Money turned over by bankrupt to wife can not be reached by summary order. *In re* Green (1901), E. Dist. Pa., McPherson, J., 108 Fed.; 616; 6 A. B. R., 270.

State court having taken possession of estate by receiver more than four months prior to bankruptcy, will not be divested of control. *Frazier* v. *So. Loan & Trust Co.* (1900), C. C A., 4th Cir.,Paul, J., 99 Fed., 707, 3 A. B. R., 710.

Possession of assets by trustee should be obtained by application to State Court. *In re* Kersten & Kersten (1901), E. Dist. Wis., Seaman, J., 110 Fed., 929; 6 A. B. R., 516.

Where proceedings in State Court are in nature of insolvency proceedings state administration is suspended by bankruptcy. *In re* Kersten & Kersten (1901), E. Dist. Wis., Seaman, J., 110 Fed., 929; 6 A. B. R., 516.

Jurisdiction of bankruptcy court prevails over State court which had appointed a receiver on grounds of insolvency. Comity requires that bankruptcy receiver apply for an order for possession. *In re* Lengert Wagon Co. (1901), S. Dist. N.Y., Adams, J., 110 Fed., 927; 6 A. B. R., 535.

It is error on a summary petition to compel an assignee of bankrupt without notice to turn over property to the trustee. *Smith* v. *Belford* (1901), C. C. A. 6th Cir., Severns, J., 106 Fed., 658; 5 A. B. R., 291.

Jurisdiction in district Court to order purchaser of assets under general, assignment to turn over property of estate to the purchaser in bankruptcy proceedings. *Bryan* v. *Bernheimer* 1901), U. S. Supreme Ct., Judge Gray, 181 U. S., 181; 5 A. B. R., 623.

Jurisdiction of District Court to take possession of property of bankrupt which was in possession, although mortgagee claims title and possession. *In re* Bendeer (1901), W. Dist. Ark., Rogers, J., 106 Fed., 873; 5 A. B. R., 632.

Court of bankruptcy has no power by summary process to order sheriff to turn over to trustee money obtained from sale under execution made null by bankruptcy adjudication. *In re* Franks (1899), S. Dist. Ala., Toulmin, J., 95 Fed., 635; 2 A. B. R., 634.

The jurisdiction of the bankruptcy court over exempt property is limited to setting the exempt property aside. Disputes concerning title to property left to other courts. *In re* Hill, N. Dist. Ga., Newman, J., 96 Fed., 185; 2 A. B. R., 798; 2 N. B. N., 180.

Bankruptcy court has power to compel purchasers at a chattel mortgage sale of bankrupt's goods, after adjudication to turn property purchased over to trustee. *In re* Brooks (1899), Dist. Vt., Wheeler, J.; 1 A. B. R., 531; 1 N. B. N., 240.

A stockholder without personal interest may be ordered to surrender

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to Marshal and held for contempt if he refuses. *In re* Macon Lumber Co. (1901), S. Dist. Ga., 112 Fed., 323; 7 A. B. R., 66.

Goods in possession of bankrupt at time of adjudication are in possession of the bankrupt court. No process of the state court can take them out. Summary relief proper. *White & Ors* v. *Schloerb et al.* (1900), U. S. Sup. Ct., Gray, J., 178 U. S., 542; 4 A. B. R., 178; 2 N. B. N., 721.

Jurisdiction of State court which has appointed receiver of a firm is not to be assailed in bankruptcy court in subsequent proceeding—no order will be made on the receiver to turn over the assets. Trustee must apply to state court for such an order. *In re* Price & Co. (1899), So. Dist. N. Y., Brown, J., 92 Fed., 987; 1 A. B. R., 606; 1 N. B. N., 240.

Adjudication in bankruptcy will be respected by state court and funds in receiver's hands be ordered turned over to the trustee. State court will allow for costs and expenses of the receivership. *Wilson* v. *Parr* (1902), Little, J., Sup. Ct. Ga., 8 A. B. R., 230.

Bankruptcy Court having possession of property of bankrupt will not allow a subsequent proceeding in State Court to interfere with the same. *Keegan* v. *King* (1899), Dist. Ind., Baker, J., 96 Fed., 758; 3 A. B. R., 79.

Property being administered by a state court should not be disturbed by a court of bankruptcy unless it is evident that an injustice will be done to the general creditors by administration in the State Court. *Southern Loan & Trust Co.* v. *Benbow* (1899), W. Dist. N. C., Ewart, J., 96 Fed., 514; 3 A. B. R., 9; 1 N. B. N., 499.

Reopening of estate should be based on proper petition setting up the facts. *In re* Newton (1901), C. C. A., 8th Cir., Adams, J., 107 Fed., 429; 6 A. B. R., 52.

State court cannot demand as a condition of turning over property in hands of receiver that costs of administration be first paid. *Hanson* v. *Stephens* (1902), Sup. Ct. Ga., Little, J., 42 S. E., 1028.

(8) **[Close estates.]** Close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered:

Duty of trustee to close estates expeditiously. Sec. 47a (2).

Trustee to file final account fifteen days before the final meeting of creditors. Sec. 47 *post.*

Creditors to have ten days' notice. Sec. 58a *post.*

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As to death or removal of trustee, Sec. 46. See generally *ante* (3) (5) (7) and notes thereto. As to administration of estates, see Chapter VII.

Speedy closing of estates duty of courts of bankruptcy. *In re* Stein (1899), Dist. Ind., Baker, J., 94 Fed., 124; 1 A. B. R., 662; 1 N. B. N., 339.

Court reluctant to reopen estate. *In re* Newton (1901), C. C. A., 8th Cir., Adams, J., 107 Fed., Rep., 429; 6 A. B. R., 52; 3 N. B. N., 978; *In re* Shaffer (1900), E. Dist. N. C., Purnell, J., 104 Fed., 982; 4 A. B. R. 728; 3 N. B. N., 54.

(9) **[Confirm or reject compositions.]** Confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases;

For confirmation or rejection of compositions, see Sec. 12 and Sec. 13, *post*, Gen. Ord. XXXII. For effect of setting aside composition on title to property, see Sec. 64 c and Sec. 70d, *post*. For forms for composition see Forms 60 and 61, *post*.

(10) **[Pass on referee's findings.]** Consider and confirm modify or overrule, or return. with instructions for further proceedings, records and findings certified to them by referees;

As to Practice on review of referee's finding, see Gen. Ord. XXVII. As to findings of the referee, see Sec. 38 and 39, *post*, and notes.

Ruling of referee to which exception is desired to be made to the Judge should be accompanied by an order, and petition for review should be filed. *In re* Smith (1899), W. Dist. Texas, Maxey, J., 93 Fed., 791; 2 A. B. R., 190; 1 N. B. N., 532.

Orders and decrees may be made and corrected at any time, the court being always open. *Mahoney et al.*, v. *Ward* (1900), E. Dist. N. C., Purnell, J., 100 Fed., 278; 3 A. B. R., 770; 2 N. B. N., 538.

Petition for review essential before judge will review referee's order. *In re* Russell (1900), N. Dist. Cal., De Haven, J., 105 Fed., 501; 5 A. B. R., 566; 3 N. B. N., 365. *In re* Smith (1899), W. Dist. Texas, Maxey, J., 93 Fed., 791; 2 A. B. R., 190; 1 N. B. N., 532.

Petition for review is in nature of assignment of errors and only matters included therein will be passed on. *In re* T. L. Kelley Dry Goods Co. (1900), E. Dist. Wis., Seaman, J., 102 Fed., 747; 4 A. B. R., 528.

(11) **[Pass on claims to exemption.]** Determine all claims of bankrupts to their exemptions;

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As to exemptions to which bankrupt is entitled, see Sec. 6 *post* and notes, also Sec. 47 (11), *post*, annd notes as to duty of Trustee in regard to exemptions. Bankrupt to schedule exemptions, Sec. 7 (8) *post*. Form No. 1, Sch. B (5).

Court will not review a finding or order of the referee that property is not exempt, unless a trustee has been appointed and has set apart the bankrupt's exemption. *In re* Smith (1899), West Dist. Texas, Maxey, J., 93 Fed., 791; 2 A. B. R., 190; 1 N. B. N., 532.

Bankruptcy Court exclusive jurisdiction to determine right to exemptions as between bankrupt and trustee. *McGahan* v. *Anderson* (1902), C. C. A., 4th Cir., Jackson, J., 113 Fed., 115; 7 A. B.R., 641; affirming *in re* Anderson (1900), Dist. S. C., Brawley, J., 103 Fed., 854; 4 A. B. R. 640

Petition for exemptions reasonable so long as the estate remains in such a condition that exemptions can be allowed. *In re* White (1900), Dist. Vt., Wheeler, J., 103 Fed., 774; 4 A. B. R., 613; 3 N. B. N., 270.

An order setting apart homestead exemptions may be vacated during the term at which entered. *In re* Mayer (1901), C. C. A., 7th Cir., Woods, J., 108 Fed., 599; 6 A. B. R., 117; 3 N. B. N., 592.

(12) [**Discharge bankrupts.**] Discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases;

As to discharges, see Sections 14, 15 and 16, *post*, and notes. See also Gen. Order XII, XXXI and Forms 57, 58 and 59. As to debts not affected by discharge, see Sec. 17 *post* and notes.

(13) [**Enforce orders.**] Enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

As to imprisonment for contempts before referees, see Sec. 41 *post* and notes. Officers defined, Sec. 1 (18) and notes. Persons defined, Sec. 1 (19) and notes.

Bankrupt committed for failure to pay trustee fifteen hundred dollars which the court found he had concealed. *In re* McCormick (1899), S. Dist. N. Y., Brown, J., 97 Fed., 566; 3 A. B. R., 340; 2 N. B. N., 204.

Before commitment for contempt for disobedience to the orders of the court wilful disobedience should be proved beyond a reasonable doubt. *In re* McCormick (1899), S. Dist. N. Y., Brown, J., 97 Fed., 566; 3 A. B. R., 340; 2 N. B. N., 204.

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In proceedings for contempt for failure to pay over money to the trustee there should be an order to show cause and an application for hearing. Bankrupt may be attached for failure to obey order to pay over. It must appear that he has the money at the time he is ordered to turn it over. *In re* Rosser (1900). C. C. A., 8th Cir., Sanborn, J., 101 Fed., 562; 4 A. B. R., 153.

Imprisonment for contempt for failure to turn over money to a trustee approved *in re* Schlesinger (1900), C. C. A., 8th Cir., Shipman, J., 102 Fed., 117; 4 A. B. R., 361; 2 N. B. N., 169.

Ripon Knitting Works v. *Schreiber* (1900), Dist. of Washington, Handford, J., 101 Fed., 810; 4 A. B. R., 299; 2 N B. N., 545.

No absolute order committing for contempt should issue before the order to show cause. *In re* Rosser (1900), C. C. A., 8th Cir., Sandborn, J., 101 Fed., 562; 4 A. B. R., 153.

In re Schlesinger (1899), S. Dist. N. Y., Brown, J., 97 Fed., 930; 3 A. B. R., 342; 2 N. B. N., 169.

Contempt proceedings enforcible against bankrupt for failure to turn over goods found to be under his control by the referee. Proof, however, should be convincing to justify the summary process. *In re* Mayer (1900), E. Dist. Wis., Seaman, J., 97 Fed., 328; 3 A. B. R., 533; 2 N. B. N., 257.

Injunction—contempt for violating where only verbal notice of its issuance is given. *In re* Krinsky Bros. (1902), S. Dist. N. Y., Adams, J., 112 Fed., 972; 7 A. B. R., 535.

Bankrupt committed to jail for failure to surrender assets. *In re* Wilson (1902), W. Dist. Ark., Rogers, J., 116 Fed., 419; 8 A. B. R., 612.

Bankrupt's ability to perform order must clearly appear. *Boyd* v. *Glucklich* (1902), C. C. A., 8th Cir., 116 Fed., 131; 8 A. B. R., 393.

Power of committment should be cautiously exercised. *In re* Gottardi *et al.* (1902), S. D. Cal., Wellborn, J., 114 Fed., 328.

Referee has power in first instance to make summary order for surrender of property—district court power under the bankruptcy act and under general equity powers to commit the guilty party to jail. *Mueller* v. *Nugent* (1902), U. S. Sup. Court, Fuller, J., 184 U. S., 18; 7 A. B. R., 224

Debtor must be discharged when it appears that he cannot surrender concealed property. *In re* Taylor (1901), Dist. Colo., Hallett, J., 114 Fed., 607; 7 A. B. R., 410.

Assignee of bankrupt fined for contempt. *In re* Krinsky (1902), S. Dist. N. Y., 112 Fed., 972; 7 A. B. R., 535.

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(14) **[Extradite bankrupts.]** Extradite bankrupts from their respective districts to other districts;

As to extradition of bankrupts, see Sec. 10 *ante*. As to removal of accused from one district to another, see Sec. 1,014 R. S. U. S.

This is the same power defined more specifically in Sec. 10. *In re* Ketchum (1901), C. C. A., 6th Cir., Clark, J., 5 A. B. R., 532; 3 N. B. N., 769.

(15) **[Make orders.]** Make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act;

For rules, forms and orders, see Sec. 30 and notes.

For discussion of jurisdiction see Sec. 23 and notes.

As to enforcement of orders, see Sec. 2 (13) and notes and Sec. 41.

As to jurisdiction of referees, see Sec. 38a (4).

This section is sufficient to authorize holding bankrupt by writ of *ne exeat* where section 9 (b) is insufficient. *In re* Lipke (1900), S. Dist. N. Y., Brown, J., 98 Fed., 970; 3 A. B. R., 569; 2 N. B. N., 347.

A court of bankruptcy has power to adjudicate the validity of a transfer of accounts and compel the surrender by the fraudulent assignee thereof. *In re* Kerski (1899), E. Dist. Wis., Forward, R.; 2 A. B. R., 79; 1 N. B. N., 328.

Bankruptcy Court has general equity powers to enforce orders. *Mueller* v. *Nugent* (1902), U. S. Sup. Court, Fuller, J., 184 U. S., 18; 7 A. B. R., 224. *In re* Wilson (1902), W. Dist. Ark., Rogers, J., 116 Fed., 419; 8 A. B. R., 612; *In* Gottardi *et al.* (1902), S. Dist. Cal., Wellborn, J., 114 Fed., 328; *In re* Miller (1900), Nor. Dist. Ia., Shiras, J., 105 Fed., 57; 5 A. B. R., 184; 3 N. B. N., 329. *Fisher* v. *Cushman* (1900), C. C. A., 1st Cir., Putnam, J., 103 Fed., 860; 4 A. B. R., 646. *In re* Diack (1900), S. Dist. N. Y., Brown, J., 100 Fed., 770.

Power may be exercised by the referee in the first instance subject to review by the judge. *Mueller* v. *Nugent* (1902), U. S. Sup. Ct., Fuller, J., 184 U. S. 18; 7 A. B. R., 224; *In re* Miller (1900), N. Dist. Ia., Shiras, J., 105 Fed., 57; 5 A. B. R., 184; 3 N. B. N., 329. *In re* Deuell (1900), W. Dist. Mo., Philips, J., 100 Fed., 633; 4 A. B. R., 60. *In re* Mayer (1900), E. Dist. Wis., Seaman, J., 98 Fed., 839; 3 A. B. R., 533. *In re* McCormick (1899), S. Dist. N. Y., Brown, J., 97 Fed., 566. *In re* Purvine (1899), C. C. A., 5th Cir., Newman, J., 96 Fed., 192; 1 N. B. N., 326. *In re* Tudor (1899), Dist. Colo., Hallett, J., 96 Fed., 912; 1 N. B. N., 476; same case

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(1900), 100 Fed., 796; 2 A. B. R., 808; *In re* Oliver (1899), N. Dist. Cal., De Haven, J., 96 Fed., 85; 2 A. B. R., 783; 1 N. B. N., 329. *In re* Coffman (1899), N. Dist. Tex., Meek, J., 93 Fed., 422; 1 N. B. N., 326. *In re* Sapiro (1899), E. Dist. Wis., Seaman, J., 92 Fed., 340; 1 A. B. R., 296; 1 N. B. N., 136.

Filing of petition is in effect an attachment and injunction. *In re* Krimsky (1902), S. Dist. N. Y., Adams, J., 112 Fed., 972; 7 A. B. R., 535; *In re* Arnett (1901), W. Dist Tenn, Hammond, J., 112 Fed., 770;7 A. B. R., 522.

Order issued before trustee appointed, restraining removal of fixtures from bankrupts' premises. *In re* Smith (1902), Nor. Dist. Ga., Newman, J., 113 Fed., 993; 8 A. B. R., 55.

Bankruptcy Court may enjoin assignee under State law from parting with assigned property. *Rumsey, etc.*, v. *Novelty, etc., Mfg. Co.* (1899), E. Dist. Mo., Adams, J., 99 Fed., 699; 3 A. B. R., 704; 2 N. B. N., 128; *In re* Gutwillig (1899), C. C. A., 2nd Cir., Wallace, J., 92 Fed., 337; 1 A. B. R., 388; 1 N. B. N., 554. *In re Lea* v. *George M. West Co.* (1899), E. Dist. Va., Waddill, J., 91 Fed., 237; 1 A. B. R., 261; 1 N. B. N., 79. *Leidigh Carriage Co.* v. *Stengil* (1899), C. C. A., 6th Cir., Taft, J., 95 Fed., 637; 2 A. B. R., 383; 1 N. B. N., 296.

Bankruptcy Court has power to order assessment of stockholders for unpaid subscription to capital stock. *In re* Miller Electric Maintenance Co. (1901), W. Dist., Pa., Buffington, 111 Fed., 515; 6 A. B. R., 701.

Section 2a gives full jurisdiction for examination, even though District Court under Section 25e might not entertain the suit. *In re* Cliffe (1899), E. Dist. Pa., McPherson, J., 97 Fed., 540; 3 A. B. R., 257; 1 N. B. N., 509.

Examination may be had of a trustee under state court proceedings appointed more than four months prior to bankruptcy touching his doings. *In re* Purcell (1902), Dist. Conn., Townsend, J., 114 Fed., 371; 8 A. B. R., 96.

Bankrupt ordered to pay over money held by him to the trustee. *In re* Schlesinger (1899), S. Dist. N. Y., Brown, J., 97 Fed., 930; 3 A. B. R., 342; 2 N. B. N., 169.

Bankrupt ordered to pay over money in his possession to trustee—no deductions made for money spent in a debauch. *In re* Tudor (1899), Dist. Colo., Hallett, J., 100 Fed., 796; 2 A. B. R., 808; 1 N. B. N., 476. *In re* Henschel (1901), S. Dist. N. Y., Wise, R.; 7 A. B. R., 207. *In re* Shera (1902), S. Dist. N. Y., Adams, J., 114 Fed., 207; 7 A. B. R. 552.

Orders may be vacated at any time without regard to terms, unless rights have vested thereunder. *In re* Ives (1902), C. C. A., 6th Cir., Wanty, J., 113 Fed., 911; 7 A. B. R., 692.

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Order should be based on motion or petition for precise purpose. *In re* Lemon, , etc., Co. (1901), C. C. A., 5th Cir., Day, J., 112 Fed., 296; 7 A. B. R., 291.

Bankruptcy Court of New York ordered trust company of Philadelphia to pay money held for the bankrupt, but attached by a creditor to the receiver in bankruptcy and fined the company for contempt for noncompliance. The Pennsylvania District Court entered ancillary order enforcing the payment. *In re* Peiser (1902), E. Dist. Pa., McPherson, J., 115 Fed., 199; 7 A. B. R., 690.

(16) **[Punish contempts before referees.]** Punish persons for contempts committed before referees;

As to procedure in contempt proceedings, see Sec. 41, *post*, and notes. Bankrupt's exemption from arrest does not extend to arrest for contempt. Sec. 9a.

(17) **[Appoint and remove trustees.]** Pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them;

As to appointment of trustee, see Sec. 44, *post*. As to qualification and duties of trustee, see Sec. 45 and notes. As to Removal of Trustee, see Sec. 46. Judge must approve appointment of trustee and he only can remove. Gen. Order XIII. No official or general trustee to be appointed. Gen. Ord. XIV. As to when court may order appointment of trustee, see Gen. Ord. XV. As to Notice of appointment, see Gen. Ord. XVI. Forms No. 22–24, notice of appointment. Trustees not appointed in certain cases. Gen. Ord. XV. Order that no trustee be appointed. Form No. 27.

(18) **[Tax costs.]** Tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and,

As to costs of preserving estate and administration, see Sec. 64b. As to costs against creditor when involuntary petition is dismissed, Sec. 3e. Attorney's fee taxable as part of costs of administration, Sec. 64b (3). Costs may be proved as a claim against estate, Sec. 63a (3). As to cost. in contested cases, see Gen. Order XXXIV.

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Referee's jurisdiction as to taxation of costs discussed and upheld *In re* Scott (1902), Dist. Mass., Olmstead, R., 7 A. B. R., 710.

Costs of storing personal property sustained by a creditor while holding the property subject to a lien which is dissolved by an adjudication in bankruptcy not taxable against the estate, but provable as a claim. *In re* Allen (1899), N. Dist. Cal., De Haven, J., 96 Fed., 512.

When intervening creditor unsuccessful and property levied on is surrendered and sold the costs of caring for it in the interim will not be taxed against the creditor, though all the witness fees may be so taxed. *In re* Caroline Cooperage Co. (1899), E. Dist. N. C., Purnell, J., 96 Fed., 604; 1 N. B. N., 534.

Reference to a referee on questions arising from opposition to discharge is in effect to a special master and costs for the services as such may be taxed in favor of referee as special master. *Fellows* v. *Freudenthal* (1900); C. C. A., 7th Cir., Seaman, J., 102 Fed., 731; 4 A. B. R., 490; 3 N. B. N., 97.

(19) **[Transfer cases.]** Transfer cases to other courts of bankruptcy.

Judge may for cause at any time transfer cases from one referee to another, Sec. 22 (b). As to petitions in different districts, see Gen. Ord. VI. Where cases transferred compensation of referees is apportioned, Sec. 40b. and notes.

[Unspecified powers.] Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

See *ante* Sec. 2 (15).

Bankruptcy Court may order reference to special master as in ordinary equity practice. *Fellows* v. *Freudenthal* (1900), C. C. A., 7th Cir., Seaman, J., 102 Fed., 731; 4 A. B. R., 490; 3 N. B. N., 97.

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CHAPTER III.

BANKRUPTS.

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SECTION 3. BANKRUPTS.

(3) **[Acts of bankruptcy.]** a Acts of bankruptcy by a person shall consist of his having

As to acts of bankruptcy under Act of 1867, see Sec. 39 of that act *post*, Sec. 1 of Act of 1841, *post*, also Sec. 1 of Act of 1800.

Insolvency is not a feature of the acts of bankruptcy. *In re* West C. C. A., 2nd Cir., Shipman, J., 108 Fed., 940; 5 A. B. R., 734.

(1) **[Conveyances to defraud.]** Conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or

See *post* (2) (3) and (4) with notes. For definition of "transferred" see ante Sec. 1 (25); of "concealed" see Sec. 1 (22) ante.

Flight of bankrupt with property is both a concealment and a removal of property with intent to defraud creditors and is an act of bankruptcy. *In re* Filer (1900), S Dist. N. Y., Brown, J., 108 Fed., 209; 5 A. B. R., 332.

This is the same as fraudulent transfer at common law. *Githens* v. *Shiffler* (1902), Middle Dist. Penn., Archbald, J., 112 Fed., 505; 7 A. B. R., 453.

Intention to prefer not same as intention to defraud. *Githens* v. *Shiffler* (1902), Middle Dist. Penn., Archbald, J., 112 Fed., 505; 7A B. R., 453.

Debtor who absconds with property guilty of intent to defraud. *In re* Filer (1900), S Dist. N.Y ., 108 Fed., 209; 5 A. B. R., 332.

Voluntary transfer to a trustee without preference an act of bankruptcy under this clause. *Rumsey, etc., Co.* v. *Novelty Mfg. Co.* (1899), E. Dist. Mo., Adams, J., 99 Fed., 699; 3 A. B. R., 704.

Failure of partner to oppose application for receiver does not render them chargeable under this section. *Vaccaro* v. *Security Bank* (1900), C. C. A., 6th Cir., Lurton, J., 103 Fed., 436; 4 A. B. R., 474; 2 N. B. N. 1,037.

Consent to receivership without preference is an act of bankruptcy. *Davis* v. *Stevens* (1900), Dist. S. Da., Carland, J., 104 Fed., 235; 4 A.B R., 763; 3 N. B. N., 131.

Allowing receiver to be appointed in State court not act of bankruptcy. *In re* Baker-Ricketson (1900), Dist. Mass., Lowell, J., 97 Fed., 489; 4 A. B. R., 605; 2 N. B. N., 133.

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Chattel mortgage more than a year old does not bring one giving it under this section. *Asbury Park Bldg., etc.*, v. *Shepherd* (1901), Sup. Ct. N. J., 50 Atl., 65.

Transfer by an insane person not an act of bankruptcy. *In re* Funk (1900), N. Dist. Iowa, Shiras, J., 101 Fed., 244.

Petitioning creditors need not prove insolvency under this clause. *In re* West (1901), C. C. A., 2nd Cir., Shipman, J., 108 Fed., 940; 5 A. B. R., 734.

Petition need not allege details of concealment. *In re* Bellah, Dist. Del., Bradford, J. (1902), 116 Fed., 69; 8 A. B. R., 310.

Corporation applying for receiver more than four months before bankruptcy not under this clause. *In re* Harper & Bro (1900), S D. N. Y., Brown, J., 100 Fed., 266; 2 N. B. N., 605.

Withdrawal of money by partner from insolvent firm not an act of bankruptcy. *In re* Shapiro (1901), S. Dist. N. Y., Brown, J., 106 Fed., 495; 5 A. B. R., 839.

(2) **[Preference by transfer.]** Transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or

Transfer more than four months old by a corporation not act of bankruptcy under this section. *Citizen's Bank* v. *W. C. De Pauw Co.* (1901) C. C. A., 7th Cir., Grosscup, J., 105 Fed., 926; 5 A. B. R., 345.

When transfer of property a preference, Sec. 60a *post*. Trustee may recover property transferred when transfer a preference, Sec. 60 d. *post*. As to when a person is insolvent, see *ante* Sec. 1, sub. (15), and notes. See also *ante* Sec. 1, Sub. (22).

"Transfer" defined, Sec. 1 (25) *ante*, and notes. Trustee takes title to property transferred, Sec. 70a (5).

Transfer by insolvent to secure a creditor either directly or indirectly constitutes an act of bankruptcy. *Goldman, Beckman & Co.* v. *Smith* (1899), Dist. of Ky., Barr, J., 93 Fed., 182; 1 A. B. R., 266; 1 N. B. N., 160.

Burden of proving insolvency not on the creditors under this section, but burden on bankrupt to prove solvency. *In re* West (1901); C. C. A., 2nd Cir., Shipman, J., 108 Fed., 940; 5 A. B. R., 734.

Conveyance of personal property by an insolvent to a creditor to pay a debt is an act of bankruptcy. *Johnson* v. *Wold* (1899), C. C. A., 5th Cir., Shelby, Judge, 93 Fed., 640; 2 A. B. R., 84; 1 N. B. N., 325.

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The insolvency must be found to be as of the date of the act of bankruptcy. *In re* Rome Planing Mill (1899), N. Dist. N. Y., Coxe, J., 96 Fed., 812; 3 A. B. R., 123; 2 N. B. N., 531.

Transfer may consist of sale of assets and payment of certain creditors therewith. *Boyd* v. *Lemon Gale Co.* (1902), C. C. A., 5th Cir., Pardee, J., 114 Fed., 647; 8 A. B. R., 81.

Transferring property to a creditor on which the creditor pays a sum as balance in favor of transferror, is a fraudulent preference and an act of bankruptcy. Intent to make a preference will be presumed. *Johnson* v. *Wold* (1899), C. C. A., 5th Cir., Shelby, J., 93 Fed., 640; 2 A. B. R., 84; 1 N. B. N., 325.

Conveying property and paying off part of the creditors comes under this clause. *In re* Mingo Valley Creamery Assn. (1900), E. Dist. Pa., McPherson, J., 100 Fed., 282; 4 A. B. R., 67; 2 N. B. N., 679.

A person is insolvent when the aggregate of his property exclusive of that conveyed in fraud of creditors, is insufficient at a fair valuation to pay his debts. *In re* Rome Planing Mill Co. (1899), N. Dist. N. Y., Coxe, J., 99 Fed., 937; 3 A. B. R., 123.

Transfer is within the meaning of the law no matter how devious the transaction if creditor acquires from the debtor what ought to be distributed under Bankruptcy Act among all the creditors. *Stern* v. *Louisville Trust Co.* (1901); C. C. A., 6th Cir., Severens, J., 112 Fed., 501; 7 A. B. R., 305. *In re* McCee (1901), N. Dist. of N. Y., Coxe, J., 105 Fed., 895; 5 A. B. R., 262. *In re* Lange (1899), N. Dist. of Ia., Shiras, J., 97 Fed., 197; 1 A. B. R., 189; 1 N. B. N., 60. *Goldman, Beckman & Co.* v *Smith* (1899), Dist. of Ky., Barr, J., 93 Fed., 182; 1 A. B. R., 266; 1 N. B. N., 160. *Mather* v. *Goe* (1899), N. Dist Ohio, Ricks, J., 92 Fed., 333 1. A. B. R., 504; 1 N. B. N., 554. *Swarts* v. *St. Louis Fourth National Bank* (1902); C. C. A., 8th Cir., 117 Fed., 1; 8 A. B. R., 673.

Transfers not held acts of bankruptcy. *Union etc. Mfg. Co.* (1902). C. C. A., 7th Cir., Jenkins, J., 112 Fed., 774; 7 A. B. R., 472. *Rumsey etc*; *Co.* v. *Novelty etc. Mfg. Co.* (1899), E. Dist. Mo., Adams, J., 99 Fed., 699, 3 A. B. R., 704. *Sabin* v. *Camp* (1900), Dist. Ore., Billinger, J., 98 Fed., 974; 3 A. B. R., 578; 2 N. B. N., 375. *In re* Little River Lumber Co. (1899) W. Dist. Ark., Rogers, J., 92 Fed., 585; 1 A. B. R., 483; 1 N. B. N, 306.

An insolvent giving a mortgage to secure a preexisting indebtedness commits act of bankruptcy. *In re* Ed. Wright Lumber Co. (1902), W. Dist. Ark., Rogers, J., 114 Fed., 1,011.

Where there is no other creditor with provable claim transfer is not an act of bankruptcy. *Beers* v. *Hanlin* (1900), Dist. Ore., Bellinger, J., 99 Fed. 695; 3 A. B. R., 745; 3 N. B. N., 749.

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Conveyance to father-in-law held a transfer. *In re* Grant (1901), S. Dist. N. Y., Brown, J., 106 Fed., 496; 5 A. B. R., 837.

Transfer of partnership property not act of bankruptcy where individual estate sufficient to satisfy debts. *Vaccaro* v. *Security Bank* (1900); C. C. A., 6th Cir., Lurton, J., 103 Fed., 436; 4 A. B. R., 474; 2 N. B. N., 1,037.

Petitioning creditors must prove insolvency, transfer and intent. *In re* Rome Planing Mill Co. (1899), N. Dist. N. Y., Coxe, J., 96 Fed., 812; 3 A. B. R., 123; 2 N. B. N., 531.

Intent to prefer must appear. *In re* Gilbert (1902), Dist. Ore., Bellinger, J., 112 Fed., 951; 8 A. B. R., 101.

Test of preference is one member of a class of creditors receiving more than another. *Swarts* v. *St. Louis Fourth Nat. Bank* (1902), C. C. A., 8th Cir., Sanborn, J., 117 Fed., 1; 8 A. B. R., 673.

Transfer of large part of property conclusive evidence of intent. *In re* McGee (1901), N. Dist. N. Y., Coxe, J., 105 Fed., 895; 3 N. B. N., 224.

Full payment by insolvent firm to several creditors, leaving others unpaid, sufficient proof. *Boyd* v. *Lemon etc. Co.* (1902), C. C. A., 5th Cir., Pardee, J., 114 Fed., 647; 8 A. B. R., 81.

Amount of transfer affects presumption. *In re* Gilbert (1902), Dist Ore., Bellinger, J., 112 Fed., 951; 8 A. B. R., 101.

The intent is entirely that of the debtor. *In re* Rome Planing Mill Co. (1899), N. Dist. N. Y., Coxe, J., 96 Fed., 812; 3 A. B. R., 123; 2 N. B. N., 531.

Payment by an insolvent debtor operating as a preference is *prima facie* evidence that a preference was intended. *In re* Bloch (1901), C. C. A., 2nd Cir., Shipman, J., 109 Fed., 790; 6 A. B. R., 300; 3 N. B. N., 894.

Transfer while insolvent presumes preference. *In re* Schmechel Cloak etc. Co. (1900), W. Dist. Mo., Philips, J., 104 Fed., 64; 4 A. B. R., 719; 3 N. B. N., 110. *Johnson* v. *Wald* (1899), C. C. A., 5th Cir., 93 Fed., 640; 2 A. B. R., 84; 1 N. B. N., 325.

Debtor is presumed to know his financial condition. *In re* Gilbert; (1902), Dist. Ore., Bellinger, J., 112 Fed., 951; 8 A. B. R., 101.

(3) **[Preference through legal proceedings.]** Suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property

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affected by such preference vacated or discharged such preference; or

As to meaning of "insolvent" see *ante* Sec. 1, Sub. (15) and notes. Preference defined Sec. 60 *post*, and notes.

Confession of judgment on note made prior to the passage of the Bankruptcy Act not an act of bankruptcy. *In re* Nelson (1899), W. Dist. Wis., Bunn, J., 98 Fed., 76; 1 A. B. R., 63; 1 N. B. N., 301.

The intent of the bankrupt is not an element—fact of judgment and execution sufficient to warrant proceedings. *In re* Reichman (1899), E. Dist. Mo., Adams, J., 91 Fed., 624; 1 A. B. R., 17; 1 N. B. N., 556. *In re* Meyers (1899), N. Dist. N. Y., Hotchkiss, R.; 1 A. B. R., 1; 1 N. B. N., 293.

Partnership commencing proceedings for appointment of receiver and distribution of assets under a State insolvency law guilty of an act of bankruptcy. *Mather* v. *Coe* (1899), N. Dist. Ohio, Ricks, J., 92 Fed., 333; 1 A. B. R., 504; 1 N. B. N., 554.

Failure to pay matured judgment notes, on which judgments were taken and levy made, is an act of bankruptcy. *In re* Thomas (1900), W. Dist. Pa., Buffington, J., 103 Fed., 272; 4 A. B. R., 571; 2 N. B. N., 1,021.

A corporation suffering execution commits an act of bankruptcy which cannot be avoided by taking voluntary action for a dissolution. *In re* Storm (1900), E. Dist. N. Y., Thomas, J., 103 Fed., 618; 4 A. B R., 601.

Assignment of part of claim of money due by municipality more than four months before action is not an act of bankruptcy. *In re* Hanna & Kirk (1901), E. Dist. Pa., McPherson, J., 105 Fed., 587; 5 A. B. R., 127; 3 N. B. N., 237.

A payment to officer by execution defendant is such a levy as constitutes an act of bankruptcy. *In re* Miller (1900), W. Dist. N. Y., Hazel, J., 105 Fed., 57; 5 A. B. R., 140.

A preferred creditor may qualify to file petition by surrendering preference. *In re* Miller (1900), W. Dist. N. Y., Hazel, J., 105 Fed., 57; 5 A. B. R., 140.

A transfer with a preferential intent may be made through a third person and still be an act of bankruptcy. *In re* McGee (1901), N. Dist. N. Y., Coxe, J., 105 Fed., 895; 5 A. B. R., 262; 3 N. B. N., 224.

Where concealment is alleged as an act of bankruptcy, actual concealment must be shown, not merely concealment of the consideration. *Citizens Bank* v. *W. C. De Pauw Co.* (1900), C. C. A., 7th Cir., Grosscup, J., 105 Fed., 926; 5 A. B. R., 345; 3 N. B. N., 244.

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Insolvency at time of preferential levy must be shown to sustain action to recover from creditor—insolvency after the levy and caused by it not adequate. *Chicago Title & Trust Co.* v. *Roeblings Sons* (1901), Cir. Ct. N. Dist. of Illinois, Kohlsaat, J., 107 Fed., 71; 5 A. B. R., 368; 3 N. B. N., 354.

Act of bankruptcy committed by suffering a judgment and garnishment thereon. *In re* Harper (1900), N. Dist. Ill., Kohlsaat, J., 105 Fed., 900; 5 A. B. R., 567.

Appearing as parties to a suit in State court and consenting to the appointment of a receiver, which proceeding works a preference is an act of bankruptcy. Such proceedings no bar to proceedings in bankruptcy. *In re* Kersten & Kersten (1901), E. Dist. Wis., Seaman, J., 110 Fed., 929; 6 A.B. R., 516; 3 N. B. N., 913.

Suffering a receiver to be appointed is not an act of bankruptcy. *In re* Baker, Ricketson Co. (1899), Dist. of Mass., Lowell, J., 97 Fed. 489; 4 A. B. R., 605; 2 N. B. N., 133.

Voluntary application for a receiver by a corporation is equivalent to a general assignment and an act of bankruptcy. *In re* Empire, etc., Co. (1899), N. Dist. N. Y., Hotchkiss, R., 98 Fed., 981; 1 A. B. R., 136; 1 N. B. N., 301.

Preferences obtained by application for receivership by members of insolvent firm "suffered or permitted" within this section. *In re* Kersten (1901), E. Dist. Wis., Seaman, J., 110 Fed., 926; 6 A. B. R., 516; 3 N. B. N., 913.

The voluntary application by a corporation under the New York statute for a receiver, is equivalent to making a general assignment (full discussion of the purposes of the act). *In re* Empire Metallic Bedstead Co. (1899), No. Dist. N. Y.., Hotchkiss, R., 1 A. B. R., 136; 1 N. B. N., 13. (Reversed see *post.*)

Stipulation for the appointment of a receiver in the State Court, in adverse proceedings, followed by a transfer of assets is not act of bankruptcy if in fact the bankrupt does not know he is insolvent. Expediency of considering a transfer of a small part of the estate as an act of bankruptcy doubted. *In re* Gilbert (1901), Dist. Ore., Bellinger, J., 112 Fed., 951; 8. A. B. R., 101.

Act of bankruptcy not committed by voluntary application by corporation for receiver in state court—this is not equivalent to a general assignment. *In re* Empire Met. Bedstead Co. (1899), C. C. A., 2nd Cir., Shipman, J., 98 Fed., 981; 3 A. B. R., 575; 2 N. B. N., 304.

Appointment of receiver of corporation on voluntary application not an act of bankruptcy. *In re* Harper & Bros. (1900), S. Dist. N. Y., Brown, J., 100 Fed., 266; 3 A. B. R., 804; 2 N. B. N., 605.

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Stipulation for the appointment of a receiver of a firm not an act of bankruptcy. *In re* Gilbert (1902), Dist. Ore., Bellinger, J., 112 Fed., 951; 8 A. B. R., 101.

The petition must allege that preferential payments were made with intent to prefer. *In re* Ewing (1902), C. C. A., 2nd Cir., 115 Fed., 707; 8 A. B. R., 269.

This section does not apply to enforcing a lien of a mortgage given more than five months prior to the filing of the petition. *In re* Chapman (1900), N. Dist. Ga., Newman, J., 99 Fed., 395; 3 A. B. R., 607.

Where a receiver is appointed in the State court of the property of a copartnership, and the operation of the State statute is to give preferences not given by the bankruptcy act, an act of bankruptcy has been committed. *Mather* v. *Coe, Powers & Co.* (1899), N. Dist. Ohio, Ricks, J. 92 Fed., 333; 1 A. B. R., 504; 1 N. B. N., 544.

The intent of the bankrupt is involved. Act of bankruptcy complete if proceedings are had, or a preference given while solvent, but insolvent when the judgment is secured. *In re* Moyer, E. Dist. Pa., McPherson, J., 93 Fed., 188; 1 A. B. R., 577; 1 N. B. N., 260.

This section does not apply to such levies and liens as have accrued long prior to the passage of the bankruptcy act. *In re* Ferguson (1899), S. Dist. N. Y., Brown, J., 95 Fed., 429; 2 A. B. R., 586.

Time of act of bankruptcy dates from five days anterior to date of sale of property on execution under an attachment commenced long anterior to four months. *Parmenter Mfg. Co.* v. *Stoever* (1899), C. C. A., 1st Cir., Putnam, J., 97 Fed., 330; 3 A. B. R., 220; 2 N. B. N., 174.

Proceedings to recover property seized by marshal should be by motion or by plenary suit in the discretion of the court. *In re* Young (1901), C. C. A., 8th Cir., 111 Fed., 158; 7 A. B. R., 14.

Intent of the bankrupt no feature of the act of bankruptcy. The entry of judgment by confession on an old power of attorney is "suffering" and "permitting" within the meaning of the act. *Wilson Bros.* v. *Nelson* (1901), U. S. Sup. Court, Gray, J., 183 U. S., 191; 7 A. B. R., 142.

Burden of proof of solvency is on the bankrupt when the allegation shows concealment of money greater than the indebtedness of the bankrupt. *In re* Schenkein & Coney (1902), W Dist. N. Y., Hotchkiss, R., 7 A. B. R., 162.

Actual results of legal proceedings only considered. *In re* Fergeson (1899), S. Dist. N. Y., Brown, J., 95 Fed., 429; 2 A. B. R., ,586. *In re* Moyer (1899), E. Dist. Pa., McPherson, J., 93 Fed., 188; 1 A. B. R., 577. *In re* Reichman (1899), E. Dist. Mo., Adams, J., 91 Fed., 624; 1 A. B. R., 17; 1 N. B .N., 556. *In re* Chapman (1900), N. Dist. Ga., Newman, J.,

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99 Fed., 395; 2 A. B. R., 607; *in re* Baker-Ricketson (1899), Dist. Mass., Lowell, J., 97 Fed., 489; 2 N. B. N., 133; *in re* Harper (1900), N. Dist. Ill., Kohlsaat, J., 105 Fed., 900; 5 A. B. R., 567.

"Legal proceedings" means any proceedings in a court of justice by which the property of the debtor is seized and diverted from his general creditors. *In re* Rome Planing Mill (1899), N. Dist. N. Y., Coxe, J., 96 Fed., 812; 3 A. B. R., 123; 2 N. B. N., 531.

Corporation held to have committed act of bankruptcy within this section. *Scheuer* v. *Smith, etc., Co.* (1901), C. C. A., 5th Cir., Pardee, J., 112 Fed., 407; 7 A. B. R., 384.

Preferences must have been "suffered or permitted," failure of a debtor to vacate a preference does not constitute an act of bankruptcy under this section. *Duncan* v. *Landis* (1901), C. C. A., 3rd Cir., Gray, J., 106 Fed., 839; 5 A. B. R., 649; 3 N. B. N., 673.

Actual levy on property not necessary. *In re* Miller (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 764; 5 A. B. R., 140.

Failure to defend actions and allowing executions is an act of bankruptcy. *In re* Cliffe (1899), E. Dist. Pa., McPherson, J., 94 Fed., 354; 2 A. B. R., 317; 1 N. B. N., 509.

Creditor need not wait for sale. *In re* Rome Planing Mill (1899), N. Dist. N.Y., Coxe, J., 96 Fed., 812; 3 A. B.R., 123; 2 N. B. N., 531. *In re* Elmira Steel Co. (1901), W. Dist. N. Y., Hazel, J., 109 Fed., 456; 5 A. B. R., 484.

Act of bankruptcy in not vacating execution within time. *Parmenter Mfg. Co.* v. *Stoever* (1899), C. C. A., 1st Cir., Putnam, J., 97 Fed., 330; 3 A. B. R., 220; 2 N. B. N., 174.

Corporation applying for dissolution and permitting judgments guilty of act of bankruptcy. *In re* Storm (1900), E. Dist. N. Y., Thomas, J., 103 Fed., 618; 4 A. B. R., 601.

Execution and levy act of bankruptcy. *In re* Thomas (1900), W. Dist. Pa., Buffington, J., 103 Fed., 272; 4 A. B. R., 571; 2 N. B. N., 1,021.

Judgment on warrant of attorney an act of bankruptcy. *In re* Nelson (1899), W. Dist. Wis., Brown, J., 98 Fed., 76; 1 A. B. R., 63; 1 N. B. N., 567.

Judgment on irrevocable power of attorney several years old unvacated an act of bankruptcy. *Wilson* v. *Nelson* (1901), U. S. Sup. Ct., Gray, J., 183 U. S., 191; 7 A. B. R., 142.

There must be voluntary acquiescence on the part of the debtor. *Duncan* v. *Landis* (1901), C. C. A., 3rd Cir., Gray, J., 106 Fed., 839; 5 A. B. R., 649; 3 N. B. N., 673.

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(4) **[General Assignment.]** Made a general assignment for the benefit of his creditors, * or being insolvent applied for a receiver for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory, or of the United States.*

As amended by act of 1903, Sec. 2 of amendment, see page — *post*. Amendment adds matter between stars.

General assignment is an act of bankruptcy and insolvency of the bankrupt not a feature essential to the adjudication – construction of the remaining parts of Sec. 3 (b) (c) and (d) does not require insolvency to accompany the act of bankruptcy; motive of assignment not to be considered. *West Co.* v. *Lea & Co.* (1899), U. S. Sup. Ct., White, J., 174 U. S., 590. 2 A. B. R., 463;1 N. B. N., 409. *In re* Meyer (1899), C. C. A., 2nd Cir., Wallace, J., 98 Fed., 976; 3 A. B. R., 559. *Leidigh Carriage Co.* v. *Stengel* (1899), C. C. A., 6th Cir., Taft, J., 95 Fed., 637; 2 A. B. R., 383; 1 N. B. N., 296. *Davis* v. *Bohle* (1899), C. C. A., 8th Cir., 92 Fed., 325; 1 A. B. R., 412; 1 N. B. N., 216. *In re* Smith (1899), Dist. Ind., Baker, J., 92 Fed., 135; 2 A. B. R., 9. *Clark* v. *American Mfg. Co.* (1900), C. C. A., 4th Cir., Waddell, J., 101 Fed., 962; 4 A. B. R., 351. *Day* v. *Bick etc. Hardware Co.* (1902), C. C. A., 5th Cir., 114 Fed., 834; 8 A. B. R., 175; *Bryan* v. *Bernheimer* (1901), 181 U. S., 188; 5 A. B. R., 623; 3 N. B. N., 482. *Green River Deposit Bank* v. *Craig* (1901), W. Dist. Ky., Evans, J., 110 Fed., 137; 6 A. B. R., 381; 3 N. B. N., 897.

General assignment of majority of directors and stockholders of corporation is an act of bankruptcy. Question of fact in involuntary bankruptcy referable to a referee. *Clark* v. *Mfg. & Enameling Co.* (1900); C. C. A., 4th Cir., Waddell, J., 101 Fed., 962; 4 A. B. R., 351.

General assignment an act of bankruptcy. State general assignment law not void but voidable by the act. The New York law not a general insolvency law like that of Mass. A general assignment an act of bankruptcy as a fraud under the bankruptcy act. The assignee is an accomplice and the title of the property passes to the trustee on his appointment. *In re* Gutwillig (1898), Brown, J., S. Dist. N. Y., 90 Fed., 475; 1 A. B. R., 78; 1 N. B. N., 40.

A general assignment is an act of bankruptcy, although not accompanied by insolvency. *Leidigh, etc., Co.* v. *Stengel* (1899), C. C. A., 6th Cir., opinion by Taft, J., 95 Fed., 637; 2 A. B. R., 383; 1 N. B. N., 387.

Creditors who appear in general assignment proceedings to attack preferences are not estopped from filing petition for involuntary bankruptcy. Estoppel must be based on some acquiescence and approval.

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Leidigh, etc., Co. v. *Stengel* (1899), C. C. A., 6th Cir., Taft, J., 95 Fed., 637; 2 A. B. R., 383; 1 N. B. N., 296.

Assignment under State law held not an act of bankruptcy. See authorities discussing distinction between State insolvency laws and statutes permitting general assignments collected and discussed. *Patty-Joiner Co.* v. *Cummins* (1900), Tex. Sup. Ct., Gaines, J., 4 A. B. R., 269; 57 S. W., 566.

Executing a deed of trust, which in general effect operates as a general assignment, is an act of bankruptcy. *Rumsey Co.* v. *Novelty Mfg Co.* (1899), E. Dist. Mo., Adams, J., 99 Fed., 699; 3 A. B. R., 704; 2 N. B. N., 128.

A general insolvency law is suspended by the bankruptcy act and proceedings under it are void, not merely voidable. Law of Illinois governing insolvency proceedings held to be a general insolvency law. *In re* Curtis (1899), S. Dist. Ill., Allen, J., 91 Fed., 737; 1 A. B. R., 440; 1 N. B. N., 163.

A general assignment is voidable, not void, and can be avoided only by a subsequent adjudication in bankruptcy. *In re* Romanow (1899), Dist. Mass., Lowell, J., 92 Fed., 510; 1 A. B. R., 461.

Creditors assenting to the general assignment estopped to file petition for involuntary bankruptcy, based on such assignment as an act of bankruptcy. *In re* Romanow (1899), Dist. Mass., Lowell, J., 92 Fed., 510; 1 A. B. R., 461.

Where partnership and individual members make an assignment, act of bankruptcy is committed by all of them. *Green River Deposit Bank* v. *Craig* (1901), W. Dist. of Ky., Evans, J., 110 Fed., 137; 6 A. B. R., 381; 3 N. B. N., 897.

Assignment by all but one member of partnership where other member assents, act of bankruptcy. *In re* Grant (1901), S. Dist. N. Y., Brown, J., 106 Fed., 496; 5 A. B. R., 837; 3 N. B. N., 425.

or (5) **[Admitted inability to pay.]** Admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

See Sec. 4 *post*, and notes. See notes to (4) *ante*.

Sufficient admission of insolvency shown by letter of bankrupt offering compromise of claims. *In re* Lange (1899), S. Dist. N. Y., Brown J., 91 Fed., 361; 3 A. B. R., 231; 1 N. B. N., 60.

Consent by a corporation is an act of bankruptcy. *In re* Kelly Dry Goods Co. (1900), E. Dist. Wis., Seaman, J., 102 Fed., 747; 4 A. B. R.,

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528. *In re* Columbia Real Estate Co. (1900), Dist. of Ind., Baker J., 101 Fed., 965; 4 A. B. R., 411.

A corporation whose board of directors adopts a resolution authorizing its president to address letters to its creditors admitting its inability to pay debts, and its willingness to be adjudged a bankrupt, and whose president writes letters to its creditors to that effect, is guilty of an act of bankruptcy. *In re* Machine & Conveyor Co. (1899), S. Dist. N. Y., Brown, J., 91 Fed., 630; 1 A. B. R., 421; 1 N. B. N., 135.

Act of bankruptcy not shown by appointment of receiver of a firm, although with the firm's consent—it is not a general assignment—insolvency not shown where one partner's estate sufficient to pay firm debts—*semble* such receivership might be merged in bankruptcy proceedings if other acts of bankruptcy were committed by the insolvent. *Vaccaro* v. *Security Bank et al.* (1900), C. C. A., 6th Cir., 103 Fed., 436; 4 A. B. R., 474; 2 N. B. N., 1,037.

Admission by a corporation not shown by a resolution authorizing an officer to make such admission when the officer makes it in writing after the petition in bankruptcy has been filed. *In re* Baker-Rickertson Co. (1899), Dist. Mass., Lowell, J., 97 Fed., 489; 4 A. B. R., 605; 2 N. B. N., 133.

Query: Can a wife make the admission? *In re* Peter Paul Book Co. (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 786; 5 A. B. R., 105.

Consent by corporation is an act of bankruptcy. *In re* Kelly Dry Goods Co. (1900), E. Dist. Wis., Seaman, J , 102 Fed., 747; 4 A. B R., 528.

Admission by one partner of a firm of insolvency of firm is an act of bankruptcy. *In re* Kersten & Kersten (1901), E. Dist. Wis., 110 Fed., 929; 6 A. B. R., 516; 3 N. B. N., 913.

Admission signed by the president of a corporation by order of board of directors, an act of bankruptcy. *In re* Mutual Mercantile Agency (1901), S. Dist. N. Y., Adams, J., 111 Fed., 152; 6 A. B. R., 607

Board of directors of a corporation may make the admission. *In re* Rollins Gold, etc., Min. Co. (1900), S. Dist. N. Y., Brown, J , 102 Fed. 982; 4 A. B. R., 327.

The consent of a corporation to be adjudged bankrupt valid. *In re* Columbia Real Estate Co. (1900), Dist. of Ind., Baker, J., 101 Fed., 965; 4 A. B. R., 411.

b **[Petition to be filed within four months.]** A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after

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the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

As to computation of time see Sec. 31a *post* and notes.

"Transfer" defined Sec. 1 (25) *ante*. As to what are acts of bankruptcy, see *ante* (a). As to procedure in involuntary cases, see Sec. 59 *post*. For definition of insolvency Sec. 1 (15) *ante* and notes. Petition defined. Sec. 1 (20) *ante*. Person defined, Sec. 1 (19) *ante*.

Petition should be verified by creditor, not by attorney unless the attorney is better informed than the client. Specific facts must be alleged, not general allegations. *In re* Nelson (1899), W. Dist. Wis., Bunn, J., 98 Fed., 76; 1 A. B. R., 63; 1 N. B. N., 567.

In the computation of time, exclude the day when the act of bankruptcy was committed and include the day when the petition was filed. *In re* Stevenson (1899), Dist. Del., Bradford, J., 94 Fed., 110; 2 A. B. R., 66; 1 N. B. N., 313.

The notoriety of the possession depends on the character of the property. The statute only requires that there shall be no effort at concealment. *In re* Woodward (1899), E. Dist. Tex., Dillard, R., 2 A. B. R., 233; 1 N. B. N., 252.

Referee's finding as to the insolvency not disturbed, except on strong showing. *In re* Rome Planing Mills (1900), N. Dist. N. Y., Coxe, J., 96 Fed., 812; 3 A. B. R., 766; 2 N. B. N., 531.

Wife as creditor not debarred from proceeding against her husband in bankruptcy. *In re* Novak (1900), N. Dist. Ia., Shiras, J., 101 Fed., 800; 4 A. B. R., 311.

What constitutes insolvency determined. *In re* Rome Planing Mill Co. (1900), N. Dist. N. Y., Coxe, J., 99 Fed., 937; 3 A. B. R., 766; 2 N. B. N., 531.

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Creditor of unliquidated claim for damages not entitled to file a petition in involuntary bankruptcy. *In re* Morales (1901), S. Dist. Fla., Locke, J., 105 Fed., 761; 5 A. B. R., 425; 3 N. B. N., 432.

In Illinois an infant may not be adjudged a bankrupt in involuntary proceedings. *In re* Eidemiller (1900), N. Dist. Ill., Kohlsaat, J., 195 Fed., 595; 5 A. B. R., 570; contra *in re* Brice (1899), S Dist. Ia., Woolson, J , 2 A. B. R., 197.

Four full months after the act of bankruptcy allowed for filing the petition. *In re* Planing Mill Co. (1901), W. Dist. N. Y., Hotchkiss, R.; 6 A. B. R., 38; 3 N. B. N., 637.

Bankrupt offering to testify to facts waives question of jurisdiction of court. *In re* Smith (1902), Dist. Conn., Platt, J., 117 Fed., 961; 9 A. B. R., 98.

A surety who has not yet paid the debt is not a creditor and cannot file petition in involuntary bankruptcy. *Phillips* v. *Dreher Shoe Co* (1902), Middle Dist., Pa., Archbald, J., 112 Fed., 404; 7 A. B. R., 326.

Adjudication of insolvency on ground of act of bankruptcy committed while insolvent, is *res adjudicata* as to the insolvency as to creditors. *In re* American Brewing Co. (1902), C. C. A., 7th Cir., Bunn, J., 112 Fed., 752; 7 A B. R., 463.

An assignment more than four months old will not be assailable. *In re* Carver & Co. (1902), E. Dist. N. C., Purnell, J., 113 Fed., 138; 7 A. B. R., 539.

In computing the four months exclude the day on which the act of bankruptcy was committed. *In re* Dupree (1899), E. Dist. N. C., Purnell, J., 97 Fed., 28; 1 N. B. N., 513. *In re* Stevenson (1899), Dist. Del. Bradford, J., 94 Fed.,110; 2 A. B. R., 66.

Preference not within four months. *Murray* v *Beal* (1901), Sup. Ct Utah, 65 Pac., 726. *In re* Lewis (1899), S. Dist. N. Y., Brown, J., 91 Fed., 632; 1 A. B. R., 458; 1 N. B. N., 556.

Chattel mortgage an act of bankruptcy (1901), Mo. Ct. App., 88 Mo. App., 335.

Four months period applies to duplicate petitions. *In re* Dupree (1899), E. Dist. N. C., Purnell, J., 97 Fed., 28; 1 N. B. N., 513.

c [**Defense of solvency.**] It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this Act at the time of the filing the petition against him, and if

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solvency at such state is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

For definition of insolvency, see *ante* Sec, 1 Sub. (15). For proceeding in involuntary cases, see Sec. 59 *post.*

Alleged bankrupt entitled to costs on dismissal of petition, but no allowance for counsel fees or damages. *In re* Morris (1902), E. Dist. Pa., McPherson, J., 115 Fed., 591; 7 A. B. R., 709.

Burden of proof of solvency is on the alleged bankrupt where removal and concealment are charged. *In re* Schenkin (1902), 113 Fed., 421; 7 A. B. R., 162.

Corporation solvent in fact does not become insolvent by appointment of receiver—complete defense that corporation is solvent even though receiver has been appointed. *In re* Henry Zeitner Brewing Co. (1902), S. Dist. N. Y., Adams, J., 117 Fed., 799; 9 A. B. R., 63.

Solvency of partnership complete defense though partnership in the hands of a receiver. *In re* Burrell & Co. (1903), S. Dist. N. Y., Adams, J., 9 A. B. R., 178.

d **[Person denying insolvency.]** Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

For proceedings in involuntary cases, see Sec. 59, *post.* For definition of "person against whom petition has been filed", see, *ante*, Sec. 1, sub. (1). A partner may oppose a petition the same as an involuntary bankrupt. Gen. Order VIII.

Burden of proving solvency, when alleged, being on bankrupt on his failure to produce his books, adjudication may be made *pro confesso. Bray* v. *Cobb* (1898), E. Dist. N. C., Purnell, J., 91 Fed., 102; 1 A. B. R., 153; 1 N. B. N., 209.

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Bankrupt must submit to cross-examination; and credits must be estimated at actual value. *In re* Coddington (1902), W. Dist. Pa., Archbald, J., 118 Fed., 281.

e **[Petitioner to give bond.]** Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

As to seizure of bankrupts' property and bond to be given on such seizure, see *post.* Sec. 69a and notes. For form of bond of petitioning creditor, see Form No. 9, *post.*

[Allowance of costs and damages.] If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

As to costs and contested adjudications, see Gen. Ord. XXXIV. For proceedings in involuntary cases, see Sec. 59, *post.*

Where bond not given no taxation of counsel fees against the petitioning creditor; ordinary costs provided by Gen. Ord. XXXIV. *In re* Ghiglione (1899), S. Dist. N. Y., Brown, J., 93 Fed., 186; 1 A. B. R., 580; 1 N. B. N., 351.

District Court will tax costs, disbursements and attorney's fees against petitioning creditors in favor of one sought to be made a bankrupt where proceedings are unsuccessful. *In re* Nixon, (1901) Dist. Mont., Knowles, J., 110 Fed., 633; 6 A. B. R., 693.

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SEC. 4. WHO MAY BECOME BANKRUPTS.

a **[Voluntary bankrupts.]** Any person who owes debts, except a corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.

Analogous provisions, act 1841, Sec. 7; act 1867, Sec. 11, *post.*

For definitions of corporations, see Sec. 1, sub. (6), *ante.* Person includes corporations, officers, partnerships and women, Sec. 1, sub. (19) *ante*, and notes. See as to persons by whom proceedings may be conducted general order IV and notes. "Debts" defined, Sec. 1 (11), *ante*, and notes.

Where by state law an infant is liable for debts, such infant may be adjudged bankrupt. *In re* Brice (1899), S. Dist. of Ia., Woolson, J., 93 Fed., 942; 2 A. B. R., 197; 1 N. B. N., 310.

The fact that distinction is made between natural and artificial persons and that there is a distinction made between classes of artificial persons, does not render the bankruptcy act unconstitutional. *Lehigh Co.* v. *Stengel* (1899), C. C. A., 6th Cir., Taft, J., 95 Fed., 637; 2 A. B. R., 383; 1 N. B. N., 387.

Where a voluntary petition is filed subsequent to an involuntary petition and the adjudication on the voluntary petition would injure the estate by securing preferences to creditors, the adjudication should be on the involuntary petition. *In re* Dwyer (1902), Dist. N. Dak., Amidon, J., 112 Fed., 777; 7 A. B. R., 532.

Infant may not be adjudged bankrupt. A firm of which he is a member may. *In re Duguid* (1899), E. Dist. N. C., Purnell, J., 100 Fed., 274; 3 A. B. R., 794; 2 N. B. N., 607. See notes under Sec. 3, clause 6, *ante.*

An infant may be adjudged bankrupt when he owes debts which he may not disaffirm on his majority. *In re* Penzansky (1902), Dist. Mass., Farmer, R., 8 A. B. R., 99.

Insane person can not be adjudged a bankrupt. *In re* Funk (1900), N. Dist. Ia., Shiras, J., 101 Fed., 244; 4 A. B. R., 96.

An officer of regular army may be adjudged bankrupt. *Audubon* v. *Shufeldt* (1901), 181 U. S., 575; 5 A. B. R., 829.

"Debts" as defined in Sec. 1 (11) must be strictly followed. *In re* Yates (1902), N. Dist. Col., De Haven, J., 114 Fed., 365; 8 A. B. R., 69.

There must be an existing provable debt to entitle one to take advantage of bankruptcy act. Judgment suspended on appeal not such debt. *In re* Yates (1902), N. Dist. Cal., De Haven, J., 114 Fed., 365; 8 A. B. R., 69.

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The bankruptcy act is not unconstitutional by reason of provisions for voluntary bankruptcy. *Nat. Bank* v. *Moyses* (1902), U. S. Sup. Ct., Chief Justice Fuller, 186 U. S., 181; 8 A. B. R., 1.

One not insolvent may be a voluntary bankrupt. *Wetmore* v. *Wetmore* (1899), N. Y. Sup. Ct. O'Brien, J., 44 N. Y. App. Div., 220.

b **[Involuntary bankrupts.]** Any natural person, except a wage earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, *mining*, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts. *The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory or of the United States.*

"Person" defined Sec. 1 (19) and notes. "Wage-earner" defined-Sec. 1 (27) and notes. "Corporations" defined Sec. 1 (6) and notes. "Debts" defined Sec. 1 (11) and notes and 63a and notes. Person against whom an involuntary petition has been filed is entitled to jury trial on the question of his solvency Sec. 19 (a) and notes. "Adjudication" defined Sec. 1 (2) and notes. For form of involuntary petition, see Form No. 3. As to involuntary petitio ns, see Sec. 59 and notes.

An admission by the officers of a corporation of Mass. not sufficient cause for involuntary bankruptcy. Stockholders vote necessary—*semble* a corporation cannot make any such admission as an evasion of the act. *In re* Bates Machine Co. (1899), Dist. Mass., Lowell, J., 91 Fed., 625; 1 A. B. R., 129; I. N. B. N., 135.

A fire insurance company may not be adjudged a bankrupt. *In re* Cameron, etc., Co. (1899), W. Dist. Mo., Phillips, J., 96 Fed., 756; 2 A. B. R., 372; 1 N. B. N., 383.

The amount of one thousand dollars indebtedness necessary to give jurisdiction in involuntary bankruptcy may be estimated, when necessary, by including among the creditors, one who has received a preference

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voidable by Sections 60 (a) and (b). *In re* Cain (1899), N. Dist., Ill., Eastman, R.; 2 A. B. R., 378; 1 N. B. N., 389.

To the same effect, *in re* Tirre (1899), S. Dist. N. Y., Brown, J., 95 Fed., 425; 2 A. B. R., 493; 1 N. B. N., 402.

An incorporated private hospital, conducted for profit, is a mercantile company and liable to bankruptcy. *In re* San Gabriel San. Co. (1900). S. Dist. Cal., Wellborn, J., 95 Fed., 271; 2 A. B. R., 408; 1 N. B. N., 390.

Debts preferentially paid are to be counted as existing in estimating the amount of liabilities to confer jurisdiction. *In re* Norcross (1899), W. Dist. Mo., Hall. R., 1 A. B. R., 644; 1 N. B. N., 528.

Company engaged in furnishing water does not come under this classification, and is not subject to be adjudicated bankrupt. *In re* New York & Westchester Water Co. (1900), S. Dist. N. Y., Brown, J., 98 Fed., 711; 3 A. B. R., 508; 2 N. B. N., 414.

A mining company not subject to bankruptcy [amendment of Feb. 5th, 1903, changes this]. *In re* Elk Park Mining & Milling Co. (1899), Dist. Colo., Hallett, J., 101 Fed., 422; 4 A. B. R., 131.

Company engaged in theatrical performance not subject to bankruptcy. *In re* Oriental Society (1900), E. Dist. Pa., McPherson, J., 104 Fed., 975; 5 A. B. R., 219

Debtor changing his business to farming within four months cannot escape prosecution of involuntary bankruptcy. *In re* Luckhardt (1900), Dist. Kan., Hook, J., 101 Fed., 807; 4 A. B. R., 307.

A farmer may not be adjudged a bankrupt on involuntary petition, even on default. *In re* Taylor (1900), C. C. A., 7th Cir., Bunn, J., 102 Fed., 728; 4 A. B. R., 515; 2 N. B. N., 92.

Coal mining company, though operating a store, is not principally engaged in mercantile pursuits, and is not liable to bankruptcy proceedings. [Amendment Feb. 5th, 1903, changes this.] *McNamara et al.* v. *Helena Coal Co.* (1900), N. Dist. Ala., Brice, J.; 5 A. B. R., 48.

Mining company not subject to proceedings in bankruptcy. *In re* Woodside Coal Co. (1900), E. Dist. Pa., McPherson, J., 105 Fed., 56; 5 A. B. R., 186; 3 N. B. N., 336.

A coal company which buys coal in the ground, mines and markets it, is subject to bankruptcy, its principal business being trading. *In re* Keystone Coal Co. (1901), W. Dist. Pa., Van Wormer, R.; 5 A. B. R. 389; 3 N. B. N., 344.

Reversed—*In re* Keystone Coal Co. (1901), W. Dist. Pa., Buffington, J., 109 Fed., 872; 6 A. B. R., 377; 3 N. B. N., 938.

Corporation engaged in smelting ore is a manufacturing corporation.

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In re Tecopa Mining & Smelting Co. (1901), S. Dist. Cal., Wellborn, J., 110 Fed., 120; 6 A. B. R., 250.

Facts which tend to show whether an alleged bankrupt is engaged chiefly in farming, in *re* Mackey (1901), Dist. Del., Bradford, J., 110 Fed., 355; 6 A. B. R., 577.

What constitutes being engaged chiefly in farming discussed. *In re* Drake (1902), Dist. S. C., Brawley, J., 114 Fed., 229; 8 A. B. R., 137.

Pleading to merits waives the objection that an involuntary petition does not allege that defendant is not a farmer or wage-earner. Verification of petition which is defective, may be corrected on motion, jurisdiction being acquired by the filing of the petition. *Bank* v. *Craig Brothers* (1901), W. Dist. Ky., Evans, J., 110 Fed., 137; 6 A. B. R., 381.

A mercantile agency may be adjudged bankrupt. *In re* Mutual Mercantile Agency (1901), S. Dist. N. Y., Adams, J., 111 Fed., 152; 6 A. B. R., 607.

A restaurant or hotel not a mercantile or trading business and not subject to involuntary bankruptcy. *In re* Chesapeake Oyster & Fish Co., Dist. Colo., Hallett, J., 112 Fed., 960; 7 A. B. R., 173.

After an involuntary petition filed and no adjudication, bankrupt may file his voluntary petition and hearing will be held on it. The involuntary petition may be stayed to protect costs or other rights. *In re* Stegar (1902), N. Dist. Ala., Jones, J., 113 Fed., 978; 7 A. B. R., 665.

An incorporated social club cannot be adjudged bankrupt. *In re* Fulton Club (1902), N. Dist. Ga., Newman, J., 113 Fed., 997; 7 A. B. R., 670.

A corporation cannot for the sake of procuring adjudication in bankruptcy, collude with a creditor so that a claim is split up to make the necessary numbers. *In re* Independent Thread Co. (1902), Dist. N. J., Kirkpatrick, J., 113 Fed., 998; 7 A. B. R., 704.

A corporation which never did in fact any trading or mercantile business cannot be adjudged a bankrupt. It does not matter what it is empowered to do. *In re* Tontine Surety Co. of New Jersey (1902), Dist. of N. J., Kirkpatrick, J., 116 Led., 401; 8 A. B. R., 421.

A corporation engaged in the business of carriage by water of passengers and goods for hire may not be adjudged a bankrupt. *In re* Philadelphia & Lewes Transportation Co. (1902), E. Dist. Pa., McPherson, J., 114 Fed., 403; 7 A. B. R., 707.

Petitioners must allege and prove that the alleged bankrupt was engaged in one of the enumerated businesses. *In re* Chicago–Joplin Lead Co. (1900), W. Dist. Mo., Phillips, J., 104 Fed., 67; 4 A. B. R., 712.

Must be engaged in enumerated pursuits at the time of filing the petition. *In re* Minn., etc., Constr. Co. (1900), Sup. Ct. Ariz., 60 Pac., 881.

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SEC. 5.

a **[Partnership may be adjudged bankrupt.]** A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt

Analogous provisions act 1841, Sec. 14 *post*; act of 1867, Sec. *post.*

As to proceedings in partnership cases, see Gen. Order VIII and notes. "Person" used in this act includes corporation, Sec. 1 (19) *ante.* For form of petition see Form No. 2. See *b. c. d. e. f. g.* and *h.*, *post*, and notes.

Individual partners can not be discharged without bringing in co-partners. *In re* Freund (1899), N. Dist. Pa., James, R., 1 A. B. R., 25; 1 N. B. N., 105.

So long as any partnership assets or liabilities remain, the same may be adjudicated. *In re* Levy & Richman (1899), N. Dist. N. Y., Moss, R.; 2 A. B. R., 21; 1 N. B. 287.

Where the property of a partner is used to pay the debt of a co-partner, his trustee is subrogated to the rights of the creditor whose debt is so paid. *In re* Mason & Son (1899), Dist. R. I., Littlefield, R.; 2 A. B. R., 60; 1 N. B. N., 331.

In a petition to adjudicate a partnership a bankrupt notice to non-joining partners is essential. *In re* Altman, N. Dist. N. Y., Coxe, J., (1899), 96 Fed., 263; 2 A. B. R., 407; 1 N. B. N., 358.

Individual petitions are no notice to firm creditors and will not bar firm debts. *In re* Carmichael (1899), N. Dist. Ia., Shiras, J., 96 Fed., 594; 2 A. B. R., 815.

An act of bankruptcy by a partner for the firm binds the firm; such as an assignment by one partner of the firm's assets. *Chemical Nat. Bank* v. *Meyer, et al.*, (1899) E. Dist. N. Y., Thomas, J., 92 Fed., 896; 1 A. B. R., 565; 1 N. B. N., 304.

An adjudication on the petition of two of four partners that the co-partnership be adjudged a bankrupt as a co-partnership and as individuals is erroneous and should be set aside. Neither the co-partnership nor the individual members are relieved from debts. *In re* Altman, (1899) N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 689; 1 N. B. N., 358.

Existence of unpaid debts where there are no partnership assets, and the partnership has ceased to exist, not a sufficient ground to adjudge partnership a bankrupt, *idem*

Partnership and individual petitions may be joined and one fee only

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charged on filing. *In re* Gay (1899), Dist. N. H., Aldrich, J., 98 Fed., 870; 3 A. B. R., 529.

Partnership may be adjudged a bankrupt irrespective of individuals who may be drawn in, if they have committed an act of bankruptcy. *In re* Meyer (1899), C. C. A., 2nd Cir., Wallace, J., 98 Fed., 976; 3 A. B. R., 559.

Petition in involuntary bankruptcy against a co-partnership should show whether all members are insolvent or not. *In re* Blair, S. Dist. N. Y., Brown, J., 99 Fed., 76; 3 A. B. R., 588; 2 N. B. N., 890.

Members of the partnership may not be adjudged bankrupts on involuntary petitions. *Mahoney et al.* v. *Ward* (1900), E. Dist. N. C., Purnell, J., 100 Fed., 278; 3 A. B. R., 770; 2 N. B. N., 538.

Individual partner should file schedule both for himself and partnership. Notices to creditors should contain the statement showing desire to be released from partnership debts; otherwise such debts not barred. *In re* Laughlin (1899), N. Dist. Ia., Shiras, J., 96 Fed., 589; 3 A. B. R., 1.

What constitutes a partnership. *In re* Kenney (1899), S. Dist. N. Y., Brown, J., 97 Fed., 554; 3 A. B. R., 353; 1 N. B. N., 401.

Where one partner is dead, bankruptcy court will take jurisdiction of the estate, but not to dispossess the administrator without his consent. *In re* Pierce & Son (1900), Dist. Wash., Handford, J., 102 Fed., 977; 4 A. B. R., 489; 2 N. B. N., 977.

Where it appears that all proceedings are partnership in character, individual discharge not given. *In re* Hale *et al.*, (1901), E. Dist. N. C., Purnell, J., 107 Fed., 432; 6 A. B. R., 35.

In bankruptcy, partners and the individual members are distinct entities—bankruptcy of one does not necessarily involve them both. *In re* Sanderlin (1901), E. Dist. N. C., Purnell, J., 109 Fed., 857; 6 A. B. R., 384.

What facts constitute a partnership for purposes of adjudication in bankruptcy. *Lott* v. *Young* (1901), C. C. A., 9th Cir., Hawley, J., 109 Fed., 798; 6 A. B. R., 436.

Facts insufficient to show partnership. *In re* Clark (1901), Dist. Wash. Handford, J., 111 Fed., 893; 7 A. B. R., 96.

Partner may not file petition as a creditor against his copartner. *In re* Shenkein & Coney (1902), W. Dist. N. Y., Hotchkiss, R., 7 A. B. R., 162.

Failure more than eight years before too stale to order all partners to show cause why they should not be adjudicated in the bankruptcy proceedings of one of them. *Royston* v. *Weis* (1902), C. C. A., 5th Cir., 112 Fed., 962; 7 A. B. R., 584.

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Bankruptcy of one member of a partnership dissolved does not affect mortgage given by firm, where firm is not adjudicated. *McNair* v. *McIntyre* (1902), C. C. A., 4th Cir., Simonton, J., 113 Fed., 113; 7 A. B. R., 638.

Intention of Congress that partnership should be an entity, like a corporation for purposes of the bankruptcy act. *In re* Meyer (1899), C. C. A., 2nd Cir., Wallace, J., 98 Fed., 976; 3 A. B. R., 559.

Firm committing act of bankruptcy may be adjudged bankrupt, though the individual members not guilty of such acts. *In re* Sanderlin (1901), E. Dist. N. C., Purnell, J., 109 Fed., 857; 6 A. B. R., 384.

Partnership petition is a separate proceeding—each partner seeking discharge must file separate petition and pay fees accordingly. *In re* Farley & Co. (1902), W. Dist. Va., McDowell, J., 115 Fed., 359; 8 A. B R., 266.

In case of a voluntary petition by a partner a firm creditor may not object to the adjudication on the ground of solvency—even if the copartner does come to object, it is an individual right as to him. Comparison between acts of 1841, 1867 and 1898. History of Legislation. *In re* Carleton (1902), Dist. Mass., Lowell, J., 115 Fed., 246; 8 A. B. R., 270.

Fact that one copartner is a minor will not prevent the adjudication of the firm if act of bankruptcy has been committed. *In re* Dunnigan Bros. (1899), Dist. Mass., Lowell, J., 95 Fed., 428; 2 A. B. R., 628.

Procedure where partner seeks discharge from individual and firm debts. *In re* Hartman (1899), N. Dist. Ia., Shiras, J., 96 Fed., 593; 3 A. B. R., 65.

Individuals having been adjudged bankrupts and discharged years afterwards, an amendment will not be entertained to declare a firm debt, where the effect will be to disturb transactions long since closed. *In re* Mercur (1902), E. Dist. Pa., Archbold, J., 116 Fed., 655; 8 A. B. R., 275.

Creditors may petition against members as well as against the firm. *idem.*

Partners may petition for adjudication though there are no assets of the firm. *In re* Hirsch (1899), W. Dist. Tenn., Hammond, J., 97 Fed., 571; 2 A. B. R., 715.

Partnership continues if debts exist though the debts may be outlawed. *In re* Levy (1899), N. Dist. N. Y., Coxe, J., 95 Fed., 812; 2 A. B. R., 21.

Members of a firm unwilling to join in a petition by part of firm may be adjudged involuntary bankrupts. *In re* Murray (1899), S. Dist. Ia., Shiras, J., 96 Fed., 600; 3 A. B. R., 601.

Acts of bankruptcy on part of firm discussed. *Vaccaro* v. *Security Bank* (1900), C. C. A., 6th Cir., Lurton, J., 103 Fed., 436; 4 A. B. R., 474.

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Separate filing fees for the partner and each member thereof necessary. *In re* Barden (1900), E. Dist. N. C., Purnell, J., 101 Fed., 553; 4 A. B. R., 31. As to partnership exemptions, see notes to Sec. 6a.

b **[Administration of partnership estate.]** The creditors of the partnership shall appoint the trustee; in other repects so far as possible the estate shall be administered as herein provided for other estates.

As to administration of estates see Chap. VII, *post.*

Creditors of the partnership appoint the trustee in the case of a joint petition; in case of a separate petition the separate creditors have the right to vote. *In re* Beck (1901), Dist. Mass., Lowell, J., 110 Fed., 140; 6 A. B. R., 554.

One not owner of claim against partnership cannot vote at election of partnership trustee. *In re* Eagles & Crisp (1900), E. Dist. N. C., Purnell, J., 99 Fed., 695; 3 A. B. R., 733.

c **[Jurisdiction over one partner sufficient.]** The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

As to jurisdiction to adjudicate bankrupt, see Sec. 2 (1) and notes *ante.* See for proceedings in partnership cases Gen. Ord. VIII, *post.*

The court acquires jurisdiction of the proceeding on the filing of the petition. If it is filed by all partners the adjudication is made at once; if by less than all, the partner who refuses to join in the petition, may oppose the adjudication as he might if the proceeding was involuntary, and he may make every defense open to a debtor upon such petition. *In re* Ives (1902), C. C. A., 8th Cir., Wantly, J., 113 Fed., 911; 7 A. B. R., 692.

d **[Trustee to keep separate accounts.]** The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

As to duties of trustees to prepare accounts, see Sec. 47a and notes; *post;* also Gen. Ord. XVII.

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e **[Expenses apportioned.]** The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

As to expenses of administration, see Sec. 62a and notes, *post.*

f **[Payment of debts—surplus.]** The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

Proceedings in partnership cases outlined. Gen. Ord. VIII. *post* See *a. b. c. d. e. g.* and *h* under this section and notes thereunder.

Individual creditors shall be paid first out of individual assets and partnership creditors paid next out of individual assets—the converse follows in partnership assets. *In re* Wilcox (1899), Dist. Mass., Lowell, J., 94 Fed., 84; 2 A. B. R., 117; 1 N. B. N., 494.

A solvent partner is a creditor of the insolvent members. *In re* Stevens (1900), Dist. Vt., Wheeler, J., 104 Fed., 325; 5 A. B. R., 9.

Partnership note endorsed by individual member remains a partnership liability and not a claim against the individual. *Lamoille, etc. Bank* v. *Stevens* Est., (1901), Wheeler, J., 107 Fed., 245; 6 A. B. R., 164.

While a corporation was a *de facto* partner in a bankrupt firm and estopped to claim money advanced under the partnership agreement, it is not so estopped as to money previously advanced. *In re* Ervin (1902), E. Dist. Pa., McPherson, J., 114 Fed., 596; 7 A. B. R., 480.

In bankruptcy proceedings of a partner of a firm, costs of suit incurred by firm are not preferred claims, though State insolvency law makes it a preferred claim. *In re* Daniels (1901), Dist. R. I., Brown, J., 110 Fed., 745; 6. A. B. R., 699.

A retiring partner, who sold his interest and took notes of continuing partner may not prove up so as to prejudice creditors of old firm. *In re* Denning (1902), Dist. Mass., Lowell, J., 114 Fed., 219; 8 A. B. R., 133.

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Real estate standing in the name of one partner, but really the firm property, to be sold and applied to the payment of firm debts. *In re* Goetzinger (1901), W. Dist. Pa., Buffington, J., 110 Fed., 366; 6 A. B. R., 399.

Court will ascertain the facts as to whether land is purchased with partnership funds, though in the individual names, and determine whether it is individual or firm assets. *In re* Mosier (1901), Dist. of Vt., Wheeler, J., 112 Fed., 138; 7 A. B. R., 268.

Purpose of bankruptcy act to apply partnership assets to payment of partnership debts, no scheme permitted to charge partnership assets with individual debts. *In re* Jones (1900), E. Dist. Mo., Adams, J., 100 Fed., 781; 4 A. B. R., 141.

Chattel mortgage executed by individual members of firm can not be proved as a claim against the partnership estate. *In re* Jones (1902), E. Dist., N. C., Purnell, J., 116 Fed., 431; 8 A. B. R., 626.

What constitutes individual and partnership debts. *In re* Stevens, (1900). Dist. Vt., Wheeler, J., 104 Fed., 323; 5 A. B. R., 9.

Discussion of partnership assets. *In re* Lehigh Lumber Co. (1900), W. Dist. Pa., Buffington, J., 101 Fed., 216; 4 A. B. R., 221.

Surplus partnership assets applied to individual debts. *In re* Gillette & Prentice (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 769; 5 A. B. R., 119.

Individual and firm assets are to be marshalled where member and firm are both adjudicated bankrupt. *In re* Wilcox (1899), Dist. Mass., Lowell, J., 94 Fed., 84; 2 A. B. R., 117.

Where partnership adjudged a bankrupt individual estates are drawn into bankruptcy court. *In re* Stokes (1901), E. Dist. Pa., McPherson, J., 106 Fed., 312; 6 A. B. R., 262.

Distribution of estate should be on basis that the bankrupt was sole owner of the business even though there is secret partner. *In re* Harris (1899), N. Dist. O., Ricks, J., 108 Fed., 517.

Firm debts not affected by the adjudication of a member of the firm on his voluntary petition. *In re* McFaun (1899), N. Dist. Ia., Shiras, J., 96 Fed., 592; 3 A. B. R., 66.

Where only individual assets remain both partners being insolvent constitute an exception to the rule of distribution and partnership creditors may share equally with individual creditors. *In re* Conrader (1902), W. Dist. Pa., Buffington, J., 9 A. B. R., 85.

g **[Claims to be marshalled.]** The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the

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assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

See *a*, *b*, *c*, *d*, *e* and *f*, *ante* and notes. As to proof of claims, see Sec.. 57a and notes, and Gen. Ord. XXI *post*. Form of proof of debt by partnership, see Form No. 34 and notes.

Attempting to charge partnership assets with an individual claim is a fraud. *In re* Jones & Cook (1900), E. Dist. Mo., Adams, J., 100 Fed. 781; 4 A. B. R., 141; 2 N. B. N., 193.

Liability of firm not shown where notes are signed by the individuals not using firm names. *Strause* v. *Hooper* (1901), E. Dist. N. C., Purnell, J., 105 Fed., 590; 5 A. B. R., 225.

Claims on notes signed by two members of a bankrupt firm allowed against the firm where the money was used by the firm. *In re* Shattuck & Bugh (1901), W. Dist. N. Y., McMaster, R., 6 A. B. R., 56.

Both individual and partnership estates may be marshalled to secure an equitable distribution of the property. *In re* Gillette & Prentice (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 769; 5 A. B. R., 119.

Firm and individual assets must be marshalled. *In re* Shapiro & Novick (1901), S. Dist. N. Y., Brown, J., 106 Fed., 495; 5 A. B. R., 839.

h **Administration where all partners are not bankrupt.**] In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt, but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

See *a*, *b*, *c*, *d*, *e*, *f* and *g*, under this section, and notes. See also proceedings in partnership cases, Gen. Ord. VIII *post*.

This section does not apply where the adjudication is refused because of the infancy of a partner. *In re* Dunnigan Bros. (1899), Dist. Mass., Lowell, J., 95 Fed., 428; 2 A. B. R., 628; 1 N. B. N., 528.

Individual adjudication and administration of estate will continue after a secret partnership is discovered—such secret partner is assumed to have assented. *In re* Harris (1899), N. Dist. O., Remington, R.; 4 A. B. R., 132; 2 N. B. N., 868.

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Partners not adjudged bankrupt required to account for interest of the bankrupt partner in the firm business. *In re* Laughlin (1899), N. Dist. Ia., Shiras, J., 96 Fed., 589; 3 A. B. R., 1.

Fact that two members of firm are adjudged bankrupt does not make the firm bankrupt, and a partnership not necessarily adjudged bankrupt. *In re* Mercur (1902), E. Dist. Pa., Archbald, J., 116 Fed., 655; 8 A. B. R., 275.

Discharge from partnership debts authorized on proper proof. *Janecki Mfg. Co.* v. *McElwaine* (1901), Dist. Ind., Baker, J., 107 Fed., 249.

Provisions of this section do not apply where one partner is infant. *In re* Dunnigan Bros. (1899), Dist. Mass., Lowell, J., 95 Fed., 428; 2 A. B. R., 628.

Trustee of insolvent member no right to firm assets. *Burke* v. *Rollinson* (1901), Sup. Ct., R. I., 49 Atl., 694.

Mortgage by a firm not invalidated by bankruptcy proceedings against member of firm only. *McNair* v. *McIntyre* (1902), C. C. A., 6th Cir., Simonton, J., 113, Fed., 113; 7 A. B. R., 638.

SEC. 6. EXEMPTIONS OF BANKRUPTS.

a **[Exemption under State laws.]** This act shall not effect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

Courts of bankruptcy to determine all claims of exemptions. Sec. 2, Sub. (11), *ante*, and trustee to set apart bankrupt's exemptions. Sec. 47, Sub. (11) *post*, and notes. See the exemption laws of each state in which district court is located.

As to statement of claim to exempt property, see Form 1, Schedule B (5), Analogous provisions, Act of 1800, Sec. 18, 34, 35, 53; Act of 1841, Sec. 3; Act of 1867, Sec. 14 amended Act June 8th, 1872, Ch. 30; Act March 28, 1873, Ch. 235.

Intention to use an unbroken colt for team work where the Vt. law allows team of horses is sufficient to exempt under the bankruptcy act. *In re* Alfred (1899), Dist. Vt., Mott, R.; 1 A. B. R., 243.

Where each partner consents to the exemptions of the other, as required by No. Carolina law, the exemptions may be allowed out of the partnership estate. *In re* Grimes (1899), W. Dist. N. C., Ewert, J., 94

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Fed., 800; 2 A. B. R., 160; 1 N. B. N., 339. *In re* Stevenson & King (1899), E. Dist. N. C., Purnell, J., 93 Fed., 789; 2 A. B. R., 230; 1 N. B. N., 266.

Under the Wis. Law exemptions may be claimed out of a partnership property. *In re* Nelson (1899), W. Dist. Wis., Bunn, J., 98 Fed., 76; 2 A. B. R., 556; 1 N. B. N., 567.

Arkansas exemption law allows no exemption from partnership property. *In re* Meriwether (1901), W. Dist. Ark., Trieber, J., 107 Fed., 102; 5 A. B. R., 435.

Exemptions allowed partner out of partnership assets, when joint interest is severed. *In re* Friedrich (1900), C. C. A., 7th Ci., Renkins, J., 100 Fed., 284; 3 A. B. R., 801.

Exemptions in New Jersey not allowed out of partnership assets. *In re* Demarest (1901), Dist. N. J., Kirkpatrick, J., 110 Fed., 638; 6 A. B. R., 232.

In North Carolina exemptions allowed out of partnership assets by consent of other partners. *In re* Seabolt (1902), W. Dist. N. C., Boyd, J., 113 Fed., 766; 8 A. B. R., 57.

Exemptions of one partner may attach to property of the partnership of which the bankrupt is a member, provided previously thereto the firm has transferred same to one member. *In re* Rudnick (1900), Dist. Wash., Hanaford, J., 102 Fed., 750; 4 A. B. R., 531; 2 N. B. N., 975.

The rule of the state of which the bankrupt is a resident followed as to exemptions—where allowed out of partnership assets the United States Court will follow. *In re* Camp (1899), N. Dist. Ga., Newman, J., 91 Fed., 745; 1 A. B. R., 165; 1 N. B. N., 142.

Exemptions of forty acres as homestead on which bankrupt claims an intention to build and occupy, is not allowed under Michigan statute, as intention does not create homestead. *In re* Hatch (1899), E. Dist., Mich., Davock, R., 2 A. B. R., 36; 1 N. B. N., 293.

Homestead exemptions pass to the bankrupt. The reversionary interest should be sold by the trustee. *In re* Woodward, E. Dist. N. C., Purnell, J., 95 Fed., 260; 2 A. B. R., 339; 1 N. B. N., 352.

Exemptions are to be passed on by the District Court. Arkansas Homestead Law construed. *In re* Overstreet (1899), E. Dist. Ark., Dooley, R.; 2 A. B. R., 486; 1 N. B. N., 408.

Under the Alabama exemption law a gold watch worth fifty dollars comes under necessary and proper wearing apparel. *Sellers* v. *Bell* (1899), C. C. A., 5th Cir., McCormick, J., 94 Fed., 801; 2 A. B. R., 529.

Exemptions of tools and implements under the California law con-

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sidered. *In re* Peterson (1899), N. Dist. Cal., DeHaven, J., 95 Fed.,417; 2 A. B. R., 630; 1 N. B. N., 430.

Exemption lost by failure to claim the same in the schedule can not be claimed by amendment. *In re* Nunn (1899), S. Dist. Ga., Proudfit, R.; 2 A. B. R., 664; 1 N. B. N., 427.

Exemption not allowed by way of amendment to schedule out of property which had already passed to trustee. Distinction between property which law makes exempt and that which the bankrupt claims to be exempt. *Moran* v. *King* (1901), C. C. A., 4th Cir., 111 Fed., 730; 7 A. B. R., 176.

Exemptions where state law does not allow cash exemptions construed. *In re* Woodward (1899), E. Dist. N.C., Purnell, J., 95 Fed., 955; 2 A. B. R., 692; 1 N. B. N., 430.

Exemptions must be set aside by the trustee and no one can act in his place. *In re* Grimes (1899), W. Dist. N. C., Ewart, J., 96 Fed., 529; 2 A. B. R., 730; 1 N. B. N., 516.

Jurisdiction of bankrupt court limited to setting the exempt property aside. Disputes concerning title to be left to other courts. *In re* Hill (1899), N. Dist. Ga., Newman, J., 96 Fed., 185; 2 A. B. R., 798; 2 N. B. N., 180. *In re* Little (1901), N. Dist. Ia., Shiras, J., 110 Fed., 621; 6 A. B. R. 681.

Title to crops growing on exempt land of a voluntary bankrupt vest in trustee. *In re* Coffman, N. Dist. Tex., Meek, J., 93 Fed., 422; 1 A. B. R., 530; 1 N. B. N., 402.

Construction of the New York law, as regards money of pensioner of the United States invested in real estate. *In re* Ellithorpe (1901), W. Dist. N. Y., Hotchkiss, R., 111 Fed., 163; 5 A. B. R., 681.

Pension money exempt but subject to costs of filing petition. *In re* Bean (1900), Dist. Vt., Wheeler, J., 100 Fed., 262; 4 A. B. R., 53.

Under Georgia law exemption only allowed where the claimant comes with clean hands. *In re* Williamson (1901), N. Dist. Ga., Newman, J., 114 Fed., 190; 8 A. B. R., 42.

The right to exemption is not lost by bankrupt withholding assets or having made fraudulent transfer. *In re* Park (1900), Dist. Ark., Rogers, J., 102 Fed., 602; 4 A. B. R., 432; 2 N. B. N., 981.

Fraudulent concealment of property by the bankrupt does not deprive him of right to exemption. *In re* Rothschild (1901), S. Dist. Ga., Cravatt, R.; 6 A. B. R., 43.

Exemptions under Georgia law forfeited for fraud in concealing assets. *In re* Waxelbaum (1900), N. Dist. Ga., 101 Fed., 228; 4 A. B. R., 120; 2 N. B. N., 228.

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Exemption law of Georgia requires debtor to make full and fair disclosure of all his personal property. Omission to do so in bankruptcy will forfeit his claim to exemptions. *In re* Boorstin (1902), N. Dist. Ga., Newman, J., 114 Fed., 696; 8 A. B. R., 89.

Property which had been preferentially transferred and afterwards surrendered to the trustee, becomes subject to the bankrupt's claim for exemption. *In re* Falconer (1901), C. C. A., 8th Cir., Thayer, J., 110 Fed., 111; 6 A. B. R., 557. *In re* Talbott (1902), Dist. Mass., Lowell, J., 116 Fed., 417; 8 A. B. R., 427.

The statute of Georgia forfeits exemption in property conveyed in fraud of creditors. Where the property was reconveyed to the grantor, who afterwards became bankrupt, the old fraudulent transfer is no longer involved and exemption may be claimed. *In re* Thompson (1902), S. Dist. Ga., Spear, J., 115 Fed., 924; 8 A. B. R., 283.

Exemptions in Missouri cannot be allowed out of property recovered by a trustee from preferred creditors. *In re* White (1900), W. Dist. Mo., Phillips, J., 103 Fed., 774; 6 A. B. R., 45.

Conveyance of homestead under Tenn. law which is fraudulent in law but not in fact, will not bar homestead. *In re* Tollett (1900), C. C. A., 6th Circt., Lurton, J., 105 Fed., 425; 5 A. B. R., 404.

In Tennessee a fraudulent conveyance bars the debtor's claim for homestead. *In re* Tollett (1900), E. Dist. Tenn., Grayson, R.; 5 A. B. R, 305.

Exemptions of bankrupt should be allowed if practicable by partition If not, then property should be sold and exemptions allowed out of proceeds. *In re* Dillon (1900), N. Dist. Cal., DeHaven, J., 100 Fed., 627; 4 A. B. R., 45.

When exemptions must be taken from property incapable of division without injury, the court should order the sale of the property and pay him his exemptions out of the proceeds. *In re* Grimes (1899), W. Dist. N. C., Alexander, R., 2 A. B. R., 610; 1 N. B. N., 426.

State law of exemptions prevails. Where it allows a waiver, waiver sustained in bankruptcy. *In re* Garden (1899), N. Dist. Ala., Bruce, J., 93 Fed., 423; 1 A. B. R., 582; 1 N. B. N., 169.

Exemptions where creditors have waiver of the same – it is duty of bankruptcy court to protect the creditor in collecting his claim out of exempt property. *In re* Woodruff, *et al.* (1899), S. Dist. Ga., Spear, J., 96 Fed. 317; 2 A. B. R., 678; 1 N. B. N., 423.

Although under Pennsylvania statute an exemption may be waived in favor of the payee of a note, yet a judgment on such note avoided as preferential under the act, destroys the benefit of the waiver of the exemption. The creditor having proved claim as a general creditor is

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estopped to claim waiver of exemptions. *In re* Bolinger (1901), W. Dist. Pa., Buffington, J., 108 Fed., 374; 6 A. B. R., 171.

Holder of judgment note containing waiver of exemptions cannot take advantage of waiver in bankruptcy unless note reduced to judgment and execution issued. *In re* Brown (1899), W. Dist. Pa., Ransom, R.; 1 A. B. R., 256; 1 N. B. N., 230.

Exemption may be waived by bankrupt, but is not forfeitable. *In re* Brown (1899), W. Dist. Pa., Buffington, J., 100 Fed., 441; 4 A. B. R., 46; 2 N. B. N., 590.

Under Alabama law waiver of exemptions in note will not bar the claim for the same. *In re* Moore (1901), Mid. Dist. Ala., Jones, J., 112 Fed., 289; 7 A. B. R., 285.

Where bankrupt has waived his exemptions in lease and landlord has destrained, no exemptions can be claimed against landlord out of the destrained property. *In re* Hover (1902), Dist. Pa., Buffington, J., 113 Fed., 134; 7 A. B. R., 330.

Under Virginia statutes exemption will not be allowed where it will go not to the bankrupt's family, but to those creditors who hold waivers of the exemption. *In re* Garner (1902), W. Dist. Va., McDowell, J., 115 Fed., 200; 8 A. B. R., 263.

Bankrupt does not lose right to exemptions by failing to claim on an execution the property afterwards being returned to the estate in bankruptcy he may waive exemptions as to one creditor but does not thereby as to all. *In re* Osborn (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 782; 5 A. B. R., 111.

Waiver of exemptions discussed in *re* Becker (1899), E. Dist. Pa., Dunn, R.; 2 A. B. N., 202.

Where bankrupt has waived his exemptions in lease and landlord has destrained no exemption can be claimed against landlord out of the destrained property. *In re* Hoover (1902), E. Dist. Pa., Buffington, J., 113 Fed., 136; 7 A, B. R., 330.

Waiver of exemptions does not create a lien on exempt property. *In re* Hopkins (1899), N. Dist. Ala., Turner, R.; 1 A. B. R., 209; 1 N. B. N., 171.

Amendment allowed of claim for exemption when made to help the bankrupt's family, but not when it would merely enure to benefit of secured creditor. *In re* Moran (1900), W. Dist. Pa., Paul, J., 105 Fed., 901; 5 A. B. R., 472.

Under Mass. law watch not an article of necessary wearing apparel. *In re* Turnbull (1901), Dist. Mass., Lowell, J., 106 Fed., 667; 5 A. B. R., 549.

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Adjudication by state court before bankruptcy allowing homestead exemption is *res adjudicata*. *In re* Rhodes (1901), N. Dist. O., Wing, J., 109 Fed., 117; 5 A. B. R., 197.

Under the Kansas exemption law a plat of ground containing less than an acre and having on it several buildings not used for dwellings exclusvely, allowed the bankrupt's family as exemptions on his decease. *In re* Parker (1899), Dist. Kan., White, R.; 1 A. B. R., 708; 1 N. B. N., 261.

Sec. 6 is controlled by Section 70. *In re* Steele & Co. (1899), S. Dist. Ia., Shiras, J., 98 Fed., 78; 3 A. B. R., 549; 2 N. B. N., 281.

Exemptions under Texas law—what constitutes abandonment of business homestead. *In re* Harrington (1900), N. Dist. Tex., Meek, J., 99 Fed., 390; 3 A. B. R., 639; 1 N. B. N., 513.

Taxes on exempt property to be paid out of general fund in hands of trustee. *In re* Tilden (1899), S. Dist. Ia., Woolson, J., 91 Fed., 500; 1 A. B. R., 300; 1 N. B. N., 134.

Exemption laws to be liberally construed. *Idem.*

Court to aid bankrupt to obtain his homestead may order a sale of part of his several pieces of property, which are all mortgaged, free of iens. *In re* Thomas, Dist, Wash., Handford, J. (1899), 96 Fed., 828; 3 A. B. R., 99; 1 N. B. N., 551.

A diamond stud worth $250 held to be wearing apparel. *In re* Smith, (1899), W. Dist. Tex., Maxey, J., 93 Fed., 791; 3 A. B. R., 140; 1 N. B. N., 532.

Exemptions in Wisconsin allow bankrupt gold watch as wearing apparel. *In re* Jones (1899), S. Dist. Wis., Seaman, J., 97 Fed., 773; 3 A. B. R., 259; 2 N. B. N., 296.

Construction of Wisconsin statute covering exemptions. *In re* Hoag (1899), W. Dist. Wis., Bunn, J., 97 Fed., 543; 3 A. B. R., 290.

Application by bankrupt of money in payment of claims on exempt property shortly before bankruptcy—trustee will be subrogated to claim. *In re* Boston (1899), Dist. Neb., Munger, J., 98 Fed., 587; 3 A. B. R., 388; 2 N. B. N., 19

Exemptions under law of State of Washington allowed and discussed. *In re* Buelow (1899), Dist. Wash., Handford, J., 98 Fed., 86; 3 A. B. R. 389; 2 N. B. N., 26.

Exemption under S. Carolina law discussed. *In re* McCutchen (1900), E. Dist. So. Car., Brawley, J., 100 Fed., 779; 4 A. B. R., 81; 2 N. B. N., 636.

A watch not a necessary article of wearing apparel. *In re* Turnbull (1901), Dist. Mass., Olmstead, R.; 5 A. B. R., 231; 3 N. B. N., 294.

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Gold watch and chain necessary wearing apparel in Rhode Island. *In re* Caswell (1901), Dist. R. I., Barrows, R.; 6 A. B. R., 718.

Bankruptcy act provides time and manner of claiming exempt property and must be followed. Exempt property must be described in schedules and descriptions must be specific and definite. *In re* Groves (1901), N. Dist. O., Remington, R.; 6 A. B. R., 728.

Exemptions allowed under state process followed shortly by bankruptcy. Under Virginia law bankrupt's wife may claim homestead as head of a family, although living with her husband. *Richardson* v. *Woodward* (1900), C. C. A., 4th Cir., Purnell, J., 104 Fed., 689; 5 A. B. R., 94.

Exemptions allowed under state process, followed shortly by bankruptcy, cannot be claimed a second time. *In re* Miller (1899), W. Dis. Mo., Crittenden, R.; 1 A. B. R., 647; 1 N. B. N., 263.

Exemptions of bankrupt should be allowed if practicable by partition, if not, then property should be sold and exemptions allowed out of proceeds. *In re* Diller (1900), N. Dist. Cal., DeHaven, J., 100 Fed., 931; 4 A. B. R., 45.

Exemption being indivisible property should be sold and exemption attach to proceeds. *In re* Oderkirk (1900), Dist. Vt., Wheeler, J., 103 Fed., 779; 4 A. B. R., 617.

Expenses of the sale of indivisible homestead are not chargeable to the bankrupt. *In re* Hopkins (1900), Dist. Vt., Wheeler, J., 103 Fed., 781; 4 A. B. R., 619.

Before question of exemption can come before the court, trustee must be appointed and set aside the exempt property. *In re* Smith (1899), W. Dist. Tex., Maxey, J., 93 Fed., 791; 2 A. B. R., 190.

Homestead acquired while insolvent from proceeds of property unpaid for not allowable. Burden of proving solvency on bankrupt. *McGahan* v. *Anderson* (1902), C. C. A., 4th Cir., Johnson, J., 113 Fed., 115; 7 A. B. R., 641.

The bankruptcy act is not unconstitutional by reason of the exemptions in this section. *Hanover National Bank* v. *Moyses* (1902), U. S. Sup. Ct., Chief Justice Fuller, 186 U. S., 181, 8 A. B. R., 1.

Exemption laws of Maryland considered and discussed. *In re* Beauchamp (1900), Dist. Md., Morris, J., 101 Fed., 106; 4 A. B. R., 151.

Exemptions under North Carolina considered and construed. *In re* Wilson (1900), Dist. N. C., Purnell, J., 101 Fed., 571; 4 A. B. R., 260.

District Court has no jurisdiction over exemptions after allowance. *In re* Hatch (1900), S. Dist. Ia., Shiras, J., 102 Fed., 280; 4 A. B. R., 349; 1 N. B. N., 293.

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Status of property at time of adjudication will determine whether it is a business homestead or not. *In re* Harrington (1900), E. Dist. Tex., Dillard, R., 3 A. B. R., 639; 1 N. B. N., 513.

Under Pennsylvania statute bankrupt can not claim his exemptions out of the proceeds of a liquor license. *In re* Myers (1900), E. Dist. Pa., Mason, R., 4 A. B. R., 536; 2 N. B. N. 860.

Exemptions under the Virginia law not allowed unless a showing is made by claimant that he has a clean title. *In re* Tobias (1900), W. Dist. Va., Paul, J., 103 Fed., 68; 4 A. B. R., 555.

Under the New York statute a single woman allowed her necessary wearing apparel as exempt, and what constitutes same. *In re* Stokes (1900), S. Dist. N. Y., Wise R., 4 A. B. R., 560; 3 N. B. N., 443.

Homestead law of the United States (U. S. Rev. St., Sec. 2296), giving one hundred and sixty acres of land free of prior debts, not disturbed by bankruptcy — growing crops thereon not exempt. *In re* Daubner (1899), Dist. Ore., Bellinger, J., 96 Fed., 805; 3 A. B. R., 368; 1 N. B. N., 520.

Under the Vermont law a race horse not exempt. *In re* Libby (1900), Dist. Vt., Wheeler, J., 103 Fed., 776; 4 A. B. R., 615.

The rentals of exempt land of the bankrupt contracted for and accruing after adjudication, do not constitute assets of his estate in bankruptcy. *In re* Oleson (1901), N. Dist. Ia., Shiras, J., 110 Fed., 796; 7 A. B. R., 22.

A watch is a "tool" or "implement of trade" if value suitable for purposes and is exempt under Mass. law. *In re* Coller (1901), Dist. Mass., Lowell, J., 111 Fed., 503; 7 A. B. R., 131.

Temporary absence from homestead exempt under Missouri law is no abandonment. *In re* Lynch (1899), W. Dist. Mo., Crittenden, R., 1 A. B. R., 245; 1 N. B. N., 182.

Facts under Kentucky law not showing abandoning of homestead. *In re* Carmichael (1901), Dist. Ky., Evans, J., 108 Fed., 789; 5 A. B. R., 551.

Temporary leaving of homestead not an abandonment. *In re* Pope, S. Dist. Ia., Shiras, J., (1900), 98 Fed., 722; 3 A. B. R., 525; 2 N. B. N., 427.

Under the Vermont law one who reserved a room in a tenement house owned by himself, but boarded and roomed elsewhere, can not claim a homestead. *In re* Dawley (1899), Dist. Vt., Wheeler, J., 94 Fed., 795; 2 A. B. R., 496; 1 N. B. N., 528.

Homestead exemption abandoned by bankrupt absconding. *In re* Mayer (1901), C. C. A., 7th Cir., Woods, J., 108 Fed., 599; 6 A. B. R., 117.

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Under the California statute a farmer, who temporarily changes his occupation with no intention of a permanent abandonment of it, can claim his exemptions after his adjudication. *In re* Fly (1901), S. Dist. Cal., Wellborn, J., 110 Fed., 141; 6 A. B. R., 550.

A lien on exempt property is subject to the jurisdiction of the state court solely. *Powers Dry Goods Co.* v. *Nelson* (1901), Sup. Ct. N. Dak., 7 A. B. R., 506

Exemption law of Pennsylvania construed. *In re* Manning (1902), E. Dist. Pa., McPherson, J., 112 Fed., 948; 7 A. B. R., 571.

Where the value of the homestead does not appear to be more than the exemption then the whole should be set over to the bankrupt. *In re* Gibbs (1900), Dist. Vt., Wheeler, J., 109 Fed., 627; 4 A. B. R., 619.

Exemption allowed in Vermont out of an estate of tenancy by courtesy. *In re* Marquette (1900), Dist. Vt., Wheeler, J., 103 Fed., 777; 4 A. B. R., 623.

Where dispute between bankrupt and trustee as to the value of property claimed as exempt under the Georgia law, property should be offered at public sale. *In re* Lynch (1900), S. Dist. Ga., Speer, J., 101 Fed., 579; 4 A. B. R., 262.

In California, horse and wagon used by painter in carrying his material is exempt—such painter to be considered a laborer. *In re* Hindman (1900), C. C. A., 9th Cir., Hawley, J., 104 Fed., 331; 5 A. B. R., 20.

Exemption of policy of insurance by state law prevails in bankruptcy *Steele* v. *Buell et al.* (1900), C. C. A., 8th Cir., Caldwell, J., 104 Fed., 968; 5 A. B. R., 165.

In Vermont a homestead exemption which is subject to claims prior to the exemptions will be sold by the bankruptcy court in such parts as will pay the claims free of the homestead. *In re* Gordon (1902), Dist. Vt., Wheeler, J., 115 Fed., 445; 8 A. B. R., 255.

Duty of court of bankruptcy to protect exempt property from attachment of liens, which would nullify the policy of the law. *In re* Tune (1902), N. Dist. Ala., Jones, J., 115 Fed., 906; 8 A. B. R., 285.

A preferential mortgage covering property which might have been claimed as exempt, cannot be sustained as to such property, as the right of exemption is personal to the bankrupt and cannot pass to another. *In re* Schuller (1901), E. Dist. Wis., Seaman, J., 108 Fed., 591; 6 A. B. R., 278.

Under the Virginia law the bankrupt must designate the particular claims claimed as exempt. *In re* Wilson (1901), W. Dist. Va., Paul, J., 108 Fed., 197; 6 A. B. R., 287.

Under Florida statute a bankrupt who has carried on business under

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a corporate name may claim exemptions out of the assets. *In re* Carpenter (1901), C. C. A., 5th Cir., McCormick, J., 109 Fed., 558; 6 A. B. R., 465.

Under Pennsylvania statute no exemption allowed in cash. *In re* Haskin (1901), E. Dist. Pa., McPherson, J., 109 Fed., 789; 6 A. B. R., 485.

What constitutes "head of family" under Arkansas statute, discussed. *In re* Morrison (1901), E. Dist. Ark., Trieber, J., 110 Fed., 734; 6 A. B. R., 488.

Under Missouri lawclaims existing prior to acquisition of homestead are superior to exemption. *In re* Stout (1900), W. Dist. M. Phillips, J., 109 Fed., 794; 6 A. B. R., 505.

Exemptions under Mass. insolvency law favorable to bankrupt not allowed under bankruptcy law, as insolvency law suspended in its operation. *In re* Anderson (1901), Dist. Mass., Lowell, J., 110 Fed., 141; 6 A. B. R., 555.

No jurisdiction in plenary suits to adjust liens on exempt property by creditors—trustee has no title to exempt property. *Woodruff* v. *Chesere* (1901), C. C. A., 5th Cir McCormick, J., 105 Fed., 601; 5 A. B. R., 296.

Title to exempt property does not pass to trustee—bankruptcy court cannot pass on exempt property. *In re* Wells (1900), W. Dist. Ark., Rogers, J., 105 Fed., 762; 5 A. B. R., 308.

Exemptions must be carried out as provided by state law—the bankruptcy court will not settle claims adverse to the exemption, but will relegate the party to the state court. *In re* Ogilvie, S. Dist. Ga., Macdonell, R. (1900); 5 A. B. R., 374.

Exemption laws must be liberally construed. *In re* Tilden (1899), S. Dist. Ia., Woolson, J., 91 Fed., 500; 1 A. B. R., 300; 1 N. B. N., 134.

Construction of exemption laws of State Court will be followed. *In re* Stone (1902) E. Dist. Ark. Trieber J. 116 Fed. 35; 8 A. B. R. 416:

Established rules of construction prevail where State Courts have not passed on exemption laws. Richardson vs. Woodward (1900); C. C. A. 4th Purnell J. 104 Fed. 878; 5 A. B. R. 94; *In re* Beauchamp (1900) Dist. Md. Morris J. 101 Fred. 106; 4 A. B. R. 151.

Bankrupt acting in good faith may change his homestead within four months under Kansas law. *Huenergardt* v. *Brittain Dry Goods Co.* (1902), C. C. A., 8th Cir., Thayer, J., 116 Fed., 31; 8 A. B. R., 341.

In allowing exemptions out of a stock of merchandise the prevailing cost to trade should be adopted by appraisers. *In re* Prager (1902), Dist. Colo., Harrison, R., 8 A. B. R., 356.

Creditor who has had notice cannot contest claim for exemption af-

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ter discharge. *In re* Ruse (1902), N. Dist. Ala., Jones, J., 115 Fed., 993; 8 A. B. R., 411.

Arkansas law construed—construction of State law by highest court of state binding on bankuptcy court. *In re* Stone (1902), E. Dist. Ark., Trieber, J., 116 Fed., 35; 8 A. B. R., 416.

Exemptions claimed from property recovered by trustee from assignee under general assignment. *In re* Talbot (1902), W. Dist. Ga., Speer, J., 116 Fed., 417; 8 A. B. R., 427.

"Perfect good faith" defined as relating to homestead exemptions under Georgia law. *In re* West (1902), N. Dist. Ga., Newman, J., 116 Fed., 767; 8 A. B. R., 564.

Bankruptcy court no further jurisdiction over exempt property than necessary to set aside and dispose of questions incident thereto. *In re* Jackson (1902), E. Dist. Pa., McPherson, J., 116 Fed., 46; 8 A. B. R., 594.

Duty of bankrupt under Indiana law to disclose exemptions in garnishment proceedings. *In re* Beak (1902), Dist. Ind., Baker, J., 116 Fed., 530; 8 A. B. R., 639.

Bankrupt denied his exemptions out of recovered preference. *In re* Evans (1902), E. Dist. N. C., Purnell, J., 116 Fed., 909; 8 A. B. R., 730.

Costs of the proceedings should be deducted from exemptions. *In re* Hines (1902), S. Dist. W. Va., Keller, J., 117 Fed., 790; 7 A. B. R., 27.

Bankrupt may not be allowed his exemption, or any part out of a fund produced by a sale of personal property by his assignee. *In re* Staunton (1902), E. Dist. Pa., McPherson, J., 117 Fed., 507; 9 A. B. R., 79.

Business homestead which has been abandoned may not be claimed as exempt under Texas law. *In re* Flannagan (1902), W. Dist. Texas, Maxey, J., 117 Fed., 695; 9 A. B. R., 140.

A fraudulent assignment under the law of Pennsylvania bars exemptions. *In re* Yost (1902), Middle Dist. Pa., Archbald, J., 117 Fed., 792; 9 A. B. R., 153.

Exempt property not subjected to lien of purchase price under Iowa law. *In re* Seydel (1902), N. Dist. Ia., Shiras, J., 118 Fed., 207.

Under Iowa law one homestead allowed to be exchanged for another—exemption will attach to the proceeds of sale of the old before the new was acquired. *In re* Johnson (1902), N. Dist. Ia., Shiras, J., 118 Fed., 312.

Under Pennsylvania law exemptions must be claimed out of specific property—not generally as to amount. *In re* Duffy (1902), Middle Dist. Pa., Archbald, J., 118 Fed., 926.

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Exemptions not lost by the bankrupt's assignment for the benefit of creditors which was surrendered to the trustee, the assignment not being fraudulent. *Bashinski* v. *Talbot* (1902), C. C. A., 5th Cir., Shelby, J., 119 Fed., 337.

Improvement on Indian lands allowed bankrupt Indian. *In re* Grayson (1901), Sup. Ct., Ind. Ter., 61 S. W., 984.

This section controlled by Sec. 70a (5). *In re* Scheld (1900), C. C. A., 9th, Ross, J., 104 Fed., 870; 5 A. B. R., 102. *In re* Holden (1902), C. C. A., 9th Cir., McKenna, J., 113 Fed., 141; 7 A. B. R., 615; *contra Steele* v. *Buel* (1900), C. C. A., 8th Cir., Caldwell, J., 104 Fed., 968; 5 A. B. R., 165.

Exemption laws of Georgia construed. *In re* Swords (1901), N Dist. Ga., Newman, J., 112 Fed., 661; 7 A. B. R., 436.

Pennsylvania statute construed as to exemption note. *Miller* v. *Black* (1901), 10 Pa. Dist., 255.

As to amendments of schedules claiming exemptions, see notes to Sec. 7 (8), *post*.

SEC. 7. DUTIES OF BANKRUPTS.

a **[Attend meetings and hearing.]** The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed;

For definition of bankrupt see Sec. 1 (4) and notes, *ante*.

As to meetings of creditors, see Sec. 55, *post*, and notes.

As to discharge, see Sec. 14, *post*. As to hearings on application for discharges see Sec. 14b, and notes, *post*.

(2) **[Comply with orders.]** Comply with all lawful orders of the court;

Court may include the referee. Sec. 1, sub. (7), *ante*, and notes.

As to duties of persons in proceedings before referees, see Sec. 41, *post*, and notes. As to how contempts before referees are punished, see Sec. 41b and notes. Contempt in refusing to obey orders to surrender assets Sec. 2 (13) and notes, *ante*.

(3) **[Examine proofs of claims.]** Examine the correctness of all proofs of claims filed against his estate;

As to proof of claims see Sec. 57 and notes. Also Gen. Ord. XXI, *post*.

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(4) **Execute and deliver papers.**] Execute and deliver such papers as shall be ordered by the court;

"Court" may include the referee Sec. 1 (7) and notes, *ante*.

(5) **Execute transfers.**] Execute to his trustee transfers of all his property in foreign countries;

As to title to property vesting in the trustee see Sec. 70a and notes. *post*.

(6) [**Inform trustee of evasions of law.**] Immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this Act, coming to his knowledge;

As to offences under this act, see Sec. 29 and notes, *post*.

(7) [**Disclose false claim.**] In case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee;

Duty of bankrupts to assist in contesting spurious claims—sufficiency of objection—practice. *In re* Ankeny (1900), N. Dist. Ia., Shiras, J., 100 Fed., 614; 4 A. B. R., 72; 2 N. B. N., 349.

As to punishment for presenting false claim see Sec. 29b (3), and notes.

(8) [**Prepare and file schedules.**] Prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, the fact to be stated, the amounts due each of them, the consideration thereof, the security held by them if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and

Amendment of schedules, Gen. Ord. XI. As to Schedules in involuntary bankruptcy, see Gen. Ord. IX and notes. As to frame of Schedules

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see Gen. Ord. V. As to form of Schedules, see Form No. 1 and Schedules. As to exemptions see Sec. 6 and notes *ante*.

Bankrupt in involuntary cases may be attached for failure to furnish schedules. Gen. Order VIII, *post*.

Scheduling debts barred by the statute of limitations does not revive them and make them provable against the estate. *In re* Resler (1899), Dist. Minn., Marriman, R., 95 Fed., 804; 2 A. B. R., 166; 1 N. B. N., 280.

Property acquired by the bankrupt since the filing of the original petition and prior to adjudication is not such property as is required to be scheduled. *In re* Harris (1899), N. Dist. Ill., Wean, R., 2 A. B. R., 359; 1 N. B. N., 384.

Quaere: Can corporation in which bankrupt is a stockholder be compelled to furnish lists of stockholders with date of becoming stockholders. *In re* Post (1899), N. Dist. O., Fisher, R.; 1 N. B. N., 294.

A vested remainder by will should be scheduled. *In re* Shenberger (1900), N. Dist. O., Ricks, J., 102 Fed., 978; 4 A. B. R., 487; 2 N.B. N. 783.

Schedules should state the street and number, addresses of creditors, else they will be defective. *In re* Brumelkamp (1899), N. Dist. N. Y., Stone, R., 2 A. B. R., 318; 1 N. B. N., 360.

Printed forms must be used. *Mahoney* v. *Ward* (1900), E. Dist. N. C., Purnell, J., 100 Fed., 278; 3 A. B. R., 770.

Bankrupt must schedule all his property. *In re* Becker (1901), N. Dist. N. Y., Coxe, J., 106 Fed., 54; 5 A. B. R., 438.

Exempt property should be scheduled and claimed as exempt. *In re* Bean (1900), Dist. Vt., Wheeler, J., 100 Fed., 262; 4 A.B. R., 53. *In re* Todd (1901), S. Dist. N. Y., Brown, J., 112 Fed., 315; 6 A. B. R., 88.

Scheduling a claim barred by the statute of limitations does not revive it. *In re* Resler (1899), Dist. Minn., Lochren, J., 95 Fed., 804; 2 A. B. R., 602; 1 N. B. N., 280.

Where schedule named certain parties as creditors the defense of statute of limitations against such creditors was thereby waived so far as the bankrupt personally was concerned. *In re* Gibson (1902), Indian Ter., Clayton, J., 69 S. W., 974.

Debts not scheduled not discharged. *In re* Monroe (1902), Dist. Wash., Handford, J., 114 Fed., 398; 7 A. B. R., 706.

Schedules must show the amounts due creditors. *In re* Schiller (1899), W. Dist. Va., Paul, J., 96 Fed., 400; 2 A. B. R., 704.

Verification must be by the bankrupt and clearly show that fact. *In re* Blankfein (1899), S. Dist. N. Y., Brown, J., 97 Fed., 191; 3 A. B. R.,

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165. *In re* Brumelkamp (1899), N. Dist. N. Y., Coxe, J., 95 Fed., 814; 2 A. B. R., 318.

Amendment of schedules allowed. *In re* Royal (1901), E. Dist. N. C., Purnell, J., 112 Fed., 135; 7 A. B. R., 106. *In re* Slingluff (1900), Dist. Md., Morris, J., 105 Fed., 502; 5 A. B. R., 76. *In re* Beerman (1901), N. Dist. Ga., Newman, J., 112 Fed., 662; 7 A. B. R., 431. *In re* Falconer (1901), C. C. A., 8th Cir., Thayer, J., 110 Fed., 111; 6 A. B. R., 557. *In re* Bean (1900), Dist. Vt., Wheeler, J., 110 Fed., 262; 4 A. B. R., 53. *In re* Laughlin (1899), N. Dist. Ia., Shiras, J., 96 Fed., 589; 3 A. B. R., 1. *In re* McFaun (1899), N. Dist. Ia., Shiras, J., 96 Fed., 592; 3 A. B. R., 66.

Further exemptions not allowed by amendment. *In re* Moran (1900), W. Dist. Va., Paul, J., 105 Fed., 901; 5 A. B. R., 472; affirmed in *Moran* v. *King* (1901), C. C. A., 4th Cir., Boyd, J., 111 Fed., 730; 7 A. B. R., 176.

(9) **[Submit to examinations.]** When present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided, however, That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

Refusal to submit to examination contempt, Sec. 41a (4), *post*. As to examination on question of solvency, Sec. 3d. *ante*. As to meetings of creditors, see Sec. 55b. Form of order for examination of bankrupt. Form No. 28. See also Sec. 21 and notes *ante*. Referee may examine bankrupt, or cause him to be examined at instance of any creditor, Sec. 55, *post*, and notes.

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Witness may not be compelled to testify concerning gambling. *In re* Feldstein (1900), S. Dist. N. Y., Brown, J., 103 Fed., 269; 4 A. B. R., 321; 2 N. B. N., 982.

Bankrupt may not be compelled to answer incriminating questions—however it seems he may not claim the benefit of a discharge thereafter. *In re* Hathhorn (1900), E. Dist. La., Gurley, R., 2 A. B. R., 298; 1 N. B. N., 361.

Bankrupt may not be required to give testimony which may incriminate him. *In re* Scott (1899), W. Dist. Pa., Buffington, J., 95 Fed., 815; 1 A. B. R., 49; 1 N. B. N., 161.

Examination of bankrupt may be held after discharge, if within the year. *In re* Peters (1899), Dist. Mass., Olmstead, R., 1 A. B. R., 248; 1 N. B. N., 165.

Where bankrupt is no longer in jeopardy by reason of a conviction, no further protection is needed and he may be compelled to answer questons which otherwise might be incriminating. *In re* Franklin Syndicate (1900), E. Dist. N. Y., Thomas, J., 101 Fed., 402; 4 A. B. R., 511; 2 N. B. N., 522.

The evidence taken under the examination under this section can not be used on objections to discharge. *In re* Marx, *et al.*, (1900), Dist. Ky. Evans, J., 102 Fed., 676; 4 A. B. R., 521.

Creditors who were not present at first meeting of creditors are entitled to examine the bankrupt, on giving statutory notice without filing specifications of objections to discharge. Costs of notices and examination taxed against examining creditors. *In re* Price (1899), S. Dist. N. Y., Brown, J., 91 Fed., 635; 1 A. B. R., 419; 1 N. B. N., 131.

Bankrupt may not be examined as to circumstances of an assignment for benefit of creditors, unless foundation laid for the belief that property was concealed at the time of assignment and still is concealed by him. *In re* Hayden (1899), S. Dist. N. Y., Locke, J., 96 Fed., 199; 1 A. B. R., 670; 1 N. B. N., 265.

Bankrupt can not refuse to produce books of account on ground that they contain incriminating evidence. *In re* Sapiro (1899), E. Dist. Wis., Seaman, J., 92 Fed., 340; 1 A. B. R., 296; 1 N. B. N., 136.

A creditor who is listed as such by a bankrupt, may examine the bankrupt before filing proof of claim. *In re* Walker, Dist. N. Dak., Amidon, J., 96 Fed., 550; 3 A. B. R., 35; 1 N. B. N., 510.

Bankrupt required to attend for examination wherever reasonably necessary. *In re* Mellen (1899), S. Dist. N. Y., Brown, J., 97 Fed., 326; 3 A. B. R., 226; 2 N. B. N., 69.

Examination of bankrupt and witnesses takes wide latitude. Books

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of corporation in which bankrupt is interested may be produced. *In re* Horgan & Slattery (1900), C. C. A.,2nd Cir., Opinion by Wallace, J., 98 Fed., 414; 3 A. B. R., 253; 2 N. B. N., 233.

Transactions prior to the passage of the act will be investigated if tending to show fraud occurring subsequent. *In re* Headley (1899), W. Dist. Mo., Phillips, J., 97 Fed., 765; 3 A. B. R., 272; 2 N. B. N., 250.

This section construed and bankrupt held bound to testify. *Mackel* v. *Rochester* (1900), C. C. A., 9th Cir., Marrow, J., 102 Fed., 314; 4 A., B. R. 1; 2 N. B. N., 880.

Bankrupt must submit to examination at the instance of his trustee as to the affairs and transactions connected with the bankrupt estate. *In re* Westfall & Bros. & Co. (1902), W. Dist. Cal., Wise, R.; 8 A. B. R., 431.

Books and papers of a bankrupt corporation may not be used on indictment against officers of a corporation to criminate them, where the books and papers were taken from them by receiver. *People* v. *Swartz and Greenberg* (1902), Kavanaugh, J.; 8 A. B. R., 487.

Bankrupt not compelled to testify or to turn over his books and papers, where it is claimed by so doing he would be furnishing evidence which would avail in a criminal charge pending—constitutional privilege can not be invoked where the evidence could not possibly injure him. *In re* Kauter & Cohen, S. Dist. N. Y., Adams, J., 117 Fed., 356; 9 A. B. R., 104.

Examination of bankrupt not limited to four months preceding bankruptcy. *In re* Brundage (1900), N. Dist. Ia., Shiras, J., 100 Fed., 613; 4 A. B. R., 47; compare *In re* Hayden (1899), S. Dist. N. Y., Locke, J., 96 Fed., 199; 1 A. B. R., 670.

Bankrupt having voluntarily moved out of jurisdiction of court while proceedings pending therein, must pay his own expense on returning for examination. *In re* Groves (1901), N. Dist. O., Remington, R.; 6 A. B. R., 732.

Effect of the protection of the statute extends only to prosecutions in the federal courts. *In re* Nachman (1902), Dist. S. C., Brawley, J., 114 Fed., 995; 8 A. B. R., 180.

The constitutional privilege to refuse to answer questions tending to incriminate may be raised by plea to petition of trustee to compel bankrupt to disclose and turn over assets. *In re* Glassner, Snyder & Co. (1902), Dist. Md., Brinton, R., 8 A. B. R., 184.

Bankrupt not compelled to answer questions which may tend to criminate him. *In re* Rosser (1899), E. Dist. Mo., Rogers, J., 96 Fed., 305; 2 A. B. R., 755; 1 N. B. N., 469.

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The bankrupt may not be compelled to answer incriminating questions. *In re* Rosser (1899), E. Dist. Mo., Rogers, J., 96 Fed., 305; 2 A. B. R., 755; 1 N. B. N., 469.

Duty of bankrupt to make a full and fair disclosure of all his business. *In re* Grossman (1901), E. Dist. Mich., Swan, J., 111 Fed., 507; 6 A. B. R., 510.

Creditor need not file his claim before examining bankrupt. *In re* Walker (1899), Dist. N. Da., Amidon, J., 96 Fed., 550; 3 A. B. R., 35; *In re* Jehu (1899), N. Dist. Ia., Shiras, J., 94 Fed., 638; 2 A. B. R., 498

Bankrupt must attend and submit to examination on all reasonable occasions. *In re* Lewensohn (1900), S. Dist. N. Y., Brown, J., 99 Fed., 73; 3 A. B. R., 299.

Bankrupt not protected on cross-examination of matter he has volunteered. *In re* Walsh (1900), S. Dist. Ohio, Thompson, J., 104 Fed., 518; 4 A. B. R., 693.

Bankrupt's counsel should not participate in examination. *In re* Kross (1899), S. Dist. N. Y., Brown, J., 96 Fed., 816; 3 A. B. R., 187; 1 N. B. N., 566.

Bankruptcy act gives no immunity, except on matter of bankrupts' testimony. *In re* Smith (1902), S. Dist. N. Y., Adams, J., 112 Fed., 509; 7 A. B. R., 213.

SEC. 8. DEATH OR INSANITY OF BANKRUPTS.

a [**Not to abate proceedings.**] The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided*, That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

See General Equity Rule 87 as to the appointment of guardian and *prochein ami*.

Death of bankrupt will not stop proceedings on objections to discharge. *In re* Parker (1899), Dist. Kan., White, R.; 1 A. B. R., 615; 1 N. B. N., l. 40.

Death of bankrupt before adjudication could not abate suit in involuntary case. *In re* Hicks (1901), Wheeler, J., Dist. Vt., 107 Fed., 910; 6 A. B. R., 182.

This section applies to a corporation voluntarily seeking a dissolution.

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Scheuer v. *Smith, etc., Co.*(1901), C. C. A., 5th Cir., Pardee, J., 112 Fed., 407; 7 A. B. R., 384.

Exemptions of deceased bankrupt pass to his administrator. *In re* Seabolt (1902), W. Dist. N. C., Boyd, J., 113 Fed., 766; 8 A. B. R., 57.

Dower in bankrupt's real estate preserved to widow. *In re* Shaeffer (1900), E. Dist. N. C., Purnell, J., 105 Fed., 352; 4 A. B. R., 728.

Guardian of lunatic bankrupt appointed. *In re* Burka (1901), W. Dist. Tenn., Hammond, J., 107 Fed., 674; 5 A. B. R., 843.

Death of bankrupt after his personal estate is disposed of leaves no allowance for widow—her dower in the real estate is not affected by his death before it has been disposed of. *In re* Slack (1901), Dist. Vt., Wheeler, J., 111 Fed., 523; 7 A. B. R., 121; see also *In re* Seabolt (1902), W. Dist. N. C., Boyd, J., 113 Fed., 766; 8 A. B. R., 57.

SEC. 9. PROTECTION AND DETENTION OF BANKRUPTS.

a **[Exemption from arrest.]** A bankrupt shall be exempt from arrest upon civil process except in the following cases:

This section construed by general order XII—suspends exercise of right of arrest pending application for discharge. *In re* Lewenson (1900) S. Dist. N. Y., Brown, J., 99 Fed., 73; 3 A. B. R., 594; 2 N. B. N., 315.

The exemption from arrest should be accompanied by the condition of bankrupt filing bond not to abscond. *In re* Lewenson (1900), S. Dist N. Y., Brown, J., 99 Fed., 73; 3 A. B. R., 594; 2 N. B. N., 315.

This section affords no protection against costs taxed at the time of filing the petition. *In re* Marcus (1900), Dist. Mass., Lowell, J., 104 Fed., 331; 5 A. B. R., 19.

(1) **[Process for contempt.]** When issued from a court of bankruptcy for contempt or disobedience of its lawful orders;

As to contempts see Sec. 41 and notes, *post*. See as to orders issued by court of bankruptcy, Sec. 2 (15) and notes, *ante*.

(2) **[Process from State court.]** When issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court

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of bankruptcy or engaged in the performance of a duty imposed by this act.

As to debts not barred by discharge, see Sec. 17 and notes, *post*. For definition of debt, see Sec. 1 (11) and notes, *ante*.

Provision of this section applies to cases arising only after filing petition. *In re* Claiborne (1901), S. Dist. N. Y., Brown, J., 109 Fed., 74; 5 A. B. R., 812.

Bankrupt court will not release bankrupt from arrest by State court on judgment for support of bastard child, such claim not being dischargeable. *In re* Baker (1899), Dist. Kan., Hook, J., 96 Fed., 954; 3 A. B. R., 101; 1 N. B. N., 547.

Remedy of creditor on judgment for wages to arrest debtor under New York statute is lost under bankruptcy procedure, and injunction will issue. *In re* Grist (1899), N. Dist. N. Y. Hotchkiss, R.; 1 A. B. R., 89.

b **[Detention for examination.]** The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

For definition of judge, see Sec. 1 (16) and notes, *ante*. Refusal to submit to examination by bankrupt is contempt. Sec. 41a (4), *post*.

This remedy should be strictly construed and carefully applied. *In*

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re Schenkein & Coney (1902), W. Dist. N. Y., Brown, J., 113 Fed., 421; 7 A. B. R., 162.

Warrant need not state that bankrupt is brought before the court for examination. *In re* Lipke (1900), S. Dist. N. Y., Brown, J., 98 Fed., 970; 3 A. B. R., 569.

This section applies merely to restraining bankrupts from departing from the district. *In re* Ketchum (1901), C. C. A., 6th Cir., Clark, J., 5 A. B. R., 532.

Power of bankruptcy court does not extend to arrest of one not within the district. *In re* Hassenbusch (1901), C. C. A., 6th Cir., Clark, J., 108 Fed., 35.

SEC. 10. EXTRADITION OF BANKRUPTS.

a **[Proceedings under indictment govern.]** Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

See section 2, Sub. (14) *ante*, and notes thereunder. Section 10 defines the same power as is defined in Sec. 2, Sub. (14). *In re* Hassenbusch (1901), C. C. A., 108 Fed., 35.

Only one warrant necessary to extradite from one district to another, one to be delivered to sheriff from whose custody the prisoner is taken, another to the sheriff to whom the custody is taken and the original writ with the marshal's return thereon shall be returned to the clerk of the District Court to which he is removed. U. S. Revised Statute, Sec. 1,029.

SEC. 11. SUITS BY AND AGAINST BANKRUPTS.

a **[Stay of suits.]** A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or,

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if within that time such person applies for a discharge, then until the question of such discharge is determined.

As to jurisdiction of State and United States Courts, see Sec. 25, *post*. As to claims which discharge releases, see Sec. 17 and notes *post*. As to discharges, see Sec. 14 and notes *post*. As to filing of petition, Gen. Ord. II. Question of staying suit may be referred to referee. Gen. Order XII (3) *post*. See *c* under this section and notes thereunder. As to meaning of "adjudication" see Sec. 1 (2).

Creditor's bill by which lien was acquired more than four months before filing bankruptcy petition, should not be stayed. *Continental Nat. Bank* v. *Katz* (1899), Sup. Ct. Cook County, Ills., Ball, J.; 1 A. B. R., 19; 1 N. B. N., 165.

Although the lien was acquired less than four months before the petition, stay order denied. *Reed* v. *Cross* (1899), Sup. Ct. Cook County, Ills., Ball, J., 1 A. B. R., 34; 1 N. B. N., 267.

Creditor's bill on judgment attaching is fraudulent. Conveyance enjoined where granted filed same inside four months grantee having reconveyed to bankrupt. *In re* Brown (1899), Dist. Ore., Bellinger, J. 91 Fed., 358; 1 A. B. R., 107; 1 N. B. N., 240.

Bankruptcy court may restrain attachment sale of property pending filing of involuntary petition. *Blake, et al.*, v. *Francis Valentine Co.* (1899), N. Dist. Cal., Hawley, J., 89 Fed., 691; 1 A. B. R., 372; 1 N. B. N., 47.

The granting of an injunction is a matter of discretion. The District Court has plenary powers where suit in a State Court is on a debt to which a discharge would be a release. *In re* Globe Cycle Works (1899), N. Dist. N. Y., Hotchkiss, R., 2 A. B. R., 447; 1 N. B. N., 421.

State court no jurisdiction to appoint a receiver after filing of bankruptcy petition. *Carpenter* v. *O'Conner* (1898), Ohio Cir. Ct., 2nd Dist., Opinion by Wilson, J., 1 A. B. R., 381; 9 Ohio Cir. Dis., 201.

Power to stay suits discretionary with the District Court. *In re* Lesser (1900), C. C. A., 2nd Cir., LaCombe, J., 99 Fed., 913; 3 A. B. R., 758; 2 N. B. N., 599.

Suit in a State Court to settle bankruptcy account as administrator will be stayed pending hearing on application for discharge. *In re* Rogers (1899), Dist. Ky., Howard, R., 1 A. B. R., 541; 1 N. B. N., 211.

Proceedings to foreclose chattel mortgage will not be stayed by a court of bankruptcy—trustee should appear in the State Court. *In re* Buntrock Clothing Co. (1899), N. Dist. Ia., Shiras, J., 92 Fed., 886; 2 A. B. R. 98; 1 N. B. N., 291.

Courts of bankruptcy will stay proceedings supplementary to execu-

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tion in a State Court. *In re* Kletchka (1899), S. Dist. N. Y., Brown, J., 92 Fed., 901; 1 A. B. R., 479; 1 N. B. N., 160.

Trustee having brought suit to set aside transfer in state court the previous jurisdiction of the United States court in having enjoined the defendant does not bar the State Court. *Bindseil* v. *Smith* (1900), Ct. of App., N. J., Dixon, J., 5 A. B. R., 40.

After adjudication it is entirely discretionary with the bankruptcy court to stay proceedings of the State Court and require a sale of mortgaged property to be made by the trustee in bankruptcy. Bankruptcy court shall not interfere with the proceedings where it is apparent that not enough will be realized to satisfy the mortgage debt. *In re* Holloway (1899), Dist. Ky., Evans, J., 93 Fed., 638; 1 A. B. R., 659; 1 N. B. N., 254.

To justify granting an injunction restraining attachment proceedings prior to filing involuntary petition, it must appear that suit by trustee would be an inadequate remedy. *In re* Ogles (1899), W. Dist. Tenn., Hammond, J., 93 Fed., 426; 1 A. B. R., 671; 1 N. B. N., 400.

Judgment in State Court may be enjoined when it was obtained by fraud. *So. Loan Co & Trust* v. *Benbow* (1899), W. Dist. N. C., Ewart, J., 96 Fed., 514; 3 A. B. R., 9; 1 N. B. N., 499.

Where it seems that the mortgage exceeds the value of the property the District Court will not enjoin the foreclosure. *In re* Porter & Bros. (1901), Dist. Ky., Evans, J., 109 Fed., 111; 6 A. B. R., 259.

State Court has no right to proceed with an action there pending. *Carpenter Bros.* v. *O'Connor* (1898), Ohio Cir. Ct., 2nd Cir.; 1 A. B. R., 381; 9 Ohio Cir. Dis., 201.

District Court has jurisdiction to restrain replevin proceedings in State Court. *In re* Agins (1899), C. C. A., 2nd Cir.; 1 N. B. N., 184.

Staying of suit for bankrupt in state court, will not affect right of plaintiff as surety on a bond given in the proceedings. *In re* Marten (1901), W. Dist. N. Y., Hazel, J., 105 Fed., 753; 5 A. B. R., 423.

An injunction issued by a referee restraining an action in the State court against a bankrupt does not release persons jointly liable with the bankrupt. *In re* Delong (1899), Nor. Dist. N. Y., Moss, R., 1 A. B. R., 66; 1 N. B. N., 26.

Execution to enforce alimony against bankrupt will not be enjoined. *Turner* v. *Turner* (1901), Dist. Ind. Baker, J., 108 Fed., 785; 6 A. B. R., 287.

District Court no jurisdiction to enjoin suit for trespass against United States Marshal, *McLean* v. *Mayo* (1901), E. Dist. N. C., Purnell, J., 113 Fed., 106; 7 A. B. R., 115.

Proceedings in State Court supplementary to execution may be en-

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joined. *In re* Kletchka (1899), Sou. Dist. N. Y., Brown, J., 92 Fed. 901; 1 A. B. R., 479; 1 N. B. N., 160.

Chattel mortgagee in possession may be enjoined from selling. *In re* Nathan (1899), Dist. Nev., Hawley, J., 92 Fed., 590; 1 N. B. N., 563.

Suit against trustee may be enjoined. *In re* Gutman & Wenk (1902) S. Dist. N. Y., Adams, J., 114 Fed., 1,009; 8 A. B. R., 252.

Injunction granted to restrain ejectment suit in State court. *In re* Chambers, Calder & Co. (1900), Dist. R. I., Brown, J., 98 Fed., 865; 3 A. B. R., 537; 2 N. N. N., 388.

Bankruptcy Court may enjoin pending execution and levy. *In re* Kimball (1899), W. Dist. Pa., Buffington, J., 97 Fed., 29; 1 N. B. N., 515.

Mortgage foreclosure may be enjoined and property sold in bankruptcy court where it seems to be for the interest of the estate. *In re* Booth (1899), N. Dist. Ga., Upson, R., 2 A. B. R., 771; 1 N. B. N., 476.

Jurisdiction of District Court does not authorize the enjoining of a suit in a state court begun years before—doctrine of *Bardes* v. *Hawarden Bank* again announced; *Pickens* v. *Dent* (1902), Sup. Ct., U. S., Fuller, J.; 9 A. B. R., 47.

Where a petition for an injunction in a pending bankruptcy proceeding describes as "In the District Court of the United States for the Northern District of New York, in bankruptcy No. 1141" is specific enough to give them court jurisdiction. *In re* Goldberg (1902), N. Dist. N. Y., Roy, 117 Fed., 692; 9 A. B. R., 156.

This section does not prevent entry of a special judgment on a verdict where defendant had been adjudicated bankrupt after verdict, where the security on bond is still liable. *Rosenthal* v. *Nove et al.* (1900), Sup. Ct., Mass., Barker, J., 175 Mass., 559.

Action in State Court should be stayed pending disposition of bankruptcy proceedings against defendant. *First Nat. Bank* v. *Hym* (1902), Sup. Ct. Ia., McLain, J.; 91 N. W., 784.

Application for stay of proceedings should be made in State Court. *McIntyre* v. *Malone et al.* (1902), Sup. Ct. Neb., 91 N. W., 246.

Application by mortgagee for stay of foreclosure proceedings in State Court by reason of bankruptcy proceedings denied. *Carter* v. *People's Nat. Bank* (1900), Sup. Ct. Ga., Little, J., 109 Ga., 573.

Stay of proceedings not granted where the lien was obtained more than four months before. *Smith* v. *Meisinheimer* (1898), Sup. Ct. Ky., Lewis, J., 20 Ky. Law Rep., 954.

Vacation of judgment against bankrupt not granted trustee as he had adequate remedy by action to recover property. *Gage* v. *Bates Mach. Co.* (1902), Sup. Ct. N. H., Wather, J., 52 Atl., 457.

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Jurisdiction in bankruptcy court to enjoin creditor proceeding in State court sustained. *In re* Kimball (1899), W. Dist. Pa., Buffington, J., 97 Fed., 29; 3 A. B. R., 161; 1 N. B. N., 515.

Section 11 applies to both voluntary and involuntary cases. *In re* Gister (1899), N. Dist. Ia., Shiras, J., 97 Fed., 322; 3 A. B. R., 228; 2 N. B. N., 297.

Better practice is to apply for stay in State court. *Idem.*

Proceedings to foreclose chattel mortgage will not be stayed by a court of bankruptcy—the trustee should appear in the State court. *In re* Buntrock Clothing Co., N. Dist., Ia., Shiras, J. (1899), 92 Fed., 886; 2 A. B. R., 98; 1 N. B. N., 91.

After adjudication it is entirely discretionary with the bankruptcy court to stay proceedings of State court and require a sale of mortgaged property to be made by trustee in bankruptcy. Bankruptcy court should not interfere with proceedings where it is apparent that not enough will be realized to satisfy the mortgage debt—Sec. 11 and Sec. 45 construed. *In re* Holloway (1899), Dist. of Ky., Evans, J., 93 Fed., 638; 1 A. B. R., 659; 1 N. B. N., 264.

Landlord restrained from making ejectment where its enforcement would prejudice the estate. *In re* Chambers, Coldeer & Co. (1900), Dist. R. I., Brown, J., 98 Fed., 865; 3 A. B. R., 537; 2 N. B. N., 388.

Courts of bankruptcy may grant an injunction restraining the assignee under general assignment from disposing of or interfering with the property which comes into his hands until a petition in bankruptcy is disposed of. *In re* Gutwillig (1899), C. C. A., 2nd Cir., opinion, Wallace, J., 92 Fed., 337; 1 A. B. R., 388; 1 N. B. N., 340.

Bankruptcy court has power to issue injunction restraining mortgagee from foreclosing liens and to order property of bankrupt sold free from liens. *In re* Pittelkow (1899), E. Dist. Wis., Seaman, J., 92 Fed., 901; 1 A. B. R., 472; 1 N. B. N., 234.

Replevin suit in state court restrained where property in hands of trustee. *In re* Russel (1900), N. Dist. Cal., De Haven, J., 101 Fed., 248; 5 A. B. R., 566; 3 N. B. N., 365. *In re* Guttman & Wenk (1902), S.Dist. N. Y., Adams, J., 114 Fed., 1,009; 8 A. B. R., 252.

Courts of bankruptcy will stay proceedings supplementary to execution in a state court. *In re* Kletchke (1899), S. Dist. N. Y., Brown, J., 92 Fed., 901; 1 A. B. R., 479; 1 N. B. N., 160.

Proceedings in state court to enforce mechanic's liens should be enjoined. *In re* Emsile (1900), C. C. A., 2nd Cir., Wallace, J., 98 Fed., 716; 4 A. B. R., 126; 2 N. B. N., 171.

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Mortgage foreclosure stayed in state court where commenced after bankruptcy, to determine validity of mortgage. *In re* San. Gabrie San. Co. (1900), C. C. A., 9th Cir., 102 Fed., 310; 4 A. B. R., 197; 1 N. B. N., 390.

State court appointing receiver of realty claimed by trustee—discussion of question involved. *Porter* v. *Cummings* (1900), Sup. Ct. Ga., Fish, J., 1 N. B. N., 520.

Injunction to restrain paying out of money realized by execution sale will not be granted where the purpose is to stay the proceedings until bankruptcy proceedings can be instituted. *Vietor* v. *Lewis* (1899), N. Y. Sup. Ct., 1 A. B. R., 667; 1 N. B. N., 240.

Suit in state court restrained sufficiently to enable trustee to intervene. *In re* Klein (1900), N. Dist. Ill., Kohlsaat, J., 97 Fed., 31; 3 A. B. R., 174; 1 N. B. N., 486.

Proceedings in garnishment in state court against bankrupt may be stayed or not in the discretion of the bankruptcy court. *In re* St. Albans Foundry Co. (1900), Dist. Vt., Mott, R.; 4 A. B. R., 594; 2 N. B. N., 1,093.

Jurisdiction of district court is sustained to stay proceedings in state court. Habeas Corpus from district court will release bankrupt who is held by state court under order for omitting to pay alimony, which by district court decree was held a provable and dischargeable debt. State court may not review the conclusions of the decree of the District Court. *Wagner* v. *United States et al.* (1900), C. C. A., 6th Cir., Day, J., 104 Fed., 133. 4 A. B. R., 596.

Jurisdiction in district Court to enjoin disposition of property claimed as *belonging* to the estate, though it is in the possession of third parties, until such time as a trustee might bring appropriate suit. *In re* Currier (1901), W. Dist. N. Y., Hotchkiss, R., 5 A. B. R., 639.

Jurisdiction in District court to enjoin proceedings against the bankrupt property pending in State court at time of bankruptcy. *Picken* v. *Dent et al.* (1901), C.C. A., 4th Cir., Goff, J., 106 Fed., 653; 5 A. B. R., 644.

The jurisdiction of state courts and courts of bankruptcy over administration of insolvent estates is not concurrent—the latter have paramount jurisdiction. *Leidigh Co.* v. *Stengl* (1899), C. C. A., 7th Cir., Taft, J., 95 Fed., 637; 2 A. B. R., 383; 1 N. B. N., 387.

Jurisdiction of District court is not shown in case of agent of bankrupt withholding assets to compel surrender of the same. Resort must be had to plenary suit in State court. *In re* Nugent (*Wayne Knitting Mills* v. *Nugent*) (1900), C. C. A., 6th Cir., Severens, J., 104 Fed., 530; 4 A. B. R., 747.

Bankruptcy court may restrain third person from changing status of

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property which is claimed as part of assets of the estate. *In re* Smith (1902), N. Dist. Ga., Newman, J., 113 Fed., 993; 8 A. B. R., 55.

This section applies only to suits that are pending and proceedings therein. *In re* Claiborne (1901), S. Dist. N. Y., Brown, J., 109 Fed., 74; 5 A. B. R., 812.

Suit on unliquidated claim after adjudication stayed. *In re* Hilton (1900), S. Dist. N. Y., Brown, J., 104 Fed., 981; 4 A. B. R., 774.

Action for false representation not stayed as not dischargeable. *In re* Cole (1901), W. Dist. N. Y., Hazel, J., 106 Fed., 837; 5 A. B. R., 780.

Stay of proceedings to enable bankrupt to plead his discharge. *In re* Rosenthal (1901), S. Dist. N. Y., Brown, J., 108 Fed., 368; 5 A. B. R., 799.

Stay order not granted against suit for over due alimony. *In re* Shepard (1899), S. Dist. N. Y., Brown, J., 97 Fed., 187; 5 A. B. R., 857. *In re* Houston (1899), Dist. of Ky., Evans, J., 94 Fed., 119; 2 A. B. R., 107.

Garnishment and attachment will be restrained pending discharge. *In re* Beerman (1901), N. Dist. Ga., Newman, J., 112 Fed., 662; 7 A. B. R., 431; *Bear* v. *Chase* (1900), C. C. 4th Cir., Waddill, J., 99 Fed., 920. 3 A. B. R., 746.

b **[Appearance of trustee ordered.]** The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

As to jurisdiction of U. S. and State Courts, see Sec. 23 and notes.

Trustee must apply to state court and be governed by its rules and practice. *Bank of Commerce* v. *Elliott* (1901), Sup. Ct. Wis., Marshall, J., 109 Wis., 648; 6 A. B. R., 409.

It is within the discretion of the state court to allow trustee to intervene. *National Distilling Co.* v. *Seidel* (1899), Sup. Ct. Wis., 1; 103 Wis., 484.

Trustee becomes liable for costs and damages, having substituted himself for defendant bankrupt in a replevin suit. *In re* Neely (1902), C. C. A., 2nd Cir., Lacombe, J., 113 Fed., 210; 7 A. B. R., 312.

Under New York statute trustee must give bonds for cause of action accruing prior to his appointment. *Joseph* v. *Makley* (1902), Sup. Ct N. Y., App. Div., O'Brien, J., 8 A. B. R., 18.

It is discretionary with the State court to permit trustee to be made a party—trustee must appear and defend according to the rules of the State court. *National Distilling Co.* v. *Seidel* (1899), Sup. Wis., Marshall, J., 103 Wis., 489.

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c **[Prosecution of suit by trustee.]** A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

As to suits by trustee, see Sec. 23b and notes. See also Sec. 60b and notes.

Trustee having submitted to jurisdiction of state court in collecting a lien due the estate is bound by the decision of that court. *In re* Van Alstyne, N. Dist. N. Y., Coxe, J., 100 Fed., 929; 4 A. B. R., 42; 2 N. B. N., 642.

This section construed in favor of jurisdiction of bankruptcy court in suits by trustee against third persons. *In re* Boudouine (1900), C. C. A., 2nd. Cir., Wallace, J., 96 Fed., 536; 3 A. B. R., 651; 1 N. B. N., 506.

Where state court has taken jurisdiction by suit by trustee in bankruptcy the United States court has no revisory power. *Robinson* v. *White* (1899), Dist. Ind., Baker, J., 97 Fed., 33; 3 A. B. R., 88; 1 N. B. N., 513.

This section relates only to those actions that are part of the bankrupt's estate—action for malicious prosecution no part of bankrupt's estate. *In re* Haensel (1899), N. Dist. Cal., De Haven, J., 91 Fed., 355; 1 A. B. R., 286; 1 N. B. N., 240.

Trustee must go in the state court and ask to have receiver of property belonging to the bankrupt turn same over to trustee. *In re* B. L. Price & Co (1899), S. Dist. N. Y., Brown, J., 92 Fed., 987; 1 A. B. R., 606; 1 N. B. N., 240.

d **[Two years limitation.]** Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

As to closing estates, see Sec. 2 (8) and notes. As to duties of trustees in closing estates, see Sec. 47 a and notes. See for suits by trustee Sec. 23b and notes, also *a b c* of this section.

SEC. 12. COMPOSITIONS, WHEN CONFIRMED.

a **[When may be offered.]** A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

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As to examination of bankrupt, see Sec. 7 (9) and notes *ante*. As to examination at first meeting of creditors, see Sec. 55b and notes, *post*. As to schedule of property and list of creditors see Sec. 7 (8) and notes. See also *b c d* and *e* under this section and notes.

The sections of act which compel dissenting creditors to be bound and to accept the composition must be strictly construed. *In re* Rider (1899), N. Dist. N. Y., Coxe, J., 96 Fed., 808; 3 A. B. R., 178.

Composition must be offered to all and all must have a chance to accept. *In re* Rider (1899), N. Dist. N. Y., Coxe, J., 96 Fed., 808; 3 A. B. R., 178.

Composition does not affect the rights of secured creditors—they are not parties to it and have no provable claims and their objections are not to be regarded. *In re* Kahn (1902), S. Dist. N .Y., Wise, R., 9 A. B. R., 107.

b **[Application for confirming.]** An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

Application may be referred to a referee. Gen. Ord. XII (3). Petition for meetng to consider composition Form No. 60 and notes. Notices to creditors of hearings on application for confirmation of composition, see Sec. 58a (2) and notes. See *a*, *c* and *d* of this section.

Assignee of large number of creditors counted as one creditor only. *In re* Messengill (1902), E. Dist. N. C., Purnell, J., 113 Fed., 366; 7 A. B. R., 669.

Composition will be rejected where majority do not concur and all have not had notice. *In re* Rider (1899), N. Dist. N. Y., Coxe, J., 96 Fed., 808; 3 A. B. R., 178.

Creditors having once accepted composition offered them will not be allowed to withdraw their consent in the absence of fraud. *In re* Levy (1901), W. Dist. Pa., Buffington, J., 110 Fed., 744; 6 A. B. R., 299.

Amount deposited for costs must be sufficient in order to confirm. *In re* Rider (1899), N. Dist. N. Y., Coxe, J., 96 Fed., 808; 3 A. B. R., 178.

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c **[Hearing application.]** A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

Creditors must have at least ten days notice of hearing. Sec. 58a (2) and notes. As to opposition to composition, see Gen. Ord. XXXII.

Creditors who oppose composition should enter their appearance and file specifications in writing of the grounds of their opposition. *City Nat. Bank* v. *Doolittle* (1901), C. C. A., 5th Cir., Toulmin, J., 107 Fed., 236; 5 A. B. R., 736; *Adler* v. *Jones* (1901), C. C. A., 6th Cir., Day, J., 109 Fed., 967; 6 A. B. R., 245.

Notice of hearing given by referee. *In re* Hilborn (1900), S. Dist. N. Y., Brown, J., 104 Fed., 866.

Burden is on the objecting creditors to show that action of the majority is not for the best interests of all the creditors. *In re* Heyman (1901), S. Dist. N. Y., Brown, J., 108 Fed., 207.

Confirmation of a composition proposed by the bankrupt followed by dismissal of the case discharges bankrupt from all ordinary claims—not necessary that holders participated in composition proceedings. *Glover Grocery Co.* v. *Dome* (1902), Sup. Ct. Ga., Lumpkin, J., 42 S. E., 347; 8 A. B. R., 702.

Confirmation of composition does not bar right of action against the stockholders on their subscription. *Wood* v. *Vanderveer* (1900), Sup. Ct. N. Y., Rumsey, J., 55 N. Y. App. Div., 549.

Unless confirmation provides for costs it will not be confirmed. *In re* Harris (1902), W. Dist. Tenn., Hammond, J., 117 Fed., 575; 9 A. B R., 20.

d **[When composition confirmed.]** The judge shall confirm a composition if satisfied that

(1) **[Best interest of creditors.]** It is for the best interests of the creditors;

Matter of composition may be referred to a referee on questions of fact. *Adler* v. *Jones* (1901), C. C. A., 6th Cir., Day, J., 109 Fed., 967; 6 A. B. R., 245.

As to appeal where confirmation is referred, see Sec. 24*a* and notes.

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(2) **[Bankrupt entitled to discharge.]** The bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and

As to discharge when granted, see Sec. 14b and notes. As to duties of bankrupts, see Sec. 7a.

(3) **[Offer must be in good faith.]** The offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

When composition confirmed title revests in bankrupt. Sec. 70f.

As to discharge after composition, see Sec. 14c *post*. Objectors to confirmation of composition must file specifications. Gen. Ord. XXXII. For forms relating to compositions, see forms No. 60 to 63, inclusive.

Creditors must have at least ten days' notice of hearing for confirmation of compositions. Sec. 58a (2) *post*. On revocation of composition, property is to be applied to the payment of claims. Sec. 64 *post*.

No appeal from decision of creditors on offer of composition. *In re* Adler (1900), W. Dist. Tenn., Hammond, J., 103 Fed., 444; 4 A. B. R., 583; 3 N. B. N., 15.

After a composition an action commenced by trustee will enure to the benefit of the bankrupt. *Stone* v. *Jenkins* (1900), Sup. Ct. Mass., Morton, J., 4 A. B. R., 568; 57 N. E., 1,002.

Objections to composition that it is not for the best interests of the estate—burden on the objector to prove it. *City Nat. Bank* v. *Doolittle* (1901), C. C. A., 5th Cir., Toulmin, J., 107 Fed., 236; 5 A. B. R., 736.

Refusal of District court to approve composition will not be reviewed unless it appears that the discretion of the court was abused. *Adler* v. *Jones* (1901), C. C. A., 6th Cir., Day, J., 109 Fed., 967; 6 A. B. R., 245.

When composition agreement once signed by creditors, they may not withdraw consent in absence of fraud. *In re* Levy (1901), W. Dist. Pa., Buffington, J., 110 Fed., 744; 6 A. B. R., 299.

Referee no jurisdiction unless specifically conferred, to hear claims on composition. *In re* Fox (1900), N. Dist. Ohio, Remington, R., 6 A. B. R., 525; 3 N. B. N., 1,012.

An assignee of a number of claims counts as only one vote. *In re* Messingill (1902), E. Dist. N. C., Purnell, J., 113 Fed., 366; 7 A. B. R., 669.

Composition should be confirmed if no misconduct is shown and the proposition offered substantially all the estate will produce. *In re* H. J.

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Arrington Co. (1902), E. Dist, Va., Waddill, J., 113 Fed., 498; 8 A. B. R. 64.

Composition should be confirmed unless it clearly appears it would be for the interest of the creditors to reject it. *In re* Criterion Watch Case Mfg. Co. (1902), S. Dist. N. Y., Wise, R., 8 A. B. R., 206.

e **[Distribution of assets.]** Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

SEC. 13. COMPOSITIONS, WHEN SET ASIDE.

a **[When fraud practiced.]** The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

See *ante* Sec. 12 and notes. As to disposition of property when composition set aside, see *post*, 64c.

Compositions may be set aside only for fraud. This section limits and qualifies Sec. 2 (9). An error in address of creditors in schedules, whereby he receives no notice, will not set composition aside. *In re* Rudnick (1899), Dist. Mass., Lowell, J., 93 Fed., 787; 2 A. B. R., 114; 1 N. B. N., 531.

SEC. 14. DISCHARGES, WHEN GRANTED.

a **[Application for Discharge.]** Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably

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prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

For definition of discharge, see Sec. 1 (12) *ante*, and notes. Creditors shall have at least ten days' notice of application for discharge. Sec. 58(2) and notes *post*. As to revocation of discharge, see Sec. 15 *post*, and notes. Application for discharge may be referred to referee. Gen. Ord. XII. As to petitions for discharges and what petition should state, see Gen. Orders XXXI and XXXII. As to proceedings in opposition to discharge see Gen. Ord. XXXII. Petition for discharge must be verified. Sec. 18 and notes *post*. For form of petition for discharge, see form 57. For form of order for discharge, see form 59.

Court without power to discharge unless application made within eighteen months. *In re* Fahy (1902), N. Dist. Ia., Shiras, J., 116 Fed., 239; 8 A. B. R., 354.

No second petition allowable after first petition is denied. The practice on reference to referee of hearing on objections to discharge is that before a special master, exceptions to findings of fact must be taken. Otherwise such findings are conclusive. Grand jury having found no bill on case presented on which discharge was refused, is no ground for vacating order denying discharge. *In re* Royal (1902), E. Dist. N. C., Purnell, J., 113 Fed., 140; 7 A. B. R., 636.

Application must be within the time limit of the statute. *In re* Wolff (1900), N. Dist. Cal., De Haven, J., 100 Fed., 430.

Petition for additional six months must be within the time limit. *In re* Fahy (1902), N. Dist. Ia., Shiras, J., 116 Fed., 239; 8 A. B. R., 354.

b **[Hearing application.]** The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has

Specifications of objections must be filed by the creditors opposing discharge. Gen. Ord. XXXII and Form No. 58. As to conduct of proceedings, see Gen. Ord. IV and notes.

Advice of counsel, although not always sufficient excuse, may be allowed as an explanation. *In re* Schreck (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 366; 1 N. B. N., 334.

Objections to discharge must be specific, not general. *In re* Dixon

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(1899), S. Dist. Ia., Woolson, J., 93 Fed., 440; 1 A. B. R., 610; 1 N. B. N., 326.

General discharge does not affect the question as to what debts are barred by it. *In re* Tinker (1900), S. Dist. N. Y., Brown, J., 99 Fed., 79; 3 A. B. R., 580; 2 N. B. N., 391.

Specification of objections to discharge must be as specific as an indictment. *In re* Hirsch (1899), W. Dist. Tenn., Hammond, J., 96 Fed., 468; 2 A. B. R., 715; 2 N. B. N., 137.

Specifications of objections to discharge must be based on one or both of the two grounds enumerated in the act. *In re* Thomas (1899), S. Dist. Ia., Woolson, J., 92 Fed., 912; 1 A. B. R., 515; 1 N. B. N., 329.

Insufficient specifications of objections to discharge should be stricken out. *In re* Holman (1899), S. Dist. Ia., Woolson, J., 92 Fed., 512; 1 A. B. R., 600; 1 N. B. N., 552.

Denial of discharge for partnership no bar to application of individual member for discharge. *In re* Feigenbaum (1902), S. Dist. N. Y., Adams, J., 7 A. B. R., 339.

Bankrupt organizing bogus corporation for purpose of concealing assets not entitled to discharge. *In re* Wertheimer (1900), S. Dist. N. Y., Adams, J., 6 A. B. R., 756.

A creditor whose claims are not barred by discharge cannot move to vacate discharge. *In re* Monroe (1902), Dist. Wash., Hanford, J., 114 Fed., 398; 7 A. B. R., 706.

Discharge of a debt by bankruptcy proceedings is not prevented by reason of the discharge being refused in previous state insolvency proceedings. *Dean* v. *Justices, etc.*, Sup. Ct., Mass., Holmes, J. (1899); 2 A. B. R., 163; 1 N. B. N., 336.

Discharge of partners on individual petitions without showing nonexistence of firm assets, not granted. *In re* Meyers (1899), S. Dist. N. Y., Brown, J., 97 Fed., 757; 2 A. B. R., 707; 1 N. B. N., 515.

A bankrupt creditor corporation is dischargeable—such discharge does not affect the secondary liability of officers. *In re* Marshall Paper Co. (1900), C. C. A., 1st Cir., Colt, J., 102 Fed., 872; 4 A. B. R. 468; 2 N. B. N., 1,053.

Discharge refused where sole creditor's claim was not dischargeable on ground of being wilful and malicious injury to person. *In re* Maples, Dist. Mont., Knowles, J., 105 Fed., 919; 5 A. B. R., 426.

Examination of bankrupt may be used as evidence on objection to discharge. *In re* Cooke (1901), S. Dist. N. Y., Brown, J., 5 A. B. R., 434.

Partnership petition not basis for discharge of individual where all

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proceedings are partnership in character. *In re* Hale, *et al.* (1901), E. Dist. N. C., Purnell, J., 107 Fed., 432; 6 A. B. R., 35.

Fraudulent conduct of bankrupt prior to bankruptcy no ground for refusing discharge. *In re* Steed & Curtis (1901), E. Dist. N. C., Purnell, J., 107 Fed., 682; 6 A. B. R., 73; 2 N. B. N., 941.

Fact that bankrupt owes but one debt does not bar right to discharge. *In re* Frank (1901), W. Dist. Pa., Buffington, J., 6 A. B. R., 156; 3 N. B N., 35.

On objections to discharge and reference to a referee, referee can pass on admissibility of evidence—he has no authority to allow amendments. *In re* Kaiser (1900), Dist. Minn., Lochren, J., 99 Fed., 689; 3 A. B. R., 767; 2 N. B. N., 123.

Partnership may be discharged; so long as debts exist partnership continues. *In re* Hirsch (1900), S. Dist. N. Y., Brown, J., 97 Fed., 571; 3 A. B. R., 344; 2 N. B. N., 137.

Question of jurisdiction on ground of want of domicile can not be raised on objection to discharge. *In re* Clisdell (1900), N. Dist. N. Y., Coxe, J., 101 Fed., 246; 4 A. B. R., 95; 2 N. B. N., 638.

Application for discharge more than eighteen months after adjudication *nunc pro tunc* not allowed. *In re* Wolff (1900), N. Dist. Cal., DeHaven, J., 100 Fed., 430; 4 A. B. R., 74; 2 N. B. N., 908.

Specifications of objections to discharge must be definite and certain and allege statutory ground. *In re* Peacock (1900), E. Dist. N. C., Purnell, J., 101 Fed., 560; 4 A. B. R., 136; 2 N. B. N., 758.

Death of bankrupt will not prevent or stop proceedings on objections to discharge. *In re* Parker (1899), Dist. Kans., White, R., 1 A. B. R., 615; 1 N. B. N., 261.

Courts of bankruptcy may award costs against creditors who file objections to discharge. *In re* Wolpert (1899), N. Dist. N. Y., Hotchkiss R.; 1 A. B. R., 436; 1 N. B. N., 238.

Hearing will be deferred until fees are paid. *In re* Barden (1900), E. Dist. N. C., Purnell, J., 101 Fed., 553; 4 A. B. R., 31; *In re* Fees payable by voluntary bankrupts (1899), Dist. Wash., Hanford, J., 95 Fed., 120.

Statements false in matters of slight consequence no bar. *In re* Miner (1902), Dist. Ore., Bellinger, J., 114 Fed., 998; 8 A. B. R., 248.

Where intentional fraudulent transfer made discharge will be refused. *In re* Schenck (1902), Dist. Washington, Hanford, J., 116 Fed., 554; 8 A. B. R., 727.

Amendments of specifications liberally allowed. *In re* Carley (1902) C. C. A., 3rd Cir., Gray, J., 117 Fed., 130; 8 A. B. R., 720.

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Defects in specifications waived where not raised on hearing. *In re* Osborne (1902), C. C. A., 1st Cir., Putnam, J., 115 Fed., 1; 8 A. B R., 165

Bankrupt need not demur to specifications to avail himself of their insufficiency. *In re* Crist (1902), S. Dist. Ala., Toulmin, J., 116 Fed., 1,007; 9 A. B. R., 1.

If no objection is made the court will presume that no reason exists for not granting a discharge. *In re* Royal (1902), E. Dist. N. C., Purnell, J., 113 Fed., 140; 7 A. B. R., 636.

Discharge of individual members of a firm refused where the adjudication is only of the firm. *Strause* v. *Hooper* (1901), E. Dist. N. C., Purnell, J., 105 Fed., 590; 5 A. B. R., 225; 3 N. B. N., 276.

Testimony of other witness than the bankrupt on first meeting not competent on objections to discharge. *In re* Wilcox (1901), C. C. A., 2nd Cir., Shipman, J., 109 Fed., 628; 6 A. B. R., 362; 3 N. B. N., 876.

Burden of proof on objecting creditors. *Idem.*

Practice—no answer or other pleading by bankrupt to a specification necessary—a false oath made by bankrupt in his examination no ground for objection to his discharge—.

Objection to discharge cannot be taken *pro confesso*. *In re* Logan (1900), Dist. Ky., Evans, J., 102 Fed., 876; 4 A. B. R., 525; 2 N. B. N., 1,056.

Discharge not obtainable on individual petition against firm debts unless all the petition and notices so declare—instructions as to procedure. *In re* Hartman (1899), N. Dist. Ia., Shiras, J., 96 Fed., 593; 3 A. B. R., 65. To same effect *in re* McFaun (1899), N. Dist. Ia., Shiras, J., 96 Fed., 592; 3 A. B. R., 66.

Objections to discharge must show that the intent was unlawful. *Smith* v. *Keegan* (1901), C. C. A., 1st Cir., Putnam, J., 111 Fed., 157; 7 A. B. R., 4.

The burden of proof is on the person who objects to discharge of bankrupt. *In re* Idzall (1899), S. Dist. Ia., Woolson, J., 96 Fed., 314; 2 A. B. R., 741.

Objection to discharge must aver distinctly the facts. Referee no power to allow amendments to specifications. *In re* Wolfensohn (1900), S. Dist. N. Y., Dexter, R., 5 A. B. R., 60.

Fraudulent transfer is not necessarily a bar to discharge. *In re* Crenshaw, S. Dist. Ala., Toulmin, J., 95 Fed., 632; 2 A. B. R., 623.

Oversight in making a schedule is not a bar to discharge. *Idem.*

Quere: May bankrupt corporation be entitled to discharge. *In re* Marshall Paper Co. (1899), Dist. Mass., Lowell, J., 95 Fed., 419; 2 A. B.

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R., 653; 1 N. B. N., 407. It is entitled to discharge *In re* Marshall Paper Co. (1900), C. C. A., 102 Fed., 872.

Specification of objections to discharge may, in the discretion of the court, be filed *nunc pro tunc*—creditor held not to have proved his claim. *In re* Frice (1899), S. Dist. Ia., Woolson, J., 96 Fed., 611; 2 A. B. R., 674; 1 N. B. N., 432.

Grounds of objection to discharge must be proved by clear and convicning testimony. *In re* Howden (1901), N. Dist. N. Y., Coxe, J., 111 Fed., 723; 7 A. B. R., 191 contra, *Knott* v. *Putnam* (1901), Dist. Va., Wheeler, J., 107 Fed., 907; 6 A. B. R., 80.

Discharge not refused because of a claim based on fraud. *In re* Rhutassell, (1899), N. Dist. Ia., Shiras, J., 96 Fed., 597; 2 A. B. R., 697; 1 N. B. N., 572.

Decision of lower court on question of discharge will be sustained, unless the decision is clearly against the weight of evidence. Duplicity of pleading should be raised below, not in the Appellate Court for the first time. *Osborne* v. *Perkins* (1901), C. C. A., 1st Cir., Aldrich, J., 112 Fed., 127; 7 A. B. R., 250.

Objections to discharge must in all cases proceed in regular order. *In re* Sykes (1901), W. Dist. Tenn., Hammond, J., 106 Fed., 669; 6 A. B. R., 264.

No court bound to take judicial notice of discharge. *Collins* v. *McWalters* (1901), Sup. Ct. N. Y., 35 Misc. (N. Y.), 648; 6 A. B. R., 593.

(1) **[Committed an offense.]** Committed an offense punishable by imprisonment as herein provided; or

For offenses under the act, see Sec. 29a and notes.

Discharge granted where grounds of opposition were transfers more than a year old. *Fields* v. *Kartner* (1902), C. C. A., 5th Cir., 115 Fed., 950; 8 A. B. R., 351.

Where specifications of objections to discharge fail to aver that bankrupt "knowingly and fraudulently" made a false oath, they are fatally defective. *In re* Beebe (1902), E. Dist. Pa., McPherson, J., 116 Fed., 48; 8 A. B. R., 597.

Discharge denied though fraudulent transfers were made more than four months before. *In re* Schenck (1902), Dist. Wash., Hanford, J., 116 Fed., 554; 8 A. B. R., 727.

Discharge refused where assets shown to be concealed. *In re* Otto (1902), Dist. N. Y., Lewis, R., 8 A. B. R., 753.

After filing specifications for discharge no pleading necessary by bankrupt—bankrupt may demur or move to strike out for insufficiency

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or go to trial on the merits. *In re* Crist (1902), S. Dist. Ala., Toulmin, J., 116 Fed., 1,007; 9 A. B. R., 3.

Where money received by bankrupt after filing petition, burden of proof is on him to prove that it was turned over to trustee on his application for discharge. *In re* Leslie (1903), N. Dist N. Y., Ray, J., 119 Fed., 406.

Offenses and frauds of agents not imputable to the bankrupt principal. *In re* Meyers (1900), S. Dist. N. Y., Brown, J., 105 Fed., 353; 5 A. B. R., 4; 2 N. B. N., 111.

Objections to discharge must be confined to the statutory ground—non-residence in the state of the bankrupt no ground for objections to discharge—on ground of perjury sufficient facts must be produced to sustain objections. *In re* Goodale, *et al.* (1901), N. Dist. N. Y., Coxe, J., 109 Fed., 783; 6 A. B. R., 493.

Fraudulent preference not amounting to a concealment no bar to discharge. *In re* Pierce (1900), N. Dist. N. Y., Coxe, J., 102 Fed., 977; 4 A. B. R., 554; 2 N. B. N., 984.

Fraudulent preferences before passage of the act no bar to discharge. *In re* Webb (1900), N. Dist. N. Y., Coxe, J., 98 Fed., 404; 3 A. B. R., 204; 2 N. B. N., 289.

Discharge refused where bankrupt has large unexplained shortage of assets. *In re* Finklestein (1900), S. Dist. N. Y., Brown, J., 101 Fed., 418; 3 A. B. R., 800; 2 N. B. N., 839.

Proof of false oath will bar discharge irrespective of question as to whether he can be convicted of perjury. *In re* Gaylord (1901), C. C. A., 2nd Cir., Wallace, J., 106 Fed., 833; 7 A. B. R., 1.

The effect of discharge on a debt does not govern right to discharge. General discharge will be granted even if the only debt scheduled is one that would not be affected by discharge. *In re* McCarty (1901), N. Dist. Ill., Humphrey, J., 111 Fed., 151; 7 A. B. R., 40.

Omitting cash in bank from his schedule and making no effort to amend his schedule constitutes fraudulent concealment. *In re* Royal (1901), E. Dist. N. C., Purnell, J., 112 Fed., 135; 7 A. B. R., 106.

Discharge denied on the ground that bankrupt has not surrendered all his property and rights of property where he had life estate capable of voluntary alienation, but not attached by creditors, where bankrupt files voluntary petition. *In re* Fleishman (1902), Dist. Ct., N. Dist. Ill., Kohlsaat, J., 25 Nat. Corp. R., 520.

Buying claim of opposing creditors by bankrupt, directly or indirectly, is ground for refusing discharge. Also where bankrupt has property in wife's name for purpose of concealment, discharge refused. *In re* Steind-

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ler & Hahn (1900), S. Dist. N. Y., Pendleton, R., 5 A. B. R., 63; 3 N. B. N., 81.

Objections to discharge not sustained where concealment of assets is alleged, but is not shown to be wilfully, intentionally, knowingly and fraudulently done. An appropriation by husband of wife's interest in a business, does not vest equitable title in him. *In re* Bryant (1900), E. Dist. Tenn., Clark, J., 104 Fed., 789; 5 A. B. R., 114; 2 N. B. N., 1,058.

Discharge—bankrupt carrying on business in wife's name—circumstances not showing fraud, discharge granted. *In re* Locks (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 783; 5 A. B. R., 136.

Omitting property from schedules will not bar discharge if not done with fraudulent intent. *In re* Eaton (1901), N. Dist. N. Y., Coxe, J., 110 Fed., 731; 6 A. B. R., 531.

No fraud in omitting to schedule property of which though legally his he might have reasonable doubt as to ownership. *In re* Marsh (1901), Dist. Vt., Wheeler, J., 109 Fed., 602; 6 A. B. R., 537.

Failure to schedule contingent interest under father's will not vested at time of bankruptcy no bar to discharge. *In re* Wetmore (1900), E. Dist. Pa., McPherson, J., 99 Fed., 703; 3 A. B. R., 700.

Discharge refused where bankrupt on examination made false statements as to his disbursements. *In re* Dews (1900), Dist. R. I., Brown, J., 101 Fed., 549; 3 A. B. R., 691; 2 N. B. N., 437.

Fraudulent concealment is not always shown by fraudulent conveyance—secret trusts must be scheduled or discharge will not be allowed. *In re* Berner (1900), S. Dist. Ohio, Remington, R., 4 A. B. R., 383; 2 N. B. N., 268.

False oath is made when bankrupt omits $37.50 from his schedules. *In re* Roy (1900), Dist. Vt., Wheeler, J., 96 Fed., 400; 3 A. B. R., 37; 1 N. B. N., 526.

Discharge refused where bankrupt had omitted property previously fraudulently transferred to his wife. *In re* Welch (1901), S. Dist. Ohio, Thompson, J., 100 Fed., 65; 3 A. B. R., 93; 1 N. B. N., 533.

Fraudulent conveyance of bankrupt will bar the discharge. *In re* Skinner (1899), N. Dist. Ia., Shiras, J., 97 Fed., 190; 3 A. B. R., 163.

Omission to schedule assets from mistake of law or fact will not bar discharge. *In re* Morrow (1899), N. Dist. Cal., DeHaven, J., 97 Fed., 574; 3 A. B. R., 263.

Discharge granted. No concealment of assets shown—failure to schedule valueless land no objection. *In re* Hirsch, S. Dist. N. Y., Brown, J., 97 Fed., 571; 3 A. B. R., 344; 2 N. B. N., 137.

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Discharge refused on failure to account for assets. *In re* O'Gara, Dist. Ore., Bellinger, J., 97 Fed., 932; 3 A. B. R., 349.

Discharge not denied for acts committed before the passage of the bankruptcy act. *In re* Webb (1899), N. Dist. N. Y., Coxe, J., 98 Fed., 404; 3 A. B. R., 386; 2 N. B. N., 11.

The concealment of assets and false oath to bar discharge must be clearly shown. *In re* DeLeeuw (1899), S. Dist. N. Y., Brown, J., 98 Fed., 408; 3 A. B. R., 418; 2 N. B. N., 267.,

Omission from schedule without fraudulent intent not a bar to discharge. *In re* Freund (1899), S. Dist. N. Y., 98 Fed., 81; 3 A. B. R., 418; 1 N. B. N., 305.

Discharge will not be granted when bankrupt fails to account for assets. *In re* Mendelsohn (1900), S. Dist. N. Y., Brown, J., 102 Fed., 119; 4 A. B. R., 103; 1 N. B. N., 391.

Undetermined proceedings for discharge under law of 1867 not a bar to this procedure. *In re* Herrman (1900), S. Dist. N. Y., Brown, J., 102 Fed., 753; 4 A. B. R., 139; 2 N. B. N., 905.

Where bankrupt by mistake included in his schedules property which did not belong to him, and there is absence of proof that false oath was wilful and fraudulent, there is no ground for refusing discharge. *In re* Bushnell (1899), Dist. N. J., Parker, R., 1 N. B. N., 528.

No ground for objection to discharge that bankrupt did not deliver correct statement of accounts where every effort has been made to procure the statement. *Idem.*

Innocent failure to schedule creditors will not be a ground for refusing discharge. *In re* Huber (1899), N. Dist. N. Y., Judson, R.; 1 N. B. N., 432.

Discharge refused for concealment of assets which are fraudulently transferred prior to the act, but over which the bankrupt continues to exercise ownership. *In re* Quackenbush, N. Dist. N. Y., Coxe, J., 102 Fed., 282; 4 A. B. R., 274; 2 N. B. N., 964.

Discharge denied for refusal to turn over assets. *In re* Cashman (1900), S. Dist. N. Y., Brown, J., 103 Fed., 67; 4 A. B. R., 326; 2 N. B. N., 980.

Discharge refused for concealment of assets. *In re* Hoffman Addn. (1900), S. Dist. N. Y., Brown, J., 102 Fed., 979; 4 A. B. R., 331; 2 N. B. N., 554.

Omitting to schedule shares of stock in name of wife not shown to be in trust for bankrupt, even if open to attack by trustee no ground for withholding discharge. *Fellows et al* v. *Freudenthal* (1900), C. C. A., 7th Cir., Seaman, J., 102 Fed., 731; 4 A. B. R., 490.

Failure to schedule assets with knowledge of their existence constitutes a false oath within the meaning of the act and will be ground for

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barring discharge. *In re* Welch (1900), S. Dist. Ohio, Thompson, J., 3 A. B. R., 93; 1 N. B. N., 533.

The intentional omission from the schedule of small items of goods worth in the aggregate only fifty dollars, is sufficient ground for refusing a discharge. *In re* Lowenstein (1899), S. Dist. N. Y., Holt, R., affirmed by Brown, J., 2 A. B. R., 193; 1 N. B. N., 326.

A transfer to his wife by bankrupt and thereafter bankrupt's working ostensibly for the wife in the conduct of the business is not fraudulent concealment to bar discharge in the absence of a trust in the husband's favor. *In re* Fitchard, N. Dist. N. Y., Coxe, J., 103 Fed., 742; 4 A. B. R., 609; 2 N. B. N., 1,075.

Mere fact of failing to schedule property which had been conveyed to the wife without intent to defraud creditors, no bar to discharge. *In re* Freund (1899), S. Dist. N. Y., Brown, J., 98 Fed., 81; 3 A. B. R., 418.

Effect of discharge is to be determined when it is pleaded. *In re* White (1900), S. Dist. Ohio, Mack, R., 2 N. B. N., 536.

Facts showing concealment—fraudulent transfer to wife—no explanation—failure to keep books—obstructing investigation by trustee. *In re* Bemis (1900), N. Dist. N. Y., Coxe, J., 104 Fed., 672; 5 A. B. R., 36; 3 N. B. N., 49.

Discharge denied for concealing assets of estate. *Ablowich* v. *Sturzburg* (1901), C. C. A., 2nd Cir., 105 Fed., 751; 5 A. B. R., 403.

Concealment of assets shown in bankrupt selling out at wholesale and not satisfactorily proving that he had actually paid out proceeds—the burden being on him so to do. *In re* Holstein (1902), Dist. Conn., Platt, J., 114 Fed., 794; 8 A. B. R., 147.

False oath should be such as to show purpose to defraud or misrepresent. Mistakes in figures as to liabilities and assets without such purpose no ground for withholding discharge. *In re* Otto (1902), Dist. N. J., Kirkpatrick, J., 115 Fed., 860; 8 A. B. R., 305.

Fraudulent concealment of property is not shown from the mere equitable interest of a bankrupt which may be shown on a bill. *In re* Dews, Dist. of R. I., Brown, J., 96 Fed., 181; 2 A. B. R., 691; 1 N. B. N., 411.

Omission to schedule $500 advanced seven years before by the bankrupt to his wife is not a bar to discharge. *Sellers* v. *Bell*, C. C. A., 5th Cir., McCormick, J., 94 Fed., 801; 2 A. B. R., 529.

Fraudulent transfer of property will bar the discharge though made before the act was passed, as it was the duty of the bankrupt to schedule the same. *In re* McNamara (1899), S. Dist. N. Y., Wise, R., 2 A. B. R., 566; 2 N. B. N., 341.

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Discharge denied when bankrupt omitted to schedule a vested remainder under his father's will. *In re* Wood (1900), S. Dist. N. Y., 95 Fed., 946; 3 A. B. R., 572; 1 N. B. N., 530.

Voluntary gift to a wife several years before proceedings not a ground for opposing discharge, although open to attack by trustee. *In re* House (1900), E. Dist. N. Y., Thomas, J., 103 Fed., 616; 4 A. B. R., 603; 2 N. B. N., 1,099.

Objecting creditors must show that bankrupt knowingly and fraudulently concealed property belonging to his estate in order to resist discharge on ground of concealment of property. *In re* Cohn (1900), W. Dist. Mo., Rathburn, R., 1 A. B. R., 655; 2 N. B. N., 299.

Discharge refused for failure of bankrupt to account for moneys in his possession shortly before bankruptcy. *In re* Cabus (1901), S. Dist. N. Y., Pendleton, R., 6 A. B. R., 156.

Facts showing stock of a company held for bankrupt's benefit provided he reduced same to possession, do not show such intent as justified charge of concealment. *In re* Conn. (1901), Dist. Ore., Bellinger, 108 Fed., 525; 6 A. B. R., 217; 3 N. B. N., 955.

Costs incurred prior to filing of petition are barred by discharge. Those incurred after are not so barred. *Aiken, Lambert & Co.* v. *Haskins* (1901), N. Y. Sp. Ct., Houghton, J., 70 N. Y., Sup. 293; 34 Misc., 505; 6 A. B. R., 46.

False oath before the referee ground for objection, though not testifying, although such testimony cannot be used against him criminally. *In re* Dow (1900), S. Dist. Ia., McPherson, J., 105 Fed., 889; 5 A. B. R. 400.

Mingling funds of the bankrupt with those of his wife in bank so that they cannot be distinguished is ground for withholding discharge—costs of referee's fee for reference allowed. *Bragassa* v. *St. Louis Cycle Co.* (1901), C. C. A., 5th Cir., 107 Fed., 77; 5 A. B. R., 700.

Objection to discharge on ground of false oath not established by showing he had made statement previously which conflicted with the present oath. *Bauman* v. *Feist* (1901), C. C. A., 8th Cir., 107 Fed., 83; 5 A. B. R., 703.

Where objection to ground of discharge is false oath the evidence must be clear and convincing. *In re* Gaylord (1901), N. Dist. N. Y., Coxe, J., 106 Fed., 833; 5 A. B. R., 410.

Omission from schedule of tontine life policy will bar discharge. *In re* Becker (1901), N. Dist. N. Y., Coxe, J., 106 Fed., 54; 5 A. B. R., 438.

Alimony in arrears not provable or dischargeable debt. *Maisner* v. *Maisner* (1901), N. Y. Sup. Ct., Patterson, J.; 6 A. B. R., 295; 3 N. B. N., 999.

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Fraudulent intent to prefer—burden of proof of insolvency and intent on issue is on creditor—intent is so shown when the insolvency is proved and the fact of transfer burden of intent then rests on the bankrupt—value of property determined by the receivers is evidence on question of insolvency. *In re* Block (1901), C. C. A., 2nd Cir., Shipman, J., 109 Fed., 790; 6 A. B. R., 300; 3 N. B. N., 894.

Concealment from trustee not to be technically construed—concealment from receiver of state court pending appointment, will apply to the trustee. *In re* Lesser Bros. (1901), S. Dist. N. Y., 108 Fed., 205; 5 A. B R., 330.

(2) [**Destroyed books.**] With (fraudulent) intent to conceal his (true) financial condition (and in contemplation of bankruptcy), destroyed, concealed, or failed to keep books of account or records from which (his true) * such * condition might be ascertained; or

As amended by Act of 1903. See 4 of Amendment, page , *post.*
[Amendment omits matter between brackets and adds matter between stars.]

Destruction of books by bankrupt before the act not in contemplation of bankruptcy is no foundation for refusing discharge. *In re* Stark (1899), S. Dist. N. Y., Holt, R., 1 A. B. R., 180; 1 N. B. N., 232.

Concealment of books in order to be an objection to discharge must have been in contemplation of bankruptcy. *In re* Boasberg (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 353; 1 N. B. N., 133.

Objections to discharge not sustained by proof of fraudulent concealment of books by a bankrupt prior to the passage of the act. *In re* Shorer (1899), Dist. Conn., Townsend, J., 96 Fed., 90; 2 A. B. R., 165; 1 N. B. N., 331.

Failure to keep books must relate to a period since the passage of the bankruptcy act. *In re* Dews (1899), Dist. R. I., Brown, J., 96 Fed., 181; 2 A. B. R., 483; 1 N. B. N., 411.

The failure to keep books where the business does not require bookkeeping is not an objection to discharge. *Sellers* v. *Bell* (1899), C. C. A., 5th Cir. McCormick, J., 94 Fed., 801; 2 A. B. R., 529.

Failure to keep books must be with fraudulent intent. *In re* Spear *et al.* (1900), Dist. Vt., Wheeler, J., 103 Fed., 779; 4 A. B. R., 617.

Failure to keep books—facts showing fraudulent intent. *In re* Kenyon (1902), N. Dist. Ia., Shiras, J., 112 Fed., 658; 7 A. B. R., 527.

Objections to discharge not found to be proved beyond a reasonable doubt. Circumstances showing concealment and failure to keep books.

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In re Greenberg (1902), Dist. Conn., Townsend, J., 114 Fed., 773; 8 A. B. R., 94.

Failure to keep books of account shown by omission to make any entry of debts to bankrupt's relatives in his books, except on private memorandum books, which were lost. *In re* Feldstein (1902), C. C. A., Lacombe, J., 2nd Cir., 115 Fed., 259; 8 A. B. R., 160.

Discharge not refused, although there was looting of assets by creditors and disappearance of books a long time before failure. *In re* Phillips (1900), S. Dist. N. Y., Brown, J., 98 Fed., 844; 3 A. B. R., 542; 2 N. B. N., 424.

Discharged denied where books were shown to be falsified. *In re* McBachron, E. Dist. Wis., Seaman, 116 Fed., 783; 8 A. B. R., 732.

Discharge—effect of failing to keep books shown on examination as affecting right to discharge. *In re* Leopold (1901), S. Dist. N. Y., Wise, R., 5 A. B. R., 278.

Where able business man failed to keep books of account when he knew himself to be hopelessly insolvent, he is not entitled to discharge. *In re* Kenyon (1902), N. Dist. Ia., Shiras, J., 112 Fed., 658; 7 A. B. R, 527.

Fraudulent keeping of books by one partner in effort to cheat both creditor and partner, not chargeable against the innocent partner and no bar to discharge. *In re* Schultz, Jr. (1901), S. Dist. N. Y., Brown, J. 109 Fed., 264; 6 A. B. R., 91; 3 N. B. N., 844.

Objection to discharge not sustained for failure to keep books where the business was such that books would not ordinarily be kept. *In re* Corn (1901), N. Dist. Ga., Newman, J., 106 Fed., 143; 5 A. B. R., 478.

Concealment of assets and failure to keep proper books of account bars discharge. *In re* Holstein (1902), Dist. Conn., Platt, J., 114 Fed., 794; 8 A. B. R., 147.

Discharge refused where bank account concealed. *In re* Otto (1902), Dist. N. J., Kirkpatrick, J., 115 Fed., 860; 8 A. B. R., 305.

Concealment more than a year before adjudication no bar to discharge. (1902), C. C. A., 5th Cir., 115 Fed., 950; 8 A. B. R., 351.

Where no objection to discharge the fraudulent keeping of books is shown, it is not necessary to prove that it was in contemplation of bankruptcy. This may be inferred from the facts. *In re* Feldstein (1901), S. Dist. N. Y., 108 Fed., 794; 6 A. B. R., 458; 3 N. B. N., 810.

Loss of books in 1891 does not show fraudulent intent and is no ground for opposing discharge. *In re* Stark (1899), S. Dist. N. Y., Brown, J., 96 Fed., 88; 2 A. B. R., 785; 1 N. B. N., 232.

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Failure to keep books before the Act no objection to discharge. *In re* Holman (1899), S. Dist. Ia., Woolson, J.,92 Fed., 512; 1 A. B. R., 600; 1 N. B. N., 552.

In re Schertzer (1900), E. Dist. Pa., McPherson, J., 99 Fed., 706; 3 A. B. R., 699; 2 N. B. N., 520.

Discharge denied—bankrupts held to have concealed their books by failing to account for them. *In re* Ablowich (1900), S. Dist. N. Y., Brown, J., 99 Fed., 81; 3 A. B. R., 586; 2 N. B. N., 386.

Failure of bankrupt's husband, who was her agent, to keep books, not to be imputed to the bankrupt. *In re* Hyman (1899), S. Dist. N. Y., Thomas, J., 97 Fed., 195; 3 A. B. R., 169.

Destruction of books before passage of the act no bar to discharge; nor is debt created by a fraud before passage of the act a bar to discharge. *In re* Lieber (1899), Dist Pa., Mason, R., 3 A. B. R., 217; 2 N. B. N., 21.

Failure to keep books must be shown to be with fraudulent intent. *In re* Brice S. Dist. Ia., Shiras, J., (1900) 102 Fed., 114; 4 A. B. R., 355.

Trader presumed to keep books. Insufficient explanation to account for their non-production will prevent discharge. *In re* Berkowitz (1900), S. Dist. N. Y., Wise, R., 4 A. B. R., 37.

Discharge refused for failure to keep books—bankrupt purposely commingled his funds with his wife's and kept no books of his own. *In re* Bragasa (1900), N. Dist. Tex., Meek, J., 102 Fed., 936; 4 A. B. R., 519; 2 N. B. N., 837.

The failure to keep books must be in contemplation of bankruptcy; not merely of insolvency. *In re* Marx (1900), Dist. Ky., Evans, J., 102 Fed., 676; 4 A. B. R., 521; 2 N. B. N., 837.

Facts showing concealment of books. *In re* Morgan (1900), W. Dist. Ark., Rogers, J., 101 Fed., 982; 4 A. B. R., 402; 2 N. B. N., 846.

*(3) **[Obtained property on false representation.]** Obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit; or*

*(4) **[Transferred property to defraud.]** At any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed any of his property with intent to hinder, delay, or defraud his creditors; or*

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*(5) **[Discharged within six years.]** In voluntary proceedings been granted a discharge in bankruptcy within six years; or*

*(6) **[Refused to obey orders.]** In the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court.*

As amended by act of Feb. 5, 1903. Amendment adds matter between stars. See Sec. 4 of Amendment, *post*.

c **[Confirmation of composition.]** The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

For proceedings in compositions, see Sec. 12 and 13. On confirmation of composition, title to bankrupt's property revests in him. Sec. 70f and notes.

SEC. 15. DISCHARGES, WHEN REVOKED.

a **[Facts to be shown.]** The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

On revocation of discharge trustee appointed, Sec. 44 .As to disposition of property, see Sec. 64c and notes. See as to discharges, *ante*, Sec. 14 and notes.

Discharge revocable for fraud if attacked in one year. *In re* Meyers (1900), S. Dist. N. Y., Brown, J., 97 Fed., 757: 3 A. B. R., 722; 2 N. B. N., 669.

Discharge vacated when opposition thereto was bought off by privity of the bankrupt. *In re* Dietz (1899), S. Dist. N. Y., Brown, J., 97 Fed., 563; 3 A. B. R., 316; 2 N. B. N., 125.

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Question as to whether a discharge should be revoked may upon petition of creditors not guilty of laches, be referred to the referee. *In re* Meyers (1900), S. Dist. N. Y., Brown, J., 97 Fed., 757; 3 A. B. R., 722; 2 N. B. N., 669.

To revoke discharge fraud in procuring it must be shown. *In re* Hoover (1900), E. Dist. Pa., McPherson, J. 5, A. B. R., 247; 3 N. B. N., 327.

Creditors must show diligence in seeking revocation of discharge. General allegation not enough. *In re* Oleson (1901), N. Dist. Ia., Shiras, J., 110 Fed., 796; 7 A. B. R., 22.

Discharge can not be vacated and case reinstated to damage of creditor without notice, where action is more than a year after adjudication. *In re* Hawk (1902), C. C. A., 8th Cir., Sanborn, J., 114 Fed., 916; 8 A. B. R., 71.

The remedy given by this section is exclusive and the order can not be questioned or attacked collaterally in any court—bankrupt can not surrender or vacate his discharge. *In re* Shaffer (1900), E. Dist. N. C., Purnell, J., 104 Fed., 982; 4 A. B-. R., 728.

SEC. 16. CO-DEBTORS OF BANKRUPTS.

a **[Liability of co-debtor.]** The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

In case of a corporation being bankrupt, the court should facilitate the enforcement by creditors of the stock liability of directors by allowing a judgment where judgment is a necessary pre-requisite. *In re* Marshall Paper Co., Dist. Mass., Lowell, J., 95 Fed., 419; 2 A. B. R., 653; 1 N. B. N., 407.

Liability of bankrupt as maker of note is barred by his discharge against the payee who paid same after the petition in bankruptcy to the endorsee. *Smith* v. *Wheeler* (1900), N. Y. Sup. Ct., Mervin, J.; 5 A. B. R., 46.

Stockholders not released by bankruptcy of their corporation. *Elshree* v. *Burt* (1902), Sup. Ct. R. I., Douglas, J., 53 Atl., 60.

Surety on lease may plead bankruptcy of the lessor in defense to an action as the lease determines on adjudication. *Bernhardt* v. *Curtis* (1902), Sup. Ct. La., Provosty, J., 33 So., 125.

Surety on bond released by discharge of principal in bankruptcy. *Hathaway* v. *Masterson* (1902), Ill. Court of Apps., 1st Cir., Waterman, J., 101 Ill. App., 626.

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Surety on appeal bond released on discharge. *Goyer Co.* v. *Jones* (1901), Sup. Ct., Miss., 79 Miss., 253.

SEC. 17. DEBTS NOT AFFECTED BY A DISCHARGE.

a A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as

As to provable debts see Sec. 63 and notes.

Where no vendors' lien discharge in bankruptcy is a good defense to action for purchase price of personalty. *Graham* v. *Richardson* (1902), Sup. Ct. Ga., Fish, J.; 8 A. B. R., 700.

Alimony accrued or subsequent not barred by discharge. *Young* v. *Young* (1901), Sup. Ct. N. Y., Gildersleeve, J., 71 N. Y. C. 944; 35 Misc. Rep., 335; 7. A B. R., 171.

Alimony overdue is a provable debt and barred by discharge. *In re* Challoner (1899), N. Dist. Ill., Kohlsaat, J., 98 Fed., 82; 3 A. B. R., 442; 2 N. B. N., 105.

Alimony due not provable or dischargeable. *Turner* v. *Turner* (1901), Dist. Ind., Baker, J., 108 Fed., 785; 6 A. B. R., 289.

Alimony in areaes not provable or dischargeable debt. *Maisner* v. *Maisner* (1901), N. Y. Sup. Ct., Patterson, J.; 6 A. B. R., 295, 3 N. B. N., 999.

A judgment for breach of promise to marry is a dischargeable debt. *In re* McCauley (1900), E. Dist. N. Y., Thomas, J., 101 Fed., 223; 4 A. B. R., 122; 2 N. B. N., 1,089.

Damages for breach of promise to marry (unaccompanied by seduction) is dischargeable in bankruptcy. *Finnegan* v. *Hall* (1901), N. Y. Sup. Ct., Russell, J., 72 N. Y. S., 347; 35 Misc., 773; 6 A. B. R., 648.

Under New York statute judgment for criminal conversation is not released by discharge in bankruptcy. *Colwell* v. *Tinker* (1902), N. Y. Ct. App., Bartlett, J.; 7 A. B. R., 334.

Discharge must always be pleaded in bar. *Collins* v. *McWalters* (1901,) Sup. Ct. N. Y., Gildersleeve, J., 6 A. B. R., 593.

Judgment for breach of promise, though coupled with seduction, is barred by discharge. *Distler* v. *McCoulay* (1901), Sup. Ct. N. Y., Woodward, J.; 73 N. Y. S., 270; 66 App. Div. 42; 7 A. B. R., 138. Reversing lower court.

Discharge of debtor no defense to an action against a sheriff for the escape of the judgment debtor. *Baer* v. *Grell* (1901), Municipal Court of City of New York, Joseph, J.; 6 A. B. R., 428; 3 N. B. N., 1,053.

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Discharge does not affect liens on exempt property. *Evans* v. *Rounsaville* (1902), Sup. Ct. Ga., Little, J., 8 A. B. R., 236. To the same effect, *Smith* v. *Zachry* (1902), Sup. Ct. Ga., Little, J., 8 A. B. R., 236.

Judgment for money on breach of contract vacated by discharge. *In re* Arkell (1901), N. Y. Sup. Ct., Ingraham, J., 72 N. Y. S., 555; 65 App. Div., 130; 6 A. B. R., 650.

Discharge bars judgment based on note, although it is claimed the note was founded on fraud. *Hargadine-McKittrich Dry Goods Co.* v. *Hudson et al.* (1901), U. S. Cir. Ct., E. Dist. Mo., Rogers, J., 111 Fed., 361; 6 A. B. R., 657.

Discharge on second petition no bar to debts scheduled under the first. *In re* Claff (1901), Dist. Mass., Lowell, J., 111 Fed., 506; 7 A. B. R., 128.

Trover not an action for fraud. *Burnham et al.* v. *Pidcock* (1900), N. Y. Sup. Ct. McAdam, J., 68 N. Y. S., 1,107; 58 App. Div. 273; 2 A. B. R., 42.

Action by creditor after discharge alleging among other things one account to which the discharge would be a bar, the answer of the dischare by the bankrupt was good as to the one account, although other accounts showed embezzlement to which the discharge was no bar. *Watertown Carriage Co.* v. *Hall* (1901), Sup. Ct. N. Y., Smith, J., 7 A. B. R., 716.

Discharge no bar to claims on replevin bond being too contingent to be provable debt. *Clemmons* v. *Brinn* (1901), Sup. Ct. N. Y., McAdam, J., 7 A. B. R., 714.

A statement made to a mercantile agency for the purpose of securing credit, if relied on and fraudulent, has precisely the same effect as though it had been made in person by the debtor to a creditor and relied on by him. *In re* Russell & Birkett (1901), N. Dist. N. Y., Hawley, R., 5 A. B. R., 608.

Debt dischargeable due from retention of money by bankrupt from sale of goods. *Knott et al.* v. *Putnam* (1901), Dist. Vt., Wheeler, J., 107 Fed., 907; 6 A. B. R. 80.

Bankruptcy court will determine as to the fiduciary character of the debt, irrespective of decision of state courts. *Knott* v. *Putnam* (1901) Dist. Vt., Wheeler, J., 107 Fed., 907; 6 A. B. S. 80.

(1) **[Taxes excepted.]** Are due as a tax levied by the United States, the State, county, district, or municipality in which he resides;

Taxes assessed against exempt property should be paid in full out of

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funds in the hands of the trustee. *In re* Baker (1899), E. Dist. Tex., Hurley, R., 1 A. B. R., 526; 1 N. B. N., 547.

(2) **[Judgments in actions for frauds.]** Are *liabilities * (judgments in actions) for (frauds, or) obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, *or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation;*

As amended by Act of 1903, Sec. 5 of amendment, page 399 post. Amendment omits matter between brackets and adds matter between stars.

Discharge releases a debt where money was received by mistake *Western Cold Storage Co.* v. *Hurd* (1902), W. Dist. Mo., Philips, J.; 8 A. B. R., 633.

Discharge can not be pleaded in defense to action of trover. *Berry* v. *Jackson* (1902), Sup. Ct. Ga., Lumpkin, J.; 8 A. B. R., 485.

Judgment based on fraud will not be cancelled on discharge of the debtor in bankruptcy. *Stevens* v. *Meyers* (1902), Sup. Ct. N. Y., Ingraham, J., 72 App. Div. 128; 76 N. Y. Supp., 332; 8 A. B. R., 496.

A voluntary conveyance by bankrupt of lands does not necessarily nvolve a present interest which should be scheduled—such interest must be shown to bar discharge. *In re* Countryman (1903), N. Dist. Ia., Shiras, J., 119 Fed., 639.

Form of a debt is not material, being merged in the judgment which is only to be considered in actions of tort, and if not in form of tort would be barred by the discharge. *In re* Rhutassel (1899), N. Dist. Ia., Shiras, J., 96 Fed., 597; 2 A. B. R., 697; 1 N. B. N., 572.

Commingling of bankrupt's funds with estate of which bankrupt is administrator, will bar a discharge until funds are separated. *In re* Walther (1899), E. Dist. N. Y.; Thomas, J., 95 Fed., 941; 2 A. B. R., 702.

Plea of discharge in bankruptcy is rendered inoperative by showing that the debt was created by the fraud of the bankrupt. *In re* Thomas (1899), S. Dist. Ia., Woolson, J., 92 Fed., 912; 1 A. B. R., 515; 1 N. B. N., 329.

Debts created by misappropriation are not released by discharge in bankruptcy, nor are they entitled to priority. *Claflin Co.* v. *Eason, Trustee* (1899), E. Dist. Tex., White, R., 2 A. B. R., 263; 1 N. B. N., 360.

A debt created by fraud is not merged in the judgment to such an extent that its nature and origin can not be shown. *Packer* v. *Whittier*

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(1899), C. C. A., 1st Cir., Webb, J., 91 Fed., 1; 511 A. B. R., 621; 1 N. B. N., 240.

A judgment for criminal conversation is a judgment for malicious injury and not barred by the statute. *Colwell* v. *Tinker* (1901) N. Y. Sup. Ct., Gildersleeve, J., 71 N. Y. S., 152; 35 Misc., 330; 6 A. B. R., 434; 62 N. E., 668; 169 N. Y., 531.

Obligation to pay rent is terminated by bankruptcy. *Bray* v. *Cobb* (1900), E. Dist. N. C., Purnell, J., 100 Fed., 270; 3 A. B. R., 788; 2 N. B. N., 586.

Firm debts not released by individual petition. *In re* Hartman, N. Dist. Ia., Shiras, J., 96 Fed., 593; 3 A. B. R., 65.

To the same effect *in re* McFaun (1899), N. Dist. Ia., Shiras, J., 96 Fed., 592; 3 A. B. R., 66.

Debt of factor for goods sold for principal dischargeable and suit enjoined. *In re* Basch (1900), S. Dist. N. Y., Brown, J., 97 Fed., 761; 3 A. B. R., 235; 2 N. B. N., 122.

Statute of limitations governed on bankruptcy proceedings by state law. New York law construed. *In re* Lorillard (1901), C. C. A., 2nd Cir., Lacombe, J., 108 Fed., 591; 5 A. B. R., 602.

Known debt omitted from schedule not barred by discharge. *Tyrrel* v. *Hammerstein* (1900), Sup. Ct. N. Y., McAdam, J.; 6 A. B. R., 430.

Judgment for seduction and breach of promise not barred by discharge. *Distler* v. *McCauley* (1901), Sup. Ct. N. Y., Dickey, J., 73 N. Y. S., 270; 66 App. Div., 42; 6 A. B. R., 492.

To revive a debt barred by discharge the promise may be oral, but it must be clear and definite. *Smith* v. *Stansfield* (1901), Sup. Ct. Minn., Lewis, J., 84 Minn., 343; 87 N. W., 917; 7 A. B. R., 498.

Discharge removes the legal obligation to pay the debt, but leaves the moral obligation and the old debt is sufficient consideration for a new promise which may be oral. *Mutual, &c., Assn.* v. *Beatty* (1899), C. C. A., 9th Cir., Morrow, J., 93 Fed., 747; 2 A. B. R., 244.

Debts not affected by discharge may not be sued on until after discharge; in the interim bankrupt enjoined from collecting commissions as administrator earned after adjudication on application of such creditor. *In re* Rogers (1899), Dist. Ky., Howard, R., 1 A. B. R., 541; 1 N. B. N., 211.

Bankruptcy proceedings will not release a bankrupt from the order of the state court compelling him to support his minor children. *In re* Hubbard (1899), N. Dist. Ill., Kohlsaat, J., 98 Fed., 710; 3 A. B. R., 528.

General discharge does not affect question as to what debts are affected by it. *In re* Tinker (1900), S. Dist. N. Y., Brown, 99 Fed., 79; 3 A. B. R., 580; 2 N. B. N. 391.

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Debts not dischargeable by bankruptcy; only so determined in other forums after discharge. *In re* Mussey (1900), Dist. Mass., Lowell, J., 99 Fed., 71; 3 A. B. R., 592; 2 N. B. N., 113.

The right to discharge not the effect of discharge will be considered by the bankruptcy court—fraud used in this section means moral turpitude and intentional wrong—the fact that certain debts would not be barred no ground for withholding general discharge. *In re* Blumberg (1899), E. Dist. Tenn., Clark, J., 94 Fed., 476; 1 A. B. R., 633; 1 N. B. N., 258.

Clause two requires that a judgment should have been rendered. *Morse & Rogers* v. *Kaufman*, Sup. Ct. App. Va., Whittle, J. (1902), 4 Va. Sup. Ct. R., 172; 40 S. E., 916; 7 A. B. R., 549.

Judgment on common counts is one to which clause 2 does not apply. *Barnes Mfg. Co.* v. *Norden* (1902), Sup. Ct. N. Y., Dixon, J., 51 At., 454; 7 A. B. R., 553.

Discharge no bar to claim against bankrupt banker who received deposits while insolvent, under New York statute. *Frey* v. *Torrey*, Sup. Ct. N. Y., Laughlin, J. (1902), 75 N. Y. S., 40; 70 App. Div., 166; 8 A. B. R., 196.

Debt not barred by discharge which is created by the fraud of the bankrupt. Law of 1867 did not require averment of the *scienter*. *Forsyth* v. *Vehmeyer* (1900), U. S. Sup. Ct., Peckham, J., 177 U. S., 177; 3 A. B. R., 807; 2 N. B. N., 1,142.

New promise to pay debt discharged by bankruptcy must be definite. *Thompkins* v. *Hazen* (1900), N. J. Ct. App., Bartlett, J., 5 A. B. R., 62.

Judgment barred where fraud is the gravamen of the action. An action for conversion of goods not essentially one of fraud. *Burnham* v. *Pidcock* (1900), N. Y. Sup. Ct., Rumsey, J., 68 N. Y. S., 1,007; 58 App. Div., 273; 5 A. B. R., 590.

Judgment for seduction of daughter not barred. *In re* Freche (1901), Dist. N. Y., Kirkpatrick, J., 109 Fed., 620; 6 A. B. R., 479.

Failure to schedule property turned over to wife in fraud of creditors will bar discharge. *In re* Lafleche (1901), Dist. Vt., Wheeler, J., 109 Fed., 307; 6 A. B. R., 483.

This provision applies only where fraud is the gravamen of the action. The sale of property previously sold to creditor who did not record deed, does not exempt from discharge on ground of fraud. Fraud must be proved. *Collins* v. *McWalters* (1901), Sup. Ct. N. Y., Gildersleeve, J., 72 N. Y. S., 208; 35 Misc., 648; 6 A. B. R., 593.

Fraud need not be apparent from the judgment itself—an equity suit based on the fraud of the defendants will not be affected by the discharge. *In re* Bullis (1902), Sup. Ct. N. Y., Springer, J., 73 N. Y. S., 1,047; 68 App. Div., 508; 7 A. B. R., 238.

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(3) **[Creditors not scheduled.]** Have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or

Debt not barred where the creditor is not named in schedule. *Columbia Bank* v. *Birkett* (1901), Sup. Ct. N. Y., Clark, J., 73 N. Y. S., 704; 36 Misc. Rep., 391; 7 A. B. R., 222.

As to schedules of property and creditors see Sec. 7 (8) *ante*.

(4). **[Created by fraud in fiduciary relation.]** Were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

The fiduciary capacity must be that of an expressed, not implied, trust—not for defalcation of mere factor or agent. Fraud by such agent prevents the operation of the statute discharging the debt—trustee under trust, acts under express trust. *Bracken* v. *Milner* (1900), W. Dist. Mo., Phillips, J., 104 Fed., 522; 5 A. B. R., 23.

The fiduciary relation is one existing previously to, or independently of the particular transaction out of which the debt arose. *Bryant* v. *Kinyon* (1901), Sup. Ct. Mich., Hooker, J., 6 A. B. R., 237.

Judgment against a corporation on accounting on a misappropriation of partnership funds is not a debt for fraud or in a fiduciary capacity. *Gee* v. *Gee* (1901), Sup. Ct. Minn., Lovely J., 84 Minn., 384; 87 N. W., 1,116; 7 A. B. R., 500.

Clause four requires that the bankrupt must have been an officer or acting in a fiduciary capacity. *Morse & Rogers* v. *Kaufman*, Sup. Ct. App., Va., Whittle, J. (1901), 40 S. E., 916; 7 A. B. R., 549.

Discharge does not relieve from debt for money received by private banker after he knew he was insolvent. *Pridmore* v. *Toirey* (1902), Sup. Ct., N. Y.; Gildersleeve, J., 38 N. Y. Misc., 127.

Money received on embezzlement by an agent not barred by discharge. *Ruff* v. *Milner* (1901), Ct. App. of Mo., Bland, J., 92 Mo. App., 620.

A discharge in bankruptcy is analogous in its effect to the statute of limitations—it neither pays nor discharges the debt but suspends the right of action. *Wenham* v. *Matin* (1902), Ill. App., Waterman, J., 103 Ill. App., 609.

Where transferee of note scheduled as belonging to maker was not

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scheduled but had notice of proceedings, the debt was barred. *Fider* v. *Manning* (1899) Sup. Ct. Minn., Canty, J., 78 Minn., 309.

Fiduciary capacity relates to technical not implied trusts—an administrator is a technical trustee—interest as well as principal embraced in the liability which is not discharged. *Johnson's Admr.* v. *Parmerter* (1901), Sup. Ct. Vt., Rowell, J., 52 Atl., 73.

Petition in state court for leave to file supplemental answer, setting up discharge in bankruptcy denied for insufficiency, failing to set out that claim was scheduled, etc. *Balk* v. *Harris* (1902), Sup. Ct. N. C., Furches, J., 41 S. E., 940.

Discharge does not affect liens on property it only relieves the debtor from the obligation to pay. *Evans* v. *Staale* (1903), Sup. Ct. Minn., Start, J., 92 N. W., 951.

Knowledge of pending proceeding by an unscheduled creditor bars his claim. *Zimmerman* v. *Ketchum* (1903), Sup. Ct. Kan., Pollock, J., 71 Pac., 264.

Discharge does not affect lien on property. It is only personal to the bankrupt. *Paxton* v. *Scott* (1902), Sup. Ct. Neb., 92 N. W., 611; *Philmon* v. *Marshall* (1902), Sup. Ct. Ga., Cobb, J., 43 S. E. 48; *McCall* v. *Hening* (1902), Sup. Ct. Ga., Little, J., 42 S. E. 468; *Holland* v. *Cunliff* (1902), Ct. App. Mo., Barclay, J., 69 S. W., 737.

Alimony not a provable debt within the meaning of the bankruptcy act. *Wetty* v. *Wetty* (1900), Ill. Ct. of App., 1st Dist., Windes, J., 96 Ill. App., 141; *Sargent* v. *Sargent* (1901), Ohio Cir. Ct., Phillips, J., 8 Ohio N. P., 238; 11 Ohio, Dec., S. C. P., 218; *Arrington* v. *Arrington* (1902), Sup. Ct. N. C., Fuches, J., 42 S. E., 554; *Barclay* v. *Barclay* (1900), Sup. Ct. Ill., Phillips, J., 184 Ill., 375; *Wetty* v. *Wetty* (1902), Magruder, J., Sup. Ct. Ill., 195 Ill., 335.

Discharge in bankruptcy of one of the parties to a suit covering the debt in controversy has the same effect as when one of three or more obligors has died. *Seymour* v. *Richardson, etc., Co.* (1902), Ct. App. Ill., Freeman, J., 103 Ill. App., 625.

Discharge in bankruptcy only available by property pleading it. *Lane* v. *Holcomb, et al.* (1903), Sup. Ct. Mass., Knowlton, J., 65 N. E., 794.

Scheduling creditor as of unknown place of residence does not constitute such fraud as to bar the debt even when it is shown that bankrupt called at the creditor's residence two years prior to proceedings. *In re* Mallner (1902), Sup. Ct. N. Y., Patterson, J., 75 N. Y. App. Div., 441.

Discharge in bankruptcy no proof of insolvency at the time of adjudication. *Wetmore* v. *Wetmore* (1899), Sup. Ct. N. Y., O'Brien, J., 44 N. Y. App. Div., 220.

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A discharge in bankruptcy does not purge one from contempt of court in taking money in defiance of an injunction. *In re* Meggett (1900), Sup. Ct. Wis., Dodge, J., 105 Wis., 291.

Discharge in bankruptcy no defence to an action based on defendant's fraud or other misconduct in a fiduciary capacity. *Gerner* v. *Yates* (1900), Sup. Ct. Neb., Sullivan, J., 61 Neb., 100.

Debt not discharged where schedule gives creditor's name incorrectly. *Lisum* v. *Kraus* (1901), Sup. Ct. N. Y., Hascoll, J., 35 N. Y.. Misc., 376.

Certified copy of adjudication competent evidence. *Rosenfeld* v. *Siegfried* (1901), Ct. App. Mo., Bland, J., 91 Mo. App., 169.

Judgment in favor of wife for alienation of her husband's affection is not dischargeable—as it is wilful and malicious. *Leicester* v. *Hoadley* (1903), Sup. Ct. Kans., Cunningham, J., 71 Pac., 318.

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CHAPTER IV.

COURTS AND PROCEDURE.

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SEC. 18. PROCESS, PLEADINGS, AND ADJUDICATIONS.

a **[Service of petition—return—publication.]** Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service can not be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits in equity),* to enforce a legal or equitable lien* in courts of the United States,* except that, unless the judge shall otherwise direct, the order shall be published not more than once a week for two consecutive weeks, and the return day shall be ten days after the last publication unless the judge shall for cause fix a longer time.*

As amended by Act of 1893. Sec. 6 of Amendment, page ——— *post.*

Amendment omits matter between brackets and adds matter between stars.

Petition defined, Sec. 1 (20) and notes. As to service by publication, see United States Equity Rule 94. As to when suit deemed to be commenced, see Sec. 67*c* and notes. As to computation of time, see Sec. 31 and notes. As to filing petition, see Sec. 59*c* and notes; see also as to other creditors joining in petition, Sec. 59*f*. As to form of Subpoena, see Form No. 5 and notes. As to designation of newspapers for publication, see Sec. 28 and notes.

General Order XXXVII makes equity rules prescribed by the United States Supreme Court control in the matter of service of process. Process shall be served by the Marshal by delivering a copy to the defendant or some adult member of his family. United States Equity Rules, 11, 12, 13, 14, 15, 16. Process must issue out of the office of the Clerk and be tested by the seal of the Clerk. Gen. Order III.

Petition must follow forms. *Mahoney* v. *Ward* (1900), E. Dist. N. C., 100 Fed., 278; 3 A. B. R., 770.

Service on foreign corporation sufficient if it follows the state law. *In re* Magid-Hope Silk Mfg. Co. (1901), Dist. Mass., Lowell, J., 110 Fed., 352; 6 A. B. R., 610.

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Notice by publication desirable where bankrupt a lunatic. *In re* Burka (1901), W. Dist. Tenn., Hammond, J., 107 Fed., 674; 5 A. B. R., 843.

Adjudication valid, although before the fifteen days—creditor coming afterwards, but in due season, may plead—only a creditor may so move to vacate adjudication. *In re* Columbia Real Estate Co. (1900), Dist. Ind., Baker, J., 101 Fed., 965; 4 A. B. R., 411.

Failure to get subpoena served on bankrupt in six months does not deprive the court of jurisdiction. *In re* Stein (1901), C. C. A., 2nd Cir. 105 Fed., 749; 5 A. B. R., 288.

Equity practice governs where statute is not specific. *In re* Columbia Real Estate Co. (1902), C. C. A., 7th Cir., Seaman, J., 112 Fed., 643; 7 A. B. R., 441.

Jurisdiction not lost by delay in service of subpoena. *In re* Freeschberg (1902), S. Dist. N. Y., Wise, R., 8 A. B. R., 607.

Objection to discharge is a pleading and should be sworn to and signed by the objectar.—if done by attorney, reasons for should appear.—Defect may be waived by bankrupt failing to raise point. *In re* Baerncoff (1902), E. Dist. Pa., McPherson, J., 9 A. B. R., 133.

b **[Time to plead to petition.]** The bankrupt, or any creditor, may appear and plead to the petition within (ten) *five* days after the return day, or within such further time as the court may allow.

Amended by Act of 1893. Sec. 6 of Amendment, page———*post.*

Amendment omits matter between brackets and adds matter between stars.

Denial of bankruptcy should follow Form 6. Compare with the United States Equity Rule 17.

Time for bankrupt to plead may not be extended by consent of petitioning creditors. *In re* Simonson (1899), Dist. Ky., Evans, J., 92 Fed., 904; 1 A. B. R., 197; 1 N. B. N., 230.

Denial of insolvency not confined to any particular form. *In re* Page N. Dist. Ohio, Ricks, J., 99 Fed., 538; 3 A. B. R., 679; 2 N. B. N., 110.

Formal defects of petition including improper verification waived by answer. *Leidigh, etc., Co.* v. *Stengel* (1899), C. C. A., 6th Cir., Taft, J., 95 Fed., 637; 2 A. B. R., 383; 1 N. B. N., 296.

A petition that contains no specific allegations is defective. Defect is waived by joining issue and going to trial. *In re* Cliffe (1899), E. Dist. Pa., McPherson, J., 97 Fed., 540; 2 A. B. R., 317; 1 N. B. N., 509.

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Denial should follow official form 6. *In re* Ogles (1899), W. Dist. Tenn., Hammond, J., 93 Fed., 426; 1 A. B. R., 671; 1 N. B. N., 400.

Original petition being dismissed an amended petition not allowed as a substitute. *In re* Hyde & Gload Mfg. Co. (1900), E. Dist. N. Y., Thomas, J., 103 Fed., 617; 4 A. B. R., 602; 2 N. B. N., 1,122.

Time to plead cannot be extended by agreement among creditors. *Simonson* v. *Sinsheimer* (1901), C. C. A., 6th Cir., Taft, J., 100 Fed., 426; 5 A. B. R., 537.

Official form No. 6 should be followed in the answer. Amendment of defective answer. *Mather et al.* v. *Coe, Powers & Co.* (1899), N. Dist. Ohio, Ricks, J., 92 Fed., 333; 1 A. B. R., 504.

Sufficiency of answer cannot be raised by demurrer; it can only be raised by setting the case for hearing upon the bill and answer. *Goldman, Beckman, Smith & Co.* v. *Smith* (1899), 93 Fed., 182; 1 A. B. R., 266.

Where defending creditor files his answer setting up solvency and the case was submitted on the pleadings without proofs taken, the answer is conclusive—petitioning creditors wishing to contest a question raised by the answer should put in a replication and go to trial before adjudication. *In re* Taylor (1900), C. C. A., 7th Cir., Bunn, J., 102 Fed., 728; 4 A. B. R., 515.

Answering waives demurrer even though the answer expressly asserts an intention not to waive it. *Green River Deposit Bank* v. *Craig Bros.* (1901), West. Dist. Ky., Evans, J., 110 Fed., 137; 6 A. B. R., 381.

Petition for review will not be dismissed for want of necessary parties, where the same parties are before the court that were in the court below. *In re* Utt (1901), C. C. A., 7th Cir., Woods, J., 105 Fed., 754; 5 A. B. R., 383.

c **[Verification of Pleadings.]** All pleadings setting up matters of fact shall be verified under oath.

As to who may administer oaths and affirmations, Sec. 20 and notes. Oath includes affirmation. Sec. 1 (17).

Verification of petition should show venue. The attorney of petitioner should not be the notary. *In re* Brumelkamp (1899), N Dist. N. Y., Stone, R.; 2 A. B. R., 318; 1 N. B. N., 360.

Objection to verification of petition comes too late after answer by bankrupt. *In re* Simonson, Dist. Ky., Evans, J., (1899) 92 Fed., 904; 1 A. B. R., 197; 1 N. B. N., 230.

Oath administered by attorney, who subsequently appears as attorney of record for bankrupt, does not invalidate the petition. *In re* Kindt (1900), S. Dist. Ia., 98 Fed., 867; 3 A. B. R., 443; 2 N. B. N., 306.

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Verification of specifications of objections to discharge necessary. *In re* Brown (1901), C. C. A., 5th Cir., 112 Fed., 49; 7 A. B. R., 252.

No formal affidavit of verification is prescribed, it is sufficient if verified—verification by a corporation. *In re* Bellah (1902), Dist. of Del., Bradford, J., 116 Fed., 69; 8 A. B. R., 310.

Verification should be by petitioner not by the attorney—if facts more fully within the knowledge of the attorney it may be made by him. *In re* Nelson (1899), W. Dist. Wis., Bunn, J., 98 Fed., 76; 1 A. B. R., 63,

Defect in verification of petition is waived by answering to the merits. *In re* Herzikopf (1902), S. Dist. Cal., Wellborn, J., 118 Fed., 101; 9 A. B. R., 90.

Attorney may verify involuntary petition where it appears that he has the knowledge. *In re* Hunt (1902), N. Dist. Ia., Shiras, J., 118 Fed., 282.

d **[Determining issues of fact—jury trials.]** If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this Act, and makes the adjudication or dismiss the petition.

See *ante a* and *b* and notes. As to when jury trial may be demanded, see Sec. 19 and notes. Adjudication defined, Sec. 1 (2). For forms of adjudication, see Forms 11 and 12. As to costs in contested adjudications, see Gen. Ord. XXXIV

A creditor may raise the jurisdictional question of bankrupt being in excepted class (a farmer); default of the bankrupt not equivalent to a voluntary petition. *In re* Taylor (1900), C. C. A., Brown, J., 102 Fed., 728; 4 A. B. R., 515.

Guardian ad litem will be appointed for a lunatic bankrupt—equity practice controls. *In re* Burka (1901), W. Dist. Tenn., Hammond, J., 107 Fed., 674; 5 A. B. R., 843.

Jurisdictional question must be taken to be waived if not raised promptly. *In re* Mason (1900), W. Dist. N. C., Ewart, J., 99 Fed., 256; 3 A. B. R., 599.

e **[Where no pleadings filed.]** If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if

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present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

See *a*, *b*, *c*, *d*, *ante*, under this section and notes thereunder. For forms of adjudication, see Forms 11 and 12.

Adjudication in different districts—answer in one default in another *In re* Elmira Steele Co. (1901), W. Dist. N. Y., 109 Fed., 456; 5 A. B, R., 484.

An involuntary adjudication of bankruptcy may not be made before, the expiration of the time allowed. *Day* v. *Beck & Gregg Hardware Co.* (1902), C. C. A., 5th Cir., Shelby, J., 114 Fed., 834; 8 A. B. R., 175.

Adjudication of corporation by default where petition alleges preference while insolvent is *res adjudicata* to all creditors on all such facts including date of insolvency. *In re* American Brewing Co. (1902), C. C. A., 7th Cir., 112 Fed., 752; 7 A. B. R., 463.

Adjudication set aside. *In re* Maples (1901), Dist. Mont., Knowles, J., 105 Fed., 919; 5 A. B. R., 426.

Adjudication may be vacated on proper showing. *In re* Ives (1902). C. C. A., 6th Cir., Wanty, J., 113 Fed., 911; 7 A. B. R., 692.

f **[Where judge absent reference to referee.]** If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

As to computation of time, see Sec. 31 and notes. See General Order XII as to duties of referees. For form of reference in absence of the judge, see form No. 15.

This section provides for reference by clerk of voluntary cases in absence of judge. In partnership cases, filed by one partner, clerk may likewise refer it to referee who will proceed under Rule XII until remaining partner appears and contests, when it goes back to the judge—see draft of order. *In re* Murray, Dist. Ia., Shiras, J., 96 Fed., 600; 3 A. B. R., 601; 1 N. B. N., 570.

The clerk cannot send a case of involuntary bankruptcy to the referee for adjudication, except in cases wherein no issue is made by the bankrupt or any creditor. *In re* L. Humbert & Co. (1900), N. Dist. Ia., Shiras, J., 100 Fed., 439; 4 A. B. R., 76.

A deputy clerk cannot make an order of reference in bankruptcy.

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Bray et al. v. *Cobb* (1898), E. Dist. N. C., Purnell, J., 91 Fed., 102; 1 A. B. R., 153

g **[Hearing on voluntary petition.]** Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee.

See notes *a*, *b*, *c*, *d*, *e* and *f*, under this section.

As to form of adjudication, see Forms No. 11 and 12. As to duties of referee on reference, see Gen. Ord. XII. For order of reference in judge's absence, see form No. 15. "Judge" does not include referee. Sec. 1 (16). "Adjudication" defined, Section 1 (2) ante.

Parties not before the court not affected by decree of adjudication. *Neustadter* v. *Chicago Dry Goods Co.* (1899), Dist. Wash., Handford, J., 96 Fed., 830; 3 A. B. R., 96; 2 N. B. N., 552.

The practice of sending petitions directly to the judge is improper—petitions should be filed with the clerk. *In re* Sykes (1901), W. Dist. Tenn., Hammond, J., 106 Fed., 669; 6 A. B. R., 264.

After involuntary petition is filed and before action thereon. bankrupt may file voluntary petition on which adjudication may be entered—creditor's petition to be held to protect costs or other rights. *In re* Stegar (1902) N. Dist. Ala., Jones J., 113 Fed., 978; 7 A. B. R., 665.

Where voluntary petition filed after involuntary petition, notice should be given creditors and subsequent action should depend on the best interest of the estate. *In re* Dwyer (1902), Dist. North Da., Amidon, J. 112 Fed., 777; 7 A. B. R., 532.

SEC. 19. JURY TRIALS.

a **[When jury may be demanded.]** A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

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As to time for filing answers, see Sec. 18b. For form of order for jury trial, see Form No. 7.

Time within which jury may be asked is mandatory. *Bray* v. *Cobb* (1899), E. Dist. N. C., Purnell, J., 91 Fed., 102; 1 A. B. R., 153; 1 N. B. N., 209.

Claims of creditors do not involve jury trial—proceedings are equitable. *In re* Christensen (1900), N. Dist. Ia., Shiras, J., 101 Fed., 802; 4 A. B. R., 99; 2 N. B. N., 670.

Jury trial when demanded is a matter of right—is a trial at common law reviewable only on a writ of error—error must be presented by bill of exceptions as the proceeding only passes on error and not of fact. *Elliot* v. Toeppner (1902), Sup. Ct. U. S., Fuller, J.; 9 A. B. R., 50.

Bankrupt entitled to a jury trial on the question of whether he has made a general assignment or not. *Day* v. *Beck & Gregg Hardware Co.* (1902), C. C. A., 5th Cir., Shelby, J., 114 Fed., 834; 8 A. B. R., 175.

Trial by jury matter of right and cannot be denied if seasonably demanded. *Duncan* v. *Landis* (1901), C. C. A., 3rd Cir., Gray, J., 106 Fed., 839; 5 A. B. R., 649.

This section does not confer right of jury trial in bankruptcy proceedings. Calling the jury is discretionary with the court. *In re* Rude (1900), Dist. Ky., Evans, J., 101 Fed., 805; 4 A. B. R., 319; 2 N. B. N., 493.

Jury trial should be allowed creditors on question of solvency, where their claims are attacked for preferences. *In re* Linton (1902), E. Dist. Pa., Hoffman, R., 7 A. B. R., 676.

Bankrupt's right to trial by jury on issue of act of bankruptcy inviolable. *Day* v. *Beck & Gregg Hardware Co.* (1902), C. C. A., 5th Cir., Shelby, J., 114 Fed., 834; 8 A. B. R., 175.

b **[Attendance of jury—certifying case to other court.]** If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such circuit court has or is to have a jury first in attendance.

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c **[Laws as to jury trials applicable.]** The right to submit matters in controversy, or an alleged offense under this Act, to a jury shall be determined and enjoyed, except as provided by this Act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

As to trials by jury in United States Courts, see Sections 800–821, Revised Statutes United States. Also supplement to Revised Statutes of United States, page 270.

See b and notes ante. See Section VI Amendment to the United States Constitution.

SEC. 20. OATHS, AFFIRMATIONS.

a **[Who may administer oaths.]** Oaths required by this Act, except upon hearings in court, may be administered by

The attorney of the petitioner should not be the notary who administers the oath. *In re* Brumelkamp (1899), N. Dist. N. Y., Coxe, J., 95 Fed., 814; 2 A. B. R., 318; 1 N. B. N., 360; *In re* Kindt (1900), S. Dist. Ia., Shiras, J., 98 Fed., 403; 4 A. B. R., 148.

(1) referees;

(2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and

(3) diplomatic or consular officers of the United States in any foreign country.

A power of attorney authorizing proxies to vote at creditors' meetings may be executed before the consular or diplomatic officer of the United States in a foreign country. *In re* Sugenheimer (1899), S. Dist. N. Y., Brown, J., 91 Fed., 744; 1 A. B. R., 425; 1 N. B. N., 59.

b **[Affirmations.]** Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

For punishment for false oath, see Sec. 29b (2) and notes.

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SEC. 21. EVIDENCE.

a [**Compulsory attendance of witness.**] A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt,* and his wife,* (who is a competent witness under the laws of the State in which the proceedings are pending), to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this Act:

**Provided*, that the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt.*

As amended by Act 7, 1903, Sec. 7 of Amendment , page———post.

Amendment omits matter between brackets and adds matter between stars.

As to examination of bankrupts see Sec. 7 (9) and notes. See also U. S. Rev. S. 5087.

See *d*, *post*, and notes.

Witness living more than one hundred miles from place of hearing can not be compelled to attend by subpoena. *In re* Hemstreet (1902), N. Dist. Ia., Shiras, J., 8 A. B. R., 760.

Third parties who are examined during proceedings are not as a matter of strict legal right entitled to be represented by counsel. *In re* Howard N. Dist. Cal., De Haven, J., 95 Fed., 415; 2 A. B. R., 582; 1 N. B. N., 488.

Wife of bankrupt may not be compelled to testify. *In re* Fowler (1899), W. Dist. Wis., Bunn, J., 93 Fed., 417; 1 A. B. R., 555; 1 N. B. N., 215.

Referee in bankruptcy may require any designated person who is competent witness under the laws of the State to appear and be examined concerning the acts, conduct and property of a bankrupt—referee may examine trustee in insolvency proceedings concerning disposition of assets. *In re* Pursell (1902), Dist. of Conn., Platt, J., 114 Fed., 371; 8 A. B. R., 96.

Competency of the witness is for the court—if witness claims professional privilege court may examine him as to relation. *Peoples*

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Bank of Buffalo v. *Brown* (1902), C. C. A., 3rd Cir., Dallas, J., 112 Fed., 652; 7 A. B. R., 475.

Examination of witnesses, who have close business relations with bankrupt, should be very broad. And objections to its validity should not be strictly allowed. *In re* Foerst (1899), S. Dist. N. Y., Brown, J., 93 Fed., 190; 1 A. B. R., 259.

Other witnesses may not be examined touching matters not relating to the bankrupt's affairs. *In re* Carley (1901), Dist. Ky., Evans, J., 106 Fed., 862; 5 A. B. R., 554.

Examination under this section is for the benefit of trustee in protection and preservation of the estate. Notice to the bankrupt not necessary, nor has he right to participate therein. *In re* Cobb (1901), Dist. Mass., Farmer, R., 7 A. B. R., 104.

Whether a question asked a witness is proper is for the court, not the witness, to determine—if professional secrets are claimed it is for the court to determine by preliminary inquiries whether such relation exists and whether the reason is good. *Peoples Bank ef Buffalo* v. *Brown* (1902), C. C. A., 3rd Cir., Dallas, J., 112 Fed., 652; 7 A. B. R., 475.

Wife of bankrupt is incompetent witness under law of State of Washington. *In re* Jefferson (1899), Dist. Wash., Handford, J., 96 Fed., 826; 3 A. B. R., 174; 1 N. B. N., 288.

Wife of bankrupt held not competent witness for examination in Wisconsin. *In re* Mayer (1899), E. Dist. Wis., Seaman, J., 97 Fed., 328; 3 A. B. R., 222; 2 N. B. N., 257.

Questions asked bankrupt must relate only to bankrupts present assets. *In re* White (1900), S. Dist. Ohio, Mack, R., 2 N. B. N., 536.

Wife not competent witness in Missouri. *In re* Cohn (1900), E. Dist. Mo., Adams, J., 104 Fed., 328; 5 A. B. R., 16.

Examination can only extend to acts of bankrupt or acts of third persons, so interwoven with acts of bankrupt as to make them virtually the same by reason of community of interest. *In re* Carley (1902), Dist. Ky., Evans, J., 106 Fed., 862; 5 A. B. R., 554.

Large latitude is allowed in the examination of persons closely connected with the bankrupt in business dealing. *In re* Horgan & Slattery (1899), 98 Fed., 414; 3 A. B. R., 253.

Bankrupt cannot be compelled to answer criminating questions. *In re* Nachman (1902), Dist. S. C., Brawley, J., 114 Fed., 995; 8 A. B. R., 180.

Order for examination may be made on the simple application or demand of a creditor or interested party—examination of third persons is to afford full information touching bankrupt's estate. *In re* Fixen & Co. (1899), S. Dist. Cal., Wellborn, J., 96 Fed., 748; 2 A. B. R., 822.

Bankrupt required to attend whenever reasonably required by credi-

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tors. *In re* Mellen (1899), S. Dist. N. Y., Brown, J., 97 Fed., 326; 3 A. B. R., 226.

b **[Depositions—right to take.]** The right to take depositions in proceedings under this Act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

Depositions of a witness living more than a hundred miles from the place of trial, or who is about to leave the district, or is old and infirm, may be taken before a judge of any United States court, or commissioner of the United States, Clerk of a Circuit or District court, Chancellor, Justice or Judge of a Supreme or Superior court, Mayor of a City, Judge of a County court or court of common pleas, or any Notary Public, not attorney, in the case. Revised Statute of the United States, Sec. 863 and 867. State laws as to taking depositions may be followed. 2 Sup. R. S. of U. S., p. 4.

Examination commission allowed in district other than the one in which petition filed—practice under U. S. statute. *In re* Carley (1901), Dist. Ky., Evans, J., 106 Fed., 862; 5 A. B. R., 554.

c **[Notice of taking depositions.]** Notice of the taking of depositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

As to allowance of claims, see Sec. 57c. As to what depositions to prove debts shall contain, see General Order XXI (1).

d **[Certified copies as evidence.]** Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

As to evidence, see Sec. 21 and notes; see also as to evidence, Rev. St. of U. S., Sec. 4,992, 5,119.

Certified copy of record showing petition adjudication and appoint-

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ment and qualification of trustee authenticated by certificate of referee admissible in evidence in suit by trustee to set aside conveyance. *Sprallin* v. *Colson Bros.* (1902), Sup. Ct. Miss., Tennel, J., 80 Miss., 278.

e **[Copy of order approving trustees bond.]** A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

As to form of order approving trustee's bond, see Form No. 17. As to time title vests in trustee, see Sec. 70.

f **[Certified copy of orders—evidence.]** A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

As to evidence, see Sec. 21 and notes; also notes to *a*, *b*, *c*, *d* and e of this section.

g **[Evidence of revesting of title in the bankrupt.]** A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart.

Confirmation of composition revests title in the bankrupt. Sec. 70f and notes.

SEC. 22. REFERENCE OF CASES AFTER ADJUDICATION.

a **[Judge may refer cause.]** After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it

As to order of reference, see Form 14. As to what the order of reference shall contain, see Gen. Ord. XII. Proceedings after reference to

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be before referee unless required by act to be before judge, Gen. Ord. XXII. As to powers and duties of referees, see Sec. 39; also Gen. Ord. XXXV.

(1) **[General or Special Reference.]** Generally to the referee or specially with only limited authority to act in the premises or to consider and report upon specified issues; or

(2) **[To any referee within the jurisdiction.]** To any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

b **[Transfer to different referee.]** The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

See *ante* Sec. 2 (19) as to transfer of cases. As to fees in case of reference, see Sec. 40b.

SEC. 23. JURISDICTION OF UNITED STATES AND STATE COURTS.

a **[Circuit Courts.]** The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

As to removal of causes to Circuit Court, Sec. 638 Rev. St., U. S.; also 1 Sup. Rev., St. 611.

As to jurisdiction of courts of bankruptcy, see Sec. 2. As to suits by and against bankrupts, see Sec. 11 and notes. As to suits by trustee to recover property transferred, Sec. 60b.

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Held, United States Courts have jurisdiction to determine validity of assignments—construes clause to be one relating to the jurisdiction of the United States Circuit Courts and not applicable to the District Courts, and not impairing the effect of Chapler II, ante. *In re* Sievers (1899), Adams, J., E. Dist. Mo., 91 Fed., 366; 1 A. B. R., 117; 1 N. B. N., 67.

Contra—District court no jurisdiction in replevin where bankrupts and defendant are citizens of same state. *Mitchell* v. *McClure* (1899), W. Dist. Pa., Buffington, J., 91 Fed., 621; 1 A. B. R., 53; 1 N.B.N.,138.

Circuit Court of the United States has no jurisdiction of a suit by a trustee to set aside conveyance by bankrupt in fraud of creditors where the parties are outside of the State. *Goodier* v. *Barnes* (1899), N. Dist. N. Y., Coxe, J., 94 Fed., 798; 2 A. B. R., 328; 1 N. B. N., 383.

After adjudication trustee must be made a party to a subsequent proceeding for foreclosure. *Mills* v. *Kiernan* (1900), Sup. Ct. N. Y., Birchoff, J., 1 N. B. N., 410.

b **[Suits by trustee—where brought.]** Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant* except suits for the recovery of property under Section sixty, subdivision b, and section sixty-seven, subdivision e. c.*

Amended by Act of 1903. Section 8 of amendment page *post.*

Amendment adds matter between stars.

As to trustees bringing suits, see Sec. 11 and notes. Suit by trustee may be prosecuted to set aside a preference, 60b.

The Supreme Court of the United States in discussing this section settled the question of the jurisdiction of the district courts in suits by the trustee against third parties—following the notes of these cases are the notes of sundry courts many of them preceding those decisions in point of time.

(The amendment of 1903 will be noted *supra*.)

District court no jurisdiction, except by consent of suit by trustee against third person to collect assets or set aside preferences. *Bardes* v. *First National Bank ef Hawarden* (1900), U. S., Sup. Ct., Gray, J., 175 U. S., 526; 4 A. B. R., 163; 2 N. B. N., 725.

Wall v. *Cox* (1901), U. S. Sup. Ct., Gray, J., 181 U. S., 244; 5 A. B.

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R., 727. *Mitchell* v. *McClure* (1900), U. S. Sup. Ct., 178 U. S., 539; 4 A. B. R., 177. *Hicks* v. *Knost* (1900), U. S. Sup. Ct., 178 U. S., 541; 4 A. B. R., 178; *Mueller* v. *Nugent* (1902), Sup. Ct. U. S., Fuller, J., 184 U. S., 1.

An assignee for the benefit of creditors in the State court has the right to have his claims for services and attorneys' fees adjudicated in the State court—bankruptcy court has no jurisdiction to adjudicate the merits of his claim unless by his consent and then only by plenary suit. *Louisville Trust Co.* v. *Cominger* (1902), Sup. Ct. of U. S., Fuller, J., 184 U. S., 18; 7 A. B. R., 421; affirming *Sinsheimer* v. *Simonson* (1901), C. C. A., 6th Cir., Severens, J., 107 Fed., 898; 5 A. B. R., 537.

Statute of limitations of the state applies as to creditor's bill by trustee This section does not apply to creditors bill brought by trustee. *Lehman* v. *Crosby* (1900), S. Dist. N. Y., Brown, J., 99 Fed., 542; 3 A. B. R., 662; 1 N. B. N., 451.

This section is a limitation on Circuit courts of the United States and not on District courts. *Cox* v. *Wall et al.* (1900), W. Dist. N. C. Ewart, J., 99 Fed., 546; 3 A. B. R., 664; 2 N. B. N., 572.

Bill by trustee to set aside fraudulent transfer of personalty is proper procedure. *Cox* v. *Wall el al.* (1900), W. Dist. N. C., Ewart, J., 99 Fed., 546; 3 A. B. R., 664; 2 N. B. N., 572.

Supreme Court of N. Y. has jurisdiction to entertain suit by trustee to set aside fraudulent conveyance. *Silberstein* v. *Stahl et al.* (1900), N. Y. Sup. Ct., Russell, J.; 4 A. B. R., 626.

Jurisdiction of Circuit court in suit where trustee is party entertained. *Bank* v. *Iron Co.* (1899), N. Dist. Ga., Newman, J., 102 Fed., 755; 3 A. B. R., 582; 99 Fed., 82.

Jurisdiction of District court is not restricted by this section and bill to set aside fraudulent transfer will be entertained. *Norcross* v. *Nathan* (1900), Dist. Nevada, Hawley, J., 99 Fed., 414; 3 A. B. R., 613; 2 N. B. N., 405.

Subdivision b of this section does not divest the District Court of jurisdiction. *Carter* v. *Hobb et al.* (1899), Dist. Ind., Baker, J., 92 Fed., 594; 1 A. B. R., 215; 1 N. B. N., 191.

Section 23b does not deprive District court of jurisdiction of suits by trustee to set aside preferences. *Murray* v. *Beal* (1899), Dist. Utah. Marshall, J., 97 Fed., 567; 3 A. B. R., 284; 2 N. B. N., 164.

Where property is in litigation in State Court parties thereto coming into district subject themselves to order therein. *In re* Riker (1901), C. C. A., 2nd Cir., 107 Fed., 96; 5 A. B. R., 720.

A bill by a trustee to set aside a fraudulent conveyance is cognizable

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in the District court. *Carter* v. *Hobbs* (1899), Dist. Ind., Baker, J., 92 Fed., 594; 1 A. B. R., 215; 1 N. B. N., 191.

The District court has jurisdiction over mortgages to inquire into their validity without the consent of the mortgagee. *Carter* v. *Hobbs* (1899), Dist. Ind., Baker, J., 92 Fed., 594; 1 A. B. R., 215; 1 N. B. N., 191.

The District court cannot entertain jurisdiction of suit by trustee to set aside conveyance. *Burnett* v. *Morris Mercantile Co.* (1899), Dist. Ore., Bellinger, J., 91 Fed., 365; 1 A. B. R., 229; 1 N. B. N., 240.

Courts of bankruptcy have no jurisdiction of suits by trustee against third persons to collect money due the bankrupt. Sec. 23 limits Sec. 2. *Hicks* v. *Knest* (1899), S. Dist. Ohio, Thompson, J., 94 Fed., 625; 2 A. B. R., 153; 1 N. B. N., 336.

Assignment in state court before bankruptcy petition and subsequent sale by assignee cannot be attacked by summary proceedings in bankruptcy—chancery action necessary. *In re* Abraham (1899), C. C. A., 5th Cir., McCormick, J., 93 Fed., 767; 2 A. B. R., 266; 1 N. B. N., 281.

District court no jurisdiction of suit by trustee to set aside fraudulent transfer. *Perkins* v. *McCauley et al.* (1899), S. Dist. Cal., Wellborn, J., 98 Fed., 286; 3 A. B. R., 445.

Contra, Louisville v. *Trust Comingor* (1899), Dist. Ky., Evans, J., 98 Fed., 456; 3 A. B. R., 450.

No jurisdiction in District court where third person holds property of bankrupt under fraudulent transfer. *In re* Sheinbaum (1901), S. Dist. N. Y., Brown, J., 107 Fed., 247; 5 A. B. R., 187.

Equity will follow fund created by wrongful conversion of stocks held by bankrupt as broker. *Hutchinson* v. *Leroy* (1902), C. C.A., 1st. Cir., Putnam, J., 115 Fed., 937; 8 A. B. R., 20.

No jurisdiction in State Court to entertain bill in equity to preserve assets until the bankruptcy law will be invoked. *Ideal Clothing Co.* v. *Hazel* (1901), Sup. Ct., Mich.; 6 A. B. R., 265; 3 N. B. N., 630.

State Court no jurisidction of suit againt trustee in bankruptcy for possession of property, held by him. *Turrentine* v. *Blackwood* (1900), Ala. Sup. Ct., Harralson, J., 28 So., 95; 4 A. B. R., 338.

State Court having obtained jurisdiction by foreclosure before bankruptcy can retain it to the end. *In re* Gerdes (1900), So. Dist. Ohio, Thompson, J., 102 Fed., 318; 4 A. B. R., 346; 2 N. B. N., 131.

Section 23b does not deprive District Court of suits by trustee to set aside preferences. *Murray* v. *Beal* (1899), Marshall, J., 97 Fed., 567; 3 A. B. R., 284; 2 N. B. N., 164.

Equitable replevin allowed on rescission of contract of sale for fraud.

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In re Weil (1901), S. Dist. N. Y., Adams, J., 111 Fed., 897; 7 A. B. R. 90.

Permission may be given mortgagee to make trustee defendant *In re* San. Gabriel S. Co. (1901), C. C. A., 9th Cir., 111 Fed., 892; 7 A B. R., 206.

District Court has no jurisdiction to set aside a conveyance between a husband and wife on petition of creditors—remedy is by trustee in State Court. *In re* Griffith (1899), E. Dist. Tenn., Grayson, R.; 1 N. B. N., 645.

Finding as to title of property is *res adjudicata* until reversed and should not be re-opened by the court which made it. *In re* Lemmon & Gale Co. (1901), C. C. A., 6th Cir., Day, J., 112 Fed., 296; 7 A. B. R., 291.

Jurisdiction not waived if want of not raised till filing of second amended petition in suit by trustee. *In re* Hemby, Hutchinson Pub. Co. (1900) N. Dist. Ill., Kohlsaat, J., 105 Fed., 909; 5 A. B. R., 569.

Jurisdiction having been given by consent can not be revoked—construction of validity of chattel mortgage. *In re* Durham (1902), Dist. Md., Morris, J., 114 Fed., 750; 8 A. B. R., 115

Jurisdiction of United States District Court in bankruptcy paramount to that of State Court over estate being administered in insolvency proceedings. Comity can not confer jurisdiction. *In re* Macon Lumber Co. (1901), S. Dist. Ga., Spear, J., 112 Fed., 323; 7 A. B. R., 66.

District Court no jurisdiction in suit to set aside conveyance by bankrupt which is alleged to be fraudulent. *In re* Carter (1899), S. Dist. Ga., Myrick, R., 1 A. B. R., 160; 1 N. B. N., 162.

Mere interest of trustee in results of pending litigation in the State Court, no ground for staying action, or transferring same to United States court. *In re* Greater American Exposition (1900), C. C. A., 8th Cir., Thayer, J.; 4 A. B. R., 486.

The District Court has no jurisdiction to collect a preferential payment made to a creditor. *In re* Goldberg (1899), Dist. Utah, Baldwin, R., 1 A. B. R., 385; 1 N. B. N., 266.

Bankruptcy court no jurisdiction to determine by summary proceeding a controversy between the trustee as such and an adverse claimant concerning property claimed by the trustee. *In re* Fowler (1899), Dist. Conn. Banks, R., 93 Fed., 417; 1 A. B. R., 637; 1 N. B. N., 215.

Bankruptcy court no power to compel court to reopen a case which proceeded after bankruptcy to suit on a bail bond against the surety only. *In re* Franklin (1901), Dist. Mass., Lowell, J., 106 Fed., 666; 6 A B. R., 285.

State law governs application of trustee to intervene in suit in State

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court. *Bank of Commerce* v. *Elliott* (1901), Sup. Ct. Wis., Marshall, J., 109 Wis., 648; 6 A. B. R., 409.

When court will adjudicate claim to exempt property—liens on property set aside as exempt must be adjudicated in other courts. *In re* Little (1901), N. Dist. Ia., Shiras, J., 110 Fed., 621; 6 A. B. R., 681.

Title of third person, although a daughter of bankrupt, can only be tested in plenary suit by trustee, and not by summary process. *In re* Cohn (1899), S. Dist. N. Y., Brown, J., 98 Fed., 75; 3 A. B. R., 421; 2 N. B. N., 299.

Jurisdiction of a State Court which has appointed a receiver of a firm is not to be assailed in a court of bankruptcy in subsequent proceedings—no order will be made on the receiver to turn over the assets—trustee must apply to state court for such an order. *In re* Price & Co. (1899), S. Dist, N. Y., Brown, J., 92 Fed., 987; 1 A. B. R., 606; 1 N. B. N.,131.

District court no jurisdiction to sue third party for debt due bankruptcy estate. *In re* Goldberg (1899), Dist. Utah, Baldwin, R.; 1 A. B. R., 385; 1 N. B. N., 256.

Trustee should obtain consent of court before bringing suit. *In re* Mersman (1901), W. Dist. N. Y., Hotchkiss, R., 7 A. B. R., 46.

Creditor who has voluntarily litigated in District court validity of transfer by bankrupt, cannot afterwards deny jurisdiction of the court. *Phillips* v. *Turner* (1902), C. C. A., 5th Cir., 114 Fed., 726; 8 A. B. R., 171.

Court of bankruptcy no power to determine the merits of a controversy where there is real claim in fact even though fraudulent. *In re* Michie (1902), Dist. Mass., Lowell, J., 116 Fed., 749; 8 A. B. R., 734.

Corporation to whom a debtor transferred all his property, adjudged bankrupt—District court no jurisdiction to entertain plenary suit in equity to determine the validity of the transfer. *Real Estate Trust Co.* v. *Thompson* (1902), E. Dist. Pa., McPherson, J., 112 Fed., 945; 7 A. B. R., 520.

Suit by trustee to set aside fraudulent conveyance brought in state court. *Sheldon* v. *Parker* (1902), Sup. Ct. Neb., Duffie, J., 92 N. W., 923; *Skillin* v. *Maibrunn* (1902), Sup. Ct. N. Y., O'Brien, J., 78 N. Y. Supp., 436.

Trustee may bring the action any time within two years to set aside fraudulent conveyance. *Schreck* v. *Hanlon* (1902), Sup. Ct. Neb., Duffie, J., 92 N. W., 625; *Myers* v. *Hart* (1901), C. C. Ohio, Cook, J., 22 Ohio, C. C., 427; *Lyon* v. *Clark* (1900), Sup. Ct., Mich. Moore, J., 124 Mich., 100.

Vacation of judgment against bankrupt not granted trustee as he had adequate remedy by action to recover the property. *Gage* v. *Bates Mach. Co.* (1902), Sup Ct. N. H., Walker, J., 52 Atl., 457.

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State Courts have concurrent jurisdiction with federal courts of an action of trover to determine title to goods taken by trustee. *Fruda* v. *Osgood* (1901), Sup. Ct. N. H., Blodget, J., 51 Atl., 663.

Trustee to prosecute suits in State courts or in the U. S. Circuit Court where diversity of citizenship exists. *Robinson* v. *White* (1899), Dist. Ind., Baker, J., 97 Fed., 33; *Bindseil* v. *Coshion* (1900), Sup. Ct. N. J., 60 N. J. Eq., 116; *Lyon* v. *Clark* (1900), Sup. Ct. Mich., 124 Mich., 100; *Nye* v. *Hart* (1901), 12 Ohio Cir. Dec., 419; *Jones* v. *Schermerhorn* (1900), 53 N. Y. App. Div., 143; *French* v. *R. Pets.* Co. (1900), 81 Minn., 341.

Where property in hands of the trustee, the bankruptcy court has jurisdiction on full hearing to determine the question of validity and amount of a mortgage lien thereon. *In re* Kellogg (1902), W. Dist. N. Y., Hazel, J., 113 Fed., 120; 7 A. B. R., 623.

Claimant of lien on property in lawful possession of trustee must submit to jurisdiction of bankruptcy court, where it comes in and files petition submitting to the jurisdiction. *In re* Durham (1902), Dist. Md., Morris, J., 114 Fed., 750; 8 A. B. R., 115.

c **[Concurrent jurisdiction of District and Circuit Courts.]** The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this Act.

As to offenses under Act, see Sec. 29 and notes.

This is limited strictly to offenses and does not extend to civil suits. *Goodier* v. *Barnes* (1899), N. Dist. N. Y., Coxe, J., 94 Fed., 798; 2 A. B. R., 328.

SEC. 24. JURISDICTION OF APPELLATE COURTS.

a **[Courts with appellate jurisdiction Supreme Court.]** The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy

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not within any organized circuit of the United States and from the supreme court of the District of Columbia.

See *post* Sec. 24b. As to procedure on appeals, see Gen. Order XXXVI *post*, and notes. See Sec. 25 for orders from which appeals will lie.

For procedure in appeals to the Supreme Court of United States, see Rev. Stat. of U. S., Sec. 687 to 611; see also 2 Sup. R. S. U. S., 79, 209. 541. For proceedings on appeals in Circuit Courts of Appeals, see 1 Sup. Rev. S. U. S., 910; also 2 Sup. Rev. St. U. S., 542.

No appeal lies directly to the Supreme Court of the United States from a judgment dismissing an involuntary petition entered upon the finding of a jury that the alleged bankrupt was a farmer. *First Nat. Bank of Denver et al.* v. *Klug* (1902), Sup. Ct. U. S., Fuller, J., 186 U. S., 203; 8 A. B. R., 12.

In order that an appeal may lie under this section in cases not enumerated in Sec. 25, it must be a final order or decree order within the meaning of the Act creating the Circuit Court of Appeals. *In re* Columbia Real Estate Co. (1902), C. C. A., 7th Cir., Seaman, J., 112 Fed., 643; 7 A. B. R., 441.

b **[Circuit Courts of Appeals.]** The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

See as to appeals, Sec. 25 and notes; also as to procedure, Gen. Ord, XXXVI. See notes to *a ante*.

Held, that jurisdiction is by original petition to review matters of law only. *In re* Rouse, Hazard Co. (1899), C. C. A., 7th Cir., 91 Fed., 96. 1 A. B. R., 234; 1 N. B. N., 75.

The Circuit Court of Appeals only revises the action of the District Court in matters of law. *In re* Purvine (1899), C. C. A., 5th Cir., Newman. J., 96 Fed., 192; 2 A. B. R., 787.

This section is governed by 25a. *In re* Good (1900), C. C. A., 8th Cir. Thayer, J., 99 Fed., 389; 3 A. B. R., 605;

This section relates only to questions of law and not of fact. *In re* Whitener (1900), C. C. A., 5th Cir., Pardee, J., 105 Fed., 180; 5 A. B. R., 198.

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Petition for review does not authorize review of questions of fact. *In re* Rosser (1900), C. C. A., 8th Cir., Sandborn, J., 101 Fed., 562; 4 A. B. R., 153.

No time limit for petition for review. *In re* New York Economical Printing Co. (1901), C. C. A., 2nd Cir., Putnam, J., 106 Fed., 839; 5 A. B. R., 697.

Petition for review does not have the effect of appeal or writ of error in removing the cause. *In re* Orman (1901), C. C. A., 5th Cir., 107 Fed., 101; 5. A B. R., 698.

Only party aggrieved by adverse decision can be heard on appeal therefrom. *Bank of Com.* v. *Elliott* (1901), Sup. Ct. Wis., Marshall, J., 109 Wis., 648; 6 A. B. R., 409.

Jurisdiction extends to review of law not facts, and is not on appeal but by petition. *Courier Journal Job. P. Co.* v. *Scharfer-Meyer-Printing Co.* 101 Fed., 699; 4 A. B. R., 183.

Petition for review may be filed inside of six months—questions of law may be raised by petition for review of facts by appellee. *In re* Worcester County (1900), C. C. A., 1st Cir., 102 Fed., 808; 4 A. B. R., 496.

Petition for review to court of appeals not allowed in cases between trustee and third persons—such cases must be brought up by appeal or writ of error under Clause a. *In re* Jacobs (1900), C. C. A., 8th Cir. Thayer, J., 99 Fed., 539; 3 A. B. R., 671.

Distinction between petition for review and appeal—the former only applies to law questions, the latter both to the law and the facts. *In re* Richards (1899), C. C. A., 7th Cir., Jenkins, J., 96 Fed., 935; 3 A. B. R. 145; 2 N. B. N., 38.

Compare *in re* Rouse, Hazard & Co. 1 A. B. R., 231 and *in re* Purvine (1899), 2 A. B. R., 787; see *ante* this section.

Bankruptcy court is not required to make a statement of facts for purpose of appeal. *In re* Meyers (1900), S. Dist. N. Y., Brown, J., 105 Fed., 353; 5 A. B. R., 4.

The practice on appeal to Appellate Court is by writ of error where a jury trial has been had, or act of bankruptcy not shown by suffering a judgment. Some act of acquiescence necessary to be shown. *Duncan et al.* v. *Landis* (1901), C. C. A., 3rd Cir., Gray, J., 106 Fed., 839; 5 A. B. R., 649.

Creditor appealing from the allowance of a claim, when trustee refuses to so appeal. *McDaniel* v. *Strand* (1901), C. C. A., 4th Cir., Simonton, J., 106 Fed., 486; 5 A. B. R., 685.

Order of dismissal of involuntary petition may under this section be

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set aside as regulations affecting appeals do not apply. *In re* Jemison Mercantile Co. (1902), 5th Cir., McCormick, J., 112 Fed., 966; 7 A. B. R., 588.

Appeal lies directly from District court to the Supreme court in bankruptcy proceedings. *First Nat. Bank* v. *Klug* (1902), Sup. Ct. United States, Fuller, J., 186 U. S., 203; 8 A. B. R., 12.

SEC. 25. APPEALS AND WRITS OF ERROR.

a **[When appeals may be taken.]** That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit,

(1) **[Judgment on adjudication.]** From a judgment adjudging or refusing to adjudge the defendant a bankrupt;

(2) **[Judgment on discharge.]** From a judgment granting or denying a discharge; and

(3) **[Judgment on claim.]** From a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

Held, the jurisdiction of Appellate court includes questions of law and of fact on appeal taken in ten days. Petition for review covers questions of law only. *In re* Rouse, Hazard Co. (1899), C. C. A., 7th Cir., 91 Fed., 96; 1 A. B. R., 234; 1 N. B. N., 75.

A petition for review and not an appeal, the proper method of taking case to court of appeals where court issued summary order determining title to property. *In re* Abraham (1899), C. C. A., 5th Cir., McCormick, J., 93 Fed., 767; 2 A. B. R., 266; 1 N. B. N., 281.

This section applies to appeal from adjudication which must be taken within ten days. *In re* Good (1900), C. C. A., 8th Cir., Thayer, J., 99 Fed., 389; 3 A. B. R., 605.

No appeal having been taken in ten days after decree court can allow petition for rehearing, so as to open up time for appeal. *In re* Wright

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(1899), Dist. Mass., Lowell, J., 96 Fed., 820; 3 A. B. R., 184; 1 N. B. N., 428.

Appeal to Circuit court of Appeals on the question of allowance of attorneys' fees for over $500. *In re* Curtis (1900), C. C. A., 7th Cir., Jenkins, J., 100 Fed., 784; 4 A. B. R., 17.

Under this section law and fact are both reviewable. *Courier Journal P. Co.* v. *Scharfer-Meyer-Printing Co.*, C. C. A., 6th Cir., 101 Fed., 699; 4 A. B. R., 183.

No appeal lies to the Supreme court of the territory for amount under $500. *In re* Stumpf (1900), Sup. Okla., Burrell, J., 4 A. B. R., 267.

Creditor no right of appeal from allowance of claims except through the trustee. District court may order trustee to make appeal. *Chatfield* v. *O'Dwyer* (1900), C. C. A., 8th Cir., 101 Fed., 797; 4 A. B. R., 313.

Appeal must be perfected in ten days in the lower court. *Norcross* v. *Nave & McCord Mer. Co.* (1900), C. C. A., 8th Cir., 101 Fed., 796; 4 A. B. R., 317.

Time limit for appeals does not apply to suits outside of the bankruptcy proceedings to recover assets. Silence gives consent to jurisdiction. It is too late to object in the Appellate Court. *Boonville Nat, Bank* v. *Balkey* (1901), C. C. A., 7th Cir., Jenkins, J., 107 Fed., 891; 6 A. B. R., 13.

The decisions of the federal court of appeals in a district embracing Indiana construing a federal statute must be regarded as of controlling authority in a bankruptcy proceeding—discussion of federal court as to insolvency. *Severin* v. *Robinson* (1901), App. Ct. Ind., Wiley, J., 27 Ind. App., 55.

No appeal from interlocutory order reviewing ruling of the referee, refusing to compel the bankrupt to produce the books for examination. *Goodman* v. *Brunner* (1901), C. C. A., 5th Cir., Pardee, J., 109 Fed., 481; 6 A. B. R., 470.

Order sustaining demurrer to petition to vacate order of adjudication filed by creditors in voluntary proceedings, is not appealable under this section, but reviewable under Section 24. Creditor can not file petition asking that a voluntary adjudication be set aside. *In re* Ives (1902), C. C. A., 6th Cir., 111 Fed., 495; 7 A. B. R., 692.

Where a matter of law is solely involved, petition for review and not appeal will be allowed. *Hutchinson* v. *Leroy* (1902), C. C. A, 1st Cir. Putnam, J., 115 Fed., 937; 8 A. B. R., 20.

No alteration in the order of the court of appeals can be made in District court. No terms of court in District court as to all interlocutory

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orders in bankruptcy. *In re* Henschel (1902), S. Dist. N. Y., Adams, J., 114 Fed., 968; 8 A. B. R., 201.

Only trustee can appeal from allowance of claim. *Foreman* v. *Burleigh et al.* (1901), C. C. A., 5th Cir, Putnam, J., 109 Fed., 489; 6 A. B. R., 230.

Appeal from allowance of claim may be taken by any one in interest. *In re* Roche (1900), C. C. A., 5th Cir., 101 Fed., 956; 4 A. B. R., 369.

The word "claim" means any money demand. *In re* Whitener (1901), C. C. A., 5th Cir., 105 Fed., 180; 5 A. B. R., 198.

Bankrupt has no right of appeal from order refusing approval of composition where trustee only has opposed the approval. *Ross* v. *Saunders*, C. C. A., 1st Cir., Putnam, J., 5 A. B. R., 350.

b **[Appeal to Supreme Court from Circuit Court of Appeals.]** From any final decision of a court of appeals, allowing or rejecting a claim under this Act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

As to appeals and the procedure prescribed by the Supreme Court, see Gen. Ord. XXXVI. See Act of 1891 creating Circuit Court of Appeals, 1 Sup. Rev. S. U. S., p. 901.

1. **[Jurisdictional amount—question involved.]** Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

As to cases from State Court to United States Supreme Court, see Rev. St. U. S., Sec. 698–705.

2. **[Certificate of question by Supreme Court Justice.]** Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this Act throughout the United States.

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c. **[Trustee not required to give bond.]** Trustees shall not be required to give bond when they take appeals or sue out writs of error.

d **[Certificate to Supreme Court by other courts.]** Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

Sec. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the supreme court in the following cases:

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the supreme court from the court below for decision.

From the final sentences and decrees in prize causes.

In cases of conviction of a capital or otherwise infamous crime.

In any case that involves the construction or application of the constitution of the United States.

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

In any case in which the constitution or law of a state is claimed to be in contravention of the constitution of the United States.

Nothing in this act shall affect the jurisdiction of the supreme court in cases appealed from the highest court of a state, nor the construction of the statute providing for review of such cases. Act of 1891, 1 Supp Rev. St., U. S., 901.

Certificate of questions from District to Supreme Court controlled by Section 5 Judiciary Act of 1891. Final judgment must precede certificate. *Bardes* v. *First Nat. Bank of Hawarden*, U. S. Sup. Ct., Fuller, J., 175 U. S., 526; 3 A. B. R., 680; 2 N. B. N., 75.

See *ante*, note to Sec. 24, practice in petition for review. *In re* Richards (1899), C. C. A., 7th Cir., 96 Fed., 935; 3 A. B. R., 145; 2 N. B. N., 38.

See the case *in re* Newberry (1899), W. Dist. Mich., Severans, J., 97 Fed., 24; 3 A. B. R., 158; 2 N. B. N., 56.

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SEC. 26. ARBITRATION OF CONTROVERSIES.

a **[Trustee may submit to arbitration.]** The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

As to arbitration and what the application should show see Gen. Ord. XXXIII.

b **[Selection of arbitrators.]** Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

See as to arbitration Gen. Ord. XXXIII.

c **[Effect of findings.]** The written findings of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

As to procedure in arbitration see Gen. Ord. XXXIII.

Arbitrators must be appointed in the manner prescribed by the statute. Court may review findings. *In re* McLam (1899), Dist. Vt., Wheeler, J., 97 Fed., 922; 3 A. B. R., 245.

SEC. 27. COMPROMISES.

a **[When allowed.]** The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

Creditors must receive notice of compromises, Sec. 58a (7).

SEC. 28. DESIGNATION OF NEWSPAPERS.

a **[To publish notices.]** Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which

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notices required to be published by this Act and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

As to what notices must be published see Sec. 58.

SEC. 29. OFFENSES.

a **[Misappropriating property—destroying documents.]** A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

A trustee cannot be compelled to incriminate himself. *In re* Smith (1902), S. Dist. N. Y., Adams, J., 112 Fed., 509; 7 A. B. R., 213.

b **[Punishment by imprisonment.]** A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently

(1) **[Concealing property.]** Concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or

See notes under Sec. 3.

Concealment of property must be shown by existence of property in the bankrupt, or held in trust for him. *In re* Cornell (1899), S. Dist. N. Y., Brown, J., 97 Fed., 29; 3 A. B. R., 172.

Withholding money received after filing the petition is not concealment—it does not belong to the estate in bankruptcy. *In re* Polakoff (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 358; 1 N. B. N., 232.

Bankrupt attorney omitting to schedule contingent fees unearned is not guilty of fraudulent concealment. *In re* McAdam (1899), S. Dist. N. Y., Brown, J., 98 Fed., 409; 3 A. B. R., 417; 2 N. B. N., 256.

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(2) [**False oath or account.**] Made a false oath or account in, or in relation to, any proceeding in bankruptcy;

As to oaths, see Sec. 20.

Requirement for indictment for perjury under this section. *Bartlett* v. *United States* (1901), C. C. A., 9th Cir., Gilbert, J., 106 Fed., 884; 5 A. B. R., 678.

There must be allegations of fraudulent intent—it must be specific and definite. *In re* Wetmore (1901), W. Dist. N. Y., Knight, R., 6 A. B. R., 703.

(3) [**False claims.**] Presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or

As to proof of claim, see Sec. 57 and Gen. Ord. XXI.

(4) [**Received property from bankrupt.**] Received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this Act; or

(5) [**Extorted money or property.**] Extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

c [**Punishment by fine.**] A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly

(1) [**Acting as referee when interested.**] Acted as a referee in a case in which he is directly or indirectly interested; or

As to referees, see Secs. 39 to 44.

(2) [**Purchased property of estate.**] Purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or

As to when a case is before a referee, see Gen. Ord. XII.

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(3) **[Refusal to permit inspection of accounts and papers.]** Refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

As to accounts of trustee, see Gen. Ord. XXVI. Accounts of trustees, Gen. Ord. XVII.

d **[One year limitation.]** A person shall not be prosecuted for any offense arising under this Act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

SEC. 30. RULES, FORMS, AND ORDERS.

a **[Supreme Court to make.]** All necessary rules, forms, and orders as to procedure and for carrying this Act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

See Gen. Ord. XXXVIII as to forms.

The general orders are obligatory and binding upon courts of bankruptcy. They confer rights as well as prescribe rules of practice, and must be followed. *In re* Scott (1900), E. Dist. N. C., Purnell, J., 99 Fed., 404; 3 A. B. R., 625; 2 N. B. N., 440.

SEC. 31. COMPUTATION OF TIME.

a **[How time computed.]** Whenever time is enumerated by days in this Act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

In computation of time with regard to the four months' limitation, exclude the day when the act of bankruptcy was committed and include

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the day when the petition was filed. *In re* Stevenson (1899), Dist. Del., Bradford, J., 94 Fed., 110; 2 A. B. R., 66; 1 N. B. N., 313.

Four full months after the act of bankruptcy must be allowed for filing the petition. *In re* Tonawanda Street Planing Mill Co. (1901), W. Dist. N. Y., Hotchkiss, R., 6 A. B. R., 38.

Computation of time—attachment brought September 9th, and bankruptcy January 9th, is within the four months and dissolved by bankruptcy. *Jones* v. *Stevens* (1901), Sup. Ct. Maine, Wiswell, J., 48 Atl., 170; 5 A. B. R., 571.

SEC. 32. TRANSFER OF CASES.

a In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

For transfer of cases, see General Order VI; also ante Sec. 2 Sub. (19).

Transfer will be made where it operates for greater convenience of creditors. *In re* Sears (1901), W. Dist. N. Y., Hazel, J., 112 Fed., 58; 7 A. B. R., 279.

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CHAPTER V.

Officers, their Duties and Compensation.

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SEC. 33. CREATION OF TWO OFFICES.

a **[Referee and trustee.]** The offices of referee and trustee are hereby created.

No official or general trustee to be created. General order XIV. For qualifications of trustee see *Post*, Sec. 45. Court may order that no trustee be appointed in no asset cases. Sec. 45 and notes.

SEC. 34. APPOINTMENT, REMOVAL, AND DISTRICTS OF REFEREES.

a **[Duties of Court.]** Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction,

(1) **[Appoint and remove referees.]** Appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and

As to jurisdiction of courts of bankruptcy see Chapter II. For analo-

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gous provisions under act 1800 see Sec. 2 of that act *post*. See, also, Sec. 5 of act of 1841 and Sec. 3, Act of 1867.

Special referee should not be appointed with consent of parties. *Bray et al.* v. *Cobb* (1899), E. Dist. N. C., Purnell, J., 1 A. B. R., 153; 1 N. B. N., 209; 91 Fed., 102.

(2) **[Districts of referees.]** Designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

As to jurisdiction of referees, see Sec. 38 and notes.

SEC. 35. QUALIFICATIONS OF REFEREES.

a. **[Who eligible.]** Individuals shall not be eligible to appointment as referees unless they are respectively

(1) **[Competent.]** Competent to perform the duties of that office.

As to duties of referees see Sec. 39.

(2) **[Not office holder.]** Not holding any office of profit or emolument under the laws of the United States or of any state other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public;

(3) **[Not related to judges.]** Not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and

(4) **[Residents of district.]** Residents of, or have their offices in, the territorial districts for which they are to be appointed.

For similar provisions of act of 1867, see Sec. 5 of that act.

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SEC. 36. OATHS OF OFFICE OF REFEREES.

a **[Same oath as judge.]** Referees shall take the same oath of office as that prescribed for judges of the United States courts.

As to form of oath see Revised Statutes United States Sec. 1756–1757. See, also, forms No. 16 and 17.

SEC. 37. NUMBER OF REFEREES.

a **[Sufficient number to transact business.]** Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

See, *ante* Sec. 33, 34 and 35.

SEC. 38. JURISDICTION OF REFEREES.

a **[Jurisdiction in districts.]** Referees respectively are hereby invested, subject always to a review by the Judge, within the limits of their districts as established from time to time, with jurisdiction to

(1) **[Consider petitions.]** Consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions;

Referee may in his discretion order amendments to be made to the petition and schedule of a voluntary bankrupt, and may refuse to call a first meeting of creditors until the amendments are made. *In re* Brumelkamp (1899), N. Dist. N. Y., 95 Fed., 814; 2 A. B. R., 318.

Adjudication must be by judge, unless he is absent from the district. Sec. 18 g and f reference after adjudication Sec. 22 ante.

(2) **[Administer oaths etc.]** Exercise powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment;

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As to oaths ond affirmations see section 20 *ante*.

(3) **[Take possession of property.]** Exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act;

Referee may issue an injunction restraining interference with bankrupt's property and appoint a receiver of the same. *In re* Abrahamson & Bretstein (1899), N. Dist. N. Y., Moss, R., 1 A. B. R., 44; 1 N. B. N., 23.

The referee has power to cite bankrupt to show cause why property should not be surrendered to the trustee. *In re* Oliver (1899), N. Dist. Cal., DeHaven, J., 96 Fed., 85; 2 A. B. R., 783; 1 N. B. N., 229.

Referee may restrain the collection of judgments obtained in the state court. *In re* Northrop (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 427.

Referee has power to order sale of property free from incumbrances. *In re* Sanborn (1899), Dist. Vt., Wheeler, J., 96 Fed., 551; 3 A. B. R., 54.

The referee has power to make a summary order on rule to show cause why agent of bankrupt should not surrender property of the estate. *Mueller* v. *Nugent* (1902), Sup. Ct. U. S., Fuller, J., 184 U. S. 1; 7 A. B. R., 224.

Jurisdiction of referee sufficient to order sale of property. *In re* Styer (1899), E. Dist. Pa., McPherson, J., 98 Fed., 290; 3 A. B. R., 424; 2 N. B. N., 205.

See *In re* McDuff (1900), C. C. A., 5th Cir., Pardee, J., 101 Fed., 241; 4 A. B. R., 110.

(4) **[Perform certain duties of court.]** Perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and

Referee has no jurisdiction to find that debt is provable whether created by fraud or not. He must allow or disallow. *In re* Lazarovic (1898), Dist. Kan., Corey, R., 1 A. B. R., 476.

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Referee has jurisdiction to issue injunction restraining a creditor from selling property seized under a writ of detinue and to order the property turned over to the trustee. *In re* Huddleston (1899), N. Dist. Ala Turner, R., 1 A. B. R., 572; 1 N. B. N., 214.

Referee has jurisdiction to enjoin sale of bankrupt's real estate in state court. *In re* Sabine (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 315; 1 N. B. N., 45.

Referee has jurisdiction to entertain motion for dismissal of proceedings after reference. *In re* Scott (1902), Dist. Mass., Olmstead, R., 7 A. B. R., 35.

Mandatory injunction should not issue without notice to all parties. Preliminary injunction should first issue with a rule to show cause. *In re* Tune (1902), N. Dist. Ala., Jones, J. 115 Fed., 906; 8 A. B. R., 285.

(5) **[Authorize the employment of stenographers.]** Upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

No authority to employ stenographers, except under this section. Such fee may be taxed against successful party in contest between claimant and trustee, as part of the necessary expenses of estate. *In re* Todd (1901), S. Dist. N. Y., Brown, J., 109 Fed., 265; 6 A. B. R., 88.

SEC. 39. DUTIES OF REFEREES.

a **[Duties.]** Referees shall

See Gen. Ord. XII and XVI.

(1) **[Declare dividends.]** Declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable;

As to the declaration and payment of dividends, see Sec. 65 and notes *post*. As to duties of referees in general. see Gen. Order XII *post*.

(2) **[Examine all schedules and lists.]** Examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended;

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As to what schedules to contain and duty of bankrupt to file, see Sec. 7 (8). As to manner of drawing schedules, see Gen. Ord. V. Duty of petitioning creditor to file, Gen. Ord. IX. As to amendment of schedules, see Gen. Ord. XI *post*.

Duty of referee to examine schedules. No abbreviation of names or addresses not in common use tolerated. *In re* Mackay & Co. (1899), N. Dist. N. Y., Collier, R., 1 A. B. R., 593.

(3) **[Furnish information.]** Furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest;

Referee cannot refuse parties in interest a reasonable opportunity to inspect accounts, papers and records relating to a bankrupt's estate Sec. 47 (5) *post*.

(4) **[Give notice.]** Give notices to creditors as herein provided;

As to notices to creditors, see Sec. 58 and notes *post*.

(5) **[Make up records.]** Make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges;

Referee to transmit names of creditors and proven claims to clerk. Gen. Order XXIV *post*. See form of list, Form No. 40 *post*.

On appeal to Court of Appeals, complaint of incomplete record not sustained when shown that case proceeded from referee on his certificate and summary of the evidence. *Cunningham* v. *Bank* (1900), C. C. A., 6th Cir., Lurton, J., 101 Fed., 977; 4 A. B. R., 192; 2 N.B. N., 589.

Referee's finding of fact on petition for discharge will not be reversed, except upon clear and convincing proof of error. *In re* Covington (1901), W. Dist. N. C., Purnell, J., 110 Fed., 143; 6 A. B. R., 373.

Referee's finding of fact will not be disturbed unless manifestly erroneous. *In re* Stout (1900), W. Dist. M., Phillips, J., 109 Fed., 794; 6 A. B. R., 505.

(6) **[Prepare schedules and list.]** Prepare and file the

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schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so;

As to duty of bankrupt to file, see Sec. 7 (8) and notes. As to preparation of schedules in involuntary cases, see Sec. Gen. Order IX.

(7) **[Preserve and transmit records.]** Safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded;

See ante (5) and notes.

(8) **[Transmit papers to clerk.]** Transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail;

As to duties of referees, see Gen. Ord. XII; see also *ante* (6) and (7).

(9) **[Preserve Evidence.]** Upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and

As to taking of testimony, see Gen. Ord. XXII. As to evidence, see Sec. 21 and notes. As to jurisdiction of referee, see Sec. 38a (2) and notes.

(10) **[Obtain papers.]** Whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

As to filing of papers, see Gen. Ord. II.

b **[Acts prohibited.]** Referees shall not

(1) **[Act when interested.]** Act in cases in which they are directly or indirectly interested;

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Referee not disqualified because a debtor of the bankrupt. *Bray* v. *Cobb* (1899), E. Dist. N. C., Purnell, J., 91 Fed., 102; 1 A. B. R., 153; 1 N. B. N., 209.

(2) **[Practice as attorney.]** Practice as attorneys and counselors at law in any bankruptcy proceedings; or

(3) **[Purchase from estate.]** Purchase, directly or indirectly, any property of an estate in bankruptcy.

Duties of referee prescribed. Gen. Order XII. Duty or referee to notify trustee of his appointment. Gen. Order XVI.

SEC. 40. COMPENSATION OF REFEREES.

a **[Fees and commissions.]** Referees shall receive as full compensation for their services, payable after they are rendered, a fee of *fifteen* (ten) dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, *and twenty-five cents for every proof of claim filed for allowance, to be paid from the estate, if any, as a part of the cost of administration,* and from estates which have been administered before them one per centum commissions on *all moneys disbursed to creditors by the trustee,* (sums to be paid as dividends and commissions) or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

As amended by Act of 1903—See Amended, page , *post.* Matter omitted in amendment embraced between brackets—additional matter found between stars.

As to limitation of compensation of referees and trustees see Sec. 72 *post.*

See notes on compensation of trustee, see Sec. 48a.

As to compensation of Referees, see Gen. Order XXXV. Sub. (2).

Referees entitled to commissions on amounts paid unsecured creditors. *In re* Coffin (1899), E. Dist. Tex., Dillard, R., 2 A. B. R., 344; 1 N. B. N., 507.

Payment *pro tanto* on a secured claim by the trustee does not entitle

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the referee to an allowance on commissions. *In re* Fort Wayne Electric Corporation (1899), Dist. Ind., Baker, J., 94 Fed., 109; 1. A. B. R., 706; 1 N. B. R., 356.

Commission should be allowed on money paid out as commissions. *In re* Sabine (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 322; 1 N. B. N., 45.

No commissions allowed on payments entitled to priority.

No commission on secured claims, unless security submitted to bankrupt court.

No commissions payable on prior or secured claims—discussion of word "dividend." *In re* Fielding (1899), W. Dist. Mo., Philips, J., 96 Fed., 800; 3 A. B. R., 135; 2 N. B. N., 735.

Commissions not confined to dividends paid unsecured creditors but allowed on amounts paid secured creditors. Dividend defined. *In re* Barber (1899), Dist. Minn., Lochren J., 97 Fed., 547; 3 A. B. R., 306; 1 N. B. N., 559.

This section is unconstitutional because the referee's commission is affected by its judicial decision. *In re* Gardner (1900), E. Dist. Va., Waddill, J., 103 Fed., 922; 4 A. B. R., 421; 1 N. B. N., 189.

Referee may not make extra charges for hearing claims, preparing dividend sheets—his commissions are to be paid only on sums available for payment of dividends and commissions. *In re* Barker (1901), N. Dist. Ia., Shiras, J., 111 Fed., 501; 7 A. B. R., 132.

Referee's compensation limited to amount prescribed in the Act. *In re* Pierce (1901), Dist. Colo., Hallett, J., 111 Fed., 516; 6 A. B. R., 747.

Referee may charge for stationary, publishing notices, etc., Not for his own services in copying petition for discharge, though he may charge for what such work costs him. *In re* Dixon (1902), N. Dist. Cal., De Haven, J., 114 Fed., 675; 8 A. B. R., 145.

Court has power to refer the question of the application for discharge to a referee in the capacity of special master and not as referee in bankruptcy, and as this is not among the enumerated duties of the referee, he is entitled to reasonable allowance therefor unaffected by the fact that he also holds the office of referee. *Fellows et al.* v. *Freudenthal* (1900), C. C. A., 7th Cir., Seaman, J., 102 Fed., 731; 4 A. B. R., 490; 2 N. B. N., 97.

Referee allowed reasonable compensation where services outside the ordinary scope of his duties. *In re* Todd (1901), S. Dist. N. Y., Brown, J., 109 Fed., 265; 6 A. B. R., 88.

b **[Division between referees.]** Whenever a case is transferred from one referee to another the judge shall de-

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termine the proportion in which the fee and commissions therefor shall be divided between the referees.

As to transfer of reference, see Sec. 22 (b) and notes, *ante*.

c **[Where reference revoked.]** In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee.

SEC. 41. CONTEMPTS BEFORE REFEREES.

a **[Prohibited acts.]** A person shall not, in proceedings before a referee,

(1) **[Disobey orders.]** Disobey or resist any lawful order, process, or writ;

For analogous provisions, see Act of 1800, Secs. 14 and 15; also Secs. 4, 5 and 7 of Act of 1867, *post*.

Bankrupt who fails to account for money, or pay over committed until he accounted for the same. *In re* Rosser (1899), E. Dist. Mo., Rogers, J., 96 Fed., 305; 2 A. B. R., 746; 1 N. B. N., 469.

Referee has power to order bankrupt to turn over assets and on bankrupt's refusal to certify the same to the judge an attachment for contempt may issue. *In re* Miller (1900), N. Dist. Ia., Shiras, J., 105 Fed., 57; 5 A. B. R., 184.

(2) **[Misbehave during hearing.]** Misbehave during a hearing or so near the place thereof as to obstruct the same;

As to when and where hearings had, see Gen. Ord. XII.

(3) **[Withholding documents.]** Neglect to produce, after having been ordered to do so, any pertinent document; or

As to evidence, see Sec. 21a and notes.

(4) **[Refuse to appear for examination.]** Refuse to appear after having been subpœnaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken

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the oath, refuse to be examined according to law: *Provided*, That no person shall be required to attend as a witness before a referee at a place outside of the State of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

See Sec. 21 and notes, *ante*.

Refusal of bankrupt to account for assets justifies imprisonment for contempt. *In re* Rosser (1899), E. Dist. Mo., Rogers, J., 96 Fed., 308; 2 A. B. R., 746; 1 N. B. N., 469.

It is contempt punishable by imprisonment for the bankrupt to refuse to turn over property to the trustee. *In re* Purvine (1899), C. C. A., 5th Cir., Newman, J., 96 Fed., 192; 2 A. B. R., 787

Failure to account for property is contempt and punishable by imprisonment. *In re* Duell (1899), W. Dist., Mo. Phillips, J., 100 Fed., 633; 4 A. B. R., 60.

Referee to report to judge the expenses in each case. Gen. Order XXVI. Sec. 42 *post*.

b [**Contempt proceedings—penalty.**] The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

Bankruptcy courts have jurisdiction to punish for contempt. Sec. 2 (16) and notes.

SEC. 42. RECORDS OF REFEREES.

a [**Manner of keeping records.**] The records of all proceedings in each case before a referee shall be kept as

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nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

Records to be transmitted to clerk after case finished. Sec. 39a (7) Certified copies of records are evidence. Sec. 21d.

b [**Books and papers.**] A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file constitute the records of the case.

c [**Become part of court records.**] The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

As to duty of the referee to transmit records, see Sec. 39a (7).

SEC. 43. REFEREE'S ABSENCE OR DISABILITY.

a [**Filling vacancy.**] Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy.

As to appointment of referees, see Sec. 34 and notes.

On disqualification of regular referee, judge may appoint a special referee, and this without regard to wishes of parties. Owing a debt to the bankrupt is not a disqualification. *Bray* v. *Cobb* (1899), E. Div. N. C., Purnell, J., 91 Fed., 102; 1 A. B. R., 153; 1 N. B. N., 209.

SEC. 44. APPOINTMENT OF TRUSTEES.

a [**Creditors appoint—when court appoint.**] The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or

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after a composition has been set aside or a discharge revoked or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

Trustee includes all the trustees of an estate. Sec. 1 Sub. (26) *ante*.

As to who appoints trustee, Sec. 2, Sub. (17) *ante*.

Creation of office, see *ante*, Sec. 33. See also Sections 46 and 47, *post*.

See Sec. 55 as to meeting of creditors.

An undischarged bankrupt not competent to serve as trustee in another estate. *In re* Smith (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 38; 1 N. B. N., 136.

The appointment of a trustee may be postponed pending an offer of a composition. *In re* Rung Bros. (1899), N. Dist. N. Y., Hotchkiss, R., 2 A. B. R., 620; 1 N. B. N., 406.

On failure of creditor to appoint trustee, referee may. *In re* Kuffler (1899), S. Dist. N. Y., Brown, J., 97 Fed., 187; 3 A. B. R., 162; 2 N. B. N., 29.

Attorney of creditors cannot vote for trustee without special authority. *In re* Blankfein (1899), S. Dist. N. Y., Brown, J., 97 Fed., 191; 3 A. B. R.. 165; 2 N. B. N., 49.

Trustee's being a creditor no disqualification. *In re* Lewensohn, S. Dist. N. Y., Brown, J., 98 Fed., 576; 3 A. B. R., 299; 2 N. B. N., 871.

Referee may appoint trustee on failure of creditors to select one. *In re* Brooks (1900), E. Dist. Pa., McPherson, J., 100 Fed., 432; 4 A. B. R., 50; 2 N. B. N., 680.

Referee may appoint trustee where creditors do not agree, and may exercise his discretion in so doing. *In re* Richards (1900), N. Dist. N. Y., Coxe, J., 103 Fed., 849; 4 A. B. R., 631; 2 N. B. N., 1,027.

An attorney at law cannot vote the claim of his client without a duly executed power of attorney for that purpose. *In re* Scully (1900), R., 108 Fed., 372; 5 A. B. R., 716.

Election of trustee set aside where it appears votes were procured by collusion with the bankrupt. *In re* Henschel (1901), S. Dist. N. Y., Wise, R., 6 A. B. R., 25.

Under some circumstances the court will appoint special counsel to advise the trustee. *In re* Arnett (1901), W. Dist. Tenn., Hammond, J., 112 Fed., 770; 7 A. B. R., 522.

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At the election of a trustee it is the duty of the referee to refuse votes of claims which are held in the interest of the bankrupt. *In re* Dayville Woolen Co. (1902), Dist. Conn., Townsend, J., 114 Fed., 674; 8 A. B. R., 85.

On election of trustee objections to claims should not be disregarded to allow creditors to vote—due consideration should be taken of the objections and an opportunity given to contest the same before decision. *In re* Malino (1902), S. Dist. N. Y., Adams, J., 8 A. B. R., 205.

SEC. 45. QUALIFICATIONS OF TRUSTEES.

a [**Who may be trustees.**] Trustees may be

(1) [**Individuals.**] Individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or

(2) [**Corporations.**] Corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

SEC. 46. DEATH OR REMOVAL OF TRUSTEES.

a [**Suit not to abate.**] The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

SEC. 47. DUTIES OF TRUSTEES.

a [**Duties.**] Trustees shall respectively

(1) [**Account and pay over.**] Account for and pay over to the estates under their control all interest received by them upon property of such estates;

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(2) **[Turn property into money—close estates.]** Collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest;

As to suits by trustees, see Sec. 23b, c, d and Sec. 11; see also Sec. 60c as to suits to set aside preferences.

Title to bankrupt's property vests in trustee. Sec. 70 and notes.

Costs should not be incurred by trustee in selling mortgaged property nor should he accept burdensome property. *In re* Cogley (1901), N. Dist. Ia., Shiras, J., 107 Fed., 73; 5 A. B. R., 731.

Trustee not liable for rent of premises where no demand made by landlord. *In re* Wiessner (1902), E. Dist. N. Y., Thomas, J., 116 Fed., 68; 8 A. B. R., 415.

Assignee in proceedings prior to bankruptcy who was allowed to remain in possession of bankrupt's property during several months, is entitled to compensation for such services. *In re* Klein & Co. (1902), S. Dist. N. Y., Adams, J., 116 Fed., 523; 8 A. B. R., 559.

Trustee not permitted to maintain an attachment by a creditor voidable under the act to attack a mortgage. *In re* Moore (1901), Dist. Vt. Wheeler, J., 107 Fed., 264; 6 A. B. R., 175.

Trustees duties discussed at length—right to hire counsel and commence actions for recovery of assets—practice of submitting validity of declaration and prospects of recovery to court for instructions condemned in that case largely on the ground of bad faith. *In re* Baber (1902), E. Dist. Tenn., Hammond, J., 119 Fed., 520.

Duty of trustee to refund money paid bankrupt by mutual mistake. *In re* Collisi, W. Dist. Mich., Blair, R., 1 A. B. R., 625.

He may in the exercise of reasonable judgment employ counsel. *In re* Abram (1900), E. Dist. Cal., DeHaven, J., 103 Fed., 272; 4 A. B. R., 575.

Trustee's counsel must not represent interests adverse to the general creditors. *In re* Rusch (1900), E. Dist. Wis., Seaman, J., 105 Fed., 607; 5 A. B. R., 565.

Trustee should pay taxes. *In re* Conhaim (1900), Dist. Wash., Handford, J., 100 Fed., 268; 4 A. B. R., 58; 2 N. B. N., 148.

(3) **[Deposit money.]** Deposit all money received by them in one of the designated depositories;

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As to selection of depositories for money by court. Sec. 61a.

The funds should be deposited to the credit of the trustee designating the estate. *In re* Carr (1902), E. Dist. N. C., Purnell, J., 116 Fed., 556; 9 A. B. R., 58.

(4) [**Disburse money.**] Disburse money only by check or draft on the depositories in which it has been deposited;

Secs. 60, 61a.

(5) [**Furnish information.**] Furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest;

Accounts are open to inspection of all parties in interest. Sec. 49.

(6) [**Keep accounts.**] Keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts;

See Sec. 5d and notes as to keeping of separate accounts relative to partnership and individual property.

(7) [**Make detailed statements.**] Lay before the final meeting of the creditors detailed statements of the administration of the estates;

As to meetings of creditors, see Sec. 55. See Sec. 58a (6).

(8) [**Make reports.**] Make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors;

As to notices to creditors, see Sec. 58a (6).

(9) [**Pay dividends.**] Pay dividends within ten days after they are declared by the referees;

See Section 65 and notes as to the declaration and payment of dividends.

(10) [**Report condition of estates.**] Report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their ap-

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pointment and every two months thereafter, unless otherwise ordered by the courts; and

(11) **[Set apart exemptions.]** Set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

As to form for report of exempt property, see Form 47. As to exemption of bankrupt, see Sec. 6 and notes *supra*.

Duty of trustee to set aside exemptions, notwithstanding bankrupt's fraudulent concealment of property. *In re* Peterson (1899), E. Dist. Wis., Jones, R., 1 A. B. R., 254; 1 N. B. N., 215.

Although no trustee be appointed an order setting aside the bankrupt's exemptions preserves the exemptions to the bankrupt. *Smalley* v. *Langenower* (1902), Sup. Ct.., Wash., Fullerton, J., 70 Pac., 786.

Exemptions must be set aside by trustee and no one can act in his place. *In re* Grimes (1899), W. Dist. N. C., Ewart, J., 96 Fed., 529; 2 A. B. R., 730; 1 N. B. N., 116.

On dispute between trustee and bankrupt as to value of homestead exemptions, it should be sold and the amount paid out of proceeds. *In re* Lynch (1900), S. Dist. Ga., Spear, J., 101 Fed., 579; 4 A. B. R., 262; 1 N. B. N., 182.

Bankruptcy court has exclusive jurisdiction to determine exemptions. Homestead acquired while insolvent from proceeds of property unpaid for, not allowable—burden of proving solvency at time of purchase on the bankrupt. *McGahan* v. *Anderson* (1902), C. C. A., 4th Cir., Jackson, J., 113 Fed., 115; 7 A. B. R., 641.

b **[Concurrence of two out of three.]** Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

See Secs. 44 and 45.

c* **[Trustee to file certified copy of adjudication.] The trustee shall, within thirty days after adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall re-

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ceive a compensation of fifty cents for each copy so filed, which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the cost and disbursements of the proceedings.*

As amended by Act of 1903. See amended, page—*post*. Additional matter found between stars.

As to duties of trustees, see Gen. Order XVII. As to bonds of joint trustees, see Sec. 50j.

SEC. 48. COMPENSATION OF TRUSTEES.

a [**Fees and commissions.**] Trustees shall receive (as full compensation) for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered, such commissions (on sums to be paid as dividends and commissions) *on all moneys disbursed by them* as may be allowed by the courts, not to exceed (three) *six* per centum on the first five (thousand) *hundred* dollars or less, *four per centum on moneys in excess of five hundred dollars and less than fifteen *hundred *dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars,* (two per centum on the second five thousand dollars or a part thereof) and one per centum on (such sums) *moneys* in excess of ten thousand dollars. *And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of one per centum of the amount to be paid the creditors on such composition.*

As to compensation of trustees, see Gen. Order XXXV. See also notes as to compensation of referees, *ante* Sec. 40.

As amended by Act of 1903. See Amendment page , *post*. Matter found in Act of 1898 and omitted in Amendment contained between brackets–new matter found between stars. See Sec. 72 *post*, as to limitation on compensation of trustees and referees.

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Trustee is entitled to commissions on amounts paid secured creditors. *In re* Coffin (1899), E. Dist. Tenn., Dillard, R., 2 A. B. R., 344; 1 N. B. N., 507.

Commissions payable on claims having priority. *In re* Gerson, E. Dist. Pa., Mason, R., 2 A. B. R., 352; 1 N. B. N., 315.

No commission payable on prior or secured claims—discussion of word "dividend." *In re* Fielding (1899), W. Dist. Mo., Phillips, J., 91 Fed., 800; 3 A. B. R., 135; 2 N. B. N., 735.

Trustee cannot receive lump sum greater than his commissions of three per cent., nor can he be allowed for services as agent prior to his appointment as trustee. *In re* Carolina Cooperage Co. (1899), E. Dist. N. C., Purnell., J., 96 Fed., 950; 3 A. B. R., 154; 1 N. B. N., 534.

No fees allowed trustee as commissions on dividends to secured creditors. *In re* Utt (1901), C. C. A., 7th Cir., Woods, J., 105 Fed., 754; 5 A. B. R., 383.

No extra compensation allowed trustee, no matter how valuable his services. *In re* Epstein (1901), W. Dist. Ark., Trieber, J., 109 Fed., 878; 6 A. B. R., 191.

Sale by trustee for invoice price—fact that bankrupt had purchased some of the goods originally for less than the invoice price constitutes no ground for rebate to purchaser. *Owens* v. *Bruce* (1901), C. C. A., 4th Cir., Waddill, J., 109 Fed., 72; 6 A. B. R., 322.

Trustee's commissions not earned where the creditor after commencing suit in trustee's name, compromised the same and assigned the claim to a friend of the bankrupt and dismissed the suit. *In re* Kaiser (1902), Dist. Mont., Knowles, J., 112 Fed., 955; 8 A. B. R., 108.

Trustee who is an attorney may defend in person suits against property in his hands, and will be allowed the same compensation as he would if he had employed other competent counsel. *In re* Mitchell (1899), W. Dist. Pa., Van Wormer, R., 1 A. B. R., 687; 1 N. B. N., 264.

Trustee allowed extra fees for unusual services for carrying on a business. *In re* Plummer (1899), N. Dist. N. Y., Hotchkiss, R., 3 A. B. R., 320; 2 N. B. N., 292.

"Dividends" comprehends payments made to priority and secured creditors, as well as out of funds passing through the trustees hands. *In re* Muhlhouser Company (1902), N. Dist. O., Remington, R., 9 A. B. R., 80.

Fees and expenses of trustee of sale of mortgaged property should be allowed only as connected with the sale—not then allowed as fees incurred in bankruptcy proceeding. *In re* Utt (1901), C. C. A., 7th Cir., Woods, J., 105 Fed., 754; 5 A. B. R., 383.

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b **[When more than one trustee.]** In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

As to how and when trustees appointed, see Sec. 44.

c **[Compensation withheld.]** The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

See Gen. Ord. XXXV as to compensation; also Sec. 48. As to removal of trustee, see Gen. Ord. XIII.

SEC. 49. ACCOUNTS AND PAPERS OF TRUSTEES.

a **[Must be open to inspection.]** The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

On accounting by the trustee, it is the duty of the referee to examine the details of the trustee's account. *In re* Baginsky, Michael & Co. (1899), E. Dist. La., Gurley, R., 2 A. B. R., 243; 1 N. B. N., 360.

It is an offense under this act for a referee or trustee to refuse to permit a reasonable opportunity for the inspection of accounts of estates. Sec. 29c (3).

SEC. 50. BONDS OF REFEREES AND TRUSTEES.

a **[Referees bonds.]** Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

As to form of bond of referee, see Form No. 17.

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One surety only is necessary on a bond, where it is a surety company. *In re* Max Kalter (1899), E. Dist. Pa., Mason, R., 2 A. B. R., 590; 1 N. B. N., 384.

b **[Trustees' bond.]** Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

As to form of bond, see Form No. 25. Order approving trustee's bond, see form No. 26.

c **[Creditors fixing amount of trustees' bond.]** The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

As to meeting of creditors, Sec. 55. Creditors appoint trustees, see Sec. 44.

d **[Sureties qualification.]** The court shall require evidence as to the actual value of the property of sureties.

e **[Two sureties required.]** There shall be at least two sureties upon each bond.

f **[Value of property of sureties.]** The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

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g **[Corporations as sureties.]** Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

h **[Filing of bonds—suit on bonds.]** Bonds of referees, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

Trustee may bring suit on bond of former trustee in District Court. *United States* v. *Union Surety and Guaranty Co.* (1902), S. Dist. N. Y., Adams, J., 118 Fed., 482; 9 A. B. R., 114.

i **[Trustees' personal liability.]** Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this act, of whose estates they are respectively trustees.

j **[Joint trustees.]** Joint trustees may give joint or several bonds.

k **[Vacancy by failure to give bond.]** If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

l **[Limitation of suits on referees' bonds.]** Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

m **[Limitation to suits on trustees' bonds.]** Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

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SEC. 51. DUTIES OF CLERKS.

a **[Duties.]** Clerks shall respectively

(1) **[Account for fees.]** Account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers;

(2) **[Collect fees.]** Collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without, and can not obtain, the money with which to pay such fees;

See Sec. 52 as to compensation of clerks.

Petitioner *in forma pauperis* must show he cannot obtain money for costs—he cannot pay his counsel and then make the affidavit. *In re* Collier (1899), W. Dist. Tenn., Hammond, J., 93 Fed., 191; 1 A. B. R., 182; 1 N. B. N., 257.

In pauper cases the costs of the bankrupt are not a charge on his exemptions—he need not be expected to borrow the costs. *Sellers, et al* v. *Bell*, 1899 Circuit Ct. of Appeals, 5th. Cir. McCormick, J., 94 Fed., 801; 2 A. B. R., 529.

One fee only can be charged a partnership petition. *In re* Langslow *et al.* (1899), N. Dist. N. Y., Coxe, J., 98 Fed. 869; 1 A. B. R., 258; 1 N. B. N., 232.

Partnership and individual petitions may be joined, and one fee only charged for filing. *In re* Gay, (1899), Dist. N. H. Aldrich, J., 98 Fed., 870; 3 A. B. R., 529.

The statutory fees on proper affidavit may be waived by the clerk to the extent of filing the petition, but the subsequent proceedings will not ensue until those fees are paid by the bankrupt, unless from peculiar circumstances he is an object of charity. *In re* Anonymous (1899), Dist. Washington, Handford, J., 2 A. B. R., 527.

The costs advanced are not to be refunded under rule 10. *In re* Matthews (1899), S. Dist. Ia., Shiras, J., 97 Fed. 772; 3 A. B. R., 265.

Clerk should collect filing fees separately for partnership and indi-

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vidual partners. *In re* Barden (1900), E. Dist. N. C., Purnell, J., 101 Fed., 553; 4 A. B. R., 31; 2 N. B. N., 741.

Poverty affidavit establishes *prima facie* right to file petition without the costs. *In re* Levy (1900), E. Dist. Wis., Seaman, J., 101 Fed., 247; 4 A. B. R., 108.

On poverty affidavit referee not authorized to rule the bankrupt to advance costs before discharge.—Such orders being for the judge. *In re* Plimpton (1900), Dist. Vt., Wheeler, J., 103 Fed., 775; 4 A. B. R., 614; 3 N. B. N., 14.

In pauper cases the costs of the bankrupt are not a charge on his exemptions—he need not be expected to borrow the costs. *Sellers* v. *Bell* (1899), C. C. A., 5th Cir., McCormick, J., 94 Fed., 801; 2 A. B. R., 529.

(3) **[Deliver papers.]** Deliver to the referees upon application all papers which may be referred to them, or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used;

Duty of referees to call for papers. Section 59 Sub. (8).

(4) **[Pay referee's and trustees' fees.]** And within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

As to keeping of clerk's docket see Gen. Order I. post.

As to filing of papers, see Gen. Order II.

See Sec. 40 a as to compensation of referees; as to compensation of trustees see Sec. 48, see also Gen. Ord. XXXV.

SEC. 52. COMPENSATION OF CLERKS AND MARSHALS.

a **[Clerks' filing fee.]** Clerks shall respectively receive as full compensation for their services to each estate, a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

As to fees of clerks see Gen. Order XXXV post. See as to pauper petitions, Sec. 51 a (2).

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b **[Marshals fee.]** Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may hereafter be enacted, fixing the compensation of marshals.

As to accounts to be kept by Marshals see Gen. Order XXIX post.

Marshal permitted to charge fee for serving petitioner where no statutory provision is made. *In re* Damon, W. Dist. N. Y., Hazel, J., 5 A. B. R., 133.

SEC. 53. DUTIES OF ATTORNEY GENERAL.

a **[Collect and report statistics of cases.]** The Attorney General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

SEC. 54. STATISTICS OF BANKRUPTCY PROCEEDINGS.

a **[Officers to furnish information to attorney general.]** Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney General, for statistical purposes, within ten days after being requested by him to do so.

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CHAPTER VI.

CREDITORS.

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SEC. 55. MEETINGS OF CREDITORS.

a **[Place and time.]** The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bank-

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rupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

As to examinations of bankrupt, see Gen. Order XXII. For analogous. provisions, see Sec. 6, 29 and 30 Act of 1800, Sec. 7 Act of 1841, and Sec 11, 12, 17, 26, 28 Act of 1867.

As to notices of first meetings of creditors, see Sec. 58 and Gen. Ord. XXI. For form of notice of first meeting, see Form No. 18

Court may call special meeting of creditors. Gen. Order XXV.

Conduct of meetings of creditors under Sections 55 and 57 discussed and construed. *In re* Eagles & Crisp (1899), E. Dist. N. C., Purnell, J., 99 Fed., 695; 3 A. B. R., 733; 2 N. B. N., 462.

Surprise occasioned by oversight of legal provision no ground for adjournment. *In re* Finlay (1900), S. Dist. N. Y., Coxe, J., 104 Fed., 675; 3 A. B. R., 738.

b **[Presiding officer—duties.]** At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

Court may order that no trustee be appointed, Gen. Ord. XV.

Attorney of creditor has a lien on the claim allowed for his fees and the District Court will enforce it for him. *In re* Rude (1900), Dist. Ky., Evans, J., 101 Fed. 805; 4 A. B. R., 319; 2 N. B. N., 493.

The interference by bankrupt in procuring proxies will justify referee in throwing out such proxies in the election. *In re* McGill (1901), C. C. A. 6th. Cir. Day, J., 106 Fed. 57; 5 A. B. R., 155.

See notes under Sec. 56 post. Form of order for examination of bankrupt, form No. XXVIII. As to examination of the bankrupt see Sec. 7 (9) and 21 a.

c **[Creditor's duty.]** The creditors shall at each meeting take such steps as may be pertinent and necessary for the

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promotion of the best interests of the estate and the enforcement of this Act.

d **[Subsequent meetings of creditors.]** A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

e **[Meeting at call of court.]** The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

As to proof of claims see Sec. 57 post, see as to voters at creditors' meetings Sec. 56 post.

f **[Final meeting.]** Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

Notices of final meetings, Sec. 58. Trustees duties to lay statement of condition of the estate before the meeting of creditors. Sec. 47 a (7).

Notice of final meeting of creditors may be included in notice of payment of dividend. *In re* Smith (1899), N. Dist. N. Y., Hotchkiss, R., 2 A. B. R., 648; 1 N. B. N., 404.

Sec. 56. Voters at Meetings of Creditors.

a **[Method of voting.]** Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

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As to proof and allowance of claims see Sec. 57 and notes.

Referee may reject proxy which is procured in the interest of the bankrupt. *In re* Henschel (1901), S. Dist. N. Y., Brown, J., 109 Fed., 861; 6 A. B. R., 305. *In re* McGill (1901), C. C. A., 6th Cir. Day, J., 106 Fed. 57; 5 A. B. R., 155.

Claims that are not allowed cannot vote. *In re* Henschel, (1902), C. C. A., 2nd Cir., Wallace, J., 114 Fed., 968; 7 A. B. R., 662.

b **[Voting by secured creditors.]** Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

See Sec. 57 as to securities and finding value of.

For definition of secured creditor see Sec. 1 (23), and notes.

Creditors who recovered twenty per cent. dividend under an assignment prior to the passage of the bankruptcy act, are not held to be secured creditors or barred from proving claim, and voting for trustee. *In re* Folb (1899), E. Dist. N. C. Purnell, J., 91 Fed., 107; 1 A. B. R., 22; 1 N. B. N. 34.

Absent creditors not to be considered in voting for trustee, though their claims have been allowed. Referee who disapproves of creditors' choice of trustee must call another meeting. *In re* MacKeller (1902), Middle Dist. Pa., Archibald, J., 116 Fed., 547; 8 A. B. R., 669.

In partnership cases creditors of the firm may vote the full amount of the claim irrespective of the securities furnished by individual members to such creditors. *In re* Coe (1899), N. Dist. Ohio, Remington, R., 1 A. B. R., 275; 1 N. B. N., 294.

The provisions of this section apply to partnership creditors only in case of a joint petition. *In re* Beck (1901), Dist. Mass., Lowell, J., 110 Fed., 140; 6 A. B. R., 554.

SEC. 57. PROOF AND ALLOWANCE OF CLAIMS.

a **[Of what to consist.]** Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and

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whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

See Gen. Order XXI as to proof and allowance of claim.

See debts not barred by discharge, Sec. 17.

For forms for proof of debt see Form No. 31, 32, 33, 34, 35 and 36.

See debts not barred by discharge, Sec. 17.

Proof of claim should state consideration and defective claim may be expunged when so defective. *In re* Scott (1899), N. Dist. Tex., Meek, J., 99 Fed., 404; 1 A. B. R., 553; 1 N. B. N., 226.

The proof of claim and evidence should correspond—a material variance may justify its diallowance—where claimant is found guilty of combining with bankrupt in scheme to defraud the creditors his claim will be disallowed. *In re* Lanshaw (1902), Dist. Mo., Phillips, J., 9 A. B. R., 167.

An outlawed claim may be expunged after proof. Scheduling such claim does not revive it. *In re* Lipman (1899), S. Dist. N. Y., Brown, J. 94 Fed., 353; 2 A. B. R., 46; 1 N. B. N., 310.

When a claim is proved it must be allowed upon filing unless objections are made by the parties in interest, or unless continued for cause by the court upon its own motion. *In re* Ankenny (1899), N. Dist. Ia., James, R. , 1 N. B. N., 482.

Duty of referee to allow claim even though it is bad pleading, when it conforms with bankruptcy forms, orders and statute. *Idem.*

Amendments of claims allowed where justice will be done. *In re* Meyers & Charni (1900), Dist. Ind., Barker, J., 99 Fed., 691; 3 A. B. R., 760; 2 N. B. N., 765.

Creditor who has instituted replevin against the assignee under general assignment not estopped from proving his claim for balance of claim in bankruptcy. *In re* Wilcox & Wright (1899), Dist. Tenn., Grayson, R., 1 A. B. R., 544.

Contract for annuity provable up to expiration of one year from adjudication. *Bray* v. *Cobb* (1900), E. Dist. N. C., Purnell, J., 91 Fed., 102; 3 A. B. R., 788; 1 N. B. N., 209.

A mortgagee not bound to prove claim in ordinary way. Omission to do so merely forfeits rights to claim as general creditor. He may by petition have his lien allowed and paid out of fund obtained by sale of the property. *In re* Goldsmith, N. Dist. Texas. Meek, J., 118 Fed., 763.

Affidavit to claim administered by the attorney will not prevent the

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allowance of the claim. *In re* Kimball (1899), Dist. Mass., Lowell, J., 100 Fed., 777; 4 A. B. R., 144; 1 N. B. N., 515.

Oral admissions uncorroborated by circumstances not sufficient to prove claim. *In re* Kaldenberg (1900), S. Dist. N. Y., Brown, J., 105 Fed., 232; 5 A. B. R., 6.

Proof of claim must be made within the year. Setting up of adverse claim for preferences not proof of claim. *In re* Rhodes (1900), W. Dist. Pa., Buffington, J., 105 Fed., 231; 5 A. B. R., 197.

Rent accruing after bankruptcy not a provable claim. *Atkins* v. *Wilcox* (1900), C. C. A., McCormick, J., 105 Fed., 595; 5 A. B. R., 313.

Judgment inside of four months on a creditor's bill begun before four months gives no preference to the complainants in the bill. *In re* Lesser Bros. (1900), C. C. A., 2nd Cir, Shipman, J., 5 A. B. R., 320.

Judgment on attachment within the four months vacated although the attachment was more than four months old. *In re* Tobias Lesser (1901), S. Dist. N. Y., Brown, J., 108 Fed., 201; 5 A. B. R., 326.

Bankrupt stock broker, who has pledged stock bought by him for a customer, is not guilty of conversion. Customer may prove claim for damages as of date of adjudication. *In re* Swi ft (1900), Dist. Mass., Lowell, J., 106 Fed., 65; 5 A. B. R., 335.

Alimony whether due or accruing not a provable debt or a dischargeable debt. *Audubon* v. *Shufeldt* (1901), U. S. Sup. Ct., Gray, J., 181 U. S., 575; 5 A. B. R., 829.

Proof of claim may be made by holder of note against both maker and endorser for full amount of note. *In re* Swift (1900), Dist. Mass., 106 Fed., 65; 5 A. B. R., 415.

Only trustee can appeal from allowance of claim. *Foreman* v. *Burley* (1901), C. C. A., 1st Cir., Putnam, J., 109 Fed., 313; 6 A. B. R., 230.

Claim of corporation which was de facto a partner of bankrupt not allowed as the contract was *ultra vires*. *In re* Ervin (1901), E. Dist. Pa., McPherson, J., 109 Fed., 135; 6 A. B. R., 356.

Proof of claim where bankrupt dead cannot be by claimant in Penn. although if no objection be made claim must be allowed. *In re* Shaw (1901), E. Dist. Pa., McPherson, J., 109 Fed., 780; 6 A. B. R., 499.

A wife's claim for money advanced bankrupt husband cannot be proved against his estate in Mass. *In re* Talbot (1901), Dist., Mass., Lowell, J. 110 Fed. 924, 7 A. B. R., 29.

Proof of claims against estate of bankrupt by member of his family should be scrutinized with great care. *In re* Brewster, (1902) N. Dist. N. Y., Smith, R. 7 A. B. R. 486.

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Money deposited with bankrupt for margins not a provable claim. *In re* Knott. (1901) Dist. Vt. Wheeler, J., 109 Fed. 626; 6 A. B. R., 749.

Expenses of an agreement of liquidation entered into by creditors cannot be proved as a claim against the estate. *In re* Wertheimer, (1900) S. Dist. N. Y. Adams, J., 6 A. B. R. 756;

Claim for rent under lease providing that in the event lessee became bankrupt rent for unexpired term should become due and payable — doubted whether such clause enforcible in bankruptcy — priority of lien upheld. Wilson v. Penn. Trust Co., (1902) C. C. A. 3rd. Cir. Acheson, J. 114 Fed. 742; 8 A. B. R. 169;

Claiment who fraudulently pads his claim not allowed to prove for anything. In re Flick (1900), S. Dist. Ohio, Thompson, J., 105 Fed. 503; 5 A. B. R. 465;

Note given by bankrupt to former partner for partner ship assets not enforcible against individual estate of bankrupt. *In re* Gerson (1901), E. Dist. Pa., Mason, R., 5 A. B. R., 480.

Claim for tort may be waived as to the tort and allowed. Amount being certain is liquidated. *In re* Filer (1901), S. Dist. N. Y., Dexter, R., 5 A. B. R., 582.

Court on failure of creditors to apply a payment on either of two claims exercises its equitable powers to direct the application. *Zartman* v. *Hines* (1901), W. Dist. N. Y., Hawley, R., 6 A. B. R., 139.

In Alabama wife may be claimant against her bankrupt husband's estate. *Blumberg* v. *Bryan* (1901), C. C. A., 5th Cir., McCormick, J., 107 Fed., 673; 6 A. B. R., 20.

A secured claim is preferred only to the extent that it covers a past consideration. *City Nat. Bank of Greenville* v. *Bruce* (1901), C. C. A., 4th Cir., Waddill, J., 109 Fed., 69; 6 A. B. R., 311.

Claim of a surety on contract of bankrupt is provable. *Bryce* v. *Guaranty Co.*, C. C. A., 6th Cir., Severns, J., 7 A. B. R., 6.

Claim for damages for breach of promise to marry assessable in bankruptcy. *In re* Crocker (1902), S. Dist. N. Y., Wise, R., 8 A. B. R., 188.

Proof of the assigned claim should be sufficient as to the assignee to estop the assignor. *In re* Miner (1902), Dist. Ore., Billinger, J., 114 Fed., 998; 8 A. B. R., 248.

b **[When claim founded upon writing.]** Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a state-

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ment of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

As to form of affidavit of lost instrument, see Form No. 37.

Contesting claim—creditor moving to re-examine claim of another has the burden of proof. *In re* Howard (1900), N. Dist. Cal., DeHaven, J., 100 Fed., 630; 4 A. B. R., 69; 1 N. B. N., 488.

Proceedings on proofs of claim, burden of proof on objectors (A), (B), (C), (D) and (F), construed. *In re* Sumner (1900), E. Dist. N. Y., Thomas, J., 101 Fed., 224; 4 A. B. R., 123; 2 N. B. N., 68.

Creditors may examine the bankrupt without first proving claim. *In re* Jehu (1899), N. Dist. Ia., Shiras, J., 94 Fed., 638; 2 A. B. R., 498; 1 N. B. N., 509.

Where lost note was payable to a bank the note having been given by bankrupt, the bank was enjoined from indorsing it, but allowed as a claim. *In re* Jackson (1899), Dist. Vt., Wheeler, J., 94 Fed., 797; 2 A. B. R., 501.

c [**Filing claims.**] Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending or before the referee if the case has been referred.

As to proof of debts, see Gen. Ord. XXI (3).

d [**When claims allowed.**] Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

Bankrupt may file objections to claims. *In re* Ankenny (1899), N. Dist. Ia., James, R., 1 N. B. N., 511.

e [**Claims of secured creditors.**] Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such

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sums only as to the courts seem to be owing over and above the value of their securities or priorities.

Secured creditor defined. Sec. 1 (23) and notes.

Filing proof of unsecured claim is not an irrevocable waiver of security. Proof may be withdrawn if no dividend declared and rights of third parties have not intervened. *In re* Friedman (1899), S. Dist. N. Y., Holt, R., 1 A. B. R., 510; 1 N. B. N., 208.

Full particulars concerning notes on which claims are based, must be furnished. *In re* Stevens (1900), Dist. Vt., Wheeler, J., 104 Fed., 323; 5 A. B. R., 11.

f **[Objections to claims.]** Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

Where proof shows claim was for money loaned bankrupt for purpose of gambling for mutual benefit, claim not allowable. *Marden* v. *Phillips et al.* (1900), Dist. Mass., Brown, J., 103 Fed., 196; 4 A. B. R., 566.

g **[Preferred creditors must surrender preference before proving claim.]** The claims of creditors who have received preferences, *voidable under section sixty, subdivision b, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable, under section sixty-seven, subdivision e, have been made or given,* shall not be allowed unless such creditors shall surrender *such* (their) preferences, *conveyances, transfers, assignments, or incumbrances.*

Omitted matter from Act of 1898 between brackets. New matter found between stars.

As amended by Act of 1903, see amended page post.

Sec. 60 *a b c* and notes.

The unpopularity of this clause was largely instrumental in procuring the amendments of 1903.

Note the controlling case of *Pirie* v. *Chi. T. & T. Co. post* by the Supreme Court.

Note the amendment of 1903 in this clause removing the penalizing of the "innocent" preferential creditor, so called, *supra* .

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Preferences received without knowledge of insolvency must be returned before creditor may prove claim. Innocent creditor on the same footing with guilty. *Pirie etc. Co.* v. *Chicago Title & Trust Co.*, U. S. Sup. Ct., McKenna, J., 102 Fed., 1005; 5 A. B. R., 814.

Creditor may not prove a claim on notes given for indebtedness incurred after the giving a note in full of indebtedness without surrendering payments received on first note. *In re* Meyer (1902), N. Dist. Texas, Meek, J., 115 Fed., 997; 8 A. B. R., 598.

Bank discounting a note in good faith otherwise preferential need not surrender preference before proving claim. *In re* Wyly (1902), N. Dist. Texas, Meek, J., 116 Fed., 38; 8 A. B. R., 604; *in re* Bullock (1902), E. Dist. N. C., Purnell, J., 116 Fed., 667; 8 A. B. R., 646.

Claim for damages for conversion of stock cannot be proved until payments received on account are surrendered. *In re* Graff (1902), E. Dist. N. Y., Thomas, J., 117 Fed., 343; 8 A. B. R., 744.

No preference shown in receipt of payment from third person on which bankrupt was also liable—referee's practice is governed by rules in equity in taking testimony and he cannot excuse a witness from answering questions on objections, but should note the answer and report the facts. *Dressel* v. *North State Lumber Co.* (1902), E. Dist. N. C., Purnell, J., 119 Fed., 531.

Where all creditors whose claims were allowed have received one hundred per cent. creditors whose claims have been disallowed for preference should be paid. *In re* Morton (1902), Dist. Mass., Lowell, J., 118 Fed., 908.

Creditors who have received a preference must refund before proving claims. *Worden* v. *Columbus Electric Co.* (1899), Dist. Ind., Baker, J., 96 Fed., 803; 3 A. B. R., 186.

An innocent creditor receiving preferences allowed to elect whether he will surrender or not. *In re* Conhaim, Dist. Wash., Handford, J., 100 Fed., 268; 3 A. B. R., 249; 2 N. B. N., 521.

Fraudulent combination of creditors with bankrupt will justify court in postponing claim. *In re* Headley (1899), W. Dist. M., Phillips, J., 97 Fed., 765; 3 A. B. R., 272; 2 N. B. N., 250.

Preference, although more than four months old, must be surrendered before proof. *In re* Jones (1900), Dist. Mass., Lowell, J., 100 Fed., 781; 4 A. B. R., 563; 2 N. B. N., 961.

Clerk's wages covering more than three months' time—payment to be made thereon within four months. *In re* Henry C. King Co. (1902), Dist. Mass., Lowell, J., 113 Fed., 110; 7 A. B. R., 619.

No preference shown in payment which closed the account where a new

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transaction is subsequently occurring. *In re* Seay (1902), N. Dist. Ga., Newman, J., 113 Fed., 969; 7 A. B. R., 700.

Payments in four months which are followed by new credits are to be rendered thereby in estimating the amount of preference. *Kimball* v. *E. A. Rosenham Co.* (1902), C. C. A., 8th Cir., Sanborn, J., 114 Fed., 85; 7 A. B. R., 718.

Payment to a bank on note discounted by creditor is a preference as to such creditor. *In re* Waterbury Furniture Co. (1902), Dist. Conn., Townsend, J., 114 Fed., 255; 8 A. B. R., 79.

To avoid liability on preference creditors turned over note of bankrupt to a bank to make proof thereon—claim of bank was disallowed. *In re* Levi (1902), W. Dist. N. Y., Van Vorhis, R., 8 A. B. R., 244.

The fact that the estate was enriched as a whole by the dealings with the creditor in the four months will not relieve him from the duties of surrendering preferences, there being no subsequent credits. *In re* Colton Ex. & Import Co. (1902), S. Dist. N. Y., Adams, J., 115 Fed., 158; 8 A. B. R., 257.

Claim of bank which issued due bill on draft of debtor who had already made assignment held it might retain the money and apply it to another proceeding in bankruptcy, which was filed separately—set-off allowed in bankruptcy though not under state law. *In re* Meyer & Dickinson (1901), E. Dist. N. Y., Thomas, J., 106 Fed., 828; 5 A. B. R., 593.

Specific application of payments to outstanding accounts does not prevent payments from being preferences. *In re* Bashline (1901), W. Dist. Pa., Buffington, J., 109 Fed., 965; 6 A. B. R., 194.

General creditor must surrender his security before his claim may be allowed. *In re* Leeman (1899), Dist. Me., Sprague, R., 1 N. B. N., 331.

Payment of rent to landlord not a preferred claim, he not being in same class as other creditors. *In re* Barrett (1901), S. Dist. N. Y., Wise, R., 6 A. B. R., 199.

There is no time limit of four months to these preferences. A transaction closed by a payment in full is not to be carried over to affect new credits and payments. Labor payment is not a "transfer". *In re* Abraham Steers Lumber Co. (1901), S. Dist. N. Y., Thomas, J., 110 Fed., 738; 6 A. B. R., 315.

A creditor receiving preference on one of several claims of the same class must surrender it before he may prove any of his claims. *Swarts* v. *Fourth Nat. Bank of St. Louis* (1902), C. C. A., 8th Cir., Sanborn, J., 117 Fed., 1; 8 A. B. R., 673.

A creditor who received preference innocently may not prove his claim without surrender. *In re* Schafer (1900), N. Dist. N. Y., 105 Fed., 352; 5 A. B. R., 146.

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As to right to set off new credits by the creditor, *McKey* v. *Lee* (1901), C. C. A., 7th Cir., Grosscup, J., 105 Fed., 923; 5 A. B. R., 267.

Payment by a firm to its creditor preferentially made will prevent him from proving against the estate of one of the members in bankruptcy. *In re* Kellar (1901), N. Dist. Ia., Shiras, J., 110 Fed., 348; 6 A. B. R., 487.

Payment to servants, clerks and laborers not a preference under this section. *In re* Read & Knight (1901), S. Dist., N. Y. Dexter, R., 7 A. B. R., 111.

A fraudulent settlement by an insolvent with his creditors can be urged to defeat allowance of claims of such creditors in subsequent bankruptcy proceedings who participated in the fraud. *In re* Knox, S. Dist. N. Y., Coxe. J., 98 Fed., 585; 3 A. B. R., 371.

Burden of proof is on those attacking validity of claim. *Hill* v. *Levy* (1900), Dist. Va., Waddill, J., 98 Fed., 94; 3 A. B. R., 374; 2 N. B. N., 180.

The creditor receiving payment within the four months innocently, must refund before proving claim. Citing *Columbus Electric Co.* v. *Worden* (1899), 96 Fed., 803; 3 A. B. R., 634. *In re* Fixen & Co. (1900), C. C. A., 9th Cir., Morrow, J., 102 Fed., 295; 4 A. B. R., 10; 1 N. B. N., 568.

Construing this section with 60 (a) and (b), innocent creditors who receive preferences within four months must surrender before proving claims. *Strobel* v. *Knost* (1900), S. Dist. Ia., Thompson, J., 99 Fed., 409; 3 A. B. R., 631.

See to same effect as *Strobel* v. *Knost*, *Columbus Electric Co.* v. *Worden* (1900), C. C. A., 7th Cit., Jenkins, J., 96 Fed., 803; 3 A. B. R., 634.

Creditors must come into court and submit their claims. *In re* Coffin (1899), E. Dist. Tex., Dillard, R., 2 A. B. R., 344; 1 N. B. N., 507.

A creditor who has been given a preference must surrender it before he can prove his claim. *In re* Knost & Wilhelmy (1899), S. Dist. Ohio, Waite, R., 2 A. B. R., 471; 1 N. B. N., 403.

In absence of proof of insolvency no preference can be found to exist *In re* Alexander (1900), N. Dist. Ga., Newman, J., 102 Fed., 464; 4 A. B. R., 376; 2 N. B. N., 997.

This section and 60 (a) do not apply where the creditor did not know he was insolvent at the time of making the payment. *In re* Smoke (1900), S. Dist. N. Y., Brown, J., 4 A. B. R., 434; 2 N. B. N., 831.

Creditor who has received preference not entitled to file petition in involuntary bankruptcy. *In re* Rogers Milling Co. (1900) W. Dist. Ark., Rogers, J., 102 Fed., 982; 4 A. B. R., 540; 2 N. B. N., 973.

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An innocent preferential creditor may not be compelled to surrender his mortgage, nor be deprived of the proceeds on sale of property free rom liens. *McNair* v. *McIntyre* (1902), C. C. A., 4th Cir., Simonton, J., 113 Fed., 113; 7 A. B. R., 638.

Payment otherwise preferential subject to set off by subsequent credits. The entire claim is not divisable so as to affect preferences. *C. S. Morey Mer. Co.* v. *Schiffer*, C. C. A., 8 Cir., Sanborn, J., 114 Fed., 447; 7 A. B. R., 670.

Preference found in a composition many years prior to the bankruptcy fraudulent in equity in the amount thereof must be surrendered before proof of claim. *In re Chaplin* (1902), Dist. Mass., Lowell, J., 115 Fed., 162; 8 A. B. R., 121.

Payment by notes discounted by creditor, payee becomes preference from time of discount, unless it comes back to his hands from failure of bankrupt to meet it. Credits given subsequent to the preference may be proved without surrender. *In re* Weissner (1902), E. Dist. N. Y., Thomas, J., 115 Fed., 421; 8 A. B. R., 177.

To bar claim on account of preference, it must appear that there has been a preference. *In re* Hickey (1901), N. Dist. Ia., Shiras, J., 112 Fed. 287; 7 A. B. R., 282.

Innocent creditor must surrender before proof where a new debt is not coupled with it, nor will the payment on the former be a preferences *In re* Abraham Steers Lumber Co. (1901), C. C. A., 112 Fed., 406; 7 A. B. R., 332.

A stock broker and customer are merely ordinary debtor and creditor and the customer must surrender preferences. *In re* Gaylord (1902), E. Dist. M., Adams, J., 112 Fed., 668; 7 A. B. R., 577.

Judgment by confession within four months and on suit by trustee held a preference creditor must surrender before proof of claim. *In re* Greth (1902), E. Dist. Pa., McPherson, J., 112 Fed., 978; 7 A. B. R., 598.

Payment to laborers, clerks and servants within four months not preference under 57 g, such persons constituting a distinct class. In Read & Knight (1900), S. Dist. N. Y., Dexter, R., 7 A. B. R., 111.

h **[Securities held by secured creditors—value determined.]** The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, com-

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promise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

"Secured creditor" defined Sec. 1 (23) ante and notes.

Secured creditor must deduct value of security before claim proved. *In re* Little (1901), N. Dist. Ia., Shiras, J., 110 Fed., 621; 6 A. B. R., 681.

i **[Claims secured by individual undertaking.]** Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

The creditor has a preference over a surety in proving a claim. *In re* Heyman (1899), S. Dist. N. Y., Thomas, J., 97 Fed., 195; 2 A. B. R., 651.

A retiring partner, who pays a prior debt which the remaining partner agreed to pay, is a surety as regards him, and is subrogated to the claim of that creditor. *In re* Dillon (1900), Dist. Mass., Lowell, J., 100 Fed., 627; 4 A. B. R., 63.

Equitable subrogation allowed where no injustice will be done to other creditors. *Courier Journal Job Printing Co.* v. *Schaefer Meyer Brewing Co.* (1900), C. C. A., 6th Cir., Lurton, J., 101 Fed., 699; 4 A. B. R., 183.

Those coming under this section not allowed the set-off of section 60 (c). *In re* Christensen (1900), N. Dist. Ia., James, R., 4 A. B. R., 202; 2 N. B. N., 670.

j **[Debts owing to United States, etc.]** Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

k **[Reconsideration of claims.]** Claims which have been allowed may be reconsidered for cause and reallowed or re-

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jected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

Burden on objectors to claim—proof must be offered before expunging claim on objections. *In re* Doty (1900), S. Dist. N. Y., Dexter, R., 5 A. B. R., 58.

This clause limits right to apply by petition to trustee and to creditors who are dissatisfied with the amount allowed to some creditors of the bankrupt. *In re* Chambers, Calder & Co. (1901), Dist. R. I., Littlefield, R., 6 A. B. R., 707.

l **[Recovery of dividend on rejected claim by trustee.]** Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

As to payment of dividends, see Sec. 65 and notes.

m. **[Claims by one estate against another.]** The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

Ownership of fund in two estates will be determined by court and distributed to one set of creditors or the other according to the equities. *In re* Rosenberg (1902), E. Dist. Pa., McPherson, J., 116 Fed., 402; 8 A. B. R., 624.

n **[Time for proving claims.]** Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

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As to procedure in proof of claim, see Gen. Order XXI.

Refusal to re-open case for proof of claim is discretionary. *In re* Wood (1899), E. Dist. N. C., Purnell, J., 95 Fed., 946; 2 A. B. R., 695; 1 N. B. N., 430.

This is not an enlargement of creditors' rights, but a restriction on them. *In re* Stein (1899), Dist. Ind., Baker, J., 94 Fed., 124; 1 A. B. R., 662; 1 N. B. N., 339.

This section must be construed with section 65 (a), (b) and (c), and sections 47 (a), 2 and 8 Subd., 55 (b), 58 (a), (b), (c) and 66 (a) and (b). *In re* Stein (1899), Dist. Ind., Baker, J., 94 Fed., 124; 1 A. B. R., 662; 1 N. B. N., 339.

No limitation for filing claims under composition. *In re* Simon Fox (1901), N. Dist. Ohio., Remington, R., 6 A. B. R., 525.

Notice to creditors must be sent—bankrupt must show he has used diligence to find the debtors. *In re* Dvorak (1901), N. Dist. Ia., Shiras, J., 107 Fed., 76; 6 A. B. R., 66.

Claims must be filed before one year, irrespective of the discharge of the bankrupt. *In re* Liebowitz (1901), N. Dist. Tex., Meek. J., 108 Fed., 617; 6 A. B. R., 268.

SEC. 58. NOTICES TO CREDITORS.

a **[Ten days' notice.]** Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of

(1) **[Examinations.]** All examinations of the bankrupt;

(2) **[Hearings.]** All hearings upon applications for the confirmation of compositions or the discharge of bankrupts;

(3) **[Meetings of creditors.]** All meetings of creditors;

(4) **[Sales.]** All proposed sales of property;

(5) **[Dividends.]** The declaration and time of payment of dividends;

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(6) **[Final accounts.]** The filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon;

(7) **[Compromises.]** The proposed compromise of any controversy, and

(8) **[Dismissal of proceedings.]** The proposed dismissal of the proceedings.

For notice of first meeting of creditors, see Form No. 18.

For form of notice of dividend, see Form 41. As to sales of property, see Gen. Order XVIII.

Notice to creditors not essential when officer of the court desire immediate information for preservation of the estate and examination of bankrupt for that purpose. *In re* Abrahamson & Bretstein (1899), Moss, R., N. Dist. N. Y., 1 A. B.R ., 44; 1 N. B. N., 23.

Applicants for examination of bankrupt subsequent to first meeting of creditors must pay all costs of examination including cost of notices and mailing the same. *In re* Price (1899), S. Dist. N. Y., Brown, J., 91 Fed., 635; 1 A. B. R., 419; 1 N. B. N., 131.

Sections 58 and 59 relate to dismissals. *Neustadter* v. *Chicago Dry Goods Co.* (1899), Dist. Wash., 96 Fed., 830; 3 A. B. R., 96, 1 N. B. N., 552.

Examination of bankrupt prior to first meeting limited to preparation of schedule. *In re* Franklin Syndicate (1900), E. Dist. N. Y., Thomas. J., 101 Fed., 402; 4 A. B. R., 244; 2 N. B. N., 522.

b **[First meetings—other notices.]** Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

As to selection of newspapers, see Sec. 28a.

c **[Notices given by referee.]** All notices shall be given by the referee, unless otherwise ordered by the judge.

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SEC. 59. WHO MAY FILE AND DISMISS PETITIONS.

a **[Voluntary bankrupt.]** Any qualified person may file a petition to be adjudged a voluntary bankrupt.

As to who may become bankrupts, see Sec. 4a and notes ante.

Creditors of a voluntary bankrupt can not oppose the adjudication. *In re* Jehu (1899), N. Dist. Ia., Shiras, J., 94 Fed., 638; 2 A. B. R., 498; 1 N. B. N., 509.

Individual petition cannot be so amended as to include partnership. A new petition should be filed. *In re* Mercur (1902), E. Dist. Pa., Archbald, J., 116 Fed., 655; 8 A. B. R., 275.

Members of firm desiring to be adjudicated bankrupt individually should each file petition. *In re* Farley & Co. (1902), W. Dist. Va., McDowell, J., 115 Fed., 359; 8 A. B. R., 266.

A petition in bankruptcy may not be amended in order to insert a further and later act of bankruptcy. *In re* Sears (1902), C. C. A., 2nd Cir., 117 Fed., 294; 8 A. B. R., 713.

Lunatic cannot file his petition by his committee. *In re* Eisenberg (1902), S. Dist. N. Y., Adams, J., 117 Fed., 786; 8 A. B. R., 551.

b **[Involuntary bankrupt.]** Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

As to claims which may be proved, see Sec. 57 *ante*.

As to form of involuntary petition, see Form No. 3 *post*.

Creditors, parties to general assignment proceedings, estopped from filing involuntary petition. *In re* Simonson (1899), Dist. Ky., Evans, J., 92 Fed., 904; 1 A. B. R., 197; 1 N. B. N., 549.

Bankruptcy courts are reluctant to admit estoppel against creditors and there must be weighty reasons for invoking it. *In re* Simonson (1899), Dist. of Ky., Evans, J., 92 Fed., 904; 1 A. B. R., 197; 1 N. B. N., 549.

A second creditor may join in an involuntary petition after filed—all rights of amendment are in the second credit or *In re* D.A. Taylor (1899) N. Dist. N. Y., King, R.; 1 N. B. N., 412.

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Debt attempted to be satisfied by a void transfer should be counted when determining jurisdictional facts. *In re* Tirre (1899), Sou. Dist. N. Y., Brown, J., 96 Fed., 425; 1 N. B. N., 402; 2 A. B. R., 493.

A creditor whose claim is unliquidated can not file petition. *In re* Brinckman (1900), Dist. Ind., Baker, J., 103 Fed., 65; 4 A. B. R., 551; 3 N. B. N., 28.

Adjudication which was based on proof of claim of petitioners after the contest of such claim is *res adjudicata* against the estate and not open to attack by creditors. Creditors have right to contest adjudication and are concluded by all matters directly in issue and determined by the decree. Collateral matters although proved are not *res adjudicata*. *In re* Henry Ulfelder Clothing Co. (1899), N. Dist. Cal., De Haven, J., 98 Fed., 409; 3 A. B. R., 425.

See the cases of *in re* Moyer (1899), E. Dist. Pa., McPherson, J., 1 A. B. R., 577; *in re* Arnold (1899), 94 Fed., 1001; 2 A. B. R., 180; 1 N. B. N., 334; *in re* Richards, 2 A. B. R., 518.

Involuntary bankruptcy of corporation which executes written admission and consent—rule 12 must be observed, subpœna issued and rule entered to allow any creditor to appear and object. *In re* Humbert Co. (1900), N. Dist. Ia., Shiras, J., 100 Fed., 439; 4 A. B. R., 76.

Duplicate copy of petition must be filed within the four months; clerk's docket should show the filing of the same. *In re* Dupree (1899), E. Dist. N. C., Purnell, J., 97 Fed., 28; 1 N. B. N., 513.

Creditor who assented to a general assignment not permitted to become petitioning creditors in involuntary bankruptcy proceedings against the assignor. *In re* Romanow & Feingold (1899), N. Dist., Mass., Lowell, J., 1 N. B. N., 213.

Creditors may join in the petition subsequent to its original filing though doing so more than four months after the act of bankruptcy. *In re* Romanow & Feingold (1899), N. Dist. Mass., Lowell, J., 1 N. B. N., 213.

An Indian may file petition in bankruptcy. An interest in tribal land not such as may be reached by creditors of bankrupt. *In re* Rennie, Dist. I. T. (1899), 2 A. B. R., 182; 1 N. B. N., 385.

Dismissal of involuntary petitions on application of majority of petitioning creditors cannot be allowed against objection of minority creditors. *In re* Cronin (1899), Dist. Mass., Lowell, J., 98 Fed., 584; 3 A. B. R., 552.

Petitioning creditors who file claims in assignment proceedings in the state court are not estopped where they were not in possession of full knowledge of the fraudulent conduct of the bankrupt at the time they

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acquiesced in the assignment. *In re Curtis* (1899), C. C. A., 7th Cir., 94 Fed., 630; 2 A. B. R., 226; 1 N. B. N., 357.

Where the number of creditors petitioning for adjudication in bankruptcy are insufficient at the time of filing to support the same creditors may join any time before adjudication. *In re* Romanow (1899), Dist. Mass., Lowell, J., 92 Fed., 510; 1 A. B. R., 461; 1 N. B. N., 213.

A petition may not be amended so as to insert acts of bankruptcy subsequent to one originally set up. *In re* Sears (1902), C. C. A., 2nd Cir., 117 Fed., 294; 8 A. B. R., 559.

When there are more than twelve creditors three creditors are required to join in the petition in order to give the court jurisdiction. The sufficiency of the number of creditors is a jurisdictional fact which may be questioned collaterally. *Buckingham* v. *Schuylkill Plush & Silk Co.* (1902), Sup. Ct. N. Y., Blanchard, J., 38 N. Y., Misc., 305.

Act of bankruptcy committed before November 1, 1898, injunction in State Court to restrain creditor from disposing of goods received as a preference voidable until involuntary provisions of the act came into effect, denied. *Ellis* v. *L. Hays Saddlery & Leather Co.* (1902), Sup. Ct. Kans., Smith, J., 69 Pac., 165.

Involuntary petition can not be filed by attacking creditor without first abandoning an attachment lien. One petitioner can not buy up claims to file as co-petitioners. *In re* Burlington Malting Co. (1901), E. Dist. Wis., Seaman, J., 109 Fed., 777; 6 A. B. R., 369.

Petition must be signed by at least three creditors where there are twelve or more—no cause of complaint that bankrupt has solicited his creditors not to join in petition. *In re* Brown (1901), E. Dist. Mo., Rogers, J., 111 Fed., 979; 7 A. B. R., 102.

After filing involuntary petition debtor reduced his indebtedness to the petitioners to less than five hundred dollars by payment. Held that the jurisdiction was not thereby lost. *Spencer* v. *Duplan Silk Co.* (1902), E. Dist. Pa., 115 Fed., 689; 7 A. B. R., 563.

Unliquidated disputed claim may not be used for filing involuntary petition. *In re* Big Meadows Gas Co. (1902), W. Dist. Pa., Buffington, J., 113 Fed., 974; 7 A. B. R., 697.

Petitioner in involuntary proceedings may not withdraw so as to prevent adjudication. *In re* Beddingfield (1899), N. Dist. Ga., Newman, J., 96 Fed., 190; 2 A. B. R., 355; 1 N. B. N., 385.

Other creditors may join by agreement and create the necessary amount. *In re* Beddingfield (1899), 96 Fed., 190; 2 A. B. R., 355; 1 N. B. N., 385.

Debts paid by bankrupt in fraud of the act included in computing the

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requisite amount for adjudication. *Re* F. F. Cain (1899), N. Dist. Ill. Eastman, R., 1 N. B. N., 389.

Allegations of involuntary petition must be allegations of fact and made with reasonable and sufficient certainty. It must allege that preferential payments to a creditor were made with intent to prefer such creditor. *In re* Ewing (1902), C. C. A., 2nd Cir., 115 Fed., 707; 8 A. B. R., 269.

Petition held sufficient if it did not specify the business an alleged bankrupt was engaged in where question was raised on demurrer, and the demurrer filed as part of the answer on which the parties went to a final hearing. *In re* Stern (1902), C. C. A., 2nd Cir., Townsend, J., 116 Fed., 604; 8 A. B. R., 569.

Manner and details of concealment need not be averred. *In re* Bellah (1902), Dist. of Del., Bradford, J., 116 Fed., 69; 8 A. B. R., 310.

Defective petition which does not allege an act of bankruptcy cannot be amended so as to state statutory grounds. *White* v. *Bradley Timber Co.* (1902), S. Dist. Ala., Toulmin, J., 116 Fed., 768.

Application for reinstatement of involuntary petition which was dismissed denied. *In re* Jemison Mercantile Co. (1902), C. C. A., 5th Cir., McCormick, J., 112 Fed., 966; 7 A. B. R., 588.

Jurisdiction in involuntary bankruptcy attaches to court in which petition was first filed in point of time. *In re* Elmira Steel Co. (1901), N. Dist. N. Y., 109 Fed., 456; 5 A. B. R., 484.

Verificatcn of petition sufficient if made by coudsel, if counsel more familiar with facts than c,ient. *In re* Chequasset Lumber Co. (1901), S. Dist. N. Y. Adams, J., 112 Fed., 56; 7 A. B. R. 87.

Petitioner who has a preference disqualified unless he make restitution. *In re* Gillette & Prentice (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 769; 5 A. B. R., 119.

c **[Petitions in duplicate.]** Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

The filing of a duplicate copy of the petition is necessary to confer jurisdiction. A suit may be dismissed on a failure to do so. *In re* Stevenson, (1899) Dist. Del., Bradford, J., 94 Fed., 110; 2 A. B. R., 66; 1 N. B. N., 313.

If duplicates not filed time permit of act does not begin to run. *In re* Stevenson (1899), Dist. Del., Bradford, J., 94 Fed., 110; 2 A. B. R., 66; 1 N. B. N., 313.

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d **[Notice to other creditors.]** If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

Petitions in involuntary cases may be amended so as to include sufficient number of creditors. *In re* Mercur, E. Dist. Pa., McPherson, J., 95 Fed., 634; 2 A. B. R., 626.

As to preparation of schedules in involuntary cases see Gen. Order IX.

e **[Computing number of creditors.]** In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

f **[Appearance of creditors.]** Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

This section construed *in re* Stein, C. C. A., 2nd Cir., 5 A. B. R., 288.

Petition of insufficient number of creditors gives jurisdiction that may

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be fortified by other creditors by joining in later. *In re* Mammoth Pine Lumber Co. (1901), W. Dist. Ark., Rogers, J., 109 Fed., 308; 6 A. B. R., 84.

g **[Notice of dismissal.]** A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.

As to priority of petitions, see Gen. Order VII.

Dismissal of voluntary petition allowed in absence of estate. *In re* Hebbart (1901), Dist. Vt., Wheeler, J., 104 Fed., 322; 5 A. B. R., 8.

Application for reinstatement of proceedings in involuntary proceedings on the ground of want of notice may after a year be denied on account of unreasonable delay. *In re* Jenison Mer. Co. (1902), C. C. A., 6th Cir., McCormick J., 112 Fed., 966; 7 A. B. R., 588.

SEC. 60. PREFERRED CREDITORS.

a **[What constitutes a preference.]** A person shall be deemed to have given a preference if, being insolvent, he has, *within four months before the filing of the petition, or after the filing of the petition and before the adjudication*, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. *Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.*

As amended by law of 1903, see Amendment, page , *post.* New matter found between stars.

See 57 g, *ante.*

Subdivisions a and b should be construed together. A preference cannot be set aside if the creditor had no reasonable cause to believe the debtor was insolvent. *In re* Ebert (1899), W. Dist. Wis., Lewis, R., 1 A. B. R., 340.

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A preference is a payment made by a debtor within four months, the result of which would be to give the payee a greater percentage, although innocently received. *In re* Knost & Wilhelmy (1899), S. Dist. Ohio, Waite, R., 2 A. B. R., 471; 1 N. B. N., 403.

The assignment of fire insurance policies as collateral to secure present of future advances of money or goods, is not giving a preference within the meaning of the bankruptcy act. Sections 60 and 67 compared. *In re* Little River Lumber Co. (1899), W. Dist. Ark., Rodgers, J., 92 Fed., 585; 1 A. B. R., 483; 1 N. B. N., 306.

Payment of money to a creditor on account constitutes a transfer. *In re* Christenson (1900), N. Dist. Ia., James, R., 101 Fed., 243; 4 A. B. R., 202; 2 N. B. N., 695.

No set-off allowed those coming under Section 59 (g). *In re* Christensen, N. Dist. Ia., James, R., 4 A. B. R., 262; 2 N. B. N., 695.

Payment on claim for wages not preference. *In re* Fewerlicht (1902) S. Dist. N. Y., Smith, J., 8 A. B. R., 550.

Liability of bankrupt not a claim unless liability fixed by notice and protest. *In re* Edson (1902), Dist. Vt., Wheeler, J., 119 Fed., 487.

In pleading it is sufficient to allege that the transfer had the prohibited effect and the defendant had reasonable cause to know—matters tending to prove need not be set out in detail—transfer of securities by bankrupt to one who thereupon endorses bankrupt's note within four months, which is delivered to a creditor is preferential payment where knowledge is brought home to the creditor. *Crooks* v. *Peoples National Bank* (1899), Sup. Ct. N. Y., Herrick, J., 46 N. Y., App., Div. 335; see the same case (1902), 72 N. Y. App., Div. 331.

Creditor must have had actual knowledge of insolvency or such circumstances as would make reasonably prudent man suspect insolvency. *Sirrine* v. *Stoner-Marshall Co.* (1902), Sup. Ct. S. C., Jones, J., 42 S. E., 432.

Payment no preference unless creditor had knowledge. *Sherman* v. *Luckhardt* (1902), Sup. Ct. Kans., Doster, J., 70 Pac., 702.

The date of delivery of deed not the date of recording is date of transfer in case of preference. *Dean* v. *Plane et al.* (1902), Sup. Ct. Ill., Cartwright, J., 195 Ill., 495.

There must be an intent to give a preference—facts showing. *Benedict* v. *Duhel* (1902), Sup. Ct. N. Y., McLaughlin, J., 79 N. Y., Supp., 205.

Adjudication on ground of fraudulent preference is *res adjudicata* as to insolvency and notice of bankrupt, but not as to the creditor. *Laundry* v. *First Nat. Bank of Junction City* (1903), Sup. Ct. Kans., 71 Pac., 259.

A chattel mortgage held for a year unrecorded but possession taken

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within four months is a preferential transfer dating as of the possession. *Landis* v. *McDonald* (1901), Ct. App., Mo., Ellison, J., 80 Mo., App., 335; *Babbitt* v. *Kelly* (1902), Ct. App., Mo., Good., J., 70 S. W., 385.

If transferee, as a reasonably prudent business man, believed debtor was insolvent or intended to give an advantage to one creditor over another a preference is given. *Johnson* v. *Cohn* (1902), Sup. Ct. N. Y., Gildersleeve, J., 39 N. Y., Misc., 189.

Merely giving a renewal chattel mortgage does not constitute a preference. Intent to give is a question of fact. *Deland* v. *Mittur and Chany Bank* (1903), Sup. Ct. Iowa, Diemer, J., 93 N. W., 304.

Preference not shown by procuring of judgment and levy unless some fraud appears—query whether a confession of judgment made but not entered before the passage of the act is open to challenge. *Jones* v. *Roch and Maloy* (1898), Dist. Ct. of Pa., Clayton, J., 8 Pa., Dist. Rep., 714.

Knowledge on the part of bank of the insolvency of the debtor will make the payment recoverable. *Pepperdine* v. *Nat. Exchange Bank* (1900), Ct. of App. of Mo., Bland, J., 84 Mo. App., 234.

No preference under the Bankruptcy Act by assignment of book accounts as collateral security. *Young* v. *Upson* (1902), S. Dist. N. Y., Hazel, J., 115 Fed., 192; 8 A. B. R., 377.

There can be no preference unless the one receiving preference had reasonable cause to believe a preference was intended. *Levor* v. *Seiter* (1902), Sup. Ct. N. Y., Patterson, J., 8 A. B. R., 459; *Peck* v. *Connell* (1902), Superior Ct. Pa., Porter, J., 8 A. B. R., 500. *In re* Harpke (1902), C. C. A., 7th Cir., Grosscup, J., 116 Fed., 295; 8 A. B. R., 535.

Sec 60a controlls 57g. *Swarts* v. *Fourth Nat. Bank of St. Louis* (1902), C. C. A., 8th Cir., Sanborn, J., 117 Fed., 1; 8 A. B. R., 673.

Test of a preference is one creditor receiving more than others of the same class with knowledge *idem*.

"Creditors of the same class discussed *idem*.

Lien may be a preference. *In re* Belding (1902), Dist. Mass., Lowell, J., 116 Fed., 1016; 8 A. B. R., 718.

No preference shown where transaction between bankrupt and creditor during the four months swells the bankrupt's estate, the payment to the creditor having been made without knowledge of insolvency. *Jaquith* v. *Alden* (1902), Dist. Mass., Lowell, J., 118 Fed., 270; 9 A. B. R., 165.

Claim by bank as endorser of note of bankrupt taken in due course of business is not effectual by preferences which exist against the endorser. *In re* Levi (1903), W. Dist. N. Y., Hazel, J., 9 A. B. R., 175.

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Creditor must surrender payment on a note discounted at a bank within the four months. *In re* Waterbury Furniture Co. (1902), Dist. Conn., Townsend, J., 114 Fed., 255; 8 A. B. R., 79.

Mortgage cannot be attached if both parties believed the bankrupt to be solvent and he was apparently solvent. *Stratton* v. *Lawson* (1902), Sup. Ct. Wash., Mount, J., 27 Wash., 310.

Facts held not to show conveyance in contemplation of bankruptcy. *Harmon* v. *Feldheim et al.* (1902), Sup. Ct. Mich., 91 N. W., 744.

Complainant must allege that the effect of the transfer is to give the creditor a greater percentage of his debt. *Schryer* v. *Citizens Nat. Bank* (1902), Sup. Ct. N. Y., Laughlin, J., 74 N. Y., App., Div. 478.

Debtor must have had reasonable cause to believe in the insolvency of the bankrupt or had reasonable cause so to do. *Taft* v. *Fourth Nat. Bank* (1900), C. C. Ohio, 8 Ohio N. P., 59; 10 Ohio Dic., Sup. C. P., 405. *Harrison* v. *Walker* (1902), Sup. Ct. Mich., Montgomery, J., 91 N. W., 1025.

If a bankrupt gives an innocent person security for an accommodation indorsement of his note there is such consideration flowing from the act of endorsement that even if bankruptcy occurs within the four months the endorser can hold the securities to the extent of reimbursing himself to the amount of the note which he has become liable to pay. *Cooks* v. *Peoples Nat. Bank* (1901), Sup. Ct. N. Y., Houghton, J., 34 N. Y. Misc., 450.

Payment of debt in money within four months held a transfer which a trustee could set aside. *Sherman* v. *Luckhardt* (1902), Mo. Ct. App., Smith, J., 70 S. W., 388.

Delivery of security by insolvent to a third person to guaranty notes on which he is liable is not a preference. *Crook* v. *Peoples Nat. Bank* (1899), Sup. Ct. N. Y., Russell, J., 29 N. Y., Misc., 30.

Execution of judgment notes and permitting same to be entered against him is not act of bankruptcy. *In re* Anderson (1900), W. Dist. Pa., Buffington, J., 9 Pa. Dist. Rep., 504.

Transfer of property constituting a preference—facts showing. *Allen* v. *French* (1901), Sup. Ct. Mass., Barker, J., 178 Mass., 539.

Whether debtor has reasonable cause to believe his debtor insolvent is a question of fact. *Bondinote* v. *Hamann* (1902), Sup. Ct. Ia., Waterman, J., 90 N. W., 497.

Innocent creditors receiving preferences not prejudiced. *In re* Ratliff (1901), E. Dist. N. C., Purnell, J., 107 Fed., 80; 5. A. B. R., 713.

Preference to be unlawful must be given for antecedent debt. *In re* Davidson (1901), S. Dist. Ia., McPherson, J., 109 Fed., 882; 5 A. B. R., 528.

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A creditor who by execution collects part of his claim has obtained such a preference as forbids his proving his claim without first remitting *In re* Gallagher (1901), Dist. Mass., Farmer, R., 6 A. B. R., 255.

A transfer of an insolvent which enables the creditor to obtain a greater privilege, is a preference. *In re* Keller (1901), Dist. Ia., Shiras, J., 109 Fed., 118; 6 A. B. R., 334.

The rule which starts the time running from the date of the record applies only to preferences which are acts of bankruptcy, and not to preferences which are voidable under section 60 (a) and (b). *In re* Mersman (1901), W. Dist. N. Y., Hotchkiss, R., 7 A. B. R., 46.

Proceeds of execution collected before bankruptcy not recoverable by trustee unless creditor had reasonable cause to believe insolvency. *In re* Blair *et al.* (1900), S. Dist. N. Y , Brown, J., 99 Fed., 76; 4 A. B. R., 220. 2 N. B. N., 890.

Surrender of firm note and acceptance of individual note of one member more than four months before filing of petition, and subsequent judgment not a preference by the firm. *In re* Lehigh Lumber Co, *et al.* (1900), W; Dist. Pa., Buffington, J., 101 Fed., 216; 4 A. B. R., 221; 2 N. B. N., 512.

Preference shown in surrendering goods sold to bankrupt under provision that vendors retain lien for purchase price. *In re* Klingman (1900), S. Dist. Ia., Shiras, J., 101 Fed., 691; 4 A. B. R., 254; 1 N. B. N., 294.

Where there are several accounts it cannot be claimed that the preference is to be disregarded because the account is closed. *In re* Sloan (1900), S. Dist. Ia., Shiras, J., 102 Fed., 116; 4 A. B. R., 356.

Creditor holding security under Section 60 which was cut off by fore. closure of a prior mortgage need not surrender security before proving claim. *In re* Stendts (1899), N. Dist. N. Y., Hotchkiss, R., 1 N. B. N., 509.

No preference found in a transfer by the bankrupt to a judgment creditor of such property because the transferee was not a firm creditor. *In re* Rudnick (1900), Dist. Wash., Hanford, J., 102 Fed., 750; 4 A. B. R., 531; 2 N. B. N., 769;

It is no preference for one partner to buy out his co-partner's interest although the proceeds may have been used in the making of preferential payments. *In re* Kindt (1900), S. Dist. Ia., Shiras, J., 101 Fed., 107; 4 A. B. R., 148; 2 N. B. N., 306.

If acts tend to defeat delay or hinder the operation of the bankrupt law a preference will be created. *In re* D. A. Taylor (1899), N. Dist. N. Y., King, R.; 1 N. B. N., 412.

Rent payment is not ordinarily a preference. *In re* Lange (1900). S. Dist. N. G., Brown, J., 97 Fed., 197; 3 A. B. R., 231; 2 N. B. N., 85,

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Preference not found where the effect of the joint operation was to increase the estate, although the creditor did receive sundry payments within the four months. The credits need not be subsequent to the payments to the creditor. *In re* Topliff (1902), Dist. Mass., Lowell, J., 114 Fed., 323; 8 A. B. R., 141.

Preference created by fraudulent scheme between debtor and sundry creditors who obtain payments before bankruptcy by an assignee's collusive sale. *Stern, Falk & Co.* v. *Louisville Trust Co.* (1901), C. C. A., 6th Cir., 112 Fed., 501; 7 A. B. R., 305.

The giving of checks by a bankrupt to its president for present advances to pay wage claims due from the corporation, does not constitute a preference within the meaning of the bankruptcy act. *In re* Union Feather & Wool Mfg. Co. (1902), C. C. A., 7th Cir., Jenkins, J., 112 Fed., 774; 7 A. B. R., 472.

Payment of account in full within four months does not prejudice new debt subsequently created. *In re* Champion (1902), S. Dist. Ala., Ervin, R., 7 A. B. R., 560.

Four months limitation for preferential payment is fraud in the exercise of equitable discretion based on analogious limitation in the law. *In re* Dickinson (1902), W. Dist. N. Y., Moss, R., 7 A. B. R., 679.

Money received by sheriff on execution within four months in a preference. *In re* Metzger Toy & Novelty Co. (1902), W. Dist. Ark., Rogers, J., 114 Fed., 957; 8 A. B. R., 307.

There can be no preferences unless there is insolvency. *In re* Wittenl berg Veneer & Panel Co., E. Dist. Wis., Seaman, J., 108 Fed., 593; 6 A. B. R., 271.

The test whether a creditor received a preference with knowledge is a question of fact, rather shan of law, and not reached by petition for review. *In re* Eggert (1900), C. C. A., 7th Cir., Jenkins, J., 4 A. B. R., 449.

To avoid a preference it must appear that the bankrupt first was insolvent, second intended to give a preference, third, the creditor must have known or had reasonable cause to know of the insolvency. *In re* Ebert (1899), W. Dist. Wis., Lewis, R., 1 A. B. R., 340.

b **[Preference voidable—jurisdiction to recover.]** If a bankrupt shall have given a preference (within four months before the filing of a petition, or after the filing of the petition and before the adjudication), and the person receiving it, or to be benefited thereby, or his agent acting therein,

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shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person. *And, for the purpose of such recovery, any court of bankruptcy, as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.*

As amended by Act of 1903. See Amendment, page , *post.*

Omitted matter from Act of 1898 between brackets. New matter between stars.

Knowledge of insolvency is not found from fact of discounting a bil and accepting assignment of an account in payment. *In re* Eggert (1900), E. Dist. Wis., Seaman, J., 98 Fed., 843; 3 A. B. R., 541; 2 N. B. N., 185.

Where suit is brought to recover preference and allegation that the bankrupt paid such money on his claim—not essential to allege it was out of the bankrupt's estate. *Richter* v. *Nimmo* (1901), N. Y. Supt. Ct., Jenks J., 63 App. Div., 422; 71 N. Y. Supp., 501; 6 A. B. R., 680.

The test whether creditors received a preference with knowledge is a question of fact rather than of law and not reached by petition for review. *In re* Eggert (1900), C. C. A., 7th Cir., 102 Fed., 735; 4 A. B. R., 449.

Preference obtained by proceedings within the four months avoided and the surrender by summary order of possession of the goods by the sheriff to the trustee granted. *In re* Fellerath (1899), N. Dist. Ohio, Ricks, J., 95 Fed., 121; 2 A. B. R., 40; 1 N. B. N., 292.

Preferences by giving of mortgages and lease set aside by decree of district court at the suit of trustee, and creditors made to account for the profits of one of the premises. *Carter* v. *Goodykoontz* (1899), Dist. Ind., Baker, J., 94 Fed., 108; 2 A. B. R., 224; 1 N. B. N., 196.

Agreement made more than four months prior to bankruptcy providing that creditor might have option to purchase, applying his claims thereon, not a preference, thought right put in force within the four months. *Savin* v. *Camp* (1900), Dist. Ore., Bellinger, J., 98 Fed., 974; 3 A. B. R., 578; 2 N. B. N., 375.

Creditor has reasonable cause to believe preference was intended if he has knowledge of facts and circumstances which would put a prudent man upon inquiry. *In re* Jacobs (1899), W. Dist. Ia., Jones, R., 1 A. B. R., 518; 1 N. B. N., 183.

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Action by trustee to set aside preference—erroneous instruction—harmless will be disregarded. *Whitely Grocery Co.* v. *Roach* (1902), Sup. Ct. Ga., Fish, J., 42 S. E., 282; 8 A. B. R., 505.

Trustee can sue without first obtaining order to do so. *Chism* v. *Citizens Bank of Clarksdale* (1900), Sup. Ct. Miss., Terrell, J., 77 Miss., 599.

Action by trustee to set aside fraudulent conveyance—fraud of bankrupt—bankrupt not necessary party (1902), Sup. Ct. N. Y., O'Brien, J., 78 N. Y. Supp., 369.

Trustee may avoid preference where there was reasonable cause on part of creditor to believe insolvency—may follow fund. *Lampkin* v. *Poeples Nat. Bank* (1902), Sup. Ct. Mo., Ellison, J., 71 S. W., 715.

Setting aside conveyance—trustee represents creditors. *Oliver* v. *Hilgers et al.* (1902), Sup. Ct. Minn., Lewis, J., 92 N. W., 511.

Trustee permitted to file a bill in equity to set aside a preference enacted by orders for goods taken in by a nominal partnership within four months. *Margden* v. *Sugden* (1902), Sup. Ct. N. H., Renwick, J., 52 Atl., 74.

Law, not chancery, the former for a suit by a trustee to set aside amount of a fraudulent preference—the transaction involving one item. *McCormick* v. *Page* (1901), Ill. Ct. App., Dibell, J., 96 Ill. App., 447.

Trustee must bring action to set aside a preference in the state court—intent, not an essential element. *Gabriel* v. *Tonner* (1902), Sup. Ct. Cal., Gray, J., 70 Pac., 1021.

Complaint sustained by the trustee's mense assignee to set aside a transfer made by the bankrupt to his wife. *Bryan* v. *Madden* (1902), Sup. Ct. N. Y., Russell, J., 38 N. Y., Misc., 638.

Fraudulent intent to prefer—burden of proof of inso,vency and intent on issue is on creditor—intent is so shown when insolvency is proved and the fact of transfer burden of intent then rests on the bankrupt—value of property determined by the receivers is evidence on question of insolvency. In re Blocy (1901). C. C. A. 2nd Cir. Shipman, J., 109. Fed., 790; 6 A. B. R., 300; 3 N. B. N., 894.

In suit by trustee proof what goods bought at private sale subsequent to auction is incompetent to establish value. *Seebrig* v. *Wellington* (1901), N. Y. Sup. App., Div., Adams, J., 6 A. B. R., 671.

A party to be liable to a suit of a trustee for receiving preference must have been a creditor. Mere liability as endorser for bankrupt does not constitute such relation. *Swartz* v. *Siegel* (1902), E. Dist. M., Adams, J., 114 Fed., 1,001; 8 A. B. R., 220.

This section is limited to cases where the creditor had reasonable cause to believe that a preference was intended. *Blakey, Receiver,* v. *Boone-*

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ville Nat. Bank (1899), Dist. Ind., Baker, J., 95 Fed., 267; 2 A. B. R. 459; 1 N. B. N., 411.

Where preference is merely voidable trustee can not maintain without previous demand and refusal, but where under Section 67 (e) transer is fraudulent it is void and demand unnecessary. *In re* Phelps (1899), N. Dist. N. Y., Hotchkiss, R.; 3 A. B. R., 396; 2 N . B. N., 484.

Preferential incumbrance before passage of act not affected thereby *In re* Terrill, (1900), Dist. Vt., Wheeler, J., 100 Fed., 778; 4 A. B. R., 145.

No preference found where bankrupt's wife lent money obtained from mortgaging her property to pay decree to turn over trust funds. *Fry* v. *Penn. Trust Co.* (1900), Sup. Ct., Pa., Green, J., 5 A. B. R., 51.

Pleading in action to set aside preference—consent of bankruptcy court not essential prerequisite to maintaining suit. *Chism, Trustee,* v. *Bank* (1900), Sup Ct. Miss., Terrel, J.; 5 A. B. R., 56.

Set-off allowed from preferential payment on claim secured partially by mortgage—claim allowed for the deficiency. *In re* Tanner (1901), W. Dist. N. Y., McMaster, R., 6 A. B. R., 196.

A mortgage which is executed in blank and in which subsequently the blanks are filled up does not take effect until the latter date and if such date falls within the four months prior to bankruptcy, is invalid. *In re* Barrett (1901), S. Dist. N. Y., Wise, R., 6 A. B. R., 48.

c **[Set-off of new credit after preference.]** If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

See 57 g and notes; also b *supra.*

Creditors innocently receiving preferential payments are entitled to set-off under this section. *In re* Thompson's Sons (1901), E. Dist. Pa. Hunter, R.; 6 A. B. R., 663.

Creditor innocently receiving preference is entitled to a sett-off. *In re* Soldosky (1901), Dist. Mont., Lochren, J., 111 Fed., 511; 7 A. B. R., 123; *in re* Dundas (1901), Dist. Vt., Wheeler, J., 111 Fed., 500; 7 A. B. R., 129.

Preferences entitled to set-off in cases under Section 60 (a) and (b) *Peterson* v. *Nash Bros* (1901), C. C. A., 8th Cir., Adams, J., 112 Fed., 311; 7 A. B. R., 181.

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Set-off allowed of credits within four months, although made before the preference. *In re Dickson* v. *Wyman* (*In re* Jourdan), C. C. A., 1st Cir., Putnam, J.; 7 A. B. R., 186.

Set-off allowed the innocent preferee. *In re* Thompson's Sons, McPherson, J., E. Dist. Pa., 112 Fed., 651; 7 A. B. R., 214.

Pleadings on suit to set aside preference must allege insolvency. *Martin* v. *Bigelow* (1901), Sup. Ct. N. Y., Scott, J.; 7 A. B. R., 218.

The set-off provided in Section 60 (c) was intended to apply only to cases arising under Section 60 (b). Payment in full is a preference. *In re* Rosenberg (1901), S. Dist. N. Y., Pendleton, R., 7 A. B. R., 316.

Rebate allowed bankrupt on claim from course of business. *In re* B. H. Douglas & Sons Co. (1902), Dist. Conn., Townsend, J., 114 Fed., 772; 8 A. B. R., 113.

Preferences reduced by subsequent credits. *Gans* v. *Ellison*, C. C. A., 3rd Cir., Acheson, J.; 8 A. B. R., 153; also the same effect, *Kahn* v. *Export & Commission Co.* (1902), C. C. A., 5th Cir., 115 Fed., 290; 8 A. B. R., 157.

Set-off allowed innocent creditor following *McKee* v. *Lee, et al.*; 5 A. B. R., 267 *supra*. See the cases collected on this point *in re* Bothwell (1902), Dist. N. J., Lewis, R.; 8 A. B. R., 213.

Right of set-off exists in favor of a preferred creditor who received the preference innocently. *McKee* v. *Lee, et al.* (1901), C. C. A., 7th Cir., Grosscup, J., 105 Fed., 923; 5 A. B. R., 267.

This section applies to the innocent as well as the guilty preferential creditor. *In re* Ryan (1901), N. Dist. Ill., Kohlsaat, J., 105 Fed., 760; 5. A B. R., 396. (Being same case as *McKee* v. *Lee*, *supra*.)

No set-offs allowed where mutual credits subsequently given. Cases restricted to 60 (b) *ante*. *In re* Keller (1901), N. Dist. Ia., Shiras, J., 109 Fed., 118; 6 A. B. R., 334.

No set-off allowed the creditor who has received a preference under Section 57 (g) and received preferential payments for subsequent credits. *In re* Oliver (1901), W. Dist. Mo., Phillips, J., 109 Fed., 784; 6 A. B. R., 626. *In re* Christensen, N. Dist. Ia., James, R., 4 A. B. R., 202; 2 N. B. N., 695.

This section and Sec. 68 must be interpreted as applicable to incidental proceedings in bankruptcy and does not change the principles of set-off in actions. *Pearsall* v. *Nassau Nat. Bank* (1902), Sup. Ct. N. Y., Jenks, J., 74 N. Y., App., Div., 89.

Where the dealings between the bankrupt and the creditor during the four months' time has enhanced the value of the estate there is no room for preference. *Peterson* v. *Nash Bros.* (1901), C. C. A., 8th Cir., Adams,

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J., 112 Fed., 311; 7 A. B. R., 181. *In re* Jordan (*Dickson* v. *Wyman*) (1901), C. C. A., 1st Cir., Putnam, J., 111 Fed., 726; 7 A. B. R., 186. *Morey* v. *Schiffer* (1902), C. C. A., 8th Cir., Sanborn, J., 114 Fed., 447; 7 A. B. R., 670. *Kimball* v. *Rosenbeam* (1902), C. C. A., Sanborn, J., 114 Fed., 85; 7 A. B. R., 718. *Gans* v. *Ellison* (1902), C. C. A., 3 Cir., Acheson, J., 114 Fed., 734; 8 A. B. R., 153. *In re* Topliff (1902), Dist. of Mass., Lowell, J., 114 Fed., 323; 8 A. B. R., 141. *Jacquith* v. *Alden* (1902), C. C. A., 1st Cir., Lowell, J., 9 A. B. R., 165.

d **[Payment to attorney—Examination.]** If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

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CHAPTER VII.

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SEC. 61. DEPOSITORIES FOR MONEY.

a **[Courts to designate.]** Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

Trustees must deposit money in depositories. Sec. 47a (3) *ante*. As to payment of money deposited, see Gen. Order XXIX.

SEC. 62. EXPENSES OF ADMINISTERING ESTATES.

a **[Expenses reported under oath.]** The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

As to what are expenses of estates, see Gen. Ord. XXXV. As to indemnity for expense to be deposited by the bankrupt, see Gen. Order X. As to indemnity for expenses of traveling by referee, see Gen. Ord. XXVI. See Sec. 5e as to payment of expenses from individual and firm estates.

Trustee refused allowance of attorney's fee for preparation of account —this is among the ordinary duties which he should perform. *In re* Averill (1899), N. Dist. Ohio, Remington, R., 1 N. B. N., 544.

Assignee in insolvency proceedings not entitled to allowance as custodian in preserving the estate prior to filing petition in bankruptcy, *In re* Peter Paul Book Co. (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 786; 5 A. B. R., 105.

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SEC. 63. DEBTS WHICH MAY BE PROVED.

a **[Provable debts.]** Debts of the bankrupt may be proved and allowed against his estate which are

For analogous provisions of act of 1800 see Sec. 39 of that act; of act of 1841 see Sec. 5 of that act; also Sec. 19 of act of 1867.

See notes under Sec. 17, "debts not barred a discharge."

(1) **[Fixed liability.]** A fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest;

See notes under Sec. 17.

Bankrupt not liable on notes where protest and notice not given. Such contingent liability not provable. *In re* Edson (1902), Dist. Vt., Wheeler, J., 119 Fed., 487.

Alimony over-due is provable debt in bankruptcy and a court of bankruptcy may release the bankrupt from arrest under state authority for non-payment. *In re* Houston (1899), Dist. Ky., Evans, J., 94 Fed., 119. 12 A. B. R., 107; 1 N. B. N., 205.

Alimony due not a provable debt and not barred. *In re* Smith (1899), N. Dist. N. Y., Hotchkiss, R., 3 A. B. R., 67; 1 N. B. N., 471.

Alimony over-due is a provable debt. *Fite* v. *Fite* (1901), Ct. of App. Ky., Guffy, J., 5 A. B. R., 461.

Rent accruing after adjudication is not a claim against the estate. Bankruptcy bars future liability on a lease. Lien of landlord under state law not recognized in bankruptcy. *In re* Jefferson (1899), Dist. Ky. Evans, J., 93 Fed., 948; 2 A. B. R., 206; 1 N. B. N., 288.

Judgment more than ten years old not a provable debt in North Carolina. *In re* Farmer (1902), E. Dist. N. C., Purnell, J., 9 A. B. R., 19.

Judgment for fine in criminal prosecution is a provable debt. *In re* Alderson (1900), Dist. W. Va., Jackson, J., 98 Fed., 588 3 A. B. R., 544.

Landlord's claim for future rent not a provable debt. *In re* Ells (1900), Dist. Mass., Lowell, J., 98 Fed., 967; 3 A. B. R., 564; 2 N. B. N., 357.

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Contract of endorsement is a provable claim *In re* Schaeffer (1900), E. Dist. Pa., McPherson, J., 104 Fed. 973; 5 A. B. R., 248; reversed *In re* Gerson (1901), E. Dist. Pa., McPherson, J., 107 Fed., 897; 5 A. B. R., 89.

Rent accruing after bankruptcy not a provable claim. *In re* Mahler. (1900), E. Dist. Mich., Swan, J., 105 Fed., 428; 5 A. B. R., 453.

Contingent liability of bankrupt as endorser cannot be changed to absolute liability shortly before bankruptcy without adequate consideration, *In re* Marks & Garson (1901), W. Dist. N. Y., Van Vooris, R., 6 A. B. R., 641.

Claim of surety of debt of bankrupt is dischargeable where principal is provable. *Hoyer* v. *Comstock* (1901), Sup. Ct. Ia., Given, J., 7 A. B. R., 493.

Alimony is a provable debt and proceedings therefor in state court may be joined. *In re* Van Orden (1899), Dist. N. J., Kirkpatrick J., 96 Fed., 86; 2 A. B. R., 801; 1 N. B. N., 475.

Deficiency must appear on face of deficiency decree in order to be recognized in a court of bankruptcy. *In re* Huber *et al.* (1899), N. Dist, N. Y., Judson, R., 1 N. B. N., 512.

Rent accruing after bankruptcy not a provable debt. *In re* Collingnon (1900), N. Dist. N. Y., Hotchkiss, R., 4 A. B. R., 250; 2 N. B.N., 660

Rent of premises due prior to the filing of the petition in bankruptcy is a preferred claim. *In re* Shilliday (1899), W. Dist. Pa., Blair, R., 1 N. B. N., 475. See the case of *Sinsheimer* v. *Simonson* (1900), C. C. A., 6th Cir., Taft, J., 92 Fed., 904; 3 A. B. R., 824.

Debt barred by statute of limitations revived by bond and mortgage, even though mortgage void. *In re* Stendts (1899), N. Dist. N. Y., Hotchkiss, R., 1 N. B. N., 509.

After divorce in Arkansas a wife has one-third of her husband's personalty. Before such decree she has no claim provable in bankruptcy against her estate. *Hawk* v. *Hawk* (1900), W. Dist. Ark., Rogers, J., 102 Fed., 679; 4 A. B. R., 463; 2 N. B. N., 940.

A bond given by bankrupt to secure payment of annuity is a provable debt. *Cobb* v. *Overman* (1901), C. C. A., 4th Cir., Waddill, J., 109 Fed., 65; 6 A. B. R., 324.

(2) **[Costs of suit.]** Due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice;

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See Sec. 11 as to suits by and against trustees.

Costs taxed against bankrupt in suit pending at time of filing the petition are not provable. *In re* Marcus *et al.* (1900), Dist. Mass., Lowell, J., 104 Fed., 531; 5 A. B. R., 19.

(3) **[Claim for taxable costs.]** Founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt;

Where petition filed before judgment for costs rendered, costs are not provable or dischargeable in bankruptcy. *In re* Marcus *et al.* (1901), C. C. A., 1st Cir., Putnam, J., 105 Fed., 909; 5 A. B. R., 365.

Costs incurred in case under lien. *In re* Allen (1899), N. Dist. Cal., DeHaven, J., 96 Fed., 512; 3 A. B. R., 38.

An assignee under voluntary assignment by reason whereof an adjudication in bankruptcy followed is entitled to no compensation for services nor for disbursements for rent, etc., prior to the bankruptcy. After bankruptcy he may be allowed for as a receiver until trustee takes possession. *In re* B. H. Gladding Co. (1902), Dist. R. I., Barrows, R., 9 A. B. R., 117.

(4) **[Open account or contract.]** Founded upon an open account, or upon a contract express or implied; and

See Sec. 17 and notes.

Costs of attachment incurred before bankruptcy allowed as a prior claim. *In re* Lewis (1900), Dist. Mass., 91 Fed., 632; 4 A. B. R., 51; 1 N. B. N., 556.

A stockholder's liability under state statutes is a provable claim in bankruptcy, as it is founded on implied contract. Bankruptcy court may direct payment to liquidate claim or make the computation itself. *In re* Rouse (1899), N. Dist. Ohio, Remington, R., 1 A. B. R., 393; 1 N. B. N., 48.

A liability of bankrupt as endorser accruing after petition is provable claim. *In re* Gerson (1901), C. C. A., 3rd Cir., Acheson, J., 107 Fed., 897; 6 A. B. R., 11.

Money in hands of trustee which but for the finding bankruptcy would have been taxable under state law is still taxable. In re Sims (1902), W. Dist. Ga., Speer, J., 9 A. B. R., 162.

Lien of landlord for rent under Delaware law is entitled to priority. *In re* Mitchell (1902), Dist. of Del., Bradford, J., 116 Fed., 87.

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Landlord given prior claim for rent under Pennsylvania law. *In re* Duble (1902), Middle Dist. Pa., Archbald, J., 117 Fed., 794; 9 A. B. R., 121.

Claim for trust fund not entitled to priority unless the fund can be traced to the estate of the bankrupt in the hands of the trustee. *In re* Marsh (1902), Dist. of Conn., Platt, J., 116 Fed., 396; 8 A. B. R., 576.

Claim for rent accruing after bankruptcy not a provable claim—notes given therefor invalid for lack of consideration. *In re* Hays, Foster & Ward (1902), W. Dist. Ky., Evans, J., 117 Fed., 879; 9 A. B. R., 144.

Labor claims allowed priority by state statute protected by this clause and not limited by b (4.) *In re* Slomka (1902), S. Dist. N. Y., Adams, J., 117 Fed., 688; 9 A. B. R., 124.

Contingent claim—agreement by divorced man to pay his wife for her and the children's support until certain events or her remarriage or until the children arrive at maturity is not provable. *Dunbar* v. *Dunbar* (1901), Sup. Ct. Mass., Barber, J., 180 Mass., 170.

Claims for damages for failure to deliver ice according to contract are provable. *In re* Stern (1902), C. C. A., 2nd Cir., Townsend, J., 116 Fed., 604; 8 A. B. R., 569.

An attorney's fee stipulated for in an unmatured note is not a provable claim. *In re* Gaslington (1902), N. Dist. Texas, Meek, J., 115 Fed., 999; 8 A. B. R., 602.

Judgment more than ten years old not a provable claim in North Carolina. *In re* Farmer (1902), E. Dist. N. C., Purnell, J., 116 Fed., 763; 6 A. B. R., 19.

Demand for conversion of property not a provable debt. Specifications in this section not extended except by necessary construction. *Watertown Carriage Co.* v. *Hall* (1902), Sup. Ct. N. Y., Smith, J., 75 N. Y., App. Div., 201.

Right of landlord to proceed with a dispossessing warrant and as an incident thereto to obtain a judgment for double rent is not affected by a discharge of the tenant in bankruptcy obtained during pendency of the dispensary proceedings as such a claim is not provable debt. *Hamilton* v. *McCrosky* (1900), Sup. Ct. Ga., Lewis, J., 112 Ga., 651.

A sublessee of the bankrupt has no claim provable based on an action or breach of covenant for quiet enjoyment having been evicted by the landlord after bankruptcy. *In re* Pennewell (1902), C. C. A., 6th Cr., Severens, J., 119 Fed., 139.

Liability of bankrupt as endorser of a note not provable unless notice of protest duly given. *In re* Edson (1902), Dist. W. V., Wheeler, J., 119 Fed., 487.

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Wife's contract with bankrupt husband for her services not basis for claim. *In re* Kaufmann (1900), E. Dist. N. Y., Thomas, J., 104 Fed., 768; 5 A. B. R., 104.

(5) **[Judgment after filing petition.]** Founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

Judgment pending bankruptcy is provable debt less costs—*In re* McBryde (1899), E. Dist. N. C., Purnell, J., 99 Fed., 686; 3 A. B. R., 729; 2 N. B. N., 345.

Entry of judgment between adjudication and discharge for less amount that the debt does not forfeit the difference; full claim allowed in bank, ruptcy. *In re* Pinkell (1899), N. Dist. N. Y., Hotchkiss, R., 1 N. B. N., 138; 1 A. B. R., 333.

b **[Unliquidated claims.]** Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

Unliquidated claim not provable until it is first liquidated under directions. *In re* Cushing(1901), W. Dist. N. Y., Moss, R., 6 A. B. R., 22.

Claim for wages on contract for future employment basis of computation. *In re* Silverman Bros. (1899), W. Dist. Mo., Phillips, J., 97 Fed., 325; 4 A. B. R., 83; 2 N. B. N., 760.

Claim for taxes has priority and should be paid as claim prior to secured creditors. *In re* Hilberg (1901), W. Dist. Pa., Mears, R., 6 A. B. R., 714.

An action for damages by father for seduction of daughter is provable debt and barred by discharge. *In re* Sullivan (1899), N. Dist. N. Y., Hotchkiss, R., 2 A. B. R., 30; 1 N. B. N., 380.

A claim not due or owing at the filing of the petition not provable. *In re* Burka (1900), E. Dist Mo., Adams, J., 104 Fed., 326; 5 A. B. R., 12.

Breach of contract to marry is a provable debt. *In re* Fife (1901), W. Dist. Pa., Buffington, J., 109 Fed., 880; 6 A. B. R., 258.

An undischarged bankrupt can prove claim arising since his adjudica-

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tion against another bankrupt's estate. *In re* Smith (1899), Hotchkiss; R., N. Dist. N. Y., 1 A. B. R., 37.

Claim by wife is provable in state court where disability of married woman to own property separately has been removed. *In re* Neiman (1901), E. Dist. Wis., Seaman, J., 109 Fed., 113; 6 A. B. R., 329.

A creditor is one who owns a demand or claim provable in bankruptcy; claims for tort not liquidated not provable and owner not creditor. *Beers* v. *Hamlin*, (1900) Dist. Ore., Bellinger, J., 99 Fed., 695; 3 A. B. R., 745.

Whether a debt is provable or not turns on its status at the time of filing the petition. *In re* Bingham (1899), Dist. Vt., Wheeler, J., 94 Fed., 796; 2 A. B. R., 223; 1 N. B. N., 351.

An unliquidated claim for tort for injuries to a person not provable under section 63. *In re* Yates (1902), N. Dist. Cal., DeHaven, J., 114 Fed., 365; 8 A. B. R., 69.

SEC. 64. DEBTS WHICH HAVE PRIORITY.

a [**Taxes.**] The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

For analogous provisions, see Sec. 62, Act of 1800; Sec. 5, Act of 1841, and Sec. 28, Act of 1867.

Taxes on exempt property payable by trustee out of general fund. *In re* Tilden (1899), S. Dist. Ia., Woolson, J., 91 Fed., 500; 1A. B. R., 300.

A judgment not a lien held not a prior claim. *In re* Wood (1899), E. Dist. N. C., Purnell, J., 95 Fed., 946; 2 A. B. R., 695; 1 N. B. N., 430.

Taxes on exempt property to be paid out of assets. *In re* Baker (1899), E. Dist. Texas, Hurley, R., 1 A. B. R, 526; 1 N. B. N., 202.

Taxes which are a prior secured lien on real estate will not be paid out of the general fund, so as to benefit the mortgagee. *In re* Veitch (1900), Dist. Conn., Townsend, J., 101 Fed., 251; 4 A. B. R., 112.

Taxes chargeable on life estate of bankrupt advanced by remainder-

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man should be refunded by trustee. *In re* Force (1900), Dist. Mass., Farmer, R., 4 A. B. R., 114.

Iowa "Mulct" is not a tax but a license, and not a preferred claim. *In re* Ott (1899), S. Dist. Ia., Woolson, J., 95 Fed., 274; 2 A. B. R., 637; 1 N. B. N., 294.

b **[Order of payment.]** The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be

(1) **[Costs of preserving estates.]** The actual and necessary cost of preserving the estate subsequent to filing the petition;

As to costs in involuntary cases, see Gen. Ord. XXXIV.

Attorneys' fees for bankrupt's lawyer allowed only for actual services. *In re* Terrill (1900), Dist. Vt., Wheeler, J., 100 Fed., 778; 4 A. B. R., 625.

Attorney's fee not allowed bankrupt out of assets collected by trustee, which had been fraudulently transferred. *In re* O'Connell (1899), S. Dist. N. Y., Brown, J., 98 Fed., 83; 3 A. B. R., 422; 2 N. B. N., 237.

Clerk in store has priority of payment for his claim for wages, but not where he loaned his full wages to the bankrupt. *In re* Flick (1900), S. Dist. Ohio, Thompson, J., 105 Fed., 503; 5 A. B. R., 465.

This section is a rule of priority and does not over-ride the provisions of sections 5 (f) and (h). *In re* Daniels (1901), Dist. R. I., Brown, J., 110 Fed., 745; 6 A. B. R., 699.

(2) **[Filing fees — Expense of creditors.]** The filing fees paid by creditors in involuntary cases, *and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery;*

As amended by Act of 1903. See Amendment, page , *post*. New matter between stars.

As to filing fees, see Sec. 51a.

(3) **[Costs of administration.]** The cost of administration, including the fees and mileage payable to witnesses

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as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in volutary cases, as the court may allow;

Fee of bankrupt's attorney of $25 allowed for preparing schedules. *In re* Carolina Cooperage Co. (1899), E. Dist. N. C., Purnell, J., 96 Fed., 950; 3 A. B. R., 154; 2 N. B. N., 23.

The services of the bankrupt attorney for which allowance should be made, are not necessarily of direct benefit to the estate. *In re* Kross (1899), S. Dist. N. Y., Brown, J., 96 Fed., 816; 3 A. B. R., 187; 1 N. B. N., 566.

Fees allowed attorney of creditors who opposed claims of other creditors, trustee refusing to act. *In re* Little River Lumber Co, (1900), W. Dist. Ark. Rogers, J., 101 Fed., 558; 3 A. B. R., 682; 1 N. B. N., 306.

Notice to creditors not essential before allowing fees to counsel for bankrupt or trustee. *In re* Stotts (1899), S. Dist. Ia., Woolson, J., 93 Fed., 438; 1 A. B. R., 641; 1 N. B. N., 326.

The bankrupt's attorney may be allowed fees in involuntary cases for services for drawing schedules, making copies of the same and expenses of attending before referee, etc. *In re* Michel (1899), E. Dist. Wis., Jones, R., 1 A. B. R., 665; 1 N. B. N., 265.

Where mortgaged chattels are sold by trustee free from liens and amount realized not enough to satisfy mortgage debt, the fees of bankrupt's attorney cannot be allowed. *In re* Frick (1899), N. Dist. Ohio, Fay, R., 1 A. B. R., 719; 1 N. B. N., 214.

Seventy-five dollars a reasonable fee for bankrupt's attorney; no special benefit accruing to the trustee—after trustee appointed creditors, attorney not allowed fees. *In re* Silberman & Schoor (1899), S. Dist. N. Y., Brown J., 97 Fed., 325; 3 A. B. R., 227; 2 N. B. N., 18.

Allowance of fee for bankrupt's attorney not forfeited by subsequent misconduct of the bankrupt. *In re* Mayer (1900), E. Dist. Wis., Seaman, J., 101 Fed., 227; 4 A. B. R., 238; 2 N. B. N., 257.

Services of attorney must be such as inure to the benefit of the estate and not personally to the bankrupt. *In re* Mayer (1900), E. Dist. Wis., Seaman, J., 101 Fed., 227; 4 A. B. R., 238; 2 N. B. N., 257.

Twenty-five dollars per day for examination and fifty dollars for pre-

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paring schedules allowed attorney for bankrupt. *In re* Mayer (1900), E. Dist. Wis., Seaman, J., 101 Fed., 227; 4 A. B. R., 238; 2 N. B. N., 257.

Attorney for receiver who is also attorney for creditors of bankrupt cannot be allowed for services. *In re* Kelly Dry Goods Co. (1900), E. Dist. Wis., Seaman, J., 102 Fed., 747; 4 A. B. R., 528.

Rent incurred by the trustee is an expense of administration and entitled to priority. *In re* Grimes (1899), W. Dist. N. C., Ewart, J., 96 Fed., 529; 2 A. B. R., 730; 1 N. B. N., 426.

In involuntary cases attorneys' fees may be allowed the bankrupt's attorney for services rendered the bankrupt while performing statutory duties—no allowance for preparing schedules and petition—allowance entirely within the jurisdiction of the court. *In re* Averill (1899), N. Dist. Ohio, Remington, R., 1 N. B. N., 544.

On sale of mortgaged property by a trustee on request of mortgagee, attorney fee not allowed as on foreclosure. *In re* Roche (1900), C. C. A., 5th Cir., 101 Fed., 956; 4 A. B. R., 369.

Attorney's fee allowed for filing petition for an injunction but not for sending notices, attending meetings and contesting claims, nor for procuring bids. *In re* Harrison Mer. Co. (1899), Dist. Mo., Phillips, J., 95 Fed., 123; 2 A. B. R., 419; 1 N. B. N., 382.

In a voluntary proceeding attorney's services are a general debt to be proved as other debts, but where services preserve the estate they are a prior claim. *In re* Beck (1899), S. Dist. Ia., Woolson, J., 92 Fed., 889; 1 A. B. R., 535; 1 N. B. N., 338.

The fee allowed classed b–3 is prior lien of landlord for rent. *In re* Duncan (1899), N. Dist. Tex., Meek, J., 2 A. B. R., 321; 1 N. B. N., 339.

In general in assignment preceding bankruptcy no allowance made assignee for services—custodian's fee allowable. *In re* Peter Paul Book Co. (1900), W. Dist. N. Y., Hazel, J., 104 Fed., 786; 5 A. B. R., 105.

No fee allowed attorney for creditor in a voluntary case. The fee for attorney of bankrupt must be determined by the size of the estate. *In re* Smith (1901), W. Dist. N. C., Purnell, J., 108 Fed., 39; 5 A. B. R., 559.

Order of priority in distribution is to be governed by equity rules in contest between claimants. *In re* Burke (1901), N. Dist. Ohio, Remington, ington, R., 6 A. B. R., 502.

Fees for bankrupt's attorney for services in procuring discharge not allowable. *In re* Brundin (1901), Dist. Minn., Lochren, J., 112 Fed., 306; 7 A. B. R., 296.

Expenses of referee including clerk hire, fall within this section. *In re* Tebo (1900), Dist. W. Va., Jackson J., 101 Fed., 419; 4 A. B. R., 235.

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Allowance of counsel fees rests largley within the discretion of referee, *Idem.*

Costs of administration take precedence of specific liens. *Idem.*

Only one fee allowed for bankrupt's attorney, although individual partners are represented by separate counsel. *In re* Eschwege & Cohn (1902), S. Dist. N. Y., Willis, R., 8 A. B. R., 282.

Attorney's fee for bankrupt—discretionary to delay allowance of, awaiting evidence as to value of. *In re* Dreebin (1900), Dist. Tex., Meek., J., 101 Fed., 110; 4 A. B. R., 146.

Costs of attachment incurred before bankruptcy allowed as a prior claim. *In re* Lewis (1900), Dist. Mass., Lowell., J. 99 Fed., 935; 4 A. B. R., 51; 1 N. B. N., 556.

Allowance of attorney's fees for petitioning creditor reduced from $12,500 to $2,000. *In re* Curtis (1900), C. C. A., 7th Cir., Jenkins, J., 100 Fed., 784; 4 A. B. R., 17.

Reasonableness of attorney's fees in the discretion of the court governed by the circumstances of the case. *In re* Burrus (1899), Dist. W. Va. Jackson J., 97 Fed., 926; 3 A. B. R., 296.

(4) **[Employes' wages.]** Wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and

Salary of a managing director is not a preferred claim. *In re* Grubbs-Wiley Grocery Co. (1899), Dist. Mo., Rathbun, R., 2 A. B. R., 442; 1 N. B. N., 381.

Creditors must prove their claims before they can petition for preference. *In re* Ogles, W. Dist. Tenn., Walker, R., 2 A. B. R., 514; 1 N. B. N., 400.

Wages blended with contract emp loying capital and machinery not a prior claim. *In re* Rose (1899), N. Dist. Ohio, Hunter, R., 1 A. B. R. 68; 1 N. B. N., 212.

Wages earned after filing the petition in bankruptcy entitled to priority under clause B (4). *In re* Gerson (1899), E. Dist. Penn., Mason, R., 1 A. B. R., 251; 1 N. B. N., 1 90.

The limitation as to time and amount must prevail. B (5) held to relate to other and different debts. *In re* Rouse Hazard & Co. (1899), C. C. A., 7th Circuit, 91 Fed., 96; 1 A. B. R., 234; 1. B. N., 75.

Traveling salesman does not come under this clause. *In re* Scanlan

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Co. (1899), Dist. Ky., Evans, J., 97 Fed., 547; 3 A. B. R., 202; 2 N. B. N., 58.

Traveling salesman's wage not entitled to priority. *In re* Greenewald & Co. (1900), E. Dist. Penn., McPherson, J., 99 Fed., 705; 3 A. B. R., 696; 2 N. B. N., 791.

Assignee of wage claim not entitled to priority. *In re* Westlund, 1899) Dist. Minn., Lochren, J., 99 Fed., 399; 3 A. B. R., 646.

Where mortgaged chattels are ordered sold free from lien of mortgagee and amount realized is not enough to satisfy the mortgage debt, wages will not be paid out of proceeds. *In re* Frick (1899), N. Dist. O. Fay, R., 1 A. B. R., 719; 1 N. B. N., 214.

Priority of a wage claim not lost by merging it in a judgment. *In re* Anson (1900), N. Dist. Cal., DeHaven, J., 101 Fed., 698; 4 A. B. R., 231; 2 N. B. N., 567.

Labor claims prior to specific liens. *In re* Tebo, (1900), Dist. W. Va., Jackson, J., 101 Fed., 419; 4 A. B R., 235.

Wage claims assigned after bankruptcy have priority in assignee's hands. *In re* Campbell (1900), E. Dist. Wis., Seaman, J., 102 Fed., 686; 4 A. B. R., 535.

Commissions due as wages not entitled to priority. *In re* Mayer (1900), Dist. Wis., Seaman, J., 101 Fed., 227; 4 A. B. R., 119; 2 N. B. N., 257.

President of bankrupt corporation cannot claim salary as prior claim. *In re* Carolina Cooperage Co. (1899), E. Dist. N. Car., Purnell, J., 96 Fed. 950; 3 A. B. R., 154; 2 N. B. N., 23.

Wage claims assigned after bankruptcy have priority in assignee's hands. *In re* Campbell (1900), E. Dist. Wis., Seaman, J., 102 Fed., 686; 4 A. B. R., 535.

Priority given to traveling salesman in Washington under provision of state law. *In re* Lawlor (1901), Dist. Wash., Hanford, J., 110 Fed., 135; 6 A. B. R., 184.

Sale by trustee free and clear of liens will require the trustee to pay tax liens. *In re* Keller (1901), N. Dist. Ia., Shiras, J., 110 Fed., 348; 6 A. B. R., 351.

Wage claim comes under clause b. 4, not under clause b. 5. *In re* Shaw (1901), E. Dist. Penn. McPherson, J., 109 Fed., 780; 6 A. B. R., 501.

Contract of employment for a term unexpired at the time of bankruptcy does not entitle employe to prove claim for the balance of the unexpired term. *In re* Silverman Bros, (1899), West Dist. Mo., Crittenden, R., 2 A. B. R., 15; 1 N. B. N., 286.

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(5) **[Debts to persons entitled to priority.]** Debts owing to any person who by the laws of the States or the United States is entitled to priority.

Debts due the United States prior, Sec. 3,466 Rev. St. of U. S.

Debts created by misappropriation not entitled to priority. Creditors who are entitled to priority lose their privilege by suffering the estate to be distributed without protest. *Claflin, etc. Co.* v. *Eason, Trustee*, (1899), E. Dist. Tex., White, R., 2 A. B. R., 263; 1 N. B. N., 360.

A claim due a county for wages of its convicts is provable and being a preferred claim under the State Law, is so in bankruptcy. *In re* Wright, *et al.* (1899), Dist. Mass., Lowell, J., 95 Fed., 807; 2 A. B. R., 592; 1 N. B. N., 428.

By Penn. law landlord's lien is a prior claim even for future rent. *In re* Goldstein (1899), W. Dist. Penn., Van Wormer, R.; 2 A. B. R., 603; 1 N. B. N., 422.

Judgments for fines on criminal proceedings recovered by the State are not preferred claims. *In re* Alderson (1900), Dist. W. Va., Jackson, J., 98 Fed., 588; 3 A. B. R., 544.

Bankrupt act recognizes liens as fixed by state law—limitation of time for filing such claims governed by the U. S. law. *In re* Fall City Shirt Mfg. Co. (1899), Dist. Ky., Evans, J., 98 Fed., 592; 3 A. B. R., 437; 1 N. B. N., 565.

Commissions are payable on claims having priority. *In re* Gerson (1900), E. Dist. Penn., Mason, R.; 4 A. B. R., 480; 2 N. B. N., 860.

No priority of claim allowed where trust funds were commingled by bankrupt so as identity is lost. *idem.*

A broker borrowed money on collateral left with him, which was sold by his creditor becoming bankrupt. No priority of claim allowed the depositor. *In re* Swift (1901), Dist. Mass., Olmstead, R.; 5 A. B. R., 232.

Claim for rent given priority under Penn. statutes. Applies only to rent accruing prior to date of adjudication. Reasonable rent during trustee's occupancy allowed. *In re* Cronson (1899), W. Dist. Penn., 1 N. B. N., 474.

Debt due a county for convict labor a preferred claim. *In re* Worcester County (1900), C. C. A., First Cir., Putnam, J., 102 Fed., 808; 4 A. B. R., 496.

Lien for laborer's wages secured by Ohio statute preserved in bankruptcy. *In re* Coe-Powers & Co. *et al.* (1901), C. C. A., 6th Cir., Day J., 109 Fed., 550; 6 A. B. R., 1.

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Wage claims may be given preference under this clause or State law may give and control. *In re* Lawlor (1901), Dist. Wash., Hanford, J., 6, 110 Fed., 135; 6 A. B. R., 184.

Where the state law gives debt due by guardian a priority it will be respected as such in bankruptcy. *In re* Crow (1902), W. Dist. Ky., Dean, R.; 7 A. B. R., 545.

Insolvency law in State in force for purpose of determining priority. *In re* Daniels (1901), Dist. R. I., Brown, J., 110 Fed., 745; 6 A. B. R., 699.

Lien claims under Va. law for supplies discussed.

Insurance by mortgagor does not inure to benefit mortgagee or lienor unless by contract. *In re* West Norfolk Lumber Co. (1902), East Dist. Va., Waddill, J., 112 Fed., 759; 7 A. B. R., 648.

(*c*) **[After composition set aside or discharge revoked.]** In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

As to revocation of discharge see *ante* Sec. 15; as to setting aside a composition see *ante* Sec. 13, also Sec. 12. As to when compositions may be offered.

For analogous provisions of Act of 1800, see 29 and 30 of that act; of Act of 1841, see Sec. 10 of that act; also Secs. 27 and 28 of Act of 1867.

SEC. 65. DECLARATION AND PAYMENT OF DIVIDENDS.

a **[On allowed claims.]** Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

See Sec. 64 and note as to debts which have priority.

Discussion of word "dividend" *in re* Fielding (1899), W. Dist. Mo., Phillips, J., 96 Fed., 800; 3 A. B. R., 135; 2 N. B. N., 735.

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b **[First and subsequent dividends.]** The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order: **Provided*, That the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed: *And provided further*, That the final dividend shall not be declared within three months after the first dividend shall be declared.*

As amended by act of 1903. See amendment page *Post*. New matter found between stars.

Commissions may be paid referees and trustees on money paid out on, first, unsecured debts; second, on commissions; third, on the surplus to the bankrupt after all creditors are paid in full, but not on payments on claims entitled to priority; if secured creditor submits his security to the bankruptcy court and receives his due, commission should be allowed on amount paid. *In re* Sabine (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R., 322; 1 N. B. N., 312.

The referee should hold back from the amount of the first dividend enough to cover expenses of administration and to cover such claims as he has intimation will probably be presented and allowed. Attorneys have a right to priority out of any funds that may be in the hands of trustee at the time claim is allowed. *In re* Scott (1899), E. Dist. Tex., Meek, J., 96 Fed., 607; 2 A. B. R., 324; 1 N. B. N., 353.

Dividend defined. *In re* Barber (1899), Dist. Minn., Lochren, J., 97 Fed., 517; 3 A. B. R., 306; 1 N. B. N., 559.

c **[Claims filed subsequent to payment of dividends.]** The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be

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affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

Money ready for distribution should be paid to creditors who have filed their claims. No money should be retained for schedule creditors who have not filed their claims. *In re Stein* (1899), Dist. Ind., Baker, J., 94 Fed., 124; 1 A. B. R., 662; 1 N. B. N., 339.

d **[When person adjudged bankrupt without the United States.]** Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such courts shall be paid any amounts.

e **[Limit to amount collectable by claimant.]** A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this Act.

SEC. 66. UNCLAIMED DIVIDENDS.

a **[Payment into court.]** Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

b **[Distribution after one year.]** Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bank-

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rupt: *Provided*, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

SEC. 67. LIENS.

a **[Claims which are not valid liens.]** Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

State law giving vendor of property the right to subject the same to levy for purchase money gives no lien superior to the trustee. *In re* Wilkes, E. Dist. Ark., Trieber, J., 7 A. B. R., 574.

No lien where purchase price of goods not secured by chattel mortgage. *In re* Tatem, Mann & Co., E. Dist. N. C., Purnell, J., 6 A. B. R., 426.

Unrecorded chattel mortgage avoided as to trustee. *In re* Leigh Bros. Dist. Colo., Harrison, R., 2 A. B. R., 606; 1 N. B. N., 425.

An unrecorded chattel mortgage is void as to creditors who became such between making and the filing of the same. *In re* Loud (1899), E. Dist. Mich., Davock, R., 1 N. B. N., 502.

A mortgage executed more than four months prior to bankruptcy proceedings, but recorded in less than four months, is nevertheless a valid lien. *In re* Wright (1899), N. Dist. Ga., Newman, J., 96 Fed., 187; 2 A. B. R., 364; 1 N. B. N., 381.

Lien of a mechanic enforced provided he has complied with the statutory conditions. *In re* Kirby-Dennis Co., (1899), C. C. A., 7th Cir., Jenkins, J., 95 Fed., 116; 2 A. B. R., 402; 1 N. B. N., 399.

A lien not perfected at the time of proceedings in bankruptcy is lost—a trustee does not represent lien claimants as against unsecured creditors. *Goldman, Beckman & Co.* v. *Smith* (1899), Dist. of Ky., Durett, R., 2 A. B. R., 104; 1 N. B. N., 291.

An unrecorded chattel mortgage avoided as to trustee. *In re* Leigh Bros. (1899), Dist. Colo., Harrison, R., 96 Fed., 806, 2 A. B. R., 606; 1 N. B. N., 526.

This section and subdivisions c and f refers to existing liens, not those merged in judgment. Property sold and proceeds distributed before power of bankruptcy court invoked. *Botts* v. *Hammond* (1900), C. C. A., 4th Cir., Simonton, J., 99 Fed., 916; 3 A. B. R., 775.

Mortgage liens—facts establishing fraud. *In re* Steininger Mercantile Co. (1900), C. C. A., 5th Circt., Pardee, J., 107 Fed., 669; 6 A. B. R., 68.

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Purchaser having notice of insolvency of bankrupt not a bona fide purchaser within the meaning of the act. *Brown* v. *Case*, Sup. Jud. Ct., Mass., Lathrop, J., 61 N. E., 279; 6 A. B. R., 744.

Pledge without delivering or recording valid in Georgia and good against trustee—trustee takes property as the innocent purchaser. *Chattanooga Nat. Bank* v. *Rome Iron Co.* (1900) Cir. Ct., Nor. Dist. Ga. Newman, J., 102 Fed., 755; 4 A. B. R., 441.

A chattel mortgage which for want of re cording or refiling became invalid as to creditors is so invalid only as to judgment creditors, and good as against general creditors represented by the trustee. *In re* New York Economical Printing Co. (1901), C. C. A., 2nd Cir., Wallace, J., 110 Fed., 514; 6 A. B. R., 615.

Trustee as against unrecorded conditional sale is in the position of a judgment creditor. *Logan* v. *Nebraska Moline Plow Co* (1902), Sup. Ct. Neb., Day, J., 92 N. W., 129.

Chattel mortgage given in good faith cannot be questioned by the trustee. *In re* Standard Laundry Co. (1902), C. C. A., 9th Cir., Hawley, J., 116 Fed., 476; 8 A. B. R., 538.

Conditional sale void under state law as to creditors is void as to trustee—all creditors of the bankrupt have the status through the trustee of attaching creditors, as well in voluntary as in involuntary cases. *In re* Fraizer (1902), W. Dist. Mo., Phillips, J., 9 A. B. R., 21.

A conditional sale not allowed as a preferred claim where it appears that the claimant delivered goods to the bankrupt under contract for retaining title, but the circumstances showed it to be a conditional sale. *In re* Robinson (1902), W. Dist. Mo., Phillips, J., 118 Fed., 471; 9 A. B. R., 180.

Lien of chattel mortgage in Wisconsin which was not filed for record until after a general assignment is lost as to the trustee in bankruptcy subsequently appointed—question of rights of trustee generally to assail mortgage defective as to creditors not determined. *In re* H. G. Andrae Co. (1902), E. Dist. Wis., Scaman, J., 9 A. B. R., 135.

Unrecorded mechanic's lien not invalid where security given to secure former advances. *Duplan Silk Co* v. *Spencer* (1902), C. C. A., 3rd Cir., Gray, J., 115 Fed., 689; 8 A. B. R., 367.

Trustee entitled to be substituted to rights of attachment creditors as party plaintiff. *Patten* v. *Corley* (1902), Sup. Ct. N. Y., Bartlett, J., 8 A. B. R., 482.

Trustee may be subrogated to rights of a creditor having judgment against bankrupt on note containing waiver of personal property exemption. *In re* W. G. Jackson (1902), E. Dist. Pa., McPherson, J., 116 Fed., 46; 8 A. B. R., 594.

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This section does not extend to a judgment or decree enforcing a pre existing lien, but is confined to judgments creating liens. *Metcalf* v. *Barker* (1902), Sup. Ct. of U. S., Fuller, J., 9 A. B. R., 36.

Sale on fraudulent representations as to solvency may be disaffirmed and goods recovered for trustee. *In re* Hamilton Furniture & Carpet Co. (1902), Dist. of Ind., Baker, J., 9 A. B. R., 65.

A deed by a bankrupt to his mother who had no knowledge of his insolvency is not affected by the bankruptcy act. *Craft* v. *Morrow* (1901), Penn. County Court, Taylor, J., 25 Pa., Co., C. 487.

A lien acquired by a creditor's bill on real estate allowed to stand. *Arnold* v. *Trevianns* (1903), Sup. Ct. N. Y., Jenks, J., 79 N. Y. Supp., 732.

Trustee takes property subject to existing liens —effect of mechanic's liens. *South End Improvement Co.* v. *Harden* (1902), Sup. Ct. N. J. (Eq.), Reed, J., 52 Atl., 1127.

b **[Trustee subrogated to rights of creditors.]** Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

Creditor's bill in state court long pending against bankrupt is not abated by bankruptcy. Trustee may intervene and pursue the remedy for benefit of general or secured creditors. *Taylor* v. *Taylor et al* (1900), N. J. Chancery, Reed, J., 45 Atl., 440; 4 A. B. R., 211.

Section 67 f applies to both voluntary and involuntary cases. *In re*; Vaughan (1899), S. Dist. N. Y., Brown, J., 97 Fed., 560; 3 A. B. R., 362. 2 N. B. N., 101.

This section covers voluntary as well involuntary bankruptcies *In re* Richards (1899), C. C. A., 7th Cir., Jenkins, J., 96 Fed., 935; 3 A. B. R., 145; 2 N. B. N., 38.

In conditional sale title goes to the trustee—contract of sale that title remain in the vendor till paid is conditional. *In re* Howland (1901), N. Dist. N. Y., Coxe, J., 109 Fed., 869; 6 A. B. R., 495.

c **[Certain liens dissolved.]** A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process

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or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if

(1) **[Defendant insolvent.]** It appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or

"Insolvency" defined. Sec. 1 (15). Preference defined Sec. 60 a.

Knowledge of insolvency not necessary to be shown. *In re* Burrus (1899), W. Dist. Va., Jackson, J., 97 Fed., 926; 3 A. B. R., 296.

Proceeds of execution in the hands of the sheriff for levy inside of four months goes to the trustee. *In re* Tenney, S. Dist. N. Y., Brown, J., 97 Fed., 554; 3 A. B. R., 353; 2 N. B. N., 140.

Lien acquired more than four months prior not affected by bankruptcy proceedings. *In re* Dunavant (1899), E. Dist. N. C., 96 Fed., 542; 3 A. B. R., 41; 1 N. B. N., 542.

Mechanic's lien in N. Y. obtained for antecedent debt is dissolved by petition filed within four months after notice of lien filed. *In re* Emslie & Son (1900), S. Dist. N. Y., Brown, J., 102 Fed., 291; 3 A. B. R., 516; 2 N. B. N., 324.

The time of the entry of the judgment, not the time of giving the note counted as to the validity of the lien. *In re* Richards (1890), C. C. A., 7th Cir., Jenkins, J., 96 Fed., 935; 3 A. B. R., 145; 2 N. B. N., 38.

Mortgage of property shortly before bankruptcy avoided. *In re* McLam (1899), Dist. Vt., Wheeler, J., 97 Fed., 922; 3 A. B. R., 245.

(2) **[Knowledge of Insolvency.]** The party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or

Costs and disbursements of an attachment suit pending against the bankrupt are not collectable out of the bankrupt's estate. *In re* Young (1899), E. Dist. N. Y., Thomas, J., 96 Fed., 606; 2 A. B. R., 673; 1 N. B. N. 428.

(3) **[Fraud — trustee subrogated.]** That such lien was sought and permitted in fraud of the provisions of this

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Act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

Judgments obtained preferentially will be set aside and the sheriff be required to turn over to trustee all the proceeds of execution thereunder. Such creditors may, however, prove their claims as general creditors. *In re* Richard (1899), E. Dist. N. C., Purnell, J., 94 Fed., 633; 2 A. B. R., 506; 1 N. B. N., 487.

Trustee subrogated to lien of a ttaching creditors and District Court held jurisdiction. *In re* Hammond (1899), Dist. Mass., Lowell, J., 98 Fed., 845; 3 A. B. R., 466.

d **[Liens given in good faith.]** Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.

See notes to e and f, *post.*

Lien of mortgage creditor after foreclosure does not attach to the rents received by the trustee pending redemption, nor should the trustee be required to pay the taxes. *In re* Hollenfeltz (1899), N. Dist. Ia., Shiras, J., 94 Fed., 629; 2 A. B. R., 499; 1 N. B. N., 503.

Statutory liens of landlord may be lost by mixing the claim therefor. with other claims for which no lien is given. *In re* Wolf (1899), N Dist. Ia., Shiras, J., 98 Fed., 74; 3 A. B. R., 558; 2 N. B. N., 908.

Chattel mortgage under Ohio law unrecorded becomes valid by recording against creditors who have not acquired liens in the interval. *In re* Schmitt, Dist. Ohio, Wing, J., 6 A. B. R., 150.

Burden of proof of showing lien is on the creditor making the claim. *In re* Wood (1899), E. Dist. N. C., Purnell, J., 95 Fed., 946; 2 A. B. R., 695; 1 N. B. N., 430.

Bankruptcy court has no power to issue injunction restraining mortga-

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gees from foreclosing liens—the liens to attach to the proceeds of the property sold in bankruptcy. *In re* Pittlekow (1899), E. Dist. Wis., Seaman, J., 92 Fed., 901; 1 A. B. R., 472; 1 N. B. N., 234.

Court of bankruptcy may order property sold divested of all liens, the liens to be transferred to the proceeds. *In re* Worland (1899), N. Dist. Ia., Shiras, J., 92 Fed., 893; 1 A. B. R., 450; 1 N. B. N., 316.

Lien of attachment obtained within four months of filing a petition is annulled by proceedings in bankruptcy even if suit was begun more than four months prior to proceedings. *In re* Friedman (1899), S. Dist. N. Y., Holt, R.; 1 A. B. R., 510; 1 N. B. N., 208.

District court will extend equity powers to enforce state liens—wages preferred by state law superior to landlord's lien. *In re* Byrne & Co. (1899), S. Dist. Ia., Shiras, J., 97 Fed., 762; 3 A. B. R., 268; 2 N. B. N., 246.

Landlord has no lien for overdue rent under Penn. statute. *In re* Rupple (1899), W. Dist. Penn., Buffington, J., 97 Fed., 778; 3 A. B. R., 233; 2 N. B. N., 88.

Fictitious sales for increasing the business of a corporation are contrary to public policy and parties thereto cannot maintain liens thereon in bankruptcy. *In re* Fort Wayne Electric Corp. (1899), Dist. Ind., Baker, J., 95 Fed., 264; 2 A. B. R., 503; 1 N. B. N., 356.

Bankruptcy does not affect liens given by local law. *In re* Oconee Milling Co. (1901), C. C. A., 5th Cir., 109 Fed., 866; 6 A. B. R., 475.,

Where there is no value to the estate for creditors from the proceedings liens will not be adjudicated in bankruptcy. *In re* Gibbs (1901), Dist. Vt., Wheeler, J., 109 Fed., 627; 6 A. B. R., 485.

Withholding chattel mortgage from record is not per se proof of fraud and mortgage is good from date of record. *In re* Shirley (1901), C. C. A., 6th Cir., Day, J., 112 Fed., 801; 7 A. B. R., 299.

If a transferee has reasonable cause to believe that a preference was intended by making the transfer it will be void. *In re* Jacobs (1899). W. Dist. La., Jones, R., 99 Fed., 539; 1 A. B. R., 518; 1 N. B. N., 183. *Idem.*

Section 60 and 67 e. of the Act construed and compared. *Idem.*

Transferee has reasonable cause to suspect a preference when slightest inquiry would inform him as to the facts. *Idem.*

Tailor who has taken goods from the bankrupt to make up on the piece plan, held to have a lien on the goods as against the trustee. *In re* Lowensohn (1900), S. Dist. N. Y., Brown, J., 100 Fed., 776; 4 A. B. R., 79; 2 N. B. N., 71.

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Chattel mortgage void for uncertainty which describes stock of merchandise merely as such. *Stroud* v. *Mc Daniel* (1901), C. C. A., 4th Cir., Purnell, J., 106 Fed., 493; 5 A. B. R., 695.

Costs of administration and wage claims prior to specific liens. *In re* Tebo (1900), Dist. W. Va., Jackson, J., 101 Fed., 419; 4 A. B. R., 235.

Lien relinquished by creditor of a bankrupt under mistake of law or fact may be restored if without loss to the estate. *In re* Swift (1900), Dist. Mass., Lowell, J., 5 A. B. R, 232.

The rights of a mortgagee to foreclose a chattel mortgage are not affected by bankruptcy of mortgagor. *Harvey* v. *Smith* (1901), Supreme Ct., Mass., Knowlton, J., 7 A. B. R., 497.

Lien on property set aside as exempt must be adjudicated in other courts. *In re* Little (1901), N. Dist. Ia., Shiras, J., 110 Fed., 621; 6 A. B. R., 681.

Renewal of chattel mortgage within four months period is not for past consideration, and good in the absence of other intervening liens. *In re* Shepherd (1901), N. Dist. Ill., Eastman, R., 6 A. B. R., 725.

To rescind sale on ground of fraud there must be some known false misrepresentation on which seller of goods relied. *In re* Roalswick (1901), Dist. Mont., Knowles, J., 110 Fed., 639; 6 A. B. R., 752.

Lien given by state law on clothing sold by bankrupt is lost by neglect to have the same sold separately—it is no lien on the general funds. *In re* Klopholtz & Brien (1902), E. Dist. Penn., McPherson, J., 113 Fed., 1002; 7 A. B. R., 703.

Mortgage for present consideration is valid where mortgage was in good faith although the bankrupt used proceeds of loan to make preferences. *In re* Soudans Mfg. Co. (1902), C. C. A., 7th Cir., Seaman, J., 113 Fed., 804; 8 A. B. R., 45.

Discharge in bankruptcy does not affect liens on exempt property. *Evans* v. *Rounsaville*, Supreme Ct., Ga., Little, J., 8 A. B. R., 236; *Smith* v. *Zachry* (1902), Sup. Ct., Ga., Little, J., 8 A. B. R., 240.

Lien of mortgage not affected by bankruptcy unless creditor proves his claim. *Reed* v. *Equitable Trust Co.* (1902), Sup. Ct., Ga., Lumpkin, J., Little, J., 8 A. B. R., 242.

Pledge without delivery or recording valid in Georgia, good against trustee—trustee takes property as the debtor had, subject to valid liens, not as an innocent purchaser. *Bank* v. *Rome Iron Co.* (1900), N. Dist. Ga., Newman, J., 4 A. B. R., 441.

Mortgaged property may be sold free of liens and the mortgage tested as to its jurisdiction in bankruptcy to determine—distinction between

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Bardes *v.* Bank case. *In re* Kellogg (1902), W. Dist. N. Y., Hazel, J., 112 Fed., 52; 7 A. B. R., 623.

e **[Conveyances within four months—when void..]** That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the passage of this Act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee (trustee) and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

*For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened shall have concurrent jurisdiction.

As amended by Act of 1903, see amendment, page *post*.

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New and additional matter found between stars.

As to jurisdiction of suits, see Sec. 11 and Sec. 23b *ante*.

As to assignment, see Sec. 3 (4).

General assignment is act of bankruptcy and voidable. *In re* Gray (1900), N. Y. Sup. Ct., Barrett, J., 3 A. B. R., 647.

Section 67 e and Section 70 construed and compared. *In re Gray* (1900), N. Y. Sup. Ct., Barrett, J., 3 A. B. R., 647.

A preference is created by the pledge of property by the bankrupt shortly before bankruptcy, although the agreement therefor was more than four months antecedent to the filing of the petition. *In re* Sheridan (1899), E. Dist. Penn., McPherson, J., 98 Fed., 406; 3 A. B. R., 554.

Sureties on appeal bond who receive mortgages to repay them for disbursements made on the defalcation of the bankrupt occupy no superior equitable position. *In re* Richards (1899), W. Dist. Wis., Bunn, J., 95 Fed., 258; 2 A. B. R., 518.

Intent of the mortgagee immaterial, and if for post debt within the prohibited period, trustee may recover. *Cullinane* v. *State Bank of Waverley* (1902), Sup. Ct. Iowa, Bishop, J.; 91 N. W., 783.

Claimants to property seized under an attachment within four months of the debtor's adjudication as a bankrupt, cannot, on mere motion to that end, secure the delivery of the property to them on the theory that the title was not in the debtor but in his trustee in bankruptcy. *New Orleans Acid and Fertilizer Co.* v. *Grissom & Suggs* (1901), Sup. Ct. Miss., Calhoun, J., 79 Miss., 662.

Mortgage securing present advancements as well as antecedent debts creates a preference only as to the latter. *In re* Wolf (1899), N. Dist. Ia., Shiras, J., 98 Fed., 84; 3 A. B. R., 555; 2 N. B. N., 908.

Replevin by creditor for goods bought at a fraudulent sale discussed and the question of unliquidated damages and proceedingsto ascertain the same in bankruptcy outlined. *In re* Heinsfurter (1899), S. Dist. Ia., Woolson J., 97 Fed., 198; 3 A. B. R., 113; 1 N. B. N., 504.

Bankruptcy court has jurisdiction of property pledged by the bankrupt and will dispose of same subject to right of lienors. *In re* Cobb (1899), E. Dist. N. C., Purnell, J., 96 Fed., 821; 3 A. B. R., 129; 1 N. B. N., 557.

Creditors receiving collateral within the four months must surrender the same as preferential. *In re* Cobb (1899), E. Dist. N. C., Purnell, J., 96 Fed., 821; 3 A. B. R., 129; 1 N. B. N., 557.

Chattel mortgage given within the four months allowing the mortgagor to retain possession and sell the goods mortgaged is void under the

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bankruptcy law. *In re* Platts (1901), Dist. S. D., Carland, J., 110 Fed., 126; 6 A. B. R., 568.

Chattel mortgage in part for antecedent debt void *pro tanto*. *In re* Ronk (1901), Dist. Ind., Baker, J., 111 Fed., 154; 7 A. B. R., 31.

Conditional sale upheld in Kentucky. Title of trustee in bankruptcy same as that of the bankrupt. *In re Sewell*, E. Dist. Ky., Cochran, J., 111 Fed., 791; 7 A. B. R., 133.

Where members of insolvent partnership divide the partnership assets between the members the agreement will be treated as void. and the assets held as firm assets. *In re* Head & Smith (1902), W. Dist. Ark., Rogers, J., 114 Fed., 489; 7 A. B. R., 556.

Bankruptcy court may enjoin assignee under general assignment from interfering with property assigned and may direct the marshal to take charge and hold such property pending adjudication. *Davis* v. *Bohle et al.* (1899), C. C. A., 8th Cir., Thayer, J., 92 Fed., 325; 1 A. B. R., 412; 1 N. B. N., 216.

Bankruptcy court acquires jurisdiction the moment petition is filed and failure to issue the subpœna within four months does not affect right to have preferential confessions of judgment set aside. *In re* Lewis & Bro. (1899), S. Dist. N. Y., Brown, J., 91 Fed., 632; 1 A. B. R., 458; 1 N. B. N., 556.

Bankrupt court may order sale of bankrupt's property free of liens, *Southern Loan & Trust* v. *Benbow* (1899), W. Dist. N. C., Ewart, J., 96 Fed., 514, 3 A. B. R., 9; 1 N. B. N., 499.

Wife's equitable interest in lands of the bankrupt husband which he conveyed to her before bankruptcy not fraud on creditors. *In re* Garner, N. Dist. Ga., Newman, J., 110 Fed., 123; 6 A. B. R., 596.

This section applies to transfers, etc., other than money which were not made in good faith for present, fair consideration. *Blakely* v. *Boonville Nat. Bank* (1899), Dist. Ind., Baker, J., 95 Fed., 267; 2 A. B. R., 459; 1 N. B. N., 411.

Judgment within the four months void and trustee may recover of the plaintiff—proof of insolvency at time of recovery necessary—allegations in petition on which adjudication was had of such fact of insolvency is sufficient. *Levor* v. *Seiter* (1901), Sup. Ct. N. Y., Leventritt, J., 34 N. Y. Misc., 382.

f **[Liens created through legal proceedings.]** That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent,

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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, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect:

Provided, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

For method of computing time under this act, see Sec. 31 a and notes ante.

Judgment within four months not void but merely the lien is annulled by the bankruptcy proceedings. *In re* Pease (1900), N. Dist. N. Y., Hotchkiss, R., 4 A. B. R., 547; 2 N. B. N., 1108.

The trustee has only the rights of the bankrupt's creditors to all acts and transfers; such rights do not enable the trustee to defeat a prior attachment of creditors of transferee. *In re* Mullen (1900), Dist. Mass., 101 Fed., 413; 4 A. B. R., 224; 2 N. B. N., 701.

Trustee may maintain action to set aside transfer made by a firm and its members of which he is trustee. *Barber* v. *Franklin* (1902), Sup. Ct. N. Y., Gildersleeve, J., 37 Misc., 292; 75 N. Y., Supp., 305; 8 A. B. R., 468.

A chattel mortgage with permission for mortgagee to make sales of the property is void in South Dakota as to creditors and is void in bankruptcy. *Elgin State Bank* v. *Rice* (1902), C. C. A., 8th Cir., Lochren, J., 119 Fed., 107.

Preferential conveyance six months old but recorded within four months is valid and not affected by the bankruptcy act. *Miller* v. *Shiver* (1900), Sup. Ct. Pa., Fell, J., 197 Pa. St., 191.

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Injunction to restrain attaching creditor and sheriff preliminary to appointment of trustee is proper. *In re* Goldberg (1902), N. Dist. N. Y., Ray, J., 117 Fed., 692; 9 A. B. R., 156.

This section applies to voluntary cases. Judgment transferred by a *testatum fi fa* to another county within the four months period comes under the statute so far as that new county is concerned. *Mencke* v. *Rosenberg* (1902), Sup. Ct. Pa., Mestrezot, J., 202 Pa. St. Rep., 131; 9 A. B. R., 323.

Execution on old judgment issued within the four months cannot be enjoined by bankruptcy court. *White* v. *Thompson et al.* (1903), C. C. A., 5th Cir., 119 Fed., 868.

Lien on seat in stock exchange held good though acquired within the four months no knowledge of insolvency being shown on part of claimant. *Hutchinson* v. *Otis* (1902), C. C. A., 1st Cir., Putnam, J., 115 Fed., 937; 8 A. B. R., 382.

Claims for sheriff's fees for attachment within the four months period rendered void by bankruptcy. *In re* Jennings (1902), W. Dist. N. Y., Hotchkiss, R., 8 A. B. R., 358.

Money paid to execution creditors before filing of petition within the four months does not come within this section. *Levor* v. *Seiter* (1902), Sup. Ct. N. Y., Patterson, J., 8 A. B. R., 459.

Trustee should apply to the court granting the attachment for dissolution of the attachment rendered void under this section. *Hardt* v. *Schuylkill Plush & Silk Co.* (1902), Sup. Ct. N. Y., Ingraham, J., 69 App. Div., 90; 74 N. Y. Supp., 549; 8 A. B. R., 479.

Garnishment judgment void where made within the four months and garnishee ordered to pay into court the amount owing the bankrupt. *In re* Beals (1902), Dist. Ind., Baker, J., 116 Fed., 530; 8 A. B. R., 639.

Levy made within the four months void, though judgment on which the execution issued more than six years old. *In re* Darwin (1902), C. C. A., 6th Cir., Day, J., 117 Fed., 407; 8 A. B. R., 703.

Mechanic's lien—sub-contractors held to have no right to. *Ludowice Roofing Tile Co.* v. *Penn. Inst. for the Blind* (1902), C. C. E., Dist. Pa., Archbald, J., 116 Fed., 661; 8 A. B. R., 739.

Lien of chattel mortgage inside of four months good only for that part of the consideration that was present. *Stedman* v. *Bank of Monroe* (1902), C. C. A., 8th Cir., Lochren, J., 117 Fed., 237; 9 A. B. R., 4.

The lien given by attachment or judgment on creditors' bill which is merged in the judgment is the lien here indicated by the statute and the four months commences with the date of the attachment and not of the judgment. *Metcalf* v. *Barker* (1902), Sup. Ct. U. E., Fuller J., 9 A. B. R., 36.

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Lien filed after debtor is adjudged a bankrupt is void. *Loggori* v. *Haven* (1902), Sup. Ct. N. Y., Gildersleeve, J., 79 N. Y., Supp., 395.

Loan given under a promise of a mortgage which was not delivered until subsequent and within four months is not a preference. *Murray* v. *Beal* (1901), Sup. Ct. Utah, Miner, J., 23 Utah, 548.

Banker has no lien on deposits before maturity of notes. *Pearsoll* v. *Nassau Nat. Bank* (1902), Sup. Ct. N. Y., Jenks, J., 74 N. Y. App., Div., 89.

Lien of execution on exempt property not divested by bankruptcy proceedings where exemption law requires debtor to file schedule with officer within ten days; he must do so irrespective of his filing petition in bankruptcy. *Doyle* v. *Hall* (1899), App. Ct. Ill., 1st Dist., Horton, J., 86 Ill. App., 163.

The effect of this clause is not felt where a lien by attachment was acquired more than four months before proceedings although the judgment was within the four months. *Wakeman* v. *Throckmorton* (1902), Sup. Ct. Conn., Baldwin, J., 51 Atl., 554.

Trustee may bring trespass against constable who sold property after adjudication of bankruptcy of owner where the property had been seized on attachment within the four months. *Wallal* v. *Camp* (1901), Sup. Ct. Pa., Beaver, J., 200 Pa. St., 220.

Judgment obtained within four months is void. Clause c does not limit f. *National Bank and Loan Co.* v. *Spencer* (1900), Sup. Ct. N. Y., Spring, J., 53 N. Y. App., Div., 547.

Attachments within four months are good (1) where attachment action was brought without knowledge of the debtor; (2) the creditor had no knowledge of the insolvency of his debtor; (3) attachment is not predicated upon insolvency or attempts of the debtor to conceal and dispose of his property, and (4) the creditor no reason to believe his debtor contemplated bankruptcy. *Ex parte* Chase (1900), Sup. Ct., S. C.; Pope, J.; 62 S. C., 353.

Mortgagor who receives a discharge in bankruptcy pending foreclosure proceedings is not liable to a decree for deficiency. *Prentis* v. *Richardson's estate* (1898), Sup. Ct. Mich., Moore, J., 118 Mich., 259.

Lien dissolved by bankruptcy proceeding—stay of judgment. *Pinkhard* v. *Willis & Bro.* (1900), Sup. Ct. Tex., Gill, J., 24 Tex., Civ. App., 69.

A foreign attachment dissolved by bankruptcy proceedings. *Keeler* v. *Ft. Wayne Electric Co.* (1899), Cir. Ct. Ia., Craig, J., 23 Pa. C. C., 637.

Bankrupt may testify on behalf of his estate that conveyance made by

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him was made when he knew himself to be in failing circumstances. *Supple* v. Hall (1902), Sup. Ct. Conn., Hamersby, J., 52 Atl., 407.

Attachment lien levied more than four months before proceedings upheld. *Stickney and Babcock Coal Co.* v. *Goodwin* (1901), Sup. Ct. Me., Wiswell, J., 75 Me., 246.

This section only affects liens against the trustee as to the rest of the world thus involved. *Frazee et al.* v. *Nelson* (1901), Sup. Ct. Mass., Morton, J., 179 Mass., 456.

Attachment within four months dissolved by bankruptcy proceedings. *In re* Kemp (1900), Dist. Colo., Hallet, J., 101 Fed., 689; 4 A. B. R., 242; 2 N. B. N., 565.

The preferential giving of a mortgage within the four months with knowledge on the part of the mortgagee of the intent will be declared void and set aside by decree of the district court. *In re* Teague (1899), Dist. Ind., Baker, J., 2 A. B. R., 168; 1 N. B. N., 310.

Lien by attachment within four months of adjudication vacated—word "permitted" synonomous with "suffered," or "allowed." *In re* Arnold (1899), Dist. Ky., Evans, J., 94 Fed., 1001; 2 A. B. R., 180; 1 N. B. N., 334.

Judgment levy in four months nullified and creditor compelled to return money in plenary suit. *Levor* v. *Seiter et al.* (1901), N. Y. Sup. Ct., Leventritt, J., 5 A. B. R., 576.

This section does not relate to judgments after petition but a stay of proceedings will be ordered. *Kinmouth* v. *Brarutigan* (1900), N. Y. Sup. Ct., 46 Atlantic, 769; 4 A. B. R., 344.

Suits under 67e may be brought in the Supreme Court of N. Y. *Jones* v. *Schermerhorn* (1900), Sup. Ct., N. Y., Adams, J., 53 N. Y. App. Div., 494.

Where evidence does not show gross inadequacy of consideration by the purchaser, nor knowledge of insolvency, the purchaser is not open to attack. *Dunlap* v. *Thomas* (1902), Sup. Ct. Wash., White, J., 68 Pac., 909.

Agreement to make payment out of a particular fund or to give a lien if done within the four months, is void. *Torrence* v. *Winfield Nat. Bank* (1903), Sup. Ct. Kans., Greene, J., 71 Pac., 235.

Nothing need be shown except the fact of insolvency and subsequent adjudication. *Severin* v. *Robinson* (1901), App. Ct. of Ind., Wiley, J., 27 Ind. App., 55.

Judgment procured after adjudication will not be vacated on motion in state court *quaere*. The bankrupt may deem the judgment void. *Kinmouth* v. *Braentigam* (1900), Sup. Ct. N. J., Collins, J., 65 N. J. L., 165.

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Lien of workingmen on goods in their hands recognized. *In re Lowensohn* (1900), S. Dist. N. Y., Brown, J., 100 Fed., 776; 4 A. B. R., 79; 2 N. B. N., 871.

This section does not include mechanic's liens. *In re* Emslie & Co. (1900), C. C. A., 2nd Cir., Wallace J., 98 Fed., 716; 4 A. B. R., 126; 2 N. B. N., 324.

This clause (f) controls clause C—lien obtained by legal proceedings within four months void. *In re* Rhoads 1899), W. Dist. Penn., Buffington, J., 98 Fed., 399; 3 A. B. R., 380; 2 N. B. N., 301.

This section applies only to involuntary cases. *In re* Easley, (1898) W. Dist. Va., Paul, J., 93 Fed., 419; 1 A. B. R., 715; 1 N. B. N., 230.

Section f includes both voluntary and involuntary petitions. *In re* Dobson (1899), N. Dist. Ill., Kohlsaat, J., 98 Fed., 86; 3 A. B. R., 420; 2 N. B. N., 514.

Mortgaged property should not be sold free of liens unless it appears that the sale will be for the benefit of the estate. *In re* Styer (1899), E. Dist. Penn., McPherson, J., 98 Fed., 290; 3 A. B. R., 424; 2 N. B. N., 205.

A garnishee who has paid before bankruptcy proceedings is not to be disturbed. *In re* Sharp (1899), Dist. of Ky., Durett, R., 1 A. B. R., 379.

Attachment issued in pending case within the four months rendered void by bankruptcy act. *In re* Higgins (1899), Dist. Ky., Evans, J., 97 Fed., 775; 3 A. B. R., 364; 1 N. B. N., 992.

A mechanic's lien which is created by notice and which is given within the four months is avoided. *In re* Emslie & Sons, S. Dist., Brown, J., 98 Fed., 716; 3 A. B. R., 282; 2 N. B. N., 992.

Lien of creditor disallowed, being part of a fraudulent transaction. *In re* Hugill (1899), N. Dist. O., 100 Fed., 616; 3 A. B. R., 686; 2 N. B. N., 433.

Attachments levied within the four months and prosecuted to judgment set aside by bankruptcy court and proceeds taken by trustee; summary proceedings and rule to show cause appropriate. Such creditors are not third parties claiming estate adversely. *Bear & Co.* v. *Chase* (1899), C. C. A., Waddill, J., 3 A. B. R., 746.

General assignment held void as against trustee in bankruptcy proceedings. *In re* Gutwillig (1899), C. C. A., Wallace, J., 92 Fed., 337; 1 A. B. R., 388; 1 N. B. N., 554.

Lien of attachment within four months will not be destroyed by the adjudication of the defendant in bankruptcy where the action was begun

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more than four months prior to the filing of the petition. The act looks to the beginning of the suit. *In re* De Lue (1899), Dist. Mass., Lowell, J., 91 Fed., 510; 1 A. B. R., 387; 1 N. B. N., 555.

The lien of an unrecorded chattel mortgage is good even as to creditors who gave credit after execution and before recording. *In re* Adams (1899) E. Dist. Mich., Swan, J., 97 Fed., 188; 2 A. B. R., 415; 1 N. B. N., 530.

Judgment as used in this section is sufficiently broad to include judgment of state court appointing a receiver and adjudication of bankruptcy nullifies such judgment. *Mauran* v. *Crown Carpet Lining Co.* (1901), Sup. Ct. R. I., Rogers, J., 6 A. B. R., 734.

Receiver holding property under appointment from state court entitled to expenses and fees incurred before adjudication. *Idem.*

This clause applies to voluntary and involuntary petitions. *Brown* v. *Case*, Sup. Jud. Ct., Mass., Lathrop, J., 61 N. E., 279; 6 A. B. R., 744.

Adjudication defined, Sec. 1, Sub. (2). When a person is deemed to be insolvent, Sec. 1 (15). "f" of this section destroys and supersedes "c." *In re* Tune (1902), N. Dist. Ala., Jones, J., 115 Fed., 906; 8 A. B. R., 285.

Adjudication in bankruptcy annuls a levy on attachment in state court on property claimed as exempt, even though there is waiver of exemption in judgment notes. *In re* Tune, N. Dist. Ala., Jones, J., 115 Fed., 906; 8 A. B. R., 285.

Preferential payment is not shown where it was necessary to procure consent of landlord to effect a sale of the property and if sale was not made so much less would have been realized. *In re* Pearson (1899), S. Dist. N. Y., Brown, J., 95 Fed., 425; 2 A. B. R., 482; 1 N. B. N., 474.

"f" applies only to involuntary petitions. "c" applies to either. If suit was commenced more than four months prior to the filing of the petition the judgment will be a prior claim. *In re* Collins (1899), S. Dist. Ia., Sawyer, R., 2 A. B. R., 1; 1 N. B. N., 290.

Title to property levied on by the sheriff on execution obtained within four months is rendered void by the adjudication, and the sheriff may by summary process be ordered to surrender the same. *In re* Francis Valentine (1899), N. Dist. Cal., Haven, J., 93 Fed., 953; 2 A. B. R., 188; 1 N, B. N., 532.

"c" and "f" do not remove a mechanic's lien given by statute, but statutory provisions must be strictly complied with. *In re* Kerby-Denis Co. (1899), E. Dist. Wis., Seaman, J., 94 Fed., 818; 2 A. B. R., 218; 1 N. B. N., 399.

Levy after passage of act on judgment recovered prior to the enact-

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ment vacated by the adjudication. *In re* Adams (1899), Moss, R., N. Dist. N. Y., 1 A. B. R., 94; 1 N. B. N., 167.

Judgment obtained within the three months; lien thereof avoided by the act. *In re* Hopkins (1899), N. Dist. Ala., Turner, R., 1 A. B. R., 209; 1 N. B. N., 71.

This section applies to both voluntary and involuntary bankrupts. *In re* Richards (1899), W. Dist. Wis., Bunn, J., 95 Fed., 258; 2 A. B. R., 518.

Variations of the terms of promissory notes by agreement between parties without consideration void as against existing creditors. *In re* Powers (1899), Dist. Vt., Mott, R., 1 A. B. R., 432.

Preferences within four months preceding adjudication are void and the plaintiff treated as an unsecured creditor. *In re* Huffman (1899), W. Dist. Penn., Myers, R., 1 A. B. R., 587; 1 N. B. N., 215.

An attachment execution issued within four months prior to adjudication is void. *Peck Lumber Mfg. Co.* v. *Mitchell*, Lackawanna Co. Ct., Common Pleas, Edwards, J., 1 A. B. R., 701; 1 N. B. N., 262.

This section relates to voluntary as well as involuntary proceedings. *Idem.*

Right to join under Section 59 exists only during pendency of case. *Neustadter* v. *Chicago Dry Goods Co.* (1899), Dist. Wash., 96 Fed., 830; 3 A. B. R., 96; 1 N. B. N., 552.

To the same effect see *Worden* v. *Columbus Electric Co.* (1899), Dist. Ind., Baker, J., 96 Fed., 803; 3 A. B. R., 186.

An attachment on mesne process in Vermont constitutes only an inchoate lien which is merged in the subsequent judgment, and if within four months of bankruptcy the lien is cut off. *In re* Johnson (1901). Dist. Vt., Wheeler, J., 108 Fed., 373; 6 A. B. R., 202.

To avoid such liens it must appear the bankrupt was insolvent. *Simpson* v. *Van Etten*, C. Ct., E. Dist. Penn., Dallas, J., 108 Fed., 199; 6 A. B. R., 204.

Lien created by attachment more than four months old is not avoided. *In re* Blair (1901), Dist. Mass., Lowell, J., 108 Fed., 529; 6 A. B. R., 206.

Referee has jurisdiction to order sale of property free and clear of liens. Construction of mechanic's lien law of Ark. *In re* Matthews (1901), W. Dist. Ark., Rogers, J., 109 Fed., 603; 6 A. B. R., 96.

On sale of property free and clear of liens the order of distribution should be first costs of sale, then the liens according to priority. *In re* Sanderlin, E. Dist. N. C., Purnell, J., 109 Fed., 857; 6 A. B. R., 384.

Validity of liens may be inquired into by bankruptcy court and the

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property sold free and clear. *In re* Kellogg, McMasters, R., W. Dist. N. Y., 6 A. B. R., 389.

Lien of attachment more than four months old remains although judgment thereunder is within the five months period. Sheriff allowed his fee although case commenced more than four months before. *In re* Beaver Coal Co. (1901), Dist. Or., Bellinger, J., 110 Fed., 630; 6 A. B. R., 404.

Lien of creditor's bill in state court filed more than four months does not come under this clause and the proceedings may not be interrupted by the district court. *Metcalf Bros.* v. *Barker* (Dec., 1902), U. S. Sup. Ct., Fuller, C. J., 6 A. B. R.,36,

Sheriff required to turn over to trustee proceeds of execution made within four months. *In re* Kenney (1900), C. C. A., 2nd Cir., Lacombe, J., 105 Fed., 897; 5 A. B. R., 355.

Contra the doctrine of last case. *In re* Seebold (1901), C. C. A., 5th Cir., McCormick, J., 105 Fed., 910; 5 A. B. R., 358.

This section does not apply to judgments entered after date of adjudication—no lien can be acquired after adjudication by a judgment. *In re* Engle (1901), E. Dist. Penn., McPherson, J., 105 Fed., 893; 5 A. B. R., 372.

Liens by distraint dissolved by bankruptcy proceedings. *In re* Doughtery & Co. (1901), N. Dist. Ga., Newman, J., 109 Fed., 480; 6 A. B. R., 457.

Trustee must obtain an order to restrain the attachment of property belonging to the bankrupt. *Watschke* v. *Thompson* (1901), Sup. Ct. Minn., Lewis, J., 7 A. B. R., 504.

Lien of attachment may continue to exist after the debt is barred by bankruptcy. *Powers Dry Goods* v. *Nelson* (1901), Sup. Ct. N. D., Young J., 7 A. B. R., 506.

A lien on exempt property is subject to the jurisdiction of the State court solely. *Idem.*

A lien on exempt property is subject to the jurisdiction of the State court solely Attachment lien more than four months old not merged in the judgment and remains a valid lien. *In re* Beaver Coal Co. (1902), C. C. A., 9th Cir., Gilbert, J., 113 Fed., 889; 7 A. B. R., 542.

See contra to this doctrine *in re* Lesser, C. C. A., 2nd Cir., Shipman, J., 5 A. B. R., 326.

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SEC. 68. SET-OFFS AND COUNTERCLAIMS.

a [**Mutual debts and credits.**] In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

As to cases of mutual credit after preference, see Section 60c *ante*.

See also notes under Sec. 57g.

Unpaid subscription to stock of a bankrupt corporation due from payee of bankrupt's note will bar proof of claim either in his hands or in the hands of assignee, same being non-negotiable. *In re* Albert Goodman Shoe Co. (1899), E. Dist. Penn., McPherson, J., 3 A. B. R., 200.

Separate debt due trustee cannot be set off against a liability due creditors jointly with others. *In re* Chrystal Spring Bottling Co. (1900), Dist. Va., Wheeler, J., 96 Fed., 945; 4 A. B. R., 55; 3 N. B. N., 179.

b [**When not allowed.**] A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which

(1) [**Not provable.**] is not provable against the estate; or

As to provable debts see Sec. 63 and notes, and Sec. 17.

(2) [**Purchased after petition.**] was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

Payment on money accounts not allowed as set-off. *In re* Christensen, N. Dist. Ia., James, R., 4 A. B. R., 202; 2 N. B. N., 695.

Set off allowed in bankruptcy though not under State law. *In re* Meyer & Dickinson (1901), E. Dist. N. Y., Thomas, J., 107 Fed., 86; 5 A. B. R., 593.

Set-off denied in favor of maker of notes endorsed by bankrupt for his accommodation unmatured and held by a bank as against claim due the bankrupt on advances made by him to such maker. *Idem*.

Set-off by defendant in suit by trustee of claim arising by payment of

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debt which bankrupt had covenanted to pay, allowed as a mutual credit, although not provable in bankruptcy by reason of preferences received by the original creditor. *Morgan* v. *Wordell* (1901), Sup. Ct. Mass., Holmes, J., 59 N. E., 1,037; 6 A. B. R., 167.

SEC. 69. POSSESSION OF PROPERTY.

a **[Warrant may issue to seize and hold property.]** A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released, if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

For form of warrant to seize goods and return thereon, see form No. 8 *post*.

Affidavits under this section should be as specific as possible in the statement of all essential facts. *In re* Kelley (1899), W. Dist. Tenn., Hammond, J., 91 Fed., 504; 1 A. B. R., 306; 1 N. B. N., 240.

The marshal may not seize property in hands of third person claiming adversely on the claim that it was fraudulently conveyed by the bankrupt. *In re* Kelley (1899), W. Dist. Tenn., Hammond, J., 91 Fed., 504; 1 A. B. R., 306; 1 A. B. N., 240.

Summary process to compel bankrupt to surrender property in an involuntary case is not favored. *In re* Ogles (1899), W. Dist. Tenn., Walker, R., 2 A. B. R., 514; 1 N. B. N., 326.

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A sheriff who has seized property under writs of attachment within the four months may not retain custody to secure his fees. The court will give them in due season. *In re* Francis Valentine Co. (1899), C. C. A., 9th Cir., Gilbert, J., 93 Fed., 953; 2 A. B. R., 522; 1 N. B. N., 529.

Proceedings to compel bankrupt to pay over money to trustee must be in name of trustee. *In re* Rothschild (1901), S. Dist. Ga., Crovatt, R., 5 A. B. R., 587;

Injunction will issue to stay sale under foreclosure where it appears there is margin over the mortgage debt. *In re* Sabine (1899), N. Dist. N. Y., Hotchkiss, J., 1 A. B. R., 315; 1 N. B. N., 45.

This section does not authorize the marshal to seize property not in the bankrupt's possession. *In re* Rockwood (1899), N. Dist. Ia., Shiras, J., 91 Fed., 363; 1 A. B. R., 272; 1 N. B. N., 134.

The trustee in bankruptcy may appear in County Court and contest the account of the bankrupt who is administrator of his father's estate. *In re* Clute (1899), Superior Ct., SanFrancisco, Coffey, J.; 2 A. B. R., 376; 1 N. B. N., 386.

It is contempt for bankrupt to refuse to turn over property to trustee on the order of the referee—practice therein. *In re* Pearson (1899) E. Dist. Penn., Coffin, R.; 2 A. B. R., 819; 1 N. B. N., 475.

Bankruptcy court may order its Marshal to take possession of property in the hands of assignee under general assignment pending appointment of trustee, and may restrain assignee from disposing of or interfering with the property. *Davis* v. *Bohle* (1899), C. C. A., 8th Cir., Thayer, J., 92 Fed., 325; 1 A. B. R., 412; 1 N. B. N., 216.

A creditor who subsequent to petition levies replevin writ is liable to injunction and order to return property. *In re* Huddleston (1899), N. Dist. Ala., Turner, R.; 1 A. B. R., 572; 1 N. B. N., 214.

Where property is in hands of agent of bankrupt, summary process appropriate. *Muller* v. *Nugent, supra.*

Section 69 does not authorize the seizure of property which is in the hands of third person. *In re* Rockwood (1899), N. Dist. Ia., Shiras, J., 91 Fed., 363; 1 A. B. R., 272; 1 N. B. N., 134.

Trustee may take possession by summary process of property in bankrupt's possession but claimed by the wife, where claim proves fraudulent. *In re* Smith (1899), S. Dist. Ga., Speer, J., 100 Fed., 795; 3 A. B. R., 95; 1 N. B. N., 533.

Parties holding property of estate not under adverse title may be compelled to surrender to trustee on summary order. *In re* Moore, Dist W. Va., Jackson, J., 104 Fed., 869; 5 A. B. R., 151.

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Property transferred after filing of involuntary petition must be restored to trustee. *In re* Corbett (1900), E. Dist. Wis., Seaman, J., 104 Fed., 872; 5 A. B. R., 224.

Improper meddling with assets by either bankrupt or creditor after petition filed is contempt of court. *In re* Arnett (1901), W. Dist. Tenn. Hammond, J., 112 Fed., 770; 7 A. B. R., 522.

Property secured by the bankrupt under fraudulent representations can be reclaimed by the vendor. *Bloomingdale* v. *Empire Rubber Mfg. Co.* (1902), E. Dist. N. Y., Thomas, J., 114 Fed., 1016; 8 A. B. R., 74.

Jurisdiction of the property of the bankrupt is not obtained by the filing of the petition alone. A replevin suit brought after the filing and prior to adjudication in the State court will give priority of jurisdiction to the latter court. *In re* Wells (1902), W. Dist. Mo., McPherson, J., 114 Fed., 222; 8 A. B. R., 75.

Mortgagee took possession after petition in involuntary bankruptcy was filed against the mortgagor. The receiver in bankruptcy ousted him and he brought suit in the State court—held he should be enjoined. *In re* Gutman & Wenk (1902), S. Dist. N. Y., Adams, J., 114 Fed., 1009; 8 A. B. R., 252.

SEC. 70. TITLE TO PROPERTY.

a **[Title vested in trustee.]** The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all

(1) **[Documents.]** Documents relating to his property;

The bankrupt may be compelled to deliver to the trustee his books of account although they contain incriminating evidence. *In re* Sapiro (1899), E. Dist. Wis., Seaman, J., 92 Fed., 340; 1 A. B. R., 296; 1 N. B. N., 137.

(2) **[Patents, copyrights and trademarks.]** Interest in patents, patent rights, copyrights, and trademarks;

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Application for letters patent does not pass to trustee. *In re* McDonnell (1900), N. Dist. Ia., Shiras, J., 101 Fed., 239; 4 A. B. R., 92.

(3) **[Powers.]** Powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person;

Tenancy by courtesy in the husband after issue born does not pass to trustee—is it not an asset. *Hessletine* v. *Prince*, Dist. Mass., Lowell, J., 95 Fed., 802; 2 A. B. R., 600, 1 N. B. N., 528.

A liquor license is an asset and bankrupt compelled to surrender the same to be sold by the trustee. *In re* Fisher (1899), Dist. Mass., Olmstead, R.; 1 A. B. R., 557; 1 N. B. N., 209.

Right to apply for liquor license passes from the bankrupt to the trustee—summary process to compel nominal co-owner to surrender same not proper, but equitable petition may preserve it. *In re* Brodbine, Dist. Mass., Lowell, J., 93 Fed., 643; 2 A. B. R., 53; 1 N. B. N., 279.

Under Penn. laws a liquor license is not distrainable for rent, nor can a landlord claim a prior lien on the proceeds, nor can bankrupt claim exemption therein. *In re* Myers (1900), E. Dist. Pa., McPherson, J., 102 Fed., 869; 4 A. B. R., 536.

License to occupy stall in city market is property of trustee. *In re* Emerich, W. Dist. Penn., Buffington, J., 101 Fed., 231; 4 A. B. R., 89; 2 N. B. N., 656.

Liquor license an asset which trustee takes. *In re* Fisher (1899), Dist. Mass., Lowell, J., 98 Fed., 89; 3 A. B. R., 406; 2 N. B. N., 221.

Right of action for tort committed against the bankrupt does not pass to the trustee. *In re* Haensel (1899), Dist. Col., DeHaven, J., 91 Fed., 355; 1 A. B. R., 286; 1 N. B. N., 240.

Unpaid balance of legacy goes to trustee—also liquor license. *In re* May, Dist. Minn., Merriman, R.; 5 A. B. R., 1.

Seat in stock exchange is an asset. *In re* Page (1901), C. C. A., 3rd Cir., Bradford, J., 107 Fed., 89; 5 A. B. R., 707. Also *Page* v. *Edmunds* (Oct., 1902), U. S. Sup. Ct., McKenna, J.

Membership in stock exchange is property subject to constitution of the exchange and passes to trustee. *In re* Gaylord (1901), E. Dist. Mo., Shiras, J., 111 Fed., 717; 7 A. B. R., 195.

Membership in stock exchange is asset which passes to trustee. *In re* Page, E. Dist. Penn., McPherson, J., 102 Fed., 746; 4 A. B. R., 467; 2. N. B. N., 1,069

Transfer of certificate of membership of Chamber of Commerce after

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discharge of holder in bankruptcy by the trustee cannot be blocked by objection of fellow-member creditor whose claims are barred, there being no lien on the membership conferred by the laws by. *State ex rel Crane et al.* v. *Chamber of Commerce of Minneapolis* (1899), Sup. Ct. Minn., Canty, J., 77 Minn., 308.

(4.) **[Property transferred in fraud.]** Property transferred by him in fraud of his creditors;

(5) **[Property which might have been transferred or levied on.]** Property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him:

Fraudulent transfer avoided by trustee—third persons innocent of the fraud not proper parties. *North* v. *Taylor et al.*, Sup. Ct. N. Y., Parker J.; 6 A. B. R., 233.

State insolvency laws suspended by the operation of the bankrupt act and no title remains in a trustee in insolvency to avoid preferential conveyance made by the debtor while in failing circumstances with intent to defraud his creditors. *Ketcham* v. *McNamara*, Sup. Ct. Conn., Baldwin, J.; 6 A. B. R., 160.

Partnership assignment by one member of firm followed by adjudication in bankruptcy of the firm—court will issue summary order compelling assignee to surrender assets to trustee. *In re* Stokes *et al.* (1901), E. Dist. Penn., McPherson, J., 106 Fed., 312; 6 A. B. R., 262.

Wife under no estoppel to claim furniture which was appraised in her presence as that of her husband. *In re* Jamieson (1901), Dist. R. I., Littlefield, R.; 6 A. B. R., 601.

Trustee of bankrupt contractor receiving satisfaction of mechanic's lien must pay out of amount received a sub-contractor who had perfected his lien. *In re* Huston (1901), S. Dist. N. Y., Holt, R.; 7 A. B. R., 92.

Law of the United States and not of State prevails as to validity of chattel mortgage. *In re* Hull (1902), Dist. Vt., Wheeler, J., 115 Fed., 858; 8 A. B. R., 302.

Trustee takes no title to policy of insurance which has no cash surrender value—cannot maintain action to set aside transfer of same. *Morris et al.* v. *Dodd* (1900), Sup. Ct. Ga., Fish, J., 110 Ga., 606.

The surplus income of a trust fund beyond the amount necessary to support the beneficiary is an asset of the bankrupt's estate, which passes

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to the trustee. *Brown* v. *Barker* (1902), Sup. Ct. N. Y., Hiscock, J., 68 App. Div., 594; 74 N. Y. Supp., 43; 8 A. B. R., 450.

Property of a corporation for which bankrupt works cannot be reached by trustee even where all the stock is owned by his wife. *Campbell* v. *Thompson* (1902), Sup. Ct. Colo., Thompson, J., 70 Pac., 161.

Money deposited in bank by insolvent partnership to be *pro rated* among the creditors of the firm as their interests appear is on bankruptcy proceedings a trust fund that passes to the trustee. *In re*Davis (1903), W. Dist. Texas, Moxey, J., 119 Fed., 950.

The holder of an unrecorded bill of sale of chattels given for security for loan has title against the trustee. *Haskell* v. *Merrill et al.* (1900), Sup. Ct. Mass., Holmes, J., 179 Mass., 120.

Growing crops are assets which pass to trustee. *In re* Barrows, W. Dist. Va., Paul, J., 98 Fed., 582; 3 A. B. R., 414.

An inalienable contingent remainder does not vest in the trustee. *In re* Hoadley & Munroe (1900), S. Dist. N. Y., Brown, J., 97 Fed., 765; 3 A. B. R., 780; 2 N. B. N., 704.

The prohibition by Congress on conveyance by certain Indians of lands for a term of years will preclude creditors claiming such land in voluntary proceedings by such Indian. *In re* Russie (1899), Dist. Or., Bellinger, J., 96 Fed., 609; 3 A. B. R., 6.

All the assets of the bankrupt pass to the trustee whether named in this section or not—surplus of life income by will under N. Y. law is available to creditors and can in bankruptcy proceedings be reached by summary process. *In re* Baudoine (1899), S. Dist. N. Y., Brown, J. 96 Fed., 536; 3 A. B. R., 55; 1 N. B. N., 506.

Liability of stockholders to bankrupt corporation is an asset—trustee should make the call. *In re* Chrystal Springs Bottling Co. (1899), Dist. Vt., Wheeler, J., 96 Fed., 945; 3 A. B. R., 194.

Income of bankrupt under will providing it should not be alienable or subject to claim of creditors, does not pass to trustee. *Munroe* v. *Dewey* (1900), Sup. Ct. Mass., Holmes, J., 4 A. B. R., 264; 2 N. B. N., 840.

Trustee no interest in estate created by will where estate has not vested *In re* Wetmore, E. Dist. Penn., McPherson, J., 99 Fed., 703; 4 A. B. R. 335; 3 N. B. N., 143.

Bankrupt ordered to turn over money to trustee. *In re* Kuntz (1899), Dist. Minn., Dovan, R., 1 N. B. N., 256.

Money in hands of sheriff arising from execution sale ordered paid to trustee. *Rose* v. *Vinton* (1900), Penn., Court Com. Pleas, Wallace, J., 1 N. B. N., 514.

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Contingent remainder not a vested estate and does not pass to trustee *In re* Ehle (1901), Dist. Vt., Wheeler, J., 6 A. B. R., 476.

Where husband has possession of wife's lands by courtesy the products of that land pass to trustee as part of husband's estate in bankruptcy. *In re* Ehle (1901), Dist. Vt., Wheeler, J., 109 Fed., 625; 6 A. B. R., 476.

Rent accruing after bankruptcy part of estate going to trustee *In re* Case (1901), N. Dist. Ohio, Remington, R., 6 A. B. R., 721.

Trustee's title is no better than the bankrupt—a defective mortgage good as to the creditors is good as to the trustee. *In re* Ohio Co-operative Shear Co. (1899), N. Dist. O., Fay, R., 2 A. B. R., 775; 1 N. B. N., 477.

In conditional sales title to property passes to the trustee. *In re* Yukon Woolen Co. *et al.* (1899), Dist. Conn., Thompson, J., 2 A. B. R., 805; 1 N. B. N., 420.

Where property held by bankrupt under contract of conditional sale bankrupt's title vests in the trustee subject to all equities. *In re* Bozeman (1899), S. Dist. Ga., Myrick, R., 2 A. B. R., 809; 1 N. B. N., 479.

Title to property passes to trustee whether or not lien on same is affected by bankruptcy proceedings. *In re* Benedict (1902), Sup. Ct. N. Y., Houghton, J., 8 A. B. R., 463.

Building materials belonging to a contractor on the ground for construction of building for bankrupt, whose contract provided that in case of default by the contractor bankrupt might go on and furnish building materials are not subject to a lien, and trustee takes no title to the same. *Duplan Silk Co.* v. *Spencer* (1902), C. C. A., 3rd Cir., Gray, J., 115 Fed., 689; 8 A. B. R., 367.

Bankrupt may give a title by transfer after the day of filing the petition (involuntary) before the date of adjudication. Bankrupt owns all he may acquire after the date of filing the petition. *In re* Gany, W. Dist. N. Y., Brown, J., 103 Fed., 930; 4 A. B. R., 576; 2 N. B. N., 1,082.

Section 70 construed *in re* Burka, E. Dist. Mo., Adams, J., 104 Fed., 326; 5 A. B. R., 12.

Trustee takes no title to exempt property. *In re* Wells (1900), W. Dist. Ark., Rogers, J., 105 Fed., 762; 5 A. B. R., 308.

Mortgaged property should not be brought into bankruptcy proceedings unless there is an equity of value. *In re* Utt, C. C. A., 7th Cir., Woods, J., 105 Fed., 754; 5 A. B. R., 383.

Trustee takes same title as bankrupt to assets subject to equitable liens. *In re* Klingeman (1899), S. Dist. Ia., Galer, R., 2 A. B. R., 44; 1 N. B. N., 294.

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The trustee gets no title to property held by the bankrupt under conditional sales not completed. *In re* McKay (1899), N. Dist. O., Wheeler, R.; 1 A. B. R., 292; 1 N. B. N., 133.

Title of trustee surrendered to creditor where goods were obtained by false representations of the bankrupt, which constituted the material consideration for the credit. *In re* Gany (1900), S. Dist. N. Y., Brown, J., 133 Fed., 930; 4 A. B. R., 576; 2 N. B. N., 1,082.

Title held by receiver under State proceedings to property fraudulently conveyed more than four months before does not vest in the trustee. *In re* Meyers & Co. (1899), N. Dist. N. Y., Hotchkiss, R., 1 A. B. R.,347; 1 N. B. N.,. 293.

Where the unsupported evidence of the bankrupt as to his disposition of large sums of money is improbable he may be ordered to turn the money over to a trustee. *In re* Friedman (1899), S. Dist. N. Y., Holt, R., 2 A. B. R., 201; 1 N. B. N., 332.

Trustee occupies the position of purchaser for value without notice —unrecorded lien void as to him. *In re* Booth (1899), Dist. Or., Bellinger, J., 96 Fed., 942; 3 A. B. R., 574; 2 N. B. N., 377.

A conditional sale where vendee is expected to consume or sell the property is fraudulent and void—title of trustee is same as bankrupt except in cases tainted with fraud. *In re* Gracewich (1902), C. C. A., 2nd Cir., Wallace, J., 8 A. B. R., 149.

Mortgage covering part of goods not sold at time by mortgagee to mortgagor—such goods pass to trustee. *In re* Hull (1902), Dist. Vt., Wheeler, J., 115 Fed., 858; 8 A. B. R., 302.

Title of trustee to property purchased by bankrupt subject to a chattel mortgage which he assumes to pay is the same as that of bankrupt and under the same estoppel. *In re* Standard Laundry Co., (1901), N. Dist. Cal., DeHaven, J., 112 Fed., 126; 7 A. B. R., 254.

Trustee of bankrupt grantee of deed of trust who received same without beneficial interest gets no title. *In re* Davis (1901), Dist. Mass., Lowell J., 112 Fed., 129; 7 A. B. R., 258.

Wife of bankrupt may not redeem from sale by trustee under order of referee. *In re* Novak, N. Dist. Ia., Shiras, J., 111 Fed., 161; 7 A. B. R., 267.

Trustee has no better title to property than the bankrupt, and in case of conditional sale title remaining in vendor, trustee of bankrupt vendee gets title. *In re* Kellogg (1901), W. Dist. N. Y., Hazel, J., 112 Fed., 52; 7 A. B. R., 270.

Equitable replevin by creditors claiming fraudulent representation pass title, facts not justifying restoration. *In re* Davis (1901), S. Dist. N. Y., Adams, J., 112 Fed., 294; 7 A. B. N., 276.

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Improper meddling with assets by either bankrupt or creditor after petition filed is contempt of court. *In re* Arnett (1901), W. Dist. Tenn., Hammond, J., 112 Fed., 770; 7 A. B. R., 522.

Equity of redemption of bankrupt not enlarged by bankruptcy proceeding. *In re* Goldman (1900), S. Dist. N. Y., Brown, J., 102 Fed., 122; 4 A. B. R., 100; 2 N. B. N., 818.

Trustee does not take title to contingent remainder. *In re* Wetmore (1900), S. Dist. Penn., McPherson, J., 102 Fed., 290; 4 A. B. R., 335; 3 N. B. N., 443.

Title of trustee in vested remainder—statement of under New York Statute. *In re* St. John, N. Dist. N.. Y., Coxe, J., 105 Fed., 234; 5 A. B. R., 190.

Where the property is in the possession of the trustee the court will enjoin an interference by an adverse claimant. *In re* Whitener (1900), C. C. A., 5th Cir., Pardee, J., 105 Fed., 180; 5 A. B. R., 198.

Proceeds of property levied on under State proceedings within four months prior to the bankruptcy vest in the trustee. *Schmilovitz* v. *Bernstein* (1901), Sup. Ct. R. I., Douglass, J., 5 A. B. R., 265.

Contingent remainder does not vest title in trustee. *In re* Gardiner (1901), S. Dist. N. Y., Brown, J., 106 Fed., 670; 5 A. B. R., 432.

No claim against the estate by wife where gift has not been delivered. *In re* Chapman (1900), N. Dist. Ill., Kohlsaat, J., 105 Fed., 901; 5 A. B. R., 570.

Contingent estate not vested in trustee. *In re* Wetmore, C. C. A., 4th Cir., Bradford, J., 108 Fed., 991; 6 A. B. R., 210.

Trustee holding property where facts show it to be *in custodia legis* and subject to intervening claims. *McFarland Carriage Co.* v. *Solanas et al.*, (1901), E. Dist. La., Boarman, J., 108 Fed., 532; 6 A. B. R., 221.

Rescission of contract on ground of fraudulent representation—vendor may avoid the sale irrespective of contract of vendee not to pay for them. *In re* Epstein (1901), E. Dist. Ark., Trieber, J., 109 Fed., 874; 6 A. B. R., 60.

Trustee's title to contingent interest to estate under clause of contingency where contingency relates to an event and not to person taken by devisee as vested interest and passes to trustee in bankruptcy. *In re* Twaddell (1901), Dist. Del., Bradford, J., 110 Fed., 145; 6 A. B. R., 539.

Mere agreement by mortgagee to collect rent for mortgagee not sufficient to vest title. *In re* Dole (1901), Dist. Vt., Wheeler, J., 110 Fed., 926; 7 A. B. R., 21.

Trustee succeeds to the interest of the bankrupt in the equity of redemption. *In re* Novak (1901), N. Dist. Ia., Shiras, J., 111 Fed., 161, 7 A. B. R.. 27.

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State law prevails as to assignment of dower. Expenses must be first paid where land is sold free of dower with wife's consent. *In re* Forbes (1901), N. Dist. O., Doyle, R.; 7 A. B. R., 42.

Vested remainder passes to trustee. (ILL. law) as to what is a vested remainder. *In re* McHarry (1901), C. C. A., 7th Cir., Grosscup, J., 111 Fed., 498; 7 A. B. R., 83.

Property held under conditional sale does not pass to trustee. *In re* Hinsdale (1901), Dist. Vt., Wheeler, J., 111 Fed., 502; 7 A. B. R., 85.

Trustee's title not that of attaching creditor. *idem*.

[Policy of Insurance.] *Provided*, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and

Where bankrupt conveys an insurance policy which has a cash surrender value to his wife more than four months prior to filing of petition the trustee must first institute proceedings to set aside conveyance of the policy. *In re* Graks (1899), S. Dist. O., Geiger, R., 1 A. B. R., 465; 1 N. B. N., 164.

This provision applies only to insurance policy that has a cash surrender value to the bankrupt. A policy the value of which is dependent on the release by the bankrupt's wife of her interest does not come within this section. *In re* Henrich (1899), Dist. Md., Hisky, R., 1 A. B. R., 713.

Policies of insurance having a surrender value payable to the bankrupt's estate are assets in spite of the State law declaring them exempt. *In re* Steel & Co. (1899), S. Dist. Ia., Shiras, J., 98 Fed., 78; 3 A. B. R., 549; 2 N. B. N., 281.

Tontine insurance policy payable to bankrupt on a date named, and if he die before, payable to his wife, has a cash surrender value and belongs to the trustee. *In re* Boardman, Dist. Mass.. Lowell, J., 103 Fed., 783; 4 A. B. R., 620; 2 N. B. N., 821.

Advance for premiums made by wife of bankrupt on endowment

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policy protected. *In re* Diack (1899), S. Dist. N. Y., Brown, J., 100 Fed., 770; 3 A. B. R., 723; 2 N. B. N., 664.

It is proper to require the bankrupt to execute an assignment of his insurance policies. *In re* Madden, (1901), C. C. A., 2nd Cir., 110 Fed., 348; 6 A. B. R., 614.

A policy of insurance which is transferrable and has a market value passes to the trustee, although it has no surrender value. *In re* Slingluff (1900), Dist. Md., Morris, J., 105 Fed., 502; 5 A. B. R., 76.

Although State law permits exemption of life insurance policy, one that has a cash surrender value is controlled by Section 70 and passes to the trustee. *In re* Scheld (1900), C. C. A., 9th Cir., Ross, J., 104 Fed., 870; 5 A. B. R., 102.

A policy of insurance which has a cash surrender value does not pass as exempt although State law may so provide. *In re* Holden (1902), C. C. A. 9th Cir., McKenna, J., 113 Fed., 141; 7 A. B. R., 615.

Policy of insurance to benefit of assured goes to the trustee. *In re* Lange, N. Dist. Ia., Shiras, J., 91 Fed., 631; 1 A. B. R., 189; 1 N. B. N., 44.

(6) **[Rights of action]** rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

Bankrupt is guilty of contempt for failing to turn over property to the trustee on the order the referee. *In re* Tudor (1899), Dist. Colo., Hallett, J., 96 Fed., 361; 2 A. B. R., 808; 1 N. B. N., 339.

Trover against a trustee may be maintained in state court for invading the possession of chattels purchased from the bankrupt a short time prior to the bankruptcy. *Weeks* v. *Fowler* (1902), Sup. Ct. N. H., Chase, J., 51 Atl., 543.

A cause of action which would survive and pass to the personal representative of the plaintiff will pass to the trustee. So does a claim for damages against a lumber dealer's association for unlawful conversion. *Cleland* v. *Anderson* (1902), Sup. Ct. Neb., Pound, J., 92 N. W., 306.

Bankrupt cannot after discharge prosecute a claim which he failed to schedule as an asset as the trustee took title to all his property and title did not invest in him after discharge. *Scruby* v. *Norman* (1901), Ct. of App., of Mo., Smith, J., 91 Mo. App., 517.

Trustee has no title to property acquired after the filing of the petition. *In re* Harris (1899), N. Dist. Ill., Wean, R., 2 A. B. R., 359; 1 N. B. N., 384.

Section 70 is controlled by Section 6 in the matter of exemptions.

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In re Steel & Co. (1899), S. Dist. Iowa, Shiras, J., 98 Fed., 78; 3 A. B. R., 549; 2 N. B. N., 281.

b **[Approval and sale of property.]** All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

As to sales of property see general order XVIII. As to appointment of appraisers, oath, see form No. 13 *post*.

Sale by trustee does not carry wife's inchoate right of dower—a sale of realty will not be ordered unless it appears that it will produce results to the estate. *In re* Shaeffer (1900), E. Dist. Penn., McPherson, J., 104 Fed., 973; 5 A. B. R., 248.

Title to real estate vests in trustee after appointment. *In re* Stoner, (1901), E. Dist. Penn., McPherson, J., 105 Fed., 752; 5 A. B. R., 402.

c **[Trustee to convey title.]** The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

d **[Composition set aside—vesting title in trustee.]** Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

e **[Avoiding certain transfers—recovery of property.]** The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date

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of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

As amended by Act of 1903. See Amendment page , *post*, new additional matter found between stars.

As to suits by trustee see Sec. 11 and Sec. 23.

As to title which trustee takes see *in re* Gray, N. Y. Sup. Ct., Barrett, J.; 3 A. B. R., 647. Also *in re* Adams, N. Dist. N. Y., Moss. R.; 1 A. B. R., 94.

Trustee has only the rights of bankrupt's creditors. *In re* Miller (1900) Dist. Mass., Lowell, J., 101 Fed., 413; 4 A. B. R., 224; 2 N. B. N., 701.

A trustee has no better title than the bankrupt of his creditors have. *In re* New York Economical Printing Co. (1901), C. C. A., 2nd Cir., Wallace, J., 110 Fed., 514; 6 A. B. R., 615.

f **[Revestment of title on confirmation of composition.]** Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him.

As to compositions see Sec. 12 and 13 *ante*.

An involuntary petition filed November 1st, 1899, was not premature, *Leidigh Carriage Co.* v. *Stengel* (1899), C. C. A., 6th Cir., Taft, J., 95 Fed., 637; 2 A. B. R., 383; 1 N. B. N., 296.

An act of bankruptcy committed before November 1st, 1898, when involuntary petitions could be filed may be the basis for petition. *Idem.*

Between July 1st, 1898, and November 1st, 1898, while no involuntary petition could be filed no equity for injunction to restrain disposal of goods by mortgagee under mortgage which was assailable under the bankruptcy act. *Ellis* v. *L. Hayes Saddlery & Leather Co.* (1902), Sup. Ct. Kas., Smith, J.; 8 A. B. R., 110.

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THE TIME WHEN THIS ACT SHALL GO INTO EFFECT.

a **[Force and effect.]** This Act shall go into full force and effect upon its passage: *Provided, however,* That no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

Act became operative July 1, 1898, and deprived the state courts of all power and jurisdiction except to wind up the estate in its hands. *First Nat. Bank of Grilford* v. *Ware* (1901), Sup. Ct. Me., Emery, J., 388.

Bankruptcy law did not suspend state insolvency laws in respect to proceedings already commenced—subsequent filing of petition in bankruptcy, the administration of the estate in that court and the insolvent's discharge does not deprive the state court of jurisdiction to entertain suit by assignee to recover property fraudulently conveyed. *Osborn* v. *Tender* (1903), Sup. Ct. Minn., Lewis, J., 92 N. W., 1114.

Bankruptcy act does not affect proceedings begun under state insolvency law before its passage. *Hood* v. *Blair State Bank* (1902), Sup. Ct. Neb., Barnes, J., 91 N. W., 701.

Creditor's bill filed prior to passage of the act does not abate by proceedings in bankruptcy subsequently instituted by judgment creditors—proceedings to recover assets fraudulently conveyed permitted to be carried on. *National Bank of the Republic* v. *Hobbs* (1901), C. C. S., Dist. Ga., Speer, J., 9 A. B. R., 190. To the same effect *Metcalf* v. *Barker* (1902) Sup. Ct. of U. S., Fuller, J., 9 A. B. R., 34.

State insolvency law abrogated by the act. *Parmentier Mfg. Co.* v. *Hamilton* (1899), Sup. Ct. Mass., Knowlton, J.; 1 A. B. R., 39; 1 N. B. N., 8.

State insolvency law suspended by act—act operates from July 1st. The dates for filing petitions in voluntary and individual cases merely matter of procedure. *In re* Bruss-Ritter Co. (1899), Seaman, J., E. Dist. Wis., 90 Fed., 651; 1 A. B. R., 58; 1 N. B. N., 39.

Jurisdiction of State courts ousted immediately on commencement of proceedings in bankruptcy. *In re* McKee (1899), Jefferson Co. Ct., Gregory, J., Ky.; 1 A. B. R., 311; 1 N. B. N., 139.

General assignment under State law act of bankruptcy and voidable. *Lea Bros.* v. *West* (1899), E. Dist. Va., Waddill, J., 91 Fed., 237; 1 A. B. R., 261; 1 N. B. N., 79.

Jurisdiction of bankruptcy court exclusive, not concurrent with State

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courts— receiver will be appointed to take property from assignee immediately and before adjudication. *In re* John A. Etheridge Furniture Co. (1899), Barr, J., Dist. Ky., 92 Fed., 329; 1 A. B. R., 112; 1 N. B. N., 139.

Distinction between general insolvency and general assignment statutes; former derives its potency from the law, latter from deed of debtor—former and not latter procedure is superseded by the act. The general assignment is voidable on the adjudication only. *In re* Sievers (1899), Adams, J., E. Dist. Mo., 91 Fed., 366; 1 A. B. R., 117; 1 N. B. N., 69.

Indiana law for general assignments declared in effect an insolvency statute and made void by the act, and assignee by summary process ordered to surrender assets to the bankruptcy court. *In re* Smith & Dodson (1899), Dist. Ind., Baker, J.; 2 A. B. R., 9; 1 N. B. N., 356.

Assignee under general assignment allowed no compensation or attorney's fees. *In re* Kingman (1899), Dist. Mass., Farmer, R.; 5 A. B. R., 251.

b **[Cases pending under state laws.]** Proceedings commenced under State insolvency laws before the passage of this Act shall not be affected by it.

Prior to the commencement of bankruptcy proceedings the State law for winding up corporations is not suspended. *State* v. *Sup. Ct. of King Co.* (1899), Sup. Ct. of Wash., Beavis, J.; 2 A. B. R., 92; 1 N. B. N., 309.

Bankruptcy act suspends general insolvency law and proceedings thereunder are void. *In re* Curtis (1899), S. Dist. Ill., Allen, J., 91 Fed., 737; 1 A. B. R., 440; 1 N. B. N., 163.

Before the expiration of the four months when involuntary petitions could be filed injunction may issue to restrain attaching creditors. *Blake et al.* v. *Francis Valentine Co.* (1898), N. Dist. Cal., Hawlet, J., 89 Fed., 691; 1 A. B. R., 372; 1 N. B. N., 47.

A general insolvency law is suspended by the bankruptcy act and proceedings under it are void, not merely voidable—law of Ill. governs general assignment, held to be a general insolvency law. *In re* Curtis, (1899), S. Dist. Ill., Allen, J., 91 Fed., 737; 1 A. B. R., 440; 1 N. B. N., 163.

Court of bankruptcy may restrain the further administration of the estate assignee under State law and complete administration of the estate through its own officers. *Lea Bros.* v. *West* (1899), E. Dist. Va., Waddill, J., 91 Fed., 237; 1 A. B. R., 261; 1 N. B. N., 79.

Trustee may sue either in law or equity to set aside fraudulent conveyance. Four months time does not affect. *Andrews* v. *Mathes* (1902), Sup. Ct. Ala., Harolson, J., 32 So., 738.

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Trustee may set aside sale of mortgaged chattels with the consent of the mortgagee as mortgagee not a bona fide holder. *Skillum* v. *Edelman* (1902), Sup. Ct. N. Y., Gilderslieve, J., 79 N. Y., Supp., 413.

See 70e.

Trustee not a purchaser for value without notice—has no better right to property than bankrupt. *Goodyear Rubber Co.* v. *Schreiber* (1902), Sup. Ct. Wash., Fullerton, J., 69 Pac., 648.

Action sustained by trustee in bankruptcy to set aside conveyance of real estate made by the bankrupt in fraud of creditors six months before the filing of the petition in bankruptcy. *Mueller* v. *Bruss* (1901), Sup. Ct. Wis., Bardun, J., 8 A. B. R., 442.

Where chattel mortgage and bill of sale were fraudulent and void, trustee may bring action in state court to set the same aside. *Small* v. *Mueller* (1901), Sup. Ct. N. Y., Bartlett, J., 67 App. Div., 143; 8 A. B. R., 448.

Trustee under this section must give security for costs. *Joseph* v. *Raff* (1902), Sup. Ct. N. Y., O'Brien, J., 9 A. B. R., 227; *Barber* v. *Frankpin* (1902), Sup. Ct. N. Y., Gilderslieve, J., 37 Misc., 292; 75 N. Y. Sup., 305; 8 A. B. R., 468.

State insolvency laws suspended by the passage of the bankruptcy act and proceedings thereunder staid. *In re* McKee (1899), Jefferson Co., Ky., Ct., Gregory, J.; 1 A. B. R., 311; 1 N. B. N., 139.

Bankruptcy court has jurisdiction to preserve assets of estate from seizure on attachment proceedings pending filing of petition. *Blake et al.* v. *Valentine & Co.* (1899), N. Dist. Cal., Hawley, J., 89 Fed., 691; 1 A. B. R., 372; 1 N. B. N., 47.

An action by receiver under State proceedings to set aside a conveyance is not a proceeding under State insolvency law. *In re* Meyers & Co. (1899), N. Dist. N. Y., Hotchkiss, R.; 1 A. B. R., 347; 1 N. B. N., 293.

An assignee under general assignment is not entitled to fee as such, nor is he entitled to fee for his attorney, but he should be paid for his services as custodian and should be allowed his expenses in preserving the estate. *In re* Pauley (1899), N. Dist. N. Y., Hotchkiss, R.; 2 A. B. R., 333; 1 N. B. N., 405.

The Pennsylvania statute as to domestic attachments is not suspended by the bankruptcy act. *McCollough & Linn* v. *Goodheart, Cumberland Co.* (1899), Com. Pleas Ct., Biddle, J.; 3 A. B. R., 85; 1 N. B. N., 512.

State insolvency proceedings commenced before bankruptcy not affected, nevertheless claims provable in bankruptcy irrespective of such proceedings. *In re* Bates, Dist. Vt., Wheeler, J., 100 Fed., 263; 4 A. B. R., 56; 2 N. B. N., 208.

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State insolvency proceedings commenced after July 1, 1898, are void. *Westcott Co.* v. *Berry et al.* (1899), Sup. Ct., N. H. Young, J., 45 Atl., 352; 4 A. B. R., 264.

To entitle assignee under general assignment to compensation for services rendered they must have been beneficial to the estate—no duplication of charges permitted. *In re* Kingman (1899), Dist. Mass., Farmer, R.; 1 N. B. N., 518.

When goods are stored under general assignments landlord is entitled to full rent for a reasonable period during assignment. *In re* Kingman, Dist. Mass., Farmer, R.; 1 N. B. N., 518.

A fraudulent assignment of a claim long prior to passage of bankruptcy act held void. *Scot* v. *Devlin et al.* (1898), S. Dist. N. Y., Brown, J., 89 Fed., 970; 1 N. B. N., 561.

The statute of fraud of California not abrogated by bankruptcy act. *In re* Taylor, N. Dist. Cal., Holland, R.; 1 N. B. N., 412.

Assignee of creditors under voluntary assignment allowed no fees for services but is allowed his disbursements and fees as custodian, but no attorney's fees. *In re* Bussey (1901), W. Dist. Mo., Crittenden, R.; 6 A. B. R., 603.

Assignment for creditors does not warrant paying assignee compensation for services. *In re* Tatem, Mann & Co. (1901), E. Dist. N. C., Purnell, J., 110 Fed., 519; 7 A. B. R., 52; *Wilbur* v. *Watson* (1901), Dist. R. I., Brown, J., 111 Fed., 493; 7 A. B. R., 54.

State insolvency laws suspended by the bankruptcy act—nevertheless proceedings in State Court to foreclose a mortgage combined with allegations in petitions which would have invoked the State insolvency law does not vitiate that part which covers the foreclosure. *Carling* v. *Seymour Lumber Co.* (1902), C. C. A., 5th Cir., Shelby, J., 113 Fed., 483; 8 A. B. R., 29.

The bankruptcy receiver will take possession of all property not covered by the foreclosure. Comity requires that bankruptcy receiver first apply to State court. *Idem.*

Proceedings for winding up a corporation under State insolvency law does not deprive the bankruptcy court of jurisdiction. *In re* Storck Lumber Co. (1902), Dist. Md., Morris, J., 114 Fed., 360; 8 A. B. R., 86.

*Sec. 71. **[Clerks to keep indexes and issue certificates of search.]** That the clerks of the several district courts of the United States shall prepare and keep in their respective offices complete and convenient indexes of all petitions and discharges in bankruptcy heretofore or hereafter

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filed in said courts, and shall when requested so to do, issue certificates of search certifying as to whether or not any such petitions or discharges have been filed; and said clerks shall be entitled to receive for such certificates the same fees as now allowed by law for certificates as to judgments in said courts; *Provided*, that said bankruptcy indexes and dockets shall at all times be open to inspection and examination by all persons or corporations without any fee or charge therefor.*

As amended by Act of Feb. 5, 1903. Amendment inserts entire new section.

*Sec. 72. **[Referee and trustee not to receive extra compensation.]** That neither the referee nor the trustee shall in any form or guise receive, nor shall the court allow them, any other or further compensation for their services than that expressly authorized and prescribed in this act.*

As amended by Act of Feb. 5,1903. Amendment inserts new section.

[Time amendment of Feb. 5, 1903, goes into effect.] *That the provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect but such cases shall be adjudicated and disposed of conformably to the provisions of the said Act of July first, eighteen hundred and ninety-eight.*

As amended by Sec. 19 of act of Feb. 5, 1903.

[This act was signed by the President at 4:30 p. m., of Feb. 5th, 1903.]

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GENERAL ORDERS IN BANKRUPTCY.

SUPREME COURT OF UNITED STATES.

October Term, 1898.

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XXXVIII. FORMS.
Official forms to be used in proceedings.

In pursuance of the powers conferred by the Constitution and laws upon the Supreme Court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," it is ordered, on this 28th day of November, 1898, that the following rules be adoped and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867 and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary or proper to carry into force and effect the bankrupt act of 1898 and the general orders of this court.

Section 30 provides that all rules, forms and orders prescribed by the Supreme Court govern as to procedure.

Where rules differ from statutes, statute controls. *In re* Soper & Slada (1899), N. Dist. N. Y., Hotchkiss, R.; 1 A. B. R., 193; 1 N. B. N., 182.

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I.

DOCKET.

[Clerk to keep docket—Memorandum of proceedings.] The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection.

As to duties of clerks see *ante* Section 51. See Gen. Ord. II as to filing of papers. As to reference, see Sec. 22a, also Form No. 14 for order of reference. As to referee's records, see Sec. 42a and b.

II.

FILING OF PAPERS.

[Time of filing noted.] The clerk or the referee shall indorse on each paper filed with him the day and hour of filing, and a brief statement of its character.

See *ante* as to duties of clerk, Section 51. As to filing of papers after reference see Gen. Ord. XX.

Petition delivered to the clerk and endorsed filed, after office hours and not in his office, is filed according to law. *In re* Wolf (1899), Dist. N. J., Kirkpatrick, J., 98 Fed., 84; 2 A. B. R., 322; 1 N. B. N., 505.

III.

PROCESS.

[Process to issue out of court—tested by clerk.] All process, summons and subpoenas shall issue out of the court, under the seal thereof, and be tested by the clerk; and blanks,

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with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees.

As to process see United States equity rules 7 to 16 inclusive.

IV.

CONDUCT OF PROCEEDINGS.

[May be in person or by attorney.] Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the circuit court or district court. The name of the attorney or counselor, with his place of business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act or by these general orders, required to be served on the party personally may be served upon his attorney.

Appearance of attorney for the bankrupt who has not been admitted to district court will not vitiate petition. *In re* Kindt (1900), S. Dist. Ia., Shiras, J., 101 Fed., 107; 3 A. B. R., 546; 2 N. B. N., 306.

Attorney for the bankrupt should not be the attorney for claimant. *In re* Kimball (1899), Dist. Mass., Lowell, J., 97 Fed., 29; 4 A. B. R., 144; 2 N. B. N., 46.

V.

FRAME OF PETITIONS.

[Petition to be without abbreviations.] All petitions and the schedules filed therewith shall be printed or written out plainly, without abbreviation or interlineation, except

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where such abbreviation and interlineation may be for the purpose of reference.

As to form of petitions and schedules see Form No. 1.

A petition praying adjudication, seizure by the Marshal of goods of bankrupt, and injunction is multifarious and should be dismissed—official form No. 3 must be followed. *In re* Ogles (1899), W. Dist.Tenn. Hammond, J., 93 Fed., 426; 1 A. B. R., 672; 1 N. B. N., 400.

The only prayer that should be contained in a petition in bankruptcy is that the insolvent debtor be adjudged a bankrupt. A petition containing more than this is multifarious. *Mather* v. *Coe, Powers & Coe* (1899), N. Dist. Ohio, Rick, J., 92 Fed., 133; 1 A. B. R., 504; 1 N. B., N., 554.

VI.

PETITIONS IN DIFFERENT DISTRICTS.

[Hearing to be in district of debtor's domicile.] In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicil, and the petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by an insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different members of the same partnership for an adjudication of the bankruptcy of said partnership, the court

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in which the petition is first filed having jurisdiction shall take and retain jurisdiction over all proceedings in such bankruptcy, until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest, that another of said courts should proceed with the cases, order them to be transferred to that court.

Petitions may be amended on leave granted. Gen. Ord. XI.

Petitions in different districts—practice concerning. *In re* Waxelbaum (1899)), S. Dist. N. Y., Brown, J., 98 Fed., 589; 3 A. B. R., 392; 2 N. B. N., 103.

VII.

PRIORITY OF PETITIONS.

[Petition alleging earliest act of bankruptcy to be first heard.] Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consoldiated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

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VIII.

PROCEEDINGS IN PARTNERSHIP CASES.

[Partner may contest notice of filing.] Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankuptcy, and to make all defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

See Sec. 5 as to partners *ante*.

Prayer of partnership petition should be to have firm adjudicated bankrupt. Defective petition may be amended. *In re* Meyers (1899), S. Dist. N. Y., Brown, J., 96 Fed., 408; 2 A. B. R., 770; 2 N. B. N., 111.

Notice must be given to all members of a partnership before firm adjudication. *In re* Murray, *et al.* (1899), N. Dist. Ia., Shiras, J., 96 Fed., 600; 3 A. B R., 601; 1 N. B. N., 532.

All partners must be notified. *In re* Russell (1899), N. Dist. Ia., Shiras, J., 101 Fed., 248; 3 A. B. R., 91; 1 N. B. N., 532.

IX.

SCHEDULE IN INVOLUNTARY BANKRUPTCY.

[When creditor to file.] In all cases of involuntary bankruptcy in which the bankrupt is absent or cannot be found,

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it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a schedule giving the names and places of residence of all the creditors of the bankrupt, according to the best information of the petitioning creditor. If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or may himself furnish such schedule as aforesaid.

Addresses of creditors should state street and number or schedules will be defective. If street and number not given it must be shown that a diligent effort was made to obtain them. *In re* Brumelkamp (1899), N. Dist. N. Y., Stone, R., 95 Fed., 814; 2 A. B. R., 318; 1 N. B. N., 360.

X.

INDEMNITY FOR EXPENSES.

[Officers may require advance payment.] Before incurring any expense in publishing or mailing notices or in traveling or in procuring the attendance of witnesses, or in perpetuating testimony, the clerk, marshal or referee may require, from the bankrupt or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt or other person shall be repaid him out of the estate as part of the cost of administering the same.

As to expenses of administration see Section 62.

XI.

AMENDMENTS.

[Court may allow—practice.] The court may allow amendments to the petition and schedule on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules. If amendments are made to separate schedules, the same

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must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed.

No summons, writ, declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States shall be abated, arrested, quashed or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect, or want of form, except those which, in cases of demurer, the party demurring specially sets down, together with his demurrer, as the cause thereof; and such court shall amend every such defect and want of form, other than those which the party demurring so expresses; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe. Rev. Stat. U. S. sec. 954.

Amendments to specifications of objection to discharge allowed liberally; even new grounds of objection may come in by amendment. *In re* Glass (1902), W. D. Tenn., Hammond, J., 119 Fed., 509.

Amendments to a petition of involuntary bankruptcy alleging causes arising more than four months prior to the petition allowed. The bankrupt's attorney's fees were, however, assessed against the petitioners. *In re* Strait (1899), N. Dist. N. Y., King, R.; 2 A. B. R., 308; 1 N. B. N., 354.

An amended schedule should be filed as of the date of filing the origi; nal petition. *In re* Harris (1899), N. Dist. Ills., Wean, R.; 1 N. B. N., 384.

XII.

DUTIES OF REFEREE.

1. **[Bankrupt subject to orders of referee after reference.]** The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the

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clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

As to form of order of reference see form No. 14.

2. **[Time and place when referee acts.]** The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

Referee's finding as to fact will not be disturbed unless manifestly wrong.

In re Waxelbaum (1900), N. Dist. Ga., Newman, J., 101 Fed., 228.

3. **[What matters heard by judge—reference on facts.]** Applications for a discharge, or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States or of a State, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts.

This rule must be followed in involuntary cases. *In re* Humbert Co. (1900), N. Dist. Ia., Shiras, J., 100 Fed., 439; 4 A. B. R., 76.

Questions arising on discharge may be referred to referee by the judge. *In re* McDuff (1900), C. C. A., 5th Cir., Pardee, J., 101 Fed., 241; 4 A. B. R., 110.

Sufficiency of answer to an involuntary petition can not be raised by demurrer. Case should be set for hearing on bill and answer. *Goldman, Beck & Co.* v. *Smith* (1899), Dist. Ky., Barr., J., 93 Fed., 682; 1 A. B. R., 266; 1 N. B. N., 160.

A creditor may be allowed to oppose an adjudication by intervening petition. *Goldman, Beck & Co.* v. *Smith* (1899), Dist. Ky., Barr., J., 93 Fed., —682; 1 A. B. R., 266; 1 N. B. N., 160.

Petition for review of proceedings before the referee on a certificate by the referee to the judge is the only mode of bringing the ruling of th.e referee before the court. *In re* Kelley Dry Goods Co. (1900), E. Dist. Wis., Seaman, J., 102 Fed., 747; 4 A. B. R., 528.

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XIII.

APPOINTMENT AND REMOVAL OF TRUSTEE.

[Appointed by creditors—removed by judge.] The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only.

XIV.

NO OFFICIAL OR GENERAL TRUSTEE.

[Court not to appoint.] No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases.

As to appointment of trustee see Section 2, sub. 17.

XV.

TRUSTEE NOT APPOINTED IN CERTAIN CASES.

[No assets and no creditors no trustee.] If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called.

Estate will not be opened except for good cause. *In re* Soper & Slade (1899), N. Dist. N. Y., Hotchkiss, R.; 1 A. B. R., 193; 1 N. B. N., 182.

On the discovery of assets after the first meeting of creditors at which no trustee was appointed, a trustee should be appointed. *In re* Smith (1899), W. Dist. Tex., Maxey, J., 93 Fed., 791; 2 A. B. R., 190; 1 N. B. N., 532.

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XVI.

NOTICE TO TRUSTEE OF HIS APPOINTMENT.

[Referee to notify trustee of appointment—acceptance.] It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond.

For form of notice, see form No. 24.

XVII.

DUTIES OF TRUSTEE.

[Prepare inventory—make report—duty of referee to compel.] The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report in the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before the judge, at a time specified in the order, why he should not be removed from office. The

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referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

This rule must be observed as to appointment of trustee, etc., before the court can test the question of exemptions. *In re* Smith (1899), W. Dist. Tex., Maxey, J., 93 Fed., 791; 2 A. B. R., 190; 1 N. B. N., 532.

The 20 day limitation to contest exemptions does not apply to the bankrupt but only to creditors. *In re* White (1900), Dist. Vt., Wheeler, J., 103 Fed., 774; 4 A. B. R., 613; 3 N. B. N., 27.

Trustee must specify and separately appraise articles set off as exempt. *In re* Manning (1902), E. Dist. Penn., McPherson, J., 112 Fed., 948; 7 A. B. R., 571.

XVIII.

SALE OF PROPERTY.

1. **[To be at public auction.]** All sales shall be by public auction unless ordered otherwise by the court.

2. **[When trustee authority to sell.]** Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefors and to whom sold; which account he shall file at once with the referee.

3. **[Sale of perishable property.]** Upon petition by a bankrupt, creditor, receiver or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to

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be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

XIX.

ACCOUNTS OF MARSHAL.

[Accounts to be under oath.] The marshal shall make return, under oath of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

XX.

PAPERS FILED AFTER REFERENCE.

[Filed either with the referee or clerk.] Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk.

See general order II as to filing of petition.

XXI.

PROOF OF DEBTS.

1. **[Depositions—what to show.]** Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer by the officer whose duties most nearly correspond to those of treasurer. Depositions to proved debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it

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shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

As to proof of claims see Section 67.

Proof of claim should state consideration and defective claims may be expunged when so defective. *In re* Scott (1899), N. Dist. Tex., Meek, J.; 1 A. B. R., 553; 1 N. B. N., 226.

Creditors whose claims are disallowed should file petition for review of order of referee. Claims not reexamined after a year. *In re* Chambers, Calder & Co., Dist. R. I., Littlefield, R.; 6 A. B. R., 707.

Proof of claim good although acknowledgment contains no venue, if it was on the form prescribed by the Supreme Court. *In re* Henschel, (1901) C. C. A., 2nd Cir., Wallace, J., 109 Fed., 861; 7 A. B. R., 305.

This rule refers only to claims arising before the petition was filed, not to expenses of administration—practice for creditors objecting to expenses of administration. *In re* Reliance Co. (1900), E. Dist. Penn., McPherson, J., 100 Fed., 619; 4 A. B. R., 49.

Notices of special meetings to reexamine claims should be sent by referee. *In re* Stoever, E. Dist. Penn., McPherson, J., 105 Fed., 355; 5 A. B. R., 250.

Bankrupt may not ask for examination of claims under this clause, nor will the trustee be required so to do when the result would be to bar all claims against the estate. *In re* Lyon (1901), S. Dist. N. Y., Wise, R.; 7 A. B. R., 61.

Petition for review to revive claim should be filed. Jury trial should be allowed creditor on question of solvency when their claims are attacked for preferences. *In re* Linton (1902), E. Dist. Penn., Hoffman, R.; 7 A. B. R., 676.

2. **[Creditor may have notices sent to his address.]** Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the postoffice box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified to the proof of debt.

As to notices to creditors see Section 58.

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3. **[Assigned claims—notice to claimant.]** Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt and that it is entirely unsecured, or if secured, the security, as is required in proving accrued claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

4. **[Contingent claims.]** The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish pro tanto the original debt.

5. **[Acknowledgment of letter of attorney.]** The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

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Power of attorney to vote by a partnership must be supported by oath that he is a member of the firm. *In re* Finley (1900), S. Dist. N. Y., Coxe, J.; 3 A. B. R., 738.

Wide discretion is left with referee over allowance of claims—his decisions on questions of fact have great weight with the court. *In re* Rider (1899), N. Dist. N. Y., Cox, J., 96 Fed., 811; 3 A. B. R., 192; 1 N. B. N., 483.

Proof of claims of foreign creditors not within this rule. *In re* Suggenheimer (1899), S. Dist. N. Y., Brown, J.; 1 A. B. R., 425; 1 N. B. N., 59

6. **[Re-examination of claims—practice.]** When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witnesses that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly.

XXII.

TAKING OF TESTIMONY.

[Examinations—how conducted.] The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination,

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which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

See as to evidence Section 21. Also Section 39. As to examination of witnesses see Section 55.

Transactions prior to the passage of the act if tending to show fraud occurring subsequent may be inquired into. *In re* Headley, W. Dist. Mo., Phillips, J., 97 Fed., 765; 5 A. B. R., 272; 2 N. B. N., 250.

XXIII.

ORDERS OF REFEREE.

[What order to recite.] In all orders made by a referee, it shall be recited, according as the fact may be, that notice was given and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests.

XXIV.

TRANSMISSION OF PROVED CLAIMS TO CLERK.

[Referee to transmit list to the clerk.] The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors.

For form of list of claims see Form No. 19.

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XXV.

SPECIAL MEETINGS OF CREDITORS.

[Court may call when necessary.] Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the act, the court may call such a meeting, specifying in the notice the purpose for which it is called.

As to meetings of creditors see Section 55.

It is not the proper practice to except to referee's decision—there must be a petition for review. *In re* Russell (1900), N. Dist. Cal., DeHaven, J., 105 Fed., 501; 5 A. B. R., 566.

Referee's findings are conclusive on review where no exceptions are filed to the report. *In re* Carver & Co. (1902), E. Dist. N. C., Purnell, J., 113 Fed., 113; 7 A. B. R., 539.

XXVI.

ACCOUNTS OF REFEREE.

[Referee to keep account of expenses.] Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or other officer attending him in the performance of his duties in any case which may be referred to him; and shall make return of the same under oath to the judge, with proper vouchers when vouchers can be procured, on the first Tuesday in each month

Referee's expenses may include clerk hire. In *re* Tebo (1900), Dist. West. Va., Jackson, J., 101 Fed., 419; 4 A. B. R., 235.

XXVII.

REVIEW BY JUDGE.

[Petition for review to be filed with the referee.] When a bankrupt, creditor, trustee, or other person, shall desire a review by the judge of any order made by the referee, he shall file with the referee his petition therefor, setting

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out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon.

Ruling of the referee to which an exception is desired to be made to the judge should be followed by an order—petition for review should also be filed. *In re* Smith (1899), W. Dist. Tex., Maxey, J., 93 Fed., 791; 2 A. B. R., 190.

This rule must be followed before a referee's decision can be reviewed. *In re* Schiller, W. Dist. Va., Paul, J., 96 Fed., 400; 2 A. B. R., 704.

This rule must be followed in reviewing referee's findings. *In re* Scott, E Dist N. C., Purnell, J., 93 Fed., 418; 3 A. B. R., 625; 2 N. B. N., 440.

On appeal to court of appeals complaint of incomplete record not sustained, when shown that case proceeded from referee on his certificate and summary of the evidence. *Cunningham* v. *Bank* (1900), 101 Fed., 977; C. C. A., 6th Cir.; 4 A. B. R., 192; 2 N. B. N., 689.

Petition for review of proceedings before the referee for a certificate by the referee to the judge are the only modes of bringing his proceedings before the judge. No general assignment of errors permissible. *In re* Kelly Dry Goods Co. (1900), E. Dist. Wis., Seaman, J., 102 Fed., 747; 4 A. B. R., 528.

XXVIII.

REDEMPTION OF PROPERTY AND COMPOUNDING OF CLAIMS.

[Trustee or creditors may file petition for.] Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all

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creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee.

XXIX.

PAYMENT OF MONEYS DEPOSITED.

[Money drawn on check—countersigned by judge or referee.] No moneys deposited as required by the act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks.

As to deposits and depositories for money see Section 61.

Referee must not order payment of fund without authority from the judge. *In re* Cobb (1901), E. Dist. N. C., Purnell, J., 112 Fed., 655; 7 A. B. R., 202.

XXX.

IMPRISONED DEBTOR.

[Court may issue writ of habeas corpus for imprisoned debtor.] If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon habeas corpus, by the jailer or

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any officer in whose custody he may be, before the referee, for the purpose of testifying in any matter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of habeas corpus to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

XXXI.

PETITION FOR DISCHARGE.

[What to state.] The petition of a bankrupt, for a discharge shall state concisely, in accordance with the provisions of the act and the orders of the court, the proceedings in the case and the acts of the bankrupt.

For forms of petitions for discharge see Form 57.

XXXII.

OPPOSITION TO DISCHARGE OR COMPOSITION.

[Creditor must enter appearance, must file specifications of grounds.] A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the

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day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge.

See as to discharge Section 14b.

Objections to discharge may be signed by attorneys at law authorized to practice in the United States District Court without showing written authorization. *In re* Gasser (1900), C. C. A., 8th Cir., Sanborn, J.,104 Fed., 537; 5 A. B. R., 32. *Contra in re* Glass (1902), N. D., Dis. Tenn., Hammond, J., 119 Fed., 501 (excepting under special order showing reasons).

Specifications of objections to discharge must be filed in due season. *In re* Albrecht (1900), E. Dist. Penn., McPherson, J., 104 Fed., 974; 5 A. B. R., 223.

Objection to discharge must de specific, not general. *In re* Hixon (1899), S. Dist. Ia., Woolson, J., 93 Fed., 440; 1 A. B. R., 610; 1 N. B. N., 326.

Specifications on objections to discharge must contain a *scienter*, but need not be with the certainty of an indictment. *In re* Kaiser (1900), Dist. Minn., Lochren, J., 99 Fed., 689; 3 A. B. R., 767; 2 N. B. N., 123.

Costs may be awarded against creditors who file objections to discharge. *In re* Wolpert (1899), N. Dist. N. Y., Hotchkiss, R.; 1 A. B. R., 436; 1 N. B. N., 238.

Specifications of objections to discharge must be statements of issuable facts, not mere conclusions of law. *In re* Holman, S. Dist. Ia., Woolson, J., 92 Fed., 512; 1 A. B. R., 600; 1 N. B. N., 553.

Specifications on objections to discharge may in the discretion of the court be filed *nunc pro tunc*. *In re* Frice (1899), S. Dist. Ia., Woolson, J., 96 Fed., 611; 2 A. B. R., 674; 1 N. B. N., 432.

Specifications of objections to discharge must be definite and certain and allege statutory grounds. *In re* Peacock (1900), E. Dist. N. C., Purnell, J., 101 Fed., 560; 4 A. B. R., 136; 2 N. B. N., 758.

For form of specifications on objection see form 58. Specifications may be verified *nunc pro tunc*. *In re* Wolfstein (1899), N. Dist., N. Y., Brown, J.; 1 N. B. N., 202.

Specifications on opposition to discharge must be clear, positive and direct. *In re* McGurn (1900), Dist. Nev., Hawley, J., 102 Fed., 743; 4 A. B. R., 459; 2 N. B. N., 877.

Failure to file supplemental specifications with the time limit will en-

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title to dismissal. *In re* Clothier (1901), E. Dist. Penn., McPherson, J., 108 Fed., 199; 6 A. B. R., 203.

Specifications on objections to discharge in nature of pleadings. *In re* Wetmore, W. Dist. N. Y., Knight, R.; 6 A. B. R., 703.

Specifications on objections to discharge may be made after the ten days for filing objections, provided they do not allege new matter—omitting to allege the facts complained of were done knowingly and fraudulently if not raised by the bankrupt on the hearing is waived if hearing is had on the merits. *In re* Osborne, C. C. A., 1st Circt., Putnam, J.; 8 A. B. R., 165.

Amendments liberally allowed even to introducing new grounds of objections in the specifications. *In re* Glass (1902), W. Dist. Tenn., Hammond, J., 119 Fed., 509.

XXXIII.

ARBITRATION.

[What application for authority to shall state.] Whenever a trustee shall make application to the court for authority to submit a controversy arising in the settlement of a demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject-matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise.

XXXIV.

COSTS IN CONTESTED ADJUDICATIONS.

[Successful petitioning creditor to recover costs—debtor to recover when.] In cases of voluntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a suit

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in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner.

Attorney fee of bankrupt not allowed when he has opposed proceedings. *In re* Woodard, E. Dist. N. Carolina, Purnell, J.; 2 A. B. R., 692; 1 N. B. N., 385.

XXXV.

COMPENSATION OF CLERKS, REFEREES AND TRUSTEES.

1. **[What clerk's fees to cover—copies and notices.]** The fees allowed by the act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the act to be filed with them, or certifying or delivering papers or copies of records to referees or other officers, or in receiving or paying out money; but shall not include copies furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

As to compensation of clerks see Section 52a. See Sec. 72 of bankruptcy act.

2. **[What referees' fees to cover—expenses.]** The compensation of referees, prescribed by the act, shall be in full compensation for all services performed by them under the act, or under these general orders, but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the act and allowed by special order of the judge.

As to referees' expenses see general order 26; also Section 62. As to compensation of referees, see Section 40.

Compensation not allowed referees for clerk hire. *In re* Carolina Copperage Co. (1899), E. Dist. N. C., Purnell, J., 96 Fed., 950; 3 A. B. R., 154; 1 N. B. N., 534.

3. **[What compensation of trustees to cover—not expenses.]** The compensation allowed to trustees by the act

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shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

As to compensation of trustees, see Section 48. See as to trustee compensation rate Sec. 72.

4. **[Fees in pauper cases—how collected.]** In any case in which the fees of the clerk, referee and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees, to be paid out of the estate; or may, after notice to the bankrupt, and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed.

Petitioner can not pay his lawyer and then make the affidavit in *forma pauperis*. *In re* Collier (1899), W. Dist. Tenn., Hammond, J., 93 Fed., 191 1 A. B. R., 182; 1 N. B. N., 257.

As to filing petitions *in forma pauperis* see Section 51, sub. (2).

In pauper cases the costs of the bankrupt are not a charge on his exemption—he can not be expected to borrow the costs. *Sellers* v. *Bell*, C. C. A., 5th Cir., McCormick, J., 94 Fed., 801; 2 A. B. R., 529.

XXXVI.

APPEALS.

[Appeals to Circuit Court of Appeals—equity practice governs.] Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

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As to appeals see Section 25. As to methods of perfecting appeals see supplement to Revised Statutes of United States, page 902, 903.

See also U. S. Eq. Rules post.

2. **[Appeals to Supreme Court of U. S.—thirty day limit.]** Appeals under the act to the Supreme Court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the supreme court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from, or by a justice of the Supreme Court of the United States.

3. **[Record on appeal to Supreme Court of U. S.]** In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States, the court from which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts, and its conclusions of law thereon, stated separately; and the record transmitted to the Supreme Court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions, of law.

XXXVII.

GENERAL PROVISIONS.

[Equity rules govern in equity cases—law rules in law cases—time for process.] In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as

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nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

As to forms see Section 30 and title Forms in bankruptcy.

XXXVIII.

FORMS.

[Official forms to be used.] The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case.

As amended by Act of 1903. See 4 of amendment, page , post.

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OFFICIAL FORMS IN BANKRUPTCY.

[N. B.—Oaths required by the act, except upon hearings in court, may be administered by referees and by officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken. Bankrupt Act of 1898, c. 4, Sec. 20.]

These forms to be followed. Gen. Ord. XXXVIII. Sec., 30.

[FORM No. 1.]

DEBTOR'S PETITION.

To the Honorable ——— ———,

Judge of the District Court of the United States

for the —— District of ——:

The petition of ——— ———, of ———, in the county of ———, and district and State of ———, ——— [*state occupation*], respectfully represents:

That he has had his principal place of business [*or* has resided, *or* has had his domicil] for the greater portion of six months next immediately preceding the filing of this petition at ———, within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts:

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts:

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

——— ———.

——— ———, *Attorney.*

United States of America, District of ————, ss:

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I, ——— ———, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

——— ———, *Petitioner.*

Subscribed and sworn to before me this —— day of ———, A. D 19—.

———,

———.

(*Official character.*)

NOTES.

Petition defined Sec. 1 (20).

As to petitions see Sec. 59, *ante*, and notes.

Petitions and schedules to be printed or written out plainly without abbreviation or interlineation. Gen. Ord. V.

Addresses of creditors should state street and number or schedules will be defective. If street and number not given it must be shown that a diligent effort was made to obtain them. *Re* Brumelkamp, (1899) Nor. Dist. N. Y., Coxe, J., 95 Fed., 814; 2 A. B. R., 318; 1 N. B. N., 360.

As to who may become bankrupts see Sec. 4.

When petitions are filed against the same person in different districts Gen. Ord. VI.

As to Residence of Petitioner within the District see Sec. 2 (1) *ante*.

As to bankrupt's duty to file schedules see Sec. 7 (8).

As to verification of petition see Sec. 18c and notes.

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SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated.)	Where and when contracted.	Nature and consideration of the debt, and whether contracted as partner or joint contractor; and if so, with whom.	Amount. $	c.
(1.) Taxes and debts due and owing to the United States.							
(2.) Taxes due and owing to the State of——, or to any county, district, or municipality thereof.							
(3.) Wages due workmen, clerks or servants, to an amount not exceeding $300 each, earned within three months before filing the petition.							
(4.) Other debts having priority by law.							
					Total.....		

——— ———, *Petitioner.*

Schedules must be filed within ten days after adjudication. See 7a (8).

Referee's duty to prepare schedules if bankrupt refuses See 39a (6). Petitioning creditors must file within five days after adjudication. Gen. Order IX. As to amendment see Sec. 39a (2) Abbreviations and interlineations not permitted. Gen. Ord. V. As to debts having priority, see Sec. 64.

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SCHEDULE A. (2)

[Creditors holding securities.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.]

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated.	Description of securities.	When and where debts were contracted.	value of securities.		amount of debts.	
					$	c.	$	c.
				Total.....				

——— ———, *Petitioner.*

See notes to Schedule A. (1). Definition of secured creditor Sec. 1 (23).

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SCHEDULE A. (3)

Creditors whose claims are unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated).	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc, and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount. $	Amount. c.
				Total.....		

See notes to Schedule A. (1). Definition of secured creditor Sec. 1 (23).

....., *Petitioner.*

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SCHEDULE A. (4)

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or indorsers:

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher.	Names of holders as far as known.	Residence (if unknown, that fact must be stated).	Place where contracted.	Nature of liability, whether the same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount.	
					$	c.
				Total.....		

...., *Petitioner.*

See notes to Schedule A (1).

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SCHEDULE A. (5)

Accommodation paper.

[N. B.—The dates of the notes of bills, and when due, with the names and residences of the drawers, makers, and acceptors, thereof are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher.	Names of holders.	Residences (if unknown, that fact must be stated.	Names and residence of persons accommodated.	Place where contracted.	Whether liability was contracted as partner of joint contractor, or with any other person; and if so, with whom.	Amount. $	Amount. c.
					Total.....		

——— ———, *Petitioner.*

OATH TO SCHEDULE A.

United States of America, District of ——— ss:

On this ——— day of ———, A. D. 19—, before me personally came ——— ———, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this ——— day of ———, A. D. 19—.

....,
[*Official character.*]

See notes to Schedule A (1).

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SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

SCHEDULE B. (1)

Real estate.

Location and description of all real estate owned by debtor, or held by him.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value.	
			$	c.
		Total.....		

...., *Petitioner.*

See notes to Schedule A (1). As to title to property see Sec. 70.

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SCHEDULE B. (2)

Personal property.

		$	c.
a.—Cash on hand			
b.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately)			
c.—Stock in trade, in — business of ——— ———, at ———, of the value of———			
d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz			
e.—Books, prints, and pictures, viz			
f.—Horses, cows, sheep, and other animals (with number of each), viz			
g—Carriages and other vehicles, viz			
h—Farming stock and implements of husbandry, viz			
i—Shipping and shares in vessels, viz			
k.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz			
l.—Patents, copywrights, and trade-marks, viz			
m.—Goods or personal property of any other description, with the place where each is situated, viz			
	Total		

See notes to Schedule A (1). As to title to property see Sec. 70.

———— ———, *Petitioner.*

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SCHEDULE B. (3)

Choses in action.

	Dollars.	Cents.
a.—Debts due petitioner on open account.....		
b.—Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds.....		
c.—Policies of insurance.....		
d.—Unliquidated claims of every nature, with their estimated value.....		
e. Deposits of money in banking institutions and elsewhere		
Total.....		

....., *Petitioner.*

See notes to Schedule A (1). As to title to property see Sec. 70

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SCHEDULE B. (4)

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realised from the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

General interest.	Particular description.	Supposed value of my interest.
		$ c.
Interest in land		
Personal property		
Property in money, stock, shares, bonds, annuities, etc		
Rights and powers, legacies and bequests		
	Total	

Property heretofore conveyed for benefit of creditors.	Amount realised from proceeds of property conveyed.
	$ c.
What portion of debtor's property has been conveyed by deed of assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realised therefrom, and disposal of same, so far as known to debtor	
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy	
Total	

....., ..., *Petitioner.*

See notes to Schedule A (1). As to title to property see Sec. 70. See also Sec. 60 as to preferred creditors, and see Sec. 3 as to acts of bankruptcy.

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SCHE DULE B. (5)

A particular statement of the property claimed as exempted from the operation of the acts of congress relating to bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.

		Valuation.	
		$	c
Military uniform, arms, and equipments			
Property claimed to be exempted by state laws; its valuation; whether real or personal; its description and present use- and reference given to the statute of the State creating the exemption			
	Total		

....., ..., *Petitioner.*

See notes to Schedule A (1). As to exempt property see Sec. 6.
Equipment of soldiers of U. S. not to be sold. Sec. 3748 Rev. St. of U. S.
See the exemption laws of state in which petition is filed.

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SCHEDULE B. (6)

BOOKS, PAPERS, DEEDS, AND WRITINGS RELATING TO BANKRUPTS BUSINESS AND ESTATE.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books.	
Deeds.	
Papers.	

——— ———, *Petitioner.*

OATH TO SCHEDULE B.

United States of America, District of ———, ss.

On this —— day of ———, A. D. 19—, before me personally came ——— ———, the person mentioned in and who was subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

——— ———,

——— ———,

[*Official character.*]

NOTE.
See notes to schedule A.
As to title to property see Sec. 70.

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SUMMARY OF DEBTS AND ASSETS.

[From the statements of the bankrupt in Schedules A and B.]

Schedule A	1 (1)	Taxes and debts due United States			
" "	1 (2)	Taxes due States, counties, districts, and municipalities			
" "	1 (3)	Wages			
" "	1 (4)	Other debts preferred by law			
Schedule A	2	Secured claims			
Schedule A	3	Unsecured claims			
Schedule A	4	Notes and bills which ought to be paid by other parties thereto			
Schedule A	5	Accommodation paper			
		Schedule A, total			
Schedule B	1	Real estate			
Schedule B	2-a	Cash on hand			
" "	2-b	Bills, promissory notes, and securities			
" "	2-c	Stock in trade			
" "	2-d	Household goods, &c			
" "	2-e	Books, prints, and pictures			
" "	2-f	Horses, cows, and other animals			
" "	2-g	Carriages and other vehicles			
" "	2-h	Farming stock and implements			
" "	2-i	Shipping and shares in vessels			
" "	2-k	Machinery, tools, &c			
" "	2-l	Patents, copywrights, and trade-marks			
" "	2-m	Other personal property			
Schedule B	3-a	Debts due on open accounts			
" "	3-b	Stocks, negotiable bonds, &c			
" "	3-c	Policies of insurance			
" "	3-d	Unliquidated claims			
" "	3-e	Deposits of money in banks and elsewhere			
Schedule B	4	Property in reversion, remainder, trust, &c			
Schedule B	5	Property claimed to be excepted			
Schedule B	6	Books, deeds, and papers			
		Schedule B, total			

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[FORM No. 2.]

PARTNERSHIP PETITION.

To the Honorable ——— ———,
Judge of the District Court of the United States
for the —— District of ———:

The petition of ——— ——— respectfully represents:

That your petitioners and ——— ——— have been partners under the firm name of ——— ———, having their principal place of business at ———, in the county of ———, and district and State of ————, for the greater portion of the six months next immediately preceding the filing of this petition; that the said partners owe debts which they are unable to pay in full; that your petitioners are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law, and desire to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by —— oath contains a full and true statement of all the debts of said partners, and, as far as possible, the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, verified by —— oath , contains an accurate inventory of all the property, real and personal, of said partners, and such further statements concerning said property as are required by the provisions of said acts.

And said ——— ——— further states that the schedule hereto annexed, marked C, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked D, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ——— ——— further states that the schedule hereto annexed marked E, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked F, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ——— ——— further states that the schedule hereto an-

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nexed, marked G, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked H, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ——— ——— further states that the schedule hereto annexed, marked J, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts, and that the schedule hereto annexed, marked K, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore your petitioners pray that said firm may be adjudged by a decree of the court to be bankrupts within the purview of said acts.

———— ————,
———— ————,
———— ————,
Petitioners.

———— ————, *Attorney* .

———— ————, the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information, and belief.

———— ————,
———— ————,
———— ————,
Petitioners.

Subscribed and sworn to before me this ——— day of ———, A. D. 19—.

———— ————,
[*Official character.*]
———— ————.

[Schedules to be annexed corresponding with schedules under Form No. 1.]

NOTES.

As to partnership petitions see ante Sec. 5.
As to priority of petitions see Gen. Ord. VII.
For proceedings in partnership cases Gen. Ord. VIII.
For involuntary petitions in different districts, Gen. Ord. VI. As to domicile and residence and court's jurisdiction to adjudicate in bankruptcy, Sec. 2 (1). See notes to Form No. 1, ante.

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[FORM No. 3.]

CREDITOR'S PETITION.

To the Honorable ——— ———, judge of the District Court of the United States for the —— District of ———:

The petition of ——— ———, of ———, and ——— ———, of ———, and ——— ———, of ———, respectfully shows:

That ——— ———, of ———, has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business, [*or* resided, *or* had his domicil] at ———, in the county of ——— and State and district aforesaid, and owes debts to the amount of $1,000.

That your petitioners are creditors of said ——— ———, having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of $500. That the nature and amount of your petitioners' claims are as follows:

———————————————————————————

———————————————————————————

And your petitioners further represent that said ——— ——— is insolvent, and that within four months next preceding the date of this petition the said ——— ——— committed an act of bankruptcy, in that he did heretofore, to wit, on the —— day of ———————————

———————————————————————————

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon ——— ———, as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

——— ———,
——— ———,
——— ———,
Petitioners.

——— ———. *Attorney.*

United States of America, District of ———, ss:

——— ———, ——— ———, ——— ———, being three of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

Before me, ——— ———, this —— day of ———, 19—.

——— ———,
——— ———.
(*Official character.*)

[Schedules to be annexed corresponding with schedules under Form No. 1.]

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NOTES.

As to creditors in involuntary petitions see ante Sec. 59. Duty to file schedules Gen. Ord. XI. As to schedules in involuntary cases, see Gen. Ord. IX and notes.

See notes to Form No. 1.

As to insolvency and acts of bankruptcy, see sec. 3. As to issuance and return of the subpoena, see Sec. 18 (a) and notes.

The schedules may be annexed to the petition when it is filed, but the petition and schedules may be filed separately, the latter written four days after the date of adjudication, Gen. Ord. XI.

This form must be strictly followed. The petition is bad if it asks for more than to have the insolvent debtor declared bankrupt. *Mather* v. *Coe, Powers & Co.* (1899), N. Dist. Ohio, Ricks, J., 90 Fed., 333; 1 A. B. R., 504; 1 A. B. N., 554.

Where rules of court prescribe printed form it must be used. *Mahoney* v. *Ward* (1900), E. Dist. N. C., Purnell, J., 100 Fed., 278; 3 A. B. R., 770; 2. N. B. N., 538.

Unless duplicate copy required by 59c filed within four months of acts of bankruptcy proceeding of no force even if original was filed in time. *In re* Stevenson (1899), Dist. Del., Bradford, J., 94 Fed., 110; 2 A. B. R. 66; 1 N. B. N., 313.

Alleging more than found in this petition is multifariousness. *Mather* v. *Coe* (1899), Nor. Dist. O., Richs, J., 92 Fed., 333; 1 A. B. R., 504; 1 N. B. N., 294; *In re* Ogles (1899), W. Dist. Tenn., Hammond, J., 93 Fed., 426; 1 A. B. R., 671; 1 N. B. N., 326.

Where creditor answers involuntary petition and alleges that defendant is not insolvent, the allegations of the answer must be taken as true if the case is submitted on pleadings. *In re* Taylor (1900), C. C. A., 7th Cir., Bunn, J., 102 Fed., 728; 4 A. B. R., 415.

Form 3 was clearly intended for a creditor's petition against a partnership. *Mather* v. *Coe, Powers & Co.* (1899), N. Dist. Ohio, Ricks, J., 92 Fed., 333; 1 A. B. R., 504; 1 N. B. N., 554.

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[FORM No. 4.]

ORDER TO SHOW CAUSE UPON CREDITOR'S PETITION.

In the District Court of the United States for the —— District of ———

In the matter of ————	In Bankruptcy.

Upon consideration of the petition of ——— ——— that ——— ——— be declared a bankrupt, it is ordered that the said ——— ——— do appear at this court, as a court of bankruptcy, to be holden at ———, in the district aforesaid, on the —— day of ———, at — o'clock in the ——— noon, and show cause, if any there be, why the prayer of said petition should not be granted; and

It is further ordered that a copy of said petition, together with a writ of subpœna, be served on said ——— ———, by delivering the same to him personally or by leaving the same at his last usual place of abode in said district, at least five days before the day aforesaid.

Witness the Honorable ——— ———, judge of the said court, and the seal thereof, at ———, in said district on the —— day of ———, A. D. 19—.

{ SEAL OF THE COURT. } ——— ———, *Clerk.*

NOTE.

As to pleadings and process see ante Sec. 18 and notes, Gen. Ord. III and XXXVII, and Equity Rules 13–16.

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[FORM No. 5.]

SUBPOENA TO ALLEGED BANKRUPT.

United States of America, —— District of ———.

To ——— ———, in said district, greeting:

For certain causes offered before the District Court of the United States of America within and for the —— district of ———, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at ———, in said district, on the —— day of ———, A. D. 19—, ——— ——— to answer to a petition filed by ——— ——— in our said court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable ——— ———, judge of said court, and the seal thereof, at ———, this———day of ——— A. D. 19—.

——— ———,

{SEAL OF THE COURT.} *Clerk.*

NOTE.

See Sec. 18a and notes thereto, together with Gen. Ord. XXXVII and Equity rules 12–21. relative to the issuance of, service of and seal on process.

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[FORM No. 6.]

DENIAL OF BANKRUPTCY.

In the District Court of the United States for the ——— District of ———

In the matter of ——— ———	In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 19—.

And now the said ——— ——— appears, and denies that he has committed the act of bankruptcy set forth in said petition, or that he is insolvent, and avers that he should not be declared bankrupt for any cause in said petition alleged; and this he prays may be inquired of by the court [*or*, he demands that the same may be inquired of by a jury].

——— ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 19—.

——— ———,

[*Official character.*]

NOTE.

As to denial of bankruptcy see Sec. 18b ante. Trials by jury See Sec. 19.

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[FORM No 7.]

ORDER FOR JURY TRIAL.

In the District Court of the United States for the ——— District of ———

In the matter of ———	In Bankruptcy.

At ———, in said district, on the —— day of ———, 19—.

Upon the demand in writing filed by ——— ———, alleged to be a bankrupt, that the fact of the commission by him of an act of bankruptcy and the fact of his insolvency may be inquired of by a jury, it is ordered that said issue be submitted to a jury.

——— ———,

{SEAL OF THE COURT.} *Clerk.*

NOTE.

As to when a jury trial may be demanded see Sec. 19 *post* and notes. See Gen. Ord. III as to seal of court on process.

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[FORM No. 8.]

SPECIAL WARRANT TO MARSHAL.

In the District Court of the United States for the —— District of———.

In the matter of ——— ——— ——— ——— ——— ———	In Bankruptcy.

To the marshal of said district or to either of his deputies, greeting:

Whereas a petition for adjudication of bankruptcy was, on the —— day of ———, A. D. 19—, filed against ——— ———, of the County of ——— and State of ———, in said district, and said petition is still pending; and whereas it satisfactorily appears that said ——— has committed an act of bankruptcy [*or* has neglected *or* is neglecting, *or* is about to so neglect his property that it has thereby deteriorated *or* is thereby deteriorating *or* is about thereby to deteriorate in value], you are therefore authorized and required to seize and take possession of all the estate, real and personal, of said ——— ———, and of all his deeds, books of account, and papers, and to hold and keep the same safely subject to the further order of the court.

Witness the Honorable ——— ———, judge of the said court, and the seal thereof, at ———, in said district, on the —— of ———, A. D. 19——.

{SEAL OF THE COURT.}

———,
Clerk.

RETURN BY MARSHAL THEREON.

By virtue of the within warrant, I have taken possession of the estate of the within-named ——— ———, and of all his deeds, books of account, and papers which have come to my knowledge.

———,
Marshal [or *Deputy Marshal.*]

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Fees and expenses.

1. Service of warrant.....		
2. Necessary travel, at the rate of six cents a mile each way		
3. Actual expenses in custody of property and other services as follows		
Here state the particulars.]		

———— ————,

Marshal or *Deputy Marshal*].

District of ———, A. D. 19—.

Personally appeared before me the said ——— ———, and made oath that the above expenses returned by him have been actually incurred and paid by him, and are just and reasonable.

———— ————,

Referee in Bankruptcy.

NOTE.

Sec. 2, (3), (5), gives authority to bankruptcy courts to appoint marshals. As to seizure of bankrupt's property prior to adjudication Sec. 3e and Sec. 69. See also Sec. 18a, Gen. Ord. III, and Equity Rule XV as to issuance and service of process.

Before the issuing of the warrant the petitioners must file affidavits showing that property is deteriorating in value and file a bond to indemnify the bankrupt for any loss he may suffer. Sec. 69 ante. See also notes to above.

Gen. Ord. XIX covers return of marshal under oath as to his actual and necessary expenses. Oath may be administered by persons specified in Sec. 20.

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[FORM No. 9.]

BOND OF PETITIONING CREDITOR.

Know all men by these presents; That we ,——— ———, as principal, and ——— ———, as sureties, are held and firmly bound unto ——— ———, in full and just sum of ——— dollars, to be paid to the said ——— ———, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this —— day of ——— A. D., 19—.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the —— district of ——— against the said ———, and the said ——— has applied to that court for a warrant to the marshal of said district directing him to seize and hold the property of said ——— ———, subject to the further orders of said district court.

Now, therefore, if such a warrant shall issue for the seizure of said property, and if the said ——— ——— shall indemnify the said ——— ——— for such damages as he shall sustain in the event such seizure shall prove to have been wrongfluly obtained, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in
presence of— ——— ——— [SEAL.]
——— ——— ——— ——— [SEAL.]
——— ——— ——— ——— [SEAL.]

Approved this —— day of ———, A. D. 19—.

——— ———,
District Judge.

NOTE.

See Sec. 69 as to bond given on seizure of bankrupts property prior to adjudication. See also Sec. 3e as to sureties on bonds see Sec. 50.

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[FORM No. 10.]

BOND TO MARSHAL.

Know all men by these presents: That we, ——— ———, as principal, and ——— ———, as sureties, are held and firmly bound unto ——— ———, marshal of the United States for the ——— district of ———, in the full and just sum of ——— dollars, to be paid to the said ——— ———, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this —— day of ——— A. D. 19—.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the ——— district of ———, against the said ——— ———, and the said court has issued a warrant to the marshal of the United States for said district, directing him to seize and hold property of the said ——— ———, subject to the further order of the court, and the said property has been seized by said marshal as directed, and the said district court upon a petition of said ——— ——— has ordered the said property to be released to him.

Now, therefore, if the said property shall be released accordingly to the said ——— ———, and the said ——— ———, being adjudged a bankrupt, shall turn over said property or pay the value thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the
presence of— ——— ———[SEAL].
——— ——— ——— ———[SEAL].
——— ——— ——— ———[SEAL.]

Approved this ——— day of ———, A. D. 19—.

——— ———,
District Judge,

NOTE.

As to release of seizure of the bankrupt's property prior to adjudication see Sec. 69 relative to the bond required to be given by him.

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[FORM No. 11.]

ADJUDICATION THAT DEBTOR IS NOT BANKRUPT.

In the District Court of the United States for the —— District of ———.

In the matter of ————	In Bankruptcy.

At ———, in said district, on —— day of ———, A. D. 19—, before the Honorable ——— ———, judge of the —— district of ———.

This cause came on to be heard at ———, in said court, upon the petition of ——— that ——— be adjudged a bankrupt within the true intent and meaning of the acts of congress relating to bankruptcy, and [*Here state the proceedings, whether there was no opposition, or, if opposed, state what proceedings were had.*]

And thereupon, and upon consideration of the proofs in said cause [*and the arguments of counsel thereon, if any*], it was found that the facts set forth in said petition were not proved; and it is therefore adjudged that said ——— was not a bankrupt, and that said petition be dismissed, with costs.

Witness the Honorable ——— ———, judge of said court, and the seal thereof, at ———, in said district, on the —— day of ———, A. D. 19—.

——— ———,
Clerk.

{SEAL OF THE COURT.}

NOTE.

For definition of adjudication see Sec. 1, (2).

As to acts of bankruptcy see Sec. 3; as to who may become bankrupts Sec. 4; as to adjudications in bankruptcy Sec. 2 (1), and Sec. 18. See Gen. Ord. XXXIV as to costs in contested cases.

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[FORM No. 12.]

ADJUDICATION OF BANKRUPTCY.

In the District Court of the United States for the —— District of ———.

————————————	
in the matter of	
————————————	In Bankruptcy.
Bankrupt.	
————————————	

At ———, in said district, on the —— day of ———, A. D. 19—, before the Honorable ——— ———, judge of said court in bankruptcy, the petition of ——— ——— that ——— ——— be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said ——— —— is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable ——— ———, judge of said court, and the seal thereof, at———, in said district, on the —— day of ———, A. D. 19—.

——— ———,
Clerk.

{SEAL OF THE COURT.}

NOTE.

See notes to Form No. 11.

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[FORM No. 13.]

APPOINTMENT, OATH, AND REPORT OF APPRAISERS.

In the District court of the United States for the —— district of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

It is ordered that ——— ———, of ———, ——— ——— of ———; and ——— ———, of ———, three disinterested persons, be, and they are hereby, appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in the schedules now on file in this court, and report their appraisal to the court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

Witness my hand this —— day of ———, A. D. 19—.

———— ————,
Referee in Bankruptcy.

—— District of ———, ss:

Personally appeared the within named ——— ——— and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

———— ————,
———— ————,
———— ————,

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

———— ————,
[*Official character.*]

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

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	Dollars.	Cents.

In witness whereof we hereunto set our hands, at ———, this —— day of ———, A. D. 19—.

———— ————.
———— ————.
———— ————.

NOTE.

As to appointment of appraisers see Sec. 70b; as to oaths see Sec. 20.

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[FORM No. 14.]

ORDER OF REFERENCE.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

Whereas ——— ———, of ———, in the county of ——— and district aforesaid, on the —— day of ———, A. D. 19—. was duly adjudged a bankrupt upon a petition filed in this court by [*or*, against] him on the —— day of ———, A. D. 19——, according to the provisions of the acts of Congress relating to bankruptcy,

It is thereupon ordered, that said matter be referred to ——— ———, one of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said acts; and that said ——— ——— shall attend before said referee on the —— day of ——— at ———, and thenceforth shall submit to such orders as may be made by said referee or by this court relating to said ——— bankruptcy.

Witness the Honorable ——— ———, judge of the said court, and the seal thereof, at ———, in said district, on the —— day of ———, A. D. 19—.

——— ———,
Clerk.

{SEAL OF THE COURT.}

NOTE.

As to reference of cases after adjudication see Sec. 22, and notes. See also Gen. Ord. XII.

As to order of reference in the judges absence see Form 15.

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[FORM No. 15.]

ORDER OF REFERENCE IN JUDGE'S ABSENCE.

In the District Court of the United States for the —— District of ———.

In the matter of ————	In Bankruptcy.

Whereas on the —— day of ———, A. D. 19—, a petition was filed to have ——— ———, of ———, in the county of ——— and district aforesaid, adjudged a bankrupt according to the provisions of the acts of Congress relating to bankruptcy; and whereas the judge of said court was absent from said district at the time of filing said petition [*or, in case of involuntary bankruptcy*, on the next day after the last day on which pleadings might have been filed, and none have been filed by the bankrupt or any of his creditors], it is thereupon ordered that said matter be referred to ——— ———, one of the referees in bankruptcy of this court, to consider said petition and take such proceedings therein as are required by said acts; and that the said ——— ——— shall attend before said referee on the —— day of ———, A. D. 19—, at ———.

Witness my hand and the seal of the said court, at ———, in said district, on the —— day of ——, A. D. 19—.

——— ———,
Clerk.

{SEAL OF THE COURT.}

NOTE.

As to reference in the judge's absence see Sec. 18f, g. See Form 14.

Use of this form considered. *In Re* Munny, (1899) N. Dist. Ia., Shiras, J., 96 Fed., 600. 3 A. B. R., 601; 2 N. B. N., 164.

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[FORM No. 16.]

REFEREE'S OATH OF OFFICE.

I, ——— ———, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God.

——— ———.

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

——— ———,

District Judge.

NOTE.

As to oaths of office of referees see Sec. 36. As to Duties of Referee see Secs. 33 to 50, inclusive.

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[FORM No. 17.]

BOND OF REFEREE.

Know all men by these presents: That we ——— ——— of ——— ——— as principal, and ——— ——— of ——— ——— and ——— ——— of ——— ———, as sureties are held and firmly bound to the United States of America in the sum of ——— dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this ——— day of ——— A. D. 19—.

The condition of this obligation is such that whereas the said ——— ———, has been on the —— day of ———, A. D. 19—, appointed by the Honorable ——— ———, judge of the district court of the United States for the ——— district of ———, a referee in bankruptcy, in and for the county of ———, in said district, under the acts of Congress relating to bankruptcy.

Now, therefore, if the said ——— ——— shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed
in the presence of

——— ———, [L. S.]
——— ———, [L. S.]
——— ———, [L. S.]

Approved this —— day of ———, A. D. 19—.

——— ———
District Judge.

NOTE.
As to bonds of referees and trustees see Sec. 50.

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[FORM No. 18.]

NOTICE OF FIRST MEETING OF CREDITORS.

In the District Court of the United States for the —— District of ———.
In Bankruptcy.

In the matter of
———
Bankrupt. } In Bankruptcy.

To the creditors of ——— ———, of ———, in the county of ———, and district aforesaid, a bankrupt.

Notice is hereby given that on the —— day of ———, A. D. 19—, the said ——— ——— was duly adjudicated bankrupt; and that the first meeting of his creditors will be held at ——— in ———, on the —— day of ———, A. D. 19—, at —— o'clock in the ——— noon, at which time the said creditors may attend, prove their claims, appoint a trustee, examine the bankrupt, and transact such other business as may properly come before said meeting.

———— ————,
Referee in Bankruptcy.

———— ——, 19—.

NOTE.

As to meetings of creditors see Sec. 58 and Gen. Ord. XXI(a). As to proof and allowance of claims see Sec. 55, 57. As to appointment of trustees see Sec. 2 (17) 44, and general Ord. XIII. As to examinations of bankrupts see Sec. 7a (1, 9).

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[FORM No. 19.]

LISTS OF DEBTS PROVED AT FIRST MEETING.

In the District Court of the United States for the —— District of ———.

In the matter of
———
Bankrupt.
} In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 19—, before ——— ———, referee in bankruptcy.

The following is a list of creditors who have this day proved their debts:

Names of creditors.	Residence.	Debts. proved.	
		Dolls.	Cts.

——— ———,
Referee in Bankruptcy.

NOTE.

Referee to keep record of all proceedings in each case before him, see Sec. 42. Referee's duty to transmit list of proved claims to Clerk. Gen. Ord. XXIV.

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[FORM No. 20.]

GENERAL LETTER OF ATTORNEY IN FACT WHEN CREDITOR IS NOT REPRESENTED BY ATTORNEY AT LAW.

In the District Court of the United States for the —— District of ———

In the matter of
———
Bankrupt.
} In Bankruptcy.

To ——— ———:

——— ———.

I, ——— ———, of ———, in the county of ——— and State of ——— do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trutsee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In witness whereof I have hereunto signed my name and affixed my seal the —— day of ———, A. D. 19—.

——— ———, [L. S.]

Signed, sealed, and delivered in the presence of —

——— ———.

Acknowledged before me this —— day of ———, A. D. 19—.

——— ———,

[*Official character.*]

NOTE.

As to definition of "creditor" see Sec. 1 (19). As to who may conduct proceedings Gen. Ord. IV.

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For execution of Letters of Attorney to represent creditors see Gen. Ord. XXI (5).

As to persons who may take acknowledgments see Sec. 20 and notes.

[FORM No. 21.]

SPECIAL LETTER OF ATTORNEY IN FACT.

In the matter of
_____
Bankrupt.
} In Bankruptcy.

To _____ _____,
_____ _____:

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at _____, on the _____ day of _____, before _____, or any adjournment thereof, and then and there _____ for _____ and in _____ name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

_____ _____. [L. S.]

In witness whereof I have hereunto signed my name and affixed my seal the —— day of _____, A. D. 19—.

Signed, sealed, and delivered in presence of—

_____ _____.

Acknowledged before me this —— day of _____, A. D. 19—.

_____ _____,
(*Official character.*)

See notes to Form 20.

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[FORM No. 22.]

APPOINTMENT OF TRUSTEE BY CREDITORS.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 19—, before ——— ———, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the [*here insert the names of the newspapers in which notice was published*], we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint ——— ———, of ———, in the county of ——— and State of ———, to be the trustee— of the said bankrupt's estate and effects.

Signatures of creditors.	Residences of the same.	Amount of debt.	
		Dolls.	Cts.

Ordered that the above appointment of trustee— be, and the same is hereby approved.

———— ————,
Referee in Bankruptcy.

NOTES.

Definition of trustee Sec. 1 (26).

As to appointment of trustees see Sec. 2 (17), 44, Gen. Ord. XIII, XIV, XV. As to their qualifications see Sec. 44. As to meetings of creditors see Sec. 55. As to voters at creditors' meetings see Sec. 56. As to notices to which creditors entitled see Sec. 58, Gen. Ord. XXI (2).

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[FORM No. 23.]

APPOINTMENT OF TRUSTEE BY REFEREE.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 19—, before ——— ———, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given in the [*here insert the names of the newspapers in which notice was published*] I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy; and I do hereby cretify that the creditors whose claims had been allowed and were present, or duly represented, failed to make choice of a trustee of said bankrupt's estate, and therefore I do hereby appoint ——— ——— of ———, in the county of ——— and State of ———, as trustee of the same.

———,
Referee in Bankruptcy.

NOTES.

See notes to Form 22.

See also Form 24.

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[FORM No. 24.]

NOTICE TO TRUSTEE OF HIS APPOINTMENT.

In the District Court of the United States for the —— District of ——

In the matter of —————————— *Bankrupt.*	In Bankruptcy.

To ——— ———, of ———, in the county of ———, and district aforesaid:

I hereby notify you that you were duly appointed trustee [*or* one of the trustees] of the estate of the above named bankrupt at the first meeting of the creditors, on the —— day of ———, A, D. 19—, and I have approved said appointment. The penal sum of your bond as such trustee has been fixed at ——— dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at ——— the —— day of ———, A. D. 19—.

———— ————,
Referee in Bankruptcy.

NOTE.

Referee's duty to notify trustee of his appointment Gen. Ord. XVI. As to bond of trustee Sec. 50b and Form 25.

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[FORM No. 25.]

BOND OF TRUSTEE.

Know all men by these presents; That we, ——— ———, of ———, as principal, and ——— ———, of ———, and ——— ———, of ———, as sureties, are held and firmly bound unto the United States of America in the sum of ——— dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors and administrators, jointly and severally, by these presents.

Signed and sealed this —— day of ——— A. D. 19—.

The condition of this obligation is such, that whereas the above-named ——— ——— was, on the —— day of ———, A. D. 19—, appointed trustee in the case pending in bankruptcy in said court, wherein ——— ——— is the bankrupt, and he, the said ——— ———, has accepted said trust with all the duties and obligations pertaining thereunto:

Now, therefore, if the said ——— ———, trustee as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

Signed and sealed in
presence of—

——— ——— ——— ———, [SEAL.]
——— ——— ——— ———, [SEAL.]
——— ———, [SEAL.]

NOTE.
See Sec. 50b and Form 26.

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[FORM No. 26.]

ORDER APPROVING TRUSTEE'S BOND.

At a court of bankruptcy, held in and for the —— District of ———, at ———, ———, this —— day of ———, 19—.

Before ——— ———, referee in bankruptcy, in the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

It appearing to the Court ——— ———, of ———, and in said district, has been duly appointed trustee of the estate of the above-named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by the creditors [*or* by order of the court], to wit, in the sum of ——— dollars, it is ordered that the said bond be, and the same is hereby approved.

——— ———,
Referee in Bankruptcy.

NOTE.
As to trustee's bond see Sec. 50b and Form 25.

[FORM No. 27.]

ORDER THAT NO TRUSTEE BE APPOINTED.

In the District Court of the United States for the ——— District of———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

——— ———,
Referee in Bankruptcy.

NOTE.
No trustee cases Gen. Ord. XV.

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[FORM No. 28.]

ORDER FOR EXAMINATION OF BANKRUPT.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

At ———, on the —— day of ———, A. D. 19—.

Upon the application of ——— ———, trustee of said bankrupt, it is ordered that said bankrupt, attend before ——— ———, one of the referees in bankruptcy of this court, at ——— on the —— day of ———, at — o'clock in the —— noon, to submit to examination under the acts of Congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

——— ———, *Referee in Bankruptcy.*

NOTES.

Duty of bankrupt to attend meetings of creditors and submit to examination Sec. 7a (1, 9). Duties to appear in court as witness Sec. 21a; Gen. Ord. XII (1).

[FORM No. 29.]

EXAMINATION OF BANKRUPT OR WITNESS.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 19—, before ——— ———, one of the referees in bankruptcy of said court.

——— ———, of ———, in the county of ——— ,and State of ———, being duly sworn and examined at the time and place above mentioned, upon his oath says. [*Here insert substance of examination of party.*]

——— ———, *Referee in Bankruptcy.*

NOTES.

Examination and testimony of bankrupts, Sec. 7a (1, 9), 21, Gen. Ord. XXII and notes.

For contempts before referees, Sec. 41. See also Forms 28, 30.

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[FORM No. 30.]

SUMMONS TO WITNESS.

To ——— ———:

Whereas ——— ———, of ———, in the county of ———, and State of ———, has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the District Court of the United States for the ——— District of ———,

These are to require you, to whom this summons is directed, personally to be and appear before ——— ———, one of the referees in bankruptcy of the said court, at ———, on the —— day of ———, at — o'clock in the ——— noon, then and there to be examined in relation to said bankruptcy.

Witness the Honorable ——— Judge of said court and the seal thereof at ———, this —— day of ———, A. D. 19—.

——— ———, *Clerk.*

RETURN OF SUMMONS TO WITNESS.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

On this —— day of ———, A. D. 19—, before me came——— ——— of ———, in the county of ——— and State of ———, and makes oath, and says that he did, on ———, the —— day of ———, A. D. 19—, personally serve ——— ———, of ———, in the county of ——— and State of ———, with a true copy of the summons hereto annexed, by delivering the same to him; and he further makes oath, and says that he is not interested in the proceeding in bankruptcy named in said summons.

——— ———.

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

——— ———.

NOTES.

Orders to require attendance of witnesses, Sec. 21; test and process Gen. Ord. III. Oaths, Sec. 20.

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[FORM No. 31.]

PROOF OF UNSECURED DEBT.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

At ———, in said district of ———, on the —— day of ———, A. D. 19—, came ——— ——— ,of ———, in the county of ———, in said district of ———, and made oath, and says that ——— ———, the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of ——— dollars; that the consideration of said debt is as follows:———

———

———

that no part of said debt has been paid [except———]; that there are no set-offs or counterclaims to the same [except———]; and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

———,
Creditor.

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

———,
[*Official character.*]

NOTES.

Proof and allowance of claims Sec. 57, Gen. Ord. XXI (1).

If note given it should be filed with proof, Sec. 57b. If it is desired to compute interest on the claim, then a further allegation should be made setting out the time when debt became due, Gen. Ord. XXI(1).

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[FORM No. 32.]

PROOF OF SECURED DEBT.

In the District Court of the United States for the —— District of ———

In the matter of

———————————— } In Bankruptcy.

Bankrupt.

At ———, in said district of ———, on the —— day of ———, A. D. 19—, came ——— ———, of ———, in the county of ———, in said district of ———, and made oath, and says that ——— ———, the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of ——— dollars; that the consideration of said debt is as follows————————————; that no part of said debt has been paid [except————————————]; that there are no set-offs or counterclaims to the same [except———————]; and that the only securities held by this deponent for said debt are the following:————————————

———————————————————————————

———————————————————————————

——— ———,

Creditor.

Subscribed and sworn to before me this —— day of ——— A. D. 19—.

——— ———,

[*Official character.*]

NOTES.

As to secured debts see Sec. 57 and Gen. Ord. XXI. See notes to Form No. 31.

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[FORM No. 33.]

PROOF OF DEBT DUE CORPORATION.

In the District Court of the United States for the ——District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

At ———, in said district of ———, on the —— day of ———, A. D. 19—, came ——— ———, of ———, in the county of ——— and State of ———, and made oath and says that he is ——— of the ———, corporation incorporated by and under the laws of the State of ———, and carrying on business at ———, in the county of ——— and State of ———, and that he is duly authorized to make this proof, and says that the said ——— ———, the person by [*or* against] whom a petitioner for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is justly and truly indebted to said corporation in the sum of ——— dollars; that the consideration of said debt is as follows: ———;
———;
that no part of said debt has been paid [except———]; that there are no set-offs or counter claims to the same [except———]; and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

———,
——— *of said corporation.*

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

———,
[*Official character.*]

NOTES.

See notes to Forms 31, 32.
As to proofs of claim by corporation, Gen. Ord. XXI(1).
As to definition of corporation, Sec. 1(b) and notes.

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[FORM No. 34.]

PROOF OF DEBT BY PARTNERSHIP.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

At ———, in said district of ———, on the —— day of ———, A. D 19—, came ——— ———, of ———, in the county of ———, in said district of ———, and made oath and says that he is one of the firm of ——— ———, consisting of himself and ——— ———, of ———, in the county of ——— and State of ———; that the said ——— ———, the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of ——— dollars; that the consideration of said debt is as follows:———————

———————————————————

that no part of said debt has been paid [except———————]; that there are no set-offs or counterclaims to the same [except———————]; and this deponent has not, nor has his said firm, nor any person by their order, or to this deponent's knowledge or belief, for their use, had or received any manner of security for said debt whatever.

———— ————,
Creditor.

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

———— ————.
[*Official character.*]

NOTES.

See notes to forms 31, 32, 33. See Gen. Ord. XXI.

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[FORM No. 35.]

PROOF OF DEBT BY AGENT OR ATTORNEY.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

At ——— in said district of ——— on the —— day of ———, A. D. 19—, came ——— ———, of ———, in the county of ———, and State of ———, attorney [*or* authorized agent] of ———, in the county of ———, and State of ———, and made oath and says that ——— ———, the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said ——— ———, in the sum of ——— dollars; that the consideration of said debt is as follows:———————————————————————————————; that no part of said debt has been paid [except ———————————————————————————————]; and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use had or received any manner of security for said debt whatever. And this deponent further says, that this deposition can not be made by the claimant in person because———————————————————————————————, and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

——— ———.

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

——— ———,

[*Official character.*]

NOTES.

See notes to Forms No. 31, 32, 33, 34.

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[FORM No. 36.]

PROOF OF SECURED DEBT BY AGENT.

In the District Court of the United States for the —— District of ———.

In the matter of
———
Bankrupt.
} In Bankruptcy.

At ———, in said district of ——— ,on the —— day of ———, A. D. 19—, came ——— ———, of ———, in the county of ———, and State of ———, attorney [*or* authorized agent] of ———, in the county of ———, and State of ———, and made oath, and says that ——— ———, the person by [*or* against] whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to the said ——— ——— in the sum of ——— dollars; that the consideration of said debt is as follows:———————————
———————————————————————————————
———————————————————————————————
that no part of said debt has been paid [except———————————
———————————————————————————————];
that there are no set-offs or counter claims to the same [except———————
———————————————————————————————];
and that the only securities held by said ——— for said debt are the following: ———————————————————————————————
———————————————————————————————;
and this deponent further says that this deposition can not be made by the claimant in person because———————————————
———————————————————————————————,
and that he is duly authorized by his principal to make this deposition, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

——— ———.

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

——— ———,
[*Official character.*]

NOTES.

See notes to Forms 31, 32, 33, 34.

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[FORM No. 37.]

AFFIDAVIT OF LOST BILL, OR NOTE.

In the District Court of the United States for the —— District of ———.

In the matter of

———— } In Bankruptcy.

Bankrupt.

On this —— day of ———, A. D. 19—, at ———, came ——— ———, of ———, in the county of ———, and State of ———, and makes oath and says that the bill of exchange [*or* note], the particulars whereof are underwritten, has been lost under the following circumstances, to wit,

———————————————————————

———————————————————————

and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said ——— ———, or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said bill [*or* note], nor in any manner parted with or assigned the legal or beneficial interest therein, or any part thereof; and that he, this deponent, is the person now legally and beneficially interested in the same.

Bill or note above referred to.

Date.	Drawer or maker.	Acceptor.	Sum.

——— ———,

Subscribed and sworn to before me this —— day of ———, A. D. 19—.

——— ———,

(*Official character.*)

NOTES.

See notes to Forms 31, 32, 33, 34.

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[FORM No. 38.]

ORDER REDUCING CLAIM.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 19—.

Upon the evidence submitted to this court the claim of ——— against said estate [and *if the fact be so*, upon hearing counsel thereon], it is ordered, that the amount of said claim be reduced from the sum of ——— as set forth in the affidavit in proof of claim filed by said creditor in said case, to the sum of ———, and that the latter-named sum be entered upon the books of the trustee as the true sum upon which a dividend shall be computed [*if with interest*, with interest thereon from the day of ———, A. D. 19—].

———, ———,
Referee in Bankruptcy.

NOTE.

As to re-examination, reduction, or disallowance of claims, see Sec. 2 (2), 57d, f, k, l, and Gen. Ord. XXI(6).

[FORM No. 39.]

ORDER EXPUNGING CLAIM.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 19—.

Upon the evidence submitted to the court upon the claim of ——— against said estate [and, *if the fact be so*, upon hearing conusel thereon], it is ordered that said claim be disallowed and expunged from the list of claims upon the trustee's record in said case.

———, ———,
Referee in Bankruptcy.

NOTES.

See notes to Form 38.

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[FORM No. 40.]

LIST OF CLAIMS AND DIVIDENDS TO BE RECORDED BY REFEREE AND BY HIM DELIVERED TO TRUSTEE.

In the District Court of the United States for the —— District of ———.

In the matter of

———— } In Bankruptcy.

Bankrupt.

At ———, in said district, on the —— day of ———, A. D. 19—.

No.	Creditors. [To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.]	Sum proved.		Dividend.	
		Dollars.	Cents.	Dollars.	Cents.

———— ————,

Referee in Bankruptcy.

NOTES.

Duty of referee to declare dividends, Sec. 39a(1).

Declaration and payments of dividends, Sec. 47a, 55.

As to notices to creditors of the declaration and time of payment, Sec. 58a(5).

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[FORM No. 41.]

NOTICE OF DIVIDEND.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

At ———, on the —— day of ———, A. D. 19—.

To ——— ———,

Creditor of ——— ———, bankrupt:

I hereby inform you that you may, on application at my office, ———, on the —— day of ———, or on any day thereafter, between the hours of ——, receive a warrant for the ——— dividend due to you out of the above estate. If you can not personally attend, the warrant will be de-. livered to your order on your filling up and signing the subjoined letter

——— ———, *Trustee.*

CREDITOR'S LETTER TO TRUSTEE.

To ——— ———,

Trustee in bankruptcy of the estate of ——— ———, bankrupt:

Please deliver to ——— ——— the warrant for dividend payable out of the said estate to me.

——— ———. *Creditor.*

NOTES.

Notices to be given by referee, 58.
See as to notices, Gen. Ord. XXI.
See notes to Form No. 40.

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[FORM No. 42.]

PETITION AND ORDER FOR SALE BY AUCTION OF REAL ESTATE.

In the District Court of the United States for the —— District of ———

In the matter of ——— *Bankrupt*.	In Bankruptcy.

Respectfully represents ———, trustee of the estate of said bankrupt that it would be for the benefit of said estate that a certain portion of the real estate of said bankrupt, to wit; [*here describe it and its estimated value*] should be sold by auction, in lots or parcels, and upon terms and conditions as follows:———

———

Wherefore he prays that he may be authorized to make sale by auction of said real estate as aforesaid.

Dated this —— day of ———, A. D. 19—.

———, *Trustee.*

The foregoing petition having been duly filed, and having come on for hearing before me, of which hearing ten day's notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or* after hearing ——— ——— in favor of said petition and ——— ——— in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's real estate specified in the foregoing petition, by auction, keeping an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this —— day of ———, A. D. 19—.

———,

Referee in Bankruptcy.

NOTES.

As to sale of real and personal property, see Sec. 70b and Gen. Ord. XVIII.

As to notices to creditors of sales of property, Sec. 58a(4).

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[FORM No. 43.]

PETITION AND ORDER FOR REDEMPTION OF PROPERTY FROM LIEN.

In the District Court of the United States for the —— District of ———.

In the matter of ——————— *Bankrupt*.	In Bankruptcy.

Respectfully represents ——— ———, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describe the mortgage*], or to a conditional contract [*describing it*], or to a lien [*describe the origin and nature of the lien*], [*or, if the property be personal property*, has been pledged or deposited and is subject to a lien] for [*describe the nature of the lien*], and that it would be for the benefit of the estate that said property should be redeemed and discharged from the lien thereon. Wherefore he prays that he may be empowered to pay out of the assets of said estate in his hands the sum of ———, being the amount of said lien, in order to redeem said property therefrom.

Dated this —— day of ———, A. D. 19—.

——— ———, *Trustee.*

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or* after hearing ——— ——— in favor of said petition and ——— ——— in opposition thereto], it is ordered that the said trustee be authorized to pay out of the assets of the bankrupt's estate specified in the foregoing petition the sum of ———, being the amount of the lien, in order to redeem the property therefrom.

Witness my hand this —— day of ———, A. D. 19—.

———— ————,
Referee in Bankruptcy.

NOTES.

Redemption of property and compounding of claims, Gen. Ord. XXVIII
Notice to creditors, 58a(4).

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[FORM NO 44.]

PETITION AND ORDER FOR SALE SUBJECT TO LIEN.

In the District Court of the United States for the —— District of ———.

In the matter of
———————————
Bankrupt. } In Bankruptcy.

Respectfully represents ——— ———, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describe mortgage*], or to a conditional contract [*describe it*], or to a lien [*describe the origin and nature of the lien*], or [*if the property be personal property*] has been pledged or deposited and is subject to a lien for [*describe the nature of the lien*], and that it would be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

Dated this —— day of ———, A. D. 19—.

——— ———, *Trustee.*

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing no adverse interest being represented thereat [*or* after hearing ——— ——— in favor of said petition and ——— ——— in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction [*or*, at private sale], keeping an accurate account of the property sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this —— day of ———, A. D. 19—.

———,
Referee in Bankruptcy.

NOTE.
As to sale of property see Sec. 70b, Gen. Ord. XVIII.
Notices to creditors, Sec. 58a(4).
As to liens on property, see Sec. 67 and notes.

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[FORM No. 45.]

PETITION AND ORDER FOR PRIVATE SALE.

In the District Court of the United States for the —— District of ———

In the matter of
———
Bankrupt. } In Bankruptcy.

Respectfully represents ——— ———, duly appointed trustee of the estate of the aforesaid bankrupt.

That for the following reasons, to wit———

it is desirable and for the best interest of the estate to sell at private sale a certain portion of the said estate, to wit:———

Wherefore he prays that he may be authorized to sell the said property at private sale.

Dated this —— day of ———, A. D. 19—.

——— ———, *Trustee.*

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or* after hearing ——— ——— in favor of said petition and ——— ——— in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, at private sale, keeping an accurate account of each article sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this —— day of ———, A. D. 19—.

Referee in Bankruptcy.

NOTE.

See notes to Form 44.

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[FORM No. 46.]

PETITION AND ORDER FOR SALE OF PERISHABLE PROPERTY.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

Respectfully represents ——— ——— the said bankrupt, [*or*, a creditor, *or* the receiver, *or* the trustee of the said bankrupt's estate.]

That a part of the said estate, to wit,———

———

———

now in ———, is perishable, and that there will be a loss if the same is not sold immediately.

Wherefore, he prays the court to order that the same be sold immediately as aforesaid.

Dated this —— day of ———, A. D. 19—.

——— ———.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to the creditors of the said bankrupt, [*or* without notice to the creditors], now, after due hearing, no adverse interest being represented thereat, [*or* after hearing ——— ——— in favor of said petition and ——— ——— in opposition thereto] I find that the facts are as above stated, and that the same is required in the interest of the estate, and it is therefore ordered that the same be sold forthwith and the proceeds thereof deposited in court.

Witness my hand this —— day of ———, A. D. 19—.

———,

Referee in Bankruptcy.

NOTE.

See notes to Form 44.

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[FORM No. 47.]

TRUSTEE'S REPORT OF EXEMPTED PROPERTY.

In the District Court of the United States for the —— District of ———.

In the matter of

———————————— } In Bankruptcy.

Bankrupt.

At ———, on the —— day of ———, 19—.

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the acts of Congress relating to bankruptcy.

General head.	Particular description.	Value.	
		Dolls.	Cts.
Military uniforms, arms, and equipments			
Property exempted by State laws.			

———— ————,

Trustee.

NOTE.

As to exemptions of bankrupts, see Sec. 6.

Bankrupt's duty to claim exemptions, Sec. 7a(8.)

Trustees' duty to set aside exemptions, Sec. 47a(11), and Gen. Ord. XVII.

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[FORM No. 48.]

TRUSTEE'S RETURN OF NO ASSETS.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt* .	In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 19—.

On the day aforesaid, before me comes ——— ———, of ———, in the county of ——— and State of ———, and makes oath, and says that he, as trustee of the estate and effects of the above-named bankrupt , neither received nor paid any moneys on account of the estate.

Subscribed and sworn to before me at ———, this —— day of ———, A. D. 19—.

——— ———,
Referee in Bankruptcy.

NOTE.
Duties of trustees, Sec. 47 and Gen. Ord. XVII.

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[FORM NO. 49.]

ACCOUNT OF TRUSTEE.

Dr. *The estate of* ——— ———, *bankrupt*, *in account with* ——— ———, *trustee.* Cr.

		Dolls.	Cts.	Dolls.	Cts.			Dolls.	Cts.	Dolls.	Cts.

NOTE.

As to accounts of trustees see Sec. 29c (3), 47a (1, 6–8), 49. As to audit of trustee's account, Gen. Ord. XVII. Notice to be given to creditors of settling and filing final account, Sec. 58a (6). As to expenses of administering estates, see Sec. 62.

[FORM NO. 49.]

ACCOUNT OF TRUSTEE.

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[FORM No. 50.]

OATH TO FINAL ACCOUNT OF TRUSTEE.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

On this —— day of ———, A. D. 19—, before me comes ——— ——— of ———, in the county of ——— and State of ———, and makes oath and says that he was, on the —— day of ———, A. D. 19—, appointed trustee of the estate and effects of the above named bankrupt, and that as such trustee he has conducted the settlement of the said estate. That the account hereto annexed containing —— sheets of paper, the first sheet whereof is marked with the letter —— [*reference may here also be made to any prior account filed by said trustee*] is true, and such account contains entries of every sum of money received by said trustee on account of the estate and effects of the above-named bankrupt , and that the payments purporting in such account to have been made by said trustee have been so made by him. And he asks to be allowed for said payments and for commissions and expenses as charged in said accounts.

———, *Trustee.*

Subscribed and sworn to before me at ——— in said —— district of ———, this —— day of ———, A. D. 19—.

———,
[*Official Character.*]

NOTE.
See notes to Form 49; also Sec. 20 as to oaths.

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[FORM No. 51.]

ORDER ALLOWING ACCOUNT AND DISCHARGING TRUSTEE.

In the District Court of the United States for the —— District of ———,

In the matter of ——— *Bankrupt.*	In Bankruptcy.

The foregoing account having been presented for allowance, and having been examined and found correct, it is ordered, that the same be allowed, and that the said trustee be discharged of his trust.

———— ————,
Referee in Bankruptcy.

NOTE.
See notes to Form 49.

[FORM No. 52.]

PETITION FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

To the Honorable ——— ———,
Judge of the District Court for the —— District of ——:

The petition of ——— ———, one of the creditors of said bankrupt, respectfully represents that it is for the interest of the estate of said bankrupt that ———, heretofore appointed trustee of said bankrupt's estate, should be removed from his trust, for the causes following, to wit: [*here set forth the particular cause or causes for which such removal is requested.*]

Wherefore ——— ——— pray that notice may be served upon said ———, trustee as aforesaid, to show cause, at such time as may be fixed by the court, why an order should not be made removing him from said trust.

———— ————.

NOTE.
Appointment and removal of trustees, Sec. 2(17), 44, 46, Gen. Ord. XIII. Notices to be given creditors, Sec. 58 and Gen. Ord. XXI(2).

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[FORM No. 53.]

NOTICE OF PETITION FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

At ———, on the —— day of ———, A. D. 19—.

To ——— ———,

Trustee of the estate of ——— ———, bankrupt:

You are hereby notified to appear before this court, at ———, on the —— day of ———, A. D. 19—, at — o'clock —. m., to show cause (if any you have) why you should not be removed from your trust as trustee as aforesaid, according to the prayer of the petition of ——— ———, one of the creditors of said bankrupt, filed in this court on the —— day of ——— A. D. 19—, in which it is alleged [*here insert the allegation of the petition*].

——— ———, *Clerk*.

NOTE.

See notes to Form 52.

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[FORM No. 54.]

ORDER FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

Whereas ——— ———, of ———, did, on the —— day of ———, A. D. 19—, present his petition to this court, praying that for the reasons therein set forth, ——— ———, the trustee of the estate of said ——— ———, bankrupt, might be removed:

Now, therefore, upon reading the said petition of the said ——— ——— and the evidence submitted therewith, and upon hearing counsel on behalf of said petitioner and counsel for the trustee, and upon the evidence submitted on behalf of said trustee,

It is ordered that the said ——— ——— be removed from the trust as trustee of the estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said ——— ———, trustee [*or*, out of the estate of the said ——— ———, subject to prior charges].

Witness the Honorable ——— ———, judge of the said court, and the seal thereof, at ———, in said district, on the —— day of ———, A. D. 19—.

{SEAL OF THE COURT.}

———,
Clerk.

NOTES.

See notes to Form 52.

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[FORM No. 55.]

ORDER FOR CHOICE OF NEW TRUSTEE.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

At ———, on the —— day of ———, A. D. 19—.

Whereas by reason of the removal [*or* the death *or* resignation] of ——— ———, heretofore appointed trustee of the estate of said bankrupt, a vacancy exists in the office of said trustee,

It is ordered that a meeting of the creditors of said bankrupt be held at ———, in ———, in said district, on the —— day of ———, A. D. 18—, for the choice of a new trustee of said estate.

And it is further ordered that notice be given to said creditors of the time, place, and purpose of said meeting, by letter to each, to be deposited in the mail at least ten days before that day.

——— ———, *Referee in Bankruptcy.*

NOTES.

See notes to Form 52 and see Form 54.

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[FORM NO. 56.]

CERTIFICATE BY REFEREE TO JUDGE.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

I, ——— ———, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings: [*Here state the question, a summary of the evidence relating thereto, and the finding and order of the referee thereon.*]

And the said question is certified to the judge for his opinion thereon.

Dated at ———, the —— day of ———, A. D. 19—.

———— ————,
Referee in bankruptcy.

NOTES.

See as to certificate Sec. 2(10) and notes.

As to petition for review by judge, see Sec. 24f, 38a and Gen. Ord. XXVII.

As to referee's return with certificate Sec. 39a(5).

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[FORM NO. 57.]

BANKRUPT'S PETITION FOR DISCHARGE.

In the matter of ——— *Bankrupt*.	In Bankruptcy.

To the Honorable ——— ———,
Judge of the District Court of the United States for the District of ———.

——— ———, of ———, in the county of ——— and State of ———, in said district, respectfully represents that on the —— day of ———, last past, he was duly adjudged bankrupt under the acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said acts and of the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from such discharge.

Dated this —— day of ———, A. D. 19—.

——— ———, *Bankrupt.*

ORDER OF NOTICE THEREON.

District of ———, *ss.*

On this —— day of ———, A. D. 19—. on reading the foregoing petition, it is ——

Ordered by the court, that a hearing be had upon the same on the —— day of ———, A. D. 19—, before said court, at ———, in said district, at ——— o'clock in the ———noon; and that notice thereof be published in ——— ———, a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the court, that the clerk shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

Witness the Honorable ——— ———, judge of the said court, and the seal thereof, at ———, in said district, on the —— day of ———, A. D. 19—.

——— ———,
Clerk.

{SEAL OF THE COURT.}

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—— hereby depose, on oath, that the foregoing order was published in the —— ———— on the following —— days, viz:

On the —— day of ——— and on the —— day of ———, in the year 19—.

———— ————,

District of ———.

———— ————, 19—.

Personally appeared ——— ———, and made oath that the foregoing statement by him subscribed is true.

Before me.

———— ————,

[*Official character.*]

I hereby certify that I have on this —— day of ———, A. D. 19—, sent by mail copies of the above order, as therein directed.

———— ————,

Clerk.

NOTES.

As to discharges in general, see Sec. 14 and notes.
Revocation of discharges, see Sec. 16 and notes.
Discharges granted by judge only, 38a(4).
Notices to be given creditors, Sec. 58 and Gen. Ord. XXI(2).

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[FORM No. 58.]

SPECIFICATION OF GROUNDS OF OPPOSITION TO BANKRUPT'S DISCHARGE.

In the District Court of the United States for the —— District of ———.

In the matter of ——————————— *Bankrupt*.	In Bankruptcy.

———— ————, of ———, in the county of ——— and State of ———, a party interested in the estate of said ———— ————, bankrupt, do hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following specification: [*Here specify the grounds of opposition.*]

———— ————, *Creditor.*

NOTES.

Opposition to discharge or composition, see Sec. 14b and Gen. Ord. XXXII and notes.

Specifications must be circumstantial and show statutory grounds of opposition. *In re* Frice (1899), S. Dist. Ia., Woolson, J., 96 Fed., 611; 1 N. B. N., 18.

Specification may be amended to show scienter. *In re* Pierce (1900), N. D. N. Y., Coxe, J., 103 Fed. 64; 4 A. B. R., 554; 2 N. B. N., 984.

[FORM No. 59.]

DISCHARGE OF BANKRUPT.

District Court of the United States,

——— District of ———.

Whereas, ———— ———— of ——— in said district, has been duly adjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said ———— ———— be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the —— day of ———, A. D. 19—, on which day the petition for adjudication was filed ———— him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable ———— ————, judge of said district court, and the seal thereof this —— day of ———, A. D. 19—.

———— ————, *Clerk.*

{SEAL OF THE COURT.}

NOTE.

See references to Form 57.

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[FORM No. 60.]

PETITION FOR MEETING TO CONSIDER COMPOSITION.

District Court of the United States for the —— District of ———

———— } In Bankruptcy.
Bankrupt .

To the Honorable ——— ———, Judge of the District Court of the United States for the —— District of ———:

The above-named bankrupt respectfully represent that a composition of ——— per cent. upon all unsecured debts, not entitled to priority ——— ——— in satisfaction of —— debts has been proposed by —— to —— creditors as provided by the acts of Congress relating to bankruptcy, and —— verily believe that the said composition will be accepted by a majority in number and in value of ——— creditors whose claims are allowed.

Wherefore, he pray that a meeting of —— creditors may be duly called to act upon said proposal for a composition, according to the provisions of said acts and the rules of court.

——— ———,
Bankrupt.

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[FORM No. 61.]

APPLICATION FOR CONFIRMATION OF COMPOSITION.

In the District Court of the United States for the —— District of ———.

In the matter of
———— } In Bankruptcy.
Bankrupt.

To the Honorable ——— ———, Judge of the District Court of the United States for the —— District of ———.

At ———, in said district, on the —— day of ———, A. D. 19—, now comes ——— ———, the above-named bankrupt, and respectfully represents to the court that, after he had been examined in open court [*or* at a meeting of his creditors] and had filed in court a schedule of his property and a list of his creditors, as required by law, he offered terms of composition to his creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims; that the consideration to be paid by the bankrupt to his creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings amounting in all to the sum of ——— dollars, has been deposited, subject to the order of the judge, in the ——— National Bank, of ———, a designated depository of money in bankruptcy cases.

Wherefore the said ——— ——— respectfully asks that the said composition may be confirmed by the court.

———— ———, *Bankrupt*.

NOTE.

As to compositions, see Sec. 12 and 13, and Gen. Ord. XII(3). See also notes to Form 58 as to opposition to confirmation.

See notes to Form 62.

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[FORM No. 62.]

ORDER CONFIRMING COMPOSITION.

In the District Court of the United States for the —— District of ———.

In the matter of ——— *Bankrupt.*	In Bankruptcy.

An application for the confirmation of the composition offered by the bankrupt having been filed in court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited, having been deposited as ordered, in such place as was designated by the judge of said court, and subject to his order; and it also appearing that it is for the best interests of the creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of Congress relating to bankruptcy: It is therefore hereby ordered that the said composition be, and it hereby is, confirmed.

Witness the Honorable ——— ———, judge of said court, and the seal thereof, this —— day of ———, A. D. 19—.

——— ———, *Clerk.*

{SEAL OF THE COURT.}

NOTES.

As to confirmation of compositions, see Sec. 12 and 13. Debts released on confirmation of a composition, Sec. 14b.

Opposition to composition, Gen. Ord. XXXII.

Notices on composition, 58a(2) and Gen. Ord. XXI(2).

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[FORM No. 63.]

ORDER OF DISTRIBUTION ON COMPOSITION.

UNITED STATES OF AMERICA:
In the District Court of the United States for the —— District of ———

In the matter of ——— *Bankrupt.*	In Bankruptcy.

The composition offered by the above named bankrupt in this case having been duly confirmed by the judge of said court, it is hereby ordered and decreed that the distribution of the deposit shall be made by the clerk of the court as follows, to wit: 1st, to pay the several claims which have priority; 2d, to pay the costs of proceedings; 3d, to pay, according to the terms of the composition, the several claims of general creditors which have been allowed, and appear upon a list of allowed claims, on the files in this case, which list is made a part of this order.

Witness the Honorable ——— ———, judge of said court, and the seal thereof, this —— day of ———, A. D. 19—.

———— ———, *Clerk.*

{SEAL OF THE COURT.}

NOTE.

See notes to Forms 60, 61, 62.

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RULES OF PRACTICE

FOR THE

COURTS OF EQUITY OF THE UNITED STATES.

[See Gen. Ord. XXVII.]

PRELIMINARY REGULATIONS.

Rule 1.— **[Courts always Open]** The circuit courts, as court of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to hearing of all causes upon their merits.

Rule 2. **[Clerk]** The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course and applied for, or had by the parties or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

Rule 3. **[Judge may exercise powers of court.]** Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule-days at the clerk's office, make and direct all such interlocutory orders, rules,

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and other proceedings, preparatory to the hearing of all causes upon their merits in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary, at the next rule-day thereafter, unless some other time is assigned by the judge for the hearing.

Rule 4. **[Entry of motions—Notice to parties]** All motions, rules, orders, and other proceedings, made and directed at chambers, or on rule-days at the clerk's office, whether special or of course, shall be entered by the clerk in an order-book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. And, except in cases where personal or other notice is specially required or directed, such entry in the order-book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

Rule 5—**[Motions of course]** All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees; for

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filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers, for taking bills *pro confesso;* for filing exceptions; and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the court or of any judge thereof, shall be deemed motions and applications grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

Rule 6.—**[Motions not of course]** All motions for rules or orders and other proceedings, which are not grantable of course or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule-day, and entered in the order-book, and shall be heard at the rule-day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court *ex parte*, and granted, as if not objected to, or refused, in his discretion.

PROCESS.

Rule 7.—**[Subpœna]** The process of subpœna shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and, unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and, if the defendant can not be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

Rule 8.—**[Final process]** Final process to execute any decree may, if the decree be solely for the payment of

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money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of *assumpsit*. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party can not be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

Rule 9.—**[Writ of assistance]** When any decree or order is for the delivery or possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

Rule 10.—**[When person not a party is entitled to an order]** Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party in the cause.

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SERVICE OF PROCESS.

Rule 11.—[**Bill must be filed before process.**] No process of subpœna shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

Rule 12.—[**What process to contain.**] Whenever a bill is filed, the clerk shall issue the process of subpœna thereon, as of course, upon the application of the plaintiff, which shall contain the Christian names as well as the surnames of the parties, and shall be returnable into the clerk's office the next rule day, or the next rule day but one at the election of the plaintiff, occurring after twenty days from the time of issuing thereof. At the bottom of the subpœna shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of subpœna may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpœna against all the defendants.

Rule 13.—[**Service by copy.**] The service of all subpœnas shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

Rule 14.—[**Second subpœna.**] Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpœna, *toties quoties*, against such defendant, if he shall require it, until due service is made.

Rule 15.—[**Marshal to serve process — return.**] The service of all process, mesne and final, shall be by the

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marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

Rule 16.—**[Suit docketed on return of subpoena.]** Upon the return of the subpœna as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

APPEARANCE.

Rule 17.—**Defendant to enter appearance—when.]** The appearance day of the defendant shall be the rule-day to which the subpœna is made returnable, provided he has been served with the process twenty days before that day; otherwise his appearance-day shall be the next rule-day succeeding the rule-day when the process is returnable.

[Appearance entered on order book.] The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book on the day thereof by the clerk.

BILLS TAKEN PRO CONFESSO.

Rule 18.—**[Defendant must answer—default.]** It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to file his plea, demurrer, or answer to the bill, in the clerk's office, on the rule-day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order-book, that the bill be taken *pro confesso;* and thereupon the cause shall be proceeded in *ex parte*, and the matter of the bill may be decreed by the court at any time after the expiration of thirty days

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from and after the entry of said order, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

Rule 19.—**[Decree on pro confesso—setting order aside.]** When the bill is taken *pro confesso* the court may proceed to a decree at any time after the expiration of thirty days from and after the entry of the order to take the bill *pro confesso*, and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the cost of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the same.

FRAME OF BILLS.

Rule 20.—**[What bill to contain.]** Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of ——: A. B., of ——, and a citizen of the State of ——, brings this

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his bill against C. D., of ——, and a citizen of the State of ——, and E. F., of ——, and a citizen of the State of ——. And thereupon your orator complains and says that," &c.

Rule 21.—[**Charging—confederating and jurisdiction clause may be omitted.**] The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defense to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative, or stating part of his bill, state and avoid, by counter-averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant by way of defense or excuse to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is required, it shall also be specially asked for.

Rule 22.—[**Bill must show why necessary or proper parties, omitted.**] If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they can not be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may

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pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

Rule 23.—**[What prayer for process to contain.]** The prayer for process of subpœna in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon, as justice may require upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

Rule 24.—**[Counsel must sign bill.]** Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that, upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

Rule 25.—**[State taxable costs to be followed.]** In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

Rule 26.—**[Scandal and impertinence to be expunged—reference for.]** Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in *hæc verba*, or any other impertinent

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matter or any scandalous matter, not relevant to the suit. If it does, it may, on exceptions, be referred to a master, by any judge of the court, for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

Rule 27.—**[Exceptions for scandal and impertinence.]** No order shall be made by any judge for referring any bill, answer, or pleading, or other matter or proceeding, depending before the court, for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule-day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule-day, or the master shall certify that further time is necessary for him to complete the examination.

AMENDMENT OF BILLS.

Rule 28. **[Amendment—when matter of course.]** The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill, in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards such as filing blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and gen-

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erally in matters of form. But if he amend in a material point (as he may do of course) after a copy has been so taken, before any answer or plea or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish, in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

Rule 29.—**[Plaintiff may amend bill—notice—order.]** After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule-day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

Rule 30.—**[Amendment filed before next rule day.]** If the plaintiff so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office on or before the next succeeding rule-day, he shall be considered to have abandoned the

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same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

Rule 31.—**[Certificate of council must accompany demurrer.]** No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant; that it is not interposed for delay; and, if a plea, that it is true in point of fact.

Rule 32. **[Fraud or combination charged must be answered.]** The defendant may at any time before the bill is taken for confessed, or afterward with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea and explicitly denying the fraud and combination, and the facts on which the charge is founded.

Rule 33. **[Setting down plea or demurrer for argument —issue taken.]** The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the fact stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

Rule 34. **[Costs on overruling plea.]** If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period unless the court shall be satisfied that the defendant has good ground, in point of law or fact, to interpose the same, and it was not interposed vexatiously or for delay. And, upon the overruling of any plea or demurrer, the defendant

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shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule-day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

Rule 35. **[Costs on allowance of plea.]** If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill, upon such terms as it shall deem reasonable.

Rule 36. **[Demurrer or plea not overruled because too broad.]** No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

Rule 37.—**[Not overruled because answer covers same matter.]** No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

Rule 38. **[Bill dismissed unless plea set down or replied to.]** If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument on the rule-day when the same is filed, or on the next succeeding rule-day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for that purpose.

ANSWERS.

Rule 39.—**[Defendant may file plea and answer.]** The rule, that if a defendant submits to answer he shall answer fully to all matters of the bill, shall no longer apply

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in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defense (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar and an answer in support of such plea, touching the matters set forth in the bill to avoid or repel the bar or defense. Thus, for example, a *bona fide* purchaser, for a valuable consideration without notice, may set up that defense by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

Rule 40.—**[Answer required only to interrogatories.]** A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

Ordered, (DECEMBER TERM, 1850). That the fortieth rule, heretofore adopted and promulgated by this court as one of the rules of practice in suits in equity in the circuit courts, be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

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Rule 41. **[How interrogatories arranged.]** The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other and numbered consecutively 1, 2, 3, etc.; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following, that is to say: "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3," etc.: and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

(*Amendment to 41st Equity Rule* DECEMBER TERM, 1871.)

[Answer evidence.] If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of Congress of July 2, 1864.

[Rev. Stat. U. S., Sec. 385.)

Rule 42. **[Note concerning interrogatories part of bill.]** The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note, after the bill is filed, shall be considered and treated as an amendment of the bill.

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Rule 43. [**Frame of interrogating part.**] Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say:—

"1. Whether, &c.

"2. Whether, &c."

Rule 44. [**Defendant may decline to answer interrogatory.**] A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill from which he might have protected himself by demurrer.

Rule 45. [**Special replication not necessary.**] No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

Rule 46. [**Supplemental answer.**] In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer on or before the next succeeding rule-day after that on which the amendment or amended bill is filed, unless the time is en-

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larged or otherwise ordered by a judge of the court; and upon his default, the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

Rule 47. **[Proper parties may be omitted on cause shown.]** In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, can not be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in their discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

Rule 48. **[Parties may be omitted.]** Where the parties on either side are very numerous, and can not, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the diverse interest of the plaintiffs and the defendants in the suit properly before it. But, in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties.

Rule 49. **[Trustees parties—when.]** In all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such

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personal estate; and in such cases it shall not be necessary to make the persons benefically interested in such real estates, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

Rule 50. **[Parties in suits to execute trusts of a will.]** In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiffs shall be at liberty to make the heir at law a party where he desires to have the will established against him.

Rule 51. **[Defendants jointly and severally liable.]** In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

Rule 52. **[Setting down for argument on ground of defective parties.]** Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order-book, in the form or to the effect following, (that is to say) "Set down upon the defendant's objection for what of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

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Rule 53. **[Objection of want of proper parties.]** If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description of parties to whom the objection applies, the court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

NOMINAL PARTIES TO THE BILLS.

Rule 54. **[When defendant need not answer.]** Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpœna upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him unless the court shall otherwise direct

Rule 55. **[Injunction to stay proceedings at law—when granted as of course.]** Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion, without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term, or by a judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction —either the common injunction or a special injunction—is awarded in vacation, it shall, unless previously dissolved by the judge

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granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

Rule 56. **[Bill of revivor on death of party.]** Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and, upon suggestion of the facts, the proper process of subpœna shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule-day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

Rule 57. **[Supplemental bill may be filed.]** Whenever any suit in equity shall become defective from any event happening after the filing of the bill (as, for example, by change of interest in the parties), or for any other reason a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule-day upon proper cause shown and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto on the next succeeding rule-day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

Rule 58. **[What necessary to state in supplemental bill.]** It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original

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suit, unless the special circumstances of the case may require it.

ANSWERS.

Rule 59. **[Verification of answer.]** Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory, or before any notary public.

AMENDMENT OF ANSWERS.

Rule 60. **[Answer—how amended.]** After an answer is put in, it may be amended, as of course, in any matter of form, or by filling up a blank, or correcting a date, or reference to a document, or other small matter, and be resworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defenses, or qualifying or altering the original statements, except by special leave of the court, or of a judge thereof, upon motion and cause shown, after due notice to the adverse party, supported, if required, by affidavit; and in every case where leave is so granted, the court or the judge granting the same may, in his discretion, require that the same be separately engrossed, and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

Rule 61. **[Time for exceptions to answers.]** After an answer is filed on any rule-day, the plaintiff shall be allowed until the next succeeding rule-day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a

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longer time shall be allowed for the purpose, upon cause shown to the court, or a judge thereof; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

Rule 62. **[Same solicitor for different defendants.]** When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had, by two or more of the defendants separately, costs shall not be allowed for such separate answers, or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

Rule 63. **[Exceptions set down for hearing.]** Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule-day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule-day thereafter, before a judge of the court, and shall enter, as of course, in the order-book, an order for that purpose; and if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; provided, however, that the court, or any judge thereof, may, for good cause shown enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

Rule 64. **[Answer after exceptions allowed.]** If, at the hearing, the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule-day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his

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election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer, and complying with such other terms as the court or judge may direct.

Rule 65. **[Costs on overruling answer.]** If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

Rule 66. **[General replication when filed.]** Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule-day thereafter; and in all cases where the general replication is filed, the cause shall be deemed, to all intents and purposes, at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion, for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

TESTIMONY—HOW TAKEN.

Rule 67. **[Commissions to take testimony.]** After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both

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parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interragatories are filed at the expiration of the time the commission may issue *ex parte*. In all cases the commissioner or commissioners may be named by the court or by a judge thereof; and the presiding judge of the court exercising jurisdiction may, either in term time or in vacation, vest in the clerk of the court general power to name commissioners to take testimony.

[Testimony may be taken orally.] Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court. The examiner, if he so request, shall be furnished with a copy of the pleadings.

[Cross-examination.] Such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, all of which shall be conducted as near as may be in the mode now used in common-law courts.

[Depositions reduced to writing.] The depositions taken upon such oral examination shall be reduced to writing by the examiner, in the form of question put and answer given; provided, that, by consent of parties, the examiner may take down the testimony of any witness in the form of narrative.

[Stenographer may be employed.] At the request of either party, with reasonable notice, the deposition of any witness shall, under the direction of the examiner, be taken down either by a skillful stenographer or by a skillful typewriter, as the examiner may elect, and when taken steno-

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graphically shall be put into typewriting or other writing; provided, that such stenographer or typewriter has been appointed by the court, or is approved by both parties.

[**Testimony signed by witness.**] The testimony of each witness, after such reduction to writing, shall be read over to him and signed by him in the presence of the examiner and of such of the parties or counsel as may attend; provided that if the witness shall refuse to sign his deposition so taken, then the examiner shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal.

[**Competency of evidence not passed on by examiner.**] The examiner may, upon all examinations, state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy, of the questions; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

[**Refusal of witnesses to attend.**] In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted is as now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

[**Notice of examination.**] Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors, or parties, of the time and place of the examination for such reasonable time as the examiner may fix by order in each case.

[**Depositions transmitted to clerk.**] When the examination of witnesses before the examiner is concluded, the original depositions, authenticated by the signature of the ex-

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aminer, shall be transmitted by him to the clerk of the court, to be there filed of record, in the same mode as prescribed in section 865 of the Revised Statutes.

[Testimony by written interrogatories.] Testimony may be taken on commission in the usual way, by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons, satisfactory to the court or judge.

[Time for taking testimony assigned by court.] Where the evidence to be adduced in a cause is to be taken orally as before provided, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defense, and a time thereafter within which the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause, unless by agreement of the parties or by leave of court first obtained on motion for cause shown.

[Expenses of depositions.] The expense of the taking down of depositions by a stenographer and of putting them into typewriting or other writing shall be paid in the first instance by the party calling the witness, and shall be imposed by the court, as part of the costs, upon such party as the court shall adjudge should ultimately bear them.

[Evidence in open court.] Upon due notice given as prescribed by previous order, the court may, at its discretion permit the whole, or any specific part, of the evidence to be adduced orally in open court on final hearing.

Rule 68. **[Deposition according to Act of Congress.]** Testimony may also be taken in the cause, after it is at issue, by deposition, according to the act of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon mo-

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tion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of Congress, if a court or judge thereof shall, under all the circumstances, deem it reasonable.

See Sec. 865–870 Revised S. of U. S. as to modes of taking depositions. By act of March 9th, 1892, state law as to taking depositions may be followed. 2 Supp. to R. S. of U. S., 4.

Rule 69. **[Time for taking testimony after cause at issue.]** Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court, or a judge thereof, shall, upon special cause shown by either party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable, under all the circumstances; but, by consent of the parties, publication of the testimony may at any time pass into the clerk's office such consent being in writing, and a copy thereof entered in the order-books, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

Rule 70. **[Commission to take testimony de bene esse may issue.]** After any bill filed and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a judge of the court may direct, to take the examination of such witness or witnesses

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de bene esse, upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

Rule 71. **[Form of written interrogatory.]** The last interrogatory in the written interrogatories to take testimony now commonly in use shall in the future be altered and stated in substance thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause?" If yea, set forth the same fully and at large in your answer."

CROSS-BILL.

Rule 72. **[Answer to original bill before answer to cross bill.]** Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

Rule 73. **[What decree for account to contain.]** Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master to whom it is referred to take the same to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

Rule 74. **[When matter presented to master.]** Whenever any reference of any matter is made to a master to examine

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and report thereon, the party at whose instance or for whose benefit the reference is made shall cause the same to be presented to the master for a hearing on or before the next rule-day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

Rule 75. [**Duty of Master to hear expeditiously.**] Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report, and to certify to the court or judge the reason for any delay.

Rule 76. [**What Master's report to contain.**] In the reports made by the master to the court, no part of any state of facts, charge, affidavit, deposition, examination or answer brought in or used before them shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer were so brought in or used.

Rule 77. [**Hearing before Master.**] The master shall regulate all the proceedings in every hearing before him,

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upon every such reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents, applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office or by deposition, according to the act of Congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

Rule 78. **[Witnesses before Master—how summoned.]** Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear or give evidence it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses *viva*

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voce when produced in open court, if the court shall, in it discretion, deem it advisable.

Rule 79. **[Account, how taken.]** All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories, in the master's office, or by deposition, as the master shall direct.

Rule 80. **[Evidence previously taken to be used before the Master.]** All affidavits, depositions, and documents which have been previously made, read, or used in the court upon any proceeding in any cause or matter may be used before the master.

Rule 81. **[Evidence—how taken.]** The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary.

Rule 82. **[Appointment of Masters in Chancery.]** The Circuit Courts may appoint standing masters in chancery in their respective districts (a majority of all the judges thereof, including the justice of the Supreme Court, the circuit judges, and the district judge for the district, concurring in the appointment), and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the circuit court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and

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borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

EXCEPTIONS TO REPORT OF MASTER.

Rule 83. [**Return of Masters report—exceptions.**] The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto; and, if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule-day after the month is expired. If exceptions are filed, they shall stand for hearing before the court, if the court, is then in session; or, if not, then at the next sitting of the court which shall be held thereafter, by adjournment or otherwise.

Rule 84. [**Costs on overruling exceptions.**] And, in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs; the cost to be fixed in each case by the court, by a standing rule of the Circuit Court.

DECREES.

Rule 85. [**Correcting decrees.**] Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrollment thereof, be corrected by order of the court or a judge

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thereof, upon petition, without the form or expense of a rehearing.

Rule 86. **[Form of decrees.]** In drawing up decree and orders, neither the bill, nor answer, nor other pleadings nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:" [Here insert the decree or order.]

GUARDIANS AND PROCHEIN AMIS.

Rule 87. **[Appointment of guardians..]** Guardians *ad litem* to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the court may direct for the protection of infants and other persons.

Rule 88. **[Petition for rehearing—verification.]** Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No hearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

Rule 89. **[Rules in several circuits.]** The circuit courts

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(a majority of all the judges thereof, including the justice of the Supreme Court, the circuit judges, and the district judge for the district, concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

Rule 90. **[English chancery practice to govern.]** In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

Rule 91. **[Oath or affirmation.]** Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

Rule 92. **[Deficiency decree.]** *Ordered*, December term, 1863, That in suits in equity for the foreclosure of mortgages in the Circuit Courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided, in the eight rule of this court regulating the equity practice where the decree is solely for the payment of money.

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INJUNCTIONS.

Rule 93. October Term, 1878. **[Injunction pending appeal.]** When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party.

Rule 94. October Term, 1881. **[Bill by stockholder of corporation.]** Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action.

The following provisions relating to equity practice are to be found in the Act of 1st of June, 1872:

Sec. 7. **[Granting injunction on motion.]** That whenever notice is given of a motion for an injunction out of a Circuit or District Court of the United States, the court or judge thereof may, if there appear to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion. Such order may be granted with or without security, in

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the discretion of the court or judge: *Provided* That no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order except within the circuit to which he is allotted, and in causes pending in the circuit to which he is allotted, or in such causes at such place outside of the circuit as the parties may in writing stipulate, except in causes where such application can not be heard by the circuit judge of the circuit, or the district judge of the district.

Sec. 13. **[Bringing in absent defendants.]** That when in any suit in equity, commenced in any court in the United States, to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant to appear, plead, answer, or demur to the complainant's bill at a certain day therein to be designated, which order shall be served on such absent defendant, if practicable, wherever found; or where such personal service is not practicable, such order shall be published in such a manner as the court shall direct; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time to be allowed by the court, in its discretion, and upon proof of the service or publication of such order, and of the performance of the directions contained in the same, it shall be lawful, for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but such adjudication shall, as regards such absent defendant without appearance, affect his property within such district only.

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AMENDMENT TO THE LAW OF JULY 1, A. D. 1898—PASSED FEBRUARY 5, A. D. 1903.

AN ACT to amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July first, eighteen hundred and ninety-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause five of section two of said Act be, and the same is hereby, amended so as to read as follows:

"(5) Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates and allow such officers additional compensation for such services, but not at a greater rate than in this Act allowed trustees for similar services;"

SEC. 2. That clause four, subdivision a, of section three of said Act, be, and the same is hereby, amended so as to read as follows:

"or (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory, or of the United States."

SEC. 3. That subdivision b of section four of said Act be, and the same is hereby, amended so as to read as follows:

"b Any natural person, except a wage-earner, or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation, engaged

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principally in manufacturing, trading, printing, publishing, mining, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

"The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory or of the United States."

SEC. 4. That subdivision b of section fourteen of said Act be, and the same is hereby, amended so as to read as follows:

"b The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed any of his property with intent to

NOTE. See post the Report of the Judiciary Committee of the House concerning this amendment.

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hinder, delay, or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court."

SEC. 5. That section seventeen of said Act, be, and the same is hereby amended so as to read as follows:

"SEC. 17. DEBTS NOT AFFECTED BY A DISCHARGE.—a A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity."

SEC. 6. That subdivisions a and b of section eighteen of said Act be, and the same are hereby, amended so as to read as follows:

"a Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpœna, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service cannot be made, then notice

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shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits to enforce a legal or equitable lien in courts of the United States, except that, unless the judge shall otherwise direct, the order shall be published not more than once a week for two consecutive weeks, and the return day shall be ten days after the last publication unless the judge shall for cause fix a longer time."

"b The bankrupt, or any creditor, may appear and plead to the petition within five days after the return day, or within such further time as the court may allow."

SEC. 7. That subdivision a of section twenty-one of said Act be, and the same is hereby, amended so as to read as follows:

"a A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt and his wife, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this Act: *Provided:* That the wife may be examined only touching business transacted by her or to which she is a party, and to determine the fact whether she has transacted or been a party to any business of the bankrupt."

SEC. 8. That subdivision b of section twenty-three of said Act be, and the same is hereby, amended so as to read as follows:

"b Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of property under section

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sixty, subdivision b, and section sixty-seven, subdivision e."

SEC. 9. That subdivision a of section forty of said Act be, and the same is hereby, amended so as to read as follows:

"a Referees shall receive as full compensation for their services, payable after they are rendered, a fee of fifteen dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and twenty-five cents for every proof of claim filed for allowance, to be paid from the estate, if any, as a part of the cost of administration, and from estates which have been administered before them one per centum commissions on all moneys disbursed to creditors by the trustee, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition."

SEC. 10. That section forty-seven is hereby amended by adding thereto the following subdivision:

"c The trustee shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed, which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the cost and disbursements of the proceedings."

SEC. 11. That subdivision a of section forty-eight of said Act be, and the same is hereby, amended so as to read as follows:

"a Trustees shall receive for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except

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when a fee is not required from a voluntary bankrupt, and from estates which they have administered such commissions on all moneys disbursed by them as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of one per centum of the amount to be paid the creditors on such composition."

SEC. 12. That subdivision g of section fifty-seven of said Act be, and the same is hereby, amended so as to read as follows:

"g The claims of creditors who have received preferences, voidable under section sixty, subdivision b, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable under section sixty-seven, subdivision e, have been made or given, shall not be allowed unless such creditors shall surrender such preferences, conveyances, transfers, assignments, or incumbrances."

SEC. 13. That subdivisions a and b of section sixty of said Act be, and the same are hereby, amended so as to read as follows:

"a A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his

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debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required."

"b If a bankrupt shall have given a preference, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person. And, for the purpose of such recovery, any court of bankruptcy, as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

SEC. 14. That clause two of subdivision b of section sixty-four of said Act be, and the same is hereby, amended so as to read as follows:

"(2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery."

SEC. 15. That subdivision b of section sixty-five be, and the same is hereby, amended so as to read as follows:

"The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount

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shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order: *Provided:* That the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed. *And provided further:* That the final dividend shall not be declared within three months after the first dividend shall be declared."

SEC. 16. That subdivision e of section sixty-seven and subdivision e of section seventy of said Act be, and the same are hereby, amended by adding at the end of each such subdivision the words:

"For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

SEC. 17. That said Act is also amended by adding thereto a new section, section seventy-one, to read as follows:

"SEC. 71. That the clerks of the several district courts of the United States shall prepare and keep in their respective offices complete and convenient indexes of all petitions and discharges in bankruptcy heretofore or hereafter filed in the said courts, and shall, when requested so to do, issue certificates of search certifying as to whether or not any such petitions or discharges have been filed; and said clerks shall be entitled to receive for such certificates the same fees as now allowed by law for certificates as to judgments in said courts: *Provided:* That said bankruptcy indexes and dockets shall at all times be open to inspection and examination by all persons or corporations without any fee or charge therefor."

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SEC. 18. That said Act is also amended by adding thereto a new section as follows:

"SEC. 72. That neither the referee nor the trustee shall in any form or guise receive, nor shall the court allow them, any other or further compensation for their services than that expressly authorized and prescribed in this Act."

SEC. 19. That the provisions of this amendatory Act shall not apply to bankruptcy cases pending when this Act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said Act of July first, eighteen hundred and ninety-eight.

Approved, February 5, 1903.

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REPORT OF THE JUDICIARY COMMITTEE ON THE AMENDMENT TO THE BANKRUPTCY ACT.

57th Congress, 1st Session. } House of Representatives. { Report No. 1698.

AMENDING THE BANKRUPTCY LAW.

MR. RAY, from the Committee on the Judiciary, submitted the following

REPORT.

The Committee on the Judiciary, to which was referred the bill (H. R. 13,679) amending the bankruptcy law, has carefully considered the same and reports the bill back with the recommendation that it pass.

There have been laid before the committee resolutions and communications from more than 20,000 manufacturing and producing industries, merchants, wholesale and retail; credit men's and other business associations, lawyers, judges, and business men generally, representing wholesale and retail dealers, emphatically approving the law, asking its retention, and approving the amendments suggested by this bill.

Of all communications received on the subject less than 10 per cent. are opposed to the bankruptcy law, and these in the main place their opposition on the ground of the de-

NOTE. Courts frequently in construing statutes refer to the speeches and reports of the legislators which accompany the passage of the act as a source of information. (*Exparte* Milligan, 4 Wall., 114.) It has been thought desirable to print the report of the Judiciary Committee and the Analysis of the Amendment accompanying the same when the bill was before the House. A foot note will call attention to the changes which the house bill received in its passage through the Senate.

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fects in the law sought to be remedied and which will be remedied if these amendments are adopted.

These communications are not the result of concerted action for the retention of the law, but are the result of a desire on the part of the Judiciary Committee to fully ascertain the sentiment of the country on the question of the retention or repeal of the law. Near the close of the Fifty-sixth Congress the chairman of the Committee on the Judiciary sent out something like 15,000 inquiries indiscriminately throughout the United States addressed to all business interests, wholesale and retail, merchants, lawyers judges, etc., asking their opinion of the law and the advisability of its retention and also asking their approval or disapproval of the amendments proposed, and which amendments are in substance those reported by the committee. There was no selection except to direct inquiries to the leading business houses, wholesale and retail, and the leading lawyers and business men of the country. It is conclusively proved that the business interests and the people of the United States approve and demand the retention of the bankruptcy law and also desire these amendments which are in the interest of honest dealing. The amendments proposed are not numerous, but are such as experience has demonstrated to be essential.

The first amendment will make the law more uniform and equitable by providing that where insolvency is the question at issue assets claimed to be exempt shall not be counted in ascertaining the aggregate of the debtor's property[1].

The second amendment simply authorizes what is now done by the courts; that is, it authorizes the court to allow additional compensation when the business of a bankrupt

NOTE. 1 omitted by the Senate.

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is conducted for a limited period by the receiver, marshal or trustee in the interest of the creditors.

The next amendment makes the equivalent acts of a general assignment by an insolvent person, a voluntary accounting of an insolvent partnership by action brought by one of the partners, and an application for a receivership of an insolvent corporation each acts of bankruptcy. This makes the law more uniform and will reduce many of the inequities now practiced on creditors.

The next amendment simply provides that those coporrations which can now be adjudged involuntary bankrupts may become voluntary bankrupts on the petition of an officer or stockholder duly authorized at a meeting called for that purpose by a vote of the majority in amount of the total stock of the corporation, and adds mining corporations to those now covered by the law[2].

As a safeguard and to prevent injustice it is provided by a further amendment that the bankruptcy of a corporation shall not release its officers, directors, or stockholders as such from any liability under the laws of a State or Territory or of the United States. That is, if these officers or any of them by wrongdoing or violating the law of the State have incurred any liability they are not to be discharged from such obligations or liabilities.

The next amendment, section 5 of the bill, makes definite and certain the purpose of the law as it was framed, to wit: That the words "in contemplation of bankruptcy," mean a present or future state of insolvency and purpose to take advantage of the law. The amendment is necessary because the courts have held that the words "in contemplation of bankruptcy" mean with a view to the actual filing of a petition, and therefore many men have been discharged who ought not to have been, because it was impossible to

NOTE. 2 omitted by the Senate.

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prove that they committed the fraudulent acts mentioned at a time when they had in mind the filing of a petition in bankruptcy, although they did have in mind a present or future state of insolvency and committed the acts for the purpose of defrauding their creditors.

This amendment also provides four additional grounds for refusing a discharge in bankruptcy: (1) Obtaining property on credit on materially false statements; (2) making a fraudulent transfer of property;[3] (3) having been granted or denied a discharge in bankruptcy within six years, and (4) having refused to obey the lawful orders of the court or having refused to answer material questions approved by the court. No person who has been guilty of any of these fraudulent acts should be discharged, and a person who has refused to obey the order of the court ought not to be discharged, and it is quite clear that no person should have the benefit of the act as a voluntary bankrupt oftener than once in six years. Some men in some of the large cities have made bankruptcy a profession, and it is proposed by the amendment to stamp out these practices.

The next amendment provides that liabilities for frauds[4], etc., as described in the act shall not be released by the discharge. As the law now is, these liabilities must have been reduced to judgment or else the bankrupt is discharged. This amendment is in the interest of justice and honest dealing and honest conduct. This amendment further provides that a discharge in bankruptcy shall not release the bankrupt from liability for alimony due or to become due the wife, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation. It seems to the committee, and this is the universal sentiment, that the bankrupt ought not to be discharged from liabilties of this description.

NOTE. 3 Altered and amplified by the Senate.
4. Altered by Senate omitting word "fraud."

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The next amendment shortens the time for joining issue in involuntary cases. The expeditious disposition of an estate in bankruptcy is what all creditors desire, and this amendment is in the interest of all parties and simply, prevents undue delay.

The next amendment permits the wife to be examined as a witness as to business transactions to which she is or has been a party. In some of the States the wife may now be examined the same as any other witness. In other States she cannot be, and this amendment, carefully guarded by a proviso, simply allows her examinations as to business transactions to which she has been a party. To this there can be no reasonable objection.

The next amendment is in the interest of the speedy settlement of bankrupt estates. It has been held that actions to recover property belonging to the estate and fraudulently withheld or disposed of must be brought in the local courts. In great cities this works a practical denial of justice, as the calendars of the State courts are many times years behind, and it is conceded that in the City of New York a case cannot be reached for trial in less than from two to three years after the action is brought unless for some reason it is preferred.

The next amendment gives a larger fee to the clerk[5]. It is conceded on all hands that the present fee is so small that the clerk cannot afford to do the work required of him. The increase given by this amendment is very small, indeed, and cannot be reasonably objected to.

The same remarks apply to the next amendment.

The next amendment, section 12 of the bill, is the most important of all. Under the holding of the Supreme Court of the United States in *Pirie* v. *Chicago Title and Trust Company* (182 U. S., 438), that section 60, subdivision

5. Presumably a misprint for "referee."

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A, is a definition of a preference, it followed that payments made in good faith and other *bona fide* transactions after actual insolvency, though in due course of trade and business and without knowledge or reasonable cause to believe that a preference was intended, must be, under section 57g, surrendered before a creditor who received such a payment could prove the balance of his debt. This was never intended by the framers of the law, and it works obvious injustice and is the source of 99 per cent. of the objections to the law. The amendments proposed by section 12 of the bill and the other sections remedy all this.

The next amendment puts the four months' clause in subdivision A instead of subdivision B, and where it ought to be. As the law now stands, a preferential mortgage may be given and the creditor preferred, by withholding it from record four months, be able to dismiss the trustees' suit to recover the same, although it was recorded within the four months' period.

The next amendment simply provides that the trustee shall not be compelled to pay the accrued taxes on the homestead set-off to the bankrupt from the balance of the estate[6].

The further amendment to Section 64 of the act simply provides that the creditor may be allowed the reasonable expense of reclaiming property illegally transferred or concealed.

The next amendment is in line with the others, providing concurrent jurisdiction in the State and United States courts, and is in the interest of a speedy settlement of estates.

The last amendment is one generally demanded, and is in the interest of all persons who deal with property. It requires the clerks to prepare and keep indexes of all petitions and discharges in bankruptcy and to issue certificates in relation thereto when required. It also requires that these

6. Omitted by the Senate.

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be kept open to inspection and examination. It is frequently desirable to know whether a person has filed a petition in bankruptcy, and also whether he has been discharged and it is many times impossible within a reasonable time to ascertain these facts in the absence of convenient indexes,

Annexed hereto is a more complete analysis of these proposed amendments, useful and convenient to the lawyer. and in same attention is called to the decisions of the courts relating to the amended sections.

In proper cases and under proper restrictions those who have been unfortunate in business should be released from their debts on surrendering all their property to their creditors. But the law should be so framed as to prevent injustice and improper and indiscriminate discharges, and should also prevent its being availed of by the professional bankrupt or the dishonest debtor.

The involuntary features are most commendable, for through their instrumentalities fraudulent and unjust preferences are prohibited and there is greater confidence in the business world. Much of the fault finding with the bankruptcy law has come from those who having claims against some insolvent person, have been unable to collect for years (and these persons knew that they could not collect), but they have seen the debtor discharged under the bankruptcy law and have seen him re-enter the business world, and by the exercise of his talent and industry become a valuable factor in the business world. These debtors could never have thus re-entered business had it not been for the bankruptcy law, and this fact the creditor overlooks. He seems to think that but for the bankruptcy law he would have been paid under this improved condition of the debtor.

That dishonest men do avail themselves of the law and by fraud and perjury secure discharges can not be denied, but these instances are very rare, and when we contrast the

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great army of honest and industrious men who have been put upon their feet through the instrumentalities of the bankruptcy law with the very few dishonest persons who have been discharged under it, we must all concede that the law is wise and productive of great good and ought to be retained, and amended when experience shows that amendments are necessary in the interest of the business world.

ANALYSIS OF BILL TO AMEND THE BANKRUPTCY LAW.

Section 1: Amends clause (15) of Section 1 of the laws so that where insolvency is the question at issue assets claimed to be exempt shall not be counted in ascertaining the "aggregate of his (the debtor's) property," thus doing away with an injustice growing out of the new definition of insolvency in States that allow large exemptions. (See *In re* Baumann (Tenn.), 96 Fed., 946.)[1]

Section 2: Designed to permit the allowance of extra compensation to trustees when they do more than merely collect and distribute (as, for instance, when they are ordered to continue a going business for a considerable period of time) their fees being now limited by Section 48 to commissions on dividends to unsecured creditors. (See *In re* Epstein (Ark.), 109 Fed., 879, and the cases cited.)[2]

Section 3: Intended to bring about the result that the equivalent acts of (1) a general assignment by an insolvent person, (2) a voluntary accounting of an insolvent partnership by action brought by one of the partners, and (3)an application for a receivership of an insolvent corporation shall each be acts of bankruptcy, instead of the first (1) only, as now. Besides making the law more uniform, this change will reduce to a minimum present notorious inequities practiced on creditors through in-the-family accountings and

NOTE 1. Omitted by the Senate. 2. The Senate added a proviso that the compensation should not exceed the rate allowed trustees.

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directorial receiverships under State laws. (See *In re* Empire Metallic Bedstead Co. (N. Y.), 95 Fed., 957; *Id.*, on appeal, 98 Fed., 981, and subsequent cases uniformly holding the same doctrine.)

Section 4: Amends Section 4 of the law by (1) providing that those corporations which can now be adjudged involuntary bankrupts may, on a vote of stockholders representing a majority of the stock, petition for voluntary bankruptcy,[3] (2) adding mining corporations to those that are affected by the law, and (3) affirmatively declaring that the bankruptcy of a corporation shall not release its officers, as such, from any liability created by law.

The first (1) restores that portion of the first paragraph of Section 37 of the bankruptcy law of 1867 which permitted business corporations to file voluntary petitions, with, however, some additional restrictions for the protection of stockholders—a change the necessity of which is emphasized by the prevailing tendency in important commercial States to supersede partnerships completely by small corporations.

The second (2) is made necessary by the uniform holdings of the courts that mining corporations, which are of primary importance in some parts of the country, are not among those now enumerated in Section 4b. (See *In re* Chicago-Joplin Lead and Zinc Co. (Mo.), 104 Fed., 67; *McNamara* v. *Helena Coal Co.* (Ala.), 5 Am. B. R., 48; *In re* Keystone Coal Co. (Pa.), 6 Am. B. R., 377.)

The third (3) is merely precautionary—that there may be no doubt about the effect of the discharge of a corporation. (See *In re* Marshall Paper Co., 102 Fed., 872.)

Section 5: Modifies one of the present objections to a discharge and adds four new objections.

It has been uniformly held under the present law that

NOTE 3. Omitted by Senate.

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"in contemplation of bankruptcy" (Sec. 14b, 2) means with a view to the actual filing of a petition, and not merely a present or future state of insolvency. (*In re* Holman (Iowa). 92 Fed., 512; *In re* Carmichael (Iowa), 96 Fed., 594; *In re* Morgan (Ark.), 101 Fed., 982.) This has made this objection to a discharge practically valueless. The amendment drops this element of proof out, as well as two or three other words which are either tautological or unnecessary.

The very general complaint that the present law lets too many rogues escape from their debts—that it is weak in its discharge features—is met by four additional objections, carefully selected from a multitude of suggestions made.

The first (3) is almost identical with that proposed by S. 1035, Fifty-fifth Congress, first session (section 51 b (3), the Lindsay bill), and adopted by the House substitute. (See Congressional Record, Fifty-fifth Congress, vol. 31, p. 2039, sec. 13 b, 3.) [4]

The second (4) is a rephrasing of an objection to discharge found in section 29 of the law of 1867, and "transfer," now including "conveyance," "mortgage," "payment," etc. means the same thing. In effect it is the same as section 51 b (4) of the Lindsay bill and as section 13 b (4) of the House substitute, above.[5]

The third (5) will put an end to the possibility of debtors going through bankruptcy every month. The new period, six years, is an average arrived at from the suggestions received. (Compare Report of National Association of Referees in Bankruptcy, published in March, 1900, for other ways of solving this problem.)

The fourth (6) is intended to meet a defect which grows out of decisions that, following Counselman *v.* Hitchcock (142 U. S., 547), declare that the protection afforded a bankrupt by the last clause of section 7 a (9) does not amount to the

4. Altered by Senate. 5. Omitted by the Senate.

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immunity guaranteed by the fifth amendment to the Constitution. (See In re Rosser (Mo.), 96 Fed., 305, and compare In re Marx (Ky.), 102 Fed., 676.) The suggestion that the immunity clause inserted in the interstate-commerce law and held constitutional in *Brown* v. *Walker*, 161 U. S., 591, be also inserted here is met by the objection that such clause would in effect grant pardon in advance to bankrupts called to testify, and might result in a general amnesty to all bankrupts amenable to punishment under section 29. A discharge is a boon, not a right. He who asks it should tell what he knows of his assets and his past dealings. If he does not, the discharge should be denied him. It is thought that this new objection to discharge will accomplish much that would be accomplished by the clause in the interstate-commerce law, without amounting to freedom from criminal prosecution too.

Section 6: The changes in section 17 of the law are to settle questions arising from antagonistic decisions of the court and to exclude beyond peradventure certain liabilities growing out of offenses against good morals from the effect of a discharge. (Compare a similar amendment to the English act of 1883 by section 10 of the amendatory act of 1890.

The substitution of "liabilities" for "judgments in actions" makes the clause broader. Now claims created by fraud but not reduced to judgment are discharged. Neither the claim nor the judgment should be. (Compare In re Rhutalssel (Iowa), 96 Fed., 567, with In re Lewenson (N. Y.), 99 Fed., 73.).[6]

The reasons for the other changes are too patent to require statement. (As to the dischargeability of alimony compare In re Houston (Ky.), 94 Fed.), 119, with In re Nowell (Mass.), 99 Fed., 931; of judgments for seduction,

6. Liabilities for frauds omitted by the Senate.

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In re Sullivan (N. Y.), 2 Am. B. R., 30, with In re Freche (N. J.), 109 Fed., 620; of judgments for criminal conversation, In re Tinker (N. Y.), 99 Fed., 79, with *Colwell* v. *Tinker* (N. Y.), 6 Am. B. R., 434.

Section 7: It is conceded that too much time was given by the law for the joining of issue in involuntary cases, and that the law was silent as to the method and time of service where the bankrupt had absconded. As changed, section 18 provides for a short service by publication, and not only shortens the time within which a debtor personally served must appear and plead, but provides that time to plead shall expire when time to appear does, and not ten days later as now. All this is in the interest of the rapid administration of asset cases and the consequent reduction of expenses.[7]

Section 8. Intended to make a wife, who is often the depositary of property belonging really to the bankrupt a compellable witness in every State as to certain transactions to which she is or has been a party. Without her evidence it is sometimes practically impossible to trace property. Neither principle nor policy entitles her to her privilege when the transaction under investigation is a business one between her and her husband. For evils growing out of section 21 a, as now phrased, see In re Jefferson (Wash.), 96 Fed., 826; In re Fowler (Wis)., 93 Fed., 417.

Section 9: Under the law of 1867, the Federal and State courts had concurrent jurisdiction of suits to recover property fraudulently or preferentially transferred. *Bardes* v. *Bank of Hawarden* (Ia.), 178 U. S., 524, has so construed section 23 b, of the law as to deny such jurisdiction to the district courts, save with the consent of the proposed defendant. In commercial centers this amounts to a denial of justice, the calendars of the State courts being years

7. The Senate restored the words fifteen days for return day in lieu of ten proposed by the House.

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behind hand; while, growing out of *Bardes* v. *Bank*, have come decisions which have crippled the administration of the law to a marked degree. (See in re Ward (Mass.), 5 Am. B. R., 215; *Mueller* v. *Nugent* (Ky.), 105 Fed., 581; this latter, however, recently reversed by the Supreme Court.) There is a very general demand for a return to the policy of the law of 1867. Were it not for section 23 b, section 2 (7), would probably confer ample jurisdiction on the district courts. The change in section 23, b, proposed by the bill simply excepts from the operation of it all suits which can, under the specific words of the law, be brought to recover property, and this merely by referring to the three sections under which alone such suits can be brought. To remove all doubt, also, section 13 and 16 of the bill confer concurrent jurisdiction of all such suits on the State courts and the Federal district courts, by adding appropriate words to each of the three sections; section 60 b, section 67 e and section 70 e.

Sections 10 and 11: These changes in section 40 and section 48 are in response to the very general opinion that the referees and the trustees are not now adequately paid. The filing fee of each officer is doubled, making the deposit required at the inception of bankruptcy proceedings $40 instead of $25. It is thought this will prove sufficient in all no-asset cases. Since, under the law, it has been quite uniformly held that the commissions of these officers must be computed on moneys paid out by way of dividends only, this species of compensation has, in the large majority of cases, amounted to little. The change suggested rests on the analogy of the State laws, which reckon the commissions of executors, receivers, etc., on moneys received and paid out, and is fairer. The other changes are in the line of increasing efficiency and the securing of the best talent for the important work committed to these officers; thus, the large

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commissions to trustees in small cases, that they may have greater incentive to search for and recover property, and the 50-cent filing fee for referees, as probably the fairest way properly to compensate them for the great amount of extra work in hearing contests on claims, etc. The collection of this filing fee in advance seems to be permitted by the rules in many districts, though without apparent sanction of law. The suggested amendment ratifies this practice, which has not proven burdensome, while removing the chief objection to it—the requirement that the fee be paid as a condition of filing a claim at all—by requiring that such fee be paid as a cost of administration. The trustee is also given the same commission in composition cases as is the referee. This was an oversight when the law was framed.[8].

Section 12: *Pirie* v. *Chicago Title and Trust Co.* (182 U. S., 438), having held that section 60 a is a definition of "preference," it necessarily followed that payments and other bona fide transactions after actual insolvency, though in due course of trade and without knowledge or reasonable cause to believe that a preference was intended, must be, under section 57 g, surrendered before a creditor who received such a payment could prove the balance of his debt. This was not what was intended by the framers of the law. There is a very urgent and widespread demand for such an amendment as will obviate this menace to trade. The Ray bill (H. R. 4310) attempts to do this, but leaves a loophole in that only voidable preferences, as defined in section 60 a and b, must be surrendered, whereas some fraudulent transfers (section 67 e and section 70 e) might be retained and the debt still proven. This clause, section 57 g, has therefore been modified by adding words referring specifically to creditors who have received an advantage, void or voidable, under section 67 c or section 70 e. There are no other sec-

8. The Senate materially reduced the increase in the fees for both referees and trustees as provided by the House.

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tions in the law which provide for suits to recover back from creditors or other persons property (which includes money) improperly transferred. The change results therefore in that only those payments or transfers which could be recovered back by suit must be surrendered under section 57 g. This change will also settle the animated and unfortunate controversy over the meaning and effect of section 60 c; compare in re Keller (Ia.), 109 Fed., 118, where a district court refuses to follow a court of appeals, in *McKey* v. *Lee* (Ia.), 105 Fed., 923; also in re Dickson (Mass.), 111 Fed., 726, wherein a circuit court of appeals apparently refuses to follow the Supreme Court in *Pirie* v. *Chicago Title and Trust* Co., above.

It is not thought expedient at this time to attempt to frame a clause specifying what transactions are protected (compare section 49 of the English act of 1883 for such a clause) or to change the so-called definition of insolvency. The simpler the changes in the present law the fewer will be the controversies in the courts; and especially in a question which, like this, is at the root of our credit system, the less the disturbance of business.

Section 13: Section 60 a and b is amended in three ways:

First, by replacing the four months' clause in a, where it was in the Lindsay bill, instead of in b, as now, and where a casual reading of the law indicates it should have been left. (See in re Jones (Mass.), 4 Am. B. R., 563, for the far-reaching result of this transposition.)

Second, by adding to a clause which shall be equivalent to that found in section 3 b (1). It seems that as section 60 a now stands, a preferential mortgage may be given, and the creditor preferred by withholding it from record four months be able to dismiss the trustee's suit to recover the same, though the paper was actually recorded within the

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four months' period. (See in re Wright (Ga.), 96 Fed., 187; in re Mersman (N. Y.), 7 Am. B. R., 46.)

Third, by adding the clause as to jurisdiction of suits previously explained under section 9.

Section 14: Where homestead exemptions are allowed, it has been held that a bankrupt may insist on the trustee paying the accrued taxes on the homestead set off to him. (See in re Tilden (Ia.), 91 Fed., 500; contra, in re Veitsch (Conn.), 101 Fed., 251.) This is an injustice to creditors which calls for amendment. That suggested will accomplish the desired result.[9]

It frequently happens that the action of individual creditors in suing, as, for instance, by creditor's bill before the bankruptcy, inures to the benefit of the trustee, and almost as frequently that, through the efforts of certain creditors, property is recovered after the bankruptcy begins. It is only fair that their disbursements, by which all creditors have profited, should be accounted for to them. The change in section 64 b (2), would accomplish this.

Section 15: Adds the clause on jurisdiction of suits to section 67 a and 70 e previously explained under section 9.

Section 16 provides for indexes, etc.

9. The Senate omitted this proposed amendment.

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BANKRUPTCY ACTS OF UNITED STATES.

Act of April 4th, 1800.

Chap. [19.] An act to establish an uniform system of bankruptcy throughout the United States.

§ 1. *Be it enacted, &c.* That from and after the first day of June next, if any merchant, or other person residing within the United States, actually using the trade of merchandise, by buying and selling in gross, or by retail, or dealing in exchange, or as a banker, broker, factor, underwriter, or marine ensurer, shall, with intent unlawfully to delay or defraud his or her creditors, depart from the state in which such person usually resides, or remain absent therefrom, or conceal him or herself therein, or keep his or her house, so that he or she cannot be taken, or served with process, or willingly or fraudulently procure him or herself to be arrested, or his or her lands, goods, money, or chattels, to be attached, sequestered, or taken in execution, or shall secretly convey his or her goods out of his or her house, or conceal them to prevent their being taken in execution, or make, or cause to be made, any fraudulent conveyance of his or her lands, or chattels, or make or admit any false or fraudulent security, or evidence of debt, or being arrested for debt, or having surrendered him or herself in discharge of bail, shall remain in prison two months, or more, or escape therefrom, or whose lands or effects being attached by process issuing out of, or returnable to, any court of common law, shall not, within two months after written notice thereof, enter special bail and dissolve the same, or in districts in which attachments are not dissolved by the entry of special bail, being arrested for debt after his or her lands and effects, or any part thereof, have been attached for a debt or debts amounting to one thousand dollars or upwards, shall not, upon notice of such attachment, give sufficient security for the payment of what may be recovered in the suit in which he or she shall be arrested, at or before the return day of the same, to be approved by the judge of the district, or some judge of the court out of which the process issued upon which he is arrested, or to which the same shall be returnable, every such person shall be deemed and adjudged a bankrupt: *Provided,* That no person shall be liable to a commission of bankruptcy, if the petition be not preferred, in manner hereinafter directed, within six months after the act of bankruptcy committed.

§ 2. That the judge of the district court of the United States, for the district where the debtor resides, or usually resided, at the time of

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committing the act of bankruptcy, upon petition, in writing, against such person or persons being bankrupt, to him to be exhibited by any one creditor, or by a greater number, being partners, whose single debt shall amount to one thousand dollars, or by two creditors, whose debts shall amount to one thousand five hundred dollars, or by more than two creditors, whose debts shall amount to two thousand dollars, shall have power, by commission under his hand and seal, to appoint such good and substantial persons, being citizens of the United States, and resident in such district, as such judge shall deem proper, not exceeding three, to be commissioners of the said bankrupt, and in case of vacancy or refusal to act, to appoint others, from time to time, as occasion may require: *Provided always,* That before any commission shall issue, the creditor or creditors petitioning shall make affidavit, or solemn affirmation, before the said judge, of the truth of his, her, or their debts, and give bond, to be taken by the said judge, in the name and for the benefit of the said party so charged as a bankrupt, and in such penalty, and with such surety, as he shall require, to be conditioned for the proving of his, her, or their, debts, as well before the commissioners as upon a trial at law, in case the due issuing forth of the said commission shall be contested, and also for proving the party a bankrupt, and to proceed on such commission, in the manner herein prescribed. And if such debt shall not be really due, or, after such commission taken out, it cannot be proved that the party was a bankrupt, then the said judge shall, upon the petition of the party aggrieved, in case there be occasion, deliver such bond to the said party, who may sue thereon, and recover such damages, under the penalty of the same, as, upon trial at law, he shall make appear he has sustained, by reason of any breach of the condition thereof.

§ 3. That before the commissioners shall be capable of acting, they shall, respectively, take and subscribe the following oath or affirmation, which shall be administered by the judge issuing the commission, or by any of the judges of the supreme court of the United States, or any judge, justice, or chancellor, of any state court, and filed in the office of the clerk of the district court: *"I,* A B, *do swear (or affirm,) that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me, as a commissioner in a commission of bankruptcy against* ———— *and that without favor or affection, prejudice or malice."* And the commissioners, who shall be sworn as aforesaid, shall proceed, as soon as may be, to execute the same; and, upon due examination, and sufficient cause appearing against the party charged, shall and may declare him or her to be a bankrupt: *Provided,* That before such examination be had, reasonable notice thereof, in writing, shall be delivered to the person charged

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as a bankrupt; or if he, or she, be not found at his or her usual place of abode, to some person of the family, above the age of twelve years, or if no such person appear, shall be fixed at the front or other public door of the house, in which he or she usually resides, and thereupon it shall be in the power of such person, so charged as aforesaid, to demand before, or at the time appointed for, such examination, that a jury be empannelled to inquire into the fact or facts alleged as the causes for issuing the commission, and on such demand being made, the inquiry shall be had before the judge granting the commission, at such time as he may direct, and in that case such person shall not be declared bankrupt, unless, by the verdict of the jury, he or she shall be found to be within the description of this act, and shall be convicted of some one of the acts described in the first section of this act: *Provided also,* That any commission which shall be taken out as aforesaid, and which shall not be proceeded in as aforesaid, within thirty days thereafter, may be superseded by the said judge, who shall have granted the same, upon the application of the party thereby charged as a bankrupt, or of any creditor of such person, unless the delay shall have been unavoidable, or upon a just occasion.

§ 4. That the commissioners so to be appointed, shall have power, forthwith after they have declared such person a bankrupt, to cause to be apprehended, by warrant under their hands and seals, the body of such bankrupt, wheresoever to be found within the United States: *Provided,* They shall think that there is reason to apprehend that the said bankrupt intends to abscond, or conceal him or herself: and in case it be necessary, in order to take the body of the said bankrupt, shall have power to cause the doors of the dwelling house of such bankrupt to be broken, or the doors of any other house in which he or she shall be found.

§ 5. That it shall be the duty of the commissioners so to be appointed, forthwith after they have declared such person a bankrupt, and they shall have power to take into their possession, all the estate, real and personal, of every nature and description, to which the said bankrupt may be entitled, either in law or equity, in any manner whatsoever, and cause the same to be inventoried and appraised to the best value, (his or her necessary wearing apparel, and the necessary wearing apparel of the wife and children, and necessary beds and bedding, of such bankrupt, only excepted), and also to take into their possession, and secure, all deeds and books of account, papers and writings, belonging to such bankrupt; and shall cause the same to be safely kept, until assignees shall be chosen or appointed, in manner hereafter provided.

§ 6. That the said commissioners shall, forthwith after they have declared such person a bankrupt, cause due and sufficient public notice thereof to be given, and in such notice shall appoint some convenient time

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and place for the creditors to meet, in order to choose an assignee or assignees of the said bankrupt's estate and effects; at which meeting the said commissioners shall admit the creditors of such bankrupt to prove their debts; and where any creditor shall reside at a distance from the place of such meeting, shall allow the debt of such creditor to be proved by oath or affirmation, made before some competent authority, and duly certified, and shall permit any person, duly authorized by letter of attorney from such creditor, due proof of the execution of such letter of attorney being first made, to vote in the choice of an assignee or assignees of such bankrupt's estate and effects, in the place and stead of such creditor: And the said commissioners shall assign, transfer, or deliver over, all and singular the said bankrupt's estate and effects aforesaid, with all muniments and evidences thereof, to such person or persons as the major part, in value, of such creditors, according to the several debts then proved, shall choose as aforesaid: *Provided always*, That in such choice, no vote shall be given by, or in behalf of, any creditor whose debt shall not amount to two hundred dollars.

§ 7. That it shall be lawful for the said commissioners, as often as they shall see cause, for the better preserving and securing the bankrupt's estate, before assignees shall be chosen as aforesaid, immediately to appoint one or more assignee or assignees of the estate and effects aforesaid, or any part thereof; which assignee or assignees aforesaid, or any of them, may be removed at the meeting of the creditors, so to be appointed as aforesaid, for the choice of assignees, if such creditors, entitled to vote as aforesaid, or the major part, in value, of them, shall think fit; and such assignee or assignees as shall be so removed, shall deliver up all the estate and effects of such bankrupt, which shall have come to his or their hands or possession, unto such other assignee or assignees as shall be chosen by the creditors as aforesaid; and all such estate and effects shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees, as if the first assignment had been made to him or them by the said commissioners; and if such first assignee or assignees shall refuse or neglect, for the space of ten days, next after notice in writing from such new assignee or assignees, of their apportionment, as aforesaid, to deliver over as aforesaid, all the estate and effects as aforesaid, every such assignee or assignees shall, respectively, forfeit a sum not exceeding five thousand dollars, for the use of the creditors, and shall moreover be liable for the property so detained.

§ 8. That at any time, previous to the closing of the accounts of the said assignee or assignees so chosen as aforesaid, it shall be lawful for such creditors of the bankrupt as are hereby authorized to vote in the choice of assignees, or the major part of them, in value, at a regular meeting of the said creditors, to be called for that purpose, by the said

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commissioners, or by one fourth, in value, of such creditors, to remove all or any of the assignees chosen as aforesaid, and to choose one or more in his or their place and stead: and such assignee or assignees as shall be so removed, shall deliver up all the estate and effects of such bankrupt, which shall have come into his or their hands or possession, unto such new assignee or assignees as shall be chosen by the creditors at such meeting; and all such estate and effects shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees, as if the first assignment had been made to him or them by the said commissioners: And if such former assignee or assignees shall refuse or neglect, for the space of ten days, next after notice in writing from such new assignee or assignees, of their appointment, as aforesaid, to deliver over, as aforesaid, all the estate and effects aforesaid, every such former assignee or assignees shall, respectively, forfeit a sum not exceeding five thousand dollars, for the use of the creditors, and shall moreover be liable for the property so detained.

§ 9. That whenever a new assignee or assignees shall be chosen as aforesaid, no suit at law or in equity shall be thereby abated; but it shall and may be lawful for the court in which any suit may depend, upon the suggestion of a removal of a former assignee or assignees, and of the appointment of a new assignee or assignees, to allow the name of such new assignee or assignees, to be substituted in place of the name or names of the former assignee or assignees, and thereupon the suit shall be prosecuted in the name or names of the new assignee or assignees, in the same manner as if he or they had originally commenced the suit in his or their own names.

§ 10. That the assignment or assignments of the commissioners of the bankrupt's estate and effects as aforesaid, made as aforesaid, shall be good at law or in equity, against the bankrupt; and all persons claiming by, from, or under, such bankrupt, by any act done at the time, or after, he shall have committed the act of bankruptcy upon which the commission issued: *Provided always,* That in case of a bona fide purchase, made before the issuing of the commission from or under such bankrupt, for a valuable consideration, by any person having no knowledge, information, or notice, of any act of bankruptcy committed, such purchase shall not be invalidated or impeached.

§ 11. That the said commissioners shall have power, by deed or deeds, under their hands and seals, to assign and convey to the assignee or assignees, to be appointed or chosen as aforesaid, any lands, tenements, or hereditaments, which such bankrupt shall be seised of, or entitled to, in fee tail, at law, or in equity, in possession, remainder, or reversion, for the benefit of the creditors; and all such deeds, being duly executed, and recorded, according to the laws of the state within which such lands,

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tenements, or hereditaments, may be situate, shall be good and effectual against all persons whom the said bankrupt, by common recovery, or other means, might or could bar of any estate, right, title, or possibility, of or in the said lands, tenements, or hereditaments.

§ 12 That if any bankrupt shall have conveyed or assured any lands, goods, or estate, unto any person, upon condition or power of redemption, by payment of money or otherwise, it shall be lawful for the commissioners, or for any person by them duly authorized for that purpose, by writing, under their hands and seals, to make tender of money, or other performance, according to the nature of such condition, as fully as the bankrupt might have done; and the commissioners, after such performance or tender, shall have power to assign such lands, goods, and estate, for the benefit of the creditors, as fully and effectually as any other part of the estate of such bankrupt.

§ 13. That the commissioners aforesaid shall have power to assign, for the use aforesaid, all the debts due to such bankrupt, or to any other person for his or her use or benefit; which assignment shall vest the property and right thereof in the assignee or assignees of such bankrupt, as fully as if the bond, judgment, contract, or claim, had originally belonged or been made to the said assignees; and after the said assignment, neither the said bankrupt, nor any person acting as trustee for him or her, shall have power to recover or discharge the same, nor shall the same be attached as the debt of the said bankrupt; but the assignee or assignees aforesaid shall have such remedy to recover the same, in his or their own name or names, as such bankrupt might or could have had if no commission of bankruptcy had issued: And when any action in the name of such bankrupt shall have been commenced, and shall be pending for the recovery of any debt or effects of such bankrupt, which shall be assigned, or shall or might become vested in the assignee or assignees of such bankrupt as aforesaid, then such assignee or assignees may claim to be, and shall be thereupon, admitted to prosecute such action in his or their name, for the use and benefit of the creditors of such bankrupt; and the same judgment shall be rendered in such action, and all attachments or other security taken therein, shall be in like manner holden and liable, as if the said action had been originally commenced in the name of such assignee or assignees, after the original plaintiff therein had become a bankrupt as aforesaid: *Provided,* That where a debtor shall have, bona fide, paid his debt to any bankrupt, without notice that such person was bankrupt, he or she shall not be liable to pay the same to the assignee or assignees.

§ 14. That if complaint shall be made, or information given, to the commissioners, or if they shall have good reason to believe or suspect, that any of the property, goods, chattels, or debts, of the bankrupt, are

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in the possession of any other person, or that any person is indebted to, or for the use of, the bankrupt, then the said commissioners shall have power to summon, or cause to be summoned by their attorney or other person duly authorized by them, all such persons before them, or the judge of the district where such person shall reside, by such process, or other means, as they shall think convenient, and upon their appearance, to examine them by parole, or by interrogatories, in writing, on oath or affirmation, which oath or affirmation they are hereby empowered to administer, respecting the knowledge of all such property, goods, chattels, and debts; and if such person shall refuse to be sworn or affirmed, and to make answer to such questions or interrogatories as shall be administered, and to subscribe the said answers, or, upon examination, shall not declare the whole truth, touching the subject matter of such examination, then it shall be lawful for the commissioners, or judge, to commit such person to prison, there to be detained until they shall submit themselves to be examined in manner aforesaid, and they shall, moreover, forfeit double the value of all the property, goods, chattels, and debts, by them concealed.

§ 15. That if any of the aforesaid persons shall, after legal summons to appear before the commissioners or judge, to be examined, refuse to attend, or shall not attend at the time appointed, having no such impediment as shall be allowed of by the commissioners or judge, it shall be lawful for the said commissioners or judge to direct their warrants to such person or persons as by them shall be thought proper, to apprehend such persons as shall refuse to appear, and to bring them before the commissioners or judge, to be examined, and upon their refusal to come, to commit them to prison, until they shall submit themselves to be examined, according to the directions of this act: *Provided*, That such witnesses as shall be so sent for, shall be allowed such compensation as the commissioners, or judge, shall think fit, to be rateably borne by the creditors; and if any person, other than the bankrupt, either by subornation of others, or by his or her own act, shall, wilfully or corruptly, commit perjury on such examination, to be taken before the commissioners as aforesaid, the party so offending, and all persons who shall procure any person to commit such perjury, shall, on conviction thereof, be fined, not exceeding four thousand dollars, and imprisoned, not exceeding two years, and moreover shall, in either case, be rendered incapable of being a witness in any court of record.

§ 16. That if any person or persons shall fraudulently or collusively, claim any debts, or claim or detain any real or personal estate of the bankrupt, every such person shall forfeit double the value thereof, to and for the use of the creditors.

§ 17. That if any person, prior to his or her becoming a bankrupt, shall convey to any of his or her children, or other persons, any lands

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or goods, or transfer his or [her] debts or demands into other persons' names, with intent to defraud his or her creditors, the commissioners shall have power to assign the same, in as effectual a manner as if the bankrupt had been actually seised or possessed thereof.

§ 18. That if any person or persons, who shall become bankrupt within the intent and meaning of this act, and against whom a commission of bankruptcy shall be duly issued, upon which commission such person or persons shall be declared bankrupt, shall not, within forty-two days after notice thereof, in writing, to be left at the usual place of abode of such person or persons, or personal notice, in case such person or persons be then in prison, and notice given in some gazette, that such commission hath been issued, and of the time and place of meeting of the commissioners, surrender him or herself to the said commissioners, and sign or subscribe such surrender, and submit to be examined, from time to time, upon oath or solemn affirmation, by and before such commissioners, and in all things conform to the provisions of this act, and also, upon such his or her examination, fully and truly disclose and discover all his or her effects and estate, real and personal, and how and in what manner, to whom and upon what consideration, and at what time or times, he or she hath disposed of, assigned, or transferred, any of his or her goods, wares, or merchandise, moneys, or other effects and estate, and of all books, papers, and writings, relating thereunto, of which he or she was possessed or in or to which he or she was any ways interested or entitled, or which any person or persons shall then have, or shall have had, in trust for him or her, or for his or her use, at any time before or after the issuing of the said commission, or whereby such bankrupt, or his or her family then hath, or may have, or expect, any profit, possibility of profit, benefit, or advantage whatsoever, except only such part of his or her estate and effects as shall have been really and bona fide before sold and disposed of, in the way of his or her trade and dealings, and except such sums of money as shall have been laid out in the ordinary expenses of his or her family, and also upon such examination, execute, in due form of law, such conveyance, assurance, and assignment of his or her estate, whatsoever and wheresoever, as shall be devised and directed by the commissioners, to vest the same in the assignees, their heirs, executors, administrators, and assigns, forever, in trust, for the use of all and every the creditors of such bankrupt, who shall come in and prove their debts under the commission; and deliver up unto the commissioners, all such part of his or her, the said bankrupt's goods, wares, merchandises, money, effects, and estate, and all books, papers, and writings, relating thereunto, as, at the time of such examination, shall be in his or her possession, custody, or power, his or her necessary wearing apparel, and the necessary wearing apparel of the wife and children, and necessary beds and bedding, of such bankrupt, only excepted, then he or she, the said bankrupt, upon the con-

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viction of any wilful default or omission in any of the matters or things aforesaid, shall be adjudged a fraudulent bankrupt, and shall suffer imprisonment for a term not less than twelve months, nor exceeding ten years, and shall not, at any time after, be entitled to the benefits of this act: *Provided always,* That in case any bankrupt shall be in prison, or custody, at the time of issuing such commission, and is willing to surrender and submit to be examined, according to the directions of this act, and can be brought before the said commissioners and creditors for that purpose, the expense thereof shall be paid out of the said bankrupt's effects; and in case such bankrupt is in execution, or cannot be brought before the commissioners, that then the said commissioners, or some one of them, shall, from time to time, attend the said bankrupt in prison or custody, and take his or her discovery, as in other cases; and the assignees, or one of them, or some person appointed by them, shall attend such bankrupt in prison or custody, and produce his or her books, papers, and writings, in order to enable him or her to prepare his or her discovery; a copy whereof the said assignees shall apply for, and the said bankrupt shall deliver to them, or their order, within a reasonable time after the same shall have been required.

§ 19. That the said commissioners shall appoint, within the said forty-two days, so limited as aforesaid, for the bankrupt to surrender and conform as aforesaid, not less than three several meetings, for the purposes aforesaid, the third of which meetings shall be on the last of the said forty-two days: *Provided always,* That the judge of the district within which such commission issues, shall have power to enlarge the time so limited as aforesaid, for the purposes aforesaid, as he shall think fit, not exceeding fifty days, to be computed from the end of the said forty-two days, so as such order for enlarging the time be made at least six days before the expiration of said term.

§ 20. That it shall be lawful for the commissioners, or any other person or officers, by them to be appointed, by their warrant, under their hands and seals, to break open, in the day time, the houses, chambers, shops, warehouses, doors, trunks, or chests, of the bankrupt, where any of his or her goods or estate, deeds books of account, or writings, shall be, and to take possession of the goods, money, and other estate, deeds, books of account, or writings, of such bankrupt.

§ 21. That if the bankrupt shall refuse to be examined, or to answer fully, or to subscribe his or her examination, as aforesaid, it shall be lawful for the commissioners to commit the offender to close imprisonment, until he or she shall conform him or herself; and if the said bankrupt shall submit to be examined, and, upon his or her examination, it shall appear that he or she hath committed wilful or corrupt perjury, he or she may be indicted therefor, and, being thereof convicted, shall

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suffer imprisonment for a term not less than two years, nor exceeding ten years.

§ 22. That every bankrupt, having surrendered, shall at all seasonable times, before the expiration of the said forty-two days, as aforesaid, or of such further time as shall be allowed to finish his or her examination, be at liberty to inspect his or her books and writings, in the presence of some person to be appointed by the commissioners, and to bring with him or her, for his or her assistance, such persons as he or she shall think fit, not exceeding two at one time, and to make extracts and copies to enable him or her to make a full discovery of his or her effects; and the said bankrupt shall be free from arrests in coming to surrender, and after having surrendered to the said commissioners, for the said forty-two days, or such further time as shall be allowed for the finishing of his or her examination; and in case such bankrupt shall be arrested for debt, or taken on any escape warrant or execution, coming to surrender, or after his surrender, within the time before mentioned, then, on producing such summons or notice under the hand of the commissioners, and giving the officer a copy thereof, he or she shall be discharged; and in case any officer shall afterwards detain such bankrupt, such officer shall forfeit to such bankrupt, for his or her own use, ten dollars for every day he shall detain the bankrupt.

§ 23. That every person who shall, knowingly or wilfully, receive or keep concealed any bankrupt, so as aforesaid summoned to appear, or who shall assist such bankrupt in concealing him or herself, or in absconding, shall suffer such imprisonment, not exceeding twelve months, or pay such fine to the United States, not exceeding one thousand dollars, as upon conviction thereof shall be adjudged.

§ 24. That the said commissioners, shall have power to examine, upon oath or affirmation, the wife of any person lawfully declared a bankrupt, for the discovery of such part of his estate as may be concealed or disposed of by such wife, or by any such person; and the wife shall incur such penalties for not appearing before the said commissioners, or refusing to be sworn or affirmed or examined, and to subscribe her examination, or for not disclosing the truth, as by this act is provided against any other person in like cases.

§ 25. That in case any person shall be committed by the commissioners for refusing to answer, or for not fully answering any question, or for any other cause, the commissioners shall in their warrant specify such question or other cause of commitment.

§ 26. That if after the bankrupt shall have finished his or her final examination, any other person or persons shall voluntarily make discovery of any part of such bankrupt's estate, before unknown to the commis-

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sioners, such person or persons shall be entitled to five per cent. out of the effects so discovered, and such further reward as the commissioners shall think proper; and any trustee having notice of the bankruptcy, wilfully concealing the estate of any bankrupt for the space of ten days after the bankrupt shall have finished his final examination, as aforesaid, shall forfeit double the value of the estate so concealed, for the benefit of the creditors.

§ 27. That if any bankrupt, after the issuing any commission against him or her, pay to the person who sued out the same, or give or deliver to such person, goods, or any other satisfaction or security for his or her debt, whereby such person shall privately have and receive a greater proportion of his or her debt than the other creditors, such preference shall be a new act of bankruptcy, and on good proof thereof such commission may and shall be superseded, and it shall and may be lawful for either of the judges having authority to grant the commission as aforesaid, to award any creditor petitioning another commission, and such person, so taking such undue satisfaction as aforesaid, shall forfeit and lose, as well his or her whole debts, as the whole he or she shall have taken and received, and shall pay back or deliver up the same, or the full value, thereof, to the assignee or assignees who shall be appointed or chosen under such commission, in manner aforesaid, in trust for, and to be divided among, the other creditors of the said bankrupt, in proportion to their respective debts.

§ 28. That if any bankrupt, after the issuing any commission against him or her, pay to the person who sued out the same, or give or deliver to such person, goods, or any other satisfaction or security, for his or her debt, whereby such person shall privately have and receive a greater proportion of his or her debt than the other creditors, such preference shall be a new act of bankruptcy, and on good proof thereof, such commission shall and may be superseded, and it shall and may be lawful for either of the judges, having authority to grant the commission as aforesaid, to award any creditor petitioning another commission; and such person, so taking such undue satisfaction as aforesaid, shall forfeit and lose, as well his or her whole debts, as the whole he or she shall have taken and received, and shall pay back, or deliver up the same, or the full value thereof, to the assignee or assignees who shall be appointed or chosen under such commission in manner aforesaid, in trust for, and to be divided amongst the other creditors of the said bankrupt, in proportion to their respective debts.

§ 29. That every person who shall be chosen assignee of the estate and effects of a bankrupt shall, at some time after the expiration of four months, and within twelve months from the time of issuing the commission, cause at least thirty days public notice to be given of the time and

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place the commissioners and assignees intend to meet, to make a dividend or distribution of the bankrupt's estate and effects; at which time the creditors who have not before proved their debts shall be at liberty to prove the same; and upon every such meeting the assignee or assignees shall produce to the commissioners and creditors then present fair and just accounts of all his or their receipts and payments, touching the bankrupt's estate and effects, and of what shall remain outstanding, and the particulars thereof, and shall, if the creditors then present, or a major part of them, require the same, be examined upon oath or solemn affirmation before the same commissioners, touching the truth of such accounts; and in such accounts the said assignee or assignees shall be allowed and retain all such sum and sums of money as they shall have paid or expended in the suing out and prosecuting the commission, and all other just allowances on account of or by reason or means of their being assignee or assignees; and the said commissioners shall order such part of the net produce of all the said bankrupt's estate as by such accounts or otherwise shall appear to be in the hands of the said assignees, as they shall think fit, to be forthwith divided among such of the bankrupt's creditors as had duly proved their debts under such commission, in proportion to their several and respective debts; and the commissioners shall make such their order for a dividend in writing, under their hands, and shall cause one part of such order to be filed amongst the proceedings under the said commission, and shall deliver to each of the assignees under such commission a duplicate of such their order, which order of distribution shall contain an account of the time and place of making such order, and the sum total or quantum of all the debts proved under the commission, and the sum total of the money remaining in the hands of the assignee or assignees to be divided, and how many per cent. in particular is there ordered to be paid to every creditor of his debt; and the said assignee or assignees, in pursuance of such order, and without any deed or deeds of distribution to be made for the purpose, shall forthwith make such dividend and distribution accordingly, and shall take receipts in a book to be kept for the purpose, from each creditor, for the part or share of such dividend or distribution which he or they shall make and pay to each creditor respectively; and such order and receipt shall be a full and effectual discharge to such assignee for so much as he shall fairly pay, pursuant to such order as aforesaid.

§ 30. That within eighteen months next after the issuing of the commission the assignee or assignees shall make a second dividend of the bankrupt's estate and effects, in case the same were not wholly divided upon the first dividend, and shall cause due public notice to be given of the time and place the said commissioners intend to meet to make a second distribution of the bankrupt's estate and effects, and for the creditors who shall not before have proved their debts, to come in and prove the same; and at

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said meeting the said assignees shall produce, on oath or solemn affirmation, as aforesaid, their accounts of the bankrupt's estate and effects, and what, upon the balance thereof, shall appear to be in their hands, shall, by like order of the commissioners, be forthwith divided amongst such of the bankrupt's creditors as shall have made due proof of their debts, in proportion to their several and respective debts; which second dividend shall be final, unless any suit at law, or equity, be depending, or any part of the estate standing out, that could not have been disposed of, or that the major part of the creditors shall not have agreed to be sold or disposed of, or unless some other or future estate or effects of the bankrupt shall afterwards come to, or vest in, the said assignees, in which cases the said assignees shall, as soon as may be, convert such future or other estate and effects into money, and shall, within two months after the same be converted into money, by like order of the commissioners, divide the same among such bankrupt's creditors as shall have made due proof of their debt under such commission.

§ 31. That in the distribution of the bankrupt's effects, there shall be paid to every of the creditors a portion rate, according to the amount of their respective debts, so that every creditor having security for his debt by judgment, statute, recognisance, or specialty, or having an attachment under any of the laws of the individual states, or of the United States, on the estate of such bankrupt, (*Provided*, there be no execution executed upon any of the real or personal estate of such bankrupt, before the time he or she became bankrupts) shall not be relieved upon any such judgment, statute, recognisance, specialty, or attachment, for more than a rateable part of his debt, with the other creditors of the bankrupt.

§ 32. That the assignees shall keep one or more distinct book, or books, of account, wherein he or they shall duly enter all sums of money or effects which he or they shall have received, or got into his or their possession, of the said bankrupt's estate, to which books of account, every creditor, who shall have proved his or her debt, shall, at all reasonable times, have free resort, and inspect the same as often as he or she shall think fit.

§ 33. That every bankrupt, not being in prison or custody, shall, at all times after his surrender, be bound to attend the assignees, upon every reasonable notice, in writing, for that purpose given, or left at the usual place of his or her abode, in order to assist in making out the accounts of the said bankrupt's estate and effects, and to attend any court of record, to be examined touching the same, or such other business as the said assignees shall judge necessary, for which he shall receive three dollars per day.

§ 34. That all and every person and persons who shall become bank-

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rupt as aforesaid, and who shall, within the time limited by this act, surrender him or herself to the commissioners, and in all things conform as in and by this act is directed, shall be allowed five per cent. upon the nett produce of all the estate that shall be recovered in and received, which shall be paid unto him or her by the assignee or assignees, in case the nett produce of such estate, after such allowance made, shall be sufficient to pay the creditors of said bankrupt, who shall have proved their debts under such commission, the amount of fifty per cent. on their said debts, respectively, and so as the said five per cent. shall not exceed, in the whole, the sum of five hundred dollars; and in case the nett produce of the said estate shall, over and above the allowance hereafter mentioned, be sufficient to pay the said creditors seventy-five per cent. on the amount of their said debts, respectively, that then the said bankrupt shall be allowed ten per cent. on the amount of such nett produce, to be paid as aforesaid, so as such ten per cent. shall not, in the whole, exceed the sum of eight hundred dollars; and every such bankrupt shall be discharged from all debts by him or her due or owing, at the time he or she became bankrupt, and all which were or might have been proved under the said commission; and in case any such bankrupt shall afterwards be arrested, prosecuted, or impleaded, for or an account of any of the said debts, such bankrupt may appear without bail, and may plead the general issue, and give this act, and the special matter, in evidence: And the certificate of such bankrupt's conforming, and the allowance thereof, according to the directions of this act, shall be and shall be allowed to be sufficient evidence, prima facie, of the party's being a bankrupt within the meaning of this act, and of the commission, and other proceedings precedent to the obtaining such certificate, and a verdict shall thereupon pass for the defendant, unless the plaintiff in such action can prove the said certificate was obtained unfairly, and by fraud, or unless he can make appear any concealment of estate or effects, by such bankrupt, to the value of one hundred dollars: *Provided,* That no such discharge of a bankrupt shall release or discharge any person who was a partner with such bankrupt at the time he or she became bankrupt, or who was then jointly held or bound with such bankrupt, for the same debt or debts from which such bankrupt was discharged as aforesaid.

§ 35. That if the net proceeds of the bankrupt's estate, so to be discovered, recovered, and received, shall not amount to so much as will pay all and every of the creditors of the said bankrupt, who shall have proved their debts under the said commission, the amount of fifty per cent. on their debts, respectively, after all charges first deducted, that then, and in such case, the bankrupt shall not be allowed five per centum on such estate as shall be recovered in, but shall have and be paid by the assignees so much money as the commissioners shall think fit to allow,

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not more than three hundred dollars, nor exceeding three per centum on the nett proceeds of the said bankrupt's estate.

§ 36. That no person becoming a bankrupt according to the intent and provisions of this act, shall be entitled to a certificate of discharge, or to any of the benefits of the act, unless the commissioners shall certify under their hands, to the judge of the district within which such commission issues, that such bankrupt hath made a full discovery of his or her estate and effects, and in all things conformed him or herself to the directions of this act, and that there doth not appear to them any reason to doubt of the truth of such discovery, or that the same was not a full discovery of the said bankrupt's estate and effects; or unless the said judge should be of opinion that the said certificate was unreasonably denied by the commissioners; and unless two thirds, in number and in value, of the creditors of the bankrupt, who shall be creditors for not less than fifty dollars, respectively, and who shall have duly proved their debts under the said commission, shall sign such certificate to the judge, and testify their consent to the allowance of a certificate of discharge, in pursuance of this act; which signing and consent shall be also certified by the commissioners; but the said commissioners shall not certify the same till they have proof, by affidavit or information, in writing, of such creditors, or of the persons respectively authorized for that purpose, signing the said certificate; which affidavit or affirmation, together with the letter or power of attorney to sign, shall be laid before the judge of the district within which such commission issues, in order for the allowing the certificate of discharge; and the said certificate shall not be allowed, unless the bankrupt make oath or affirmation, in writing, that the certificate of the commissioners, and consent of the creditors thereunto, were obtained fairly and without fraud; and any of the creditors of the said bankrupt are allowed to be heard, if they shall think fit, before the respective persons aforesaid, against the making or allowing of such certificates by the commissioners or judge.

§ 37. That if any creditor, or pretended creditor, of any bankrupt, shall exhibit to the commissioners any fictitious or false debt, or demand, with intent to defraud the real creditors of such bankrupt, and the bankrupt shall refuse to make discovery thereof, and suffer the fair creditors to be imposed upon, he shall lose all title to the allowance upon the amount of his effects, and to a certificate of discharge as aforesaid; nor shall he be entitled to the said allowance or certificate, if he has lost, at any one time, fifty dollars, or, in the whole, three hundred dollars, after the passing of this act, and within twelve months before he became a bankrupt, by any manner of gaming or wagering whatever.

§ 38. That if any bankrupt, who shall have obtained his certificate, shall be taken in execution or detained in prison, on account of any

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debts owing before he became a bankrupt, by reason that judgment was obtained before such certificate was allowed, it shall be lawful for any of the judges of the court wherein judgment was so obtained, or for any court, judge, or justice, within the district in which such bankrupt shall be detained, having powers to award or allow the writ of habeas corpus, on such bankrupt producing his certificate so as aforesaid allowed, to order any sheriff or gaoler who shall have such bankrupt in custody, to discharge such bankrupt, without fee or charge, first giving reasonable notice to the plaintiff, or his attorney, of the motion for such discharge.

§ 39. That every person who shall have, bona fide, given credit to, or taken securities, payable at future days, from persons who are, or shall become, bankrupts, not due at the time of such persons' becoming bankrupt, shall be admitted to prove their debts and contracts, as if they were payable presently, and shall have a dividend in proportion to the other creditors, discounting, where no interest is payable, at the rate of so much per centum per annum, as is equal to the lawful interest of the state where the debt is payable; and the obligee of any bottomry or respondentia bond, and the assured in any policy of ensurance, shall be admitted to claim, and after the contingency or loss, to prove the debt thereon, in like manner as if the same had happened before issuing the commission; and the bankrupt shall be discharged from such securities, as if such money had been due and payable before the time of his or her becoming bankrupt; and such creditors may petition for a commission, or join in petitioning.

§ 40. That in case any person, committed by the commissioners' warrant, shall obtain a habeas corpus, in order to be discharged, and there shall appear any insufficiency in the form of the warrant, it shall be lawful for the court or judge before whom such party shall be brought by habeas corpus, by rule or warrant, to commit such persons to the same prison, there to remain until he shall conform as aforesaid, unless it shall be made to appear that he had fully answered all lawful questions put to him by the commissioners; or in case such person was committed for not signing his examination, unless it shall appear that the party had good reason for refusing to sign the same, or that the commissioners had exceeded their authority in making such commitment. And in case the gaoler to whom such person shall be committed, shall wilfully or negligently suffer such person to escape, or go without the doors or walls of the prison, such gaoler shall, for such offense, being convicted thereof, forfeit a sum not exceeding three thousand dollars, for the use of the creditors.

§ 41. That the gaoler shall upon the request of any creditor, having proved his debt, and showing a certificate thereof, under the hands of the commissioners, which the commissioners shall give without fee or

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reward, produce the person so committed; and in case such gaoler shall refuse to show such person to such creditor requesting the same, such person shall be considered as having escaped, and the gaoler or sheriff so refusing shall be liable as for a wilful escape.

§ 42. That where it shall appear to the said commissioners that there hath been mutual credit given by the bankrupt, and any other person or mutual debts between them, at any time before such person became bankrupt, the assignee or assignees of the estate shall state the account between them, and one debt may be set off against the other, and what shall appear to be due on either side, on the balance of such account, after such set off, and no more, shall be claimed or paid on either side, respectively.

§ 43. That it shall and may be lawful to and for the assignee or assignees of any bankrupt's estate and effects, under the direction of the commissioners, and by and with the consent of the major part in value of such of the said bankrupt's creditors as shall have duly proved their debts under the commission, and shall be present at any meeting of the said creditors, to be held in pursuance of due and public notice for that purpose given, to submit any difference or dispute for, on account of, or by reason or means of, any matter, cause, or thing whatsoever, relating to such bankrupt, or to his or her estate or effects, to the final end and determination of arbitrators, to be chosen by the said commissioners and the major part in value of such creditors as shall be present at such meeting as aforesaid, and the party or parties with whom they shall have such difference or dispute, and to perform the award of such arbitrators, or otherwise to compound and agree the matter in difference and dispute as aforesaid, in such manner as the said assignee or assignees, under the direction and with the consent aforesaid, shall think fit and can agree; and the same shall be binding on the several creditors of the said bankrupt; and the said assignee or assignees are hereby indemnified for what they shall fairly do, according to the directions aforesaid.

§ 44. That the assignees shall be, and hereby are, vested with full power to dispose of all the bankrupt's estate, real and personal, at public auction or vendue, without being subject to any tax, duty, imposition, or restriction, any law to the contrary notwithstanding.

§ 45. That if, after any commission of bankruptcy sued forth, the bankrupt happen to die before the commissioners shall have distributed the effects, or any part thereof, the commissioners shall, nevertheless, proceed to execute the commission, as fully as they might have done if the party were living.

§ 46. That where any commission of bankruptcy shall be delivered

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to the commissioners therein named, to be executed, it shall and may be lawful for them, before they take the oath or affirmation of qualification, to demand and take from the creditor or creditors prosecuting such commission, a bond, with one good security, if required, in the penalty of one thousand dollars, conditioned for the payment of the costs, charges, and expenses, which shall arise and accrue upon the prosecution of the said commission: *Provided always,* That the expenses, so as aforesaid to be secured and paid by the petitioning creditor or creditors, shall be repaid to him or them by the commissioners or assignees, out of the first moneys arising from the bankrupt's estate or effects, if so much be received therefrom.

§ 47. That the district judges, in each district, respectively, shall fix a rate of allowance to be made to the commissioners of bankruptcy, as compensation of services to be rendered under the commission, and it shall be lawful for any creditor, by petition to the district judge, to except to any charge contained in the account of the commissioners: And the said judge, after hearing the commissioners, may, in a summary way, decide upon the validity of such exception.

§ 48. That all penalties given by this act for the benefit of the creditors, shall be recovered by the assignee or assignees by action of debt, and the money so recovered, the charges of suit being deducted, shall be distributed towards payment of the creditors.

§ 49. That if any action shall be brought against any commissioner, or assignee, or other person, having authority under the commission, for any thing done or performed by force of this act, the defendant may plead the general issue, and give this act, and the special matter, in evidence; and in case of a nonsuit, discontinuance, or verdict or judgment for him, he shall recover double costs.

§ 50. That if any estate, real or personal shall descend, revert to, or become vested in any person, after he or she shall be declared a bankrupt, and before he or she shall obtain a certificate, signed by the judge as aforesaid, all such estate shall, by virtue of this act, be vested in the said commissioners, and shall be by them assigned and conveyed to the assignee or assignees, in fee simple, or otherwise, in like manner as above directed, with the estate of the said bankrupt, at the time of the bankruptcy, and the proceeds thereof shall be divided among the creditors.

§ 51. That the said commissioners shall, once in every year, carefully file, in the clerk's office of the district court, all the proceedings had in every case before them, and which shall have been finished; including the commissions, examinations, dividends, entries, and other determinations, of the said commissioners, in which office the final certificate of the

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said bankrupt may also be recorded; all which proceedings shall remain of record in the said office, and certified copies thereof shall be admitted as evidence in all courts in like manner as the copies of the proceedings of the said district court are admitted in other cases.

§ 52. That it shall and may be lawful for any creditor of such bankrupt, to attend all or any of the examinations of said bankrupt, and the allowance of the final certificate, if he shall think proper, and then and there to propose interrogatories, to be put by the judge or commissioners to the said bankrupt and others, and also to produce and examine witnesses and documents before such judge or commissioners, relative to the subject matter before them. And in case either the bankrupt or creditor shall think him or herself aggrieved by the determination of the said judge or commissioners, relative to any material fact, in the commencement or progress of the said proceedings, or in the allowance of the certificate aforesaid, it shall and may be lawful for either party to petition the said judge, setting forth such facts, and the determination thereon, with the complaint of the party, and a prayer for trial by a jury to determine the same, and the said judge shall, in his discretion, make order thereon, and award a venire facias to the marshal of the district, returnable within fifteen days, before him, for the trial of the facts mentioned in the said petition, notice whereof shall be given to the commissioners and creditors concerned in the same; at which time the said trial shall be had, unless, on good cause shown, the judge shall give further time; and judgment being entered on the verdcit of the jury, shall be final on the said facts, and the judge or commissioners shall proceed agreeably thereto.

§ 53. That the commissioners, before the appointment of assignees, and the assignees after such appointment, may, from time to time, make such allowance, out of the bankrupt's estate, until he shall have obtained his final discharge, as, in their opinion, may be requisite for the necessary support of the said bankrupt and his family.

§ 54. That it shall be lawful for the major part, in value, of the creditors, before they proceed to the choice of assignees, to direct in what manner, with whom, and where, the moneys arising by, and to be received from time to time out of, the bankrupt's estate, shall be lodged, until the same shall be divided among the creditors, as herein provided; to which direction every such assignee and assignees shall conform, as often as three hundred dollars shall be received.

§ 55. That every matter and thing, by this act required to be done by the commissioners of any bankrupt, shall be valid to all intents and purposes, if performed by a majority of them.

§ 56. That in all cases where the assignees shall prosecute any debtor

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of the bankrupt for any debt, duty, or demand, the commission, or a certified copy thereof, and the assignment of the commissioners of the bankrupt's estate, shall be conclusive evidence of the issuing the commission, and of the person named therein being a trader and bankrupt, at the time mentioned therein.

§ 57. That every person obtaining a discharge from his debts, by certificate as aforesaid, granted under a commission of bankruptcy, shall not, on any future commission, be entitled to any other certificate than a discharge of his person only; unless the nett proceeds of the estate and effects of such person, so becoming bankrupt a second time, shall be sufficient to pay seventy-five per cent. to his or her creditors, on the amount of their debts, respectively.

§ 58. That any creditor of a person, against whom a commission of bankruptcy shall have been sued forth, and who shall lay his claim before the commissioners appointed in pursuance of this act, may, at the same time, declare his unwillingness to submit the same to the judgment of the said commissioners, and his wish that a jury may be empannelled to decide thereon: And in like manner, the assignee or assignees of such bankrupt, may object to the consideration of any particular claim by the commissioners, and require that the same should be referred to a jury. In either case, such objection and request shall be entered on the books of the commissioners, and thereupon an issue shall be made up between the parties, and a jury shall be empannelled, as in other cases, to try the same in the circuit court for the district in which such bankrupt has usually resided. The verdict of such jury shall be subject to the control of the court, as in suits originally instituted in the said court, and when rendered, if not set aside by the court, shall be certified to the commissioners, and shall ascertain the amount of any such claim, and such creditor or creditors shall be considered in all respects as having proved their debts under the commission.

§ 59. That the lands and effects of any person becoming bankrupt, may be sold on such credit, and on such security, as a major part in value of the creditors may direct: *Provided,* nothing herein contained shall be allowed so to operate, as to retard the granting the bankrupt's certificate.

§ 60. That if any person becoming bankrupt shall be in prison, it shall be lawful for any creditor or creditors, at whose suit he or she shall be in execution, to discharge him or her from custody, or if such creditor or creditors shall refuse to do so, the prisoner may petition the commissioners to liberate him or her, and thereupon, if, in the opinion of the commissioners, the conduct of such bankrupt shall have been fair, so as to entitle him or her, in their opinion, to a certificate, when by law such certificate might be given, it shall be lawful for them to direct the dis-

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charge of such prisoner, and to enter the same in their books, which being notified to the keeper of the gaol in which such prisoner may be confined, shall be a sufficient authority for his or her discharge: *Provided,* That in either case, such discharge shall be no bar to another execution, if a certificate shall be refused to such bankrupt: *And provided also,* That is shall be no bar to a subsequent imprisonment of such bankrupt by order of the commissioners, in conformity with the provisions of this act.

§ 61. That this act shall not repeal or annul, or be construed to repeal or annul, the laws of any state now in force, or which may be hereafter enacted, for the relief of insolvent debtors, except so far as the same may respect persons who are, or may be, clearly within the purview of this act, and whose debts shall amount, in the cases specified in the second section thereof, to the sums therein mentioned. And if any person within the purview of this act, shall be imprisoned for the space of three months, for any debt, or upon any contract, unless the creditors of such prisoner shall proceed to prosecute a commission of bankruptcy against him or her, agreeably to the provisions of this act, such debtor may and shall be entitled to relief, under any such laws for the relief of insolvent debtors, this act notwithstanding.

§ 62. That nothing contained in this law shall, in any manner, affect the right of preference to prior satisfaction of debts due to the United States, as secured or provided by any law heretofore passed, nor shall be construed to lessen or impair any right to, or security for, money due to the United States, or to any of them.

§ 63. That nothing contained in this act shall be taken or construed to invalidate, or impair, any lien existing at the date of this act, upon the lands or chattels of any person who may become a bankrupt.

§ 64. That this act shall continue in force during the term of five years, and from thence to the end of the next session of congress thereafter, and no longer: *Provided,* That the expiration of this act shall not prevent the complete execution of any commission which may have been previously thereto issued. [*Approved, April* 4, 1800.]

AMENDMENT OF FEBRUARY 13th, 1801.

Sec. 12 of "An Act to provide for the more convenient organization of Courts of the United States." Approved, February 13th, 1801.

§ 12. That the said Circuit Courts, respectively, shall have cognizance, concurrently with the District Courts, of all cases, which shall arise, within their respective circuits, under the act to establish a uniform system of bankruptcy throughout the United States; and that each circuit judge, within his respective circuit, shall and may perform all and singular the duties enjoined by the said act, upon a judge of a

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District Court; and that the proceedings under a commission of bankruptcy, which shall issue from a circuit judge, shall, in all respects, be conformable to the proceedings under a commission of bankruptcy which shall issue from a district judge, *mutatis mutandis.*

AMENDMENT OF APRIL 29, 1802.

Cognizance of pending cases was transferred to the district judge by Sec. 11 of "An Act to Amend the judicial system of the United States."

§ 11. That in all cases in which proceedings shall, on the said first day of July next, be pending under a commission of bankruptcy, issued in pursuance of the aforesaid act, entitled "An act to provide for the more convenient organization of the courts of the United States," the cognizance of the same shall be, and hereby is, transferred to, and vested in, the district judge of the district within which such commission shall have issued, who is hereby empowered to proceed therein, in the same manner, and to the same effect, as if such commission of bankruptcy had been issued by his order.

AN ACT TO REPEAL BANKRUTCY ACT.

Chapter 6, par. 1. Approved Dec. 19th, 1803.

§ 1. *Be it enacted, &c.* That the act of congress, passed on the fourth day of April, one thousand eight hundred, entitled "An act to establish an uniform system of bankruptcy throughout the United States," shall be and the same is hereby, repealed: *Provided, nevertheless,* That the repeal of the said act shall, in nowise, affect the execution of any commission of bankruptcy which may have been issued prior to the passing of this act, but every such commission may and shall be proceeded on and fully executed, as though this act had not passed. [*Approved, December* 19, 1803.]

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BANKRUPTCY ACT OF AUGUST 19TH, 1841.

An act to establish a uniform system of bankruptcy throughout the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, established throughout the United States, a uniform system of bankruptcy, as follows: All persons whatsoever, residing in any State, District or Territory of the United States, owing debts, which shall not have been created in consequence of a defalcation as a public officer; or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity, who shall, by petition, setting forth to the best of his knowledge and belief, a list of his or their creditors, their respective places of residence, and the amount due to each, together with an accurate inventory of his or their property rights, and credits, of every name, kind, and description, and the location and situation of each and every parcel and portion thereof, verified by oath, or, if conscientiously scrupulous of taking an oath, by solemn affirmation apply to the proper court, as hereinafter mentioned, for the benefit of this act and therein declare themselves to be unable to meet their debts and engagements, shall be deemed bankrupts within the purview of this act, and may be so declared accordingly by decree of such court; all persons, being merchants, or using the trade of merchandise, all retailers of merchandise, and all bankers, factors, brokers, underwriters, or marine insurers, owing debts to the amount of not less than two thousand dollars, shall be liable to become bankrupts within the true intent and meaning of this act, and may, upon the petition of one or more of their creditors, to whom they owe debts amounting in the whole to not less than five hundred dollars, to the appropriate court, be so declared accordingly, in the following cases, to wit: whenever such person, being a merchant, or actually using the trade of merchandise, or being a retailer of merchandise, or being a banker, factor, broker, underwriter or marine insurer, shall depart from the State, District, or Territory, of which he is an inhabitant, with intent to defraud his creditors; or shall conceal himself to avoid being arrested; or shall willingly or fraudulently procure himself to be arrested, or his goods and chattels, lands, or tenements, to be attached, distrained, sequestered, or taken in execution; or shall remove his goods, chattels, and effects, or conceal them to prevent their being levied upon, or taken in execution, or by other process; or make any fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods or chattels, credits, or evidence of debt: *Provided, however,* That any person so declared a bankrupt, at the instance of a creditor, may, at his election, by petition to such court within ten

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days after its decree, be entitled to a trial by jury before such court, to ascertain the fact of such bankruptcy; or if such person shall reside at a great distance from the place of holding such court, the said judge, in his discretion, may direct such trial by jury to be had in the county of such person's residence, in such manner, and under such directions, as the said court may prescribe and give; and all such decrees passed by such court, and not so re-examined, shall be deemed final and conclusive as to the subject-matter thereof.

SEC. 2. *And be it further enacted,* That all future payments, securities, conveyances, or transfers of property, or agreements made or given by any bankrupt, in contemplation of bankruptcy, and for the purpose of giving any creditor, endorser, surety, or other person, any preference or priority over the general creditors of such bankrupts; and all other payments, securities, conveyances, or transfers of property, or agreements made or given by such bankrupt in contemplation of bankruptcy, to any person or persons whatever, not being a bona fide creditor or purchaser, for a valuable consideration, without notice, shall be deemed utterly void, and a fraud upon this act; and the assignee under the bankruptcy shall be entitled to claim, sue for, recover, and receive the same as part of the assets of the bankruptcy; and the person making such unlawful preferences and payments shall receive no discharge under the provisions of this act: *Provided,* That all dealings and transactions by and with any bankrupt, bona fide made and entered into more than two months before the petition filed against him, or by him, shall not be invalidated or affected by this act: *Provided,* That the other party to any such dealings or transactions had no notice of a prior act of bankruptcy, or of the intention of the bankrupt to take the benefit of this act. And in case it shall be made to appear to the court, in the course of the proceedings in bankruptcy, that the bankrupt, his application being voluntary, has, subsequent to the first day of January last, or at any other time, in contemplation of the passage of a bankrupt law, by assignments or otherwise, given or secured any preference to one creditor over another, he shall not receive a discharge unless the same be assented to by a majority in interest of those of his creditors who have not been so preferred: *And provided, also,* That nothing in this act contained shall be construed to annul, destroy, or impair any lawful rights of married women, or minors, or any liens, mortgages, or other securities on property, real or personal, which may be valid by the laws of the States respectively, and which are not inconsistent with the provisions of the second and fifth sections of this act.

SEC. 3. *And be it further enacted,* That all the property, and rights of property, of every name and nature, and whether real, personal, or mixed, of every bankrupt, except as is hereinafter provided, who shall

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by a decree of the proper court, be declared to be a bankrupt within this act, shall by mere operation of law, ipso facto, from the time of such decree, be deemed to be divested out of such bankrupt, without any other act, assignment, or other conveyance whatsoever; and the same shall be vested, by force of the same decree, in such assignee as from time to time shall be appointed by the proper court for this purpose, which power of appointment and removal such court may exercise at its discretion, toties quoties; and the assignee so appointed shall be vested with all the rights, titles, powers, and authorities to sell, manage, and dispose of the same, and to sue for and defend the same, subject to the orders and directions of such court, as fully, to all intents and purposes, as if the same were vested in, or might be exercised by, such bankrupt before or at the time of his bankruptcy declared as aforesaid; and all suits in law or in equity, then pending, in which such bankrupt is a party may be prosecuted and defended by such assignee to its final conclusion, in the same way, and with the same effect as they might have been by such bankrupt; and no suit commenced by or against any assignee shall be abated by his death or removal from office, but the same may be prosecuted or defended by his successor in the same office; *Provided, however,* That there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of three hundred dollars; and, also, the wearing apparel of such bankrupt, and that of his wife and children; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of said court.

SEC. 4. *And be it further enacted,* That every bankrupt, who shall bona fide surrender all his property, and rights of property, with the exception before mentioned, for the benefit of his creditors, and shall fully comply with and obey all the orders and directions which may from time to time be passed by the proper court, and shall otherwise conform to all the other requisitions of this act, shall (unless a majority in number and value of his creditors who have proved their debts, shall file their written dissent thereto) be entitled to a full discharge from all his debts, to be decreed and allowed by the court which has declared him a bankrupt, and a certificate thereof granted to him by such court accordingly, upon his petition filed for such purpose; such discharge and certificate not, however, to be granted until after ninety days from the decree of bankruptcy, nor until after seventy days' notice in some public newspaper, designated by such court, to all creditors who have proved their debts, and other persons in interest, to appear at a particu-

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lar time and place, to show cause why such discharge and certificate shall not be granted; at which time and place any such creditors, or other persons in interest, may appear and contest the right of the bankrupt thereto: *Provided,* That in all cases where the residence of the creditor is known, a service on him personally, or by letter addressed to him at his known usual place of residence, shall be prescribed by the court, as in their discretion shall seem proper, having regard to the distance at which the creditor resides from such court. And if any such bankrupt shall be guilty of any fraud or wilful concealment of his property or rights of property, or shall have preferred any of his creditors contrary to the provisions of this act, or shall wilfully omit or refuse to comply with any orders or directions of such court, or to conform to any other requisites of this act, or shall, in the proceedings under this act, admit a false or fictitious debt against his estate, he shall not be entitled to any such discharge or certificate; nor shall any person, being a merchant, banker, factor, broker, underwriter, or marine insurer, be entitled to any such discharge or certificate, who shall become bankrupt, and who shall not have kept proper books of account, after the passing of this act; nor any person who, after the passing of this act, shall apply trust funds to his own use: *Provided,* That no discharge of any bankrupt under this act shall release or discharge any person who may be liable for the same debt as a partner, joint contractor, endorser, surety, or otherwise, for or with the bankrupt. And such bankrupt shall at all times be subject to examination, orally, or upon written interrogatories, in and before such court, or any commission, appointed by the court therefor, on oath, or, if conscientiously scrupulous of taking an oath, upon his solemn affirmation, in all matters relating to such bankruptcy, and his acts and doings, and his property and rights of property, which in the judgment of such court, are necessary and proper for the purposes of justice; and if in any such examination, he shall wilfully and corruptly answer, or swear, or affirm, falsely, he shall be deemed guilty of perjury, and shall be punishable therefor in like manner as the crime of perjury is now punishable by the laws of the United States; and such discharge and certificate, when duly granted, shall, in all courts of justice, be deemed a full and complete discharge of all debts, contracts, and other engagements of such bankrupt, which are proveable under this act, and shall be and may be pleaded as a full and complete bar to all suits brought in any court of judicature whatever, and the same shall be conclusive evidence of itself in favor of such bankrupt, unless the same shall be impeached for some fraud or wilful concealment by him of his property or rights of property, as aforesaid, contrary to the provisions of this act, on prior reasonable notice specifying in writing such fraud or concealment; and if, in any case of bankruptcy, a majority, in number and value, of the creditors who shall have proved

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their debts at the time of hearing of the petition of the bankrupt for a discharge as hereinbefore provided, shall at such hearing file their written dissent to the allowance of a discharge and certificate to such bankrupt, or if, upon such hearing, a discharge shall not be decreed to him, the bankrupt may demand a trial by jury upon a proper issue to be directed by the court, at such time and place, and in such manner, as the court may order; or he may appeal from that decision, at any time within ten days thereafter, to the circuit court next to be held for the same district, by simply entering in the district court, or with the clerk thereof, upon record, his prayer for an appeal. The appeal shall be tried at the first term of the circuit court after it be taken, unless, for sufficient reason, a continuance be granted; and it may be heard and determined by said court summarily, or by a jury, at the option of the bankrupt; and the creditors may appear and object against a decree of discharge and the allowance of the certificate, as hereinbefore provided. And if, upon a full hearing of the parties, it shall appear to the satisfaction of the court, or the jury shall find that the bankrupt has made a full disclosure and surrender of all his estate, as by this act required, and has in all things conformed to the directions thereof, the court shall make a decree of discharge, and grant a certificate, as provided in this act.

SEC. 5. *And be it further enacted,* That all creditors coming in and proving their debts under such bankruptcy, in the manner hereinafter prescribed, the same being bona fide debts, shall be entitled to share in the bankrupt's property and effects, pro rata, without any priority or preference whatsoever, except only for debts due by such bankrupt to the United States, and for all debts due by him to persons who, by the laws of the United States, have a preference, in consequence of having paid moneys as his sureties, which shall be first paid out of the assets; and any person who shall have performed any labor as an operative in the service of any bankrupt shall be entitled to receive the full amount of the wages due to him for such labor, not exceeding twenty-five dollars: *Provided,* That such labor shall have been performed within six months next before the bankruptcy of his employer; and all creditors whose debts are not due and payable until a future day, all annuitants, holders of bottomry and respondentia bonds, holders of policies of insurances, sureties, endorsers, bail, or other persons, having uncertain or contingent demands against such bankrupt, shall be permitted to come in and prove such debts or claims under this act, and shall have a right, when their debts and claims become absolute, to have the same allowed them; and such annuitants and holders of debts payable in future may have the present value thereof ascertained, under the direction of such court, and allowed them accordingly, as debts in presenti; and no creditor or other person, coming in and proving his debt or other

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claim shall be allowed to maintain any suit at law or in equity therefor, but shall be deemed thereby to have waived all right of action and suit against such bankrupt; and all proceedings already commenced, and all unsatisfied judgments already obtained thereon, shall be deemed to be surrendered thereby; and in all cases where there are mutual debts or mutual credits between the parties, the balance only shall be deemed the true debt or claim between them, and the residue shall be deemed adjusted by the set-off; all such proof of debts shall be made before the court decreeing the bankruptcy, or before some commissioner appointed by the court for that purpose; but such court shall have full power to set aside and disallow any debt, upon proof that such debt is founded in fraud, imposition, illegality, or mistake; and corporations to whom any debts are due, may make proof thereof by their president, cashier, treasurer, or other officer, who may be specially appointed for that purpose; and in appointing commissioners to receive proof of debts, and perform other duties, under the provisions of this act, the said court shall appoint such persons as have their residence in the county in which the bankrupt lives.

SEC. 6. *And be it further enacted,* That the district court in every district shall have jurisdiction in all matters and proceedings in bankruptcy arising under this act, and any other act which may hereafter be passed on the subject of bankruptcy; the said jurisdiction to be exercised summarily, in the nature of summary proceedings in equity; and for this purpose the said district court shall be deemed always open. And the district judge may adjourn any point or question arising in any case in bankruptcy into the circuit court for the district, in his discretion, to be there heard and determined; and for this purpose the circuit court of such district shall also be deemed always open. And the jurisdiction hereby conferred on the district court shall extend to all cases and controversies in bankruptcy arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to all cases and controversies between such creditor or creditors and the assignee of the estate, whether in office or removed; to all cases and controversies between such assignee and the bankrupt, and to all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy. And the said courts shall have full authority and jurisdiction to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent the circuit courts may now do in any suit pending therein in equity. And it shall be the duty of the district court in each district, from time to time, to prescribe suitable rules and regulations, and forms of proceedings, in all matters of bankruptcy; which rules, regulations, and forms,

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shall be subject to be altered, added to, revised, or annulled, by the circuit court of the same district, and other rules and regulations, and forms, substituted therefor; and in all such rules, regulations and forms, it shall be the duty of the said courts to make them as simple and brief as practicable, to the end to avoid all unnecessary expenses, and to facilitate the use thereof by the public at large. And the said courts shall, from time to time, prescribe a tariff or table of fees and charges to be taxed by the officers of the court or other persons, for services under this act, or any other on the subject of bankruptcy; which fees shall be as low as practicable, with reference to the nature and character of such services.

SEC. 7. *And be it further enacted,* That all petitions by any bankrupt for the benefit of this act, and all petitions by a creditor against any bankrupt under this act, and all proceedings in the case to the close thereof, shall be had in the district court within and for the district in which the person supposed to be a bankrupt shall reside, or have his place of business at the time when such petition is filed, except where otherwise provided in this act. And upon every such petition, notice thereof shall be published in one or more public newspapers printed in such district, to be designated by such court at least twenty days before the hearing thereof; and all persons interested may appear at the time and place where the hearing is thus to be had, and show cause, if any they have, why the prayer of the said petitioner should not be granted; all evidence by witnesses to be used in all hearings before such court shall be under oath, or solemn affirmation, when the party is conscientiously scrupulous of taking an oath, and may be oral or by deposition, taken before such court, or before any commissioner appointed by such court, or before any disinterested State judge of the State in which the deposition is taken; and all proof of debts or other claims, by creditors entitled to prove the same by this act, shall be under oath or solemn affirmations as aforesaid, before such court or commissioner appointed thereby, or before some disinterested State judge of the State where the creditors live, in such form as may be prescribed by the rules and regulations hereinbefore authorized to be made and estabished by the courts having jurisdiction in bankruptcy. But all such proofs of debts and other claims shall be open to contestation in the proper court having jurisdiction over the proceedings in the particular case in bankruptcy; and as well the assignee as the creditor shall have a right to a trial by jury, upon an issue to be directed by such court, to ascertain the validity and amount of such debts or other claims; and the result therein, unless a new trial shall be granted, if in favor of the claims, shall be evidence of the validity and amount of such debts or other claims. And if any person or persons, shall falsely and corruptly answer, swear, or affirm, in any hearing or on trial of any matter, or in any proceeding in

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such court in bankruptcy, or before any commissioner, he and they shall be deemed guilty of perjury, and punishable therefor in the manner and to the extent provided by law for other cases.

SEC. 8. *And be it further enacted,* That the circuit court within and for the district where the decree of bankruptcy is passed, shall have concurrent jurisdiction with the district court of the same district of all suits at law and in equity which may and shall be brought by any assignee of the bankrupt against any person or persons claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferable to, or vested in, such assignee; and no suit at law or in equity shall, in any case, be maintainable by or against such assignee or by or against any person claiming an adverse interest touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years after the declaration and decree of bankruptcy, or after the cause of suit shall first have accrued.

SEC. 9. *And be it further enacted,* That all sales, transfers, and other conveyances of the assignee of the bankrupt's property and rights of property, shall be made at such times and in such manner as shall be ordered and appointed by the court in bankruptcy; and all assets received by the assignee in money, shall, within sixty days afterwards, be paid into the court, subject to its order respecting its future safe-keeping and disposition; and the court may require of such assignee a bond, with at least two sureties, in such sum as it may deem proper, conditioned for the due and faithful discharge of all his duties, and his compliance with the orders and directions of the court; which bond shall be taken in the name of the United States, and shall, if there be any breach thereof, be sued and sueable, under the order of such court, for the benefit of the creditors and other persons in interest.

SEC. 10. *And be it further enacted,* That in order to ensue a speedy settlement and close of the proceedings in each case in bankruptcy, it shall be the duty of the court to order and direct a collection of the assets, and a reduction of the same to money, and a distribution thereof at as early periods as practicable, consistently with a due regard to the interests of the creditors: and a dividend and distribution of such assets as shall be collected and reduced to money, or so much thereof as can be safely so disposed of, consistently with the rights and interests of third persons having adverse claims thereto, shall be made among the creditors who have proved their debts, as often as once in six months from the time of the decree declaring the bankruptcy; notice of such dividends and distribution to be given in some newspaper or newspapers in the district, designated by the court, ten days at least before the order therefor is passed; and the pendency of any suit at law or in equity, by

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or against such third persons, shall not postpone such division and distribution, except so far as the assets may be necessary to satisfy the same; and all the proceedings in bankruptcy in each case shall, if practicable, be finally adjusted, settled, and brought to a close, by the court, within two years after the decree declaring the bankruptcy. And where any creditor shall not have proved his debt until a dividend or distribution shall have been made and declared, he shall be entitled to be paid the same amount, pro rata, out of the remaining dividends or distributions thereafter made, as the other creditors have already received, before the latter shall be entitled to any portion thereof.

SEC. 11. *And be it further enacted,* That the assignee shall have full authority, by and under the order and direction of the proper court in bankruptcy, to redeem and discharge any mortgage or other pledge, or deposite, or lien upon any property, real or personal, whether payable in presenti or at a future day, and to tender a due performance of the conditions thereof. And such assignee shall also have authority, by and under the order and direction of the proper court in bankruptcy, to compound any debts, or other claims, or securities due or belonging to the estate of the bankrupt; but no such order or direction shall be made until notice of the application is given in some public newspaper in the district, to be designated by the court, ten days at least before the hearing, so that all creditors and other persons in interest may appear and show cause, if any they have, at the hearing, why the order or direction should not be passed.

SEC. 12. *And be it further enacted,* That if any person, who shall have been discharged under this act, shall afterward become bankrupt, he shall not again be entitled to a discharge under this act, unless his estate shall produce (after all charges) sufficient to pay every creditor seventy-five per cent. on the amount of the debt which shall have been allowed to each creditor.

SEC. 13. *And be it further enacted,* That the proceedings in all cases in bankruptcy shall be deemed matters of record; but the same shall not be required to be recorded at large, but shall be carefully filed, kept, and numbered, in the office of the court, and a docket only, or short memorandum thereof, with the numbers, kept in a book by the clerk of the court; and the clerk of the court, for affixing his name and the seal of the court to any form, or certifying a copy thereof, when required thereto, shall be entitled to receive, as compensation, the sum of twenty-five cents and no more. And no officer of the court, or commissioner, shall be allowed by the court more than one dollar for taking the proof of any debt or other claim of any creditor or other person against the estate of the bankrupt; but he may be allowed, in addition, his actual travel expenses for that purpose.

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SEC. 14. *And be it further enacted,* That where two or more persons, who are partners in trade, become insolvent, an order may be made in the manner provided in this act, either on the petition of such partners, or any one of them, or on the petition of any creditor of the partners; upon which order all the joint stock and property of the company, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are herein exempted; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; and the assignees shall also keep separate accounts of the joint stock or property of the company, and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignees the whole of the expenses and disbursements paid by them, the nett proceeds of the joint stock shall be appropriated to pay the creditors of the company, and the nett proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors; and if there shall be any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall be added to the joint stock, for the payment of the joint creditors; and if there shall be any balance of the joint stock, after payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners, according to their respective rights and interests therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts; and the certificate of discharge shall be granted or refused to each partner, as the same would or ought to be if the proceedings had been against him alone under this act; and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone.

SEC. 15. *And be it further enacted,* That a copy of any decree of bankruptcy, and the appointment of assignees, as directed by the third section of this act, shall be recited in every deed of lands belonging to the bankrupt, sold and conveyed by any assignees under and by virtue of this act; and that such recital, together with a certified copy of such order, shall be full and complete evidence both of the bankruptcy and assignment therein recited, and supersede the necessity of any other proof of such bankruptcy and assignment to validate the said deed; and all deeds containing such recital, and supported by such proof, shall be as effectual to pass the title of the bankrupt, of, in, and to the lands therein mentioned and described to the purchaser, as fully, to all intents and purposes, as if made by such bankrupt himself, immediately before such order.

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SEC. 16. *And be it further enacted,* That all jurisdiction, power, and authority, conferrred upon and vested in the district court of the United States by this act, in cases in bankruptcy, are hereby conferred upon and vested in the circuit court of the United States for the District of Columbia, and in and upon the supreme or superior courts of any of the Territories of the United States, in cases in bankruptcy, where the bankrupt resides in the said District of Columbia, or in either of the said Territories.

SEC. 17. *And be it further enacted,* That this act shall take effect from and after the first day of February next.

APPROVED, August 19, 1841.

ACT OF MARCH 3RD, 1843. REPEALING BANKRUPTCY STATUTE.

An Act to repeal the bankrupt act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved on the nineteenth day of August, eighteen hundred and forty-one, be, and the same hereby is, repealed: *Provided,* That this act shall not affect any case or proceeding in bankruptcy commenced before the passage of this act, or any pains, penalties, or forfeitures, incurred under the said act; but every such proceeding may be continued to its final consummation in like manner as if this act had not been passed.

APPROVED, March 3, 1843.

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BANKRUPTCY ACT OF MARCH 2ND, 1867.

AN ACT to establish a uniform system of bankruptcy throughout the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several district courts of the United States be, and they hereby are, constituted courts of bankruptcy, and they shall have original jurisdiction in their respective districts in all matters and proceedings in bankruptcy, and they are hereby authorized to hear and adjudicate upon the same according to the provisions of this act. The said courts shall be always open for the transaction of business under this act, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time, and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in court. And the jurisdiction hereby conferred shall extend to all cases and controversies arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to the collection of all the assets of the bankrupt; to the ascertainment and liquidation of the liens and other specific claims thereon; to the adjustment of the various priorities and conflicting interests of all parties; and to the marshaling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors; and to all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy. The said courts shall have full authority to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent that the circuit courts now have in any suit pending therein in equity. Said courts may sit for the transaction of business in bankruptcy at any place in the district, of which place, and the time of holding court, they shall have given notice, as well as at the places designated by law for holding such courts.

SEC. 2. *And be it further enacted,* That the several circuits courts of the United States within and for the districts where the proceedings in bankruptcy shall be pending shall have a general superintendence and jurisdiction of all cases and questions arising under this act; and, except when special provision is otherwise made, may, upon bill, petition, or other proper process, of any party aggrieved, hear and determine the case as a court of equity. The powers and jurisdiction hereby granted may be exercised either by said court, or by any justice thereof, in term time

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or vacation. Said circuit courts shall also have concurrent jurisdiction with the district courts of the same district, of all suits at law or in equity, which may or shall be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferable to or vested in such assignee; but no suit at law or in equity shall, in any case, be maintainable by or against such assignee, or by or against any person claiming an adverse interest, touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years from the time the cause of action accrued, for or against such assignee: *Provided,* That nothing herein contained shall revive a right of action barred at the time such assignee is appointed.

OF THE ADMINISTRATION OF THE LAW IN COURTS OF BANKRUPTCY.

SEC. 3. *And be it further enacted,* That it shall be the duty of the judges of the district courts of the United States within and for the several districts to appoint in each congressional district in said districts, upon the nomination and recommendation of the Chief Justice of the Supreme Court of the United States, one or more registers in bankruptcy, to assist the judge of the district court in the performance of his duties under this act. No person shall be eligible to such appointment unless he be a counsellor of said court, or of some one of the courts of record of the State in which he resides. Before entering upon the duties of his office, every person so appointed a register in bankruptcy shall give a bond to the United States, with condition that he will faithfully discharge the duties of his office, in a sum not less than one thousand dollars, to be fixed by said court, with sureties satisfactory to said court, or to either of the said justices thereof; and he shall, in open court, take and subscribe the oath prescribed in the act entitled, "An act to prescribe an oath of office, and for other purposes," approved July second, eighteen hundred and sixty-two; and also that he will not during his continuance in office be, directly or indirectly, interested in or benefited by the fees or emoluments arising from any suit or matter pending in bankruptcy in either the district or circuit court in his district.

SEC. 4. *And be it further enacted,* That every register in bankruptcy, so appointed and qualified, shall have power, and it shall be his duty, to make adjudication of bankruptcy, to receive the surrender of any bankrupt, to administer oaths in all proceedings before him, to hold and preside at meetings of creditors, to take proof of debts, to make all computations of dividends, and all orders of distribution, and to furnish the assignee with a certified copy of such orders, and of the schedules of creditors and assets filed in each case, to audit and pass accounts of assignees, to grant protection, to pass the last examination of any bank-

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rupt in cases whenever the assignee or a creditor do not oppose, and to sit in chambers and despatch there such part of the administrative business of the court and such uncontested matters as shall be defined in general rules and orders, or as the district judge shall in any particular matter direct; and he shall also make short memoranda of his proceedings in each case in which he shall act, in a docket to be kept by him for that purpose, and he shall forthwith, as the proceedings are taken, forward to the clerk of the district court a certified copy of said memoranda, which shall be entered by said clerk in the proper minute-book to be kept in his office, and any register of the court may act for any other register thereof: *Provided, however,* That nothing in this section contained shall empower a register to commit for contempt, or to hear a disputed adjudication, or any question of the allowance or suspension of an order of discharge; but in all matters where an issue of fact or of law is raised and contested by any party to the proceedings before him, it shall be his duty to cause the question or issue to be stated by the opposing parties in writing, and he shall adjourn the same into court for decision by the judge. No register shall be of counsel or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, nor in an appeal therefrom; nor shall he be executor, administrator, guardian, commissioner, appraiser, divider, or assignee, of or upon any estate within the jurisdiction of either of said courts of bankruptcy, nor be interested in the fees or emoluments arising from either of said trusts. The fees of said registers, as established by this act, and by the general rules and orders required to be framed under it, shall be paid to them by the parties for whom the services may be rendered in the course of proceedings authorized by this act.

SEC. 5. *And be it further enacted,* That the judge of the district court may direct a register to attend at any place within the district, for the purpose of hearing such voluntary applications under this act as may not be opposed, of attending any meeting of creditors, or receiving any proof of debts, and, generally, for the prosecution of any bankruptcy or other proceedings under this act; and the travelling and incidental expenses of such register, and of any clerk or other officer attending him, incurred in so acting, shall be settled by said court in accordance with the rules prescribed under the tenth section of this act, and paid out of the assets of the estate in respect of which such register has so acted; or, if there be no such assets, or if the assets shall be insufficient, then such expenses shall form a part of the costs in the case or cases in which the register shall have acted in such journey, to be apportioned by the judge; and such register, so acting, shall have and exercise all powers, except the power of commitment, vested in the district court for the summoning and examination of persons or witnesses, and for requiring the produc-

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tion of books, papers, and documents: *Provided always,* That all depositions of persons and witnesses taken before said register, and all acts done by him, shall be reduced to writing and be signed by him, and shall be filed in the clerk's office as part of the proceedings. Such register shall be subject to removal by the judge of the [circuit] district court, and all vacancies occurring by such removal, or by resignation, change of residence, death, or disability, shall be promptly filled by other fit persons, unless said court shall deem the continuance of the particular office unnecessary.

SEC. 6. *And be it further enacted,* That any party shall, during the proceedings before a register, be at liberty to take the opinion of the district judge upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the register in the shape of a short certificate to the judge, who shall sign the same if he approve thereof; and such certificate, so signed, shall be binding on all the parties to the proceedings; but every such certificate may be discharged or varied by the judge at chambers or in open court. In any bankruptcy, or in any other proceedings within the jurisdiction of the court under this act, the parties concerned, or submitting to such jurisdiction, may at any stage of the proceedings, by consent, state any question or questions in a special case for the opinion of the court; and the judgment of the court shall be final, unless it be agreed and stated in such special case that either party may appeal, if, in such case, an appeal is allowed by this act. The parties may also, if they think fit, agree, that upon the question or questions raised by such special case being finally decided, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, or any property, or the amount of any disputed debt or claim, shall be paid, delivered, or transferred by one of such parties to the other of them, either with or without costs.

SEC. 7. *And be it further enacted,* That parties and witnesses summoned before a register shall be bound to attend in pursuance of such summons at the place and time designated therein, and shall be entitled to protection, and be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendence under any writ of subpœna; and all persons wilfully and corruptly swearing or affirming falsely before a register shall be liable to all the penalties, punishments, and consequences of perjury. If any person examined before a register shall refuse or decline to answer, or to swear to or sign his examination when taken, the register shall refer the matter to the judge, who shall have power to order the person so acting to pay the costs thereby occasioned, if such person be compellable by law to answer such question, or to sign such examination, and such person shall also be liable to be punished for contempt.

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OF APPEALS AND PRACTICE.

SEC. 8. *And be it further enacted,* That appeals may be taken from the district to the circuit courts in all cases in equity, and writs of error may be allowed to said circuit courts from said district courts in cases at law under the jurisdiction created by this act when the debt or damages claimed amount to more than five hundred dollars; and any supposed creditor, whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim, may appeal from the decision of the district court to the circuit court for the same district; but no appeal shall be allowed in any case from the district to the circuit court unless it is claimed, and notice given thereof to the clerk of the district court, to be entered with the record of the proceedings, and also to the assignee or creditor, as the case may be, or to the defeated party in equity, within ten days after the entry of the decree or decision appealed from. The appeal shall be entered at the term of the circuit court which shall be first held within and for the district next after the expiration of ten days from the time of claiming the same. But if the appellant in writing waives his appeal before any decision thereon, proceedings may be had in the district court as if no appeal had been taken, and no appeal shall be allowed unless the appellant at the time of claiming the same shall give bond in manner now required by law in cases of such appeals. No writ of error shall be allowed unless the party claiming it shall comply with the statutes regulating the granting of such writs.

SEC. 9. *And be it further enacted,* That in cases arising under this act no appeal or writ of error shall be allowed in any case from the circuit courts to the Supreme Court of the United States, unless the matter in dispute in such case shall exceed two thousand dollars.

SEC. 10. *And be it further enacted,* That the justices of the Supreme Court of the United States subject to the provisions of this act shall frame general orders for the following purposes:

For regulating the practice and procedure of the district courts in bankruptcy, and the several forms of petitions, orders, and other proceedings to be used in said courts in all matters under this act;

For regulating the duties of the various officers of said courts;

For regulating the fees payable, and the charges and costs to be allowed, except such as are established by this act or by law, with respect to all proceedings in bankruptcy before said courts, not exceeding the rate of fees now allowed by law for similar services in other proceedings;

For regulating the practice and procedure upon appeals;

For regulating the filing, custody, and inspection of records;

And generally for carrying the provisions of this act into effect.

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After such general orders shall have been so framed, they, or any of them, may be rescinded or varied, and other general orders may be framed in manner aforesaid, and all such general orders so framed shall, from time to time, be reported to Congress, with such suggestions as said justices may think proper.

VOLUNTARY BANKRUPTCY—COMMENCEMENT OF PROCEEDINGS.

SEC. 11. *And be it further enacted,* That if any person residing within the jurisdiction of the United States, owing debts provable under this act exceeding the amount of three hundred dollars, shall apply by petition, addressed to the judge of the judicial district in which such debtor has resided or carried on business for the six months next immediately preceding the time of filing such petition, or for the longest period during such six months, setting forth his place of residence, his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors, and his desire to obtain the benefit of this act, and shall annex to his petition a schedule, verified by oath before the court, or before a register in bankruptcy, or before one of the commissioners of the circuit court of the United States, containing a full and true statement of all his debts, and, as far as possible, to whom due, with the place of residence of each creditor, if known to the debtor, and if not known the fact to be so stated, and the sum due to each creditor, also the nature of each debt or demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued, and a statement of any existing mortgage, pledge, lien, judgment, or collateral or other security given for the payment of the same; and shall also annex to his petition an accurate inventory, verified in like manner, of all his estate, both real and personal, assignable under this act, describing the same, and stating where it is situated, and whether there are any, and if so, what incumbrances thereon, the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt: *Provided,* That all citizens of the United States petitioning to be declared bankrupt shall, on filing such petition and before any proceedings thereon, take and subscribe an oath of allegiance and fidelity to the United States, which oath shall be filed and recorded with the proceedings in bankruptcy. And the judge of the district court, or, if there be no opposing party, any register of said court, to be designated by the judge, shall forthwith, if he be satisfied that the debts due from the petitioner exceed three hundred dollars, issue a warrant, to be signed by such judge or register, directed to the marshal of said district, authorizing him forthwith, as messenger, to publish notices in such newspapers as the warrant specifies; to serve written or printed notice, by mail or personally, on all creditors upon the

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schedule filed with the debtor's petition, or whose names may be given to him, in addition, by the debtor, and to give such personal or other notice to any persons concerned as the warrant specifies, which notice shall state—

First. That a warrant in bankruptcy has been issued against the estate of the debtor.

Second. That the payment of any debts and the delivery of any property belonging to such debtor to him or for his use, and the transfer of any property by him, are forbidden by law.

Third. That a meeting of the creditors of the debtor, giving the names, residences, and amounts, so far as known, to prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy, to be holden at a time and place designated in the warrant, not less than ten nor more than ninety days after the issuing of the same.

OF ASSIGNMENTS AND ASSIGNEES,

SEC. 12. *And be it further enacted,* That at the meeting, held in pursuance of the notice, one of the registers of the court shall preside, and the messenger shall make return of the warrant and of his doings thereon; and if it appears that the notice to the creditors has not been as required in the warrant, the meeting shall forthwith be adjourned, and a new notice given as required. If the debtor dies after the issuing the warrant, the proceedings may be continued and concluded in like manner as if he had lived.

SEC. 13. *And be it further enacted,* That the creditors shall, at the first meeting held after due notice from the messenger, in presence of a register designated by the court, choose one or more assignees of the estate of the debtor; the choice to be made by the greater part in value and in number of the creditors who have proved their debts. If no choice is made by the creditors at said meeting, the judge, or, if there be no opposing interest, the register, shall appoint one or more assignees. If an assignee, so chosen or appointed, fails within five days to express in writing his acceptance of the trust, the judge or register may fill the vacancy. All elections or appointments of assignees shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient, he may appoint additional assignees, or order a new election. The judge at any time may, and, upon the request in writing of any creditor who has proved his claim, shall, require the assignee to give good and sufficient bond to the United States, with a condition for the faithful performance and discharge of his duties; the bond shall be approved by the judge or register by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the name and for the

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benefit of any injured party. If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days after notice to him of such order, the judge shall remove him and appoint another in his place.

SEC. 14. *And be it further enacted,* That as soon as said assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of said proceedings in bankruptcy, and thereupon, by operation of law, the title to all such property and estate, both real and personal, shall vest in said assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment made within four months next preceding the commencement of said proceedings *Provided, however,* That there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of five hundred dollars; and also the wearing apparel of such bankrupt, and that of his wife and children, and the uniform, arms, and equipments of any person who is or has been a soldier in the milita or in the service of the United States; and such other property as now is, or hereafter shall be, exempted from attachment, or seizure, or levy on execution by the laws of the United States, and such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process or order of any court by the laws of the State in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such State exemption laws in force in the year eighteen hundred and sixty-four, *Provided,* That the foregoing exception shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignees, and in no case shall the property hereby excepted pass to the assignees, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this act; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of the said court: *And provided further,* That no mortgage of any vessel or of any other goods or chattels, made as security for any debt or debts, in good faith and for present considerations, and otherwise valid, and duly recorded, pursuant to any statute of the United States, or of any State, shall be invalidated or affected hereby; and all the property conveyed by the bankrupt in fraud of his creditors; all rights in equity, choses in action, patents and patent rights and copy-

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rights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which the bankrupt had against any person arising from contract or from the unlawful taking or detention of or injury to the property of the bankrupt; and all his rights of redeeming such property or estate, with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same, as the bankrupt might or could have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee; and he may sue for and recover the said estate, debts, and effects, and may prosecute and defend all suits at law or in equity, pending at the time of the adjudication of bankruptcy, in which such bankrupt is a party in his own name, in the same manner and with the like effect as they might have been presented or defended by such bankrupt; and a copy, duly certified by the clerk of the court under the seal thereof, of the assignment made by the judge or register, as the case may be, to him as assignee, shall be conclusive evidence of his title as such assignee to take, hold, sue for, and recover the property of the bankrupt, as hereinbefore mentioned; but no property held by the bankrupt in trust shall pass by such assignment. No person shall be entitled to maintain an action against an assignee in bankruptcy for anything done by him as such assignee, without previously giving him twenty days' notice of such action specifying the cause thereof, to the end that such assignee may have an opportunity of tendering amends, should he see fit to do so. No person shall be entitled, as against the assignee, to withhold from him possession of any books of account of the bankrupt, or claim any lien thereon; and no suit in which the assignee is a party shall be abated by his death or removal from office, but the same may be prosecuted and defended by his successor, or by the surviving or remaining assignee, as the case may be. The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, or pledge or deposit, or lien upon any property, real or personal, whenever payable, and to tender due performance of the condition thereof, or to sell the same subject to such mortgage, lien or other incumbrances. The debtor shall also, at the request of the assignee, and at the expense of the estate, make and execute any instruments, deeds, and writings which may be proper, to enable the assignee to possess himself fully of all the assets of the bankrupt. The assignee shall immediately give notice of his appointment by publication at least once a week for three successive weeks, in such newspapers as shall, for that purpose, be designated by the court, due regard being had to their general circulation in the district, or in that portion of the district in which the bankrupt and his creditors shall reside, and shall, within six months,

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cause the assignment to him to be recorded in every registry of deeds or other office within the United States where a conveyance of any lands owned by the bankrupt ought by law to be recorded; and the record of such assignment, or a duly certified copy thereof, shall be evidence thereof in all courts.

SEC. 15. *And be it further enacted,* That the assignee shall demand and receive from any and all persons holding the same all the estate assigned, or intended to be assigned, under the provisions of this act; and he shall sell all such unincumbered estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested, and for cause shown, the court may make such order concerning the time, place, and manner of sale, as will, in his opinion, prove to the interest of the creditors; and the assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall, at reasonable times, have free resort.

SEC. 16. *And be it further enacted,* That the assignee shall have the like remedy to recover all said estate, debts, and effects, in his own name, as the debtor might have had if the decree in bankruptcy had not been rendered and no assignment had been made. If, at the time of the commencement of proceedings in bankruptcy, an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect, as if it had been originally commenced by him. No suit pending in the name of the assignee shall be abated by his death or removal; but upon the motion of the surviving, or remaining, or new assignee, as the case may be, he shall be admitted to prosecute the suit, in like manner and with like effect as if it had been originally commenced by him. In suits prosecuted by the assignee, a certified copy of the assignment made to him by the judge or register shall be conclusive evidence of his authority to sue.

SEC. 17. *And be it further enacted,* That the assignee shall, as soon as may be after receiving any money belonging to the estate, deposit the same in some bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall, as far as practicable, keep all goods and effects belonging to the estate separate and apart from all other goods in his possession, or designated by appropriate marks, so that they may be easily and clearly distinguished, and may not be exposed or liable to be taken as his property or for the payment of his debts. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the

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temporary investment of the money belonging to such estate in securities to be approved by the judge or a register of said court, or may authorize the same to be deposited in any convenient bank, upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon. He shall give written notice to all known creditors, by mail or otherwise, of all dividends, and such notice of meetings, after the first, as may be ordered by the court. He shall be allowed, and may retain, out of money in his hands, all the necessary disbursements made by him in the discharge of his duty, and a reasonable compensation for his services, in the discretion of the court. He may, under the direction of the court, submit any controversy arising in the settlement of demands against the estate, or of debts due to it, to the determination of arbitrators, to be chosen by him and the other party to the controversy, and may, under such direction, compound and settle any such controversy by agreement with the other party, as he thinks proper and most for the interest of the creditors.

SEC. 18. *And be it further enacted,* That the court, after due notice and hearing, may remove an assignee for any cause which, in the judgment of the court, renders such removal necessary or expedient. At a meeting called by order of the court in its discretion for the purpose, or which shall be called upon the application of a majority of the creditors in number and value, the creditors may, with consent of the court, remove any assignee by such a vote as is hereinbefore provided for the choice of assignee. An assignee may, with the consent of the judge, resign his trust and be discharged therefrom. Vacancies caused by death or otherwise in the office of assignee may be filled by appointment of the court, or, at its discretion, by an election by the creditors, in the manner hereinbefore provided, at a regular meeting, or at a meeting called for the purpose, with such notice thereof in writing to all known creditors, and by such person, as the court shall direct. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors, nor shall it affect the liability of the principal or surety on the bond given by the assignee. When, by death or otherwise, the number of assignees is reduced, the estate of the debtor not lawfully disposed of, shall vest in the remaining assignee or assignees, and the persons selected to fill vacancies, if any, with the same powers and duties relative thereto as if they were originally chosen. Any former assignee, his executors, or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts requisite to enable him to recover and receive all the estate. And the court may make all orders which it may deem expedient to secure the proper fulfilment of the duties of any former assignee, and

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the rights and interests of all persons interested in the estate. No person who has received any preference contrary to the provisions of this act shall vote for or be eligible as assignee; but no title to property, real or personal, sold, transferred, or conveyed by an assignee, shall be affected or impaired by reason of his ineligibility. An assignee refusing or unreasonably neglecting to execute an instrument when lawfully required by the court, or disobeying a lawful order or decree of the court in the premises, may be punished as for a contempt of court.

OF DEBTS AND PROOF OF CLAIMS.

SEC. 19. *And be it further enacted,* That all debts due and payable from the bankrupt at the time of the adjudication of bankruptcy, and all debts then existing, but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of contract, may be proved against the estate of the bankrupt. All demands against the bankrupt for or on account of any goods or chattels wrongfully taken, converted, or withheld by him, may be proved and allowed as debts to the amount of the value of the property so taken or withheld, with interest. If the bankrupt shall be bound as drawer, indorser, surety, bail, or guarantor upon any bill, bond, note, or any other specialty or contract, or for any debt of another person, and his liability shall not have become absolute until after the adjudication of bankruptcy, the creditor may prove the same after such liability shall have become fixed, and before the final dividend shall have been declared. In all cases of contingent debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends, if the contingency shall happen before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise for the bankrupt, who shall have paid the debt or any part thereof in discharge of the whole, shall be entitled to prove such debt, or to stand in the place of the creditor if he shall have proved the same, although such payments shall have been made after the proceedings in bankruptcy were commenced. And any person so liable for the bankrupt, and who has not paid the whole of said debt, but is still liable for the same or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the rules, and subject to such regulations and limitations as may be established by such rules. Where the bankrupt is liable to pay rent, or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part

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thereof up to the time of the bankruptcy, as if the same grew due from day to day, and not at such fixed and stated periods. If any bankrupt shall be liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted or withheld, the court may cause such damages to be assessed in such mode as it may deem best, and the sum so assessed may be proved against the estate. No debts other than those above specified shall be proved or allowed against the estate.

SEC. 20. *And be it further enacted,* That, in all cases of mutual debts or mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed or paid, but no set-off shall be allowed of a claim in its nature not provable against the estate: *Provided,* That no set-off shall be allowed in favor of any debtor to the bankrupt of a claim purchased by or transferred to him after the filing of the petition. When a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt owing to him from the bankrupt, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such property, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the court shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the bankrupt's right of redemption therein on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not so sold or released and delivered up, the creditor shall not be allowed to prove any part of his debt.

SEC. 21. *And be it further enacted,* That no creditor proving his debt or claim shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action and suit against the bankrupt, and all proceedings already commenced, or unsatisfied judgments already obtained thereon, shall be deemed to be discharged and surrendered thereby; and no creditor whose debt is provable under this act shall be allowed to prosecute to final judgment any suit at law or in equity therefor against the bankrupt, until the question of the debtor's discharge shall have been determined; and any such suit or proceedings shall, upon the application of the bankrupt, be stayed to await the determination of the court in bankruptcy on the question of the discharge, provided there be no unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge,

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and provided, also, that if the amount due the creditor is in dispute, the suit, by leave of the court in bankruptcy, may proceed to judgment, for the purpose of ascertaining the amount due, which amount may be proved in bankruptcy, but execution shall be stayed as aforesaid. If any bankrupt shall, at the time of adjudication, be liable upon any bill of exchange, promissory note, or other obligation in respect of distinct contracts as a member of two or more firms carrying on separate and distinct trades, and having distinct estates to be wound up in bankruptcy, or as a sole trader and also as a member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividend in respect of such distinct contracts against the estates respectively liable upon such contracts.

SEC. 22. *And be it further enacted,* That all proofs of debts against the estate of the bankrupt, by or in behalf of creditors residing within the judicial districts where the proceedings in bankruptcy are pending, shall be made before one of the registers of the court in said district, and by or in behalf of non-resident debtors before any register in bankruptcy in the judicial district where such creditors, or either of them, reside, or before any commissioner of the circuit court authorized to administer oaths in any district. To entitle a claimant against the estate of a bankrupt to have his demand allowed, it must be verified by a deposition in writing on oath or solemn affirmation before the proper register or commissioner, setting forth the demand, the consideration thereof, whether any and what securities are held therefor, and whether any and what payments have been made thereon; that the sum claimed is justly due from the bankrupt to the claimant; that the claimant has not, nor has any other person for his use, received any security or satisfaction whatever other than that by him set forth; that the claim was not procured for the purpose of influencing the proceedings under this act, and that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of such creditor, to sell, transfer, or dispose of the said claim, or any part thereof, against such bankrupt, or take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of such creditor for assignee, or any action on the part of such creditor or any other person in the proceedings under this act, is or shall be in any way affected, influenced, or controlled, and no claim shall be allowed unless all the statements set forth in such deposition shall appear to be true. Such oath or solemn affirmation shall be made by the claimant testifying of his own knowledge, unless he is absent from the United States or prevented by some other good cause from testifying, in which cases the demand may be verified in like manner by the attorney or authorized agent of the claimant testifying to the best of his knowledge, information, and belief, and setting forth his means

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of knowledge, or, if in a foreign country, the oath of the creditor may be taken before any minister, consul, or vice-consul of the United States; and the court may, if it shall see fit, require or receive further pertinent evidence, either for or against the admission of the claim. Corporations may verify their claim by the oath or solemn affirmation of their president, cashier, or treasurer. If the proof is satisfactory to the register or commissioner, it shall be signed by the deponent, and delivered or sent by mail to the assignee, who shall examine the same and compare it with the books and accounts of the bankrupt, and shall register, in a book to be kept by him for that purpose, the names of creditors who have proved their claims, in the order in which such proof is received, stating the time of receipt of such proof, and the amount and nature of the debts, which books shall be open to the inspection of all the creditors. The court may, on the application of the assignee, or of any creditor, or of the bankrupt, or without any application, examine upon oath the bankrupt, or any person tendering or who has made proof of claims, and may summon any person capable of giving evidence concerning such proof, or concerning the debt sought to be proved, and shall reject all claims not duly proved, or where the proof shows the claim to be founded in fraud, illegality, or mistake.

SEC. 23. *And be it further enacted,* That when a claim is presented for proof before the election of the assignee, and the judge entertains doubts of its validity, or of the right of the creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim until the assignee is chosen. Any person who, after the approval of this act, shall have accepted any preference, having reasonable cause to believe that the same was made or given by the debtor, contrary to any provision of this act, shall not prove the debt or claim on account of which the preference was made or given, nor shall he receive any dividend therefrom, until he shall first have surrendered to the assignee all property, money, benefit, or advantage, received by him under such preference. The court shall allow all debts duly proved, and shall cause a list thereof to be made and certified by one of the registers; and any creditor may act at all meetings by his duly constituted attorney the same as though personally present.

SEC. 24. *And be it further enacted,* That a supposed creditor who takes an appeal to the circuit court from the decision of the district court rejecting his claim, in whole or in part, shall, upon entering his appeal in the circuit court, file in the clerk's office thereof a statement in writing of his claim, setting forth the same, substantially, as in a declaration for the same cause of action at law and the assignee shall plead or answer thereto in like manner, and like proceedings shall thereupon be had in

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the pleadings, trial, and determination of the cause, as in an action at law commenced and prosecuted, in the usual manner, in the courts of the United States, except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor. The final judgment of the court shall be conclusive, and the list of debts shall, if necessary, be altered to conform thereto. The party prevailing in the suit shall be entitled to costs against the adverse party, to be taxed and recovered as in suits at law; if recovered against the assignee, they shall be allowed out of the estate. A bill of exchange, promissory note, or other instrument, used in evidence upon the proof of a claim, and left in court, or deposited in the clerk's office, may be delivered, by the register or clerk having the custody thereof, to the person who used it, upon his filing a copy thereof, attested by the clerk of the court, who shall indorse upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon.

OF PROPERTY PERISHABLE AND IN DISPUTE.

SEC. 25. *And be it further enacted,* That when it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or liable to deteriorate in value, the court may order the same to be sold, in such manner as may be deemed most expedient, under the direction of the messenger or assignee, as the case may be, who shall hold the funds received in place of the estate disposed of; and whenever it appears to the satisfaction of the court that the title to any portion of an estate, real or personal, which has come into possession of the assignee, or which is claimed by him, is in dispute, the court may, upon the petition of the assignee, and after such notice to the claimant, his agent or attorney, as the court shall deem reasonable, order it to be sold, under the direction of the assignee, who shall hold the funds received in place of the estate disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties in any courts. But this provision shall not prevent the recovery of the property from the possession of the assignee by any proper action commenced at any time before the court orders the sale.

EXAMINATION OF BANKRUPTS.

SEC. 26. *And be it further enacted,* That the court may, on the application of the assignee in bankruptcy, or of any creditor, or without any application, at all times require the bankrupt, upon reasonable notice, to attend and submit to an examination, on oath, upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, and his accounts concerning the same, to all debts due to or claimed from him, and to all other matters concerning his property and estate and the due settlement thereof according to law, which ex-

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amination shall be in writing, and shall be signed by the bankrupt and filed with the other proceedings; and the court may, in like manner, require the attendance of any other person as a witness, and if such person shall fail to attend, on being summoned thereto, the court may compel his attendance by warrant directed to the marshal, commanding him to arrest such person and bring him forthwith before the court, or before a register in bankruptcy, for examination as such witness. If the bankrupt is imprisoned, absent, or disabled from attendance, the court may order him to be produced by the jailer, or any officer in whose custody he may be, or may direct the examination to be had, taken, and certified, at such time and place and in such manner as the court may deem proper, and with like effect as if such examination had been had in court. The bankrupt shall, at all times, until his discharge, be subject to the order of the court, and shall, at the expense of the estate, execute all proper writings and instruments, and do and perform all acts required by the court touching the assigned property or estate, and to enable the assignee to demand, recover, and receive all the property and estate assigned, wherever situated; and for neglect or refusal to obey any order of the court, such bankrupt may be committed and punished as for a contempt of court, if the bankrupt is without the district, and unable to return and personally attend at any of the times or do any of the acts which may be specified or required pursuant to this section, and if it appears that such absence was not caused by wilful default, and if, as soon as may be after the removal of such impediment, he offers to attend and submit to the order of the court in all respects, he shall be permitted so to do, with like effect as if he had not been in default. He shall also be at liberty, from time to time, upon oath, to amend and correct his schedule of creditors and property, so that the same shall conform to the facts. For good cause shown the wife of any bankrupt may be required to attend before the court, to the end that she may be examined as a witness; and if such wife do not attend at the time and place specified in the order, the bankrupt shall not be entitled to a discharge unless he shall prove to the satisfaction of the court that he was unable to procure the attendance of his wife. No bankrupt shall be liable to arrest during the pendency of the proceedings in bankruptcy in any civil action, unless the same is founded on some debt or claim from which his discharge in bankruptcy would not release him.

OF THE DISTRIBUTION OF THE BANKRUPT'S ESTATE.

SEC. 27. *And be it further enacted,* That all creditors whose debts are duly proved and allowed shall be entitled to share in the bankrupt's property and estate pro rata. without any priority or preference whatever, except that wages due from him to any operative, or clerk, or house servant, to an amount not exceeding fifty dollars for labor performed within

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six months next preceding the adjudication of bankruptcy, shall be entitled to priority, and shall be first paid in full: *Provided,* That any debt proved by any person liable as bail, surety, guarantor, or otherwise, for the bankrupt shall not be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held for the benefit of the party entitled thereto, as the court may direct. At the expiration of three months from the date of the adjudication of bankruptcy in any case, or as much earlier as the court may direct, the court, upon request of the assignee, shall call a general meeting of the creditors, of which due notice shall be given, and the assignee shall then report, and exhibit to the court and to the creditors just and true accounts of all his receipts and payments, verified by his oath, and he shall also produce and file vouchers for all payments for which vouchers shall be required by any rule of the court; he shall also submit the schedule of the bankrupt's creditors and property as amended, duly verified by the bankrupt, and a statement of the whole estate of the bankrupt as then ascertained, of the property recovered and of the property outstanding, specifying the cause of its being outstanding, also what debts or claims are yet undetermined, and stating what sum remains in his hands. At such meeting the majority in value of the creditors present shall determine whether any and what part of the net proceeds of the estate, after deducting and retaining a sum sufficient to provide for all undetermined claims which, by reason of the distant residence of the creditor,. or for other sufficient reason, have not been proved, and for other expenses and contingencies, shall be divided among the creditors; but unless at least one-half in value of the creditors shall attend such meeting, either in person or by attorney, it shall be the duty of the assignee so to determine. In case a dividend is ordered the register shall, within ten days after such meeting, prepare a list of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved his claim the dividend to which he is entitled out of the net proceeds of the estate set apart for dividend, and shall forward by mail to every creditor a statement of the dividend to which he is entitled, and such creditor shall be paid by the assignee in such manner as the court may direct.

SEC. 28. *And be it further enacted,* That the like proceedings, shall be had at the expiration of the next three months, or earlier, if practicable, and a third meeting of creditors shall then be called by the court, and a final dividend then declared, unless any action at law or suit in equity be pending, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee, in which case the assignee shall, as soon as may be, convert such estate or effects into money, and within two months after the same shall be so converted the same shall

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be divided in manner aforesaid. Further dividends shall be made in like manner as often as occasion requires; and after the third meeting of creditors no further meeting shall be called unless ordered by the court. If at any time there shall be in the hands of the assignee any outstanding debts or other property, due or belonging to the estate which cannot be collected and received by the assignee without unreasonable or inconvenient delay or expense, the assignee may, under the direction of the court, sell and assign such debts or other property in such manner as the court shall order. No dividend already declared shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors before any further payment is made to the latter. Preparatory to the final dividend, the assignee shall submit his account to the court and file the same, and give notice to the creditors of such filing, and shall also give notice that he will apply for a settlement of his account, and for a discharge from all liability as assignee, at a time to be specified in such notice; and at such time the court shall audit and pass the accounts of the assignee, and such assignee shall, if required by the court, be examined as to the truth of such account, and if found correct he shall thereby be discharged from all liability as assignee to any creditor of the bankrupt. The court shall thereupon order a dividend of the estate and effects, or of such part thereof as it sees fit, among such of the creditors as have proved their claims, in proportion to the respective amount of their said debts. In addition to all expenses necessarily incurred by him in the execution of his trust, in any case, the assignee shall be entitled to an allowance for his services in such case, on all moneys received and paid out by him therein, for any sum not exceeding one thousand dollars, five per centum thereon; for any larger sum, not exceeding five thousand dollars, two and a half per centum on the excess over one thousand dollars; and for any larger sum one per centum on the excess over five thousand dollars; and if, at any time, there shall not be in his hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him. If, by accident, mistake, or other cause, without fault of the assignee, either or both of the said second and third meetings should not be held within the times limited, the court may, upon motion of an interested party, order such meetings, with like effect as to the validity of the proceedings, as if the meeting had been duly held. In the order for a dividend, under this section, the following claims shall be entitled to priority or preference, and to be first paid in full in the following order:

First. The fees, costs and expenses of suits, and the several proceed-

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ings in bankruptcy under this act, and for the custody of property, as herein provided.

Second. All debts due to the United States, and all taxes and assessments under the laws thereof.

Third. All debts due to the State in which the proceedings in bankruptcy are pending, and all taxes and assessments made under the laws of such State.

Fourth. Wages due to any operative, clerk, or house servant, to an amount not exceeding fifty dollars for labor performed within six months next preceding the first publication of the notice of proceedings in bankruptcy.

Fitfh. All debts due to any persons who, by the laws of the United States, are or may be entitled to a priority or preference, in like manner as if this act had not been passed: *Always provided,* That nothing contained in this act shall interfere with the assessment and collection of taxes by the authority of the United States or any State.

OF THE BANKRUPT'S DISCHARGE AND ITS EFFECT.

SEC. 29. *And be it further enacted,* That at any time after the expiration of six months from the adjudication of bankruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, and within one year from the adjudication of bankruptcy, the bankrupt may apply to the court for a discharge from his debts, and the court shall thereupon order notice to be given by mail to all creditors who have proved their debts, and by publication at least once a week in such newspapers as the court shall designate, due regard being had to the general circulation of the same in the district, or in that portion of the district in which the bankrupt and his creditors shall reside, to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the bankrupt. No discharge shall be granted, or, if granted, be valid, if the bankrupt has wilfully sworn falsely in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in bankruptcy, in relation to any material fact concerning his estate or his debts, or to any other material fact; or if he has concealed any part of his estate or effects, or any books or writings relating thereto, or if he has been guilty of any fraud or negligence in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this act, or if he has caused, permitted, or suffered any loss, waste, or destruction thereof; or if, within four months before the commencement of such proceedings, he has procured his lands, goods, money,

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or chattels to be attached, sequestered, or seized on execution; or if, since the passage of this act, he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors; or has removed or caused to be removed any part of his property from the district, with intent to defraud his creditors; or if he has given any fraudulent preference contrary to the provisions of this act, or made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or has lost any part thereof in gaming, or has admitted a false or fictitious debt against his estate; or if, having knowledge that any person has proved such false or fictitious debt, he has not disclosed the same to his assignee within one month after such knowledge; or if, being a merchant or tradesman, he has not, subsequently to the passage of this act, kept proper books of account; or if he, or any person in his behalf, has procured the assent of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings, by any pecuniary consideration or obligation; or if he has, in contemplation of becoming bankrupt, made any pledge, payment, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this act in satisfaction of his debts; or if he has been convicted of any misdemeanor under this act, or has been guilty of any fraud whatever contrary to the true intent of this act; and before any discharge is granted, the bankrupt shall take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter, or thing specified in this act as a ground for withholding such discharge, or as invalidating such discharge if granted.

SEC. 30. *And be it further enacted,* That no person who shall have been discharged under this act, and shall afterwards become bankrupt, on his own application shall be again entitled to a discharge, whose estate is insufficient to pay seventy per centum of the debts proved against it, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed at or before the time of application for discharge. But a bankrupt who shall prove to the satisfaction of the court that he has paid all the debts owing by him at the time of any previous bankruptcy, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not previously been bankrupt.

SEC. 31. *And be it further enacted,* That any creditor opposing the

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discharge of any bankrupt may file a specification in writing of the grounds of his opposition, and the court may in its discretion order any question of fact so presented to be tried at a stated session of the district court.

SEC. 32. *And be it further enacted,* That if it shall appear to the court that the bankrupt has in all things conformed to his duty under this act, and that he is entitled, under the provisions thereof, to receive a discharge, the court shall grant him a discharge from all his debts except as hereinafter provided, and shall give him a certificate thereof under the seal of the court, in substance as follows:

District court of the United States, District of

Whereas has been duly adjudged a bankrupt under the act af Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said be forever discharged from all debts and claims which by said act are made provable against his estate, and which existed on the day of , on which day the petition for adjudication was filed by (or against) him; excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy. Given under my hand and the seal of the court at , in the said district, this day of , A. D.

[Seal.] , Judge.

SEC. 33. *And be it further enacted,* That no debt created by the fraud or embezzlement of the bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged under this act; but the debt may be proved, and the dividend thereon shall be a payment on account of said debt; and no discharge granted under this act shall release, discharge or affect any person liable for the same debt for or with the bankrupt, either as partner, joint contractor, indorser, surety, or otherwise. And in all proceedings in bankruptcy commenced after one year from the time this act shall go into operation, no discharge shall be granted to a debtor whose assets do not pay fifty per centum of the claims against his estate, unless the assent in writing of a majority in number and value of his creditors who have proved their claims is filed in the case at or before the time of application for discharge.

SEC. 34. *And be it further enacted,* That a discharge duly granted under this act shall, with the exceptions aforesaid, release the bankrupt from all debts, claims, liabilities, and demands which were or might have been proved against his estate in bankruptcy, and may be pleaded, by a simple averment that on the day of its date such discharge was granted to him, setting the same forth in hæc verba, as a full and complete bar to all suits brought on any such debts, claims, liabilities, or demands,

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and the certificate shall be conclusive evidence in favor of such bankrupt of the fact and the regularity of such discharge: *Always provided,* That any creditor or creditors of said bankrupt, whose debt was proved or provable against the estate in bankruptcy, who shall see fit to contest the validity of said discharge on the ground that it was fraudulently obtained, may, at any time within two years after the date thereof, apply to the court which granted it to set aside and annul the same. Said application shall be in writing, shall specify which, in particular, of the several acts mentioned in section twenty-nine it is intended to give evidence of against the bankrupt, setting forth the grounds of avoidance, and no evidence shall be admitted as to any other of the said acts; but said application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of said application to be given to said bankrupt, and order him to appear and answer the same, within such time as to the court shall seem fit and proper. If, upon the hearing of said parties, the court shall find that the fraudulent acts, or any of them, set forth as aforesaid by said creditor or creditors against the bankrupt are proved, and that said creditor or creditors had no knowledge of the same until after the granting of said discharge, judgment shall be given in favor of said creditor or creditors, and the discharge of said bankrupt shall be set aside and annulled. But if said court shall find that said fraudulent acts, and all of them, set forth as aforesaid, are not proved, or that they were known to said creditor or creditors before the granting of said discharge, then judgment shall be rendered in favor of the bankrupt, and the validity of his discharge shall not be affected by said proceedings.

PREFERENCES AND FRAUDULENT CONVEYANCES DECLARED VOID.

SEC. 35. *And be it further enacted,* That if any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited; and if any person being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition

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by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance, is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being distributed under this act, or to defeat the object of, or in any way impair, hinder, impede or delay the operation and effect of, or to evade any of the provisions of this act, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, the fact shall be prima facie evidence of fraud. Any contract, covenant, or security made or given by a bankrupt or other person with, or in trust for, any creditor for securing the payment of any money as a consideration for or with intent to induce the creditor to forbear opposing the application for discharge of the bankrupt shall be void; and if any creditor shall obtain any sum of money or other goods, chattels, or security from any person as an inducement for forbearing to oppose, or consenting to such application for discharge, every creditor so offending shall forfeit all right to any share or dividend in the estate of the bankrupt, and shall also forfeit double the value or amount of such money, goods, chattels, or security so obtained, to be recovered by the assignee for the benefit of the estate.

BANKRUPTCY OF PARTNERSHIPS AND OF CORPORATIONS.

SEC. 36. *And be it further enacted,* That where two or more persons who are partners in trade shall be adjudged bankrupt, either on the petition of such partners or any one of them, or on the petition of any creditor of the partners, a warrant shall issue in the manner provided by this act, upon which all the joint stock and property of the copartnership, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are hereinbefore excepted; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; and the assignee shall be chosen by the creditors of the company, and shall also keep separate accounts of the joint stock or property of the copartnership and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignee the whole of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the copartnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors; and if there shall be any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall be added to the joint

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stock for the payment of the joint creditors; and if there shall be any balance of the joint stock after payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners, according to their respective right and interest therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts; and the certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone under this act; and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone. If such copartners reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case.

SEC. 37. *And be it further enacted,* That the provisions of this act shall apply to all moneyed, business, or commercial corporations and joint-stock companies, and that upon the petition of any officer of any such corporation or company, duly authorized by a vote of a majority of the corporators present at any legal meeting called for the purpose, or upon the petition of any creditor or creditors of such corporation or company, made and presented in the manner hereinafter provided in respect to debtors, the like proceedings shall be had and taken as are hereinafter provided in the case of debtors; and all the provisions of this act which apply to the debtor, or set forth his duties in regard to furnishing schedules and inventories, executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away his money or property, shall in like manner, and with like force, effect and penalties, apply to each and every officer of such corporation or company in relation to the same matters concerning the corporation or company, and the money and property thereof. All payments, conveyances, and assignments declared fraudulent and void by this act when made by a debtor, shall in like manner, and to the like extent, and with like remedies, be fraudulent and void when made by a corporation or company. No allowance or discharge shall be granted to any corporation or joint-stock company, or to any person or officer or member thereof: *Provided,* That whenever any corporation by proceedings under this act shall be declared bankrupt, all his property and assets shall be distributed to the creditors of such corporation in the manner provided in this act in respect to natural persons.

OF DATES AND DEPOSITIONS.

SEC. 38. *And be it further enacted,* That the filing of a petition for adjudication in bankruptcy, either by a debtor in his own behalf, or by any creditor against a debtor, upon which an order may be issued by

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the court, or by a register in the manner provided in section four, shall be deemed and taken to be the commencement of proceedings in bankruptcy under this act; the proceedings in all cases in bankruptcy shall be deemed matters of record, but the same shall not be required to be recorded at large, but shall be carefully filed, kept, and numbered in the office of the clerk of the court, and a docket only, or short memorandum thereof, kept in books to be provided for that purpose which shall be open to public inspection. Copies of such records, duly certified under the seal of the court, shall in all cases be prima facie evidence of the facts therein stated. Evidence or examinations in any of the proceedings under this act may be taken before the court, or a register in bankruptcy, viva voce, or in writing, before a commissioner of the circuit court, or by affidavit, or on commission, and the court may direct a reference to a register in bankruptcy, or other suitable person, to take and certify such examination, and may compel the attendance of witnesses, the production of books and papers, and the giving of testimony, in the same manner as in suits in equity in the circuit court.

INVOLUNTARY BANKRUPTCY.

SEC. 39. *And be it further enacted,* That any person residing and owing debts as aforesaid, who, after the passage of this act, shall depart from the State, District, or Territory, of which he is an inhabitant, with intent to defraud his creditors, or, being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal or remove any of his property to avoid its being attached, taken, or sequestered on legal process; or shall make any assignment, gift, sale, conveyance or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors; or who has been arrested and held in custody under or by virtue of mesne process of execution, issued out of any court of any State, District, or Territory, within which such debtor resides or has property, founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of such State, District, or Territory applicable thereto, for a period of seven days; or has been actually imprisoned for more than seven days in a civil action, founded on contract, for the sum of one hundred dollars or upwards; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance or transfer of money, or other property, estate, rights or credits, or give any warrant to confess judgment, or procure or suffer his property to be taken on legal process, with intent to

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give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act; or who, being a banker, merchant, or trader, has fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days, shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt, on the petition of one or more of his creditors, the aggregate of whose debts provable under this act amount to at least two hundred and fifty dollars, provided such petition is brought within six months after the act of bankruptcy shall have been committed. And if such person shall be adjudged a bankrupt, the assignee may recover back the money or other property so paid, conveyed, sold, assigned, or transferred contrary to this act, provided the person receiving such payment or conveyance had reasonable cause to believe that a fraud on this act was intended, or that the debtor was insolvent, and such creditor shall not be allowed to prove his debt in bankruptcy.

SEC. 40. *And be it further enacted,* That upon the filing of the petition authorized by the next preceding section, if it shall appear that sufficient grounds exist therefor, the court shall direct the entry of an order requiring the debtor to appear and show cause, at a court of bankruptcy to be holden at a time to be specified in the order, not less than five days from the service thereof, why the prayer of the petition should not be granted; and may also, by its injunction, restrain the debtor, and any other person, in the mean time, from making any transfer or disposition of any part of the debtor's property not excepted by this act from the operation thereof and from any interference therewith; and if it shall appear that there is probable cause for believing that the debtor is about to leave the district, or to remove or conceal his goods and chattels or his evidence of property, or make any fraudulent conveyance or disposition thereof, the court may issue a warrant to the marshal of the district, commanding him to arrest the alleged bankrupt and him safely keep, unless he shall give bail to the satisfaction of the court for his appearance from time to time, as required by the court, until the decision of the court upon the petition or the further order of the court, and forthwith to take possession provisionally of all the property and effects of the debtor, and safely keep the same until the further order of the court. A copy of the petition and of such order to show cause shall be served on such debtor by delivering the same to him personally, or leaving the same at his last or usual place of abode; or, if such debtor cannot be found, or his place of residence ascertained, service shall be made by publication, in such manner as the judge may direct. No further proceedings, unless the debtor appear and consent thereto, shall be had until proof

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shall have been given, to the satisfaction of the court, of such service or publication; and if such proof be not given on the return day of such order, the proceedings shall be adjourned and an order made that the notice be forthwith so served or published.

SEC. 41. *And be it further enacted,* That on such return day or adjourned day, if the notice has been duly served or published, or shall be waived by the appearance and consent of the debtor, the court shall proceed summarily to hear the allegations of the petitioner and debtor, and may adjourn the proceedings from time to time, on good cause shown, and shall, if the debtor on the same day so demand in writing, order a trial by jury at the first term of the court at which a jury shall be in attendance, to ascertain the fact of such alleged bankruptcy; and if, upon such hearing or trial, the debtor proves to the satisfaction of the court or of the jury, as the case may be, that the facts set forth in the petition are not true, or that the debtor has paid and satisfied all liens upon his property in case the existence of such liens were the sole ground of the proceeding, the proceedings shall be dismissed and the respondent shall recover costs.

SEC. 42. *And be it further enacted,* That if the facts set forth in the petition are found to be true, or if default be made by the debtor to appear pursuant to the order, upon due proof of service thereof being made, the court shall adjudge the debtor to be a bankrupt, and, as such, subject to the provisions of this act, and shall forthwith issue a warrant to take possession of the estate of the debtor. The warrant shall be directed, and the property of the debtor shall be taken thereon, and shall be assigned and distributed in the same manner and with similar proceedings to those hereinbefore provided for the taking possession, assignment, and distribution of the property of the debtor upon his own petition. The order of adjudication of bankruptcy shall require the bankrupt forthwith, or within such number of days, not exceeding five after the date of the order or notice thereof, as shall by the order be prescribed, to make and deliver, or transmit by mail, post paid, to the messenger, a schedule of the creditors and an inventory of his estate in the form and verified in the manner required of a petitioning debtor by section thirteen. If the debtor has failed to appear in person, or by attorney, a certified copy of the adjudication shall be forthwith served on him by delivery or publication in the manner hereinbefore provided for the service of the order to show cause; and if the bankrupt is absent or cannot be found, such schedule and inventory shall be prepared by the messenger and the assignee from the best information they can obtain. If the petitioning creditor shall not appear and proceed on the return day, or adjourned day, the court may, upon the petition of any other creditor, to the required amount, proceed to adjudicate on such petition, without requiring a new service or publication of notice to the debtor.

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OF SUPERSEDING THE BANKRUPT PROCEEDINGS BY ARRANGEMENT.

SEC. 43. *And be it further enacted,* That if at the first meeting of creditors, or at any meeting of creditors to be specially called for that purpose, and of which previous notice shall have been given for such length of time and in such manner as the court may direct, three-fourths in value of the creditors whose claims have been proved shall determine and resolve that it is for the interest of the general body of the creditors that the estate of the bankrupt should be wound up and settled, and distribution made among the creditors by trustees, under the inspection and direction of a committee of the creditors, it shall be lawful for the creditors to certify and report such resolution to the court, and to nominate one or more trustees to take and hold and distribute the estate, under the direction of such committee. If it shall appear to the court, after hearing the bankrupt and such creditors as may desire to be heard, that the resolution was duly passed and that the interests of the creditors will be promoted thereby, it shall confirm the same; and upon the execution and filing by or on behalf of three-fourths in value of all the creditors whose claims have been proved of a consent that the estate of the bankrupt be wound up and settled by said trustees according to the terms of such resolution, the bankrupt, or his assignee in bankruptcy, if appointed, as the case may be, shall, under the direction of the court, and under oath, convey, transfer, and deliver all the property and estate of the bankrupt to the said trustee or trustees, who shall, upon such conveyance and transfer, have and hold the same in the same manner, and with the same powers and rights, in all respects, as the bankrupt would have had or held the same if no proceedings in bankruptcy had been taken, or as the assignee in bankruptcy would have done had such resolution not been passed; and such consent and the proceedings thereunder shall be as binding in all respects on any creditor whose debt is provable, who has not signed the same, as if he had signed it, and on any creditor, whose debt, if provable, is not proved, as if he had proved it; and the court, by order, shall direct all acts and things needful to be done to carry into effect such resolution of the creditors, and the said trustees shall proceed to wind up and settle the estate under the direction and inspection of such committee of the creditors, for the equal benefit of all such creditors, and the winding up and settlement of any estate under the provisions of this section shall be deemed to be proceedings in bankruptcy under this act; and the said trustees shall have all the rights and powers of assignees in bankruptcy. The court, on the application of such trustees, shall have power to summon and examine, on oath or otherwise, the bankrupt, and any creditor, and any person indebted to the estate, or known or suspected of having any of the estate in his possession, or any other person whose examination may be material or necessary to aid the trustees in the execution of their trust,

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and to compel the attendance of such persons and the production of books and papers in the same manner as in other proceedings in bankruptcy under this act; and the bankrupt shall have the like right to apply for and obtain a discharge after the passage of such resolution and the appointment of such trustees as if such resolution had not been passed, and as if all the proceedings had continued in the manner provided in the preceding sections of this act. If the resolution shall not be duly reported, or the consent of the creditors shall not be duly filed, or if, upon its filing, the court shall not think fit to approve thereof, the bankruptcy shall proceed as though no resolution had been passed, and the court may make all necessary orders for resuming the proceedings. And the period of time which shall have elapsed between the date of the resolution and the date of the order for resuming proceedings shall not be reckoned in calculating periods of time prescribed by this act.

PENALTIES AGAINST BANKRUPTS.

SEC. 44. *And be it further enacted,* That from and after the passage of this act, if any debtor or bankrupt shall, after the commencement of proceedings in bankruptcy, secrete or conceal any property belonging to his estate, or part with, conceal, or destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, mutilated, or falsified, any book, deed, document, or writing relating thereto, or remove, or cause to be removed, the same or any part thereof, out of the district, or otherwise dispose of any part thereof, with intent to prevent it from coming into the possession of the assignee in bankruptcy, or to hinder, impede, or delay either of them in recovering or receiving the same, or make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate with the like intent, or spends any part thereof in gaming; or shall, with intent to defraud, wilfully and fraudulently conceal from his assignee or omit from his schedule any property or effects whatsoever; or if, in case of any person having, to his knowledge or belief, proved a false or fictitious debt against his estate, he shall fail to disclose the same to his assignee within one month after coming to the knowledge or belief thereof, or shall attempt to account for any of his property by fictitious losses or expenses; or shall, within three months before the commencement of proceedings in bankruptcy, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels with intent to defraud; or shall, with intent to defraud his creditors, within three months next before the commencement of proceedings in bankruptcy, pawn, pledge, or dispose of, otherwise than by bona fide transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for, he shall be deemed guilty of a misdemeanor, and upon conviction thereof

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in any court of the United States, shall be punished by imprisonment, with or without hard labor, for a term not exceeding three years.

PENALTIES AGAINST OFFICERS.

SEC. 45. *And be it further enacted,* That if any judge, register, clerk, marshal, messenger, assignee, or any other officer of the several courts of bankruptcy, shall, for anything done or pretended to be done under this act, or under color of doing anything thereunder, wilfully demand or take, or appoint or allow any person whatever to take for him or on his account, or for or on account of any other person, or in trust for him or for any other person, any fee, emolument, gratuity, sum of money, or anything of value whatever, other than is allowed by this act, or which shall be allowed under the authority thereof, such person, when convicted thereof, shall forfeit and pay the sum of not less than three hundred dollars and not exceeding five hundred dollars, and be imprisoned not exceeding three years.

SEC. 46. *And be it further enacted,* That if any person shall forge the signature of a judge, register, or other officer of the court, or shall forge or counterfeit the seal of the court, or knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, any such person shall be guilty of felony, and upon conviction thereof shall be liable to fine of not less than five hundred dollars, and not more than five thousand dollars, and to be imprisoned not exceeding five years, at the discretion of the court.

FEES AND COSTS.

SEC. 47. *And be it further enacted,* That in each case there shall be allowed and paid, in addition to the fees of the clerk of the court as now established by law, or as may be established by general order, under the provisions of this act, for fees in bankruptcy, the following fees, which shall be applied to the payment for the services of the registers:

For issuing every warrant, two dollars.

For each day in which a meeting is held, three dollars.

For each order for a dividend, three dollars.

For every order substituting an arrangement by trust deed for bankruptcy, two dollars.

For every bond with sureties, two dollars.

For every application for any meeting in any matter under this act, one dollar.

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For every day's service while actually employed under a special order of the court, a sum not exceeding five dollars, to be allowed by the court.

For taking depositions, the fees now allowed by law.

For every discharge when there is no opposition, two dollars.

Such fees shall have priority of payment over all other claims out of the estate, and before a warrant issues the petitioner shall deposit with the senior register of the court, or with the clerk, to be delivered to the register, fifty dollars as security for the payment thereof; and if there are not sufficient assets for the payment of the fees, the person upon whose petition the warrant is issued shall pay the same, and the court may issue an execution against him to compel payment to the register.

Before any dividend is ordered the assignee shall pay out of the estate to the messenger the following fees, and no more:

First. For service of warrant, two dollars.

Second. For all necessary travel, at the rate of five cents a mile, each way.

Third. For each written note to creditor named in the schedule, ten cents.

Fourth. For custody of property, publication of notices, and other services, his actual and necessary expenses upon returning the same in specific items, and making oath that they have been actually incurred and paid by him, and are just and reasonable, the same to be taxed or adjusted by the court, and the oath of the messenger shall not be conclusive as to the necessity of said expenses.

For cause shown, and upon hearing thereon, such further allowance may be made as the court, in its discretion, may determine.

The enumeration of the foregoing fees shall not prevent the judges, who shall frame general rules and orders in accordance with the provisions of section ten, from prescribing a tariff of fees for all other services of the officers of courts of bankruptcy, or from reducing the fees prescribed in this section in classes of cases to be named in their rules and orders.

OF MEANING OF TERMS AND COMPUTATION OF TIME.

SEC. 48. *And be it further enacted,* That the word "assignee" and the word "creditor" shall include the plural also; and the word "messenger" shall include his assistant or assistants, except in the provision for the fees of that officer. The word "marshal" shall include the marshal's deputies, the word "person" shall also include "corporation," and the word "oath" shall include "affirmation." And in all cases in which

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any particular number of days is prescribed by this act, or shall be mentioned in any rule or order of court or general order which shall at any time be made under this act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day, shall fall on a Sunday, Christmas day, or on any day appointed by the President of the United States as a day of public fast or thanksgiving, or on the fourth of July, in which case the time shall be reckoned exclusive of that day also.

SEC. 49. *And be it further enacted,* That all the jurisdiction, power, and authority conferred upon and vested in the district court of the United States by this act in cases in bankruptcy are hereby conferred upon and vested in the supreme court of the District of Columbia, and in and upon the supreme courts of the several Territories of the United States, when the bankrupt resides in the said District of Columbia or in either of the said Territories. And in those judicial districts which are not within any organized circuit of the United States the power and jurisdiction of a circuit court in bankruptcy may be exercised by the district judge.

SEC. 50. *And be it further enacted,* That this act shall commence and take effect, as to the appointment of the officers created hereby and the promulgation of rules and general orders, from and after the date of its approval: *Provided,* That no petition or other proceeding under this act shall be filed, received, or commenced before the first day of June, anno Domini eighteen hundred and sixty-seven.

AMENDMENT OF JULY 27th, 1868.

AN ACT in amendment of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of second clause of the thirty-third section of said act shall not apply to the cases of proceedings in bankrup[t]cy commenced prior to the first day of January, eighteen hundred and sixty-nine, and the time during which the operation of the provisions of said clause is postponed shall be extended until said first day of January, eighteen hundred and sixty-nine. And said clause is hereby so amended as to read as follows: In all proceedings in bankruptcy commenced after the first day of January, eighteen hundred and sixty-nine, no discharge shall be granted to a debtor whose assets shall not be equal to fifty per centum of the claims proved against his estate upon which he shall be liable as the principal

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debtor, unless the assent in writing of a majority in number and value of his creditors to whom he shall have become liable as principal debtor, and who shall have proved their claims, be filed in the case at or before the time of the hearing of the application for discharge.

SEC. 2. *And be it further enacted,* That said act be further amended as follows: The phrase "presented or defended" in the fourteenth section of said act shall read "prosecuted or defended;" the phrase "non-resident debtors" in line five, section twenty-two, of the act as printed in the Statutes at Large, shall read "non-resident creditors;" that the word "or" in the next to the last line of the thirty-ninth section of the act shall read "and;" that the phrase "section thirteen" in the forty-second section of said act shall read "section eleven;" and the phrase "or spends any part thereof in gaming" in the forty-fourth section of said act shall read "or shall spend any part thereof in gaming;" and that the words "with the senior register, or" and the phrase "to be delivered to the register" in the forty-seventh section of said act be stricken out.

SEC. 3. *And be it further enacted,* That registers in bankruptcy shall have power to administer oaths in all cases and in relation to all matters in which oaths may be administered by commissioners of the circuit courts of the United States, and such commissioners may take proof of debts in bankruptcy in all cases, subject to the revision of such proofs by the register and by the court according to the provisions of said act.

AMENDMENT OF JUNE 30th, 1870.

AN ACT to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the jurisdiction conferred upon the supreme courts of the Territories by the act to which this is in amendment may be exercised, upon petitions regularly filed in that court, by either of the justices thereof while holding the district court in the district in which the petitioner or the alleged bankrupt resides, and said several supreme courts shall have the same supervisory jurisdiction over all acts and decisions of each justice thereof as is conferred upon the circuit courts of the United States over proceedings in the district courts of the United States by the second section of said act.

SEC. 2. *And be it further enacted,* That in case of a vacancy in the office of district judge in any district, or in case any district judge shall, from sickness, absence, or other disability, be unable to act, the circuit judge of the circuit in which such district in included may make, during such disability or vacancy, all necessary rules and orders preparatory to

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the final hearing of all causes in bankruptcy, and cause the same to be entered or issued, as the case may require, by the clerk of the district court.

AMENDMENT OF JULY 14th, 1870.

AN ACT in amendment of the act entitled "An act establishing an uniform system of bankruptcy throughout the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the second clause of the thirty-third section of said act, as amended by the first section of an act in amendment thereof, approved July twenty-seven, eighteen hundred and sixty-eight, shall not apply to those debts from which the bankrupt seeks a discharge which were contracted prior to the first day of January, eighteen hundred and sixty-nine.

SEC. 2. *And be it further enacted,* That the clause in the thirty-ninth section of said act which now reads "or who, being a banker, merchant, or trader, has fraudulently stopped or suspended and not resumed payment of his commerical paper within a period of fourteen days," shall be amended so as to read as follows: "or who, being a banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment, or who has stopped or suspended and not resumed payment of his commercial paper within a period of fourteen days."

1.

AMENDMENTS OF JUNE 8th, 1872.

AN ACT to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first proviso in section fourteen of an act approved March second, eighteen hundred and sixty-seven, entitled "An act to establish a uniform system of bankruptcy throughout the United States," be amended by striking out the words "eighteen hundred and sixty-four," and inserting in lieu thereof "eighteen hundred and seventy-one."

2.

AN ACT to declare the true intent and meaning of section two of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March two, eighteen hundred and sixty-seven.

Be it enacted by the Senate and House of Representatives of the United

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States of America in Congress assembled, That the powers and jurisdiction granted to the several circuit courts of the United States, or any justice thereof, by section two of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven, may be exercised in any district in which the powers or jurisdiction of a circuit court have been or may be conferred on the district court for such district, as if no such powers or jurisdiction had been conferred on such district court; it being the true intent and meaning of said act that the system of bankruptcy thereby established shall be uniform throughout the United States.

AMENDMENT OF FEBRUARY 13th, 1873.

AN ACT to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever a corporation created by the laws of any State, whose business is carried on wholly within the State creating the same, and also any insurance company so created, whether all its business shall be carried on in such State or not, has had proceedings duly commenced against such corporation or company before the courts of such State for the purpose of winding up the affairs of such corporation or company and dividing its assets ratably among its creditors and lawfully among those entitled thereto prior to proceedings having been commenced against such corporation or company under the bankrupt laws of the United States, any order made, or that shall be made, by such court agreeably to the State law for the ratable distribution or payment of any dividend of assets to the creditors of such corporation or company while such State court shall remain actually or constructively in possession or control of the assets of such corporation or company shall be deemed valid notwithstanding proceedings in bankruptcy may have been commenced and be pending against such corporation or company.

AMENDMENT OF MARCH 3rd, 1873.

AN ACT to declare the true intent and meaning of the act approved June eight, eighteen hundred and seventy-two, amendatory of the general bankrupt law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it was the true intent and meaning of an act approved June eighth, eighteen hundred and seventy-

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two, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved March second, eighteen hundred and sixty-seven," that the exemptions allowed the bankrupt by the said amendatory act should, and it is hereby enacted that they shall, be the amount allowed by the constitution and laws of each State, respectively, as existing in the year eighteen hundred and seventy-one; and that such exemptions be valid against debts contracted before the adoption and passage of such State constitution and laws, as well as those contracted after the same, and against liens by judgment or decree of any State court, any decision of any such court rendered since the adoption and passage of such constitution and laws to the contrary notwithstanding.

AMENDMENT OF JUNE 22nd 1874.

AN ACT to amend and supplement an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March second, eighteen hundred and sixty-seven, be and the same is hereby, amended and supplemented as follows: That the court may, in its discretion, on sufficient cause shown, and upon notice and hearing, direct the receiver or assignee to take possession of the property, and carry on the business of the debtor, or any part thereof, under the direction of the court, when, in its judgment, the interest of the estate as well as of the creditors will be promoted thereby, but not for a period exceeding nine months from the time the debtor shall have been declared a bankrupt: *Provided,* That such order shall not be made until the court shall be satisfied that it is approved by a majority in value of the creditors.

SEC. 2. That section one of said act be, and it is hereby, amended by adding thereto the following words: *"Provided,* That the court having charge of the estate of any bankrupt may direct that any of the legal assets or debts of the bankrupt, as contradistinguished from equitable demands, shall, when such debt does not exceed five hundred dollars, be collected in the courts of the State where such bankrupt resides having jurisdiction of claims of such nature and amount."

SEC. 3. That section two of said act be, and it hereby is, amended by striking out, in line ten, the words "the same," and inserting the word

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"any"; and by adding next after the words "adverse interest," in line twelve, the words "or owing any debt to such bankrupt."

SEC. 4. That unless otherwise ordered by the court, the assignee shall sell the property of the bankrupt, whether real or personal, at public auction, in such parts or parcels and at such times and places as shall be best calculated to produce the greatest amount with the least expense. All notices of public sales under this act by any assignee or officer of the court shall be published once a week for three consecutive weeks in the newspaper or newspapers, to be designated by the judge, which, in his opinion, shall be best calculated to give general notice of the sale. And the court, on the application of any party in interest, shall have complete supervisory power over such sales, including the power to set aside the same and to order a re-sale, so that the property sold shall realize the largest sum. And the court may, in its discretion, order any real estate of the bankrupt, or any part thereof, to be sold for one-fourth cash at the time of sale, and the residue within eighteen months in such installments as the court may direct, bearing interest at the rate of seven per centum per annum, and secured by proper mortgage or lien upon the property so sold. And it shall be the duty of every assignee to keep a regular account of all moneys received or expended by him as such assignee, to which account every creditor shall, at reasonable times, have free access. If any assignee shall fail or neglect to well and faithfully discharge his duties in the sale or disposition of property as above contemplated, it shall be the duty of the court to remove such assignee, and he shall forfeit all fees and emoluments to which he might be entitled in connection with such sale. And if any assignee shall, in any manner, in violation of his duty aforesaid, unfairly or wrongfully sell or dispose of, or in any manner fraudulently or corruptly combine, conspire, or agree with any person or persons with intent to unfairly or wrongfully sell or dispose of the property committed to his charge, he shall, upon proof thereof, be removed, and forfeit all fees or other compensation for any and all services in connection with such bankrupt's estate, and, upon conviction thereof before any court of competent jurisdiction, shall be liable to a fine of not more than ten thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both fine and imprisonment, at the discretion of the court. And any person so combining, conspiring, or agreeing with such assignee for the purpose aforesaid shall, upon conviction, be liable to a like punishment. That the assignee shall report, under oath, to the court, at least as often as once in three months, the condition of the estate in his charge, and the state of his accounts in detail, and at all other times when the court, on motion or otherwise, shall so order. And on any settlement of the accounts of any assignee, he shall be required to account for all interest, benefit, or advantage re-

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ceived, or in any manner agreed to be received directly or indirectly, from the use, disposal, or proceeds of the bankrupt's estate. And he shall be required, upon such settlement, to make and file in court an affidavit declaring, according to the truth, whether he has or has not, as the case may be, received, or is or is not, as the case may be, to receive, directly or indirectly, any interest, benefit, or advantage from the use or deposit of such funds; and such assignee may be examined orally upon the same subject, and if he shall wilfully swear falsely, either in such affidavit or examination, or to his report provided for in this section, he shall be deemed to be guilty of perjury, and, on conviction thereof, be punished by imprisonment in the penitentiary not less than one and not more than five years.

SEC. 5. That section eleven of said act be amended by striking out the words "as the warrant specifies," where they first occur, and inserting the words "as the marshal shall select, not exceeding two"; and inserting after the word "specifies" where it last occurs the words "But whenever the creditors of the bankrupt are so numerous as to make any notice now required by law to them, by mail or otherwise, a great and disproportionate expense to the estate, the court may, in lieu thereof, in its discretion, order such notice to be given by publication in a newspaper or newspapers, to all such creditors whose claims, as reported, do not exceed the sums, respectively, of fifty dollars."

SEC. 6. That the first clause of section twenty of said act be amended by adding, at the end thereof, the words "or in cases of compulsory bankruptcy, after the act of bankruptcy upon or in respect of which the adjudication shall be made, and with a view of making such set-off."

SEC. 7. That section twenty-one of said act be amended by inserting the following words in line six, immediately after "thereby": "But a creditor proving his debt or claim shall not be held to have waived his right of action or suit against the bankrupt where a discharge has been refused or the proceedings have been determined without a discharge."

SEC. 8. That the following words shall be added to section twenty-six of said act: "That in all causes and trials arising or ordered under this act, the alleged bankrupt, and any party thereto, shall be a competent witness."

SEC. 9. That in cases of compulsory or involuntary bankruptcy, the provisions of said act, and any amendment thereof, or of any supplement thereto, requiring the payment of any proportion of the debts of the bankrupt, or the assent of any portion of his creditors, as a condition of his discharge from his debts, shall not apply; but he may, if otherwise entitled thereto, be discharged by the court in the same manner and with the same effect as if he had paid such per centum of his debts,

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or as if the required proportion of his creditors had assented thereto. And in cases of voluntary bankruptcy, no discharge shall be granted to a debtor whose assets shall not be equal to thirty per centum of the claims proved against his estate, upon which he shall be liable as principal debtor, without the assent of at least one-fourth of his creditors in number, and one-third in value; and the provision in section thirty-three of said act of March second, eighteen hundred and sixty-seven, requiring fifty per centum of such assets, is hereby repealed.

SEC. 10. That in cases of involuntary or compulsory bankruptcy, the period of four months mentioned in section thirty-five of the act to which this is an amendment is hereby changed to two months; but this provision shall not take effect until two months after the passage of this act. And in the cases aforesaid, the period of six months mentioned in said section thirty-five, is hereby changed to three months; but this provision shall not take effect until three months after the passage of this act.

SEC. 11. That section thirty-five of said act be, and the same is hereby, amended as follows:

First. After the word "and" in line eleven, insert the word "knowing."

Secondly. After the word "attachment," in the same line, insert the words "sequestration, seizure."

Thirdly. After the word "and," in line twenty, insert the word "knowing." And nothing in said section thirty-five shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith, upon a security taken in good faith on the occasion of the making of such loan.

SEC. 12. That section thirty-nine of said act of March second, eighteen hundred and sixty-seven, be amended so as to read as follows:

"SEC. 39. That any person residing, and owing debts, as aforesaid who, after the passage of this act, shall depart from the State, District, or Territory of which he is an inhabitant, with intent to defraud his creditors; or, being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal or remove any of his property to avoid its being attached, taken, or sequestered on legal process; or shall make any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors; or who has been arrested and held in custody under or by virtue of mesne process or execution, issued out of any court of the United States or of any State, District, or Territory within which

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such debtor resides or has property, founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of the United States or of such State, District, or Territory, applicable thereto, for a period of twenty days, or has been actually imprisoned for more than twenty days in a civil action founded on contract for the sum of one hundred dollars or upward; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, or confess judgment, or give any warrant to confess judgment, or procure his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act; or who, being a bank, banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment, or who being a bank, banker, broker, merchant, trader, manufacturer, or miner, has stopped or suspended and not resumed payment, within a period of forty days, of his commercial paper (made or passed in the course of his business as such), or who, being a bank or banker, shall fail for forty days to pay any depositor upon demand of payment lawfully made, shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth thereof, at least, in number, and the agreegate of whose debts provable under this act amounts to at least one-third of the debts so provable: *Provided,* That such petition is brought within six months after such act of bankruptcy shall have been committed. And the provisions of this section shall apply to all cases of compulsory or involuntary bankruptcy commenced since the first day of December, eighteen hundred and seventy-three, as well as to those commenced hereafter. And in all cases commenced since the first day of December, eighteen hundred and seventy-three, and prior to the passage of this act, as well as those commenced hereafter, the court shall, if such allegation as to the number or amount of petitioning creditors be denied by the debtor, by a statement in writing to that effect, require him to file in court forthwith a full list of his creditors, with their places of residence and the sums due them respectively, and shall ascertain, upon reasonable notice to the creditors, whether one-fourth in number and one-third in amount thereof, as aforesaid, have petitioned that the debtor be adjudged a bankrupt. But if such debtor shall, on the filing of the petition, admit in writing that the requisite number and amount of creditors have petitioned, the court (if

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satisfied that the admission was made in good faith,) shall so adjudge, which judgment shall be final, and the matter proceed without further steps on that subject. And if it shall appear that such number and amount have not so petitioned, the court shall grant reasonable time, not exceeding, in cases heretofore commenced, twenty days, and, in cases hereafter commenced, ten days, within which other creditors may join in such petition. And if, at the expiration of such time so limited, the number and amount shall comply with the requirements of this section, the matter of bankruptcy may proceed; but if, at the expiration of such limted time, such number and amount shall not answer the requirements of this section, the proceedings shall be dismissed, and, in cases hereafter commenced, with costs. And if such person shall be adjudged a bankrupt, the assignee may recover back the money or property so paid, conveyed, sold, assigned, or transferred contrary to this act: *Provided,* That the person receiving such payment or conveyance had reasonable cause to believe that the debtor was insolvent, and knew that a fraud on this act was intended; and such person, if a creditor, shall not, in cases of actual fraud on his part, be allowed to prove for more than a moiety of his debt; and this limitation on the proof of debts shall apply to cases of voluntary as well as involuntary bankruptcy. And the petition of creditors under this section may be sufficiently verified by the oaths of the first five signers thereof, if so many there be. And if any of said first five signers shall not reside in the district in which such petition is to be filed, the same may be signed and verified by the oath or oaths of the attorney or attorneys, agent or agents, of such signers. And in computing the number of creditors, as aforesaid, who shall join in such petition, creditors whose respective debts do not exceed two hundred and fifty dollars shall not be reckoned. But if there be no creditors whose debts exceed said sum of two hundred and fifty dollars, or if the requisite number of creditors holding debts exceeding two hundred and fifty dollars fail to sign the petition, the creditors having debts of a less amount shall be reckoned for the purposes aforesaid".

SEC. 13. That section forty of said act be amended by adding at the end thereof the following words: "And if, on the return-day of the order to show cause as aforesaid, the court shall be satisfied that the requirement of section thirty-nine of said act as to the number and amount of petitioning creditors has been complied with, or if, within the time provided for in section thirty-nine of this act, creditors sufficient in number and amount shall sign such petition so as to make a total of one-fourth in number of the creditors and one-third in the amount of the provable debts against the bankrupt, as provided in said section, the court shall so adjudge, which judgment shall be final; otherwise it

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shall dismiss the proceedings, and, in cases hereafter commenced, with costs."

SEC. 14. That section forty-one of said act be amended as follows: After the word "bankruptcy," in line eight, strike out all of said section and insert the words, "Or, at the election of the debtor, the court may, in its discretion, award a venire facias to the marshal of the district, returnable within ten days before him for the trial of the facts set forth in the petition, at which time the trial shall be had, unless adjourned for cause. And unless, upon such hearing or trial, it shall appear to the satisfaction of said court, or of the jury, as the case may be, that the facts set forth in said petition are true, or if it shall appear that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens was the sole ground of the proceedings, the proceedings shall be dismissed, and the respondent shall recover costs; and all proceedings in bankruptcy may be discontinued on reasonable notice and hearing, with the approval of the court, and upon the assent, in writing, of such debtor, and not less than one-half of his creditors in number and amount; or, in case all the creditors and such debtor assent thereto, such discontinuance shall be ordered and entered; and all parties shall be remitted, in either case, to the same rights and duties existing at the date of the filing of the petition for bankruptcy, except so far as such estate shall have been already administered and disposed of. And the court shall have the power to make all needful orders and decrees to carry the foregoing provision into effect".

SEC. 15. That section eleven of said act be amended by inserting the words "and valuation" after the word "inventory" in the twenty-first line; and that section forty-two of said act be amended by inserting the words "and valuation" after the word "inventory" in the fifteenth line.

SEC. 16. That section forty-nine of said act be amended by striking out after the word "the" in line five, the words "supreme courts", and inserting in lieu thereof "district courts," and in line six, after the word "States", inserting the words "subject to the general superintendence and jurisdiction conferred upon circuit courts by section two of said act."

COMPOSITION WITH CREDITORS.

SEC. 17. That the following provisions be added to section forty-three of said act: That in all cases of bankruptcy now pending, or to be hereafter pending, by or against any person, whether an adjudication in bankruptcy shall have been had or not, the creditors of such alleged bankrupt may, at a meeting called under the direction of the court, and upon not less than ten days' notice to each known creditor of the time, place, and purpose of such meeting, such notice to be personal or other-

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wise, as the court may direct, resolve that a composition proposed by the debtor shall be accepted in satisfaction of the debts due to them from the debtor. And such resolution shall, to be operative, have been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at such meeting either in person or by proxy, and shall be confirmed by the signatures thereto of the debtor and two-thirds in number and one-half in value of all the creditors of the debtor. And in calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding fifty dollars shall be reckoned in the majority in value, but not in the majority in number; and the value of the debts of secured creditors above the amount of such security, to be determined by the court, shall, as nearly as circumstances admit, be estimated in the same way. And creditors whose debts are fully secured shall not be entitled to vote upon or to sign such resolution without first relinquishing such security for the benefit of the estate.

The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the same, and shall answer any inquiries made of him; and he, or, if he is so prevented from being at such meeting, some one in his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

Such resolution, together with the statement of the debtor as to his assets and debts, shall be presented to the court; and the court shall, upon notice to all the creditors of the debtor of not less than five days, and upon hearing, inquire whether such resolution has been passed in the manner directed by this section; and if satisfied that it has been so passed, it shall, subject to the provisions hereinafter contained, and upon being satisfied that the same is for the best interest of all concerned, cause such resolution to be recorded and statement of assets and debts to be filed; and until such record and filing shall have taken place, such resolution shall be of no validity. And any creditor of the debtor may inspect such record and statement at all reasonable times.

The creditors may, by resolution passed in the manner and under the circumstances aforesaid, add to, or vary the provisions of, any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation. And any such additional resolution shall be presented to the court in the same manner and proceeded with in the same way and with the same consequences as the resolution by which the composition was accepted in the first instance. The provisions of a composition accepted by such resolution in pursuance of this section shall be binding on all the creditors whose names and addresses and

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the amounts of the debts due to whom are shown in the statement of the debtor produced at the meeting at which the resolution shall have been passed, but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or promissory note, if the debtor shall be ignorant of the holder of any such bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor and of the person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description by the debtor in respect to such debt.

Any mistake made inadvertently by a debtor in the statement of his debts may be corrected upon reasonable notice, and with the consent of a general meeting of his creditors.

Every such composition shall, subject to priorities declared in said act, provide for a pro-rata payment or satisfaction, in money, to the creditors of such debtor in proportion to the amount of their unsecured debts, or their debts in respect to which any such security shall have been duly surrendered and given up.

The provisions of any composition made in pursuance of this section may be enforced by the court, on motion made in a summary manner by any person interested, and on reasonable notice; and any disobedience of the order of the court made on such motion shall be deemed to be a contempt of court. Rules and regulations of court may be made in relation to proceedings of composition herein provided for in the same manner, and to the same extent as now provided by law in relation to proceedings in bankruptcy.

If it shall at any time appear to the court, on notice, satisfactory evidence, and hearing, that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the court may refuse to accept and confirm such composition, or may set the same aside; and, in either case, the debtor shall be proceeded with as a bankrupt in conformity with the provisions of law, and proceedings may be had accordingly; and the time during which such composition shall have been in force shall not, in such case, be computed in calculating periods of time prescribed by said act.

SEC. 18. That from and after the passage of this act the fees, commissions, charges, and allowances, excepting actual and necessary disbursements, of, and to be made by the officers, agents, marshals, messengers, assignees, and registers in cases of bankruptcy, shall be reduced

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to one-half of the fees, commissions, charges, and allowances heretofore provided for or made in like cases: *Provided,* That the preceding provision shall be and remain in force until the justices of the Supreme Court of the United States shall make and promulgate new rules and regulations in respect to the matters aforesaid, under the powers conferred upon them by sections ten and forty-seven of said act, and no longer, which duties they shall perform as soon as may be. And said justices shall have power under said sections, by general regulations, to simplify, and, so far as in their judgment will conduce to the benefit of creditors, to consolidate the duties of the register, assignee, marshal, and clerk, and to reduce fees, costs, and charges, to the end that prolixity, delay, and unnecessary expense may be avoided. And no register or clerk of court, or any partner or clerk of such register or clerk of court, or any person having any interest with either in any fees or emoluments in bankruptcy or with whom such register or clerk of court shall have any interest in respect to any matter in bankruptcy, shall be of counsel, solicitor, or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, or in an appeal therefrom. Nor shall they, or either of them, be executor, administrator, guardian, commissioner, appraiser, divider, or assignee of or upon any estate within the jurisdiction of either of said courts of bankruptcy; nor be interested, directly or indirectly, in the fees or emoluments arising from either of said trusts. And the words "except such as are established by this act or by law," in section ten of said act, are hereby repealed.

SEC. 19. That it shall be the duty of the marshal of each district, in the month of July of each year, to report to the clerk of the district court of such district, in a tabular form, to be prescribed by the justices of the Supreme Court of the United States, as well as such other or further information as may be required by said justices.

First, the number of cases in bankruptcy in which the warrant prescribed in section eleven of said act has come to his hands during the year ending June thirtieth, preceding;

Secondly, how many such warrants were returned, with the fees, costs, expenses, and emoluments thereof, respectively and separately;

Thirdly, the total amount of all other fees, costs, expenses, and emoluments, respectively and separately, earned or received by him during such year from or in respect of any matter in bankruptcy;

Fourthly, a summarized statement of such fees, costs, and emoluments, exclusive of actual disbursements in bankruptcy, received or earned for such year;

Fifthly, a summarized statement of all actual disbursements in such cases for such year.

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And in like manner, every register shall, in the same month and for the same year, make a report to such clerk of,

First, the number of voluntary cases in bankruptcy coming before him during said year;

Secondly, the amount of assets and liabilities, as nearly as may be, of the bankrupts;

Thirdly, the amount and rate per centum of all dividends declared;

Fourthly, the disposition of all such cases;

Fifthly, the number of compulsory cases in bankruptcy coming before him, in the same way;

Sixthly, the amount of assets and liabilities, as nearly as may be, of such bankrupt;

Seventhly, the disposition of all such cases;

Eighthly, the amounts and rate per centum of all dividends declared in such cases;

Ninthly, the total amount of fees, charges, costs, and emoluments of every sort, received or earned by such register during said year in each class of cases above stated.

And in like manner, every assignee shall, during said month, make like return to such clerk of,

First, the number of voluntary and compulsory cases, respectively and separately, in his charge during said year;

Secondly, the amount of assets and liabilities therein, respectively and separately;

Thirdly, the total receipts and disbursements therein, respectively and separately;

Fourthly, the amount of dividends paid or declared, and the rate per centum thereof, in each class, respectively and separately;

Fifthly, the total amount of all his fees, charges, and emoluments, of every kind therein, earned or received;

Sixthly, the total amount of expenses incurred by him for legal proceedings and counsel fees;

Seventhly, the disposition of the cases respectively;

Eighthly, a summarized statement of both classes as aforesaid.

And in like manner, the clerk of said court, in the month of August in each year, shall make up a statement for such year, ending June thirtieth, of,

First, all cases in bankruptcy pending at the beginning of the said year;

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Secondly, all of such cases disposed of;

Thirdly, all dividends declared therein;

Fourthly, the number of reports made from each assignee therein;

Fifthly, the disposition of all such cases;

Sixthly, the number of assignees' accounts filed and settled;

Seventhly, whether any marshal, register, or assignee has failed to make and file with such clerk the reports by this act required, and, if any have failed to make such reports, their respective names and residences.

And such clerk shall report in respect of all cases begun during said year.

And he shall make a classified statement, in tabular form, of all his fees, charges, costs, and emoluments, respectively, earned or accrued during said year, giving each head under which the same accrued, and also the sum of all moneys paid into and disbursed out of court in bankruptcy, and the balance in hand or on deposit.

And all the statements and reports herein required shall be under oath, and signed by the persons respectively making the same.

And said clerk shall, in said month of August, transmit every such statement and report so filed with him, together with his own statement and report aforesaid, to the Attorney General of the United States.

Any person who shall violate the provisions of this section shall, on motion made, under the direction of the Attorney General, be by the district court dismissed from his office, and shall be deemed guilty of a misdemeanor, and, on conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment not exceeding one year.

SEC. 20. That in addition to the officers now authorized to take proof of debts against the estate of a bankrupt, notaries public are hereby authorized to take such proof, in the manner and under the regulations provided by law; such proof to be certified by the notary and attested by his signature and official seal.

SEC. 21. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

AMENDMENT OF APRIL 14TH, 1876.

An act concerning cases in bankruptcy commenced in the supreme courts of the several Territories prior to the twenty-second day of June, eighteen hundred and seventy-four, and now undetermined therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in

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bankruptcy commenced in the supreme courts of any of the Territories of the United States prior to the twenty-second day of June, Anno Domini eighteen hundred and seventy-four, and now undetermined therein, the clerks of the said several courts shall immediately transmit to the clerks of the district courts of the several districts of said Territories all the papers in, and a certified transcript of, all the proceedings had in each of said cases; and the said clerks of the district courts shall immediately file the said papers and transcripts as papers and transcripts in the said district courts.

SEC. 2. That the clerks of the said several supreme courts shall transmit the papers and transcripts provided for in section one of this act, in each case, to the clerk of the district court of the district wherein the bankrupt or bankrupts, or some one of them, resided at the time of the filing of the petition in bankruptcy in said case; and as soon as the said papers and transcript in any case shall have been transmitted and filed, as herein provided, the district court in which the same shall have been so filed shall have jurisdiction of the said case, to hear and determine all questions arising therein, and to finally adjudicate and determine the same in all respects as contemplated in other bankruptcy cases by the act entitled, "An act to establish a uniform system of bankruptcy throughout the United States," and approved March second, eighteen hundred and sixty-seven, and amendments thereto.

Approved, April 14, 1876.

AMENDMENT OF JULY 26TH, 1878.

An act to amend the act entitled, "An act to amend and supplement an act entitled, 'An act to establish a uniform system of bankruptcy throughout the United States' approved March second, eighteen hundred and sixty-seven, and for other purposes," approved June twenty-second, eighteen hundred and seventy-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twelve of said act be, and the same is hereby, amended as follows: After the word "committed," in line forty-four, insert: "*Provided also,* That no voluntary assignment by a debtor or debtors of all his or their property, heretofore or hereafter made in good faith for the benefit of all his or their creditors, ratably and without creating any preference, and valid according to the law of the State where made, shall of itself, in the event of his or their being subsequently adjudicated bankrupts in a proceeding of involuntary bankruptcy, be a bar to the discharge of such debtor or debtors." That section fifty-one hundred and eight of the Revised Statutes is hereby amended so as to read as follows: At any time after the expiration of six months from the adjudication of bank-

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ruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, and before the final disposition of the cause, the bankrupt may apply to the court for a discharge from his debts. This section shall apply in all cases heretofore or hereafter commenced.

Approved, July 26, 1876.

Repealing Act of June 7th, 1878.

An act to repeal the bankrupt law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the bankrupt law approved March second, eighteen hundred and sixty-seven, title sixty-one, Revised Statutes, and an act entitled, "An act to amend and supplement an act entitled, An act to establish a uniform system of bankruptcy throughout the United States, approved March second, eighteen hundred and sixty-seven, and for other purposes, approved June twenty-second, eighteen hundred and seventy-four," and all acts in amendment or supplementary thereto or in explanation thereof, be, and the same are hereby, repealed: *Provided, however,* That such repeal shall in no manner invalidate or affect any case in bankruptcy instituted and pending in any court prior to the day when this act shall take effect; but as to all such pending cases and all future proceedings therein, and in respect of all pains, penalties, and forfeitures which shall have been incurred under any of said acts prior to the day when this act takes effect, or which may be thereafter incurred, under any of those provisions of any of said acts which, for the purposes named in this act, are kept in force, and all penal actions and criminal proceedings for a violation of any of said acts, whether then pending or thereafter instituted, and in respect of all rights of debtors and creditors (except the right of commencing original proceedings in bankruptcy), and all rights of, and suits by, or against assignees, under any, or all of said acts, in any matter or case which shall have arisen prior to the day when this act takes effect (which shall be on the first day of September, Anno Domini eighteen hundred and seventy-eight), or in any matter or case which shall arise after this act takes effect, in respect of any matter of bankruptcy authorized by this act to be proceeded with after said last-named day, the acts hereby repealed shall continue in full force and effect until the same shall be fully disposed of, in the same manner as if said acts had not been repealed.

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COURTS OF UNITED STATES WITH BANKRUPTCY JURISDICTION.

UNITED STATES SUPREME COURT.

Chief Justice.

MELVILLE W. FULLER.

Associate Justices.

JOHN M. HARLAN.
OLIVER W. HOLMES.
DAVID J. BREWER.
HENRY B. BROWN.
WILLIAM R. DAY.
EDWARD D. WHITE.
RUFUS W. PECKHAM.
JOSEPH MCKENNA

Clerk.

JAMES H. MCKENNEY, Washington, D. C.

CIRCUIT COURTS OF APPEALS OF THE UNITED STATES.

The act of March 3, 1891, Sec. 1 Sup. Rev. St. U. S., 901, creates in each of the nine judicial circuits, into which the United States is divided, a Circuit Court of Appeals and determines the juridsiction. This act has been amended July 16, 1892, 2 Sup. Rev. St. of U. S., 40, by abolishing the office of marshal and providing that duties of marhsals be perfformed by United States marhsals. Act of Feb. 18th, 1895, 2 Sup. Rev. Stat. U. S., 377, extending equity jurisdiction to appeals in injunction proceedings. Act of Jan. 20th, 1897, 2 Sup. Rev. Stat. U. S., 541, conferring final jurisdiction on Circuit Courts of Appeals in all criminal cases not capital. Act of June first, 1898, 2 Supp. Rev. St. U. S., 771, conferring appellate jurisdiction in award in cases under arbitration act. Act of June, 6th, 1900, 2 Sup. Rev. Stat, U. S., 1,445, conferring jorisdiction to entertain appeal on interlocutory order granting injunction.

FIRST CIRCUIT.

Circuit Justice. OLIVER W. HOLMES, Washington, D. C.

States in Circuit. Maine, New Hampshire, Massachusetts and Rhode Island.

Circuit Judges: Le Baron Colt, Bristol, R. I., William L. Putnam, Portland, Me.

Clerk Circuit Court of Appeals, John G. Stetson, Boston, Mass.

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Annual term, first Tuesday in October; stated sessions, first Tuesday in every month, sessions for hearing cases, first Tuesday in January, April and October, at Boston, Mass.

SECOND CIRCUIT.

Circuit Justice: RUFUS W. PECKHAM, Washington, D. C.

States in Circuit.—Vermont, Connecticut and New York.

Circuit Judges, William J. Wallace, Albany, New York, Henry Lacombe, New York, N. Y., William K. Townsend, New Haven, Conn.

Clerk Circuit Court of Appeals, William Parkin, New York, N. Y.

Annual term last Tuesday in October, at New York City.

THIRD CIRCUIT.

Circuit Justice, HENRY B. BROWN, Washington, D. C.

States in Circuit.—New Jersey, Pennsylvania, Delaware.

Circuit Judges, Marcus W. Acheson, Pittsburg, Pa., Geo. M. Dallas, Philadelphia, Pa., George Gray, Wilmington, Del.

Clerk Circuit Court of Appeals, William H. Merrick, Philadelphia, Pa.

Annual term, first Tuesday in March and third Tuesday in September, at Philadelphia, Pa.

FOURTH CIRCUIT.

Circuit Justice, MELVILLE W. FULLER, Washington, D. C.

States in Circuit.—North Carolina, South Carolina, Maryland, Virginia and West Virginia.

Circuit Judges, Nathan Goff, Clarksburg, W. Virginia, Charles H. Simonton, Charleston, S. C.

Clerk Circuit Court of Appeals, Henry T. Meloney, Richmond, Virginia.

Annual term, first Tuesday in February, first Tuesday in May, and first Tuesday in November, at Richmond, Va.

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FIFTH CIRCUIT.

Circuit Justice, EDWARD D. WHITE, Washington, D. C.

States in Circuit.—Georgia, Florida, Alabama, Mississippi, Louisiana and Texas.

Circuit Judges, Don A. Pardee, New Orleans, La., A. P. McCormick, Dallas, Texas, David D. Shelby, Huntsville, Ala.

Clerk Circuit Court of Appeals, CHARLES H. LIDNUM, New Orleans, La.

Annual term, first Monday in October at Atlanta, Ga. and third Monday in November, at New Orleans, La.

SIXTH CIRCUIT.

Circuit Justice, JOHN M. HARLAN, Washington, D. C.

States in Circuit.—Ohio, Michigan, Kentucky and Tennessee.

Circuit Judges, Henry F. Severens, Kalamazoo, Michigan, Horace H. Lurton, Nashville, Tenn, William R. Day, Canton. O.

Clerk Circuit Court of Appeals, Frank O. Loveland, Cincinnati, Ohio.

Terms: First Tuesday in October and continues until the first Tuesday in October in the ensuing year. Three sessions will be held in Chicago, beginning on the first Tuesdays in October and January and the second Tuesday in April.

SEVENTH CIRCUIT.

Circuit Justice, WILLIAM R. DAY, Washington, D. C.

States in Circuit.—Indiana, Illinois, and Wisconsin.

Ciruit Judges, James G. Jenkins, Milwaukee, Wisconsin, Peter S. Grosscup, Chicago, Ill., Francis. E. Baker, Indianapolis, Indiana.

Clerk Circuit Court of Appeals, Edward M. Holloway, Chicago, Ill.

Terms: First Tuesday in October; term divided into three sessions,

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beginning on first Tuesday in October, first Tuesday in January and first Tuesday in May, at Chicago, Ill.

EIGHTH CIRCUIT.

Circuit Justice, D. J. BREWER, Washington, D. C.

States in Circuit.—Minnesota, Iowa, Missouri, Arkansas, Nebraska, Colorado, Kansas, Wyoming, North Dakota, South Dakota, Utah, New Mexico, Oklahoma and Indian Territory.

Circuit Judges, Henry C. Caldwell, Little Rock, Arkansas, Walter H. Sanborn, St. Paul, Minn., Amos M. Thayer, St. Louis, Mo.

Clerk Circuit Court of Appeals, John D. Jordan, St. Louis, Mo.

Terms: First Monday in May, at St. Paul, Minn., first Monday in September, at Denver, Colo., first Monday in December, at St. Louis, Mo.

NINTH CIRCUIT.

Circuit Justice, JOSEPH MCKENNA, Washington, D. C.

States in Circuit.—California, Oregon, Nevada, Washington, Idaho, Montana, Alaska, Arizona and Hawaii.

Circuit Judges, William W. Morrow, San Francisco, Cal., William B. Gilbert, Portland, Ore., Erskine M. Ross, Los Angeles Cal.

Clerk Circuit Court of Appeals, Frank D. Monckton, San Francisco.

Terms: Annual term first Monday in October, and adjourned sessions on the first Monday of each month at San Francisco, Cal., Annual term, second Monday in September, at Seattle, Washington. Annual term, third Monday in September, at Portland, Oregon.

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DISTRICT JUDGES, CLERKS AND REFEREES, AND THEIR JURISDICTIONS.

ALABAMA (5th Circuit.)

NORTHERN DISTRICT.

District Judge, Thos. Goode Jones, Montgomery, Ala.

Clerk District Court, Charles J. Allison, Birmingham, Ala.

Referees with jurisdiction. N. W. Trimble, Birmingham, Ala. Referee for Counties of Jefferson, St. Clair, Shelby, Bibb, Tuscaloosa, Pickens, Greene, Sumter, Hale, Blount, Walker, Lamar and Fayette.

H. D. McCarty, Anniston, Ala. Referee for the Counties of Calhoun-Cleburne, Cherokee, DeKalb, Etowah.

Jere Murphy, Jr., Huntsville, Ala. Referee for the Counties of Madison, Jackson, Limestone, Lauderdale, Colbert, Franklin, Lawrence, Marshall, Winston, Cullman, Morgan and Marion.

MIDDLE DISTRICT.

District Judge, Thos. Goode Jones, Montgomery, Ala.

Clerk, District Court, Joseph W. Dimmick, Montgomery, Ala.

Referees with jurisdiction. Walter R. Shafer, Selma, Ala., Referee for the Counties of Dallas and Perry.

Asa E. Stratton, Montgomery, Ala., Referee for the Counties of Antauga, Barbour, Bullock, Butler, Chilton, Chambers, Clay, Coffee, Coosa, Covington, Crenshaw, Dale, Elmore, Geneva, Henry, Lee, Lowndes, Macon, Montgomery, Pike, Randolph, Russell, and Tallapoosa.

SOUTHERN DISTRICT.

District Judge, Harry T. Toulmin, Mobile, Ala.

Clerk, District Court, Richard Jones, Mobile, Ala.

Referees with jurisdiction. Robert T. Ervin, Mobile, Ala., Referee for the Counties of Baldwin, Choctaw, Clarke, Conecuh, Excambia, Marengo, Mobile, Monroe, Washington, Wilcox.

ALASKA (9th Circuit).

DIVISION NO. 1.

District Judge, Melville C. Brown, Juneau, Alaska.

Clerk, District Court, W. J. Hills, Juneau, Alaska.

DIVISION NO. 2.

NOTE.

This list of referees is as complete as could be made from correspondence. In many counties no referees have been appointed, and vacancies exist in others, especially in the rural districts.

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District Judge, Alfred S. Moore, Nome, Alaska.

Clerk District Court, Geo. V. Borchsenius, Nome, Alaska.

C. A. S. Frost, Referee, Nome Alaska.

DIVISION NO. 3.

District Judge, James Wickersham, Eagle, Alaska.
Clerk District Court, A. R. Herlig, Eagle City.

ARIZONA (9th Circuit).

FIRST DISTRICT.

Justice, George R. Davis, Tucson, Ari.

Clerk District Court, Clinton D. Hoover, Tucson, Ari.

Referees with jurisdiction. Thomas A. Barton, Tucson, Ari., Referee for Counties of Cochise, Pima and Santa Cruz.

SECOND DISTRICT.

Justice for District, Fletcher M. Doan, Florence, Ari.

Clerk District Court, Daniel C. Stevens, Florence, Ari.

Referees with jurisdiction. W. H. Benson, Florence, Ari., Referee for Pinal County.

William H. Duryea, Globe, Ari., Referee for Gila County.

E. S. Mashbir, Solomanville, Ari., Referee for Graham County.

THIRD DISTRICT.

Chief Justice, Edward Kent, Phoenix, Ari.

Clerk District Court, Elias F. Dunlevy, Phoenix, Ari.

Referees with jurisdiction. Alfred Franklin, Phoenix, Ari., Referee for the Counties of Maricopa and Yuma.

FOURTH DISTRICT.

Justice, Richard E. Sloan, Prescott, Ari.

Clerk District Court, J. M. Watts, Prescott, Ari.

Referees with jurisdiction. Thos. C. Job, Prescott, Referee for Yavapai and Mohave Counties.

Fred W. Nelson, Holbrook, Ari., Referee for Coconino, Novajo and Apache Counties.

ARKANSAS (8th Circuit).

EASTERN DISTRICT.

District Judge, Jacob Trieber, Little Rock, Ark.

Clerk District Court, Eastern Division, Emerson R. Crum, Helena.

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Referees with jurisdiction. M. L. Stephenson, Helena, Referee for the Counties of Mississippi, Crittenden, Lee, Philips, Clay, Craighead, Greene, Cross, St. Francis and Monroe.

NORTHERN DIVISION.

Clerk District Court, Joseph W. Parse, Batesville.

Referees with jurisdiction. Charles F. Cole, Referee for Counties of Independence, Cleburne, Stone, Izard, Sharp, Fulton, Randolph, Lawrence and Jackson.

WESTERN DIVISION.

Clerk District Court, Sid. B. Redding, Little Rock, Ark.

Referees with jurisdiction. P. C. Dooley, Little Rock, Referee for the Counties of Arkansas, Ashley, Bradley, Chicot, Clark, Cleveland, Conway, Dallas, Desha, Drew, Faulkner, Garland, Grant, Hot Springs, Jefferson, Lincoln, Lonoke, Montgomery, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White, Woodruff.

WESTERN DISTRICT.

District Judge, John H. Rogers, Ft. Smith, Ark.

TEXARKANA DIVISION.

District Clerk, John M. Somervell, Texarkana, Ark.

Counties in Division: Calhoun, Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, Ouachito, Pike, Sevier, Union.

FORT SMITH DIVISION.

Clerk Dist. Court, H. B. Armistead, Ft. Smith, Arkansas.

Counties in Division, Benton, Crawford, Franklin, Johnson, Logan, Polk, Scott, Sebastian, Washington, Yell.

HARRISON DIVISION.

Clerk Dist. Court, W. F. Mitchell, Harrison, Ark.

Counties in Division, Baxter, Boone, Carroll, Madison, Marion, Newton, Staicy.

CALIFORNIA (9th Circuit).

NORTHERN DISTRICT.

District Judge, John J. DeHaven, San Francisco, Cal.

Clerk District Court, George E. Morse, San Francisco.

Referees with Jurisdiction: R. M. Swain, Santa Rosa, Sonoma County; A. P. Holland, Oakland, Alameda County; Milton J. Green, San Francisco, San Francisco County; Richard Belcher, Marysville, Yuba, Colusa, Sutter, Glenn, Butte, Sierra, Plumas, Tehama, Shasta, Lassen, Trinity, Siskiyou, and Modoc Counties; W. T. S. Hadley, Eureka, Humboldt and Del

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Norte Counties; W. A. Coulter, San Jose, Santa Clare & San Mateo Counties; Chas. A. Bliss, Sacramento, Sacramento, Amadon, Yolo & El Dorado Counties; Thomas L. Carothers, Ukiah, Mendocino & Lake Counties; Ira H. Reed, San Andreas, Calaveras County; E. P. Foltz, Stockton, San Joaquin & Stanislaus Counties; Charles D. Harvey, Loomis, Placer County; Ed Martin, Santa Cruz, Santa Cruz County; Paul C. Harlan, Fairfield, Solano County and Napa; A. A. Smith, Sonora, Tuolumne County.

SOUTHERN DISTRICT.

District Judge, Olin Wellborn, Los Angelos, Cal.

Clerk District Court, Edward H. Owen, Los Angelos.

Referees with Jurisdiction, Lyman Helm, Los Angelos, Referee for Los Angelos County; William G. Irving, Riverside, Referee for Riverside County; J. C. C. Russell, Hanford, Referee for Kings County; Ray Billing, sley, Santa Ana, Referee for Orange County; W. E. Shepherd, Ventura-Referee for Ventura County (resigned); Henry P. Starbuck, Santa Barbara, Referee for Santa Barbara County; J. Z. Tucker, San Diego, Referee for San Diego County; Wiley J. Tinnin, Fresno, Referee for Fresno County; Charles L. Allison, San Bernardino, Referee for San Bernardino County; Louis Lorny, San Louis Obispo, Referee for San Louis Obispo County; Arch McDonald, Madera, Referee for Madera County; E. L. Moore, Merced, Referee for Merced and Mariposa Counties.

COLORADO (8th Circuit.)

District Judge, Moses Hallettt.

Clerk District Court, Charles W. Bishop, Denver.

The State is divided into nine Bankruptcy Districts.

FIRST DISTRICT.

Referees with Jurisdiction. David V. Burns and William B. Harrison, Denver, Referees for the Counties of Arapahoe, Douglas, Elbert, Lincoln, Cheyenne, Kit Carson, Yuma, Phillips, Sedgwick, Washington, Logan, Morgan, Weld, Park, Jefferson, Clear Creek, Gilpin, Summit, Grand, Boulder and Larimer.

SECOND DISTRICT.

Referees with Jurisdiction. John B. Cochran, Colorado Springs, Referee for the County of El Paso

THIRD DISTRICT.

Referees with Jurisdiction. Samuel D. Trimble, Pueblo, Referee for the Counties of Pueblo Fremont, Chaffee, Custer, Huerfano, Otero, Bent, Prowers, Kiowa.

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FOURTH DISTRICT.

Referees with Jurisdiction. Robert T. Yeaman, Trinidad, Referee for the Counties of Las Animas and Baca.

FIFTH DISTRICT.

Referees with Jurisdiction. Ezra T. Elliott, Del Norte, Referee for the Counties of Rio Grande, Mineral, Sagauche, Costilla and Conejos.

SIXTH DISTRICT.

Referees with Jurisdiction. Chancellor T. Morgan, Durango, Referee for the Counties of La Plata, Archulita, Montezuma, San Juan, Dolores.

SEVENTH DISTRICT.

Referees with Jurisdiction. George S. Stephan, Delta, Referee for the Counties of San Miguel, Ouray, Hinsdale, Gunnison, Montrose, Delta and Mesa.

EIGHTH DISTRICT.

Referees with Jurisdiction. Jacob B. Philippi, Glenwood Springs, Referee for the Counties of Pitkin, Garfield, Rio Blanco, Routt.

NINTH DISTRICT.

Referees with Jurisdiction. William R. Kennedy, Leadville, James M. Binson, Cripple Creek, Referees for the Counties of Lake and Eagle.

CONNECTICUT (2nd Circuit).

District Judge, James P. Platt, Hartford, Conn.

Clerk District Court, Edwin E. Marvin, Hartford.

Referees with Jurisdiction. George A. Kellogg, Hartford, Referee for the Counties of Hartford and Tolland; Henry G. Newton, New Havn,e Referee for New Haven County; John W. Banks, Bridgeport, Referee for Fairfield County; Gustaf B. Carlson, Middletown, Referee for Middlesex County; Amos A. Browning, Norwich, Referee for New London Counk ty; John F. Carpenter, Putnam, Referee for Windham County; Fran-B. Munn, Winsted, Referee for Fairfield County.

DELAWARE (3rd Circuit).

District Judge, Edward G. Bradford, Wilmington.

Clerk District Court, S. Rodman Smith, Wilmington.

Referees with Jurisdiction, Arthur W. Spruance, Wilmington, referee for County of New Castle; George M. Jones, Dover, referee for Kent County; Charles F. Richards, Georgetown, Referee for Sussex County.

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DISTRICT OF COLUMBIA.

Clerk of Supreme Court, John R. Young, Washington.

Clerk of Court of Appeals, Robert Willett, Washington.

Referees for District, Edward S. McCalmont, 409 Columbian Building, and Charles H. Ames, 458 La Ave., N. W.

FLORIDA (5th Circuit).

NORTHERN DISTRICT.

District Judge, Charles Swayne, Pensacola.

Clerk, District Court, Frederick W. Marsh, Pensacola.

Referees with Jurisdiction. K. Nichols, Pensacola; E. R. Sprague, Funiak Springs; J. J. Hodges, Tallahassee. These Referees have concurrent jurisdiction for the Counties of Calhoun, Escambia, Franklin, Gadsden, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Santa Rosa, Taylor, Wakulla, Walton, Washington.

SOUTHERN DISTRICT.

District Judge, James W. Locke, Jacksonville.

Clerk District Court, Eugene O. Locke, Jacksonville.

Referees with Jurisdiction. George M. Powell, Jacksonville, Referee for Counties of Duval, Nassau, St. John, Volusia, Putnam, Clay; Frank De Ferro, Lake City; Counties of Madison, Hamilton, Suwaunee and Columbia; E. E. Voyle, Gainsville, Alackua, Bradford, Marion and Lake; William Hunter, Tampa, Central Division Southern District, Counties of Hillsboro, Citrus, Sumpter, Hernando, Pasco, Manatee, Polk, De Soto, Sea, Osceola, Orange; W. R. Anno, Miami, Dade and Brevard; J. M. Phipps, Key West, Referee for County of Monroe.

GEORGIA (5th Circuit).

NORTHERN DISTRICT.

District Judge, W. T. Newman, Atlanta.

Clerk District Court, W. C. Carter, Atlanta.

Referees with Jurisdiction, Percy H. Adams, Atlanta, Referee for the Counties of Fulton, De Kalb and Campbell; C. D. McCutcheon, Dalton, Referee for the Counties of Whitfield, Murray, Catoosa, Dade, Bartow, Gordon; George D. Anderson, Marietta, Referee for the Counties of Cobb, Cherokee, Pickens, Gilmer, Fannin, Milton; Clifford M. Walker, Monroe, Referee for the Counties of Walton, Morgan, Greene, Newton, Gwinnett, White, Towns, Lumkin, Hall, Forsyth, Rockdale; R. O. Jones, Newman, Referee for the Counties of Coweta, Heard, Meriweather, Troup; W. S. Rowell, Rome, Referee for the Counties of Floyd, Chattooga, Walver, Polk, Paulding; S. E. Grow, Carrollton, Referee for the Counties of Carroll,

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Douglas, Harralson; Frank U. Garsard, Columbus, Referee for the Counties of Muscogee, Harris, Talbot, Taylor, Chattahoochee, Marion, Schley; H. A. Wilkinson, Cuthbert, Referee for the Counties of Stewart, Webster, Quitman, Randolph, Terrell, Clay, Early, Miller.

SOUTHERN DISTRICT.

District Judge, Emory Speer, Macon.

EASTERN DIVISION.

Clerk District Court, H. H. King, Savannah.

Referees with Jurisdiction, A. H. MacDonnell, Savanah, Referee for the Counties of Chatham, Bryan, Liberty, Tatnall, Montgomery, Emanuel, Bullock, Screven and Effingham; J. H. Merrill, Bainbridge, Referee for the Counties of Decatur, Thomas, Brooks, Colquitt, Worth, Irwin, Coffee, Berrien, Lowndes, Clinch and Echol; Alfred J. Crovatt, Brunswich, Referee for the Counties of McIntosh, Glynn, Camden, Charlton, Pierce, Ware, Appling and Wayne.

NORTH-EASTERN DIVISION.

Clerk District Court, George K. Calvin, Augusta.

Referees with Jurisdiction, Joseph Gunahl, Augusta, Referee for the Counties of Burke, Columbia, Glasscock, Jefferson, Johnson, McDuffie, Richmond, Washington, Warren, Lincoln, Tolieferre, Wilkes.

WESTERN DIVISION.

Deputy District Clerk, Lenoir M. Erwin, Macon.

Referees with Jurisdiction, Alexander Proudfit, Macon, Referee for the Counties of Baker, Baldwin, Bibb, Butts, Calhoun, Crawford, Dodge, Dooley, Dougherty, Hancock, Houston, Jaspar, Jones, Laurens, Lee, Macon, Mitchell, Monroe, Pike, Pulaski, Putnam, Sumter, Telfair, Twiggs, Upson, Webster, Wilcox and Wilkerson.

HAWAII.

District Judge, Morris M. Estee, Honolulu.

Clerk District Court, Walter B. Maling, Honolulu.

IDAHO (9th Circuit).

District Judge, James H. Beatty, Boise.

Clerk District Court, Alonzo L. Richardson, Boise.

Referees with Jurisdiction, Warren Truitt, Moscow, Referee for Latah County; W. A. Brodhead, Harley, Referee for Blaine County; A. C. Kearns Wallace, Referee for Shoshone County (resigned); J. H. Padghaur, Salmon City, Referee for Lemhi County (resigned); Niles W. Tate, Boise, Referee for Ada County (resigned); Fred G. Caldwell, Pocatello, Referee for Bannock County; W. A. Hall, Grangeville, Referee for Idaho County;

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Jesse R. S. Budge, Montpelier, Referee for Bear Lake County; Douglas M. Todd, St. Anthony, Referee for Fremont County; L. H. Johnston, Challis, Referee for Custer County; Robert S. McCrea, Rademani, Referee for Kootenai County; John C. Rice, Caldwell, Referee for Canyon County (resigned); Van W. Hasbrouck, Lewiston, Referee for Nez Perces County; George F. Mahoney, Mountain Home, Referee for Elmore County; S. H. Travis, Weiser, Referee for Washington County.

ILLINOIS (7th Circuit).

NORTHERN DISTRICT.

NORTHERN DIVISION.

District Judge, C. C. Kohlsaat, Chicago.

District Clerk, T. C. MacMillen, Monadnock Block, Chicago.

Referees with Jurisdiction. Frank L. Wean, Sidney C. Eastman, Referees for the Counties of Cook, Lake and McHenry; Morrill Sprague, Joliet, Referee for the Counties of Will, Grundy and Kankakee; Fred A. Dolph, Aurora, Referee for the Counties of DuPage, Kane, Kendall and De Kalb; H. G. Cook, Ottawa, Referee for the Counties of La Salle and Bureau. Arthur E. Fisher, Rockford, Referee for the Counties of Boone, Winnebago, Stephenson and Jo Daviess; Henry S. Dickson, Dixon, Referee for the Counties of Lee, Whiteside, Ogle and Carroll.

SOUTHERN DIVISION.

Referees with Jurisdictions. David McCulloch, Peoria, Referee for the Counties of Peoria, Woodford, Stark, Tazewell, Marshall and Putnam; Claude E. Chiperfield, Canton, Referee for the Counties of Fulton and McDonough; Adair Pleasants, Rock Island, Referee for the Counties of Rock Island, Henry, Mercer; LeRoy Wharton, Galesburg, Referee for the Counties of Knox, Warren and Henderson. H. G. Greenebaum, Pontiac, Referee for the Counties of Livingston and Iroquois.

SOUTHERN DISTRICT.

District Judge, J. Otis Humphrey, Springfield.

Clerk District Court, Robert C. Brown, Springfield.

Referees with Jurisdictions. Edward S. Robinson, Springfield, Referee for the Counties of Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, DeWitt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Greene, Hamilton, Hancock, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnston, Lawrence, Logan, Moultrie, Macon, Macoupin, Madison, Marion, Mason, Massac, McLean, Menard, Monroe, Montgomery, Morgan, Perry, Pratt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White and Williamson.

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INDIANA (7th Circuit).

District Judge, John H. Baker, Indianapolis.

Clerk District Court, Noble C. Butler, Indianapolis.

FIRST DISTRICT. *Referees with Jurisdiction.* Orville W. McGinnis, Evansville, Referee for the Counties of Posey, Gibson, Pike, Dubois, Spencer, Warrick and Vanderburg.

SECOND DISTRICT. Lawrence B. Huckeby, New Albany, Referee for the Counties of Perry, Crawford, Orange, Washington, Harrison, Floyd, Clark and Scott.

THIRD DISTRICT. Minor F. Pate, Bloomfield, Referee for the Counties of Sullivan, Owen, Greene, Daviess, Martin, Lawrence and Monroe.

FOURTH DISTRICT. Thomas C. Batchelor, Vernon, Referee for the Counties of Brown, Bartholomew, Jackson, Jennings, Decatur, Ripley, Jefferson, Dearborn, Ohio and Switzerland.

FIFTH DISTRICT. Horace C. Pugh, Terre Haute, Referee for the Counties of Vigo, Vermilion, Parke, Clay, Putnam, Hendricks and Morgan.

SIXTH DISTRICT. Albert Rabb, Indianapolis, Referee for the Counties of Marion and Johnson.

SEVENTH DISTRICT. Clay C. Hunt, New Castle, Referee for the Counties of Hancock, Shelby, Rush, Henry, Wayne, Fayette, Union and Franklin.

EIGHTH DISTRICT. Charles A. Burnett, Lafayette, Referee for the Counties of Fountain, Warren, Benton, White, Tippecanoe and Montgomery.

NINTH DISTRICT. Harry C. Sheridan, Frankfort, Referee for the Counties of linton, Boone, Howard, Tipton and Hamilton.

TENTH DISTRICT. John W. Ryan, Muncie, Referee for the Counties of Madison, Delaware, Blackford, Wells, Adams, Jay and Randolph.

ELEVENTH DISTRICT. Frank Swigart, Logansport, Referee for the Counties of Carroll, Cass, Miami, Wabash, Huntington and Grant.

TWELFTH DISTRICT. John O. Bowers, Hammond, Referee for the Counties of Newton, Lake, Porter, Jasper, Pulaski and Starke.

THIRTEENTH DISTRICT. Frank E. Lambert, South Bend, Referee for the Counties of LaPorte, St. Joseph, Marshall, Fulton, Elkhart and Kosciusko.

FOURTEENTH DISTRICT. Augustin A. Chapin, Ft. Wayne, Referee for the Counties of La Grange, Noble, Whitley, Steuben, DeKalb and Allen.

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INDIAN TERRITORY (8th Circuit).

NORTHERN DISTRICT.

Judges, Joseph A. Gill, Vinita.

Clerk District Court, Charles A. Davidson, Vinita.

Deputy District Clerks, Robert C. Hunter, Claremore; Thos. C. Johnson, Herbert C. Smith, Tahlequah.

Dennis H. Wilson, Vinita, and James H. Huckleberry, Sallisand, Referee for district.

CENTRAL DISTRICT.

Judge, Wm. H. H. Clayton, South McAlester.

Clerk District Court, E. J. Fannin, South McAlester.

Referees for the District which comprises the Choctow Nation, James S. Arnote, South McAlester; P. C. Bolger, Poteau; Eugene Easton, Antlers and C. H. Elting, Caddo.

WESTERN DISTRICT.

The District comprises the Creek and Seminole nations and portions of the Cherokee and Choctow nations adjacent to the eastern and southern boundary of Creek nation.

District Judge, Charles W. Raymond, Muscogee.

Clerk District Court, Robert P. Harrison, Muscogee.

Thos. A. Sanson, Muskogee, Referee for District.

SOUTHERN DISTRICT.

District Judge, Hosea Townsend, Ardmore.

Clerk District Court, C. M. Campbell, Ardmore.

Ardmore Division.

Deputy Clerk District Court, N. H. McCoy, Ardmore.

John Hinkle, Ardmore, Referee, Pickens Co.

Pauls Valley Division.

Deputy District Clerk, J. T. Fleming, Pauls Valley.

T. N. Robnett, Referee, Pauls Valley.

Chicasha Division.

Deputy Clerk, J. W. Speake, Chicasha.

Z. E. Taylor, Referee for Indian Territory.

Ryan Division.

Deputy Clerk, S. H. Wootton, Ryan.

Eugene Hamilton, Chickasha, Referee for Chickasha and Ryan.

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PURCELL DIVISION.

Deputy Clerk, T. G. Green, Purcell.

George M. Miller, Referee, Purcell.

IOWA (8th Circuit).

NORTHERN DISTRICT.

District Judge, O. P. Shiras, Dubuque.

Clerk District Court, Alonzo J. Van Duzee, Dubuque.

Referees with Jurisdiction. C. S. Stillwell, Waukon, Alamakee County; W. A. Leathers, Dubuque, Dubuque, Delaware and Clayton Counties; F. W. Myatt, Maquoketa, Jackson County; M. W. Harmon, Independence, Buchanan County; W. J. Rogers, West Union, Fayette; R. F. B. Portman, Decorah, Winnesheik; M. M. Moon, Cresco, Howard; E. L. Smalley, Waverly, Bremer; W. P. Hoxie, Waterloo, Blackhawk and Grundy; J. S. Bradley, Charles City, Floyd; A. E. Roberts, Osage, Mitchell; J. S. Stacy, Anamosa, Jones; J. S. Anderson, Cedar Rapids, Linn and Cedar Counties; J. G. Marner, Iowa City, Johnson; Fred K. Feenan, Marengo, Iowa; C. I. Vail, Blairstown, Benton County; C. J. Stevens, Montour, Tama County; Charles O. Ryan, Eldora, Hardin County; L. F. Sutton, Clinton, Clinton County; C. C. Doolittle, Estherville, Emmet County; W. H. Morling, Emmetsburg, Palo Alto County; W. C. Ralston, Pocahontas, Pocahontas County; J. C. Kerr, Calhoun, Rockwell City County; J. C. Raymond, Algona, Kossuth County; G. S. Garfield, Humboldt, Humboldt County; Frank Farrell, Ft. Dodge, Webster County; Thomas A. Kingland, Forest City, Winnebago County; Wesley Aldridge, Britt, Hancock County; Porter Donly, Eagle Grove, Wright County; W. J. Covil, Webster City, Hamilton County; A. H. Cummings, Mason City, Worth and Cerro Gordo Counties; Henry White, Hampton, Franklin and Butler Counties; G. W. Patterson, Spencer, Dickinson and Clay Counties; Mark M. Moulton, Storm Lake, Buena Vista County; H. L. Loft, Cherokee, Cherokee County; W. D. Brown, Onawa, Sac, Monona and Ida Counties; J. L. E. Peck, Primghar, O'Brien County; J. W. Kachelhoffer, Rock Rapids, Lyon; John E. Orr, Orange City, Sioux County; C. L. Joy, Sioux Cit,y Plymouth and Woodbury Counties.

SOUTHERN DISTRICT.

District Judge, Smith McPherson, Red Oak.

Clerk District Court, Wm. R. McArthur, Des Moines.

Referees with Jurisdiction, Hillbause Buell, Keokuk, Referee for the Counties of Lee and Van Buren; La Monte Cowles, Burlington, Referee for the Counties of Des Moines and Louisa; Joseph E. Ells, Muscatine, Referee for the County of Muscatine; John M. Helmick, Davenport, Referee for the County of Scott; Henry M. Eicher, Washington, Referee

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for the Counties of Keokuk and Washington; Roger C. Galer, Mt. Pleasant, Referee for the Counties of Henry and Jefferson; A. W. Enode, Ottawa, Referee for the Counties of Davis and Wapello; Will C. Rayburn, Grinnell, Referee for the County of Powershick; Graham W. Laurence, Marshalltown, Referee for the County of Marshall; Oliver C. Meredith, Newton, Referee for the County of Jasper; Irving C. Johnson, Oskaloosa, Referee for the Counties of Mahaska and Marion; Clarence S. Wyckoff, Centerville, Referee for the Counties of Appanoose and Munroe; Warren S. Dungan, Chanton, Referee for Lucas County; John W. Freeland, Corydon, Referee for the Counties of Wayne, Decatur and Clarke; Stephen S. Ethridge, Des Moines, Referee for the Counties of Polk, Warren and Madison; Arthur T. Browne, Boone, Referee for the Counties of Boone, Strong and Greene; Hugh M. Fry, Creston, Referee for the Counties of Union, Taylor, Ringgold and Adair; M. J. Hallenan, Bayard, Referee for the Counties of Guthrie and Dallas; William R. Lee, Carroll, Referee for the Counties of Carroll and Crawford; Joseph B. Rockafellow, Atlantic Referee for the Counties of Cass, Audubon; H. C. French, Red Oak, Referee for the Counties of Page, Montgomery, Fremont Adams and Mills; Wingfield S. Mayne, Council Bluffs, Referee for the Counties of Pottawattamie, Mills, Harrison, Shelby.

KANSAS (8th Circuit).

District Judge, William C. Hook, Leavenworth.

Clerk District Court, Frank L. Brown, Topeka.

Referees with Jurisdiction, J. G. Slonecker, Topeka, Referee for the Counties of Washington, Riley, Jackson, Wabaunsee, Morris, Osage, Franklin, Marshall, Pottawatomie, Geary, Shawnee, Lyon and Douglas; Thomas J. White, Kansas City, Referee for the Counties of Doniphan, Leavenworth, Johnson, Jefferson, Memaha, Atchinson, Wyandotte and Brown; Zarah C. Millikin, Salina, Referee for the Counties of Clay, McPherson, Ottawa, Republic, Mitchell, Ellsworth, Osborne, Ellis, Phillips, Graham, Gore, Decatur, Thomas, Wallace, Cheyenne, Dickinson, Saline, Cloud, Jewell, Lincoln, Russell, Smith, Rooks, Trego, Norton, Sheridan, Logan, Rawlins and Sherman; Charles E. Cory, Ft. Scott, Referee for the Counties of Greenwood, Chautauqua, Woodson, Montgomery, Allen, Labettee, Bourbon, Cherokee, Elk, Coffey, Wilson, Anderson, Neosho, Linn, Crawford and Miami; Thomas B. Wall, Wichita, Referee for the Counties of Chase, Cowley, Harvey, Sumner, Kingman, Rice, Stafford, Barber, Pawnee, Kiowa, Ness, Ford, Lane, Meade, Finney, Seward, Kearney, Stevens, Hamilton, Morton, Butler, Marion, Sedgwick, Harper, Reno, Barton, Pratt, Rush, Edwards, Comanche, Hodgeman, Clark, Gray, Scott, Haskell, Wichita, Grant, Greeley and Stanton.

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KENTUCKY (6th Circuit).

EASTERN DISTRICT.

District Judge, Andrew N. J. Cochran, Maysville.

Clerk District Court, Joseph C. Finnell, Covington, and Walter G. Chapman, Frankfort.

Referees with Jurisdiction, J. W. Tutle, Monticello, Referee for the Counties of Wayne, Pulaski and Whitley; W. W. Tinsley, Barbourville, Referee for the Counties of Knox, Clay, Bell, Harlan, Leslie, Licher, Perry and Knott; J. M. Saunders, Stanford, Referee for the Counties of Lincoln, Rockcastle, Jackson and Laurel; Thomas H. Hardin, Harrodburg, Referee for the Counties of Mercer, Boyle, Garrord and Anderson; D. W. Lindsey, Frankfort, Referee for the Counties of Franklin, Owen, Henry, Shelby, Woodford and Scott; Martin M. Durrett, Covington, Referee for the Counties of Kenton, Campbell, Grant, Pendleton, Boone, Gallatin, Carroll and Trimble; H. Clay Howard, Paris, Referee for the Counties of Bourbon, Harrison and Nicholas; C. Suydam Scott, Lexington, Referee for the Counties of Fayette and Jessamine; R. W. Miller, Richmond,Referee for the Counties of Madison, Clarke and Estill; Thomas R. Phister, Maysville, Referee for the Counties of Mason, Bracken, Robertson and Fleming; A. T. Wood, Mt. Sterling, Referee for the Counties of Montgomery, Bath, Rowan, Merrifee, Elliott and Morgan; G. W. Gourley, Beattyville, Referee for the Counties of Lee, Powell, Wolfe, Owsley,Breathitt; P. K. Malin, Ashland, Referee for the Counties of Boyd, Greenup, Lewis, Carter, Lawrence, Floyd, Magoffin, Johnson, Pike and Martin.

WESTERN DISTRICT.

District Judge, Walter Evans, Louisville.

Clerk District Court, Thomas Speed, Louisville; Thos. Speed, Owensboro.

Referees with Jurisdiction, W. P. Lee, Mayfield, Referee for Counties of Carlisle, Fulton, Graves, Hickman; E. W. Bagby, Paducah, Referee for Counties of Livingston, Ballard, Calloway, McCracken and Marshall J. I. Landes, Hopkinsville, Referee for Counties of Caldwell, Crittenden, Lyon, Trigg, Hopkins, Christian, Webster; John A. Dean, Owensboro, Referee for Counties of Henderson, Union, McLean, Daviess, Ohio, Hancock, Breckenridge; J. Caldwell Browder, Russellville, Referee for the County of Logan; C. W. Milliken, Bowling Green, Referee for the Counties of Allen, Edmondson, Simpson, Warren; A. B. Montgomery, Elizabethtown, Referee for the County of Hardin; H. C. Gorin, Glasgow, Referee for the Counties of Clinton, Cumberland, Metcalfe, Barren, Monroe, Russell; John B. Baskin, Louisville, Referee for the Counties of Oldham, Spencer, Nelson, Jefferson, Bullitt, Meade; W. J. Lisle, Lebanon, Referee for County of Marion.

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LOUISIANA (5th Circuit).

EASTERN DISTRICT.

District Judge, Charles Parlange, New Orleans.

Clerk District Court, Frank H. Mortimer, New Orleans.

Referees with Jurisdiction. Wm A. Bell, New Orleans, Referee for Parish of Orleans and adjoining parishes; J. H. Morrison, New Roads, La., Referee for Parishes of Pointe Coupee, East and West Feliciana, East and West Baton Rouge, Iberville and Ascension; John L. Peytavin, Union, Referee for the Parishes of St. John the Baptist, St. Charles, Jefferson, Plaquemines and St. Bernard; Louis U. Folse, Napoleonville, Referee for Parishes of Iberia, Assumption, St. James, St. Mary, Terribonne and Lafourche.

WESTERN DISTRICT.

District Judge, Aleck Boarman, Shreveport.

Clerk District Court, Walter Jackson, Shreveport.

Referees with Jurisdiction. Thomas T. Taylor, Lake Charles, Referee for Parishes of Rapids, Grant, Catahoula, Winn, Natchitoches, Arcadia, Calcasieu, Vermilion, St. Martin, Lafayette, St. Landy, Avoyelles and Vermors; Percy Sandel, Monroe; A. D. Land, Jr., Shreveport.

District includes Counties of Avoyelles, Arcadia, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Clairborne, Concordia, DeSota, East Carroll, Franklin, Grant, Jackson, Lafayette, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapids, Red River, Richland, Sabine, St. Landry, St. Martin, Tensas, Union, Vermilion, Vernon, Webster, West Carroll and Winn.

MAINE (1st Circuit).

District Judge, Clarence Hale, Portland.

Clerk District Court, A. H. Davis, Portland.

Referees with Jurisdiction. Henry W. Oakes, Auburn, Referee for Androscoggin County; Edwin L. Vail, Houlton, Referee for Aroostock County; Lewis Pierce, Portland, Referee for Cumberland County; John B. Redman, Ellsworth, Referee for Hancock County; Fremont J. C. Little, Augusta, Referee for Kennebec County; Lewis F. Starrett, Rockland, Referee for Knox County; George A. Wilson, South Paris, Referee for Oxford County; John R. Mason, Bangor, Referee for Penobscot County; John F. Sprague, Monson, Referee for Piscataquis County; William T. Hall, Jr., Bath, Referee for Sagadahoc and Lincoln Counties; Daniel Lewis, Showegan, Referee for Somerset County; William P. Thompson, Belfast, Referee for Waldo County; Clement B. Donworth, Machias, Referee for Washington County; John B. Donovan, Alfred, Referee for York County.

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MARYLAND (4th Circuit).

District Judge, Thomas J. Morris, Baltimore.

Clerk District Court, James W. Chew, Baltimore.

Referees with Jurisdiction. Thomas F. Hisky, 215 N. Charles St., Baltimore; Daniel L. Brinton, Low Building, Baltimore, Thomas Foley Baltimore, Referees for Baltimore City; Walter J. Mitchell, La Plata, Referee for Charles, St. Mary's and Calvert Counties; Edwin Y. Goldsborough, Frederick, Referee for Frederick and Montgomery Counties; Emanuel W. Herman, Towson, Referee for County of Baltimore; E. Oliver Grimes, Jr., Westminster, Referee for Carroll County; Clarence W. Perkins, Chestertown, Referee for Kent, Queen Anne's, Talbot, Caroline and Dorchester Counties; Albert A. Daub, Cumberland, Referee for Alleghany and Garrett Counties; William T. Warburton, Elkton, Referee for Cecil County; Peter L. Hopper, Havre de Grace, Referee for Harford County; John D. Parker, 220 St. Paul St., Baltimore, Referee for Counties of Anne, Arundel, Howard and Prince George.

MASSACHUSETTS (1st Circuit).

District Judge, Francis C. Lowell, Boston.

Clerk District Court, Frank H. Mason, Boston.

Referees with Jurisdiction. Charles E. Burke, Pittsfield, Referee for Berkshire County; Clifford P. Sherman, New Bedford, Referee for Counties Bristol, Nantucket and Dukes; Wm. Perry, Salem, Referee for Essex County; Archibald D. Flower, Greenfield, Referee for Franklin County, Charles W. Bosworth, Springfield, Referee for Hampden County; Edward L. Shaw, Easthampton, Referee for the County of Hampshire; Henry E. Warner, Lincoln, Referee for County of Middlesex; George W. Stetson, Middleboro, Referee for the Counties of Plymouth and Barnstable; James M. Olmstead and Lewis G. Farmer, Boston, Referees for the Counties of Suffolk; Charles F. Aldrich, Worcester, Referee for the County of Worcester.

MICHIGAN (6th Circuit).

EASTERN DISTRICT.

District Judge, Henry M. Swan, Detroit.

Clerk District Court; D. J. Davison, Detroit.

NORTHERN DIVISION.

Referees with Jurisdiction. Chester L. Collins, Bay City, Referee for Counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Shiwassee and Tuscola; Harlow P. Davock, Detroit, Referee for Counties of Branch,

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Calhoun, Clinton, Hillsdale, Inhgam, Jackson, Lapeer, Lenowee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Washtenaw and Wayne.

WESTERN DISTRICT.

District Judge, George P. Wanty, Grand Rapids.

Clerk District Court, John McQuewan, Grand Rapids.

NORTHERN DIVISION.

Benj. O. Pearl, Marquette, Referee for Counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon and Schoolcraft (entire upper peninsula).

SOUTHERN DIVISION.

Referees with Jurisdiction. Alfred H. Hunt, Grand Rapids, Referee for Counties of Kent, Ottawa, Iona, Muskegon, Newaygo, Oceana, Mason, Lake, Manistee, Benzie, Leelanaw, Grand Traverse, Antrim, Kalkaska, Wexford, Osceola, Mecosta, Montcalm, Clinton, Missaukee, Charlevoix and Emmet; H. C. Briggs, Kalamazoo, Referee for the Counties of Allegan, Barry, Eaton, Kalamazoo, St. Joseph, Cass, Berrien and Van Buren.

MINNESOTA (8th Circuit).

District Judge, William Lochren, Minneapolis.

Clerk District Court, Charles L. Spencer, St. Paul.

FIRST DIVISION. *Referees with Jurisdiction*, William Burns, Winona, Referee for Counties of Winona, Wabasha, Olmstead, Dodge, Steele, Fillmore, Houston and Mower.

SECOND DIVISION. Jean A. Flittie, Mankato, Referee for the Counties of Freeborn, Faribault, Martin, Jackson, Nobles, Rock, Pipestone, Murray, Cottonwood, Watonwan, Blue Earth, Waseca, Sucar, Nicollet, Brown, Redwood, Lyon, Lincoln, Yellow, Medicine, Sibley, Lac qui Parle.

THIRD DIVISION. Michael Dorn, St. Paul, Referee for Counties of Chicago, Washington Ramsey, Dakota, Goodhue and Scott; E. S. Bassett, Faribault, Referee for County of Rice.

FOURTH DIVISION. O. C. Merriman, Minneapolis, Referee for Counties of Hennepin, Wright, Renville, McLeod, Carver, Anoka, Sherburne and Isanti; E. W. Campbell, Litchfield, Referee, Meeker, Kandioyhi, Chippewa, Swift.

FIFTH DIVISION. Crawford Sheldon, Little Falls, H. F. Greene, Duluth, Referees for Counties of Cook, Lake, St. Louis, Itasca, Cass, Crow Wing, Aitkin, Carlton, Pine, Kanabec, Millelac, Morrison and Benton.

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SIXTH DIVISION. Ole J. Vaule, Crookston, Referee for Clay, Norman, Polk, Marshall, Kittison, Red Lake, Rosecan, Beltram, Clear Water, Columbia; William L. Parsons, Fergus Falls, Referee for the Counties of Stearns, Pope, Stevens, Big Stone, Traverse, Grant, Douglas, Todd, Ottertail, Wilkins, and Southern part of Clay, Becker and Hubbard.

MISSISSIPPI (5th Circuit.)

NORTHERN DISTRICT.

District Judge, Henry C. Niles, Kosciusko.

Clerk District Court, J. S. Burton, Oxford.

Referees with Jurisdiction, John A. David, Kosciusko, Referee in bankruptcy for the Counties of Winston, Choctaw, Coahoma, Carroll, Tunica, Attala, Desoto, Tate, Marshall, Panola, Tippah, Tisomingo, Alcorn, Prentiss, Itawamba, Union, Lownds, Oktibbeha, Benton, Lee, Montgomery, Grenada, Tallehatchee, La Fayette, Pontotoc, Monroe, Chickasaw, Webster, Clay, Calhoun, Quitman, and Yalabushe; B. T. Markette, Clarksdale, Referee for the entire District, which includes the Counties of De Soto, Yalobusha, Coahoma, Lafayette, Marshall, Tunica, Quitman, Tallahatchie, Grenada, Benton, Tate and Panola.

SOUTHERN DISTRICT.

District Judge, Henry C. Niles, Kosciusko.

Clerk District Court, L. B. Moseley, Jackson.

Referees with Jurisdiction, J. B. Sterling, Jackson, Referee for Counties of Adams, Amite, Copiah, Covington, Franklin, Hinds, Holmes, Jefferson, Lawrence, Lincoln, Leflore, Madison, Pike, Rankin, Simson, Smith, Scott, Wilkinson Yazoo, Greene, Hancock, Harrison, Jackson, Marion, Perry and Pearl River; W. T. Houston, Meridian, Referee for Counties of Clarke, Jones, Jasper, Kemper, Lauderdale, Leake, Neshoba, Newton, Noxubee and Wayne; E. H. Mounger, Vicksburg, Referee for Counties of Bolivar, Clairborne, Issaquena, Sharkey, Sunflower, Warren and Washington.

MISSOURI (8th Circuit).

EASTERN DISTRICT.

District Judge, Elmer B. Adams, St. Louis.

EASTERN DIVISION.

Clerk District Court, William Morgan, St. Louis

Referees with Jurisdiction, Walter D. Coles, St. Louis, Referee for City of St. Louis; Alexander Ross, Cape Girardeau, Referee for Counties of Cape Girardeau, Scott, Mississippi, Stoddard, Butler, New Madrid, Dunklin and Pemiscot; G. P. Smith, Montgomery City, and Sherman T.

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Gresham, Farmington, Referees for the Counties of Anderson, Bollinger, Carter, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Madison, Montgomery, Oregon, Perry, Reynolds, Ripley, St. Charles, St. Francis, Ste. Genevieve, St. Louis, Shannon, Warren, Washington, and Wayne.

NORTHERN DIVISION.

Clerk District Court, Geo. C. Moore, Hannibal.

Referees with Jurisdictions. Frederick W. Neeper, Guaranty Building, Hannibal, Referee for the Counties of Macon, Marion, Monroe, Randolph, Lewis, Adair, Scotland, Schuyler, Pike, Ralls, Knox, Clark and Shelby.

WESTERN DISTRICT.

Judge District Court, John F. Philips, Kansas City.

WESTERN DIVISION.

Clerk District Court, John M. Nuckols, Kansas City.

Referee with Jurisdictions. Thomas T. Crittenden, Kansas City, Referee for the Counties of Barton, Bates, Caldwell, Carroll, Cass, Chariton, Clay, Grundy, Henry, Jackson, Jasper, Johnson, Lafayette, Linn, Livingston, Mercer, Putnam, Ray, St. Clair, Saline, Sullivan and Vernon.

SOUTHERN DIVISION.

Clerk District Court, Geo. Pepperdine, Springfield.

Referee with Jurisdictions. George S. Rathbun, Springfield, Referee for the Counties of Christian, Cedar, Dade, Dallas, Douglass, Greene, Howell, Laclede, Ozark, Polk, Pulaski, Taney, Texas, Webster and Wright.

CENTRAL DIVISION.

Clerk District Court, Henry C. Geisberg, Jefferson City.

Referees with Jurisdictions. John Montgomery, Jr., Sedalia, Referee for the Counties of Benton, Boone, Callaway, Cooper, Camden, Cole, Hickory, Howard, Maries, Miller, Moniteau, Morgan, Osage, Pettis and Phelps.

ST. JOSEPH DIVISION.

Clerk District Court, Calvin C. Colt, St. Joseph.

Referee with Jurisdictions. ——— Woodson, St. Joseph, Referee for the Counties of Andrew, Atchison, Buchanan, Clinton, Daviess, DeKalb, Gentry, Holt, Harrison, Nodaway, Platte and Worth.

JOPLIN DIVISION.

Clerk District Court, ——— ———, Springfield, Mo.

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Referee with Jurisdictions. A. E. Spencer, Joplin, Mo., Referee for Counties of Jasper, McDonald, Stone, Barry, Newton, Barton, Vernon.

MONTANA (9th Circuit).

District Judge, Hiram Knowles, Helena.

Clerk District Court, George W. Sproule, Helena.

Referees with Jurisdiction. Distrcit No. 1. Thompson Campbell, Butte, Referee for Counties of Beaverhead, Deer Lodge, Madison, Silver Bow, Ravalli, Granite and Missoula; District No. 2. S. A. Balliet, Helena, Referee for the Counties of Broadwater, Gallatin, Jefferson, Lewis and Clark and Meagher; District No. 3. , Missoula, includes Counties of Granite, Missoula and Ravalli; District No. 4. , Great Falls, Referee for Counties of Choteau, Cascade, Fergus, Flathead, Teton, and Valley; District No. 5. Henry A. Frith, Billings, Referee for the Counties of Carbon, Custer, Dawson, Park, Sweet Grass, Yellowstone and Roseland.

NEBRASKA (8th Circuit).

District Judge, William H. Munger, Omaha.

Clerk District Court, R. C. Hoyt, Omaha.

Referees with Jurisdiction. Ernest C. Eames, and E. E. Spencer, Lincoln, Referees for the Counties of Lancaster, Saline, Johnson and Seward; Charles E. Clapp and W. H. Heedman, Omaha, Referees for the Counties of Douglas, Sarpy, Washington, Bart and Cass. John A. Davies, Plattsmouth, Referee for Cass County; E. S. Ricker, Chadron, Referee for the Counties of Dawes, Sioux, Box, Butte and Sheridan; James W. Eaton, Nebraska City, Referee for the Counties of Otoo, Nemaha and Richardson; August Wagner, Columbus, Referee for the Counties of Platte, Merrick, Nance, Boone, Colfax and Butler; F. W. Vaughn, Fremont, Referee for the Counties of Dodge, Cuming and Saunders; E. P. Weatherly, Norfolk, Referee for Counties of Madison, Pierce, Stanton, Knox and Antelope; W. L. Kirkpatrick, York, Referee for the Counties of York, Polk, Hamilton and Filmore; A. C. Mayer, Grand Island, Referee for the Counties of Hall, Buffalo, Howard, Sherman Valley, Greely, Wheeler and Garfield; Walter V. Hoagland, Kearney, Referee for the Counties of Damson, Lincoln, Logan, Keith, Deuel, Cheyenne, Kimball, Banner, Scotts Bluffs; Fulton Jack, Beatrice, Referee for the Counties of Gage, Pawnee, Jefferson and Thayer; James Britton, Wayne, Referee for the Counties of Wayne, Cedar, Dixon, Dakota, Thurston; J. I. White, Curtis, Referee for Counties of Perkins, Gasper, Frontier, Chase, Dundy, Hitchcock, Furnas, Red Willow and Hayes; J. A. Gardiner, Hastings, Referee for the Counties of Adams, Clay, Unokoll, Webster; G. Norberg, Holdrege, Referee for the Counties of Phelps, Kearney, Harlan and Franklin; J. H. Shinn, Broken Bow, Referee for the Counties of Custer, Loup, Blaine,

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Thomas, Hooker and Grant; A. W. Scattergood, Ainsworth, Referee for Keyapaka, Cherry, Holt, Boyd and Rock.

NEVADA (9th Circuit).

District Judge, Thomas P. Hawley, Carson City.

Clerk District Court, T. J. Edwards, Carson City.

Referees with Jurisdiction. Samuel Platt, Carson City, Referee for the entire District.

NEW HAMPSHIRE (1st District).

District Judge, Edgar Aldrich, Littleton.

Clerk District Court, Burns P. Hodgman, Concord.

Referees with Jurisdictions. Fremont E. Shurtleff, Concord, Referee for the Counties of Rockingham, Hillsboro, Cheshire, Sullivan and Merrimack; Dwight Hall, Dover, Referee for the Counties of Strafford, Belknap and Carroll; Benjamin H. Corning, Littleton, Referee for the Counties of Coos and Grafton.

NEW JERSEY (3rd Circuit).

District Judge, Andrew Kirkpatrick, Newark.

Clerk District Court, George T. Cranmer, Trenton.

Referees with Jurisdiction. Clarence L. Cole, Atlantic City, Referee for Atlantic County; George J. Bergen, Camden, Referee for Camden County; Lewis T. Stevens, Cape May City, Referee for Cape May County; Frederick W. Leonard, Newark, Referee for Essex County; Edwin A. Lewis, Hoboken, Referee for Hunson County; Samuel D. Oliphant, Jr., Trenton, Referee for Mercer County; James Parker, Perth Amboy, Referee for Middlesex County; Frederick Parker, Freehold, Referee for Monmouth County; C. Franklin Wilson, Morristown, Referee for Morris County; John W. Harding, Paterson, Referee for Passaic County; William V. Steele, Somerville, Referee for Somerset and Himterdon Counties; Atwood L. DeCoster, Summit, Referee for Union County; William H. Morrow, Belvidere, Referee for Warren County.

NEW MEXICO (8th Circuit).

FIRST DISTRICT.

Associate Justice, John R. McFie.

Clerk District Court, Alfred M. Bergere, Santa Fe.

Referees with Jurisdiction. Benjamin M. Read, Sante Fe, Referee for the Counties of Sante Fe, San Juan, Rio Arriba and Taos (resigned).

SECOND DISTRICT.

Associate Justice, Benj. S. Baker, Albuquerque.

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Clerk District Court, William E. Dame, Albuquerque.

Referees with Jurissdictions. William D. Lee, Albuquerque, Referee for Bernalillo and Valencia and McKinley Counties.

THIRD DISTRICT.

Associate Judge, Frank W. Parker, Silver City.

Clerk District Court, James P. Mitchell, Las Cruces.

Referees with Jurisdictions. H. B. Holt, Las Cruces, Referee for the Counties of Grant, Donna, Ana, Sierra, Luna and Otero.

FOURTH DISTRICT.

Chief Justice, Wm. J. Mills, Las Vegas.

Clerk District Court, Secundino Romero, Las Vegas.

Referees with Jurisdictions. C. M. Bayne, Raton, Referee for the Counties of Union, Colfax; S. B. Davis, Jr., Las Vegas, Referee for Counties of San Miguel, Guadalope and Mora.

FIFTH DISTRICT.

Associate Justice, Daniel H. McMillan, Socorro.

Clerk District Court, John E. Griffith, Socorro.

Referee with Jurisdictions. W. E. Kelley, Socorro, Referee for the Counties of Socorro, Lincoln, Chavez and Edely.

NEW YORK (2nd Circuit).

NORTHERN DISTRICT.

District Judge, Geo. W. Ray, Norwich.

Clerk District Court, W. C. Doolittle, Utica.

Referees with Jurisdiction, R. A. Gunnison, Binghamton, Referee for the Counties of Boone, Chenango and Delaware; John M. Brainard, Auburn, Referee for Cayuga County; Henry T. Kellogg, Plattsburg, Referee for the Counties of Clinton, Essex and Franklin; Charles L. Stone, Syracuse, Referee for the Counties of Cortland and Madison; R. B. Fish, Fultonville, Referee for the Counties of Fulton, Hamilton, Montgomery; W. H. Comstock, Utica, Referee for the Counties of Oneida and Herkimer; Joseph Atwell, Watertown, Referee for the Counties of Jefferson and Lewis; Nathan B. Smith, Pulaski, Referee for Oswego County; B. W. Hoye, Oneonta, Referee for Otsega County; Edwin A. King, Troy, Referee for the Counties of Rensselaer and Washington; John C. Tulloch, Ogdensburg, Referee for St. Lawrence County; James Lee Scott, Saratoga Springs, Referee for the Counties of Saratoga, Schnectady and Warren; William Lansing, Albany, Referee for Albany, Schoharie County; George S. Tarbell, Ithaca, Referee for the Counties of Tioga and Tompkins.

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SOUTHERN DISTRICT.

District Judge, Geo. B. Adams, New York.

Clerk District Court, Thomas Alexander, New York.

Referees with Jurisdiction, Charles M. H. Arnold, Poughkeepsie, Referee for Duchess County; Walter C. Anthony, Newburgh, Referee for Orange County; Theodore Cuf 149 Broadway, Nathaniel S. Smith 302 Broadway, Stanley M. Dexter, 71 Broadway, Ernest Hall, 64 William street, George C. Holt, 34 Pine street, Macgrane Coxe, 63 Wall street, Seaman Miller, 346 Broadway, Peter B. Olney, 68 William street, Francis K. Pendleton, 27 Williams street, N. A. Prentiss, 120 Broadway, John J. Townsend, 45 Cedar street, Morris S. Wise, 40 Exchange place, Referees for New York City; Sylvester H. Thayer, Yonkers, Referee for Westchester County; Amon Van Etten, Rondout, Referee for Ulster County; Clayton Ryder, Cannel, Referee for Putnam County; Ira D. De Lamater, Hudson, Referee for Columbia County; William T. B. Storms, Nyark, Referee for Rockland County.

EASTERN DISTRICT.

District Judge, Edward B. Thomas, Brooklyn.

Clerk District Court, Richard P. Morle, Brooklyn.

Referees with Jurisdiction, Robert F. Tilney, 26 Court street, Brooklyn; Frank Reynolds, 16 Court street, Brooklyn, and Waldo E. Bullard, 26 Court street, Brooklyn, Referees for Kings County; for Queens and Nassau Counties, Charles A. Tipling, 26 Jackson avenue, Long Island City; for Suffolk Couny, William G. Nicoll, Babylon, Suffold County; for Richmond County, Charles L. Hubbell, West New Brighton, Staten Island.

WESTERN DISTRICT.

District Judge, John R. Hazel, Buffalo.

Clerk District Court, George P. Keating, Buffalo.

Referees with Jurisdiction, W. L. Ward, Wellsville, Referee for Allegany County; V. E. Peckham, Jamestown, Referee for the Counties of Cattaraugus and Chautauqua; W. H. Hotchkiss, Buffalo, Referee for Erie County; Roswell E. Moss, Elmira, Referee for Chemung County; Quincy Van Voorhis, Rochester, Referee for Monroe County; Delmar M. Darrin, Bath, Referee for the Counties of Steuben and Livingston; George D. Judson, Lockport, Referee for the Counties of Niagara and Orleans; Asa B. Priest, Canandaigua, Referee for Ontario County; John Knight, Arcade, Referee for the Counties of Genesee and Wyoming; Charles M. Woodward, Watkins, Referee for Schuyler County; Charles A. Hawley, Seneca Falls, Referee for the Counties of Seneca, Yates and Wayne.

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NORTH CAROLINA (4th Circuit).
EASTERN DISTRICT.

District Judge, Thomas R. Purnell, Raleigh.

Clerk District Court, H. L. Grant, Raleigh.

Referees with Jurisdiction, Charles Guirken, Elizabeth City, Referee for the Counties of Currituck, Camden, Pasquotank, Perquimans, Chowan, Gates, Dare, Hyde, Tyrrell and Washington; James R. Gaskill, Tarboro, Referee for the Counties of Hertford, Bertie, Martin, Edgecombe, Halifax, Northampton, Beaufort, Nash and Pitt; L. J. Moore, Newburn, Referee for the Counties of Crain, Lenoir, Jones, Pamlico, Carteret, Wayne and Onslow; S. H. Macrae, Fayetteville, and S. P. Collier, Wilmington, Referees for the Counties of New Hanover, Pender, Brunswick Columbus, Bladen, Robeson, Sampson, Duplin, Cumberland, Richmond, Hartnett and Scotland; Victor C. Boyden, Raleigh, Referee for the Counties of Wake, Chetham, Johnston, Wilson, Dunham, Person, Granville, Franklin, Vance, Warren and Moore.

WESTERN DISTRICT.

District Judge, James E. Boyd, Greensboro.

Clerks District Court, Henry C. Cowles, Statesville; W. C. Hyams, Asheville, and S. L. Trogdon, Greensboro.

Referees with Jurisdiction, H. S. Anderson, Hendersonville, Referee for the Counties of Polk, Rutherford, Lincoln, Gaston, Cleveland, Union, Anson, Buncombe, Henderson, Transylvania, Burke and Catawba; J. R. McCrary, Lexington, Referee for the Counties of Davie, Davidson, Alamance, Randolph, Montgomery, Guilford, Orange, Rockingham, Caswell, Rowan, Iredell, Stanley; Alfred A. Dula, Referee for the Counties of Caldwell and Alexander; J. E. Alexander, Winston-Salem, Referee for the Counties of Alleghany, Ashe, Watauga, Forsythe, Stokes, Yadkin, Surry and Wilkes; J. J. Hooker, Webster, Referee for the Counties of Swan, Jackson, Graham, Clay and Cherokee

NORTH DAKOTA (8th Circuit).

District Judge, Charles F. Amidon, Fargo.

Clerk District Court, J. A. Montgomery, Fargo.

Referees with Jurisdiction, L. H. Whithead, Grand Forks, Referee for the Counties of Grand Forks, Traill, Walsh, Pembina, Cavalier, Nelson, Ramsey, Eddy, Benson, Towner, Rolette, Bottineau, Pierce, McHenry, Ward and Williams; Guy L. Wallace, Fargo, Referee for the Counties of Burleigh, Stustman, Logan, McIntosh, Emmons, Kidder, Foster, Wells, McLean, Stark, Morton, Oliver, Mercer, Billings, Cass, Richland, Barnes, Dickey, Sargent, La Moure, Ransom, Griggs and Steele.

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OHIO.

NORTHERN DISTRICT.

District Judges, Augustus J. Ricks and F. J. Wing, Cleveland.

Clerk District Court, H. F. Carleton, Cleveland.

Referees with Jurisdiction, Fordyce Belford, Toledo, Lucas, Fulton and Williams Counties; Robert Carey, Upper Sandusky, Wyandotte and Marion Counties; W. C. Carman, Youngstown, Mahoning County; Chas. D.Dickinson, Leetonia, Columbiana County; Dayton A. Doyle, Akron, Summit County; L. B. Faarver, Elyria, Lorain and Medina Counties; Ed. M.Fries, Bowling Green, Wood and Henry Counties; John W. Grimm, Findlay, Hancock County; L. F. Hunter, Warren, Trumbull County; Chas. H. Keating, Mansfield, Richland County; W. F. Kean, Wooster, Wayne and Holmes Counties; T. H. Loller, Dennison, Tuscarawas County; A. M. McCarty, Canton, Stark and Carroll Counties; W. L. Monnett, Bucyrus, Crawford County; J. H. McGiffert, Ashtabula, Ashtabula County; Harold Remington, Cleveland, Cuyahoga County; H. G. Richie, Van Wert, Van Wert County; Geo. B. Smith, Ashland, Ashland County; W. B, Brattain, Paulding, Paulding and Defiance Counties; Frank E. Seager, Fremont, Sandusky County; Geo. E. Scroth, Tiffin, Seneca County; E. S. Stephens, Sandusky, Erie and Ottawa Counties; S. S. Wheeler, Lima, Allen, Auglaize and Putnam Counties; L. W. Wickham, Norwalk, Huron County; Lewis J. Wood, Painesville, Lake, Geauga and Portage Counties; Chas. S. Younger, Celina, Mercer County; George E. Crane, Kenton, Hardin County.

SOUTHERN DISTRICT.

District Judge, A. C. Thompson, Cincinnati.

Clerk District Court, B. R. Cowen, Cincinnati.

Referees with Jurisdiction, J.O. McMannis, West Union, Adams County; L. A. Koons, Athens, Athens and Hocking Counties; James M. Rees, St. Clairsville, Belmont County; Wm. D.Young, Ripley, Brown County; H. H. Haines, Hamilton, Butler County; George W. Poland, Urbana, Champaign County; Frank M. Knapp, Springfield, Clark County; William C. Bishop, Batavia, Clermont County; Frank B. Mills, Wilmington, Clinton County; Elijah Devor, Greenville, Darke County; Chas. M. McElroy, Delaware, Delaware County; Chas. C. Carpenter, Lancaster, Fairfield County; Lee Rankin, Washington, C. H., Fayette County; C. M. Rogers, Columbus, Franklin, Madison and Licking Counties; T. E. Bradbury, Gallipolis, Gallia County; G. D. Dugan, Cambridge, Guernsey County; William S. Howard, Xenia, Greene County; R. H. Minteer, Cadiz, Harrison County; Henry C. Dawson, Hillsboro, Highland County; Chas. T. Greve, Cincinnati, Hamilton County; Alfred Mack, Cincinnati, Hamilton County; Morison R. Waite, Cincinnati, Hamilton County; Wm. H.Whittaker

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Cincinnati, Hamilton County; Evan E. Eubanks, Jackson, Jackson and Vinton Counties; Justin E. Moore, Steubenville, Jefferson County; W. L. Cary, Mt. Vernon, Knox County; P. C. Booth, Ironton, Lawrence County; Wm. H. West, Bellefontaine, Logan County; Albert D. Russell, Pomeroy, Meigs County; George H. Black, McConnellsville, Morgan County; Wm. P. Vaughan, Cardington, Morrow County; Fred S. Gates, Zanesville, Muskingum County; Walter S. Kessler, Troy, Miami County; Walter D. Cline, Dayton, Montgomery County; James L. Sayler, Eaton, Preble, County; John Ferguson, New Lexington, Perry County; Harry B. Weaver, Circleville, Pickaway County; Elijah Cutright, Chillicothe, Ross County; Cecil S. Miller, Portsmouth, Scioto County; David Oldham, Sidney, Shelby County; Robt. McCreary, Marysville, Union County; John E. Smith, Lebanon Warren County; Jewett Palmer, Marietta Washington County.

OKLAHOMA (8th Circuit).

First District.

Chief Justice, John H. Burford, Guthrie.

Clerk District Court, F. A. Neal, Guthrie.

Referees with Jurisdictions. S. S. Lawrence, Guthrie, Referee for the Counties of Logan, Lincoln and Payne; A. G. Cunningham, Woodward, Referee for Woodward County.

Second District.

Associate Justice, C. F. Irwin, El Reno.

Clerk District Court, E. M. Hegler, El Reno.

Referees with Jurisdictions. George T. Bowman, Kingfisher, Referee for the Counties of Canadian, Blaine, "D," Day, Roger Mills, Custer and Washington.

Third District.

Associate Justice, B. F. Burwell, Oklahoma City.

Clerk District Court, B. D. Shear, Olkahoma City.

Referees with Jurisdictions. E. E. Hennessey, Oklahoma City, Referee for the Counties of Oklahoma, Pottawatomie, Cleveland and Greer.

Fourth District.

Associate Justice, Bayard T. Hainer, Perry.

Clerk District Court, J. E. Pickard, Perry.

Referees with Jurisdictions. John L. Pancoast, Perry, Referee for the Counties of Beaver, "P," Noble and Osage Nation.

Fifth District.

Associate Justice, John K. Beauchamp, Enid.

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Clerk District Court, C. F. McElish, Enid.

Referees with Jurisdictions. Charles H. Parker, Enid, Referee for the Counties of Garfield, Grant, Blaine, Roger Mills; Robert A. Lyle, Kingfisher, Referee for Counties of Kingfisher, Canadian, Cleveland, Curtis, and Washita.

OREGON (9th Circuit).

District Judge, Charles B. Bellinger, Portland.

Clerk District Court, E. D. McKee, Portland; Jos. A. Sladen, Portland.

Referees with Jurisdiction, Alex Sweek, Portland, Multnomah County; Charles H. Page, Astoria, Clatsop County; Albert Abraham, Roseburg, Douglas County; H. T. Bagley, Hillsboro, Washington County; C. C. Bryant, Albany, Linn, Benton and Lincoln Counties; M. D. L. Rhodes, McMinnville, Yamhill County; John Bayne, Salem, Marion County; E. Holgate, Corvallis, Benton County; Thomas FitzGerald, Pendleton, Umatilla County; Florence Olson, Milwaukee, Clackamas County; C. A. Wintermeier, Eugene, Lane County; J. B. Messick, Baker City, Baker County; R. E. Williams, Dallas, Polk County; G. S. Reavis, Enterprise, Wallowa County; J. W. Hopkins, Prineville, Crook County; Edward Dunn, Condon, Gilliam County; B. O. McCullough, Grants Pass, Josephine County; Win. A. Gowan, Burns, Harney County.

PENNSYLVANIA (3rd Circuit).
EASTERN DISTRICT.

District Judge, John B. McPherson, Philadelphia.

Clerk District Court, W. C. Craig, Philadelphia.

Referees with Jurisdiction, Joseph Mason, 1318 Stephen Girard Bldg., for Philadelphia County; Theodore M. Etting, 705 Land Title Bldg., Philadelphia County; Alfred Driver, 505 Chestnut street, Philadelphia County; Byerly Hart, 228 South Third street, Philadelphia County; Edward F. Hoffman, 560 Bullitt Bldg., Philadelphia County; Richard S. Hunter, 308 Walnut street, Philadelphia County; Christian H. Ruhl, Reading, Berks County; William C. Ryan, Doylestown, Bucks County; George M. Rupert, West Chester, Chester County; George E. Darlington, Media, Delaware County; B. Frank Eshleman, Lancaster, Lancaster County; John G. Diefenderfer, Allentown, Lehigh County; George F. Coffin, Easton, Northampton County; C. Henry Stenson, Norristown, Montgomery County; Wm. M. Fausset, Pottsville, Schuykill County.

MIDDLE DISTRICT.

District Judge, R. W. Archbald, Scranton.

Clerk District Court, E. R. W. Searle, Scranton; F. P. Snodgrass, Harrisburg; George C. Scheuer, Dep. Clerk Dist. Ct., Scranton; A. J. Colburn, Scranton.

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Referees with Jurisdiction:

C. A. Van Wormer, Referee, Scranton, for the Counties of Lackawanna, Susquehanna, Wyoming and Maine.

Alonzo T. Searle, Referee, Honesdale, for the Counties of Wayne and Pike.

Henry A. Fuller, Referee, Wilkesbarre, for the County of Luzerne.

Louis M. Hall, Referee, Towanda, for the County of Bradford.

H. A. M. Killip, Referee, Bloomsburg, for the County of Columbia.

William G. Thomas, Referee, Mauch Chunk, for the County of Carbon.

M. H. Taggart, Referee, Sunbury, for the Counties of Northumberland, Montour, Snyder and Union.

Leon B. Ferry, Referee, Wellsboro, for the County of Tioga.

John M. Wilson, Referee, Williamsport, for the Counties of Lycoming and Sullivan.

Alonzo R. Moore, Referee, Coudersport, for the Counties of Potter and Cameron.

Henry C. Quingley, Referee, Bellefonte, for the Counties of Centre and Clinton.

M. W. Jacobs, Referee, Harrisburg, for the Counties of Dauphin and Perry.

Cyrus R. Lantz, Referee, Lebanon, for the County of Lebanon.

W. Bronson Orr, Referee, Chambersburg, for the Counties of Franklin and Fulton.

William H. Trude, Referee, Huntingdon, for the Counties of Huntingdon, Mifflin and Juniata.

William W. Fletcher, Referee, Carlisle, for the County of Cumberland.

John B. McPherson, Referee, Gettysburg, for the Counties of Adams and York.

WESTERN DISTRICT.

District Judge, Joseph Buffington, Pittsburg.

Clerk District Court, Wm. T. Lindsay, Pittsburg; Frank W. Grank, Erie.

Referees with Jurisdictions, William R. Blair, Pittsburgh, for Allegheny County; Joseph M. Force, Erie, Erie County; William E. Ransom, Williamsport, Lycoming County; Thomas C. Hare, Altoona, Blair County; Henry Russell Myers, Washington, Washington County; John Q. Van Swearingen, Uniontown, Fayette County; Fred L. Kahle, Franklin, Venango County; A. G. Richmond, Meadville, Crawford County; James R. W. Baker, Mercer, Mercer County; Horace R. Rose, Johnstown,

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Cambria and Somerset Counties; Frank L. Harney, Foxburg, Clarion County; Joseph M. McClure, Bradford, McKean County; E. H. Beshlin, Warren, Warren County; J. W. Hutchinson, Butler, Butler County; James E. Keenan, Greensburgh, Westmoreland County; James Denny Daugherty, Kittanning, Armstrong County; Edwin Mahlon Underwood, New Castle, Lawrence County; W. C. Pentz, Du Bois, Clearfield County; S. J. Telford, Indiana, Indiana County; Samuel Russell Longenecker, Bedford, Bedford County; Thomas Spencer Crago, Waynesburg, Greene County; William T. Darr, Brookville, Jefferson County.

PORTO RICO.

District Judge, William H. Holt, San Juan.

Clerks District Court, Ricardo Nadal, San Juan; Frank Antonsanti Mayaguez; Antonio Aguayo.

RHODE ISLARD (1st Circuit).

District Judge, A. L. Brown, Providence.

Clerk District Court, W. P. Cross, Providence.

Referees for Entire District, Chester W. Barrows, N. W. Littlefield, Providence.

SOUTH CAROLINA (4th Circuit).

District Judge, William H. Brawley, Charleston.

Clerk District Court, C. J. C. Hutson, Charleston.

Referees with Jurisdiction, Brunson, Wm. A., Florence, Florence County; Julius E. Boggs, Pickens, Pickens County; John J. Carle, Columbia, Richland County; *B. W. Ball, Laurens County; H. E. De Pass, Spartenburg, Spartenburg County; S. Means, Beaty, Union, Union County; Chas. T. Connors, Lancaster, Lancaster County; Wm. W. Wannamaher, Orangeburg, Orangeburg County; R. A. Ellis, Barnwell, Barnwell County; Sanders Glover, Yemassee, Beaufort County; J. N. O. Gregory, Saluda C. H., Saluda County; Julius H. Heyward, Greenville, Greenville County; Edward W. Hughes, Charleston, Charleston County; L. C. Inglis, Bamberg, Bamberg County; Thos. J. Kirkland, Camden, Kershaw County; J. Fraser Lyon, Abbeville, Abbeville County; Henry A. Meetze, Lexington, Lexington County; J. E. McDonald, Winnsboro, Winnsboro County; John J. McLures, Chester, Chester County; D. T. McNeill, Conway, Horry County; J. M. Paget, Anderson, Anderson County; A. M. Rankin, Darlington, Darlington and Chesterfield Counties; I. C. Strauss Sumter, Sumter County; C. W. F. Spencer, Rock Hill, York County; Robert A. Thompson, Walhalla, Oconee County; Robert H. Welch, Newberry, Newberry County; T. W. Johnson, Marion, Marion County.

*Deceased; no successor.

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SOUTH DAKOTA (8th Circuit).

District Judge, John E. Corland, Sioux Falls.

Clerk District Court, O. S. Pendar, Sioux Falls.

Referees with Jurisdiction, Granville G. Bennett, Deadwood, Lawrence, Pinnington, Custer, Fall River, Meade and Butte Counties; John F. Hughes, Pierre, Hughes County; Charles N. Harris, Aberdeen, Brown County; Samuel A. Ramsey, Woonsocket, Sanborn, all Counties S. of Hand, Hyde, Kingsbury, Brookings, and E. of Mo. River, except Braelli County; Ralph W. Parliman, Sioux Falls, Minnehaha County.

Henry A. Mueller, Sioux Falls, Referee for Counties of Clay, Union, Yankton, Turner, Lincoln, Bon Homme, Clark's Mine, Douglas, Hutchinson, Brab, Aurora, Davison, Hanson, McCrook, Minnehaha, Moody, Lake Miner, Sanborn, Beadle, Kingsbury, Lyman, Gregory, Todd, Crow Creek, Lower Brule and Yankton Indian Reservations.

The above counties are designated as "Districts of Referees in Bankruptcy," and cases are referred pursuant to the following rule:

"In case any petition in bankruptcy is filed by or against any person residing in a county not designated as a Referee District, the same shall be referred to a Referee in the Referee District, in the same Division of the District of South Dakota, nearest by the usually traveled route to the residence of the person by or against whom such petition is filed; but, if such case is one of voluntary bankruptcy, the petitioner may, in writing, at the time of filing his petition, designate the Referee District within the proper division, to which he prefers to have the matter referred, and the reference shall, unless otherwise ordered, be made accordingly."

TENNESSEE (6th Circuit).

EASTERN DISTRICT.

District Judge, Charles W. Clark, Chattanooga.

Clerk District Court, Henry O. Ewing, Chattanooga; James F. Carter, Knoxville.

Referees with Jurisdictions. John Cox, Johnson City, Referee for the Counties of Johnson, Carter, Unicoi, Sullivan, Washington, Greene, Hawkins, Hancock, Cocke, Hamblen; W. L. Grayson, Chattanooga, and J. W. Caldwell, Knoxville, Referees for the Counties of Anderson, Bradley, Bledsoe, Blount, Campbell, Claiborne, Cumberland, Fentress, Grainger, Hamilton, James, Jefferson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Sevier, Scott, Sequatchie and Union.

MIDDLE DISTRICT.

District Judge, Charles D. Clark, Nashville.

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Clerk District Court, Henry M. Doak, Nashville.

Referees with Jurisdiction, A. L. Childress, Nashville, Referee for the entire district, comprising the Counties of Bedford, Cannon, Cheatham, Clay, Coffee, Davidson, Dekalb, Davison, Franklin, Giles, Grundy, Hickman, Humphreys, Houston, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Pickett, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Willingson and Wilson.

WESTERN DISTRICT.

District Judge, Eli S. Hammond, Memphis.

Clerk District Court, John B. Clough, Memphis.

EASTERN DIVISION.

Referees with Jurisdiction, John R. Walker, Trenton, Referee for the Counties of Benton, Carroll, Chester, Gibson, Henry, Hardman, Hardin, Henderson, Decatur, Madison, McNairy, Obion, Perry Weakley, Lake and Crockett.

WESTERN DIVISION.

Richard D. Jordan, Memphis, Referee for the Counties of Dyer, Lauderdale, Tipton, Shelby, Fayette and Haywood.

TEXAS (5th Circuit).
NORTHERN DISTRICT.

District Judge, Edward R. Meek, Ft. Worth.

Clerk District Court, J. H. Finks, Dallas.

Referees with Jurisdiction. Eugene Marshall, Dallas, Referee for the Counties of Navarro, Johnson, Ellis, Kaufman, Dallas, Rockwell, Hunt; G. P. Meade, Fort Worth, Referee for the Counties of Comanche, Hood, Erath, Tarrant, Parker, Palo Pinto, Wise, Clay, Jack, Young, Archer, Wichita, Wilbarger, Baylor, Bailey, Hardeman, Cottle, Motley, Briscoe, Hall, Childress, Collingsworth, Donley, Armstrong, Randall, Deaf Smith, Oldham, Potter, Carson, Gray, Wheeler, Hemphill, Lipscomb, Ochiltree, Roberts, Hutchinson, Hansford, Sherman, Moore, Hartley, Dallam, Foard, Parmer, Swisher, Castro, Lamb, Hale, Floyd, Cochran, Dawson and Hockley.

WESTERN DISTRICT.

WACO DIVISION.

Referees with Jurisdictions. M. C. H. Park, Waco, Referee for the Counties of Milan, Robertson, Leon, Limestone, Freestone, McLennan, Falls, Bell, Coryell, Hamilton, Bosque, Somerville and Hill; K. K. Leggett, Abilene, Referee for the Counties of Eastland, Stephens, Throckmorton, Shackleford, Callahan, Taylor, Jones, Haskell, Knox, Noland,

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Fisher, Stonewall, Kent, Dickens, King, Crosby, Garza, Lubbock, Gaines, Andrews, Mitchell, Scurry, Borden, Howard, Martin, Midland, Yoakum, Terry, Lynn; A. W. Wilson, Brownwood, Referee for the Counties of Glasscock, Sterling, Coke, Tom Green, Crockett, Schleicher, Sutton, Irion, Mills, Runnels, Coleman, Brown, Menard and Concho.

EASTERN DISTRICT.

District Judge, David E. Bryant, Sherman.

DIVISION RETURNABLE TO JEFFERSON.

Clerk District Court, W. E. Singleton, Jefferson.

Referees with Jurisdictions. J. A. Hurley, Sulphur Springs, Referee for the Counties of Bowie, Camp, Cass, Franklin, Harrison, Hopkins, Marion, Morris, Titus and Upshur.

DIVISION RETURNABLE TO TYLER.

Clerk District Court, D. W. Parish, Tyler.

Referees with Jurisdiction. C. G. White, Referee for the Counties of Anderson, Angeline, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Panola, Raines, Rusk, Shelby, Smith, Trinity, Van Zandt and Wood.

DIVISION RETURNABLE TO GALVESTON.

Clerk District Court, C. D. Hart, Galveston.

Referees with Jurisdictions. ....., Referee for the Counties of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Madison, Mortagorda, Montgomery, Walker, Waller, Wharton and Jackson.

DIVISION RETURNABLE TO PARIS.

Clerk District Court, John B. Dailey, Paris.

Referees with Jurisdictions. F. B. Dillard, Referee for the Counties of Delte, Fannin, Grayson, Lamar and Red River.

DIVISION RETURNABLE TO BEAUMONT.

Clerk District Court, C. Dart, Jr., Beaumont.

Referees with Jurisdictions. W. J. Crawford, Beaumont, Referee for the Counties of Jasper, Jefferson, Liberty, Newton, Orange, Polk, Sabine, San Augustine.

SOUTHERN DISTRICT.

District Judge, Walter T. Burns, Houston.

Clerk District Court, C. Dart, Galveston.

COUNTIES RETURNABLE TO GALVESTON.

Austin, Brazoria, Chambers, Fort Bend, Galveston, Matagorda, Wharton.

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COUNTIES RETURNABTE TO HOUSTON.

Brazos, Calhoun, Colorado, Goliad, Grimes, Harris, Jackson, Lavaca, Madison, Montgomery, Polk, San Jacinto, Trinity, Victoria, Walker, Walter.

COUNTIES RETURNABLE TO LAREDO.

Referee with Jurisdictions. Referee A. Winslow, Laredo, Referee for Aransas, Dimmit, Duval, Lasalle, McMullen, Ninces, Refugio, San Patricio, Webb, Zabato.

COUNTIES RETURNABLE TO BROWNSVILLE.

Cameron, Hidalgo, Stair.

WESTERN DISTRICT.

District Judge, Thomas S. Maxey, Austin.

DIVISION RETURNABLE TO SAN ANTONIO.

Clerk District Court, A. Grosenbacher, San Antonio.

Referees with Jurisdictions. T. M. Watlington, San Antonio, Referee for the Counties of Atacosa, Bandera, Bexar, Bee, Comal, Calhoun, Dewitt, Edwards, Frio, Guadalupe, Gonzales, Goliad, Kerr, Kendall, Kinney, Karnes, Lavaca, Live Oak, Medina, Maverick, Nucces, Uvalde, Valverde, Wilson and Zavalla.

DIVISION RETURNABLE TO EL PASO.

Clerk District Court, J. T. Hodgson, El Paso.

Referees with Jurisdictions. M. I. Killegon,————————, Referee for the Counties of Brewster, Buchel, Bailey, Castro, Cochran, Crane, Dawson, El Paso, Ector, Foley, Floyd, Hale, Hockley, Jeff Davis, Lamb, Lynn, Loving, Presidio, Pecos, Parmer, Reeves, Swisher, Terry, Upton, Winkler, Yoakum and Ward.

DIVISION RETURNABLE TO WACO.

Clerk District Court, L. B. McCulloch, Waco.

DIVISION RETURNABLE TO AUSTIN.

Clerk District Court, D. H. Hart, Austin.

Referees with Jurisdictions. Franz Fiset, Austin, Referee for the Counties of Blanco, Bastrop, Burleson, Burnet, Caldwell, Fayette, Lillespie, Hays, Kimble, Lee, Llano, Lampassas, Mason, McCullough, Milan, San Saba, Travis, Washington and Williamson; A. Winslow, Laredo, Referee for the Counties of Duval, Lasalle, McMullen, Webb, Zapata, Nueces, San Patricio, Arancos, Refugio.

UTAH (8th Circuit).

District Judge, John A. Marshall, Salt Lake City.

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Clerk District Court, J. R. Letcher, Salt Lake City.

Referees with Jurisdiction, Pearl E. Keeler, Logan City, Referee for Cache County; Thomas Maloney, Ogden City, Referee for the Counties of Weber and Box Elder and Davis; Charles Baldwin, Salt Lake City, Referee for Salt Lake County and Tooele County; Elmer E. Corfman, Provo City, Referee for the County of Utah; Frank H. Holzheimer, Eureka, Referee for Juab County; George Christensen, Mt. Pleasant, Referee for San Peet County; John Nowers, Beaver City, Referee for Beaver County.

Business for the Counties of Kane, Sevier, Uinta, Summit and Davis, on account of inability to find persons to be Referees, has been referred to other referees in other Counties.

VERMONT (2nd Circuit).

District Judge, H. H. Wheeler, Brattleboro.

Clerk District Court, George E. Johnson, Burlington.

Referees with Jurisdiction, Frank W. Tuttle, Vergennes, for Addison County; George W. Deberville, Burlington, Chittenden County; Hiram M. Mott, St. Albans, Franklin County; Fred H. McFarland, Hyde Park, Lamoille County; ....., Bradford, Orange County; John W. Redmond, Newport, Orleans County; Joel C. Baker, Rutland, Rutland County; Edward H. Deavitt, Montpelier, Washington County; Frank D. E. Stowe, Brattleboro, Windham County; Gilbert A. Davis, Windsor, Windsor County; Marshall Montgomery, St. Johnsbury, Caledonia and Essex Counties.

VIRGINIA (4th Circuit).
EASTERN DISTRICT.

District Judge, Edmund Waddill, Jr., Richmond.

Clerk District Court, George E. Bowden, Richmond, Va.

Deputy Clerk, Joseph P. Brady, Alexandria; Juno S. Fowler, Richmond.

REFEREES WITH JURISDICTION.

DISTRICT NUMBER ONE.

Referee Walter U. Varney of Alexandria, Virginia, comprising the City of Alexandria, and the Counties of Alexandria, Fairfax, Loudon, Prince William, Fauquier and Culpepper.

DISTRICT NUMBER TWO.

Referee Charles P. Caldwell, of Richmond, Virginia, comprising the City of Fredericksburg, and the Counties of Spottsylvania, Stafford, King George, Westmoreland, Richmond, Northumberland, Lancaster, Essex, King and Queen, Middlesex, Gloucester, Orange, Louisa, Hanover, Caroline, King William, New Kent and Charles City.

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DISTRICT NUMBER THREE.

Referee Robert H. Talley, of Richmond, Virginia, comprising the Cities of Richmond and Manchester, and the Counties of Henrico, Chesterfield, Powhatan and Goochland.

DISTRICT NUMBER FOUR.

Referee W. W. Forbes, of Farmville, Virginia, comprising the Counties of Prince Edward, Nottoway and Amelia.

DISTRICT NUMBER FIVE.

Referee George S. Bernard, of Petersburg, Virginia, comprising the City of Petersburg, and the Counties of Dinwiddie, Prince George, Surry, Sussex, Greensville, Lunenburg, Mecklenburg and Brunswick.

DISTRICT NUMBER SIX.

Referee John B. Locke, of Newport News, Virginia, comprising the Cities of Newport News and Williamsburg, and the Counties of James City, Warwick, York and Elizabeth City.

DISTRICT NUMBER SEVEN.

Referee Charles H. Causay, Jr., of Suffolk, Virginia, comprising the Counties of Nansemond, Isle of Wight and Southampton.

DISTRICT NUMBER EIGHT.

Referee D. Lawrence Groner, of Norfolk, Virginia, comprising the Cities of Norfolk and Portsmouth, and the Counties of Norfolk, Princess Anne and Matthews.

DISTRICT NUMBER NINE.

Referee John Goffigon, of Cape Charles City, Virginia, comprising the Counties of Accomac and Northampton.

WESTERN DISTRICT.

District Judge, H. Clay McDowell, Bigstone Gap.

HARRISBURG DIVISION.

Clerk District Court, A. K. Fletcher, Harrisonburg.

Referees with Jurisdiction, Walter H. Turner, Front Royal, Referee for City of Winchester, Counties of Frederick, Clarke, Warren and Rappahannock; Robert J. Walker, Mount Jackson, Referee for Counties of Shenandoah and Page; Charles M. Keezel, Harrisonburg, Referee for the Counties of Rockingham, Greene, Madison, Shenandoah and Page; J. E. R. Nelson, Staunton, Referee for the City of Staunton and Buena Vista, and Counties of Augusta, Highland, Bath, Alleghany, Rockbridge, Botewurt.

LYNCHBURG DIVISION.

Clerk District Court, William McCauley, Lynchburg.

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Referees with Jurisdiction, L. O. Hayden, Charlottsville, Referee for the City of Charlottsville, and the Counties of Albermarle and Fluvana; W. C. Franklin, Pamlin, Referee for the Counties of Nelson, Amherst, Appamattox, Buckingham and Cumberland; R. C. Blackford, Lynchburg, Referee for the City of Lynchburg, and the Counties of Campbell and Bradford; G. H. Penn, Roanoke, Referee for the City of Roanoke and County of Craig.

DANVILLE DIVISION.

Clerk District Court, S. W. Martin, Danville.

Referees with Jurisdiction, L. S. Thomas, Danville, Referee for the City of Danville, and the Counties of Pittsylvania, Halifax and Charlotte; Franklin, Henry and Patrick.

ABINGDON DIVISION.

Clerk District Court, Isaac C. Fowler, Abingdon.

Referees with Jurisdiction, O. T. Bailey, Abingdon, W. N. Ragland, Radford, Referees for the City of Radford, and Counties of Montgomery, Giles and Floyd; D. F. Bailey, Bristol, Washington W. Va., Referee for Counties of Washington, Smyth, Grayson, Russell, Scott, Lee, Wise and Dickinson; Thornton L. Massie, Pulaski, Referee for the Counties of Pulaski, Carroll, Wythe, Scott; W. C. Pendleton, Tazewell, Referee for the Counties of Bland, Tazewell and Buchanan.

WASHINGTON (9th Circuit).

District Judge, Cornelius H. Hanford, Seattle.

Clerk District Court, R. M. Hopkins, Seattle.

Referees with Jurisdiction, E. C. Ellis, Whatcom, and John P. Hoyt, Seattle, Referees for the Counties of King, Kitsap, Snohomish, Skagit, Whatcom, Island, Jefferson, Clallam and San Juan; Adolph Munter, Spokane, and F. W. Dewart, Spokane, Referees for the Counties of Spokane, Stevens, Adams, Lincoln, Douglas, Okanogan, Kittitas and Ferry; H. W. Canfield, Colfax, R. D. McCully, Goldendale, Geo. T. Thompson, Walla Walla, and J. A. Taggard, North Yakima, Referees for the Counties of Walla Walla, Franklin, Columbia, Asotin, Garfield, Whitman, Yakima and Klickitat.

WEST VIRGINIA (4th Circuit).

District Judge, John J. Jackson, Parkersburg.

Clerk District Court, J. Y. Moore, Clarksburg.

Referees with Jurisdiction, Frank C. Cox, Wheeling, Referee for Ohio, Wetzel, Tyler, Marion, Monongahela Counties; B. L. Butcher, Fairmont, Eugene Sommerville, Grafton, all Northern District; Geo. P. Shirley, Parsons, Referee for Counties of Tucker, Randolph, Ban Buren; James

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D. Butt, Martinsburg, Referee for Counties of Jefferson, Berkley, Morgan and Mineral; W. Frank Stout, Clarksburg, Referee for County of Harrison; George M. Johnson, Parkersburg, all Northern District.

WISCONSIN (7th Circuit).
EASTERN DISTRICT.

District Judge, W. H. Seaman, Sheboygan.

Clerk District Court, Edward Kratz, Milwaukee.

Referees with Jurisdiction. D. Lloyd Jones, Milwaukee, Wis., Referee for Counties of Milwaukee, Waukesha, Ozankee, Washington, and Dodge; Charles H. Forward, Oshkosh, Referee for Counties of Winnebago, Fond du Lac, Green Lake, Marquette and Waushara; Paul V. Cary, Appleton, Outagamie County, and any other Counties in the Eastern District convenient for parties; Paul I. Krez, Sheboygan; Charles H. Lee, Racine, Referee for Counties of Racine, Walworth and Kenosha; Daniel H. Sumner, Waukesha, T. P. Silverwood, Green Bay, Referees for Brown County; Charles Churchill, Waupaca, Referee for Counties of Waupaca and Wauskara.

Each Referee has jurisdiction of any case assigned from any part of District.

WESTERN DISTRICT.

District Judge, Romanzo Bunn, Madison.

Clerk District Court, Franklin W. Oakley, Madison; Alfred Harrison, La Crosse.

Referees with Jurisdiction, Henry M. Lewis, Madison, Theodore M. Thorson, West Superior, Guy C. Prentiss, La Crosse, Referees for the Counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, St. Croix, Sank, Sawyer, Taylor, Trumpealeau, Vernon, Vilas, Washburn, Wood.

WYOMING (8th Circuit).

District Judge, John A. Riner, Cheyenne.

Clerk District Court, Louis Kirk, Cheyenne.

Referees with Jurisdictions. Clyde M. Watts, Cheyenne, Referee for the whole district, which comprises the entire state.

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