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Supreme Court of the United States
General Orders in Bankruptcy
1867

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GENERAL ORDERS IN BANKRUPTCY.

In pursuance of the tenth section of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, the justices of the Supreme Court of the United States have framed the following General Orders, which shall constitute the rules of practice and procedure in bankruptcy in the district courts of the United States:

I.

DUTIES OF CLERKS OF DISTRICT COURTS.

The clerks of the several district courts shall enter upon each petition in bankruptcy the day, and the hour of the day, upon which the same shall be filed; and shall also make a similar note upon every subsequent paper filed with them; and the papers in each case shall be kept in a file by themselves. No paper shall be taken from the files for any purpose except by order of the court. Every paper shall have endorsed upon it a brief statement of its character. The clerks shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced; and the number of each case shall be endorsed on every paper. The docket shall be so arranged that a brief memorandum of every proceeding in each case shall be entered therein, in a manner convenient for reference, and shall at all times be open for public inspection. The clerks shall also keep separate minute books for the record of proceedings in bankruptcy, in which shall be entered a minute of all the proceedings in each case, either of the court or of a register of the court, under their respective dates.

II.

PROCESS.

All process, summons, and subpœnas shall issue out of the court under the seal thereof, and be tested by the clerk; and blanks with the signature of the clerk and seal of the court may, upon application, be furnished to the registers.

III.

APPEARANCE.

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. Either party may appear and conduct the proceedings by attorney, who shall be an attorney or counsellor authorized to practice in the circuit or district court. The name of the attorney or counsellor, with his place of residence and 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 endorsed 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 rules, required to be served on the party personally, may be served upon his attorney.

IV.

COMMENCEMENT OF PROCEEDINGS.

Upon the filing of a petition in case of voluntary bankruptcy, or as soon as any adjudication of bankruptcy is made upon a petition filed in case of involuntary bankruptcy, the petition shall be referred to one of the registers in such manner as the district court shall direct; and the petitioner shall furnish the register with a copy of the papers in the case, and thereafter all the proceedings required by the act shall be had before him, except such as are required by the act to be had in the district court, or by special order of the district judge, unless some other register is directed to act in the case.

The order designating the register to act upon any petition shall name a day upon which the bankrupt shall attend before the register, from which date he shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the register 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 register, or be delivered to him personally by the clerk or other officer of the court.

V.

REGISTERS.

The time when and the place where the registers shall act upon the matters arising under the several cases referred to them, shall be fixed by special order of the district court, or by the register acting under the authority of a general order, in each case, made by the district court; and at such times and places the registers may perform the acts which they are empowered to do by the act, and conduct proceedings in relation to the following matters, when uncontested, viz: making adjudication of bankruptcy on petition of the debtor; directing, unless otherwise ordered by the court, the newspapers in which the notices shall be published by the messenger; administering oaths; receiving the surrender of a bankrupt; granting protection thereon; giving requisite direction for notices, advertisements, and other ministerial proceedings; taking proofs of claims; ordering payment of rates and taxes, and salary or wages of persons in the employment of the assignee; ordering amendments, or inspection, or copies, or extracts of any proceedings; taking accounts of proceeds of securities held by any creditor; taking evidence concerning expenses and charges against the bankrupt's estate; auditing and passing accounts of assignees; proceedings for the declaration and payment of dividends, and taxing costs in any of the proceedings, all of which shall be subject to the control of the court.

VI.

DISPATCH OF BUSINESS.

Every register, in performing the duties required of him under the act, and by these orders, or by orders of the district court, shall use all reasonable dispatch, and shall not adjourn the business but for good cause shown. Six hours' session shall constitute a day's sitting if the business requires; and when there is time to complete the proceedings in progress within the day, the party obtaining any adjournment or postponement thereof may be charged, if the court think proper, with all the costs incurred in consequence of the delay.

VII.

EXAMINATION AND FILING OF PAPERS.

It shall be the duty of the register to examine the bankrupt's petition and schedules filed therewith, and to certify whether the same are correct in form; or, if deficient, in what respect they are so; and the court may allow amendments to be made in the petition and schedules upon the application of the petitioner, upon proper cause shown, at any time prior to the discharge of the bankrupt. At the close of the last examination of the bankrupt, the register having charge of the case shall file all the papers relating thereto in the office of the clerk of the district court, and these papers, together with those on file in the clerk's office, and the entries in the minute-book, shall constitute the record in each case; and the clerk shall cause the papers in each case to be bound together.

VIII.

ORDERS BY THE REGISTER.

Whenever an order is made by a register in any proceeding in which notice is required to be given to either party before the order can be made, the fact that the notice was given, and the substance of the evidence of the manner in which it was given, shall be recited in the preamble to the order, and the fact also stated that no adverse interest was represented at the time and place appointed for the hearing of the matter upon such notice; and whenever an order is made where adverse interests are represented before the register, the fact shall be stated that the opposing parties consented thereto, or that the adverse interest represented made no opposition to the granting of such order.

IX.

NOTIFICATION TO ASSIGNEE OF HIS APPOINTMENT.

It shall be the duty of the register, immediately upon the appointment of an assignee, as prescribed in sections 12 and 13 of the act, (should he not be present at such meeting,) to notify him, by personal or mail service, of his appointment; and in such notification the assignee so appointed shall be required to give notice forthwith to the court or register of his acceptance or rejection of the trust.

X.

TESTIMONY, HOW TAKEN.

The examination of witnesses before a register in bankruptcy 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, which shall be had in conformity with the mode now adopted in courts of law. The depositions upon such examination shall be taken down in writing by the register in the form of narrative, unless he determines that the examination shall be by question and answer in special instances, and when completed shall be read over to the witness and signed by him in the presence of the register. Any question or questions which may be objected to shall be noted by the register upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the question; 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. In case of refusal of a witness to attend, or to testify before a register, the same proceedings may be had as are now authorized with respect to witnesses to be produced on examination before an examiner of any of the courts of the United States on written interrogatories.

XI.

MINUTES BEFORE REGISTER, FILING, ETC.

A memorandum made of each act performed by a register shall be in suitable form, to be entered upon the minute-book of the court, and shall be forwarded to the clerk of the court not later than by mail the next day after the act has been performed. Whenever an issue is raised before the register in any proceedings, either of fact or law, he shall cause the same to be stated in writing in the manner required by the fourth and sixth sections of the act, and certify the same forthwith to the district judge for his decision. The pendency of the issue undecided before a judge shall not necessarily suspend or delay other proceedings before the register or court in the case.

XII.

ACCOUNTS FOR SERVICES OF REGISTER AND MARSHAL.

Every register shall keep an accurate account of his traveling and incidental expenses, and those of any clerk or other officer attending him in the performance of his duties in any case or number of cases which may be referred to him; and shall make return of the same under oath, with proper vouchers, (when vouchers can be procured,) on the first Tuesday in each month; and the marshal shall make his return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, publication of notices 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.

XIII.

MARSHAL AS MESSENGER.

It shall be the duty of the marshal as messenger to take possession of the property of the bankrupt, and to prepare, within three days from the time of taking such possession, a complete inventory of all the property, and to return it as soon as completed. The time for making the inventory and return may be enlarged, under proper circumstances, by special order of the district court. He shall also, in case the bankrupt is absent, or cannot be found, prepare a schedule of the names and residences of his creditors, and the amount due to each, from the books or other papers of the bankrupt that may be seized by him under his warrant, and from any other sources of information; but all statements upon which his return shall be made shall be in writing, and sworn to, by the parties making them, before one of the registers in bankruptcy of the court, or a commissioner of the courts of the United States. In cases of voluntary bankruptcy, the marshal may appoint special deputies to act, as he may designate, in one or more cases, as messengers, for the purpose of causing the notices to be published and served as required in the eleventh section of the act, and for no other purpose. In giving the notices required by the third subdivision of the eleventh section of the act, it shall be sufficient to give the names, residences, and the amount of the debts (in figures) due the several creditors, so far as known, and no more.

XIV.

PETITIONS AND AMENDMENTS.

All petitions, and the schedules filed therewith, shall be printed or written out plainly, and without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference; and whenever any amendments are allowed, they shall be written and signed by the petitioner on a separate paper, in the same manner as the original schedules were signed and verified; and if the amendments are made to different schedules, the amendments to each schedule shall be made separately, with proper reference to the schedule proposed to be amended, and each amendment shall be verified by the oath of the petitioner in the same manner as the original schedules.

XV.

PRIORITY OF ACTIONS (INVOLUNTARY BANKRUPTCY.)

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 six 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 consolidated, 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.

XVI.

FILING PETITIONS IN DIFFERENT DISTRICTS.

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 domicile; and such 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 firm in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the 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 for adjudication of bankruptcy shall be filed in different districts by different members of the same copartnership for an adjudication of the bankruptcy of said copartnership, the court 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.

XVII.

CONCERNING REDEMPTIONS OF PROPERTY AND COMPOUNDING CLAIMS.

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 any debts or other claims or securities due or belonging to the estate of the bankrupt, the assignee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor in the office of the clerk of the district court; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given in some newspaper, to be designated by the court, at least ten days before the hearing, so that all 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 assignee.

XVIII.

PROCEEDINGS IN CASE OF COPARTNERSHIPS.

In case one or more members of a copartnership refuse to join in a petition to have the firm declared bankrupt, the parties refusing 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 copartnership is not insolvent, or has not committed an act of bankruptcy, and to take all other defences 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 copartner shall be required to furnish to the marshal, as messenger, 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.

XIX.

DUTIES OF ASSIGNEES.

The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession; and all sales of the same shall be by public auction, unless otherwise ordered by the court. Every assignee shall keep full, exact, and regular books of account of all receipts, payments, and expenditures of money by him, and shall make report to the court, within twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the fourteenth section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the assignee within twenty days after the filing of the report.

XX.

COMPOSITION WITH CREDITORS (ARBITRATION.)

Whenever an assignee shall make application to the court for authority to submit a controversy arising in the settlement of demands against the bankrupt's estate, or of debts due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the subject-matter of the controversy and the reasons why the assignee thinks it proper and most for the interest of the creditors that it should be settled by arbitration or otherwise, shall be set forth clearly and distinctly in the application; and the court, upon examination of the same, may immediately proceed to take testimony and make an order thereon, or may direct the assignee to give notice of the application, either by publication or by mail, or both, to the creditors who have proved their claims to appear and show cause, on a day to be named in the order and notice, why the application should not be granted, and may make such order thereon as may be just and proper.

XXI.

DISPOSAL OF PROPERTY BY ASSIGNEE.

In making sales of personal property the assignee shall give at least ten days' notice of the time and place of the sale, and of the articles to be sold, by advertisement in one or more newspapers, to be designated by the court or by a register, and by posted handbills or otherwise, as he may think best for the interest of the estate, or as the court may order; and he shall give like notice of the sale of any real estate at least twenty days before such sale. Upon his application to the court, and for good cause shown, the assignee may be authorized to sell any specified portion of the bankrupt's estate at private sale. The court, by order in special cases, may dispense with newspaper and handbill advertisements. In making sale of the franchise of a corporation, it may be offered in fractional parts, or in certain numbers of shares, corresponding to the number of shares in the bankrupt corporation. And in making sale of the real estate of a bankrupt, the assignee shall, unless otherwise ordered by the court, offer the same in lots or parcels, if it exists in separate parcels, in such manner as may be for the interest of the creditors of the estate.

XXII.

PERISHABLE PROPERTY.

In all cases where goods or other articles come into possession of the messenger or assignee which are perishable, or liable to deterioration in value, the court may, upon application, in its discretion, order the same to be sold, and the proceeds deposited in court.

XXIII.

SERVICE OF NOTICE.

The notice provided by the 18th section of the act shall be served by the marshal or his deputy, and notices to the creditors of the time and place of meeting provided by the section shall be given through the mail by letter, signed by the clerk of the court.

Every envelope containing a notice sent by the clerk or messenger shall have printed on it a direction to the postmaster at the place to which it is sent to return the same within ten days unless called for.

XXIV.

OPPOSITION TO DISCHARGE.

A creditor opposing the application of a bankrupt for discharge shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file his specification of the grounds of his opposition, in writing, within ten days thereafter, unless the time shall be enlarged by order of the district court in the case, and the court shall thereupon make an order as to the entry of said case for trial on the docket of the district court, and the time within which the same shall be heard and decided.

XXV.

SECOND AND THIRD MEETING OF CREDITORS.

Whenever any bankrupt shall apply for his discharge, within three months from the date of his being adjudged a bankrupt, under the provisions of the 29th section of the act, the court may direct that the second and third meetings of creditors of said bankrupt required by the 27th and 28th sections of said act shall be had on the day which may be fixed in the order of notice for the creditors to appear and show cause why a discharge should not be granted such bankrupt; and the notices of such meeting shall be sufficient if it be added to the notice to show cause, that the second and third meetings of said creditors shall be had before the register upon the same day that cause may be shown against the discharge, or upon some previous days or day.

XXVI.

APPEALS.

Appeals in equity from the district to the circuit court, and from the circuit to the Supreme Court of the United States, shall be regulated by the rules governing appeals in equity in the courts of the United States. Any 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, according to the provisions of the 8th section of the act, shall give notice of his intention to enter the appeal within ten days from the entry of the final decision of the district court upon his claim; and he shall file his appeal in the clerk's office of the circuit court within ten days thereafter, setting forth a statement in writing of his claim in the manner prescribed by said section; and the assignee shall plead or answer thereto in like manner within ten days after the statement shall be filed. Every issue thereon shall be made up in the court, and the cause placed upon the docket thereof, and shall be heard and decided in the same manner as other actions at law.

XXVII.

IMPRISONED DEBTOR.

If at the time of preferring his petition the debtor shall be imprisoned, the court, upon his application, may order him to be produced upon *habeas corpus* by the jailor, or any officer in whose custody he may be, before the register, 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.

XXVIII.

DEPOSIT AND PAYMENT OF MONEYS.

The district court in each district shall designate certain national banks, if there are any within the judicial district, or if there be none, then some other safe depository, in which all moneys received by assignees or paid into court in the course of any proceeedings in bankruptcy shall be deposited; and every assignee and the clerk of said court shall deposit all sums received by them, severally, on account of any bankrupt's estate, in one designated depository; and every clerk and assignee shall make a report to the court of the funds received by him, and of deposits made by him, on the first Monday of every month. No moneys so deposited shall be drawn from such depository unless upon a check, or warrant, signed by the clerk of the court, or by an assignee, and countersigned by the judge of the court, or one of the registers designated for that purpose, 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 assignee or the 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 rule shall be furnished to the depository so designated, and also the name of any register authorized to countersign said checks.

XXIX.

PREPAYMENT OR SECURITY OF FEES.

The fees of the register, marshal, and clerk shall be paid or secured in all cases before they shall be compelled to perform the duties required of them by the parties requiring such service; and in the case of witnesses, their fees shall be tendered or paid at the time of the service of the summons or subpœna, and shall include their traveling expenses to and from the place at which they may be summoned to attend. The court may order the whole, or such portion of the fees and costs in each case to be paid out of the fund in court in such case as shall seem just.

XXX.

AS TO FEES AND COSTS.

To the clerk of the court.—For each notice required to be sent by mail when signed by the clerk, ten cents; the postage to be prepaid by the party required to give such notice.

To the clerk and register.—For every copy of any paper in proceedings in bankruptcy, twenty-five cents for certifying the same, and in addition thereto, ten cents for each folio of 100 words.

To the register.—For every order made where notice is required to be given, and for certifying copy of the same to the clerk, one dollar.

For every certificate of question to be certified to the district judge, under the 4th and 6th sections of the act, one dollar.

For every proof of debt, twenty-five cents; and where testimony is taken, the fees prescribed by law may be added.

In cases where the debtor has no means, and makes proof, to the satisfaction of the court, that he is unable to pay the costs prescribed by the act and these orders, the judge in his discretion may direct that the fees and costs therein shall not exceed the sum required by the act to be deposited with the clerk.

XXXI.

COSTS IN CONTESTED ADJUDICATIONS.

In cases of involuntary bankruptcy, where the debtor resists an adjudication, and the court, after hearing, shall adjudge the debtor a bankrupt, the petitioning creditor shall recover, to be paid out of the fund, the same costs that are allowed by law to a party recovering in a suit in equity; and in case the petition shall be dismissed, the debtor may recover like costs from the petitioner.

XXXII.

AS TO FORMS AND SCHEDULES.

The several forms specified in the schedules annexed to these orders for the several purposes therein stated, shall be observed and used with such alterations as may be necessary to suit the circumstances of any particular case. In all cases where, by the provisions of the act, a special order is required to be made in any proceeding, or in any case instituted under the act in a district court of the United States, such order shall be framed by the court to suit the circumstances of the particular case; and the forms hereby prescribed shall be followed, as nearly as may be, and so far as the same are applicable to the circumstances requiring such special order. 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 rules of the circuit court regulating the practice and procedure in cases at law shall be followed as nearly as may be.

XXXIII.

OMISSIONS AND AMENDMENTS.

Whenever a debtor shall omit to state in the schedules annexed to his petition any of the facts required to be stated concerning his debts or his property, he shall state, either in its appropriate place in the schedules or in a separate affidavit to be filed with the petition, the reason for the omission, with such particularity as will enable the court to determine whether to admit the schedules as sufficient, or to require the debtor to make further efforts to complete the same according to the requirements of the law; and in making any application for amendment to the schedules the debtor shall state under oath the substance of the matters proposed to be included in the amendment, and the reasons why the same had not been incorporated in his schedules as originally filed, or as previously amended. In like manner, he may correct any statement made during the course of his examination.